

PART I: UNIT SCOPE DETERMINATIONS

A. The Petitioned-For Bargaining Units

In **Case 5-RC-14906**, the Union seeks to represent a unit consisting of the following employee classifications:

All full-time and regular part-time physical production and maintenance employees in the Fossil Engineering and Maintenance Department of the Fossil Energy Division, including all warehouse employees and truck drivers, but excluding all chauffeurs, all confidential, managerial, office clerical, professional and technical employees, and all guards and supervisors as defined in the Act.

In **Case 5-RC-14907**, the Union seeks to represent a unit consisting of the following employee classifications:

All full-time and regular part-time physical production and maintenance employees in the Fossil Energy Division, including all warehouse employees and truck drivers, but excluding all employees in the Fossil Engineering and Maintenance Department, all chauffeurs, all confidential, managerial, office clerical, professional and technical employees, and all guards and supervisors as defined in the Act.

In **Case 5-RC-14908**, as amended at the hearing, the Union seeks to represent a unit consisting of the following employee classifications:

All full-time and regular part-time technical employees in the Electric Transmission and Distribution Division of the Utility Operations Group, excluding all chauffeurs, all truck drivers, all confidential, managerial, office clerical, physical production and maintenance, professional, and warehouse employees, and all guards and supervisors as defined in the Act.

In **Case 5-RC-14909**, as amended at the hearing, the Union seeks to represent a unit consisting of the following employee classifications:

All full-time and regular part-time physical production and maintenance employees in the Utility Operations Group, including all warehouse employees and truck drivers, but excluding all chauffeurs, all confidential, managerial, office clerical, professional and technical employees, and all guards and supervisors as defined in the Act.

The four representation petitions were filed by the Petitioner on or about October 14, 1999. The petitions were consolidated for hearing. A Hearing Officer for Region Five presided over the hearing held on various days from November 9, 1999, to April 25, 2000. The hearing resulted in a record of approximately 17,000 pages, plus hundreds of exhibits from both parties. Post-hearing briefs were filed by the parties on June 23, 2000. A Motion to Dismiss the Representation Petitions was filed by BGE on June 23, 2000. The Petitioner requested a mail ballot election in its post-hearing brief. On July 26, 2000, BGE filed a Memorandum in Opposition to Petitioner's Request for a Mail Ballot.

On August 2, 2000, BGE moved to reopen the record to present evidence concerning post-hearing organizational changes that occurred within BGE. On August 8, 2000, the Acting Regional Director issued a Notice to Show Cause to the parties requesting, "...the exact nature of the reorganizational changes that have occurred; the specific organizational units, job classifications, and number of employees affected by each post-hearing organizational change; the effect these organizational changes have on each unit scope and unit placement issue already briefed; whether the extant petitions must be amended to reflect new corporate entities..." On August 21, 2000, BGE filed its response to the Notice to Show Cause. On August 23, 2000, Petitioner filed its Response. On September 8, 2000, BGE and the Union filed a Joint Stipulation concerning the post-hearing changes occurring in BGE and the post-hearing movement of personnel within, into, and out of BGE and Constellation Power Source Generation, Inc. On September 13, 2000, the Parties filed a brief amendment to the Joint Stipulation. On September 22, 2000, the Acting Regional Director issued an Order receiving the Joint Stipulation, as amended, into the record and issuing a further Notice to Show Cause why the petitions in Cases 5-RC-14906 and 5-RC-14907 should not be amended to change the name of the employer from Baltimore Gas and Electric Company to Constellation Power Source Generation, Inc. On October 2, 2000, BGE filed its response to the Further Notice to Show Cause. BGE requested a hearing. On October 4, 2000, BGE filed a response to the IBEW's Response to the Acting Regional Director's Further Notice to Show Cause. Also on October 2, 2000, the Petitioner filed its Response to the Acting Regional Director's Further Notice to Show Cause. On October 4, 2000, BGE filed a response to Petitioner's Response to the Acting Regional Director's Further Notice to Show Cause. On October 17, 2000, the Acting Regional Director issued a Notice to Show Cause to Constellation Power Source Generation, Inc. to show cause why the petitions in Cases 5-RC-14906 and 5-RC-14907 should not be amended to change the name of the employer from Baltimore Gas and Electric Company to Constellation Power Source Generation, Inc. On October 27, 2000, CPSG filed its response to the Notice to Show Cause.

Against this procedural backdrop, the petitions present three major issues for resolution: unit scope; unit placement; and whether the election(s) should be conducted by mail ballot. Unit scope issues are discussed in Part I of this Decision and Direction of Election. Apart from unit scope issues, there are hundreds of job classifications that are in dispute in this proceeding. The unit placement of disputed classifications is discussed in Part II of this Decision and Direction of Election. As to the mail ballot issue, I note that comparable elections concerning the employees at issue have been conducted successfully in 1996 and 1998 by manual balloting. Despite arguments from Petitioner, I see no reason to depart from this practice. Accordingly, the election will be conducted by manual balloting.

There is no history of collective bargaining for any of the Employers' employees and no contract bar to this proceeding. No other labor organization seeks to represent the employees in any broader bargaining units than those petitioned for herein.

B. Background of Case 5-RC-14351 and the 1996 and 1998 Elections

On May 13, 1996, the IBEW filed a representation petition with Region 5 in Case 5-RC-14351. In that petition, the IBEW sought certification as the collective bargaining representative of a systemwide unit of BGE's production and maintenance employees. BGE agreed that the scope of the unit should be systemwide, but sought to include all weekly employees in the unit, regardless of whether they were production and maintenance employees. On November 15, 1996, the Regional Director for Region 5 issued a Decision and Direction of Election, finding that the systemwide production and maintenance unit sought by the Union was *an* appropriate unit. Er. Exh. 9C at 1-7 to 1-8.

After the Decision and Direction of Election in Case 5-RC-14351 issued, BGE filed a Request for Review with the Board. On December 17, 1996, the Board issued an Order that denied BGE's Request for Review, but allowed some 725 employees to vote subject to challenge. Er. Exh. 9B. On December 19, 1996, the Board issued a Supplemental Order, which explained in greater detail its December 17, 1996, Order. Er. Exh. 9A. The Board did not rule that the challenged voters had to be included in the petitioned-for unit. Instead, the Board stated explicitly that the challenged voters would cast challenged ballots, and that only if their ballots proved determinative, would the Regional Director and the Board pass on their status and the reason for their inclusion/exclusion. Er. Exh. 9A at 3.

An election in Case 5-RC-14351 was conducted in December 1996, and the challenged ballots did not prove to be determinative. After objections were filed by Petitioner IBEW, the parties agreed to set aside the 1996 election and conduct a second election, leaving the question of the challenged ballots unresolved. That re-run election was held on October 14 and 15, 1998, and the 1996 challenged voters again voted subject to challenge. Both parties filed objections. The Regional Director, on February 10, 1999, issued a Second Supplemental Decision dismissing all objections. After both the IBEW and BGE filed Requests for Review, the Board, on July 21, 1999, granted the IBEW's request, and ordered that a hearing be held on certain of the IBEW's objections. The Board denied BGE's Request for Review. On October 6, 1999, motions for reconsideration were denied.

After October 6, 1999, the IBEW's objections to the election and the question of the challenged ballots remained pending before the Region in Case No. 5-RC-14351. On October 14, 1999, the IBEW requested permission from the Region to withdraw the pending election petition it filed in May 1996 in Case 5-RC-14351. At the same time, the Union filed the four election petitions at issue in this case. On October 18, 1999, the Region granted the IBEW's request to withdraw the petition in Case No. 5-RC-14351 and to process the four representation petitions at issue here. On November 1, 1999, BGE filed a motion with the Board seeking, among other things, to stay the instant petitions until it reorganized. As noted, on November 9, 1999, the Board issued a decision denying BGE's motion. See Baltimore Gas and Electric Co., 330 NLRB No. 9 (Nov. 9, 1999). On November 22, 1999, BGE requested the Board to reconsider its ruling. The Board denied BGE's request on December 22, 1999.

C. BGE's Motions to Dismiss at Hearing

At the outset of the hearing, the Employer moved to dismiss or stay this proceeding based on, inter alia, its then-pending Request for Review concerning the Regional Director's decision to approve the withdrawal of the petition in Case 5-RC-14351. The Hearing Officer refused to stay the instant proceeding under the Board's Rules and Regulations pending a decision from the Board on the Employer's Request for Review. See Sec. 102.65 (e)(1) and (3) and 102.67(b) of the Board's Rules and Regulations, as amended. After the Employer renewed its motion, the Hearing Officer again denied it, but treated the Employer's renewal of the motion to dismiss or stay as an appeal directly to the Regional Director. In light of the Board's Orders denying the Employer's Request for Review. I likewise deny the Employer's motions for the same reasons.

BGE also moved to dismiss this proceeding on the grounds that the units sought are not appropriate units and will unnecessarily fragment the Company based on the extent of Petitioner's organizational activities, not community-of-interest criteria. BGE relies on NLRB v. Metropolitan Insurance Co., *supra*, 380 U.S. 438 (1965), discussing the history of 9(c)(5), and NLRB v. Lundy Packing Co., 68 F.3d 1577, 1580 (4th Cir. 1995), holding that the extent of organization cannot be assigned exclusive or controlling weight. BGE contends that this precedent precludes the Board from processing these petitions because the Union has sculpted the petitioned-for units to coincide with the extent of its

organization. BGE points out that Petitioner seeks to include certain classifications as eligible to vote that Petitioner challenged as ineligible classifications in Case 5-RC-14351. Therefore, BGE suggests that the instant petitions track organizational success, not appropriate unit criteria. BGE proffered certain of Petitioner's organizational flyers to support this argument. See e.g., Er. Exh. 19-21. The Employer also relies on a history of unit determinations by Region 5 and the Board concerning what is an appropriate unit at BGE. Petitioner counters that unit findings from prior cases that involved different petitioned-for units at BGE are not relevant here. Petitioner also emphasizes that there was no determination in 1996 concerning classifications that voted subject to challenge.

Having considered these positions, I reject BGE's argument that that the petitions should be dismissed because the Petitioner's position on the scope of the unit is based solely on extent of organization in contravention of Section 9(c)(5). Section 9(c)(5) of the Act provides that in determining whether a unit is appropriate for collective bargaining, the extent to which the employees have organized shall not be controlling. BGE's arguments are misplaced, because Section 9(c)(5) prohibits the Board, not the Union, from relying upon extent of organization as the sole or even the dominant factor when determining whether a unit is appropriate and whether to include disputed employees in the bargaining unit. I have not relied upon the extent of organization as the sole or dominant factor in rendering any element of this Decision and Direction of Election. To the contrary, and as the following unit scope and unit placement portions of this Decision demonstrate, I have assigned no significance to the fact that the Petitioner filed four different petitions. My decision concerning unit scope and placement issues is based solely on the evidence presented in light of controlling Board precedent in the utility industry. I have included within the bargaining units found appropriate a significant number of disputed employee classifications that the Petitioner sought to exclude. When including a disputed classification or excluding another disputed classification, I have fully and carefully evaluated the extensive record testimony and documentary exhibits the parties presented in the lengthy hearing in this case, and have made my unit placement decisions by applying traditional community of interest standards. The resulting determinations, and placements of employee classifications into or out of the appropriate bargaining units, represent my best judgment of the record evidence, applying community of interest and legal standards enumerated below. The extent of organization has not been a controlling factor.

I also conclude that the prior unit determinations in the 1996 and 1998 elections have no bearing on the issues in this proceeding. In 1996 and 1998, elections were held in 5-RC-14351 in a systemwide unit because both parties sought a systemwide unit. Thus, in 1996, the scope of the unit was not at issue. In 1996, I found that a systemwide unit was *an* appropriate unit and did not need to decide whether a less than systemwide unit was also *an* appropriate unit or was not an appropriate unit. See PECO Energy Co., 322 NLRB at 1079-80, n.1 (prior petition and election in systemwide unit does not foreclose less than systemwide units). Further, where the parties agreed to include classifications in the unit in 1996, I did not rule on the community of interest that those classifications may or may not have shared with other classifications. I found that the mere act of stipulating classifications into the unit was not a concession that a particular classification had a community of interest with production and maintenance employees. See Er. Exh 9C at 4-15. Thus, I reject BGE's argument that a classification that was included by agreement in 1996, must be included today.

In its post-hearing brief, BGE renewed its motion made at the outset of the hearing to dismiss or stay this proceeding on the grounds that the petitions are premature in light of its then pending July 1, 2000 reorganization. BGE argued that it was planning to separate itself into separate companies for nuclear generation, fossil generation, and distribution on July 1, 2000. BGE claimed that it was in a state of reorganization and that many petitioned-for employees will not be part of "BGE" after the reorganization then set to take place on July 1, 2000. Thus, BGE opposed the instant petitions, insisting that, at least until July 1, 2000, when industry deregulation became effective in Maryland and BGE's

reorganization was formally completed, the only appropriate unit is a systemwide unit. BGE also argued that the Board's prior decisions at BGE, in which elections were conducted in systemwide units in 1962, 1973, 1996 and 1998, preclude the Region from directing an election in anything less than a systemwide unit. BGE maintained that the following system-wide bargaining unit is the only appropriate unit:

All regular full-time and short-scheduled employees employed by the Employer at all its locations, excluding employees of subsidiaries, part-time employees, student employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

BGE's proposed system-wide unit consisted of the approximately 3,500 employees as set forth in the Regional Director's November 15, 1996, Decision and Direction of Election in Case 5-RC-14351. In addition, BGE's proposed system-wide unit included those classifications that the Board ordered to be voted subject to challenge, as further modified by the Settlement Agreement that resulted in a re-run election on October 14 and 15, 1998.

In support of its position, BGE argued that if all regulatory approvals and court challenges were resolved by July 1, 2000, BGE would transfer its nuclear generation assets to Calvert Cliffs Nuclear Power Plant, Inc. and its fossil generation assets to Constellation Power Source Generation, Inc., both non-regulated affiliates of Constellation Energy Group, Inc. (CEG). Following this reorganization, BGE asserted that that it would remain a regulated electric and gas utility, with Constellation Energy Group, Inc. as its parent company. BGE also asserted that most employees who worked in BGE's Nuclear Energy Division would become employees of Calvert Cliffs Nuclear Power Plant, Inc., and that most employees who worked in BGE's Fossil Energy Division would become employees of Constellation Power Source Generation, Inc. BGE further asserted that most employees who worked in BGE's Utility Operations Group (composed of the Electric Transmission and Distribution Division, Gas Distribution Division, General Services Division, and Retail Services Division) would become employees of the "new BGE." BGE stated that there would be significant staffing changes and transfers of personnel between the new BGE and the new non-regulated generation entities. In fact, BGE asserted that after July 1, 2000, BGE, in its current form, would cease to exist, and many of its employees would be transferred to the new non-regulated entities of Constellation Energy Group, Inc: Constellation Power Source Generation, Inc. and Calvert Cliffs Nuclear Power Plant, Inc. BGE asserted that the non-regulated entities would operate as separate subsidiaries of Constellation Energy under separate policies pursuant to separate human resource administration. BGE argued that although the record established that the proposed reorganization was imminent, it did not reflect the substantial staffing changes that had yet to occur, how the new entities would be staffed, and what employee transfers would take place. Thus, assuming these events took place as scheduled, BGE argued that the Petitioner would have to amend or re-file the existing petitions, and the record would have to be reopened to take such additional evidence as might be necessary to describe the new entities and their actual staffing.

BGE conceded that after any July 1, 2000 reorganization, the new BGE and the new non-regulated generation subsidiaries of Constellation Energy would not constitute a single voting unit since these companies would operate as separate entities. Rather, BGE argued that the fragmented voting units sought by the Petitioner would be just as inappropriate in the new entities as they would be under BGE's corporate structure as it existed at the time of the hearing.

BGE argued that in analogous cases where staffing changes are substantial, definite and imminent, the Board has recognized that it would be inappropriate to process a union's petition to an election. Douglas Motors Corp., 128 NLRB 309 (1960); Larson Plywood Co., Inc., 223 NLRB

1161 (1976); Martin Marietta Aluminum, 214 NLRB 646 n. 3 (1974). BGE further argued that the twin requirements which the Board requires, certainty and imminence, had been clearly demonstrated. Accordingly, BGE argued that the instant petitions should be dismissed because the record in its then current state did not contain evidence sufficient to support a Decision and Direction of Election in the new entities that would be created by reorganization after July 1, 2000.

The Petitioner countered that the planned reorganizations would not occur overnight. Petitioner asserted that BGE has already organized itself into separate administrative divisions and departments such that the petitioned-for units represent well-defined administrative segments of the Company with sufficient autonomy to make collective bargaining a feasible undertaking. In this regard, Petitioner argued that Constellation Energy Group and BGE had already made substantial reorganizational changes to prepare for electric utility deregulation after July 1, 2000, including reorganizations into large group divisions and departments, each with significant autonomy, that are consistent with the petitioned-for units. Petitioner argued that that even if BGE's formal July 2000 reorganization plan took place, BGE's Fossil Energy Division and the Nuclear Energy Division would become separate subsidiaries of Constellation Energy Group in a manner that corresponds with the units petitioned for in Cases 5-RC-14906 and 5-RC-14907. Likewise, the Petitioner claimed that the four divisions that comprised BGE's Utility Operations Group would become the new regulated BGE consistent with the petitions in 5-RC-14908 and 5-RC-14909. Thus, even if BGE's reorganization were formally completed by July 1, 2000, the Petitioner claimed that that there would be continuity in terms and conditions of employment for the employees seeking to be represented in the petitioned-for units. Consequently, Petitioner argued that the petitioned-for employees' representational desires would remain unaffected. Petitioner emphasized that in other contexts, even a change in ownership following a sale, transfer, or other change in operations does not warrant dismissing an election petition where there is continuity of employment for the petitioned-for employees. See e.g., New Laxton Coal Co., 134 NLRB 927, 929 (1961); Texas Eastman Company, 175 NLRB 626, 629 (1969); Pacific Tankers Inc., 84 NLRB 965, 966-67 (1949); Barker Automation, 132 NLRB 794, 796 (1964); Consolidated Edison Company of New York, Inc., 132 NLRB 1518, 1521-22 (1961).

D. BGE's Motion to Reopen the Record and the Parties' September 8, 2000 Joint Stipulation of Facts Concerning Post Hearing Movement of Personnel

As noted above, on August 2, 2000, following the close of the hearing and the filing of post-hearing briefs, BGE filed a Motion to Reopen Record and a Memorandum of Law in Support. In its supporting memorandum, BGE, by and through its attorneys at Constellation Energy Group, Inc., states that on July 1, 2000, the Employer made certain organizational changes that affect disposition of the instant petitions and that the record must be reopened to take additional evidence. On August 8, 2000, the Acting Regional Director for Region 5 issued a Notice to Show Cause why BGE's Motion should, or should not, be granted. On August 21, 2000, BGE filed its Response to Notice to Show Cause. By letter dated August 23, 2000, the Petitioner filed its reply.

On September 8, 2000, the Parties filed a Joint Stipulation concerning post-hearing movement of personnel, with attached exhibits. On September 13, 2000, the Parties filed a short amendment to the Joint Stipulation. The Parties' Joint Stipulation, as amended, is set forth below by numbered paragraph for ease of reference. The post-hearing changes set forth in the attached exhibits (A through E) to the parties original Joint Stipulation, as amended, have been received into the record in this matter by Order dated September 22, 2000, and they are incorporated into this Decision and Direction of Election when necessary to discuss unit scope and placement issues.

Joint Stipulation, As Amended

Post-Hearing Movement of Personnel

Attached to the stipulation as Exhibits A through E are documents which specifically set forth the movement of weekly personnel within, into, and out of BGE and Constellation Power Source Generation, Inc. ("CPSG") since the close of the hearing in this case, as well as changes concerning department and unit configuration.

Post-Hearing Changes in the Employer

1. On July 1, 2000, BGE, pursuant to authority given by the appropriate regulatory agencies, transferred all of its non-nuclear generating assets to [Constellation Power Source Generation, Inc. ("CPSG")] and all of its nuclear generating assets to Calvert Cliffs Nuclear Power Plant, Inc. ("CCNPP"). CPSG and CCNPP are separate legal entities from BGE. CPSG is a wholly owned subsidiary of Constellation Power Source Holdings, Inc. CPSG is a producer of electrical power. Since the advent of deregulation, it does so as an unregulated affiliate of Constellation Energy Group, Inc. It sells the power it produces into the wholesale market through Constellation Power Source, Inc. One of its customers is BGE.

2. The Employer does not contend that, after July 1, employees of CCNPP should be included in any of the voting units at issue here.

3. As of the close of the hearing in this case, all employees either stipulated to be eligible or in dispute in cases 5-RC-14906, 14907, 14908 and 14909 were employed by BGE.

4. As set forth in Exhibits A through E hereto, as a result of deregulation and other movements occurring after the close of the hearing, some of those employees remained employed by BGE, some became employees of CPSG, and still others became employees of CCNPP.

5. With the exceptions noted in Exhibit B hereto, all BGE employees working in the Fossil Energy Division ("FED") as of July 1 became employees of CPSG.

6. As set forth in Exhibit C hereto, some BGE employees working in the General Services Division as of July 1 became employees of CPSG.

7. CPSG consists of the same five departments which were part of BGE's FED: Department 20, which includes the Environmental Services Unit; Department 21, Brandon Shores & Wagner Operations; Department 23, Production Department-Crane/Gould Street and Riverside; Department 25, Fossil Engineering and Maintenance; and Department 28, Fuels & Business Planning.

8. The responsibilities and interrelationships among the five CPSG departments remain essentially unchanged from that which was described at the hearing.

9. The CPSG weekly employees perform the same duties, under the same conditions, as they did as FED employees.

10. CPSG staffs and operates the fossil fuel plants in a manner substantially similar to the way that they were staffed and operated under BGE.

11. The contact and interchange among the CPSG weekly employees is substantially the same as it was when these employees worked in the FED.

12. CPSG's "mobile maintenance" employees (*i.e.*, Department 25) provide the same maintenance and operational support to the fossil fuel plants and to the Calvert Cliffs Nuclear Power Plant as they did when working in FED, including: a) outage repair and project work; b) balance of plant work; and c) augmentation of plant maintenance and operational forces. When providing services to the fossil fuel plants, Department 25 charges the budgets of Departments 21 and 23 in the same manner as described at the hearing. When Department 25 provides services to the Calvert Cliffs Nuclear Power Plant, CPSG bills CCNPP, and CCNPP remits payment to CPSG, not Department 25.

13. BGE and CPSG are subject to the Maryland Public Service Commission's GENCO Code of Conduct when dealing with each other.

14. CPSG has continued for all weekly employees the training and cross-training programs previously in place under the FED.

15. CPSG's parent corporation, Constellation Power Source Holdings, Inc., has its own Director of Human Resources, who is responsible for setting and administering all labor relations and personnel policies for CPSG. All employees of CPSG are subject to the same labor relations and personnel policies.

16. CPSG has adopted the weekly salary administration program and pay grade system previously in place under BGE. This program and system applies equally to all CPSG weekly employees.

17. CPSG has adopted many of the fringe benefit plans previously in place under BGE. All CPSG weekly employees are covered by and eligible to participate in the same set of benefit plans.

18. All weekly CPSG employees participate in the same Results Incentive Awards ("RIA") program. The 2000 RIA goals for all CPSG employees are based on the same factors: kilowatt output of the fossil fuel plants and timeliness of power production from those plants.

19. CPSG has adopted the Employee Recognition Awards Program ("ERAP") previously in place under BGE and as described at the hearings. All CPSG weekly employees are eligible for awards under ERAP.

20. CPSG has adopted the Standards of Conduct and disciplinary rules previously in place under BGE, and applies those rules to all CPSG weekly employees.

21. CPSG has adopted the FEAR NOT program previously in place under the FED.

22. CPSG has adopted the grievance process, known as Help Employees Attain Resolution ("HEAR"), previously in place under BGE. Each HEAR peer review panel is composed exclusively of CPSG employees and supervisors. All CPSG weekly employees are eligible to participate in the HEAR process.

23. CPSG sponsors company-wide social and recreational programs open to all CPSG employees.

24. CPSG's parent corporation, Constellation Power Source Holdings, Inc., has its own Legal, Human Resources and Finance & Accounting departments. Those departments support CPSG.

25. CPSG is an unregulated affiliate of Constellation Energy Group, Inc. with its own profit and loss statement. As such, the performance of CPSG will be measured by the profitability related to the operating performance of its plants. CPSG will receive revenues from CPS based on underlying contracts between CPS and CPSG based on the amount of electricity produced by the plants. This level of revenue will be compared against the total cost of the CPSG organization that is primarily comprised of the five operating departments discussed previously. The five departments within CPSG maintain departmental budgets, but do not show a profit or loss on a stand-alone basis. CPSG has continued the same budgetary process as was described at the hearing for these five departments (20, 21, 23, 25 and 28). That is, when one CPSG department performs services for another, the budget of the receiving department is charged for the cost of time and materials involved in the work. The department performing the services does not receive any payment. Unlike the process that was described at the hearing, if any department of CPSG sells goods or services to an entity outside of CPSG, including BGE, CPSG bills that entity for the goods and services provided. Money received in payment of those bills will be reflected as revenue of CPSG, not the individual department that provided the goods or services. The bills are intended to reimburse CPSG for all costs incurred plus a reasonable profit, if applicable.

26. With exceptions noted in Exhibits A through E, all individuals employed in BGE's Utility Operations Group ("UOG") as of July 1 remained employees of BGE.

26. A. A BGE-wide production and maintenance unit is an appropriate unit.¹

27. As of July 1, [2000] BGE consists of the following divisions and departments: Electric Transmission & Distribution (Division 3); General Services (Division 7); Gas Distribution (Division M); Retail Services (Division L); Finance and Accounting Department (64); Human Resources Department (87); Legal Department (C1). The Fossil Energy Division no longer exists at BGE. The Nuclear Energy Division no longer exists at BGE.

28. Except as noted on the attached exhibits, the responsibilities and interrelation among the remaining BGE divisions and departments remains essentially unchanged from that which was described at the hearing.

29. Except as noted on the attached exhibits, BGE weekly employees perform the same duties, under the same conditions, as was described at the hearing.

30. Except as noted on the attached exhibits, BGE staffs and runs its remaining operations in a manner substantially similar to the way that they were described at the hearing.

31. Except as noted on the attached exhibits, the contact and interchange among the BGE weekly employees are substantially the same as described at the hearing.

¹This stipulation is not intended to contradict or change the position taken by BGE during the representation hearing and in its brief that any production and maintenance unit found appropriate within BGE must include technical employees or, alternatively, if a separate technical unit is created, it must include technical employees in all divisions of BGE. This stipulation is not intended to contradict or change any position taken by the Union concerning either the scope of the unit sought or the placement of employees in those units.

32. BGE has continued for all weekly employees the training and cross-training programs described at the hearing.

33. BGE still has its own Manager of Human Resources, who is responsible for setting and administering all labor relations and personnel policies for BGE. All employees of BGE are subject to the same labor relations and personnel policies.

34. BGE has continued the weekly salary administration program and pay grade system described at the hearing. This program and system applies equally to all BGE weekly employees.

35. BGE has continued all of the fringe benefit plans described at the hearing. All BGE weekly employees are covered by and eligible to participate in the same set of benefit plans.

36. All weekly BGE employees participate in the same Results Incentive Awards (“RIA”) program as described at the hearing.

37. BGE has continued the Employee Recognition Awards Program (“ERAP”) as described at the hearing. All BGE weekly employees are eligible for awards under ERAP.

38. BGE has maintained the Standards of Conduct and disciplinary rules described at the hearing. The rules apply to all BGE weekly employees.

39. BGE has maintained the grievance process, known as Help Employees Attain Resolution (“HEAR”) described at the hearing. Each HEAR peer review panel is composed exclusively of BGE employees and supervisors. All BGE weekly employees are eligible to participate in the HEAR process.

40. BGE continues to sponsor company-wide social and recreational programs open to all BGE employees.

41. BGE has its own Legal, Human Resources, and Finance & Accounting Departments. These departments support only BGE.

42. BGE is a regulated utility with its own profit and loss statement. BGE has continued the same budget and accounting process described at the hearing, with the exception that the generation line of business has been spun off to CPSG and CCNPP.

E. The Acting Regional Director’s Further Notices to Show Cause

On September 22, 2000, the Acting Regional Director for Region 5 issued an Order Receiving Joint Stipulation Into Record and Issuing Further Notice to Show Cause why the petitions in Cases 5-RC-14906 and 5-RC-14907 should not be amended to change the name of the Employer from Baltimore Gas and Electric Company to Constellation Power Source Generation, Inc. in accord with the Parties’ Joint Stipulation concerning post-hearing movement of personnel.

On October 2, 2000, Baltimore Gas and Electric Company filed its Response to Further Notice to Show Cause and Request for Hearing. Also on October 2, 2000, the Petitioner filed its Response to the Acting Regional Director’s Notice to Show Cause. On October 4, 2000, BGE filed a Response to the Petitioner’s Response to the Acting Regional Director’s Further Notice to Show Cause. On October 17, 2000, the Acting Regional Director issued a Notice to Show Cause to Constellation Power Source Generation, Inc. to show cause why the petitions in Cases 5-RC-14906 and 5-RC-14907 should not be

amended to change the name of the employer from Baltimore Gas and Electric Company to Constellation Power Source Generation, Inc. On October 27, 2000, CPSG filed its response to the Notice to Show Cause.

In its Response to the Notices to Show Cause, BGE argues that no election may be held based on the petitions in Cases 5-RC-14906 and 5-RC-14907 because there are not any BGE employees who fit the unit descriptions contained within the Petitions. BGE argues that the petitions in Cases 5-RC-14906 and 5-RC-14907 may not be amended to change the name of the Employer from Baltimore Gas and Electric Company to Constellation Power Source Generation, Inc., because the changes brought about by deregulation and the subject asset transfer are likely to have affected employees' attitudes toward union representation. Citing NLRB v. Burns International Security Services, Inc., 406 U.S. 272 (1972). BGE further argues that CPSG is not a successor corporation to BGE because CPSG acquired the assets of a division of BGE and BGE continues to exist. In BGE's view, the concept of successorship, "... contemplates the substitution of one employer for another, where the predecessor employer either terminates its existence, or otherwise ceases to have any relationship to the on-going operations of the successor employer." Citing TKB International Corporation, 240 NLRB 1082, 1083 n.4 (1979); Lincoln Private Police, Inc., 189 NLRB 717 (1971) ("While we do not mean to imply by our decision herein that successorship can never be found where the new employer acquires less than the predecessor's entire business, or hires less than a majority of the predecessor employer's workforce -- indeed the Board has held otherwise on prior cases -- we do require in such circumstances that other sufficient criteria exist which, in balance, warrant a finding that there has been no basic change in the employing industry.").

BGE also recognizes that additional factual considerations are relevant to a successorship analysis as set out in the Supreme Court's holding in Fall River Dying and Finishing Corp. v. NLRB, 482 U.S. 27 (1987), i.e., whether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and basically has the same body of customers. Citing 482 U.S. at 32; Texas Eastman Company, 175 NLRB 66 (1969). If the new employer is not a successor, BGE contends that the petitions may not be amended, but instead, must be dismissed.

Analyzing the Fall River Dyeing factors, BGE argues that CPSG may not be treated as a successor to BGE, and, therefore, may not simply be substituted for BGE as the Employer on the extant petitions. First, BGE emphasizes that BGE has continued to exist and the assets of only a division of BGE were transferred to CPSG. Second, BGE argues that the business of both employers is not essentially the same. While the employees of Constellation Power Source Generation, Inc. (with the exception of the transferred General Services Department employees) are under the same supervisors, BGE contends, without any further elaboration, that they are not performing the jobs under the same working conditions. Third, BGE argues that, although the production process and the products are the same, the body of customers is vastly different.

BGE further argues that the facts as set forth in the Joint Stipulation, as amended, show that the deregulated environment requires different priorities and different operating criteria. In this regard, BGE asserts the following. BGE's former Fossil Energy Division was part of a regulated utility that served only Central Maryland. It did not report profit and loss separately from BGE. Further, the profit that BGE could earn was regulated. Expenses of the divisions were factored into the rate base through a formula used by the Public Service Commission. Conversely, CPSG is part of a merchant energy company that functions in an unregulated market on a national scale. It tracks its own expenses and files

its own profit and loss statement. CPSG employees understand that expenses incurred in generating electricity impact CPSG's profit, which, in turn, impacts the success of CPSG. BGE argues that these changes are likely to have affected employees' attitudes toward union representation, for a union adds expense and bureaucracy to the generation process. BGE asserts that employees of CPSG must be given the opportunity to contemplate their interest in participating in a union election viewed from the perspective of being employees in a new, unregulated merchant energy company.

BGE concludes that because CPSG is not a successor to the Fossil Energy Division of BGE, the Petitions in 5-RC-14906 and 5-RC-14907 must be dismissed. According to BGE, if the Petitioner desires to have an election among employees of CPSG, it must file a new petition that: names the correct employer; states an appropriate unit within the correct employer; and, is based on the appropriate showing of interest among employees of the correct employer. As noted, BGE also requests a hearing on the issues by its Response to the Notice to Show Cause.

In its Response to the Notice to Show Cause issued to Constellation Power Source Generation, Inc., CPSG raises due process arguments, states that its Response is not a general appearance, and reserves its right to contest personal jurisdiction in this matter. CPSG states that it has not been afforded an opportunity to present any testimony concerning the issues raised by the subject representation petitions. CPSG further states that the Petitioner has not established any showing of interest among employees of CPSG. CPSG argues that to allow the substitution of Constellation Power Source Generation, Inc. for BGE in the Petitions in Cases 5-RC-14906 and 5-RC-14907 would deny Constellation Power Source Generation, Inc. its constitutionally and statutorily guaranteed right to a hearing and would violate CPSG's due process rights.

In addition, CPSG states that on October 23, 2000, Constellation Energy Group, Inc. announced its plans to separate into two distinct separate publicly traded holding companies; namely, Constellation Energy Group, Inc. and BGE Corp. CPSG asserts that BGE Corp. will hold, among other companies, Baltimore Gas and Electric Company and Constellation Energy Group, Inc. will hold, among other companies, Constellation Power Source Generation, Inc. Thus, according to CPSG, a further separation will occur between Constellation Power Source Generation, Inc. and BGE in the future. No time frame for these changes was provided by CPSG.

CPSG argues that the present proceeding is dissimilar from the majority of cases addressing the successor employer issue because most of those cases are post decision and direction of election and post election. Thus, according to CPSG, the employees in the majority of these cases elected a majority representative prior to the time that the issue of successorship arose. Thus, CPSG argues that a presumption arose in those cases that a majority of the successor's employees would continue to support the previously elected union in order to foster industrial peace. Citing NLRB v. Jeffries Lithograph Company, 752 F. 2d 459, 463 (1985) (quotation omitted). CPSG argues that industrial peace cannot be disrupted in the present situation because the employees have not selected an exclusive bargaining representative. CPSG further argues that an employer's due process rights should always win out when weighed against "industrial peace" although, in the present circumstance, no balancing is necessary and no reason exists to deny Constellation Power Source Generation, Inc. its statutorily and constitutionally guaranteed hearing.

CPSG argues that the petitions in Cases 5-RC-14906 and 5-RC-14907 may not be amended to change the name of the Employer from Baltimore Gas and Electric Company to Constellation Power Source Generation, Inc., because the changes brought about by deregulation, the subject asset transfer and the recent October 23, 2000 announcement concerning the separation of the

holding company are likely to have affected employees' attitudes toward union representation. Citing NLRB v. Burns International Security Services, Inc., 406 U.S. 272 (1972).

CPSG also argues that CPSG is not a successor to BGE because CPSG acquired the assets of a division of BGE and BGE continues to exist. CPSG argues that the requisite analysis in this area does not consist solely of determining whether employees' job functions have changed, but whether the employees' job situation has changed such that the employees' attitude toward union representation has changed. Citing Golden State Bottling Co. v. NLRB, 414 U.S. 168 (1973); NLRB v. Burns International Security Services, Inc., 406 U.S. 272 (1972). CPSG notes that the approach is factual and must be based on an analysis of the complete circumstances presented by the particular case, Fall River Dyeing and Finishing Corp. v. NLRB, 482 U.S. 27 (1987) and the relevant factors set forth therein.

CPSG relies on Woodrich Industries, Inc., 246 NLRB 43 (1979). CPSG notes that in determining whether or not Woodrich Industries, Inc. was a successor employer to Murcel Manufacturing Corporation, the Board looked not only to the functions being performed by the employees in the new employer but also at whether the nature of the business conducted by the prior employer changed. In that case, Murcel manufactured standardized dresses and pants suits for sale to retail stores. Woodrich was a contractor that sewed garments for various manufacturers in the fashion industry. Murcel sold its garments to retail stores. Woodrich did not. Murcel designed and manufactured its own goods and bought its own materials. Woodrich did not. Murcel manufactured standardized dresses. Woodrich made a variety of styles. Based on these and other changes, the Board concluded, on balance, that the nature and character of the employing industry had been sufficiently altered so that respondent was not a successor to Murcel. CPSG also relies on Russelton Medical Group, Inc., 302 NLRB 718 (1991) where the change in business structure from an HMO to an independent medical practice negated any finding of successorship. Based on these cases, CPSG argues that the differences brought about by deregulation are more significant than the difference between the types of garments sewed or whether a doctor's practice is part of an HMO.

CPSG argues that the business of BGE's former FED and the business of CPSG is not essentially the same. CPSG argues that prior to the separation, the Fossil Energy Division generated electricity but did not sell it. Now CPSG both generates electricity and sells it on a stand-alone basis. Although conceding that the employees of Constellation Power Source Generation, Inc. (with the exception of the transferred General Services Department employees) are under the same supervisors, CPSG asserts that they are not performing the jobs under the same working conditions. Similarly, CPSG argues that although the production process and the products are the same, the body of customers is vastly different.

CPSG further argues that the facts as set forth in the Joint Stipulation filed by BGE and the Petitioner, demonstrate that the deregulated environment requires different priorities and different operating criteria. CPSG notes that the former Fossil Energy Division was part of a regulated utility that served only Central Maryland. It did not report profit and loss separately from BGE. Further, the profit that BGE could earn was regulated. Expenses of the division were factored into the rate base through a formula used by the Public Service Commission. Conversely, CPSG argues that it is a merchant energy company that functions in an unregulated market on a national scale. It tracks its own expenses and files its own profit and loss statement. CPSG argues that its employees understand that because of its smaller size and its stand-alone position, expenses incurred in generating electricity have a significant impact on CPSG's profit; which, in turn, impacts the success of CPSG. CPSG further argues that these changes are likely to have affected employees' attitudes toward union representation, for a union adds expense and bureaucracy to the generation process. Thus, CPSG argues that the employees of CPSG must be given the opportunity to contemplate their interest in participating in a union election viewed from the

perspective of being employees in a new, unregulated merchant energy company. Accordingly, CPSG requests that the Petitions in 5-RC-14906 and 5-RC-14907 be dismissed. Alternatively, CPSG requests that it be given a full and fair opportunity to present testimony concerning the successor employer issue.

The Petitioner counters that the facts set forth in the Joint Stipulation, as amended, confirm unequivocally that Constellation Power Source Generation, Inc., is a successor employer to BGE, and that the petitions in Cases 5-RC-14906 and 5-RC-14907 should be amended to change the name of the employer from Baltimore Gas and Electric Company to Constellation Power Source Generation, Inc. (“CPSG”). Specifically, the Petitioner argues that the facts as set forth in the Joint Stipulation, as amended, are sufficient to establish successorship under the Act.

The Petitioner notes that the Board has long construed a direction of election as providing for an election among the employees of a successor company. Barker Automation, 132 NLRB 794, 796 (1961); see also New Laxton Coal Co., 134 NLRB 927, 929 (1961); Texas Eastman Co., 175 NLRB 626 (1969); Pacific Tankers, Inc., 84 NLRB 965 (1949); Allan W. Fleming, Inc., 91 NLRB 612, 614 (1950); Georgia Creosoting, 133 NLRB 349 (1961); Sindicato Puertorriqueno De Trabajadores, 184 NLRB 538 n. 3 (1970). In such situations, the petition is amended to substitute the name of the successor company for that of its predecessor. Citing the facts from the Parties’ Joint Stipulation, as amended, the Petitioner argues that there is no question that CPSG is a successor to BGE. Petitioner notes that when determining whether a new company is a successor to the old, the test is whether, under the “totality of circumstances,” there is a substantial continuity between the new and old business. Citing Fall River Dyeing & Finishing Corp. v. NLRB, 432 U.S. 27, 43 (1987). The Petitioner further asserts that when making the substantial continuity analysis, the Board must consider the case from the perspective of the employees. Tree-Free Fiber Co., 328 NLRB No. 51, slip op. at 1 (May 10, 1999) (“The Supreme Court has made it quite clear that the ‘substantial continuity’ analysis in successor cases is to be taken from the perspective of employees . . .”). Thus, focusing on the employees’ view, the question, according to Petitioner is whether: (1) CPSG’s business is essentially the same as BGE’s Fossil Energy Division; (2) the employees are doing the same job under the same working conditions; (3) the employees have the same supervisors; (4) the production process is the same; (5) the same products are provided; and (6) the customer base is basically the same. Fall River, 432 U.S. at 43. Petitioner asserts that BGE admits that no essential attribute of the employment relationship has changed and that CPSG staffs and operates the fossil fuel plants in a manner “substantially similar” to the way they were staffed and operated under BGE; that the weekly employees perform the same work, under the same supervision, in the same environment, with no hiatus; and that the production process and the products are the same. Thus, the Petitioner argues that from the perspective of the employees involved in Cases 5-RC-14906 and 5-RC-14907, their jobs have not changed, and CPSG is a successor employer. The Petitioner argues that CPSG is a successor even though BGE transferred only part of its operation to CPSG since a finding of successorship is not defeated by the mere fact that only a portion of the predecessor company is subject to a sale or transfer to a new owner. Simon DeBartelo Group, 325 NLRB 1154, 1155 (1998). Moreover, the Petitioner argues that the portion of the business that BGE transferred to CPSG is virtually coextensive, as stated, with the Petitions in Cases 5-RC-14906 and 5-RC-14907.

The Petitioner argues that BGE’s contention that there is no substantial continuity because of changes associated with the deregulation of the generation of electricity, such as the manner in which CPSG is paid for the generation of electricity, that may be different from how BGE was paid, or the fact that CPSG may have commitments to its sister companies to generate electricity in a timely manner, which may result in some sort of change in corporate priorities, is without merit under the requisite Fall River Dyeing analysis. Thus, Petitioner notes that in Fall River Dyeing, the predecessor company’s business consisted of two types of dyeing of textiles: converting and commission. Under the converting process, which accounted for more than a majority of the predecessor’s business, the company bought

unfinished fabrics for its own account, dyed and finished them, and then sold them to apparel companies. 482 U.S. at 30. Its commission business consisted of dyeing and finishing fabrics owned by other companies according to their own specifications. *Id.* The successor argued that it was not a successor because it did no converting, only commission dyeing. The Supreme Court rejected that argument and held that such a change did not alter the essential nature of the employees' jobs because the employees worked on the same machines under the direction of the same supervisors using the same production process. *Id.* at 44.

The Petitioner argues that the same result is warranted here. Thus, although there certainly may be changes associated with the deregulation of electricity, the Petitioner argues that from the perspective of the employees, their jobs have not changed. Rather as stipulated, they work in the same plants, doing the same jobs, under the same supervisors, producing the same product, earning the same salary, and subject to the same standards of conduct. For these reasons, Petitioner argues that the Parties' Joint Stipulation, as amended, and BGE's Response to the Region's Initial Show Cause Order establish that CPSG is a successor to BGE and that the name of the employer in Cases 5-RC-14906 and 5-RC-14907 should be changed to Constellation Power Source Generation, Inc.

Having considered the positions of the parties in light of their Joint Stipulation, as amended, concerning the post-hearing movement of personnel, I reject BGE's contention that the instant petitions should be dismissed as premature. The Joint Stipulation renders that argument largely moot. In fact, in paragraph 26 of the Joint Stipulation, the parties have agreed that a BGE-wide production and maintenance unit is an appropriate unit. In addition, I find that the existing petitions, read in light of the parties' Joint Stipulation, as amended, are consistent with the reorganized corporate entities as they currently exist under successorship principles and that the parties have stipulated to facts sufficient to make definitive unit scope, unit placement and successorship findings. Moreover, I note that even prior to the parties' Joint Stipulation, the record established that BGE had already substantially restructured itself in anticipation of July 1, 2000 industry deregulation in such a manner that the existing petitions were appropriately litigable under the Board's decision in PECO Energy Co., 322 NLRB 74 (1997). In this regard, I note that at the time of the hearing, BGE's reorganization plans had already been approved by the appropriate state and federal regulatory authorities and testimony from BGE's own witnesses established that there was expected to be continuity of terms and conditions of employment for most of the petitioned-for employees both before and after the July 2000 reorganization plan was to take place. For example, decisions had already been made that employees from BGE's Fossil Energy Division and Nuclear Energy Division would continue to participate in the Constellation Energy Group benefit plans when the fossil assets were transferred to Constellation Power Source Generation, Inc. and the nuclear assets were transferred to Calvert Cliffs Nuclear Power Plant, Inc. In addition, the record established that BGE planned for no break in service and that affected employees would carry over company dates of service for purposes of accrued benefits or layoffs. In these circumstances, and particularly in light of the parties' Joint Stipulation concerning the post-hearing movement of personnel, I reject BGE's contention that the instant petitions should be dismissed as premature.

Further, having considered the positions of the parties concerning the successorship issue in light of their Joint Stipulation of facts, as amended, and their Responses to the Notices to Show Cause, I agree with Petitioner that CPSG is a successor to BGE's Fossil Energy Division and that the name of the Employer in Cases 5-RC-14906 and 14907 should be amended to Constellation Power Source Generation, Inc.² In Fall River Dyeing & Finishing Corp. v. NLRB, 482 U.S. 27, 43 (1987), the Supreme

²BGE's and CPSG's requests for further hearing are denied as the existing record, Joint Stipulation, as amended, and Responses to the Notices to Show Cause adequately present the issues and the positions of the Parties. See New Laxton Coal Company, 134 NLRB 927, 928-929 (1961).

Court reiterated its prior approval in NLRB v. Burns International Security Services, 406 U.S. 272 (1972), of the Board's approach to determining whether a new employer is a successor to a prior employer. The Court noted that the approach is primarily factual and is based on the totality of the circumstances presented by each case. The Court emphasized that the focus should be upon whether there is "substantial continuity" between the employing enterprises, and summarized, as follows, the factors relevant to determining when substantial continuity exists:

[W]hether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and basically has the same body of customers.

The Court also instructed that the Board must analyze these factors primarily from the perspective of the employees, that is, "whether 'those employees who have been retained will ... view their job situations as essentially unaltered.'" *Id.*, quoting Golden State Bottling Co. v. NLRB, 414 U.S. 168, 184 (1973).

Applying this analysis to the facts presented here, I conclude that CPSG is a successor to BGE's former FED. In making this successorship determination, I specifically rely on the following facts, as set forth in the Joint Stipulation, as amended.³ With some minor exceptions noted in the Joint Stipulation, and discussed further in the unit placement section of this Decision, all BGE employees working in the former Fossil Energy Division ("FED") became employees of CPSG as of July 1, 2000. (*Id.* at para. 5). The CPSG weekly employees perform the same duties, under the same conditions, as they did as FED employees. (*Id.* at para. 9).⁴ The structure of CPSG today is essentially the same as that in place at BGE's former FED prior to July 1, 2000. Thus, CPSG consists of the same five departments which were part of the former FED, and the responsibilities and interrelation among the five CPSG departments remains essentially unchanged. (*Id.* at paras. 7-8). CPSG staffs and operates the fossil fuel plants in a manner substantially similar to the way that they were staffed and operated under BGE. (*Id.* at para. 10).

³ On July 1, 2000, BGE transferred all of its fossil generating assets to CPSG. (Joint Stip. at para.1). BGE's and CPSG's arguments that CPSG is not a successor to BGE's former FED because CPSG only acquired the assets of a division of BGE and BGE still exists, lack merit. The Board continues to recognize the concept of partial successorship. For example, in Hydrolines, Inc., 305 NLRB 416, 422-423 (1991), the alleged successor acquired only a portion of the predecessor's operations, thereby dividing the previously appropriate bargaining unit. The Board held that this did not defeat the purchaser's successorship obligations because the employees in the conveyed portion of the predecessor's operations constituted a separate appropriate unit. See also Sierra Realty Corp., 317 NLRB 832, 836 (1995); Harter Tomato Products Co., 321 NLRB 901 (1996), enforced Harter Tomato Products Co., 133 F.3d 934 (D.C. Cir. 1998). Furthermore, as shown below, BGE and CPSG left the petitioned-for bargaining unit substantially intact and CPSG continued to operate BGE's former FED in a manner substantially similar to the way BGE operated its FED.

⁴ As noted, although CPSG concedes that the employees of Constellation Power Source Generation, Inc. (with the exception of the transferred General Services Department employees) are under the same supervisors, CPSG asserts that they are not performing the jobs under the same working conditions. CPSG does not explain how the working conditions are different other than the fact that they are now performed in an unregulated environment. Moreover, BGE, represented by the same attorneys as CPSG, stipulated that the CPSG weekly employees perform the same jobs, under the same conditions, as they did as FED employees. Joint Stipulation at para. 9. In these circumstances, I find that CPSG's bare assertion in its October 27, 2000 Response to the Notice to Show Cause, does not detract from my successorship finding.

The contact and interchange among the CPSG weekly employees is substantially the same as it was when those employee worked in the former FED. (Id. at para. 11). CPSG has adopted the weekly salary administration program and pay grade system previously in place under BGE. (Id. at para. 16). CPSG has adopted many of the fringe benefit plans previously in place under BGE. (Id. at para. 17). CPSG has adopted the Employee Recognition Awards Program (“ERAP”) previously in place under BGE and as described as the hearing. (Id. at para. 19). CPSG has adopted the Standards of Conduct and disciplinary rules previously in place under BGE. (Id. at para. 20). CPSG has adopted the FEAR NOT program previously in place under BGE. (Id. at para. 21). CPSG has adopted the grievance process, referred to as “Help Employees Attain Resolution” or “HEAR,” previously in place at BGE. (Id. at para. 22). Moreover, I note that in BGE’s August 21, 2000, Response to the Acting Regional Director’s August 8, 2000, Notice to Show Cause, BGE admits that the production process and the products at CPSG are the same as they were at BGE. and admits that virtually all of the CPSG employees are under the same supervision as they were when employed by BGE’s former Fossil Energy Division. (See BGE’s August 21, 2000, Response at 9). Similarly, in its Response to the Notice to Show Cause, CPSG admits that the production process and products are the same, but asserts that the body of customers is different. However, the successorship doctrine does not require that the predecessor and the successor have the same body of customers. Rather, the pertinent question is whether they basically have the same body of customers, i.e., whether they do business in the same market. See e.g., Bell Glass Co., 293 NLRB 700, 708 (1989). I find that CPSG’s operations meet this test. Both CPSG and BGE’s former FED are (or were) in the business of generating electricity. Although CPSG asserts that it also sells electricity and BGE did not, none of the employees who actually sell electricity have been shown to be at issue in this proceeding. In addition, as noted above, the Supreme Court in Fall River Dyeing focused on the new employer’s conscious decision to “maintain generally the same business” and rejected a similar argument that the predecessor and successor were engaged in different businesses. 482 U.S. 27, 43 (1987). In Fall River Dyeing, the successor argued that it was not a successor because it did only commission dyeing, which accounted for a minority of the predecessor’s business, not converting dyeing, which accounted for a majority of the predecessor’s business. The Supreme Court rejected that argument and held that such a change did not alter the essential nature of the employees’ jobs because the employees worked on the same machines under the direction of the same supervisors using the same production process. Id. at 44. The parties have stipulated that the same is true here.

Furthermore, the record shows that CPSG has continued essentially the same business of generating electricity from fossil fuel, at the same fossil plant locations, with a majority of the same employees, who use the same equipment and production processes to produce the same product for basically the same body of customers. From the perspective of CPSG employees, I find that they will perceive CPSG as the entity that simply displaced BGE’s former FED as the entity generating fossil energy and, as such, they will view their job situation as essentially unaltered. See Sierra Realty Corp., 317 NLRB 832, 825 (1995) (employer who managed real estate was successor to cleaning and maintenance contractor from perspective of employees). Thus, the fact that CPSG may have wider business interests or a wider customer base than BGE’s former FED does not detract from my successorship finding.

I specifically reject CPSG’s arguments that it is inappropriate to amend the petitions in 5-RC-14906 and 5-RC-14907 to name it as successor employer to BGE’s FED because the successorship issue arises here in a pre-election context. Contrary to the arguments advanced by CPSG, and since no election has yet been conducted, it is obvious that the employees of CPSG will be given the opportunity to vote for or against union representation, while they are employees of CPSG. The parties will have ample time between the issuance of this Decision and the election, to inform employees about their status and who their Employer is.

Analyzing the foregoing facts from the perspective of the CPSG employees, the vast majority of whom have been retained by CPSG from BGE's former FED, I conclude that there is substantial continuity between enterprises and that the CPSG employees will view their job situations as essentially unaltered because there has been no change in any essential attribute of the employment relationship. For this reason, I find that a question concerning representation still exists concerning CPSG's employees. In these circumstances, the motions of BGE and CPSG to dismiss the petitions herein are denied, as a change of ownership of the employer during the course of the representation proceedings is not by itself sufficient to warrant such dismissal. New Laxton Coal Company, 134 NLRB 927, 929 (1961). Nor are new showings of interest required of Petitioner, as it made adequate showings of interest in Cases 5-RC-14906 and 5-RC-14907 in the appropriate units, which, as shown herein, still contain substantially the same employees. *Id.* On the basis of the entire record, I shall, therefore, amend the petitions in 5-RC-14906 and 5-RC-14907 to reflect the successorship, by substituting Constellation Power Source Generation, Inc. for BGE. Allan W. Fleming, Inc. 91 NLRB 612, 613-614 (1950); Barker Automation, Inc., 132 NLRB 794, 796 (1961); Georgia Creosoting Corporation, 133 NLRB 349, 351 (1961); New Laxton Coal Company, 134 NLRB 927, 928-929 (1961); Texas Eastman Company, 175 NLRB 626, 628 (1969).

F. Background and Overview of CPSG and BGE

The Employer, Baltimore Gas & Electric (BGE), is a regulated subsidiary of Constellation Energy Group, Inc. (CEG), a holding company that was created as a result of a reorganization on May 1, 1999. As a result of that reorganization, certain non-regulated business entities left Baltimore Gas and Electric and became part of Constellation Energy Group. As of January 1, 2000, the non-regulated companies under CEG were: BGE Home, Constellation Energy Source, Constellation Power International, Constellation Power Source, Constellation Nuclear Services, and Constellation Investments. Since July 1, 2000, those non-regulated business entities also include Constellation Power Source Generation, Inc. and Constellation Nuclear, Inc., as stipulated by the parties. CEG holds the assets of BGE and the non-regulated companies.

Typically, utility companies such as BGE are structured as subsidiaries of a holding company. In 1998, Maryland law prevented regulated public utilities like BGE from being owned by a holding company. On February 3, 1999, the Maryland Legislature passed a holding company bill to deregulate the electric utility industry in Maryland, effective July 1, 2000. The supply or generation of electricity was deregulated as of July 1, 2000. Now, customers are able to choose their own electric supplier, but the distribution of that supply of electricity continues to be regulated.

As a result of the Maryland Holding company legislation, in May 1999, BGE adopted a holding company structure that was approved by shareholders and various state and federal regulatory bodies. All the stock of BGE was converted to stock of CEG and ownership of BGE power plants was transferred from BGE to CEG. CEG began operations on May 3, 1999. BGE then negotiated a Settlement Agreement with customers, regulators and other interested parties that was filed with the Maryland Public Service Commission. The proposed settlement agreement allowed the Employer to transfer its generation assets out of the regulated BGE and into non-regulated subsidiaries. About July 1999, CEG launched a new merchant generation company called Constellation Power Source, Inc., to take advantage of the business reputation of extant wholesale energy broker Constellation Power Source (CPS), and to develop, acquire, own and operate new power plants to market energy and manage risk.⁵ In August 1999,

⁵ Constellation Power Source is a marketing and trading company that markets and trades energy. Constellation Power, Inc. operates the power plants that BGE does not own.

Constellation Nuclear Services was formed as a subsidiary of CEG to provide consulting services to other nuclear utilities that want to extend their nuclear operating licenses.

On November 10, 1999, final approval of the Settlement Agreement was given by Maryland Public Service Commission Order #75757, thereby facilitating customer choice and industry deregulation in Maryland beginning July 1, 2000 and paving the way for deregulation of BGE's generation assets effective July 1, 2000. Under the Settlement Agreement, Constellation Energy Group transferred the assets associated with the generation of electricity -- the generating plants -- to the non-regulated side of the Constellation Energy Group holding company. BGE also received the necessary authority from the Federal Energy Regulatory Commission to transfer its generating assets and form new companies under Constellation Energy Group.

Christian H. Poindexter, Chairman of the Board and Chief Executive Officer of CEG and President of BGE, presented two slides at a leadership conference in November 1999 at which he talked about industry restructuring and transformation to customer choice. These slides showed the reorganization of CEG as contemplated on January 1, 2000 (Pet. Exh 8, slide 25, p. 1) and July 1, 2000 (Pet. Exh. 8, slide 26, p. 2).

On January 1, 2000, BGE did, in fact, begin to reorganize the non-regulated subsidiaries of Constellation Enterprises Group, Inc. (CEG). Constellation Enterprises, Inc., a holding company headed by a retired executive (Mr. Crooke) dissolved. The various subsidiary companies of Constellation Enterprises, Inc. merged. Constellation Power Source, Inc., acquired the domestic fossil fuel plants of BGE, including those plants in which BGE has partial ownership interests in Pennsylvania. Constellation Power Domestic became a non-regulated subsidiary of CPS. Ronald Lowman, the Vice President of BGE's Fossil Energy Division became the head of the "generation assets" (FED) within CPS. Bob Denton, Executive Vice President of BGE's Generation Group became President of Constellation Nuclear, a new subsidiary that was created on January 1, 2000. Charles Cruse, Vice President of the Nuclear Energy Division, continues to head up the Calvert Cliff Nuclear Power Plant (CCNPP).

Until July 1, 2000, both the Utility Operations Group and the Generation Group remained part of BGE as a regulated utility. The record established that BGE anticipated that as of July 1, 2000, the assets and employees of the Fossil Energy Division (FED) and Nuclear Energy Division (NED) would move to two separate non-regulated subsidiaries of CEG. See Er. Exh. 506A and 506B and Pet. Exh. 170 and 171, and Pet. Exh. 75 at 6-7.

As stipulated to by the parties, BGE, on July 1, 2000, pursuant to authority given by the appropriate regulatory agencies, transferred all of its non-nuclear generating assets to CPSG and all of its nuclear generating assets to Calvert Cliffs Nuclear Power Plant, Inc. ("CCNPP"). CPSG and CCNPP are separate legal entities from BGE. CPSG is a wholly owned subsidiary of Constellation Power Source Holdings, Inc. CPSG is a producer of electrical power. Since the advent of deregulation, it does so as an unregulated affiliate of Constellation Energy Group, Inc. It sells the power it produces into the wholesale market through Constellation Power Source, Inc. One of its customers is BGE.

CPSG and CCNPP sell the power they generate to Constellation Power Source, Inc. ("CPS"). CPS is a subsidiary of CEG that markets power in the wholesale market. CPS buys and sells power from and to many different entities. CPS sells power to BGE. Similar to the situation described at the hearing, where the power BGE distributes to its customers through an interconnected regional power grid is not necessarily generated by BGE, after July 1, 2000, the power CPS supplies to BGE's customers will come from a number of suppliers, including CPSG and CCNPP. See e.g., Pet. Exh. 175 at 10.

As a result of deregulation and other movements occurring after the close of the hearing, some of BGE's employees remained employed by BGE, some became employees of CPSG, and still others became employees of CCNPP. The Fossil Energy Division no longer exists at BGE. The Nuclear Energy Division no longer exists at BGE. CPSG consists of the same five departments which were part of BGE's FED. Except as noted herein, all BGE employees working in the Fossil Energy Division ("FED") as of July 1, 2000 became employees of CPSG. As noted herein, a few employees working in the General Services Division as of July 1 became employees of CPSG.

As of July 1, 2000, BGE consists of the following divisions and departments: Electric Transmission & Distribution (ETDD or Division 3); General Services Division (GSD or Division 7); Gas Distribution Division (GDD or Division M); Retail Services Division (RSD or Division L); Finance and Accounting Department (64); Human Resources Department (87); Legal Department (C1). Except as noted herein, all individuals employed in BGE's Utility Operations Group ("UOG") as of July 1 remained employees of BGE. At the time of the hearing, BGE's UOG consisted of the ETDD, GSD, GDD, and RSD, the same divisions that currently make up BGE.

As a regulated public utility, BGE provides electric transmission and distribution services to approximately 1.1 million customers and provides gas distribution services to approximately 575,000 customers in a 2,300 square-mile portion of central Maryland. The State of Maryland through the Maryland Public Service Commission franchises BGE's service territory. The service area covers Baltimore City and a territory that includes the Maryland cities of Annapolis, Bel Air, Havre de Grace, Laurel, Columbia and Westminster. The gas distribution system is a section of the service territory that covers approximately 600 square miles, primarily in Baltimore City and surrounding environs. The Maryland Public Service Commission requires BGE to establish rates for electric service and gas service separately.

Constellation Power Source Generation, Inc. (CPSG, composed of BGE's former Fossil Energy Division (FED)) operates nine electric generating plants in the Baltimore area. These are: Brandon Shores, Charles P. Crane, Gould Street, Notch Cliff, Perryman, Philadelphia Road, Riverside, Herbert A. Wagner, and Westport. Five of the fossil plants (C.P. Crane, Gould Street, Riverside, H.A. Wagner, and Brandon Shores) are staffed and are powered by coal, oil or gas. The other four "peaking" plants (Perryman, Philadelphia Road, Notch Cliff, and Westport) are not staffed. They operate when additional generation is necessary and are powered primarily by gas and oil. CPSG is a part owner of the Keystone and Conemaugh electric generating plants in western Pennsylvania, and a part owner and purchaser from the Safe Harbor Water Power Corporation of a hydroelectric plant on the Susquehanna River. CPSG received all of these plants from BGE.

Calvert Cliffs Nuclear Power Plant, Inc. (CCNPP), composed of BGE's former Nuclear Energy Division (NED) and some employees from the former FED who recently transferred there, operates the Calvert Cliffs Nuclear Power Plant (CCNPP) in Lusby, Maryland in Calvert County. The Calvert Cliffs plant is located on the Chesapeake Bay, seventy-five miles from Baltimore, and outside of BGE's service territory. Neither party contends that, after July 1, 2000 employees of CCNPP should be included in any of the voting units at issue here.

CPSG's and CCNPP's generating plants are not the sole source of energy supply for BGE's customers. Through an interconnection with other utilities, BGE is part of the Pennsylvania, New Jersey and Maryland (PJM) power grid, one of a number of interconnected regional grids in the United States. The PJM is an independent system operator. It operates BGE's transmission system pursuant to an open access transmission tariff, and controls dispatch of generation pursuant to a tariff and operating agreement approved by the Federal Energy Regulatory Commission ("FERC"). Participants in the PJM system buy

and sell power to each other. Thus, if generation capacity is depleted, or if BGE determines that it can supply electricity more economically by purchasing generation from another producer, BGE may supply its customers with electricity that is generated from plants other than those of CPSG or CCNPP. Moreover, electricity generated by other utilities may have to pass through BGE's transmission system to reach the ultimate customer.

Electricity is generated through an energy conversion process. In both nuclear and fossil fuel plants, heat is used to produce steam to drive turbines that drive electric generators to generate electricity. At the CCNPP, the heat is caused by the fission of radioactive material (a form of enriched uranium). At the fossil fuel generating plants, the heat results from the burning of coal, oil, or gas. Electricity is generated at a lower voltage and is stepped up at substations or switchyards at the generating plants for transmission over lines at a higher voltage. Thereafter, voltage is stepped down at transmission stations and directed to sub-transmission stations that feed distribution stations, which step down the electricity to distribution voltage so it can pass through local overhead wire to the end user.

Maintenance of plant equipment essentially stops at the generator. Once the electricity leaves the generator, it moves to equipment that is no longer maintained by the plant staff. Generally speaking, the plant technicians do not perform work in the switchyard. BGE's Electric Transmission & Distribution Division (ETDD), one of four divisions in BGE's Utility Operations Group (UOG) maintains and repairs the step-up transformers that come out of the generators to boost the voltage to the transmission level. The step-up transformers are typically located just outside the turbine buildings on plant property, but not within the fenced-in switchyards that may be quite a distance away.

Before the electricity reaches the customer it passes through BGE's transmission distribution grid. The ETDD manages the distribution of electricity throughout the system based on local needs and the needs of the PJM interconnection. The ETDD dispatches or shuts down units by contacting the control room at power plants. The dispatching operation or central control room for the BGE system is at the Rutherford Business Center (RBC) Electric Operations Building (EOB). The specific dispatching of plants has been moved to the G&E Building in downtown Baltimore. The ETDD also maintains the protective relay equipment that keeps the transmission system intact. The bulk power control unit in the ETDD regulates the flow of system operations. The ETDD dispatches troubleshooting construction or transmission crews to fix damage to, or problems with the system.

In addition to providing electric transmission and distribution, BGE is a local gas distribution company that transports and distributes gas from interconnection points or gate stations on the interstate transmission system to end-users. BGE receives natural gas from three independent, national, gas transmission companies through a pipeline network that interconnects with nine city gate stations.⁶ The gate stations supply BGE's high and low pressure gas distribution systems.⁷ Each gate station has various mechanical equipment and instrumentation (valves, tanks, pumps, and meters) that are under remote

⁶ A gate station is a custody transfer point for commercial transactions between interstate transmission pipelines and local distributors such as BGE.

⁷ CPSG's peak shaving facilities supply gas to the distribution system during peak periods of very high demand. One was formerly at Spring Gardens, the headquarters for BGE's Gas Distribution Division (GDD), where natural gas is liquefied and stored during the off-peak season for wintertime use. At the time of the hearing, the natural gas holding tanks at Spring Gardens were no longer in service. A new and unstaffed liquefied natural gas facility was slated to open in the winter of 1999 at Westminster, Maryland and the existing BGE employees at Spring Gardens will maintain that facility. CPSG also maintains a liquefied propane gas reserve in an underground facility at its Notch Cliff plant in Baltimore County and at surface tanks at the Charles P. Crane plant.

control through telemetry. Employees do not normally report to work at gate stations, except for routine maintenance.

From the gate stations to the customer, BGE maintains approximately 5,600 miles of cast iron, steel and plastic piping and 600 district pressure regulation stations where pressure is transformed or stepped down. BGE maintains and repairs leaks along the piping system and periodically tests and calibrates meters at each customer location pursuant to Maryland regulation.

Christian H. Poindexter, Chairman of the Board and Chief Executive Officer of CEG and President of BGE oversees the governance of operations. At the time of the hearing, BGE's operations were organized into two groups, headed by an executive vice president; various divisions, headed by a vice president; departments, headed by a department manager; master sections and sections, headed by directors and general supervisors; units, headed by supervisors; and work groups headed by work leaders.⁸ The **former Generation Group**, headed by Executive Vice President, Robert E. Denton, had two divisions: the former Nuclear Energy Division (NED) and the former Fossil Energy Division (FED). As explained above, since July 1, 2000 each division in the former Generation Group has become a non-regulated operating subsidiary of CEG. The former **Utility Operations Group**, headed by Executive Vice President, Frank O. Heintz, had four divisions: the Electric Transmission & Distribution Division (ETDD), the General Services Division (GSD), the Gas Distribution Division (GDD), and the Retail Services Division (RSD). As explained above, since July 1, 200, these four divisions that made up the Utility Operations Group continue to exist with the same divisional structure as BGE.

BGE's **Electric Transmission & Distribution Division (ETDD)** is the largest division and employs approximately 1460-1574 workers. It operates BGE's bulk power delivery system that carries electricity from the power generating plants and transmission ties with other companies through the interconnected distribution system to customers. ETDD also constructs and maintains the transmission lines and substations, is responsible for distributing energy from substations directly to the customer, and coordinates the generation of electric power plants with the Pennsylvania, New Jersey, Maryland Interconnection Association (PJM) and wholesale market participants. There are five departments in the ETDD Division. They are: Business and Interconnection Management (Dept. 33), Transmission and Distribution Operations & Maintenance (Dept. 36), Electric System Operations & Planning (Dept. 37), Substation & System Protection (Dept. 38), and New Business & Distribution Construction (Dept. 39). BGE employees in ETDD report to a number of service centers or facilities discussed further below, including Rutherford Business Center (West Baltimore), Cockeysville Service Center, Piney Branch Service Center in Anne Arundel County, Arlington Training Center in Baltimore City, Dorsey Facility near BWI Airport, and Front Street in Baltimore City. There are numerous classifications in dispute throughout the ETDD.

BGE's **General Services Division (GSD)** employs approximately 730-762 individuals. The GSD performs a variety of support functions for the other BGE divisions, including facilities operations and building maintenance, grounds maintenance, vehicle/mobile equipment acquisition, repairs, and shop maintenance, purchasing and materials management, and telecommunications and information systems work. There are four departments in the General Services Division. They are: Information Technology ("IT") Applications Delivery (Dept. 71), Purchasing & Materials Management (Dept. 73), Facilities & Fleet Services (Dept. 75) and IT Operations and Technical

⁸ The parties stipulated to the issue of supervisory status. See Er. Exh. 86A, 86B and 86C; Tr. 2898-99. The parties agreed that executive vice-presidents, vice-presidents, managers, directors, general supervisors, supervisors, and work leaders are excluded as supervisors under the Act. There are no contested 2(11) issues herein.

Support (Dept. 77). In addition, the Y2K Project Unit (70-00-03), the Atlas Project Unit (70-00-04), and the IT Planning Services Master Section (70-10) report directly to the Vice President for the General Services Division. Neither party would include any employee classifications from IT Applications Delivery Department 71 in any appropriate unit. Petitioner does not seek any classifications from IT Operations & Technical Support in Department 77, whereas the Employer would include several classifications. There are also numerous classifications in dispute from Purchasing & Materials Management Department 73 and Facilities & Fleet Services Department 75.

BGE's **Gas Distribution Division (GDD)** employs approximately 719-720 workers. The GDD purchases, stores, and distributes natural gas and is responsible for maintaining BGE's gas plants, gate stations, gas mains, distribution system, and new business construction. Employees in this division have normal reporting locations to job sites within the 600 square-mile service territory, or to the Spring Gardens gas headquarters facility in Baltimore, or to satellite service or training centers such as Piney Orchard, Cockeysville, or Front Street. The Gas Distribution Division consists of three departments. They are: Gas Operations (Dept. M-1), Gas Planning & Engineering (Dept. M-2), and Gas Maintenance & Construction (Dept. M-3). The Petitioner does not seek any classifications from M2, whereas the Employer would include several classifications. There are also numerous classifications in dispute from M1 and M3.

BGE's **Retail Services Division (RSD)** employs approximately 713-915 individuals. The RSD resulted from a combination of the Customer Service function within the former Customer Service & Distribution Division and the former Marketing and Sales organization consisting of departments responsible for customer relations and sales projections. The RSD is primarily responsible for marketing and sales of energy services, collections, monitoring and recording customer use, customer service and customer relations. There are three departments in the Retail Services Division. They are: Marketing & Energy Services (Dept.L2), Customer Care (Dept.L3) and Customer Account Services (Dept.L4). In addition, five sections report directly to the Vice President of the Retail Services Division and provide support throughout BGE. They are: Pricing Strategy (L0-02), Energy Supply & Sales (L0-03), Financial Performance & Support (L0-04), Business Development (L0-06), and CIS & Support Coordination (L0-10). The Petitioner does not seek any classifications from Marketing & Energy Services Department L2, whereas the Employer would include four classifications. Neither party seeks to include any classifications in Customer Care Department L3. There are also numerous classifications in dispute from Customer Account Services Department L4.

BGE's **Human Resources Department 87** performs a wide array of employee and personnel services, human resource functions, and staff services for all divisions of BGE. Among other things, the Human Resource Department is responsible for developing and administering employee policies, wage and salary administration, grievance administration, processing job postings, providing advice regarding standards of conduct and corrective action, and generally administering the employment process. BGE's **Legal Department C1** is responsible for legal and regulatory matters. BGE's **Finance & Accounting Department 64** is responsible for corporate accounting, internal asset control, financial reporting, financing and investments, corporate taxes, insurance, and related financial matters for all divisions of BGE.

In order to create the foregoing organizational structure, the record established that over the course of the last few years, BGE has continued to restructure itself administratively in anticipation of utility deregulation. In light of the parties' Joint Stipulation, as amended, concerning post-hearing

organizational changes, I find it unnecessary to review extensive record evidence concerning numerous reorganizations since 1996 in order to decide the unit scope and placement issues presented.⁹

G. Overview of Major Facilities

Employees of CPSG and the various divisions of BGE work at one of the fossil energy plants, various major building complexes, distribution service centers, training centers, and field operations centers located throughout the service territory.

Major Building Complexes

The headquarters for CSPG, the former FED, is located at Fort Smallwood Road Complex. The Fort Smallwood Complex consists of office buildings, shops and a warehouse facility. The Brandon Shores and Wagner plants are within one-half mile walking distance of Fort Smallwood. The Fort Smallwood office building consists of two floors of offices, an area for centralized computer operations, and meeting rooms that are used by all departments in the division. It is furnished like a standard office. It is carpeted, air conditioned, and has a foyer entrance with rows of cubicles inside. There is also a cafeteria and a medical clinic that are used by CPSG departments. The Fort Smallwood complex also has a shops building consisting of machine and fabrication shops, a screen shop, tool and equipment storage areas, chemical laboratories, and classrooms. The mobile maintenance shop at Fort Smallwood performs substation steel work for the ETDD and fabrication work for Calvert Cliffs as well as the fossil plants. All employees have access to the same parking area, restroom facilities, conference room, and other areas in and around the Fort Smallwood complex.

The Rutherford Business Center (RBC) consists of six large buildings that house a variety of company operations. The RBC Fleet Services Building houses former Utility Operations Group personnel from two separate divisions. Fleet engineering and support personnel from Department 75 in BGE's General Services Division are in one end of the building. Gas welding and construction personnel from BGE's Gas Distribution Division are in the other half of the building. The RBC Windsor Office Building (WOB) houses facility operations and the manager's office for Facilities & Fleet Services Department 75. The RBC Windsor Building also houses a large contingent of IT Operations & Technical Support Department 77 personnel from the General Services Division, including telephone repairers or installers and data network technicians, and engineering personnel from the ETDD. The RBC Electric Operations Building is the nerve center for BGE's bulk power and distribution system. All of the transmission lines and connections from the PJM interconnection are controlled there as well as all switching throughout BGE's distribution system. The RBC Lord Baltimore Building houses the office portion of the Purchasing & Mails Management Department 73 of the General Services Division. It also houses a very large, fully mechanized central warehouse for large items such as gas lines, gas piping and electric distribution transformers. Attached to the warehouse is a waste transfer and disposal facility for environmentally sensitive items. The Lord Baltimore Building also houses a large area where electric meters are serviced or repaired, and a radio shop that oversees all repair and installation of communication devices. Some BGE HR personnel have a training facility at this building. Finally, the RBC South Building houses marketing and sales personnel from the Retail Services Division.

The downtown G&E Building Complex consists of two towers that house about 1500 employees at corporate headquarters, some of whom are at issue in this proceeding. The Spring Gardens complex is headquarters for the Gas Distribution Division. The Front Street facility houses the underground lines portion of the Electric Transmission & Distribution Division called the Transmission & Distribution

⁹ For an overview, see Pet. Exh. 14.

Operations & Maintenance Department 36 and a transportation and repair shop.

Distribution Service Centers

The Cockeysville Distribution Service Center houses the remainder of the Transmission & Distribution Operations & Maintenance Department 36 personnel, who handle the operations & maintenance portion of the ETDD. The Cockeysville Service Center also houses some Gas Distribution Division personnel and other General Services Division personnel, and has a transportation repair facility staffed by Facilities & Fleet Services Department 75 personnel.

The Howard Distribution Service Center is a full service repair facility that houses New Business & Distribution Construction Department 39 personnel and Transmission & Distribution Operations & Maintenance Department 36 personnel from the ETDD, and some gas service personnel (who respond to gas leaks and safety concerns) and gas construction personnel from the Gas Distribution Division.

The Piney Orchard Distribution Service Center is also a full-service repair facility that houses ETDD personnel, GDD personnel, and GSD personnel from Facility & Fleet Services Department 75.

Field Operations Centers

The Westminster Field Operations Center houses meter reading and field collections personnel from the Retail Services Division and serves as a reporting station for ETDD assigned to bucket trucks in the geographic area. The Notch Cliff Field Operations Center has a peak generating facility for CPSG. Gas division personnel maintain an underground propane storage facility there.

The Perry Hall Field Operations Center is close to the size of a distribution service center. It houses a large contingent of Gas Distribution Division personnel. The remaining 60 percent of space at Perry Hall is occupied by New Business & Distribution Construction Department 39 personnel from the ETDD.

The Blakely Field Operations Center is a small leased facility that houses meter reading personnel and field collections personnel from the Retail Service Division.

The Philadelphia Road Field Operations Center houses the peak generating facility for the FED and a substation for the ETDD. Employees are not permanently assigned there, however, mobile ETDD personnel and one FED employee report in and out to verify operations and to inspect the peak generator.

Training Centers and Other Facilities

The Arlington Field Operations Center is the training facility for the ETDD. Training and safety personnel for the ETDD are stationed there. The Pumphrey Field Operations Center houses another ETDD substation as well as a gas safety training facility.

The Brandon Woods Building is a commercial industrial park located across Fort Smallwood Road. It houses the corporate Environmental Affairs Section of CPSG. This industrial park is not a BGE facility. It is owned by Constellation Real Estate, a subsidiary of the parent corporation, Constellation Energy Group. Brandon Woods is a leased office facility adjacent to the Brandon Shores plant that houses an environmental programs unit and is where the disputed classifications of environmental permit technician and systems support technician from the Environmental Affairs Section report.

The Dorsey Customer Call Center is a leased facility that houses customer care personnel and meter reading personnel from the Retail Services Division.

Waugh Chapel is a major substation that takes a great deal of output from the CCNPP and passes it through BGE's transmission lines. No personnel report there on a regular basis.

H. Budgeting and Accounting Procedures, Business Plans and Service Level Agreements

As stipulated, CPSG is an unregulated affiliate of Constellation Energy Group, Inc. with its own profit and loss statement. As such, the performance of CPSG is measured by the profitability related to the operating performance of its plants. CPSG receives revenues from CPS by means of underlying contracts between CPS and CPSG based on the amount of electricity produced by the plants. This level of revenue is compared against the total cost of the CPSG organization as comprised by its five operating departments (20, 21, 23, 25 and 28). The five departments maintain departmental budgets, but do not show a profit or loss on a stand-alone basis. When one CPSG department performs services for another, the budget of the receiving department is charged for the cost of time and materials involved in the work. The department performing the services does not receive any payment. If any department of CPSG sells goods or services to an entity outside of CPSG, including BGE, CPSG bills that entity for the goods and services provided. Money received in payment of those bills is reflected as revenue of CPSG, not the individual department that provided the goods or services. The bills are intended to reimburse CPSG for all costs incurred plus a reasonable profit, if applicable.

As stipulated, BGE is a regulated utility with its own profit and loss statement. Profits and losses are not reported by division. BGE has continued the same budget and accounting process described at the hearing, with the exception that the generation line of business has been spun off to CPSG and CCNPP.

BGE tracks and reports revenue only as gas revenue or electric revenue. BGE does not track income or allocate revenue on a divisional basis. For internal accounting and budgeting purposes, BGE uses core lines of business: electric delivery, gas delivery, and revenue cycle management.¹⁰ Each core line of business captures expenses from several divisions.

Budgets are established for divisions, departments and units. If the employees of one division perform services for another division, the division to whom the services are provided has its budget charged. The purpose of establishing budgets below the divisional level is to hold smaller organizational groups groupings accountable for the costs incurred by that group. Expenses are tracked through the use of WMS numbers that allow charges to be tracked to the appropriate budget. The budget numbers are rolled up and eventually flow into the core lines of business.

BGE can determine at the end of the year whether a particular division, department or unit is above or below budget. Supervisors and managers are held accountable for staying within their budgets. Direct costs or expenses, such as labor costs, employee recognition awards, materials and supplies are charged to a particular unit's budget. Specific projects that cost more than \$100,000 are budgeted as extraordinary maintenance projects that are assigned a project engineer and individual project number.

BGE has a miscellaneous budget where costs for all repairs to vehicles and equipment are accumulated. At the end of the year, the costs accrue from the miscellaneous budget to the

¹⁰ Revenue cycle management is described as the customer billing function performed in the Retail Services Division.

particular customer's operations and maintenance budget or capital budget.¹¹ End of the year cost reports track money spent versus money budgeted. Transportation costs, such as fuel or repair work for vehicles are charged by vehicle number. New vehicles are leased. Departments, not divisions, pay for the leases.

In addition to direct charges, support services are charged to the four core lines of business. The support services include human resources, legal, accounting and finance, etc. The expenses with regard to the support services are allocated directly to the core lines of business using accounting formulas, not actual use.

Each of BGE's divisions and departments prepare separate annual business plans.¹² These business plans state each organization's mission and vision, and describe the organization's area of business, customers, and key strategies. Each business plan also sets forth separate performance measures and targets for the organization, and describes the particular organization's strategies for meeting its own goals.

There are also service level agreements that exist between divisions or departments that project the cost of intra-company services that one division or department (service provider) provides to another (service consumer). The record testimony established that service level agreements are basically written agreements or contracts in which one organization agrees to provide services to another organization. These service level agreements are usually negotiated between divisions, signed by high-ranking management officials, and set forth the manner in which the services will be provided and the costs will be charged to the budget of the service consumer.

The ETDD has a number of service level agreements with other BGE divisions. In fact, one individual in the ETDD is responsible for acting as a liaison with the other areas of BGE with whom the ETDD has service level agreements. That individual's role is to protect the ETDD's interests as a customer with respect to BGE's other divisions. One of the ETDD's service level agreements is with the Facilities and Fleet Services Department 75 within the General Services Division. Under that agreement, the Facilities and Fleet Services Department supplies the ETDD with bucket trucks and cellular phones. The agreement sets forth the cost that the ETDD pays for those services, which is charged back to the ETDD's budget. The ETDD also has a service level agreement with the Gas Distribution Division. Pet. Exh. 173. That agreement is signed by each division's vice-president and several department managers. Under the agreement, the Gas Distribution Divisions budget is charged for certain services provided by the ETDD. The General Services Division has service level agreements covering computer or "IT" work it provides to other areas of BGE. For example, separate service level agreements between the General Services Division and the ETDD, the GDD, and the RSD, respectively, cover "help desk" work, i.e., answering computer-related questions from employees.

The business plans, budgets and service level agreements project expenses, but they do not track or project actual income. There is no revenue tracking or profit tracking by division, department, or unit in BGE's budgets. To the extent that a business plan for a division or department references revenues, the record testimony established that such references are rough estimates, not true revenue statements.

¹¹ Operation and maintenance budgets pay for the routine operation and maintenance of the plant. Capital budgets pay for installation or replacement of new pieces of equipment.

¹²See e.g., Pet. Exh. 9, Pet. Exh.12, Pet. Exh. 45, Pet.Exh.164, Pet. Exh. 79, Pet. Exh. 182, Pet. Exh. 84, and Pet. Exh. 185.

Consistent with the above-described accounting system, BGE's annual reports break down operating statistics, revenue, and earnings per share for the electric and gas businesses of the utility. BGE's annual reports to stockholders and management report revenue along certain lines of business: the electric business; the gas business; and diversified subsidiaries. The same breakdown between the electric and gas businesses is contained in BGE's annual regulatory reports to the Federal Energy Regulatory Commission.

Although the exact profitability of BGE's businesses is reported to shareholders in terms of its gas business and electric business (Er. Exh. 6 and Er. Exh. 507), BGE further breaks down certain figures along profit lines. For example, at the time of the hearing, BGE set goals for, and kept track of, the profitability of the UOG group. Pet. Exh. 9; Er. Exh. 513. In addition, the ETDD measures its growth by tracking the return on equity associated with BGE's electric delivery line of business because the ETDD division has the most influence over that measure.

I. Human Resource, Personnel and Labor Relations Policies and Programs

As stipulated, CPSG's parent corporation, Constellation Power Source Holdings, Inc., has its own Director of Human Resources, who is responsible for setting and administering all labor relations and personnel policies for CPSG. All employees of CPSG are subject to the same labor relations and personnel policies. CPSG has adopted the weekly salary administration program and pay grade system previously in place under BGE. This program and system applies equally to all CPSG weekly employees. CPSG has adopted many of the fringe benefit plans previously in place under BGE. All CPSG weekly employees are covered by and eligible to participate in the same set of benefit plans. The record reflects that the CEG Summary Plan Descriptions cover BGE employees as well as CEG subsidiaries and it describes applicable benefit plans. See Er. Exh. 42 or its table of contents for a complete listing of benefit plans.

As stipulated, BGE has its own Manager of Human Resources, who is responsible for setting and administering all labor relations and personnel policies for BGE. All employees of BGE are subject to the same labor relations and personnel policies. BGE has continued the weekly salary administration program and pay grade system described at the hearing. This program and system applies equally to all BGE weekly employees. BGE has continued all of the fringe benefit plans described at the hearing. All BGE weekly employees are covered by and eligible to participate in the same set of benefit plans.

All weekly employees do not work the same hours. Certain classifications perform shift work or work rotating shifts. Some classifications work flex time. As noted, all weekly employees are subject to the same pay grade system and compensation policies. The record evidence established that pay grades are either weekly (between pay grades 20 and 32) or monthly (between pay grades 70 and 80), depending on how often employees are paid. The weekly employee salary structure became effective in March 1999 as a result of a 1998 market survey. The market rate became the maximum step in the salary structure for weekly employees. The salary structure consists of 13 pay grades with 10% differentials, and 5 steps per grade with 5% differentials between steps. Shift workers receive shift premiums. There is an attempt to combine jobs that have similar skills and to value such jobs consistently. Employees who have the same job title will have the same pay grade.

Within each pay grade there are five proficiency levels or steps. For each job classification, there is a written proficiency statement that outlines the skills and qualifications necessary to move through the five proficiency levels. There is an annual proficiency evaluation form that is completed for employees each anniversary date of their hire. Each employee is given a proficiency rating of 1-5, with 1 being the lowest and 5 being the highest. The five-step proficiency program is directly linked to salary steps.

Salary step adjustments become effective immediately when the proficiency evaluation for the evaluation year is completed. The skills required for specific job proficiencies are developed by the first line supervisor with employee input. For example, plant technicians maintain qualification notebooks that list the tasks in which they must demonstrate proficiency. When the plant technician has completed the requirements for a certain proficiency level, the shift supervisor initiates the paperwork for a wage increase for the plant technician. Safety on the job is a critical characteristic that is part of the plant technician's proficiency review.

Employees who laterally transfer to the same job title keep the same pay grade and cycle of proficiency evaluations. In such cases, job responsibilities are similar, there is just a different supervisory reporting relationship. When an employee is matrixed¹³ or cross-trained from one job title to another job title within the same pay grade, job responsibilities and the reporting relationship may change, but the pay and proficiency level remain the same.

Weekly employees are paid the same overtime, compensation and shift premiums, and have the same holidays. Cost of living raises are uniform across companies. There is also a uniform mileage reimbursement policy, per diem policy, relocation policy, employee discount policy, and tuition advancement program.

As stipulated, all weekly CPSG employees participate in the same Results Incentive Awards ("RIA") program. The 2000 RIA goals for all CPSG employees are based on the same factors: kilowatt output of the fossil fuel plants and timeliness of power production from those plants. CPSG has adopted the Employee Recognition Awards Program ("ERAP") previously in place under BGE and as described at the hearings. All CPSG weekly employees are eligible for awards under ERAP.

As stipulated, all weekly BGE employees participate in the same Results Incentive Awards ("RIA") program as described at the hearing. BGE has continued the Employee Recognition Awards Program ("ERAP") as described at the hearing. All BGE weekly employees are eligible for awards under ERAP.

The record evidence established that there are company-wide Employee Recognition and Award Programs (ERAP) and divisional ERAP programs. The record also established that in 1994, BGE implemented a Results Incentive Award (RIA) program under which all weekly employees are eligible for an incentive award up to 10% of annual base pay that is computed as of December 31st of the performance year and paid in March of the following year. Awards greater than 10% must be recommended in writing for approval by the Chairman of the Board. An evaluation form is used to document individual and team goals under the program. Progress is documented throughout the performance year. Team goals are important because every employee within a certain organizational unit is responsible for achieving that organization's business plan and contributing to the overall success of the organization. RIA bonuses can be linked to division-wide goals. It is within the discretion of the division vice president and department manager to determine the combination of individual and/or team goals to use for employees.

As stipulated, CPSG has adopted the Standards of Conduct and disciplinary rules previously in place under BGE, and applies those rules to all CPSG weekly employees. As stipulated, BGE has maintained the Standards of Conduct and disciplinary rules described at the hearing. The rules apply to all BGE weekly employees. Former BGE Director of Business Communications, Stephen Edward Jones, testified that terminations at BGE are rare and that he has never had to terminate an employee.

¹³ "Matrixed" employees are temporarily transferred or reassigned to work under someone else's direction.

Supervisors report resignations or recommendations regarding discharge to department managers. In cases where discharge is recommended, supervisors consult with a Human Resources consultant and prepare a Formal Warning/Corrective Action Plan as appropriate.

As stipulated, CPSG has adopted the "FEAR NOT" program previously in place under the FED. The record established that the former FED has its own training unit in 28-00-03 that trains all CPSG or former FED personnel. The record further established that the former had its own Safety and Health Unit, division-wide accident prevention committee, and division-wide, behavioral-based, safety-improvement process called "FEAR NOT."

As stipulated, CPSG has adopted the grievance process, known as Help Employees Attain Resolution ("HEAR"), previously in place under BGE. Each HEAR peer review panel is composed exclusively of CPSG employees and supervisors. All CPSG weekly employees are eligible to participate in the HEAR process. As stipulated, BGE has maintained the grievance process, known as Help Employees Attain Resolution ("HEAR") described at the hearing. Each HEAR peer review panel is composed exclusively of BGE employees and supervisors. All BGE weekly employees are eligible to participate in the HEAR process.

The record established that HEAR works as follows. Any weekly employee can use the process. Employees contact human resource consultants to initiate the process. An employee has the option to appeal either to a peer review panel (that may be composed of representatives from throughout the company) or a high ranking management official. Certain issues qualify for peer review, such as corrective or disciplinary actions, terminations, job postings, and specific applications of company policy. If an employee feels that policies are not being administered consistently, the employee can invoke the HEAR process. The peer review panel cannot change policy, but can determine whether it has been applied correctly. There is no peer review for issues related to salary, benefits, job grade and work assignment.

The peer review panel consists of five panelists, two supervisory and three non-supervisory employees, who volunteer from all different areas of the company and receive training by outside consultants. The peer review selection process operates as follows. The names of the supervisors and nonsupervisors are written on a piece of paper and placed into separate boxes. The aggrieved employee ("grievant") selects 4 pieces of paper from the supervisory box and then designates two of the four supervisors to sit on the panel. Similarly, the grievant selects eight pieces of paper from the non-supervisory box and designates three of the eight non-supervisors to sit on the panel. The panel members review the appeal and seek out relevant information from affected parties. A trained HR person facilitates the peer review grievance meetings at which panel members vote anonymously. The peer review panel's decision is binding on management.

As stipulated, CPSG sponsors company-wide social and recreational programs open to all CPSG employees. As stipulated, BGE continues to sponsor company-wide social and recreational programs that are open to all BGE employees. The record established that BGE's Employee Relations Unit from Human Resource Services Department 87 administers social and recreational activities, dispute resolution and affirmative-action, and oversees work and family programs that require management of contracts with Locate Child Care Service and Maryland Elder Care. This unit also coordinates three company-sponsored charities: the Red Cross blood program; the United Way campaign; and the March of Dimes walk-a-thon. Typically, a steering committee or corporate team made up of employees from various divisions or departments is appointed by management to lead these activities.

The record established that the BGE Employee Association is open all to employees (including supervisors, guards, and clerical employees) whether weekly or monthly. Retirees may maintain their membership. The association sponsors a number of social and recreational activities such as company roasts and Hershey Park day. An association newsletter called "The Tattler" is published about five or six times a year.

The record established that each job classification has at least one generic job description that is assigned an alpha-numeric designation for identification purposes. The job descriptions in the record as Er. Exh. 4 summarize basic qualifications and principal duties and responsibilities for each position and list equivalent-type qualification standards for each position. The same job titles have the same job descriptions, even if they are in different divisions or departments. Generally, the skills and responsibilities of positions that have common job titles are the same, although specific tasks may be slightly different. The job numbers match the title code in BGE's organizational charts. Er. Exh. 5.

When a job opening arises, the human resource consultant works with the unit supervisor or department manager (selecting supervisor) to determine whether or not to post the job. Typically, if the job is posted, a principal administrative assistant initiates a job posting number for placement on the electronic bulletin board and the internal job opportunities website.

Not all job openings are posted. If a job is not posted, it is usually because there are no qualified applicants with the requisite skills within the company. In that case, a unit supervisor can select the individual they feel is best qualified to fill a vacancy, subject to review by the department manager and HR. Where jobs are posted and filled internally, the supervisor selects current employees to be interviewed, completes candidate evaluation reports after the interviews, and ranks the candidates. When a supervisor selects someone within the unit for promotion, the administrative group within the department completes paperwork that is forwarded for coordination with payroll.

A unit supervisor or department manager identifies candidates they wish to hire and makes hiring selections contingent upon successful processing of physical exams, employment tests, and drug screening (for new hires) through Human Resources.¹⁴ Supervisors make hiring selection recommendations subject to a number of reviews by department managers. When making hiring selection recommendations, supervisors review the personnel files of applicants, select among applicants for interviews, conduct the interviews, and prepare a candidate evaluation report that ranks the candidates. Candidate evaluation reports usually are submitted to the human resource consultants and the levels of management within the supervisor's chain of command.

Both the supervisor and HR consultant interview employees applying for hire. The HR consultant generally does an initial screening of resumes and conducts initial interviews to screen out applicants. When an employee is brought in for a formal interview, the HR consultant will interview the applicant first to obtain general information and explain company policies and benefits. Then the selecting supervisor will interview the applicant. At times, the supervisor and the HR consultant interview the applicant together. The consultant and supervisor exchange information to make the actual determination of the candidate to whom they want to offer a job.

The determination of where a new hire is slotted in the pay grade system is determined by the hiring supervisor and the HR consultant for that organization. Successful candidates for operator, maintenance, clerical, or technician positions must pass a written screening examination administered by Human Resources that has been developed among various utilities that participate in the Edison Electric

¹⁴ Current employees are subject to random drug screening.

Institute. For example, there is a clerical battery test and a technician occupation test.

J. A General Overview of CPSG and its Five Departments, which were part of BGE's Former Fossil Energy Division, in Light of the Petitions in 5-RC-14906 and 5-RC-14907

In Case RC-14907, the Petitioner seeks to represent a unit of all physical production and maintenance employees within the former Fossil Energy Division, with the exception of those production and maintenance employees working in Department 25, the Fossil Engineering and Maintenance Department (FEMD). The Petitioner seeks to represent the FEMD production and maintenance employees in a separate unit in Case 5-RC-14906. More specifically, the petition in 5-RC-14906 seeks certain classifications of "mobile maintenance" employees, who work in 25-07, headed by General Supervisor, Donald A. Ensor, and in 25-08, headed by General Supervisor, Paul R. Nagle. The classifications sought by Petitioner within the various units in 25-07 include modifications mechanic, machinery mechanic, welder, and the former shops technicians, who the parties have stipulated now have job titles specific to their primary skill. The classifications sought by Petitioner within the various units in 25-08 include machinery mechanic, modifications electrician, tool mechanic, tool room attendant, truck driver-fossil energy, and machinist. Petitioner seeks no other classifications in 5-RC-14906 in the Fossil Engineering and Maintenance Department 25, with the exception of the senior relay & control technician in 25-02-0C (formerly 25-02-06) and the welder in 25-09-05.

As noted, CPSG, comprised of the five departments in BGE's former Fossil Energy Division (FED), is functionally responsible for the operation and maintenance of all electrical power generating plants that run on fossil fuels. At the time of the hearing, there were approximately 850-919 weekly employees in the former FED that reported to the various generating plants or the Fort Smallwood headquarters, described above. Many Department 25 employees at issue herein are located at the Fort Smallwood office complex. As noted, the parties have stipulated to the following facts concerning CPSG:

CPSG consists of the same five departments which were part of BGE's FED: Department 20, which includes the Environmental Services Unit; Department 21, Brandon Shores & Wagner Operations; Department 23, Production Department-Crane/Gould Street and Riverside; Department 25, Fossil Engineering and Maintenance; and Department 28, Fuels & Business Planning. The responsibilities and interrelation among the five CPSG departments remains essentially unchanged from that which was described at the hearing. The CPSG weekly employees perform the same duties, under the same conditions, as they did as FED employees. CPSG staffs and operates the fossil fuel plants in a manner substantially similar to the way that they were staffed and operated under BGE. The contact and interchange among the CPSG weekly employees is substantially the same as it was when these employees worked in the FED. CPSG's "mobile maintenance" employees (*i.e.*, Department 25) provide the same maintenance and operational support to the fossil fuel plants and to the Calvert Cliffs Nuclear Power Plant as they did when working in FED, including: a) outage repair and project work; b) balance of plant work; and c) augmentation of plant maintenance and operational forces. When providing services to the fossil fuel plants, Department 25 charges the budgets of Departments 21 and 23 in the same manner as described at the hearing. When Department 25 provides services to the Calvert Cliffs Nuclear Power Plant, CPSG bills CCNPP, and CCNPP remits payment to CPSG, not Department 25. BGE and CPSG are subject to the Maryland Public Service Commission's GENCO Code of Conduct when dealing

with each other. CPSG has continued for all weekly employees the training and cross-training programs previously in place under the FED.

CPSG's parent corporation, Constellation Power Source Holdings, Inc., has its own Director of Human Resources, who is responsible for setting and administering all labor relations and personnel policies for CPSG. All employees of CPSG are subject to the same labor relations and personnel policies. CPSG has adopted the weekly salary administration program and pay grade system previously in place under BGE. This program and system applies equally to all CPSG weekly employees. CPSG has adopted many of the fringe benefit plans previously in place under BGE. All CPSG weekly employees are covered by and eligible to participate in the same set of benefit plans. All weekly CPSG employees participate in the same Results Incentive Awards ("RIA") program. The 2000 RIA goals for all CPSG employees are based on the same factors: kilowatt output of the fossil fuel plants and timeliness of power production from those plants. CPSG has adopted the Employee Recognition Awards Program ("ERAP") previously in eligible for awards under place under BGE and as described at the hearings. All CPSG weekly employees are ERAP. CPSG has adopted the Standards of Conduct and disciplinary rules previously in place under BGE, and applies those rules to all CPSG weekly employees. CPSG has adopted the FEAR NOT program previously in place under the FED. CPSG has adopted the grievance process, known as Help Employees Attain Resolution ("HEAR"), previously in place under BGE. Each HEAR peer review panel is composed exclusively of CPSG employees and supervisors. All CPSG weekly employees are eligible to participate in the HEAR process. CPSG sponsors company-wide social and recreational programs open to all CPSG employees. CPSG's parent corporation, Constellation Power Source Holdings, Inc., has its own Legal, Human Resources and Finance & Accounting departments. Those departments support CPSG. CPSG is an unregulated affiliate of Constellation Energy Group, Inc. with its own profit and loss statement. As such, the performance of CPSG will be measured by the profitability related to the operating performance of its plants. CPSG will receive revenues from CPS based on underlying contracts between CPS and CPSG based on the amount of electricity produced by the plants. This level of revenue will be compared against the total cost of the CPSG organization that is primarily comprised of the five operating departments discussed previously. The five departments within CPSG maintain departmental budgets, but do not show a profit or loss on a stand-alone basis. CPSG has continued the same budgetary process as was described at the hearing for these five departments (20, 21, 23, 25 and 28). That is, when one CPSG department performs services for another, the budget of the receiving department is charged for the cost of time and materials involved in the work. The department performing the services does not receive any payment. Unlike the process that was described at the hearing, if any department of CPSG sells goods or services to an entity outside of CPSG, including BGE, CPSG bills that entity for the goods and services provided. Money received in payment of those bills will be reflected as revenue of CPSG, not the individual department that provided the goods or services. The bills are intended to reimburse CPSG for all costs incurred plus a reasonable profit, if applicable.

The functions of each of CSPG's five departments is discussed in more detail below after reviewing facts relevant to unit scope that focus on CPSG or the former FED as a whole.

CPSG, as comprised of the former FED, has its own headquarters, located at the Fort Smallwood Complex. The record established that the former Fossil Energy Division had its own Business Plan that contained its own Mission and Vision Statements. The former Fossil Energy Division's Mission Statement, as well as its Vision Statement, emphasized that the FED is focused on its own ability to be profitable. Thus, its Mission Statement declared that the former Fossil Division will "generate electricity to optimize profitability." Pet. Exh. at 1. The former FED Vision Statement emphasized the "[t]ransition to a merchant plant mentality, involving all employees in innovative initiatives that exceed profitability targets." Id. (Emphasis added.)

The former FED Business Plan lists assets, separate and apart from those of other former BGE divisions. Thus, CPSG's or the former FED's products include electric power generation, as well as a number of support services that Department 25 provides to various customers, including CCNPP (formerly NED) and other divisions within BGE, as well as utility and oil companies outside BGE.

Like the former FED, CPSG tracks its own costs, projects the cash flows of its generation plants, and tracks the productivity of the plants. There is a Business Planning Section in 28-04. This Section performs economic analyses on the viability of the fossil facilities and on each fossil plant's performance. CPSG or the former FED determines what it costs for each of its plants to operate at any given hour, compares those figures to the market price, and brings units on and off line accordingly. The former FED also determined its total system average expense (TSAE), which is the average cost to make a kilowatt of electricity. The former FED determined its TSAE monthly, and reported to all FED employees. The former FED also compared its productivity levels to those of its competitors, by looking at forms published by the Federal Energy Regulatory Commission.

As stipulated, when providing services to the fossil fuel plants, Department 25 charges the budgets of Departments 21 and 23 in the same manner as described at the hearing. When Department 25 provides services to the Calvert Cliffs Nuclear Power Plant, CPSG bills CCNPP, and CCNPP remits payment to CPSG, not Department 25. The record established that mobile maintenance has done fabrication work for Ciambro, an outside construction company, on at least two occasions. If the plant workforce has insufficient manpower to perform a maintenance order, then plant supervision usually requests mobile maintenance to perform the work, and if mobile maintenance cannot do so, then an outside contractor would be used. For example, outside contractors are being used on the selective catalytic reduction project (SCR) because mobile maintenance has insufficient manpower available. Supervisory Engineer, Richard Clisham, testified that the former FED (now CCNPP) could conceivably contract with an outside contractor rather than mobile maintenance, if the outside contractor could perform the work cheaper, however, he could not recall whether BGE had ever exercised this option.

Prior to July 1, 2000, what was the former FED was signatory to a number of service level agreements. For example, the former FED was signatory to separate service level agreements under which it received services from two of BGE's General Service Division Departments: Purchasing and Materials Management, and Facilities and Fleet Services. Pet. Exh 172. The Fossil Engineering & Maintenance Department 25 (FEMD) was signatory to a service level agreement with CCNPP, one of CPSG's major customers. See Pet. Exh. 167 and 181. That service level agreement specified the services that Department 25 would provide to the nuclear plant and that Calvert Cliffs would provide to Department 25, including the opportunity for FEMD to estimate and bid non-outage work that CCNPP could not support before that work was assigned to outside contractors. Paul Nagle, General Supervisor of the Mobile Maintenance Major Machinery Section, testified that Calvert Cliffs has assigned to outside contractors some of the work it had traditionally given to his Section. As a result, the amount of work that Department 25 obtains from Calvert Cliffs changes over time. Department 25 also provides

fabricated steel to BGE's ETDD. The ETDD, however, pursues other avenues to obtain fabricated steel and could use outside contractors as its supplier. Mobile maintenance supervisor, Donald Ensor, testified that the Department 25 fabrication shop obtains work from BGE divisions because these divisions have trouble finding outside contractors that are as flexible as Department 25.

As noted above, CPSG's parent corporation, Constellation Power Source Holdings, Inc., has its own Director of Human Resources, who is responsible for setting and administering all labor relations and personnel policies for CPSG. All employees of CPSG are subject to the same labor relations and personnel policies. CPSG employs individuals who perform personnel duties, such as handling human resource documents and processing employee evaluations, pay raises and/or promotions. For example, there are principal administrative assistants located in the Information Technology & Process Management Unit 28-00-05. They maintain the personnel files for the former FED, interpret personnel policies, and handle the proficiency statements, corrective actions, and salary adjustments.

CPSG handles its own payroll through personnel in 28-04-01. Pay grades are uniform across specific job classifications, however, the majority of CPSG weekly employees work in job classifications that are found only in CPSG. As noted, there is a uniform pay grade and proficiency step system, but the actual determination of an employee's salary is determined at the local level. Thus, CPSG first-line supervisors develop the job proficiency statements that apply, with input from employees who perform the particular jobs. Each CPSG employee is evaluated annually by his first-line supervisor, who uses a job proficiency statement to determine the employee's appropriate proficiency level and correlative pay grade.

As stipulated, CPSG's RIA goals for all employees are based on the same factors as at BGE's former FED: kilowatt output of the fossil plants and timeliness of power production from those plants. CPSG has its own training unit in 28-00-03 that trains all CPSG personnel. CPSG employees perform numerous other support functions and services for the entire company. For example, CPSG's Procurement Services Unit in 28-00-04 is responsible for purchasing almost everything needed by CPSG, except fossil fuel, which is purchased by the Fuel Procurement Unit in 28-00-02. The Procurement Services Unit also administers CPSG contracts for work by outside contractors, and operates the Fort Smallwood warehouse, which is staffed by CPSG employees. The CPSG has its own Information Technology Unit 28-00-05. This unit maintains the day-to-day operation of CPSG's computer systems and local area networks (LANs). The CPSG has its own Environmental Services Unit 20-00-02, which manages the compliance with laws and regulations for clean air and water, and the disposal of toxic waste. The CPSG has its own ash disposal operations in 28-01-01; its own business planning and support section in 28-04; and its own budget and cost analysis unit in 28-04-04.

The record established that most of the temporary interchange with regard to the former FED involves interchange between and among former FED classifications, i.e., between the employees of Department 25, which Petitioner seeks to represent separately, and the other former FED departments in CPSG. There is evidence that a few former FED employees, on occasion, took training classes given within BGE's Gas Division, and that they sit in classes with BGE weekly employees from other BGE divisions. Er. Exhs. 31 and 32. There is no evidence that this occurred with any frequency, however, or for any meaningful duration. The record established that the former FED's training unit in 28-00-03 also occasionally trained employees from other BGE divisions.

There was also record evidence that ETDD employees worked on power plant transformers, but rarely, if ever, had any meaningful work-related contact with plant technicians because the plant employees generally lacked expertise concerning the equipment that the ETDD employees worked on. There was also evidence of some contact between the power plants and the unit dispatch organization

within what is now BGE, but that contact was usually by telephone. The record also reflects some contact between chemistry employees in Department 25 and BGE employees. In addition, I note that the parties stipulated that some employees working in BGE's General Services Division as of July 1, 2000 became employees of CPSG. See Joint Stipulation, as amended, at para. 6 and Exhibit C. These employees have been specifically discussed when resolving unit placement issues in Part II of this Decision.

With regard to temporary interchange, there was some record testimony that former FED employees were occasionally loaned to former UOG Divisions. BGE witnesses identified three examples in 1999, and all of these employees worked in Department 25. The record shows that five modifications electricians from the Electrical Unit in 25-08-09 were loaned to the System Protection & Control Master Section 38-20-01 to work with lead relay & control technicians, senior relay and control technicians and relay and control technicians in the Relay & Control Units in 38-20-02, 03, and 04. General Supervisor Bambargar testified that the modification electricians were homogenized into relay and control unit and construction unit work crews. They performed the same type tasks that the relay and control technicians and the substation crew leaders and substation electrical mechanics and senior substation electrical mechanics performed, using the same tools, under Department 38 supervision. He testified that this was a temporary assignment that lasted from the summer of 1999 until January 1, 2000, and that similar temporary assignment have occurred whenever the Substation & System Protection Department needs manpower. The record also established that one modifications electrician in 25-08 worked in the Gas Distribution Division for two-four months, and that lead and senior relay and control technicians in 25-02-06 worked on rare occasions for the ETDD's System Protection and Controls Section 38-00-01. According to the former FED's Business Plan, these other divisions and departments are customers of the former FED.

The record established that the contact and interchange between CPSG (former FED) employees and CCNPP (former NED) employees is similar to the contact and interchange between CPSG (former FED) and BGE's former UOG, as described above. As noted above, prior to July 1, 2000, department 25 and CCNPP had executed service level agreements that covered the work that mobile maintenance did for CCNPP and that covered the opportunities for Department 25 to bid on additional work before outside contractors were utilized. Because of the distance involved, Department 25 employees received a per diem allowance, covering food and lodging, when they worked at CCNPP. General Supervisor of Major Machinery, Paul Nagle, testified that mobile maintenance employees will continue to perform work for Calvert Cliffs under much the same arrangements, even after the FED and NED become separate non-regulated subsidiaries of CEG on July 1, 2000.

There was also some testimony that Department 28 employees may have some training contact with the former NED employees. There was no evidence that fossil plant employees from Departments 21 and 23 ever worked at CCNPP. Moreover, fossil power plant employees do not have the General Orientation Training ("GOT") required to work at CCNPP.

There was some testimony that former NED employees have been loaned to Department 25 to work on outages at the fossil plants. For example, approximately eight to twelve CCNPP employees worked at Brandon Shores during the fall outage in 1999 and received a per diem allowance for food and lodging. Two mobile maintenance employees, however, testified that the CCNPP employees had no contact with plant personnel during the job.

K. A Detailed Look at the Specific Departments Within CPSG

Effective July 3, 2000, The Environmental Affairs Section (10-0A) was changed to the Environmental Affairs Section (A4-41) and is now a part of the Environmental, Health and Safety

Department in the Corporate Affairs Division of Constellation Energy Group. Units in the Environmental Affairs Section, the Environmental Performance Assessment Unit (10-0A-02) and the Water & Natural Resources Unit (10-0A-05), are now units (A4-41-02) and (A4-41-04) respectively. The responsibilities of these units, the job classifications therein, and all job duties are the same as in the former organization and as was presented in the hearing.

1. Environmental Services Unit (20-00-02)

Effective July 3, 2000, the Environmental Services Unit was moved in its entirety to Constellation Power Source Generation, Inc. and is now called the Environmental Health-Safety Division (20-01). This division now includes a Safety Unit (20-01-02), formally the Fossil Safety and Health Unit (28-01-05). This Safety Unit was moved in its entirety from Department 28 to Department 20 on July 3, 2000. In addition to the Safety Unit (20-01-02), the Environmental Health-Safety Division also includes an Environmental Unit (20-01-03), formally named the Environmental Services Unit (20-00-02). The responsibilities of these units, the job classifications therein, and all job duties are the same as in the former organizations and as was presented in the hearing.

2. Production (Brandon Shores/Wagner) Department 21

Effective July 3, 2000, the Plant Engineering Unit (21-00-02), Fuel and Ash Handling Unit (21-01), Brandon Shores Plant Operations Section (21-02), Brandon Shores/Wagner Maintenance Section (21-03), and the Wagner Plant Operations Section (21-04) have moved in their entirety to Constellation Power Source Generation, Inc. The responsibilities of these sections, the job classifications therein, and all job duties remain the same as in the former organizations and as was presented in the hearing.

Production (Brandon Shores/Wagner) Department 21 under Manager, Wayne Seifert, is responsible for operations, routine maintenance and plant engineering at the five units at Wagner and the two units at Brandon Shores, and for managing ash, a by-product of burning coal, for the whole division. Seifert testified that the January 1998 reorganization of the FED was designed to enhance the FED's flexibility to operate in a more competitive deregulated market as industry restructuring move forward. Thus, Brandon Shores and Wagner were combined into a single production department, Department 21.¹⁵ Seifert was charged with operations at both plants as well as combined maintenance, plant engineering and coal handling functions for both plants. The Brandon Shores and Wagner plants are located on adjacent properties.

Department 21 has five sections. John Kusterer is Supervisor, Plant Engineering (Brandon Shores/Wagner) Unit, 21-00-02. This unit assists in small projects within both plants such as re-engineering a small pump installation. It also coordinates major projects, such as installation of a new control system for the power plant that would be handled by engineers from Department 25. James Sherman is General Supervisor of the Fuel & Ash Handling (BS/Wagner) Section 21-01-01. This unit is responsible for fuel once it is delivered to the plants and for loading ash on trucks for transport to landfills. John Strauch, Jr., is General Supervisor of Fossil Operations (Brandon Stores), 21-02-01. Herbert Parks is General Supervisor-Planning & Support for the Maintenance Section, 21-03-01 at both Brandon Shores and Wagner. Stanley Dembeck is General Supervisor for Fossil Operations (Wagner), 21-04-01.

¹⁵ At the same time, Production Department 23 (Crane/Gould Street/Riverside) was consolidated under Manager David Snyder. Previously there had been a plant manager at Crane and a plant manager for the Gould Street, Riverside and combustion turbine operations.

Each fossil plant consists of a number of generating units, which are operated and maintained by the permanent plant staff. For example, Brandon Shores has two units; Wagner has five units. Units are brought on or shut down depending on need. Baseload plants such as Brandon Shores Unit 1 and 2, Wagner Units 3 and 4, and Crane Units 1 and 2, use coal or highly efficient oil. They generally operate every day and night, except during maintenance periods or outages, and they are the least costly units to run. Intermediate load plants, generally steam units, are less efficient, burn more expensive fuel, and are not always operational. Peak load plants use gas turbines and peaking units to burn premium fuels and natural gas. They are the least efficient plants and are used during peak periods of high demand.¹⁶ For each plant unit, a cost calculation has been made. An economic dispatch signal is sent by PJM that is loaded into computer software and is used by systems operations to determine costs per megawatt hour. Systems operations and the fossil control rooms monitor the signal by computer to determine the most economical units to bring on first, as costs increase based on increased demand.

The plant areas, with the exception of the control room and some shop areas, are not air conditioned, and are generally dirty, dusty, and noisy. Hearing and eye protection are needed. Plant technicians must satisfy respirator qualifications and are given annual hearing tests. The service buildings at both plants contain office areas with desks, cubicles, copying equipment and computers. Unlike most plant areas, these office areas are air conditioned and heated in the winter.

Each plant is headed by a plant manager. There are about 216 employees at Brandon Shores, about 130 employees at Wagner, about 127 employees at Crane, and about 38 employees at Gould Street. Energy is generated at the various plants by a number of different units, which burn either coal, oil or gas. Each plant is subdivided into an operations section and a maintenance section, each with its own general supervisor.

Plant technicians work either in operations or maintenance. Plant technicians working in maintenance perform day work and report to plant shops. They work 8-hour days, with some overtime, much like the hours worked by the industrial wastewater treatment technicians, maintenance planners, PDM technicians, and senior administrative assistants, none of whom work rotating shifts. Operations sections run the plants 24 hours a day. Generally, the plants are operated on 12-hour rotating shifts by plant technicians.¹⁷ The day shift runs from 7 a.m. to 7 p.m.; the back shift runs from 7 p.m. to 7 a.m.

The activities of the plant technicians are coordinated from the control room, which is a centrally located facility into which digital information about the various components of the plant's process system flows. Control room operators monitor the production of electricity. They remotely control the production equipment and direct the activities of the plant employees engaged in the operation and day-to-day maintenance of the equipment. There is a control room operator on duty for each production unit at each facility during each shift around the clock. The personnel on duty on a shift include a shift

¹⁶ Generally, the two nuclear units at CCNPP are dispatched 24 hours a day because of the low cost of nuclear energy. Nuclear units are not good units to cycle up or down because of nuclear regulatory complexities.

¹⁷ The term technician is used extensively throughout CPSG and BGE because so many jobs require technical training or use of technical equipment. For example, all operators at the fossil generating plants are not called plant technicians. About 1995, a multi-skilling program was established and historically, different positions with different job titles such as plant operators, machinery mechanic, electricians, instrument and control technicians, machinist or welder, were combined into a new classification of plant technician. Because these employees perform maintenance and operations work, the plant technician title was chosen to describe the nature of their work. Through cross training and job redesign, plant technicians have primary and secondary skills in the maintenance and operating areas.

supervisor, the control room operators, and plant technicians. The control room operators have responsibility to assure that an adequate complement of employees is present on a shift.

Five shift supervisors run the ten-week shift cycles at Brandon Shores and Wagner. Eventually, all plant technicians work rotating shifts to ensure that there is a sufficient number of primary and secondary skills in operations on each rotating shift. However, there are more plant technicians on shift than the number of rounds that need to be covered. This permits on-shift maintenance work to be performed.

Plant technicians working in operations report to their assigned round station in the main plant to relieve the plant technician working the previous 12-hour shift. Primary skilled operators typically use wrenches, portable hand tools, vibration monitoring equipment and scanners for collecting data from equipment. Plant technicians working on the maintenance side report to their respective shop areas. Primary skilled machinery mechanics and modification mechanics generally are qualified to use any tool in the toolroom, and the modification mechanics might be qualified to operate a backhoe.

The plant technician job description indicates that there it is a primary discipline for modifications mechanic. Machinery mechanics and modifications mechanics in mobile maintenance use the same sort of tools as plant mechanics. Plant technicians with primary electrical skills use a lot of electronic instrumentation and generally use the same type of tools that modifications electricians in mobile maintenance use. Control technicians use meters to troubleshoot and some small wrenches, screwdrivers, and small portable power tools. Welders use welding machines and welding rods, small hand tools, power tools, and grinders.

The plant technicians make regular rounds to take routine readings and make routine observations of equipment. They may use a hand-held scanner with a bar code and key pad to record information that may be downloaded into a computer. Plant technicians perform designated rounds that are rotated among them so that they each develop familiarity with the entire facility. Control room operators fill out the schedule designating which plant technician will make which round on which day. In addition, the shift supervisor passes along to the control room operator a list of routine maintenance jobs that has been prepared by the plant planning support unit. The control room operator then hands out those tasks to plant technicians at a pre-shift meeting. Maintenance tasks may be assigned at the beginning of a shift by control room operators or by shift supervisors. The control room operator keeps time sheets on a computer for the plant technicians and electronically transmits the time sheets to the plant clerk in the planning and support unit for payroll purposes.

About 1995 or 1996, BGE instituted a cross-training or multi-skilling program for the generic classification plant technicians, who previously possessed a variety of job titles such as plant mechanic, plant operator, plant electrician, or plant instrument and control technician.¹⁸ Each plant technician with a primary skill in operations was rotated out of the operations shops to develop a secondary skill in one of the mechanical maintenance shops. Similarly, primary skilled mechanics were cross-trained to develop secondary skills in operations. Rotations usually last about six months. The multi-skilling program trains plant technicians to have a level 5 proficiency in their primary skill and a level 3 proficiency in their secondary skill. This training program requires a number of regular rotations to attain and maintain the requisite skill levels. Various technicians are at different stages and levels in the program. Plant technicians, who work in maintenance will eventually rotate over to operations and vice versa. The plant technician job description (Er. Exh. 4, #567A) states that it is for a multi-skilled position requiring

¹⁸ As stipulated at Joint Stipulation, para. 14, CPSG continued the cross-training programs previously in place under the FED.

journeyman level knowledge in one fossil plant maintenance discipline and in fossil plant operations.

At Brandon Shores, four primary skilled operating plant technicians in 21-02-01 rotate into the industrial wastewater treatment technician classification. They perform shift work in the wastewater treatment area, such as mechanical maintenance on demineralizers, turning off valves, and unloading chemical trucks. When performing such functions, these plant technicians report to the senior chemical engineer instead of a shift supervisor. Plant technicians also cover the water treatment operation during the weekends. Another plant technician in that unit, who reports to the control room operator, rotates from shift work into the "tagging coordinator" position, a primary skilled operations position. This position typically works five days a week, eight hours a day, starting at 6:30 a.m. and has promotion potential to control room operator. The tagging coordinator provides safety tagging for maintenance done in the plants. The tagging coordinator develops a list of plant equipment that needs to be tagged out and made safe. The tagging coordinator creates the tags, obtains approval from the tagging authority (usually the control room operator), and accompanies plant technicians throughout the plant to place tags on equipment taken out of service. About 12 plant technicians in 21-02-01 rotate to the tagging coordinator job, one at a time, for six-month rotations, except during major outages, when more plant technicians are used to perform this function. The tagging coordinator position at Wagner is a one-year rotation.

Primary skilled operators operate all the boiler turbine and auxiliary equipment in the plant. Machinery mechanics work on all the mechanical-pipe equipment such as pumps, valves, or turbine fans and blowers. Modifications mechanics make modifications to piping systems or perhaps concrete foundations and structures. Electrical technicians perform maintenance on all the electrical aspects of the boiler plant and turbine plant, such as on breakers, motors, and control systems. Instrument and control technician maintain plant control systems. There is some overlap between the electrical technicians and the control technicians on systems that use programmable controllers. Also, both classifications must satisfactorily complete the Technician Occupation Selection System Test (TOSST). Machinists and welders also work at the plants, but there is no direct multi-skill requirement for them.

The record reflects that there is significant interaction between the mobile maintenance machinists in Department 25 at the Fort Smallwood machine shop (about 12 mobile maintenance machinists) and the plant machinists in the small machine shops at Brandon Shores or Wagner. All of these machinists occasionally work together in the plants and visit respective shops when in need of machinery. Particularly during planned outages at the plants, when mobile maintenance machinists overhaul safety valves on boilers, they bring dismantled valves down to the plant machine shop to clean and inspect the parts. Plant machinists perform similar work on safety valves on water heaters or smaller pieces of equipment. In terms of skills or proficiencies, there is no significant distinction between plant machinists and mobile machinists. Several times a year, a mobile machinist may substitute for a plant machinist on vacation. Michael Hart, the machinist in the mechanical unit at Brandon Shores in 21-03-02 came from the Mobile Maintenance Machine Shop in Department 25 at Fort Smallwood. Department 21 machinists do not go to the CCNPP.

The mobile maintenance units are primarily used at the plant during major planned outages to perform boiler overalls and turbine overhauls. During major outages, these units usually work under their own supervision and bring their own work trailer and mini toolroom. They are issued lockers and locker keys for the extent of the outage. If there is extra mobile manpower available and the plant needs two or three mobile maintenance employees for balance of plant work, these mobile maintenance employees work under plant supervision. Mobile maintenance resources are utilized by the plants before outside contractors are employed.

Mobile maintenance employees perform general boiler inspection by inspecting burners and pressure parts and they make modification tube replacements within the boiler pressure parts. The major machinery mechanics in mobile maintenance take the turbines apart for inspection, replace turbine valve parts and turbine blades and inspect the generator. Plant technicians with primary electrical or instrument and control skills may have to remove scanners or other instrumentation from the burners so that the mobile technicians or mechanics can perform their work. Similarly, on turbine generators, plant technicians assemble or reassemble instruments on bearings that monitor vibration and they may physically work side-by-side with the mobile maintenance workforce.

While the mobile maintenance workforce is performing their work, the plant workforce performs the balance of plant work on auxiliary plant equipment and systems other than the turbine and boiler. Typically, there is an outage going on all the time at one of the plants, except during high peak generation periods (summer). Mobile maintenance employees are also used for extraordinary plant maintenance projects that may last several years. In addition, mobile maintenance employees are used to reduce plant backlogs in the modifications or plant mechanical areas. In these instances, mobile maintenance forces are simply integrated into one of the plant work units to reduce the backlog. A couple times a year, a complete unit from mobile maintenance may be loaned to the plants to perform support-type work, modification work, or steel platform work, and the loaned unit would include a mobile maintenance supervisor.

The record established that the fossil plants cannot handle the normal maintenance requirements without the mobile workforce, and mobile maintenance employees are in the fossil plants more often than not throughout the course of the year. When working at the plants, the mobile maintenance employees park in plant parking lots and share locker rooms and break areas with plant technicians, although during major outages, mobile employees typically bring their own break trailer and/or tool trailer.

Maintenance sections at the plants perform routine or preventative maintenance on plant equipment. Employees assigned to mechanical units or shops at Brandon Shores and Wagner basically work from 6:30 a.m. to 3 p.m. Maintenance planners, a disputed classification, from the planning and support units, essentially work these same hours. Maintenance personnel do not work on shift, although maintenance workers, including mobile maintenance employees who are being cross-trained in plant operations, will work on shift while in cross-training. Brandon Shores/Wagner (21-00-02) and Crane/Gould Street/Riverside (23-00-01) each have a separate plant engineering section that provides system engineering support on a day-to-day basis. There is also a fuel and ash handling section at Brandon Shores/Wagner (21-01-01) that provides services to coal burning facilities at the plants. Coal equipment technicians perform shift work in this section and a laborers group works a day shift.

There is also a transportation maintenance facility (Building 44-"Bulldozer Building") at Brandon Shores that is manned by General Services Division 70 personnel from Facilities & Fleet Services Department 75-08-04. Four or five vehicle mechanics and one lead mechanic work leader report to work there.

3. Production (Crane/Gould Street/Riverside) Department 23

Effective July 3, 2000, the Gould Street/Combustion Turbine Operations Section (23-01), Crane Plant Operations Section (23-02), and Maintenance Section (23-03) have moved in their entirety to Constellation Power Source Generation, Inc. The responsibilities of these sections, the job classifications therein, and all job duties remain the same as in the former organizations and as was presented in the hearing.

Production (Crane/Gould Street/Riverside) Department 23 under Manager, David Snyder, is responsible for operations, routine maintenance and plant engineering for all the generating stations other than Brandon Shores and Wagner. Crane has two baseload steam units that run all year long. Gould Street has an oil and gas fired unit that does not run year-round, but is staffed all year round. Riverside is a steam-fired unit that is run on gas only during the summer months. Plant technicians from Gould Street make rounds each day at Riverside to lube oil systems that are still operating. In addition, Department 23 has responsibility for peaking units at combustion turbine sites at Perryman (four units), Notch Cliff (eight units), Philadelphia Road (four units), and Westport (one unit). On May 1, 1999, Department 23 was reorganized so that employees were headquartered at the Crane and Gould Street stations and the combustion turbine group is headquartered at the Perryman site.

There are wastewater treatment facilities at Crane, Gould Street, and Riverside. There is also oil recovery separation systems at Perryman and at Crane that operate continuously with pumps, gauges and controls that are monitored and maintained by the Department 23 industrial wastewater treatment technician. Department 23 plant technicians make rounds at these facilities on weekends or when the industrial wastewater treatment technician is not present.

The Crane plant proper consists of a service building attached to the plant, a boiler house, and a turbine building. The machine shop, welding shop, and a vending machine area are on the first floor. There is also an out building called the "Taj Mahal" of Crane. It is immediately adjacent to the machine shop on the first floor of the service building. It is used by mobile maintenance employees as a break area when there are many mobile maintenance employees on site, although mobile maintenance employees take breaks in other areas as well. Department 23 employees typically do not use the Taj Mahal. They usually break in the shop areas. The second floor contains locker rooms, a plant planning and support area, and a library, telephone, and equipment room. The maintenance planners, PDM technicians, safety specialist, general supervisor of maintenance, and outage management and contractor administration group from Department 25 are located on the second floor. The maintenance planners and PDM technicians sit adjacent to and in close proximity of one another in partitioned cubicles. There is direct access to the plant from the second floor through the locker rooms and turbine building. The second floor locker room is used by all plant employees, including supervisors, and by mobile maintenance employees working at the plant. The third floor contains an assembly room and some conference rooms. The plant engineering group, the industrial waste water treatment technician, many department supervisors, and the resource specialist from Fuels & Business Planning Department 28, have offices on the third floor.

The Gould Street power plant is about one-fourth the size of Crane. Plant and mobile maintenance employees use a common locker room and parking area at the site. Building 1 contains a plant office area where the maintenance planners and senior administrative assistants are stationed on the first floor, although there is no direct access to the plant without walking outside. There is also a machine shop on the first level. The second floor contains an assembly room and a storage area for parts. There is also an out-building that instrument and control and electrical plant technicians use. The industrial waste water technician does not have a specific work area at Gould Street. He makes rounds all over the plant and uses the computer at his normal work location back at Crane.

Department 23 weekly employees perform the same or similar functions as their counterparts with the same job title in Department 21. Plant technicians in Department 23 participate in the same multi-skilling program as plant technicians in Department 21. There is a machine shop at Crane, Gould Street, Riverside and Perryman. There is one machinist in Department 23 in mechanical unit 23-03-02. When mobile maintenance mechanics and modification mechanics are at these sites during outages and

non-outages, they use equipment from the machine shops and may work with the Department 23 machinist.

Department 23 has five sections. Halemane Prabhakar is Supervisor, Plant Engineering (Crane/Gould Street/Riverside) Unit, 23-00-02. This work unit is responsible for providing plant engineering services to the whole department and for acting as plant liaisons with Department 25 engineers, who are project managers for turbine overhauls, boiler overhauls and major projects. Rafael Olazagasti is General Supervisor of Fossil Operations & Maintenance (Gould Street/Riverside) Section 23-01-01. This section is responsible for on-shift operations and maintenance at the Gould Street/Riverside and combustion turbine locations. Shift supervisors for the five shifts handle the steam operations and another shift supervisor, Mike Dale, supervises combustion turbine operations and maintenance. Anthony Ciampaglio is General Supervisor of Fossil Operations & Maintenance (Crane) Section 23-02-01. This section is responsible for on-shift operations and maintenance at the Crane station and takes care of the steam units and combustion turbine units located there. Bill Butler is General Supervisor for Maintenance (Crane), 23-03-01. This section handles all of the maintenance, planning and support functions for the entire department. This section has two mechanical units in which plant technicians and a machinist work eight-hour days and some overtime and have responsibility for mechanical maintenance at all facilities. Unlike the plant technicians, however, the machinist does not work rotating shifts. There is also an instrument and electrical unit in which the continuous emissions monitor (CEM) technician, modifications electrician, and plant technicians work eight-hour days and some overtime and have responsibility for instrument and control and electrical support for all department facilities. In addition, there is a plant planning and support unit in which the maintenance planners, predictive maintenance (PDM) technicians and senior administrative assistants work eight hour days performing maintenance, planning and support functions for the department. Finally, there is a fuel and ash handling unit for the coal-fired plant and coal yard at Crane in which coal equipment technicians, plant helpers, and truck drivers work four 10-hour days and some weekends when trains must be unloaded. The coal equipment technicians, plant helpers, and truck drivers do not work rotating shifts.

Like Department 21, the Department 23 plants operate on 5 different shifts. There is usually one shift supervisor, one control room operator and two or three plant technicians working per 12-hour shift at Crane and Gould Street. Shifts run from 6 a.m. until 6 p.m. Plant technicians with primary skills in operations are rotated through a tagging coordinator position for a year or two during which the tagging coordinator spends approximately 70 percent of his time in the plant walking down and tagging or locking equipment so it can be safely worked on. Production Manager Snyder testified that the tagging coordinator has significant face-to-face contact with plant technicians who are primary skilled operators and with maintenance planners and supervision.

During the summertime, Riverside operates on five shifts with three plant technicians per shift. There is a primary skilled operator from Gould Street, a primary skilled operator from Crane, who is a secondary skilled operator at Riverside, and a primary skilled steam generator mechanic or major machinery mechanic from mobile maintenance units 25-07 or 25-08, who has a secondary skill in operations at Riverside or Gould Street. About sixteen Department 25 primary skilled mobile maintenance employees (machinery mechanics, steam generator mechanics, or welder) are assigned to work as secondary skilled operators at the Gould, Riverside and combustion turbine plants during the summer from about June 1 through September 30. Eight of these mobile maintenance employees handle the Riverside operation and another eight work shifts at the combustion turbine plants. These mobile maintenance employees work under Department 23 supervision. They are supervised by the shift supervisor at Gould Street, who makes trips back and forth between Gould Street and Riverside during his 12-hour shift.

Mike Dale, a shift supervisor for combustion turbine operations and maintenance is responsible for the combustion turbine plants at which eight or nine plant technicians report for two shifts that cover a 16-20 hour period. Four of these plant technicians are primary skilled combustion turbine operators. The others (a primary skilled mechanic, a primary skilled electrician, and two primary skilled instrument and control electricians) are cross-trained in secondary skill operations for combustion turbines. The Employer strives to have one primary skilled operator at each combustion turbine location and two at Perryman (one at Perryman units 1-4 and one at Perryman unit 51). The other primary skilled technicians in the instrument and control, mechanical and electrical crafts float through the combustion turbine sites to handle troubleshooting maintenance and control-type problems.

During the "running season," mobile maintenance employees are assigned to the combustion turbine group and are used to cover operating shifts and to make rounds. These mobile maintenance employees supplement Department 23 plant technicians or provide relief on backshifts. When performing this work, these mobile maintenance employees, like the combustion turbine group of plant technicians, are supervised by the shift supervisor for combustion turbine operations in Department 23. Mobile maintenance employees trained to be combustion turbine operators go through the same classroom training and performance certification demonstrations as plant technicians and must reach a level 3 proficiency as combustion turbine operator. Mobile maintenance employees in training status typically work with a primary skilled combustion turbine operator from Department 23.

As of December 1999, about 18-20 mobile maintenance employees were cross training in Department 23, either in steam plant operations or in combustion turbine operations. Production Department Manager, David Snyder, testified that it is not unusual for Department 23 to hire from Department 25. Within the last year, four employees from mobile maintenance permanently transferred to Department 23 to help alleviate recent attrition. These mobile maintenance employees successfully bid on Department 23 job postings. Two major machinery mechanics from 25-08 (Bob Kazinski and Tony Johnson) were hired as primary skilled mechanical plant technicians in each of two mechanical units at the Crane station in order to learn secondary skill operations. Also, the fuel and ash handling unit at Crane/Gould Street/Riverside (23-03-06) recently hired Larry Jiggets, a primary skilled machinery mechanic from mobile maintenance major machinery 25-08, as a primary skilled coal equipment technician with a secondary skill as machinery mechanic. Mobile maintenance modifications electrician, Kirk Zigler, currently is a volunteer in a pilot cross-training program to fill a vacant complement position as a primary skilled electrical plant technician in the instrument and electrical unit in 23-03-03. Zigler, however, has not been permanently transferred and could be recalled by mobile maintenance, although there are no current plans to send him back. Zigler has been cross training with Department 23 for over a year and Snyder testified that it may be several more years before he reaches a level 3 or 4 proficiency as a primary skilled plant electrician.

Snyder testified generally that the company has found out that a number of mobile maintenance employees do not like the rigors of traveling in mobile gangs from Calvert Cliffs to various fossil sites because it does not afford them much time to spend with their families. As a result, these mobile maintenance employees are applying for plant jobs that are posted. They are qualified for plant jobs because like primary skilled mechanical plant technicians, they work as machinery mechanics on major equipment such as turbines, generators, stands and pumps. Production Manager Snyder testified that to fill vacancies for plant technicians, he would typically look at skills and qualifications from across the former FED, including Department 25.

4. Fossil Engineering & Maintenance Department 25

Fossil Engineering & Maintenance Department 25 provides centralized construction and maintenance support for outages and projects, support for Clean Air Act compliance, engineering services, and construction administration for all power plants, and provides some services to the nuclear power plant at Calvert Cliffs. At the time of the hearing, Department 25 had about 321 employees under the overall direction of Department Manager, John Lewis Edler. At the time of the hearing, the FEMD is comprised of 5 segments: one stand-alone unit, and four sections made up of several different units:

- (a) Construction Administration and Outage Management Unit (25-00-02);
- (b) Maintenance and Modifications Engineering Section (25-02-01);
- (c) Steam Generator, Welding & Modifications Section (25-07-01);
- (d) Major Machinery Section (25-08-01); and
- (e) Technical Services Section (25-09-01).

Effective July 3, 2000, the FEMD was moved in its entirety to Constellation Power Source Generation, Inc. While the primary responsibilities and functions of the department remain the same, it has undergone some minor reorganization. The responsibilities of the department, the job classifications therein, and all job duties, for the most part, remain the same as in the former organizations and as was presented in the hearing, except as noted below.

Effective May 1, 2000, the Modifications Electrical Unit (25-08-0C) was transferred in its entirety to Constellation Nuclear, Inc. That company will define the roles and responsibilities of this unit (41-10-02) in the Constellation Nuclear, Inc. organization. This unit is no longer a part of the Major Machinery Section (25-08) and the Company does not seek inclusion of any employees from this section.

Effective July 3, 2000, the FEMD eliminated the job classification formally known as "Shop Technician." Only one unit within the department was affected by this change, the Fabrication Shop Unit (25-07-09) of the Steam Generator-Welding-Modifications Section (25-07). The incumbents within this unit now have job titles specific to their primary skill. All weekly job classifications of the Fabrication Shop Unit (25-07-09) now have a title of Welder or Modifications Mechanic, consistent with the remainder of the Generator-Welding-Modifications Section (25-07).

The roles, responsibilities, and duties of the Contract Administration & Outage Management Unit (25-00-02) have not changed. All job classifications and job duties remain the same as in the former organization and as was presented in the hearing.

The Maintenance & Modifications Engineering Section (25-02) and the Technical Services Section (25-09) were combined to form the Technical Services Section (25-02). The responsibilities of this section, the job classifications therein, and all job duties have not changed as in the former organizations and as was presented in the hearing.

Several units were combined as a result of the merging of the Maintenance & Modifications Engineering Section (25-02) and the Technical Services Section (25-09).

The Generation Protection & Control Unit (25-02-06) was combined with the Electric Test Unit (25-02-0C) to form the Electric Test & Generator Protection Unit (25-02-0C). The responsibilities of the unit, the job classifications therein, and all job duties remain the same as in the former organizations and as was presented in the hearing.

The Chemistry Unit (25-09-02) was combined with the Materials Engineering & Analysis unit (25-09-05) to form the Chemistry & Materials Engineering and Analysis Unit (25-02-09). The responsibilities of the unit, the job classifications therein, and all job duties remain the same as in the former organizations and as was presented in the hearing.

The Major Equipment Engineering Unit (25-02-0A) has not changed. The responsibilities of the unit, the job classifications therein, and all job duties remain the same as in the former organization and as was presented in the hearing.

The Predictive Maintenance Engineering Unit (25-09-03) is now the Predictive Maintenance Engineering Unit (25-02-08). The responsibilities of the unit, the job classifications therein, and all job duties remain the same as in the former organization and as was presented in the hearing.

The Major Machinery Section (25-08) and the Steam Generator-Welding-Modifications (25-07) sections have not changed except as noted above. The responsibilities of these sections, job classifications therein, and job duties have not changed.

The record established that at the time of the hearing there were more than 300 employees in Department 25, and approximately 180 of those are in the proposed bargaining unit petitioned-for in 5-RC-14906. Many Department 25 employees at issue herein are located at the Fort Smallwood office complex. The majority of the Department 25 employees whom the parties agree belong in a production and maintenance unit work in a group known as "mobile maintenance." Mobile maintenance basically is comprised of the Steam Generator, Welding & Modifications Section 25-07 and the Major Machinery Section 25-08. Section 25-07 works primarily on stationary components performing boiler repairs and modifications or working on large steel fabrication projects. The employees in the units in 25-07 are known as the "boiler gang." Section 25-08 employees typically work on rotating equipment, such as turbines. The employees in the units in 25-08 are known as the "turbine gang."

In Case 5-RC-14906, Petitioner seeks to represent a mobile maintenance unit that consists of all machinery mechanics, modifications electrician-generator, tool mechanics, tool room attendant, truck driver-fossil energy, and the machinist in 25-08, and all modifications mechanics, machinery mechanics, welders, and the former shop technicians in 25-07. As noted, former FED Vice President Lowman testified that the mobile maintenance employees from 25-07 and 25-08 are an integral part of the plant maintenance organization and that each plant could not operate without them.

Mobile maintenance employees are responsible for major maintenance, construction and repair work at power plants in both CPSG (the former FED) and CCNPP (the former NED). These mobile maintenance employees travel throughout CPSG's and BGE's service areas, as well as to the CCNPP, and work long hours in potentially dangerous situations. Mobile maintenance employees work at the plants on outages during the spring and fall, perform maintenance and backlog work in the winter, and operate seasonal plants during the summer. The other segments of Department 25 support the work of the mobile maintenance forces at the generation plants.

Petitioner Exhibit 22 is an article entitled "Going Mobile" from the November 1999 edition of the Employer publication called Quest. This article states that the mobile maintenance unit spends much time on the job and that mobile maintenance truly becomes a second home, complete with coworkers as a second family. The article notes that Mobile Maintenance is divided into two sections, Major Machinery and Steam Generator, Welding, & Modifications, and that the nearly 200 employees of mobile maintenance are responsible for major maintenance, construction, and repair work at company power plants, including Calvert Cliffs. The article states that the mobile maintenance employees work closely

with other sections in the Fossil Engineering & Maintenance Department, and with plant operators. The article states that mobile maintenance employees are cross trained with a breadth of skills and keep busy throughout the year performing major outage work in the spring and fall, performing maintenance and backlog work in the winter, and operating seasonal plants in the summer. Despite long hours, travel throughout the service area, and work in potentially dangerous situations, the mobile maintenance group has an excellent safety record, according to the article. The photographs in the "Going Mobile" article illustrate the working conditions of turbine and boiler gang employees.

The article also notes that innovative Department 25 programs over the past several years have helped the former Fossil Energy Division reduce generating costs to the lowest level in the PJM. Fossil Engineering & Maintenance Manager, John Edler, states, "Our department has worked hard to become flexible and cost competitive. This flexibility has given Mobile Maintenance a competitive advantage that helps them find work both in our Division and others. And everyone in our department -- project engineers and planners, technicians, and clerical support -- worked hard to support them and insure their success." The article further notes that mobile maintenance recently replaced the service water heat exchangers at Calvert Cliffs. In the article, Nuclear Project Management Manager, Richard Heibel, praised the mobile maintenance group by stating, "One, they have an excellent work ethic, coming to a job ready to work, having done the research. Two, they are innovative, finding solutions to complex problems. Three, they take 'cannots' and turn them into 'can-dos,' is, literally willing to do everything it takes to get the job done. Four, they have a high standard of quality, working on time, on schedule, and on budget. All that, and they're good people, too." The article closes by stating that Department Manager Edler is proud of the work they do and is confident that this group will rise to the challenge of new opportunities in the Constellation Power Source merchant generation company.

Former FED Vice President Lowman testified that BGE, as it existed prior to July 1, 2000, has had a number of outside contractors under retainer for several years, who performed some of the same work as mobile maintenance and could be called in if there was a need for additional support or there was a need for a skill base in a particular area. Unlike mobile maintenance, outside contractors, were required to supply their own tools and materials. Generally, however, there was no freedom to use outside contractors for support services provided in-house such as human resources, legal, or accounting functions. Department 25 bid against outside contractors for certain amounts of its work, but not necessarily the work at Calvert Cliffs. At the time of the hearing, Lowman testified that the role of mobile maintenance at CCNPP had expanded because the mobile maintenance units work more productively, flexibly, and cost effectively than outside contractors. Accordingly, Department 25 Manager, John Edler, often referred to his mobile maintenance units as the "contractor of choice."

Generally, Department 25 personnel, including the mobile maintenance craftsmen, project planners, and technical services personnel discussed below, spend approximately 80-95% of their time performing work for the fossil plants and 5-20% of their time performing work at the CCNPP. Of the six units in 25-02-01, the former Electric Test Unit (25-02-OC), the former Generation Protection and Controls Unit (25-02-06), and the Major Equipment Engineering Unit (25-02-0A) spend the most time working for the former Nuclear Energy Division. The weekly and senior positions in the former Electric Test Unit and the former Generation Protection and Controls Unit, now the Electric Test & Generator protection Unit 25-02-0C spend approximately 25 percent of their time at Calvert Cliffs. The weekly employees in the Major Equipment Engineering Unit in the turbine work group spend about 15 to 20 percent of their time at Calvert Cliffs. By contrast, employees from the Major Equipment Engineering Unit in the boiler work group spend almost none of their time at Calvert Cliffs.

a. Contract Administration and Outage Management Unit 25-00-02

The Contract Administration and Outage Management Unit 25-00-02, under Director, Peter Boute, has about 21 employees, including four classifications (assistant maintenance and modifications administrator, planning and scheduling technician, project planner, and senior administrative assistant) whose unit placement is in dispute. This unit plans and controls the use of mobile forces and outside contractors for all fossil plants. More specifically, this unit plans and manages work tasks and work schedules during outages¹⁹ at plants and arranges for mobile maintenance personnel (and outside contractors during peak demand outages) to perform maintenance and modifications work at all generating plants. Modifications work is not tied to critical outages and is low priority work that can be done at any time depending on the resources of the mobile steam generation and major machinery groups, discussed below. The Contract Administration and Outage Management Unit finds work for the mobile maintenance organization to make them as productive as possible. For example, Department 25 has lent six electricians from the Electrical Unit in Major Machinery, 25-08-09, to BGE's ETDD when Hurricane Floyd hit in 1999, and lent mechanics from various mechanical units in Major Machinery to the Gas Distribution Division during the peak winter season. Moreover, as noted above, mobile maintenance mechanics that are cross trained as plant technician operators run plants in Department 23 (Crane/Gould Street/Riverside). Outside contractors are utilized only when insufficient skilled staff is available.

b. Technical Services Section 25-02, Formerly Maintenance & Modifications Engineering Section 25-02

As noted, the Maintenance & Modifications Engineering Section (25-02) and the Technical Services Section (25-09) were combined to form the Technical Services Section (25-02). The responsibilities of this section, the job classifications therein, and all job duties have not changed as in the former organizations and as was presented in the hearing. Several units were combined as a result of the merging of the Maintenance & Modifications Engineering Section (25-02) and the Technical Services Section (25-09). The Generation Protection & Control Unit (25-02-06) was combined with the Electric Test Unit (25-02-0C) to form the Electric Test & Generator Protection Unit (25-02-0C). The responsibilities of the unit, the job classifications therein, and all job duties remain the same as in the former organizations and as was presented in the hearing. In addition, the Chemistry Unit (25-09-02) was combined with the Materials Engineering & Analysis unit (25-09-05) to form the Chemistry & Materials Engineering and Analysis Unit (25-02-09). The responsibilities of the unit, the job classifications therein, and all job duties remain the same as in the former organizations and as was presented in the hearing.

The former Maintenance & Modifications Engineering Section, now part of the Technical Services Section 25-02, is responsible for engineering modifications to the generating plants, particularly the boilers and turbines. This unit provides technical and project management support for all modifications to the turbines and generators in the fossil plants and sets the maintenance frequency for the

¹⁹ Outages occur when a generating facility is not able to operate. Outages are planned or forced (unplanned). For example, a forced outage may occur when a boiler leak forces a unit to shut down. When that occurs, the outage management unit (25-00-02) together with plant personnel provide mobile maintenance for the forced outage. Generally, the Employer plans major outages for each unit every two years. Typical outages last 6-8 weeks. Each outage typically has a project team composed of the project engineer, project manager, original equipment manufacturer engineer, project planner, quality verification technician, safety specialist, lead supervisor, supervisors and any contractors. Generally, in the spring, there is an extensive outage at one unit at the CCNPP. Contract Administration & Outage Management schedules about 20-25 weeks of planned outage maintenance a year between September and May, i.e., outside the peak summer period for electric generation.

boilers and turbines. This unit is responsible for electrical testing of transformers, motors, generators, and wiring systems and for maintenance and calibration of voltage regulators and generation control systems. This unit also provides design and drafting services for the former FED. In essence, this unit provides project engineering for major projects at the generating stations that extend beyond the routine matters handled by plant engineers, such as specialty-type engineering for turbine generators, gas turbines, and steam turbines at the CCNPP.

There were several units and disputed classifications in the former Maintenance & Modifications Engineering Section 25-02, now part of the Technical Services Section 25-02. They include the **Electrical & Controls Engineering Unit, 25-02-03**, under principal engineer Thomas W. Stevenson, with about 13 employees, in which the classifications of designer, engineering technician, and senior drafter are in dispute; the **Mechanical/Civil Engineering Unit, 25-02-04**, under principal engineer, C. Paul Gunzelman, with about 8 employees, in which the classifications of designer, and engineering technician are in dispute; the **SCR Project Unit, 25-02-05**, under project manager, Larry G. Noll, with about 3 employees, in which no classifications are in dispute; the former **Generation Protection & Control Unit, 25-02-06, now combined with the former Electric Test Unit 25-02-0C to form the Electric Test & Generation Protection Unit (25-02-0C)**, under supervisor, Juan A. Kimble, with about 7 employees, in which the classification of lead relay and control technician²⁰ is in dispute; the **Major Equipment Engineering Unit, 25-02-0A**, under principal engineer, Mark A. Devries, with about 16 employees, in which the classifications of quality verification technician and senior administrative assistant are in dispute; and the former **Electric Test Unit, 25-02-0C, now combined with the former Generation Protection & Control Unit, 25-02-06, to form the Electric Test & Generation Protection Unit (25-02-0C)**, under supervisor, Joseph W. Riebau, with about 7 employees, in which the classifications of lead electrical technician, resource technical specialist, and senior electrical technician are in dispute.

**c. Steam Generator-Welding-Modifications Sec. 25-07-01
("Mobile Maintenance")**

Steam Generator-Welding-Modifications Section 25-07-01, under general supervisor, Donald A. Ensor, is one of two mobile maintenance sections. It contains eight separate units (seven mechanical units and a fabrication shop unit, each with a separate supervisor) and about 93 employees. There are no classifications in dispute in this mobile maintenance unit. As noted, Petitioner seeks all modifications mechanics, machinery mechanics, welders, and former shop technicians (now incumbents with job titles specific to their primary skill) in 25-07 in the mobile maintenance unit petitioned-for in 5-RC-14906. The Employer would include these classifications in any production and maintenance unit found appropriate in the CPSG.

Steam Generator-Welding-Modifications employees from 25-07 provide services to all generating plants for outage maintenance and modifications work that is not routine. They are responsible for boiler outage work and perform piping or steamfitter work, steel work and platform work. They are basically boilermakers, who perform boiler repairs and modifications. Former FED Vice President Lowman testified that none of the power plants have enough maintenance personnel to handle maintenance work behind routine maintenance. Therefore, the fossil plants supplement plant maintenance forces with mobile maintenance during high maintenance periods. When there are outages, mobile maintenance provides work to specialty areas.

²⁰ Petitioner seeks to represent the senior relay and control technicians in 25-02-06 in the mobile maintenance unit petitioned for in 5-RC-14906.

d. Major Machinery Section 25-08-01 (“Mobile Maintenance”)

Major Machinery Section 25-08-01, under General Supervisor, Paul Nagle, is the other mobile maintenance section. This section performs machinery mechanic-type work, millwright work, and electrician work. Major machinery refers to large critical components of the steam, gas, or nuclear turbine generating units that are necessary for plant operation. Essentially, Section 25-08 works on turbines, while 25-07 works on boilers. The Major Machinery Section contains about 98 employees in about nine separate units (five mechanical units, an electrical unit - another electrical unit 25-08-0C was transferred to Constellation Nuclear, Inc.- an electrical/instrument unit, a tool and equipment unit, and a machinist unit, each with a separate supervisor).

The five mechanical units support outages on shifts and frequently loan machinery mechanics to the plants to perform balance of plant work even when there is no outage. General Supervisor Nagle explained that the mechanical units at the fossil plants have insufficient staff to perform all of the mechanical work during outages. The machinery mechanics from the mechanical units maintain turbine generators and perform millwright or machinist-type work, such as setting a pump. The machinery mechanics are assigned to the plant everyday during an outage. They typically work ten-hour shifts. Approximately 44 machinery mechanics would make up a typical complement that would work on major overhaul projects for turbine generators. This project complement could be supplemented with plant technicians. Three supervisors from 25-08 typically would be assigned with such a large complement; a lead supervisor and one support supervisor for the day and night shift. The machinery mechanics have their own tool boxes. The mechanical units provide all rigging, instrumentation, and tools. Typically, during major outages, major machinery will set up its own support trailer with computer telephone and fax hookups.

For less complex work or balance of plant work, the machinery mechanics are integrated into the plant mechanical units and work side-by-side with plant technicians with primary mechanical skills to perform the same jobs with the same tools under the same working conditions and supervision.²¹ The machinery mechanics from 25-08 supplement plant mechanics with primary mechanical skills on balance of plant maintenance work such as pump overhauls, compressor overhauls, valve packing, changing motors, and inspecting gear boxes. For example, plant technicians and machinery mechanics worked together on the fluid drive overhauls during the recent Wagner Unit III outage. The mobile maintenance machinery mechanics who worked on the Wagner Unit III outage were stationed at the Wagner plant for several months. At the time of the hearing, 25-08 assigned five machinery mechanics to perform balance of plant work at Wagner under Wagner supervision and five machinery mechanics to perform balance of plant work at Crane under Crane supervision. Similar arrangements are made with the electrical unit, although they are not used as frequently as the mechanical units. Mechanical unit machinery mechanics from 25-08 are typically loaned to the plants during non-outages for the entire duration of the summer. Machinery mechanics or modifications electricians have recently been loaned to the combustion turbine or steam facilities at Notch Cliff, Philadelphia, Westport, Riverside, and/or Perryman to work under plant operations shift supervisors as plant technicians with secondary operator skills. Moreover, a contingency plan for the spring 2000 Calvert Cliffs refueling outage contemplated that plant technicians with primary mechanical skills from Crane will be matrixed to major machinery to perform generator work at Calvert Cliffs. During the 1999 Calvert Cliffs outage, plant technicians with primary mechanical skills from Crane worked in machinist unit 25-08-0F at the Fort Smallwood machine shop under shop supervision. They performed machine work on valves sent to Fort Smallwood from Calvert Cliffs. During the recent Brandon Shores outage, four mechanics from Calvert Cliffs were temporarily assigned to mechanical unit supervision in mobile maintenance (25-08-03 and 05) for approximately six weeks. In the past,

²¹ Nagle testified that a lot of plant technicians came out of the major machinery unit.

machinists from Calvert Cliffs have been assigned to supplement the machinists in 25-08-0F to perform turbine generator work.

As noted, the electrical unit also supports the outages on shifts. They perform modification work that typical electricians would perform, such as installing and maintaining new electrical systems and working on switch gear. The electrical unit also performs construction type work such as wiring buildings. The Tool & Equipment Unit 25-08-0E, maintains, repairs and calibrates all the tools and equipment for Department 25, from hydraulic equipment to drills. The Machinist Unit 25-08-0F, operates the machine shop located at the Fort Smallwood headquarters. All the fossil units send work to this machine shop.²² Machinists from this unit are loaned to other mobile maintenance groups during outages. All of the units in 25-08 have a home-base at Fort Smallwood. As noted, the Electric/Instrument Unit 28-08-0C, has been transferred to CCNPP and performs electrical and instrument control work for the nuclear plant.

e. The Former Technical Services Section 25-09-01

As noted, the Maintenance & Modifications Engineering Section (25-02) and the Technical Services Section (25-09) were combined to form the Technical Services Section (25-02). The former Technical Services Section 25-09-01, under Supervising Engineer, John T. Strawbridge, Jr., operates the chemistry, metallurgical, and materials labs. These labs provide support services for metallurgical work, non-destructive examination work, welding work, chemical analysis of water systems, and predictive maintenance work such as thermography²³ and metrology²⁴ throughout CPSG, BGE and CCNPP. When Department 25 supplies these labs services to an entity outside of CPSG, CPSG bills that entity for the goods and services provided and money received in payment of those bills will be reflected as revenue of CPSG, not Department 25.

In addition, the parties stipulated that the Chemistry Unit (25-09-02) was combined with the Materials Engineering & Analysis unit (25-09-05) to form the Chemistry & Materials Engineering and Analysis Unit (25-02-09). The responsibilities of the unit, the job classifications therein, and all job duties remain the same as in the former organizations and as was presented in the hearing.

The former Technical Services Section contained three former separate units with about 50 employees, in which nine classifications are in dispute. The three former units and disputed classifications that were included in them are the former **Chemistry Unit, 25-09-02**, under principal engineer, Norbert G. Lassahn, Jr., that contains about 13 employees, in which the classification of laboratory technician is in dispute; the former **Predictive Maintenance Engineering Unit, 25-09-03**, under principal engineer, Terri Lynn Spicher, that contains about 14 employees, in which the classifications of PDM technician, performance instrument technician, and senior administrative assistant are in dispute; and the former **Materials Engineering & Analysis Unit, 25-09-05**, under principal engineer, Donald A. Wright, that contains about 21 employees, in which the classifications of metallurgical technician, NDE examiner,²⁵ NDE technician, planning and scheduling technician, and senior administrative assistant, are in dispute.

²² Each power plant has a small machine shop. At times, the machinists unit sends machinists out in the field to do machining at the power plants, including Calvert Cliffs.

²³ Thermography is similar to an MRI. It is a PDM technique that uses a camera to look through equipment or machinery.

²⁴ Metrology is basically the calibration of instrumentation used in the plants on plant equipment to perform vibration analysis or lubrication analysis.

²⁵ NDE means non-destructive evaluation.

As noted, the parties stipulated that the Chemistry Unit (25-09-02) was combined with the Materials Engineering & Analysis Unit (25-09-05) to form the Chemistry & Materials Engineering and Analysis Unit (25-02-09). The responsibilities of the unit, the job classifications therein, and all job duties remain the same as in the former organizations and as was presented in the hearing. Petitioner seeks to represent the welders in 25-09-05 in the mobile maintenance unit petitioned for in 5-RC-14906. These welders rotate in and out of mobile maintenance units usually for 18-month assignments.

The parties also stipulated that the Predictive Maintenance Engineering Unit (25-09-03) is now the Predictive Maintenance Engineering Unit (25-02-08). The responsibilities of the unit, the job classifications therein, and all job duties remain the same as in the former organization and as was presented in the hearing.

The record established the metallurgical lab administers a welder information tracking system or software program to ensure that all welders are requalified by Department 28 to meet American Society of Mechanical Engineering codes. Metallurgical lab personnel also inspect welds performed in the field, which usually must be examined by a qualified NDE examiner in order to re-qualify the welder. An NDE examiner is typically a welder trained and certified by the metallurgical laboratory. An NDE examiner could be a welder working in the plant or in former 25-09-05, now 25-02-09. An NDE examiner requalifies another welder working in the field by visually examining the weld under NDE procedures and writing a report that is usually attached to the maintenance order or engineering documents and sent back to the metallurgical lab. If the examining welder determines that the weld does not meet acceptable criteria, the weld must be redone.

5. Fuels & Business Planning Department 28

Effective July 3, 2000, the Fuels & Business Planning Department was moved in its entirety to Constellation Power Source Generation, Inc. While the primary responsibilities and functions of the department remain the same, it has undergone some reorganization. The responsibilities of the department, the job classifications therein, and all job duties remain the same as in the former organization and as was presented in the hearing, except as noted below.

The Fuels Procurement Unit (28-00-02) has not changed, nor has the job classifications therein. All job responsibilities and roles in this unit remain the same as in the former organization and as was presented in the hearing. The Fuels Procurement Unit under Director, Bruce Barnaba, purchases all of the fuel (coal, oil, gas) and equipment for CPSG or the former FED, handles IT support for all departments in CPSG or the former FED, lets contracts for any materials purchased, and does the warehousing for CPSG or the former FED.

The Training & Performance Assessment Unit (28-00-03) has not changed, nor has the job classifications therein. All job responsibilities and roles in this unit remain the same as in the former organization and as was presented in the hearing. The Training & Performance Assessment Unit, 28-00-03, under Director, Wayne Whitaker, is responsible for training operations and craft personnel in Departments 21, 23, and 25. Mobile maintenance and plant technicians are trained by this organization at the Fort Smallwood shops and at various plant locations. For performance assessment, this unit uses a structured process that originated in the former NED called Human Performance Enhancement System (HPES). This system consists of plant teams that assess performance and investigate and report on the root causes for events or accidents at the power plants. Teams are composed of employees from different departments in CPSG (the former FED). At the plant, teams typically consist of a shift supervisor, control room operator, and several plant technicians. The plant performance assessment process is

designed specifically for CPSG (the former FED), although BGE divisions such as the Gas Distribution Division have requested Department 28 training.

With regard to training, the technical training instructors in this unit are responsible for the safety and health, management process, technical skills and equipment operation training for employees of CPSG (the former FED) and employees from divisions of BGE. They conduct training at plant sites as well as at Fort Smallwood. This unit teaches courses in these areas and provides annual re-qualification training at the fossil plants and the Fort Smallwood Complex. For example, a fully trained plant technician would spend approximately one week in a safety and health requalification and several days in equipment operations requalification. If mobile maintenance employees were working at the plant site, they could attend training at the plant instead of at Fort Smallwood.

The Training & Performance Assessment Unit also provides generic system operations training for plant technicians and mobile maintenance employees that covers cross training in primary or secondary skills. Department 28 trains mobile maintenance mechanics to be operators during the summer months for Department 23. Electrical modifications mechanics in 25-07-01 have been trained to assist the former Generation Protection and Control Unit, 25-02-06, where the lead relay and control technician work. The technical training instructors in this unit handle most of the ongoing welding training qualification for CPSG at the welding training lab at the Fort Smallwood Shops Complex. Prior to the close of the hearing, they had also trained a dozen welders or mechanics from the former Nuclear Energy Division and from BGE's Gas Distribution Division and about four welders or mechanics from BGE's Electric Transmission and Distribution Division.²⁶ Prior to the close of the hearing, this unit had also provided training to mobile maintenance machinery mechanics and modification mechanics in Department 25 concerning new regulatory requirements or issues related to the work that these employees performed at the Calvert Cliffs nuclear facility.²⁷

Employees from different departments in CPSG (the former FED) attend the same training program or course. Usually, an employee's supervisor determines what training or training courses an employee needs. The technical training instructors in 28-00-03 have provided forklift training for about 600 employees, the majority of whom are in CPSG (the former FED) and about 100 of whom are in BGE's Gas Distribution Division. This unit coordinates ongoing business literacy training for CPSG (the former FED) so that the workforce can better understand and transition to the changes taking place with industry deregulation. Team members from each of the CPSG departments are trained by outside consultants. Then they train CPSG employees once or twice a year. Similar teams within CPSG (the former FED) have trained the entire former FED on quality and behavioral safety process issues as part of the Fossil Energy Accident Reduction New Observation Team – a behavioral-based safety improvement program created in October 1997. The Training & Performance Assessment Unit recently has employed two instructors, one modifications mechanic and one machinery mechanic, from Department 25 to train mobile forces and plant technicians. In the past couple of years, the Training and Performance Unit has used eight or ten different temporary instructors from Department 25.

The Procurement Services Unit (28-00-04) has not changed, nor has the job classifications

²⁶ As noted, when welds are made in the field or power plants, they are inspected and evaluated by employees certified in the NDE (non-destructive evaluation) process from the Department 25 metallurgical lab in 25-09-05, not by Department 28 employees.

²⁷ Calvert Cliffs, however, has a sister training unit (47-01-01) which trains the employees who permanently work at the Calvert Cliffs Nuclear Power Plant. This nuclear training unit has significantly different training requirements that are larger in scope than fossil requirements because it is a nuclear facility.

therein. All job responsibilities and roles in this unit remain the same as in the former organization and as was presented in the hearing. The Procurement Services Unit, 28-00-04, under Director, Joann Lingner, is responsible for purchasing, warehousing, distributing, and delivering materials, parts, and services for the operation and maintenance of the fossil power plants. In May 1998, this unit left BGE's General Services Division and was reorganized as part of BGE's Fossil Energy Division to more closely associate employees performing fossil procurement and warehousing with the division they were serving and to prepare for industry deregulation. This unit negotiates blanket contracts that contain purchase order numbers for goods or services (other than fuel) that are purchased or procured by CPSG or the former FED.

The **IT & Process Management Unit (28-00-05)** remains in Department 28, but has established a reporting relationship with the Systems & Strategy Division (Q3-00-01) in Constellation Power Source, Inc. The responsibilities of the unit, the job classifications therein, and all job duties remain the same as in the former organization and as was presented in the hearing. The IT & Process Management Unit, 28-00-05, under Director, William Dunson, maintains the day-to-day operation of a number of computer systems and local area networks associated with the operation of the production plants. In doing so, this unit interfaces with Corporate Information Technology personnel in BGE's General Services Division 70. This unit also performs payroll, document processing, recordkeeping, and other administrative and support functions for all CPSG or former FED departments.

The **Ash Operations & Marketing Unit (28-01-02)** has been renamed and is now called the **Operations Support Section (28-01)**. The **Fuel Operations Unit (28-01-03)** has not changed, nor have the job classifications therein. All job responsibilities and roles in this unit remain the same as in the former organization and as was presented in the hearing. The Operations Support Section, 28-01-01, under General Supervisor, Glenn Nilson, handles fuel for the various plants, unloads oil, moves barges through the harbor, operates two tugboats that transport coal and oil, and manages the truck driving operation that removes fly ash from the plants to the landfills. This section also handles marketing for the sale of fly ash. The material handlers, senior marine technicians and tugboat mates from this unit that Petitioner seeks to represent in 5-RC-14907 are headquartered at the FSRC warehouse. The role of this section has been expanded to include a **Facilities Maintenance Unit (28-01-04)**. On July 3, 2000, the Facilities Maintenance Unit (28-01-04) was created in the Fuels & Business Planning Department and placed in the Operations Support Section (28-01). Employees, formally a part of the Facilities and Fleet Services, Fossil- North Section (75-08) in BGE's General Services Division, Facilities and Fleet Services, Department 75, were transferred into the Operations Support Section (28-01) and are now employees of Constellation Power Source Generation, Inc. The primary role of this new Facilities Maintenance Unit (28-01-04) is to maintain the office facilities, grounds and vehicles of Constellation Power Source Generation, Inc. The responsibilities of the unit, the job classifications therein, and all job duties remain the same as in the former organization and as was presented in the hearing.

The former **Fossil Safety & Health Unit (28-01-05)** has been moved and is now the Safety Unit in the Environmental Health-Safety Division (20-01). The responsibilities of this unit have not changed, only its reporting relationship has. All job responsibilities and roles in this unit remain the same as in the former organization and as was presented in the hearing.

The **Business Planning & Marketing Support Unit (28-04-03)** has not changed, nor has the job classifications therein. All job responsibilities and roles in this unit remain the same as in the former organization and as was presented in the hearing. The Business Planning & Support Section, 28-04-01, under General Supervisor, Bruce Turczynski, is responsible for business planning and marketing support coordination with the power marketing group in BGE's ETDD. This section performs economic analysis on the viability of each plant based on its performance. It also provides some payroll support, training,

procurement, fuel purchasing and budgeting for CPSG or former FED departments. This section assists in developing the relationship between the generating units and the extant trading and marketing organization, Constellation Power Source. The record reflects that approximately 6200 megawatts of fossil generation will move over to Constellation Power Source after deregulation. Constellation Power Source will broker excess generation that exceeds the standard offer service requirements for existing BGE customers.²⁸

L. A General Overview of BGE's Utility Operations Group (UOG) and BGE's Electric Distribution and Transmission Division (ETDD) in Light of the Petitions in 5-RC-14908 and 5-RC-14909

1. BGE's Former Utility Operations Group

In Case 5-RC-14909, the Petitioner seeks a unit of all physical production and maintenance employees working in BGE's former Utility Operations Group (UOG). This unit includes approximately 1200 employees of the approximately 4094 employees working in BGE's UOG at the time of the hearing. In Case 5-RC-14908, the Petitioner seeks a unit of all technical employees working in BGE's ETDD Division. This unit includes approximately 175 employees.

After July 1, 2000, the name "UOG" disappeared and the "new BGE" largely consists of what was formerly the UOG. The inside cover of the UOG's 2000 Business Plan Summary states, "On July 1 the name UOG will disappear. From that point forward, we will proudly move ahead under the name Baltimore Gas and Electric Company (BGE)." See Er. Exh. 513. As noted, the parties stipulated that the new BGE has its own Legal, Human Resources, and Finance & Accounting Departments that support only BGE.

The former Utility Operations Group (UOG) is the administrative grouping of BGE's extant four divisions that are involved with some aspect of the delivery of energy, as opposed to the generation of electricity. These four divisions are the Electric Transmission and Distribution Division (ETDD), the Gas Distribution Division (GDD), the Retail Services Division (RSD), and the General Services Division.

As noted above in the parties' Joint Stipulation, as amended, the parties stipulated to significant facts concerning BGE. The record established that BGE expects its former UOG divisions to continue to provide services to Constellation Nuclear, Inc. or the former NED, and to CPSG or the former FED, even though these entities became completely separate corporations after July 1, 2000. In fact, the parties have stipulated that those services are to be provided under formal arrangements that comply with Maryland Public Service Commission rules on transactions between regulated utility companies and unregulated affiliates. See Joint Stipulation at para. 13.

At the time of the hearing, the former UOG was headed by Executive Vice-President, Frank Heinz. The only BGE employee above Mr. Heinz was Christian Poindexter, BGE's President and CEO. The former Utility Operations Group, unlike the former Generation Group, specifically created its own business plans to operate the "Utility Operations Group's business, our business" in an "increasingly competitive environment" as "[d]eregulation is arriving in Maryland." See Pet. Exh. 9 (1999 Business Plan) and Pet. Exh 182 (2000 Business Plan). The 1999 Business Plan Summary for the former UOG

²⁸ Department 28 Manager Parks confirmed testimony by Director of Business Communications, Steve Jones, that as the industry deregulates, some utilities are selling their generation business and becoming a transmission and distribution company.

was distributed to all former UOG employees. It outlines management's vision for the UOG and it encourages UOG employees to operate the UOG much like a separate business so that electricity delivery, gas delivery and revenue cycle management will operate as profit centers, having revenues, costs, & profit margins. See Pet. Exh 9, p. 4.²⁹ The 1999 UOG Business Plan states:

Deregulation is arriving in Maryland. Already, some of BGE's residential gas distribution customers are able to choose their gas supplier. All industrial and commercial customers are free to choose among gas suppliers. And beginning in July 2000, one-third of all our electric customers will be free to choose their supplier.

This means customers are being offered a choice in who generates or supplies their gas or electricity. The delivery of those commodities will remain regulated, and BGE will continue carrying gas and electricity through our pipes and wires to our distribution customers.

As the rules change, so will the role of the Utility Operations Group (UOG). Overtime, we will be shifting from the combination role of energy supplier and deliverer to a role more focused on energy delivery.

In our evolving role, we can expect new challenges and opportunities. Exactly what they are will become more clear after the Maryland General Assembly and Maryland Public Service Commission set the new industry rules. Deregulation could result in lower rates and revenues. On the other hand, if metering, billing and collection activities become competitive, we may have opportunities to increase our profits.

The UOG is determined to win in the new energy environment. To meet the challenges of our new role, we need to reshape our business -- and our thinking. We need to adopt a new philosophy, a new strategy, and a new structure. We need to remain flexible as the rules of deregulation are being written. And we need to share the same objectives and determination to ensure that we succeed.

To succeed, the UOG adopted the following UOG Vision, Mission, and Team Statements.

OUR VISION

We will be a recognized leader in energy delivery by enhancing our customers' quality of life, our shareholders' value, and our team's well-being.

OUR MISSION

We will safely, economically, reliably, and profitably deliver gas and electricity to our customers.

²⁹ Supervisor of the Accounting Research Unit (61-06-03), Elizabeth Sidell, testified that the profit centers would be in place on July 1, 2000. She said that the information required to monitor the allocation of costs to said profit centers was previously estimated, but not collected or maintained by the company according to these lines of business. The company plans to segregate accounting records to track the profitability of separate lines of business when deregulation occurs in July 2000. Gas delivery is currently deregulated and BGE does have accounting records that allow it to determine whether gas is making money. When electric rates are unbundled under deregulation, accounting records will track the profitability of the electric transmission and distribution system.

OUR TEAM

Achievement of our Vision and Mission will flow from the teamwork, dedication and effort of each member of the Utility Operations team. We will value, respect, and support one another as we apply our skills, knowledge, and creative talents to serve customers and increase shareholder value. We will strive to grow better and to become the best. Together we will create an enthusiastic work environment and provide for our economic future.

The Utility Operations Group Business Plan specifically stated that the UOG will operate as a business to achieve its vision:

“Because the energy industry is becoming increasingly competitive, the UOG needs to think and act as a competitive business rather than as a traditional utility. That is why we are making the organizational, process, and cultural changes described in the following initiatives:”

- operate the UOG as a business;
- become a high-performance team;
- create a new customer care process;
- create a Revenue Cycle Management strategic business unit;
- combine similar electric transmission and distribution functions and improve system reliability;
- transform the information technology organization;
- complete year 2000 project;
- improve electric and gas project profitability;
- change gas rate structure to be consistent with a "pipes" business.

Under each of these major initiatives, the business plan details other more minor initiatives necessary to achieve the vision. See Pet. Exh. 9 and Pet. Exh. 182.³⁰

³⁰ In order to prepare for utility deregulation, BGE made various organizational changes that involved separating the former UOG from the rest of BGE as it existed prior to July 1, 2000. Relay and control technicians, who formerly were part of substation protection areas within the former UOG, but who provided substantial services to the former Fossil Energy Division, moved to the Fossil Engineering and Maintenance Department 25 in 1998. Thus, they are now with CPSG's FEMD 25. Procurement personnel who worked in the former UOG's General Services Division, but who serviced the former Fossil Energy Division, were moved into the FED in 1998 to create a Fossil Procurement Section in preparation for deregulation. They are also now with CPSG. Materials used by the former UOG that

In operating as a “business,” the Utility Operations Group Business Plans measured success according to five key internal performance goals: customer satisfaction, reliability and public safety, cost management, team well-being, and profitability and growth. See e.g., Pet. Exh. 9; Pet. Exh.; Er. Exh. 513. Specific annual performance goals were set and measured against industry benchmarks or the performance of other companies. The former UOG’s profitability and growth was measured by allocating certain revenues to the UOG through a formula based on the weighted average of UOG assets and employees. Accordingly, in both 1999 and 2000, the UOG set a goal for the UOG return to shareholders of twelve percent, and also set a separate goal for UOG after-tax operating income. Pet. Exh. 9 at 3; Er. Exh. 513 at 2.

As stipulated above, BGE now has its own Manager of Human Resources, who is responsible for setting and administering all labor relations and personnel policies for BGE. All employees of BGE are subject to the same labor relations and personnel policies. At the time of the hearing, there was a Human Resource Director in charge of personnel matters only for the UOG.³¹ Prior to the July 1, 2000 reorganization, some human resource programs applied only to employees in the UOG. For example, in January 2000, BGE announced downsizing that is going to take place in the UOG. To accomplish a reduction in the number of employees in the UOG, the Voluntary Special Early Retirement Program was adopted. This early retirement program applied only to UOG employees. Employees in the former Fossil Energy Division and Former NED were not eligible to participate.

There were separate means of communicating corporate information in BGE’s former UOG. For example, only employees in the UOG received the BGE publication “Out in Front,” which contains information relevant to the UOG. As noted, BGE also recently launched an electronic communications newsletter, “For Your Information (FYI),” which it distributed only to UOG employees.

The record established that only limited work is performed by employees in the former UOG for areas outside the UOG, and vice-versa. Whenever a BGE division within the former UOG performed work for a former division outside or company outside the UOG, the entity receiving the service had its budget charged. Such work was often performed pursuant to a service level agreement. BGE’s Electric Transmission and Distribution Division performs some work at the switchyards and transformers located outside the generating plants, however, the record shows that UOG employees’ contact with non-UOG employees in such situations is minimal. At the fossil power plants, the areas where ETDD employees work at the plants (switchyards and transformers), are located physically outside of the plant, and the switchyards are in a separate fenced area. There is no evidence of any work-related interaction with fossil employees in such situations. The record established that plant technicians from CPSG or the former FED normally do not work in such areas. ETDD employees may interact with Constellation Nuclear, Inc. or former NED sponsors when working at Calvert Cliffs, however, this interaction is no different than the interaction that normally occurs between Calvert Cliffs sponsors and private contractors, or between the ETDD employees and a private customer that has its own substation serviced by the ETDD.

were stored at the Fort Smallwood warehouse were moved to the warehouse used by the former UOG at the RBC complex.

³¹Under the UOG Human Resources Director were several HR consultants, serving particular divisions within the UOG.

2. BGE's Electric Transmission and Distribution Division (ETDD)

The Electric Transmission and Distribution Division (ETDD) is the largest BGE division, employing some 1574 persons. It is headed by Vice-President Stephen Wood. At the time of the hearing, the only two levels of supervision above Mr. Wood were UOG Executive Vice-President Heinz and CEO Poindexter. The ETDD has its own budget and tracks its own costs.

The ETDD is responsible for engineering, designing, and constructing all of the systems that are necessary to transmit and distribute electricity to the customer. Employees in the ETDD plan, design, engineer, build and operate BGE's electric infrastructure. The ETDD has its own business plan. Pet. Exh 185. As described in its business plan, "The [ETDD] is responsible for the safe, economical, and reliable planning, engineering, construction, operation, and maintenance of the electric system. The division is also responsible for planning, engineering, designing and constructing new business gas and electric customer facilities." Id. at 2. The ETDD's "vision" is to be in the top quarter of energy carrier companies by the end of 2002. Id.

Except for relatively minor organizational changes that affect unit placement issues as set forth in Exhibit E to the Parties' Joint Stipulation, the present structure of the ETDD was created on May 1, 1998 by combining the former Electric Interconnection and Transmission Division 90 with the former Customer Service and Distribution Division 30.³² The May 1998 reorganization was done, at least in part, to better align the former UOG for deregulation.

There are five departments in the ETDD. The Business and Interconnection Management Department 33, employs approximately ninety-three individuals. The Transmission and Distribution Operations and Maintenance Department 36, employs approximately 551 workers. The Electric System Operations and Planning Department 37, employs approximately 204 persons. The Substation and System Protection Department 38, employs approximately 309 workers. The New Business and Distribution Construction Department Dept. 39, employs approximately 414 individuals.

Department 36 (Transmission & Distribution Operations and Maintenance) is responsible for the proactive and reactive maintenance that takes place on both the transmission and distribution electrical systems. In addition, certain sections within Department 36 are responsible for performing construction, as well as maintenance.

Department 37 (Electric System Operations and Planning) is responsible for planning and operating the entire BGE electrical system. Department 37 also contains organizations responsible for the safety functions within the ETDD, as well as field training for the distribution portion of the electrical system. There is also an organization responsible for the development of construction standards and work practices for the electric distribution system, as well as a maps and records section that maintains and updates all maps and records for the electric distribution system.

Department 38 (Substation and System Protection) is responsible for planning, designing, engineering, constructing, and operating substations. Basically, substations transform or switch the voltage of electricity by sending it in different directions on the electrical system.

³²The customer service side of the old Customer Service and Distribution Division was moved to form part of the current Retail Services Division.

Department 39 (New Business and Distribution Construction) performs several functions. It provides design engineering and construction services for building electric distribution facilities and common trench electric and gas distribution facilities. Common trench refers to the installation of electric cables and gas mains in the same trench. Department 39 also provides design, engineering, and construction services for the relocation of electric facilities, as well as for reinforcement of the distribution system. Department 39 is also responsible for the design, engineering and construction and sales of private area and municipal outdoor lighting.

Department 33 (Business and Interconnection Management) is responsible for system forecasting, transmission planning, interconnection management, performance management, information technology, materials procurement, and contract services for the ETDD. For example, the Material & Contract Services Unit 33-00-03 provides four separate functions to the ETDD. This unit administers ETDD's contracts with outside contractors; coordinates payments to outside contractors; provides material engineering services to the ETDD; and works to improve the ETDD's procurement processes by building alliances with suppliers. The Budget Development & Cost Analysis Unit 33-01-02 is dedicated to developing the ETDD's budget and providing cost analysis for the ETDD. The Business Performance & Financial Analysis Unit 33-01-03 is dedicated to analyzing the ETDD's business performance and finances. The Resource & Workload Management Unit 33-01-04 is responsible for coordinating workload planning for the ETDD and coordinates all of the service level agreements between the ETDD and other parts of BGE or other entities.

At the time of the hearing, HR consultants from BGE's Human Resource Division were primarily responsible for serving the ETDD Division. As noted, the parties have stipulated that there is now a Human Resource Department 87 responsible for setting and administering all labor relations and personnel policies for BGE and all employees of BGE's four divisions, including employees of the ETDD. The record established that within the ETDD, there is an administrative office that processes performance appraisals and promotions for employees in the division.

The record established that ETDD employee bonuses are dependent on goals that are applicable only to the ETDD. Thus, about 80% of ETDD employee RIA goals are division-wide. Within that divisional goal, some line items are measured at the department level. See Pet. Exh. 48. The remaining twenty percent of the RIA goals are made up of department, section or unit goals. Thus, within the ETDD, employee bonuses, that may comprise ten percent of pay, are dependent upon meeting division-specific goals, separate and apart from other division goals. An ETDD employee RIA bonus is dependent, at least in part, on whether or not the ETDD's budget goals are met.

As mentioned above, the ETDD is by far the largest part of the organizations that contributes to the electric delivery line of business. BGE is able to measure the profitability of its electric delivery line of business, based on the weighted average of assets and the number of employees. BGE tracks separately the return on equity for the electric delivery line of business. The ETDD, as stated in its Business Plan, measures its own return on equity by tracking the profitability of the electric delivery line of business. See Pet. Exh. 185.

When the ETDD performs work for other divisions, or supports lines of business other than electric delivery, it is often performed under a service level agreement. See e.g. Pet. Exh 172 and 173; Er. Exh. 498. For example, ETDD Department 39 designs, engineers, and constructs joint trench electric and gas service projects. The Gas Distribution Division pays for the gas portion of that work, pursuant to a service level agreement with ETDD. Pet. Exh. 173. The service level agreement between the ETDD and the GDD also covers work performed by the ETDD's Damage Prevention Unit 36-04-04, which is responsible for marking electric and gas lines prior to excavation by BGE or third parties. Pursuant to

the service level agreement, the Gas Distribution Division is charged for the ETDD's marking of the gas lines. Pet. Exh. 173.

When the ETDD performs new business design work for the Gas Distribution Division, an employee from the Gas Distribution Division checks the gas portion of the joint trench gas and electric designs drawn by ETDD designers or drafters. This employee acts as the Gas Distribution Division's representative to perform a quality control check on the design product the ETDD has produced for the GDD under the service level agreement to make sure it is consistent with Gas Distribution standards. This employee spends three days per week at the Dorsey complex, where she may interact with ETDD employees.

One classification sought in the ETDD technical unit, permission specialists in 37-05-0A, spends a significant amount of time working for the Gas Distribution Division. The GDD's budget is charged for the permission specialist's time spent performing services for the GDD. The permission specialist checks on and obtain rights-of-way (easements) for BGE's facilities. BGE has centralized the right-of-way function in the ETDD. The ETDD permission specialist is stationed at Spring Gardens, the Gas Distribution Division headquarters. The permission specialist's supervision, however, remains in the ETDD.

The ETDD also provides some services pursuant to service level agreement with the former NED. The former NED's budget was charged for the work that the ETDD performed at Calvert Cliffs. Considering the total number of employees in the ETDD, very few performed any work at the CCNPP. There is no evidence in the record of any interaction between the technical employees sought in 5-RC-14908 and any employees at the CCNPP. Furthermore, when any ETDD production and maintenance employees work on Calvert Cliffs' equipment, they are treated much like outside contractors.

The ETDD also has agreements with the General Services Division for services that the GSD provides to ETDD. When the General Services Division provides service to the ETDD Division, the ETDD's budget is charged. One ETDD employee acts as a liaison with the General Services Division and other divisions in connection with service level agreements, and acts to protect the ETDD's interests as a customer under such agreements.

The record contains evidence that on one occasion, five employees from FEMD Department 25 worked with substation crews from ETDD to assist with substation construction projects.³³ When the ETDD used these Department 25 employees, the ETDD's budget was charged for such services. The record established that the ETDD's Substation Construction Section uses fabricated steel that it obtains from either from Department 25 or from outside contractors. When using Department 25 for its fabricated steel, the ETDD's budget is charged for the service. Finally, there was testimony that in 1999, two relay and control technicians from Department 38 were loaned to the former FED and the former FED's budget was charged for these services.

M. Positions of the Parties on the Unit Scope Issues

1. The Petitioner's Positions On Unit Scope Issues

³³William Bambarger, the General Supervisor of the Substation Construction Section in 38-13, stated that he had no personal knowledge of any other occasions during which employees from Department 25 worked with substation construction crews.

The Petitioner claims that each petition is for an appropriate unit and that it need not seek the most appropriate unit. The Petitioner notes that there is more than one way to group employees for collective bargaining purposes and there may be more than one appropriate unit at a company. See General Instrument Corp., 319 F.2d 420, 422-23 (4th Cir. 1963). The Petitioner asserts that the relevant inquiry stops when an appropriate unit is found. Therefore, the Employer's proposed alternatives are not scrutinized when the units sought are appropriate. P.J. Dick Contracting, 290 NLRB 150 (1988); Dezcon, Inc., 295 NLRB 109 (1989).

The Petitioner observes that the Board has never held that system-wide units are the only appropriate unit in the utility industry. Less than system-wide units can be appropriate in the utility industry when the units sought are well-defined administrative segments of the Company. See e.g., Louisiana Gas Service Company, 126 NLRB 147 (1960); Idaho Power Company, 179 NLRB 22 (1969), Southern California Water Company, 220 NLRB 482 (1975). The Petitioner emphasizes that this principle was recently reaffirmed in PECO Energy Company, 322 NLRB 74 (1997), where the Board held that multiple, less than system-wide units were appropriate because each encompassed well-defined administrative segments of the company. Petitioner argues that each of the units sought herein encompasses a well-defined administrative segment of the former BGE or its successor and that the employees in said units share a community of interest such that collective bargaining would be a feasible undertaking.

The Petitioner claims that the production and maintenance unit sought in 5-RC-14907, consisting of the production and maintenance employees in CPSG, the former BGE Fossil Energy Division, but excluding mobile maintenance employees in Department 25, is an appropriate unit. The Petitioner does not claim that a unit of production and maintenance employees in CPSG would be inappropriate unit if Department 25 were included. Rather, Petitioner argues that the production and maintenance employees in the Fossil Engineering and Maintenance Department 25 have a community of interest that is separate and distinct from the remaining CPSG production and maintenance employees. Thus, Petitioner argues that the petitioned-for FEMD mobile maintenance employees in Case 5-RC-14906 constitute a separate appropriate unit whose exclusion from the overall production and maintenance unit sought in 5-RC-14907 would not render that unit inappropriate for bargaining. Petitioner argues, inter alia, that the bargaining unit employees in Departments 21, 23, and 28 work and provide services almost exclusively within CPSG or the former Fossil Energy Division. Petitioner notes that the employees in FEMD 25 perform the majority of their work within CPSG, former FED, but they also function as contractors for BGE's other divisions, as well as for companies outside BGE, including CCNPP. The Petitioner emphasizes that Department 25 mobile maintenance employees are not assigned to a particular plant within CPSG or the former FED. Rather, they travel regularly among various generating stations performing mobile maintenance functions. Petitioner argues that consistent with PECO, this group is appropriately excluded from the broader CPSG, former FED, production and maintenance voting group because they spend time at various generating stations. Petitioner also argues that even when FEMD employees service other departments within CPSG, the former FED, they act primarily as contractors. For these reasons, the Petitioner claims that the production and maintenance employees within the Fossil and Engineering Maintenance Department 25 have a community of interest separate and distinct from the rest of the production and maintenance employees in CPSG or the former Fossil Energy Division, and constitute a separate appropriate unit for bargaining.

As noted above, the parties have jointly stipulated that a BGE-wide production and maintenance unit is an appropriate unit. See Joint Stipulation at para. 26. Consequently, it is no longer necessary to address Petitioner's argument that a unit of all physical production and maintenance workers in BGE's UOG is presumptively appropriate in Case 5-RC-14909.

The Petitioner also argues that the technical unit sought in BGE's Electric Transmission and Distribution Division (ETDD) in Case 5-RC-14908 is an appropriate unit because the ETDD is a well-

defined administrative segment of BGE, and the unit would include all technical employees in the Division. Petitioner asserts that even if some of the employees sought in this technical unit do not meet the Board's definition of technical employee, they still may be included in such a unit if they have technical skills and duties similar to technical employees such that they share a community of interest with technical employees.³⁴ Thus, even if I should determine that some of the employees sought in the ETDD technical unit in 5-RC-14908 are not technical employees under the Act, Petitioner asserts that the nature of their jobs is such that they should properly be included in the technical unit. Thus, Petitioner argues that the ETDD technical unit would still constitute an appropriate unit even if not all of the employees in the unit meet the definition of technical employees under the Act, because all those sought in the unit have similar technical skills, duties and training. Moreover, Petitioner asserts that the skills, duties and training of those sought in the ETDD technical unit differ dramatically from the skills, duties and training of the physical production and maintenance employees sought in 5-RC-14909, and from office clerical employees.

The Petitioner argues that when a union petitions for a unit of technical employees, or a unit of technical employees and some other classifications of employees, all similarly situated technical employees in that unit must be included. Cf., PECO Energy Co., 322 NLRB at 1085;³⁵ Westinghouse Elec. Corp., 300 NLRB 834 (1990); New Orleans Public Service, Inc., 215 NLRB at 836. The Petitioner argues that this principle does not mean that a technical unit has to be broader than a well-defined administrative segment of a company. In other words, Petitioner argues that the Board's rule that all similarly situated technical employees must be included in a technical unit affects unit placement questions, and not questions of unit scope. See PECO Energy, 322 NLRB at 1085 (principle discussed in the context of unit placement questions). The Petitioner notes that once the Board determined that units of craft and technical employees, less than systemwide in scope, were appropriate in PECO, the Board

³⁴Petitioner relies on Brown & Root-Northrop, 174 NLRB 1005, 1006 (1969), where the Board determined that some employees should be included in a technical unit, although they were not technical employees under the Act. The Board held that the employees at issue shared a sufficient community of interest with technical employees because their work entailed the exercise of independent judgment; was of a technical, rather than clerical nature; and required some understanding of the technical processes in which acknowledged technicals were engaged. In Brown & Root-Northrop, the Board also rejected the notion that an employee whose tasks are primarily clerical in nature could be included in a technical unit. Rather, the Board held that, "if the interests of clerical and technical employees are to be given proper effect through the process of collective bargaining, determination of the appropriate unit must give primacy to the separate community of interest between employees engaged in clerical, nontechnical functions and those whose work and background is of a technical nature." 174 NLRB at 1005-06. Petitioner also relies on Audiovox Communications Corp., 323 NLRB 647 (1997), where the Board determined that a unit of employees engaged in technical work was appropriate, even though the employees did not meet the definition of technical employees under the Act.

³⁵The Petitioner notes that in PECO Energy Co. there was uncertainty as to the scope of the units sought. Thus, the units sought in PECO Energy Co. were production and maintenance units, with some technical employees included by stipulation and other technical employees at issue. 322 NLRB at 1081 n. 2. The Petitioner notes that the Board treated the units sought as including both technical and production and maintenance employees, and accordingly, relied on cases in which all similarly situated technical employees must be included in the unit. 322 NLRB at 1085, 1086-87. In this case, by contrast, the Petitioner claims that there is no uncertainty with respect to the units sought. The Petitioner seeks all technical employees in the ETDD in Case 5-RC-14908 and does not seek technical employees in its petition in 5-RC-14909 covering the production and maintenance employees in BGE's UOG, or in its petitions in Cases 5-RC-14906 and 5-RC-14907.

turned to unit placement issues and held that the union was required to include all technical employees in the units sought -- the production power group (non-nuclear generation) and the nuclear generation group. 322 NLRB at 1085-87. The Petitioner notes that the Board did not, however, rule that all technical employees systemwide had to be included in the respective units.

The Petitioner distinguishes New Orleans Public Service, Inc., 215 NLRB 834 (1974) because the utility in that case was structured very differently from the structure in BGE where the record developed at the hearing shows that the ETDD has its own budget, vice-president, and business plan. In New Orleans Public Service, all of the engineering and operations functions were consolidated in one division. The union sought a technical unit limited to one department in that division. The employer argued that technical employees from the other four departments in the division, as well as certain technical employees from other divisions, had to be included in the unit. The Board held that the technical unit had to include technical employees from other departments within the division, but did not have to include technical employees outside of the division. The Board recognized that the technical unit need not be systemwide, but had to include all the technical employees within the division, i.e., a single well-defined administrative segment of the company. Therefore, Petitioner argues that New Orleans Public Service is consistent with the idea that a technical unit limited to the ETDD -- the largest BGE division -- is an appropriate unit.

Accordingly, Petitioner argues that only after the scope of the unit is defined, must all similarly situated technical employees in that defined unit be included. Thus, Petitioner argues that a technical unit limited to either a distinct functional group of technical employees, or to technical employees in a distinct administrative or departmental group, is appropriate. See e.g., PECO Energy Co., 322 NLRB at 1085; Federal Electric Corp., 157 NLRB 1130 (1966); cf. Bendix Corp., 150 NLRB 718, 720 (1964) (less than company-wide technical unit was not appropriate where the union did not contend that the group constituted a single department group entitled to separate representation); Westinghouse Electric Group., 137 NLRB 332, 337 (1962) (technical units found inappropriate where the units petitioned for did not constitute a functionally distinct or homogeneous group of employees or an administrative grouping that the Board might recognize); Pratt & Whitney, 327 NLRB No. 199, slip op. at 4 (March 31, 1999) (unit of technical and professional employees that did not correspond to common organizational or overall supervision of such employees, held inappropriate).

Thus, according to Petitioner, the issue with respect to the scope of the ETDD technical unit is not whether technical employees outside of the ETDD are properly excluded from the technical unit. Rather, Petitioner frames the issue as whether the technical unit sought in the ETDD constitutes an appropriate unit because the ETDD is a separate, well-defined administrative segment of BGE. Petitioner asserts that once it is determined that the ETDD is a separate, well-defined administrative segment of BGE in which collective bargaining would be feasible, i.e., once the scope of the unit is determined, the remaining issue regarding the technical unit is one of unit placement, i.e., which employees in the ETDD are technical employees under the Act, and which employees, even if they do not meet the Board's definition of technical employees, have technical skills and duties similar to technical employees, such that they may be properly included in the technical unit. In sum, Petitioner argues that the petition in 5-RC-14908 is for an appropriate technical unit because it seeks all technical employees in the ETDD, a well-defined administrative segment of BGE, in which collective bargaining for a unit of technical employees in the ETDD is a feasible undertaking.

The Petitioner contends that the employees sought in the classifications designated as 908 on Employer Exhibit 18 perform jobs of a technical nature that require some sort of post high school education or equivalent experience. Petitioner argues that these technical employees share job duties and skills that differ from those of the physical production and maintenance employees sought in the BGE-

wide physical production & maintenance unit in 5-RC-14909. If, however, I were to find that these employees are not technical employees or that they do not constitute an appropriate technical unit, the Petitioner does not seek the inclusion of these classifications in the BGE-wide physical production & maintenance unit stipulated to be appropriate in 5-RC-14909.

The classifications that Petitioner seeks in the ETDD technical unit petitioned-for in 5-RC-14908 are the following: distribution technician in 33-00-03; senior distribution technician in 33-00-03; systems support technician in 33-02-04; designer in 36-01-01; senior drafter in 36-01-01; distribution designer in 36-05-02; distribution technician in 36-05-02; distribution designer in 36-05-03; distribution technician in 36-05-03; engineering technician in 37-02-02; senior distribution technician in 37-02-03; distribution technician in 37-02-04; senior distribution technician in 37-02-04; distribution technician in 37-03-03; drafter in 37-05-01; drafter trainee in 37-05-01; senior drafter in 37-05-01; cartographic technician in 37-05-04; engineering technician in 37-10-03; the operations computer specialist in 37-10-03; senior engineering technician in 37-10-03; designer in 38-02-02; designer in 38-02-03; drafter in 38-02-03; senior drafter in 38-02-03; senior engineering technician in 38-02-03; operating instruction technician in 38-21-02; designer in 38-21-03; drafter in 38-21-03; senior drafter in 38-21-03; designer in 38-21-04; drafter in 38-21-04; senior drafter in 38-21-04; service planner in 39-01-02; assistant service planner in 39-01-02; service planner in 39-01-02; this planner and 39-01-03; assistant service planner in 39-01-04; service planner in 39-01-04; service planner in 39-01-05; workload planner-res/i&c services in 39-01-05; assistant distribution designer in 37-01-07; distribution designer in 39-01-07; distribution technician in 39-01-07; project design coordinator in 39-01-07; senior distribution technician in 39-01-07; lighting design specialist in 39-02-02; lighting designer in 39-02-02; lighting technician in 39-02-02; construction technician in 39-10-02; meter inspector in 39-11-02; meter inspector in 39-11-03; and meter inspector in 39-12-02.

In addition to the above-enumerated classifications that Petitioner seeks to include in the ETDD technical unit petitioned-for in 5-RC-14908, there are a few classifications designated by Petitioner as both 908/909 on Employer Exhibit 18. Thus, if I find that these employees are not technical employees or that the petitioned-for unit in 5-RC-14908 does not constitute an appropriate unit, the Petitioner does seek the inclusion of these classifications in the BGE-wide physical production & maintenance unit stipulated to be appropriate in Case 5-RC-14909. These classifications are fault equipment technicians in 36-06-01; assistant fault equipment technicians in 36-06-01; lead relay and control technicians in 38-20-02, 38-20-03, and 38-20-04; and field recorders and 39-01-07. As noted, the Petitioner does not seek technical employees in any unit other than the unit petitioned-for in 5-RC-14908.

BGE has disputed Petitioner's designation of technical status for many of the positions that the Petitioner seeks to represent in the ETDD technical unit sought in 5-RC-14908. BGE contends that only the following classifications in the ETDD satisfy the Board's definition of a technical employee; the systems support technician in 33-02-04, the senior distribution technician in 37-02-04, the cartographic technician in 37-05-04, the project design coordinator in 39-01-07, and the senior distribution technician in 39-01-07.

As further explained below, at the request of the Hearing Officer, the Petitioner also identified those classifications throughout BGE's then UOG that it claimed were also technical classifications. See Pet. Exh. 149 and Pet. Exh. 162. Although the Petitioner emphatically argues that an ETDD-wide technical unit is appropriate, the Petitioner, like BGE, urges me to find alternatively that a BGE-wide technical unit, including ETDD technical employees and those technical employees from the other three divisions that made up BGE's UOG at the time of the hearing as set forth in Pet. Exh. 149 and 162, is an appropriate unit. As stated at the hearing, however, the Petitioner reserves its right to determine whether to go forward in any alternative BGE-wide technical unit, until such time as this Decision and Direction of Election issues.

Pursuant to the Hearing Officer's request, both parties prepared lists of classifications in the three other divisions of BGE's UOG (Retail Services Division, General Services Division, and the Gas Distribution Division) that the parties claimed were made up of technical employees under Board law. The Petitioner's lists of "technical" in the Retail Services Division, General Services Division, and Gas Distribution Division are set forth in Petitioner's Exhibits 149 and 162. The Petitioner emphasizes, that it does not contend that the technical employees listed in Petitioner's Exhibits 149 and 162 must be excluded from the production and maintenance unit petitioned for in 5-RC-14909 solely because they are "technical" employees. Rather, Petitioner claims that these classifications should be excluded primarily because they do not share a community of interest with physical production and maintenance employees sufficient to require their inclusion in the production and maintenance unit petitioned-for in 5-RC-14909. The Employer's lists of "technical" in each of the four divisions of BGE's UOG at the time of the hearing are set forth in Employer's Exhibits 392, 403-04, and 427. The parties' positions on technical employees outside the ETDD, but within BGE's other three divisions that made up the UOG at the time of the hearing, are set forth below.

In BGE's Gas Distribution Division, both parties agree that the following classifications satisfy the Board's definition of a technical employee; gas distribution automation technician in M1-02-06; instrument and control technician in M1-02-06; gas field technician in M2-03-05; materials specialist in M2-05-03; meter engineering technician in M2-05-03; project design coordinator in M2-05-03; technical specialist-gas in M2-05-03; and project design coordinator in M2-05-05. In addition, the Petitioner contends, over BGE's disagreement, that the designers in M1-02-01; engineering technicians in M1-07-04; gas distribution designer in M2-05-02; assistant gas distribution designer in M2-05-02; junior engineering technician in M2-05-03; gas distribution drafter in M2-05-04; gas distribution designer in M2-05-05; and assistant gas distribution designer in M2-05-05, are also technical employees.

In the Retail Services Division, both parties agree that the following classifications satisfy the Board's definition of a technical employee: energy services technician in L2-00-07; electronic metering specialist in L4-17-04; meter engineering technician in L4-17-04; senior electronic metering specialist in L4-17-04; and energy services technician in L4-17-04. In addition, the Petitioner contends, over BGE's disagreement, that the meter calibration technician in L4-17-04 is a technical employee.

In the General Services Division, both parties agree that the following classifications satisfy the Board's definition of a technical employee: fleet technician in 75-04-07; fleet technician in 75-04-08; system console operator in 77-02-02; system support technician in 77-02-03; system support technician in 77-03-01; system support technician in 77-03-02; senior radio/video technician in 77-03-03; senior network technician in 77-04-02; network technician in 77-04-02; senior telecommunications/data technician in 77-04-02; telecommunications/data technician in 77-04-02; operations support coordinator in 77-04-03; and system support technician in 77-04-05. In addition, the Petitioner contends, over BGE's disagreement, that the designer and senior drafter in 75-03-04; the system support technician in 75-03-04; and the facilities project designers in 75-06-01, 75-07-01, 75-08-01, and 75-09-01 are technical employees.

2. The Employers'³⁶ Position on Unit Scope Issues

In light of the parties' Joint Stipulation, as amended, that a BGE-wide production and maintenance unit is an appropriate unit, it is unnecessary to address the Employers' various initial arguments that the four units sought by Petitioner are inappropriate because a system-wide unit that includes all of BGE's former Generation Group and UOG is the only appropriate unit. The Employers argue that any CPSG fossil unit found appropriate must include the entire former Fossil Energy Division, not separate units within CPSG or the former FED as proposed by the petitions in 5-RC-14906 and 5-RC-14907. The Employers argue that the two fossil fuel units sought -- the Fossil Engineering and Maintenance Department 25 (Mobile Maintenance) in 5-RC-14906 and the production and maintenance employees throughout the rest of CPSG or the former Fossil Energy Division in 5-RC-14907 -- is an inappropriate fragmentation of CPSG or the former FED. The Employers contend that there is no basis for separating the production and maintenance employees in FEMD 25 (mobile maintenance) from the production and maintenance employees in the CPSG or former FED. The Employers argue that the Petitioner's unit contentions in 5-RC-14906 and 5-RC-14907 ignore overwhelming evidence of interchange and interaction among the separately petitioned-for employees and disregard the functional interdependence between all five CSPG or former FED departments. The Employers argue that all production and maintenance employees in CPSG departments or the five departments in the former FED, including mobile maintenance employees in Department 25, share an indivisible community of interest. According to the Employers, the record makes it abundantly clear that the only appropriate unit in CPSG or the former FED is one that includes the production and maintenance employees from all departments, including Department 25. The Employers further assert that the traditional community of interest factors considered by the Board militate in favor of a unit that combines the mobile maintenance employees and plant employees in a single unit. See e.g., Sandvik Rock Tools, Inc. v. NLRB, 194 F.3d 531, 535 (4th Cir. 1999).

The Employers also argue that the technical unit petitioned-for in 5-RC-14908, which is restricted to the ETDD, is completely inappropriate. The Employer argues that Petitioner seeks a fragmented portion of the ETDD, i.e., only part of the group of employees that the Board directed to be voted under challenge as "technical, and possible technical, employees" in Case 5-RC-14351. The Employer also contends that the classifications that the Union seeks in 5-RC-14908 do not meet the Board's definition for technical employees, and that even if they do, these classifications perform similar work under similar circumstances with production and maintenance employees throughout BGE. Therefore, the Employers argues that the classifications petitioned for in 5-RC-14908 should be included in a broader production and maintenance unit under the Board's decision in Sheffield Corp., 134 NLRB 1101, 1103-04 (1961). . Alternatively, the Employers contends that the smallest appropriate technical unit at BGE must include all technical employees in the other three divisions that made up the UOG, not a unit restricted to technical employees in the ETDD. The Employers conclude that Local 1900's petitions would establish a new and ill-advised precedent in the public utility industry and would create the precise fragmentation that the Board has cautioned against.

³⁶ The Employers' position as described herein is as presented by BGE at the hearing, in its post-hearing brief and in its Responses to Notices to Show Cause herein, and as presented by CPSG in its Response to Further Notice to Show Cause, as described above. The decisions herein are based on the factors presented in the record and as stipulated by the current parties hereto, that is, BGE and CPSG. Furthermore, I note that CPSG and BGE are represented by the same counsel in this proceeding.

N. Analysis of Unit Scope Issues

1. Legal Standards Under Board Precedent

The ultimate question in a representation hearing in which the unit is contested is whether the unit sought by the petitioner is *an* appropriate unit. It is fundamental that a bargaining unit need not be the most comprehensive unit, or even the most appropriate unit, but only *an* appropriate unit. Section 9(b) of the Act states that "the Board shall decide in each case whether, to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, or subdivision thereof." Thus, the plain language of Section 9(b) of the Act demonstrates that the same employees of an employer may be grouped together for purposes of collective bargaining in more than one appropriate unit. Overnite Transportation Co., 322 NLRB 723 (1996). Indeed, as the Supreme Court has stated, "[section 9 of the Act], read in light of the policy of the Act, implies that the initiative in selecting an appropriate unit resides with the employees. [. . . and] that employees may seek to organize 'a unit' that is 'appropriate' -- not necessarily the single most appropriate unit." American Hospital Ass'n v. NLRB, 499 U.S. 606, 610 (1991) (emphasis in original).

Thus, the statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act requires only that the unit be "appropriate," that is, appropriate to insure to employees in each case "the fullest freedom in exercising the rights guaranteed by this Act." Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); Parson Investment Co., 152 NLRB 192, n. 1 (1965); Federal Electric Corp., 157 NLRB 1130 (1966); Capital Bakers, 168 NLRB 904, 905 (1968); National Cash Register Co., 166 NLRB 173 (1967); and Dezcon, Inc., 295 NLRB 109 (1989). A union is not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." P. Ballantine & Sons, 141 NLRB 1103 (1963); Bamberger's Paramus, 151 NLRB 748, 751 (1965); Purity Food Stores, 160 NLRB 651 (1966). There is typically more than one way to group employees for purposes of collective bargaining. General Instrument Corp. v. NLRB, 319 F.2d 420, 422-3 (4th Cir. 1963), *cert. denied* 375 U.S. 966 (1964); Mountain Telephone Co. v. NLRB, 310 F.2d 478, 480 (10th Cir. 1962). In determining whether a petitioned-for unit is appropriate, the unit sought by the petitioning union is a relevant consideration. The Lundy Packing Company, Inc., 314 NLRB 1042, 1043 (1994), citing E.H. Koester Bakery & Co., 136 NLRB 1006 (1962).

The Board has long held that production and maintenance units are presumptively appropriate. PECO Energy Co., 322 NLRB at 1081, n. 2; Appliance Supply Co., 127 NLRB 319, 321 (1960); Bamberger's Paramus, 151 NLRB 748, 751 (1965); Hilton Hotel Corp., 287 NLRB 359 (1987). Historically, in the utility industry, production and maintenance units are often described as "physical" units. See e.g., Cincinnati Gas & Electric Co., 57 NLRB 1298, 1305 (1944) (unit of employees engaged in physical labor appropriate in the utility industry); Philadelphia Electric Co., 110 NLRB 320 (1954) (unit limited to physical employees engaged in production and maintenance work found appropriate); Sierra Pacific Power Co., 56 NLRB 458, 461 (1944) (physical or production and maintenance employees of a utility company can best be represented in a separate unit, apart from clerical employees, and other employees). In the absence of evidence to show otherwise, the Board will find a unit of production and maintenance employees appropriate, excluding therefrom those employees customarily excluded. Appliance Supply Co., 127 NLRB at 321.

It is well settled that a systemwide production and maintenance unit is the optimal appropriate unit in the electric utility industry. New England Telephone and Telegraph, 280 NLRB 162 (1986); Baltimore Gas & Electric Co., 206 NLRB 199, 201 (1973); Arizona Public Service Co., 256 NLRB 400

(1981) Rockland Light and Power Company, 105 NLRB 365 (1953); Public Service of New Hampshire, 161 NLRB 914 (1966). The Board has often stated that systemwide units are optimal in the public utility industry. Colorado Interstate Gas Co., 202 NLRB 847 (1973); Deposit Telephone Co., 328 NLRB No. 151 (1999); Louisiana Gas Service Co., 126 NLRB 147 (1960); Montana-Dakota Utilities Co., 115 NLRB 1396 (1956). The reason for this general principle lies in "the essential service rendered to their customers and the integrated and interdependent nature of their operations." Colorado Interstate Gas Co., supra. The policy considerations for this view have been reiterated time and time again in a long line of Board cases in the public utility industry. As emphasized by the Board's 1973 decision involving Baltimore Gas and Electric Company, the policy favoring systemwide units "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 essential services that the industry alone can adequately provide." Baltimore Gas & Electric Co., supra at 201.

The recent Board decisions in the public utility industry have reaffirmed this principle and have reiterated the admonition against fragmentation of bargaining units. These cases emphasize that there must be "compelling evidence" that bargaining is feasible and will not unduly disrupt the utility's ability to deliver essential services before a less than systemwide unit will be found appropriate. PECO Energy Co., 322 NLRB 1074, 1079-80 (1997); Deposit Telephone Co., 328 NLRB No. 151 (1999). In those cases where a unit that is not systemwide has been approved, the Board has insisted that it satisfy the traditional community of interest standards and that the unit conform to a well-defined administrative segment of the employer's operations. PECO Energy Co., supra at 1080-82.

Although the public utility industry generally is more intimately interrelated and interdependent throughout a widespread system than many other industries, each case must nonetheless be judged on its own merits in determining the appropriateness of bargaining units. Idaho Power Co., 179 NLRB 22 (1969); Pacific Northwest Telephone Co., 173 NLRB 1441 (1969). Where, on balance, all the relevant factors indicate that the administrative structure or geographic features of a public utility company's operations have created a separate community of interest for certain of the company's employees, a less than systemwide unit may be found appropriate. Monongahela Power Co., 176 NLRB 915 (1969); Michigan Wisconsin Pipe Line Co., 164 NLRB 359 (1967); Sanborn Telephone Co., 140 NLRB 512 (1963); Mountain States Telephone Co., 126 NLRB 676 (1960); Western Light Telephone Co., 129 NLRB 719 (1961); Southern California Water Co., 220 NLRB 482 (1975). Thus, although the Board has often stated that systemwide units may be optimal in the utility industry, the Board has long held that less than systemwide units may also be appropriate. See e.g., Deposit Telephone Co., 328 NLRB No. 151, slip op. at 2 (July 27, 1999); PECO Energy Co., 322 NLRB 1074, 1079-82 (1997); United Gas, Inc., 190 NLRB 618 (1971); Natural Gas Pipeline Co., 223 NLRB 1439 (1976); Texas Electric Service, 261 NLRB 1455, 1458 n. 13 (1982); Houston Corporation, 124 NLRB 810, 811 (1959). As explained recently in Deposit Telephone, "smaller than systemwide units are appropriate where the Board determines that they are a 'feasible undertaking.'" 328 NLRB No. 151, slip op. at 2 n. 4.

The Board has long found that units less than systemwide in scope are appropriate for bargaining in the utility industry where the unit sought corresponds to a defined administrative segment of the employer's overall operations such that collective bargaining in that unit would be a feasible undertaking. The history of collective bargaining and existing bargaining relationships and the fact that no labor organization seeks to represent a broader unit of the employees in question are relevant factors. Deposit Telephone Co., 328 NLRB No. 151 (1999), and Michigan Bell Telephone Co., 192 NLRB 1212 (1971). Deposit Telephone reversed Red Hook Telephone, 108 NLRB 260 (1967), and Fidelity Telephone, 221 NLRB 1335 (1976). In the absence of a bargaining history on a more comprehensive basis, units have

been found appropriate in the public utility industry which correspond to an administrative subdivision of the particular operation (Mountain States Telephone Co., supra), reflecting geographical lines of demarcation (Philadelphia Electric Co., 110 NLRB 320 (1955)), and reflecting operational integration of the subdivision as a separate administrative entity. Montana-Dakota Utilities Co., supra. See also Connecticut Light & Power Co., 222 NLRB 1243 (1976); Southern California Water Co., supra; New England Telephone Co., 242 NLRB 793 (1979).

Thus, units less than systemwide in scope have been found appropriate in the utility industry where the employees have no history of collective bargaining on a broader basis; work in an administrative subdivision of the utility; and enjoy a community of interest such that collective bargaining for them would be a feasible undertaking. See e.g., PECO Energy Co., 322 NLRB at 1081 (“a well-defined administrative segment of the organization can justify a smaller-than systemwide unit if the boundaries of such a unit conform to the segment”); Natural Gas Pipeline Co., 223 NLRB 1439, 1440 (1976).

As noted, in 1973, nearly three decades ago and well before industry deregulation, the Board in Baltimore Gas & Electric Co., supra, described the rationale and strong policy considerations that supported its judgment that generally systemwide units are optimal in the utility industry:

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. It has done so only when there was compelling evidence that collective bargaining in a unit less than systemwide in scope was a "feasible undertaking" and there was no opposing bargaining history. As an examination of the cases in which narrower units have been found appropriate indicates, it was clear in each case that the boundaries of the requested unit conformed to a well-defined administrative segment of the utility company's organization and could be established without undue disturbance to the company's ability to perform its necessary functions.
[Footnote omitted.]

206 NLRB at 201. See also, e.g., New England Telephone Co., 280 NLRB 162, 164 (1986) (the Board has long held that in public utility industries a systemwide unit is optimal).]

The reluctance of the Board to "fragmentize" units in the utility industry was the focal point of another 1973 case that involved natural gas pipeline systems in Colorado Interstate Gas Co., 202 NLRB 847 (1973). The Board found the requested districtwide units were too narrow in scope to be appropriate, relying on (1) the high degree of control exercised by the company's headquarters management over the operational districts; (2) evidence of substantial temporary interchange among the districts; (3) the systemwide procedures applied in posting and bidding for openings in higher paying positions; (4) the lack of substantial autonomy in the district superintendents with respect to day-to-day personnel matters; and (5) the uniformity of wages, hours, and conditions of employment throughout the company's system. See also Tennessee Gas Pipeline, 254 NLRB 1031 (1981); Gas Pipeline Co. of America, 223 NLRB 1439 (1976).

By contrast, the Board found no problem of "fragmentization" in Idaho Power Co., supra, in which a proposed divisionwide unit was found appropriate relying on factors of (1) geographic coherence;

(2) distinctiveness of functions; and (3) the relative autonomy of operation with which the divisional managing official had been entrusted.

Recently, in PECO Energy Co., 322 NLRB 1074 (1997), the Board also found a less than systemwide unit appropriate and conformed its determination to the employer's restructuring of its operations in light of industry deregulation. Still mindful of the Baltimore Gas & Electric Co. admonition against fragmentation, the PECO Board emphasized that the general rule in favor of systemwide units at public utilities does not operate as an absolute prohibition of smaller units where there is compelling evidence that bargaining in a unit less than systemwide in scope is a feasible undertaking and there is no opposing bargaining history. 322 NLRB 1074, 1079 (1997). In fact, where such factors are present, the Board repeatedly has held units appropriate which were not system-wide. See, e.g., Monongahela Power Co., 176 NLRB 915 (1969); Michigan Wisconsin Pipe Line Co., 164 NLRB 359 (1967); and Southern California Water Co., 220 NLRB 482 (1975).

In PECO Energy Co., the utility company was organized in a manner similar to BGE at the time of the hearing. PECO divided itself into separate administrative divisions called "strategic business units," that were separated in terms of function, rather than by geography. 322 NLRB at 1075-76; Cf. United Gas Co., 190 NLRB at 618, where the company was divided into separate divisions that each served a separate geographic area. PECO had a division that focused on the distribution of electricity (Consumer Energy Services), analogous to BGE's ETDD division; a separate non-nuclear generation division that operated and maintained eleven non-nuclear generating plants (Power Generation), analogous to BGE's former Fossil Energy Division; a nuclear generation division that operated and maintained two nuclear generating stations (Nuclear Generation), analogous to BGE's former Nuclear Energy Division; a gas service division (Gas Services), analogous to BGE's Gas Distribution Division; and a wholesale energy market division (Bulk Power), analogous to the non-BGE entity, Constellation Power Source. 322 NLRB at 1075. Each strategic business unit at PECO had its own vision and mission statements. PECO divisions entered into service agreements with other areas of the company, specifying the quantity, timing, and cost of the services or products provided to the divisions. If a strategic business unit received a service from another area, it received a charge against its budget. 322 NLRB at 1081. PECO, like BGE, had centralized support services. *Id.* at 1075-76. In addition, many human resource and labor relations policies applied throughout PECO, much like they do throughout CPSG and BGE. See Joint Stipulation at paras. 15 -24, 33-41.

In PECO Energy Co., IBEW Local Union 94 petitioned for two units, each limited to one fossil generation plant, or in the alternative, a unit limited to PECO's Power Generation Group (non-nuclear). 322 NLRB at 1074. The Utility Workers Union of America filed a petition to represent PECO's Nuclear Generation Group employees.

PECO asserted that, because it is a public utility company that operated an integrated enterprise, the only appropriate unit was systemwide. 322 NLRB at 1076. PECO relied on the Board's 1973 decision in Baltimore Gas & Electric Co., 206 NLRB 199 (1973). PECO stressed that the power generated by its stations went directly into one service grid and that no particular market or area was served by any particular generating station. 322 NLRB at 1076. Further, PECO argued that much of the equipment at its power plants was maintained and tested by employees from outside the generation organization. PECO also contended that the nuclear-nonuclear distinction did not justify separating nuclear generation from non-nuclear generation. *Id.* at 1079. Although PECO acknowledged that some policies applied only to its nuclear generating stations, it argued that such policies owed their existence to the Nuclear Regulatory Commission regulations. In addition, PECO emphasized the centralization of its labor relations and drew attention to the fact that there was only one job classification and wage program for all hourly employees, and that basic job classifications were virtually identical across the company.

322 NLRB at 1076. PECO also argued that medical benefits, paid time off, and premium pay policies were identical for employees across the company. *Id.*

The Board rejected PECO's arguments and found appropriate units limited to PECO's non-nuclear generation organization and its nuclear generation organization. 322 NLRB at 1080-82. More specifically, the Board held that a requested unit of craft and technical employees throughout PECO's power generation group, which consisted of all non-nuclear electric generating stations, and a separate requested unit of production and maintenance employees in PECO's nuclear generation group, were appropriate bargaining units. In finding these units appropriate, the Board acknowledged that it has long held that systemwide units in the utility industry are optimal, but emphasized that such a general rule has not operated as an absolute prohibition on smaller units. *Id.* at 1080. Rather, the Board observed that well-defined administrative segments of a utility company are appropriate units in the utility industry where collective bargaining is feasible. The Board conceded that there were several factors that would favor a systemwide unit in PECO. For example, PECO produced power for transmission to any customer no matter where located; no station or group of stations served a particular area or market; and although labor relations had been somewhat decentralized, "the devolution [was] less than total." *Id.* Nevertheless, the Board held that PECO itself structured its company in a manner that set out its non-nuclear generating division and its nuclear generating division as well-defined administrative segments of the company. The Board found that PECO had emphasized to its officials and employees that "radical cultural change" was taking place in the industry and that as part of PECO's effort to meet changes and challenges, SBUs were expected to act as autonomous divisions in many important respects. Accordingly, the Board held that the power generation group and nuclear generation group, two of five "strategic business units" created as a result of PECO's 1993 reorganization, were such well-defined administrative segments as to warrant units that were less than systemwide. *Id.* at 1082.

On the other hand, the Board in PECO also held that separate craft/technical units petitioned-for at each of two fossil fuel generating plants (Cromby and Eddystone) were not appropriate units because they did not fall within exceptions to the rule favoring systemwide units in public utilities. Rather, the Board found that such units would unduly fragment PECO's operations and that neither the Cromby or Eddystone generating station constituted a well-defined administrative segment of PECO's organization. In reaching this conclusion, the Board distinguished Natural Gas Pipeline Co., 223 NLRB 1439 (1976) and Arizona Public Service Co., 310 NLRB 477 (1993).³⁷ The Board also distinguished an arrangement at Public Service Electric and Gas, a New Jersey utility, where seven bargaining units were represented by five unions, and the Board discounted testimony that this arrangement had not resulted in any

³⁷ In Natural Gas Pipeline, the Employer's operations were divided both geographically and administratively into two major pipeline systems, each consisting of three transmission areas. The Board approved a unit of an entire division of hourly transmission employees (not a single-location unit). The district superintendents in charge of the transmission areas in Natural Gas Pipeline Co. had authority to fire employees, whereas in PECO, no employee could be fired without the approval of PECO's senior vice president for human resources and some lesser disciplinary actions had to be cleared at the SBU level. In addition, the permanent transfers of employees from one pipeline to the other was minimal, i.e., approximately 3% of division employees transferred over the preceding five years, whereas in PECO, approximately 38% of hourly employees at Eddystone and 23% of hourly employees at Cromby transferred from other PECO locations within the preceding five years.

In Arizona Public Service Co., the Board found an appropriate residual unit at one of the employer's plants because the incumbent union that represented all production and maintenance employees, except those at the plant at issue, failed to intervene. In PECO, by contrast, no union represented any of PECO's employees. Therefore, the units sought were not residual units.

proliferation of labor disputes or strikes.³⁸ The Board emphasized that this arrangement included one unit that encompassed all employees involved in the generation, transmission, and distribution of electricity, i.e., a far broader unit than the requested separate units at two of PECO's fossil fuel electric generating stations.

More recently, in Deposit Telephone Co., the union petitioned for a unit limited to fourteen customer service technicians and maintenance employees, out of a total of thirty-three employees at a telephone utility company. 328 NLRB No. 151, slip op. at 1. In finding the union's petitioned-for unit appropriate, the full complement of the current Board, in a 3-2 decision, reaffirmed the principles set forth in PECO Energy Co.

Although the Board has considered systemwide units to be "optimal" in the utilities industry, this policy has not required multidepartmental units in all instances, particularly where no other labor organization seeks to represent a more comprehensive unit. In PECO Energy Co., 322 NLRB 1074 (1997), the Board explained that less than systemwide units may be appropriate where there is no opposing bargaining history, the proposed unit constitutes a well defined administrative segment of the company's organization, and the unit can be established without undue disturbance to the company's ability to perform its necessary functions.

328 NLRB No. 151, slip op. at 2 (citations omitted).

Although the employees sought to be included in the unit in Deposit Telephone were not part of a formal field department, the Board considered them an appropriate administrative segment of the company because the employer administratively distinguished between its field employees and its other employees. 322 NLRB No. 151, slip op. at 3. The dissent argued that the small number of employees sought warranted a systemwide finding. The dissent distinguished PECO Energy Co., where each unit, as in this case, involved hundreds of employees. Id. at 6, n. 5.

2. Conclusions on Unit Scope Issues

I have applied the foregoing precedent and governing principles to the facts of this case. As explained below, I find that the production and maintenance unit petitioned-for in CPSG's Fossil Engineering and Maintenance Department 25 in Case 5-RC-14906 is not an appropriate unit and the petition is dismissed.

With respect to Case 5-RC-14907, I find that a unit of all CPSG's production and maintenance employees, including mobile maintenance employees in CPSG's Fossil Engineering & Maintenance Department (FEMD) 25, is the smallest appropriate unit and accordingly direct an election in the following unit:³⁹

³⁸ 322 NLRB at 1080. The seven units were as follows: (1) a unit of employees who generate, transmit, and distribute electricity; (2) a unit of research and lab employees; (3) a unit of employees of one division of the gas department; (4) a unit of the other gas department employees; (5) a unit of customer service and market employees; (6) a unit of office clerical employees and other administrative clerks; and (7) a unit of employees of a synthetic gas manufacturing plant.

³⁹ The Petitioner appears to have agreed, albeit reluctantly, to proceed to an election in a single fossil generation unit for production and maintenance employees. See Pet. Brief at 36.

All full-time and regular part-time physical production and maintenance employees of Constellation Power Source Generation, Inc., including all warehouse employees and truck drivers, but excluding all other employees, all chauffeurs, all confidential, managerial, office clerical, professional and technical employees, and all guards and supervisors as defined in the Act.

Since the unit that I find appropriate is broader than the petitioned-for unit, the Union is granted fourteen (14) days from the date of this Decision to make an adequate showing of interest, if necessary. Should the Union not wish to proceed to an election in the broader unit it will be permitted, upon request, to withdraw its petition without prejudice.

I find that the technical unit petitioned for in BGE's ETDD in Case 5-RC-14908 is not an appropriate unit and that the smallest appropriate unit is a BGE-wide technical unit that includes technical employees in all divisions of BGE's former UOG and accordingly direct an election in the following unit:

All full-time and regular part-time technical employees of Baltimore Gas and Electric Company, but excluding all other employees, all chauffeurs, all truck drivers, all confidential, managerial, office clerical, physical production and maintenance, professional, and warehouse employees, and all guards and supervisors as defined in the Act.

Since the unit that I find appropriate is broader than the petitioned-for unit, the Union is granted fourteen (14) days from the date of this Decision to make an adequate showing of interest, if necessary. Should the Union not wish to proceed to an election in the broader unit it will be permitted, upon request, to withdraw its petition without prejudice.

In light of the parties' Joint Stipulation, as amended, and the record as a whole, I find that a BGE-wide production and maintenance unit is an appropriate unit and I shall direct an election in said unit in Case 5-RC-14909 as follows:

All full-time and regular part-time physical production and maintenance employees of Baltimore Gas and Electric Company, including all warehouse employees and truck drivers, but excluding all other employees, all chauffeurs, all confidential, managerial, office clerical, professional and technical employees, and all guards and supervisors as defined in the Act.

a. A Separate Production and Maintenance Unit Limited to FEMD 25 Is Not An Appropriate Unit and the Smallest Appropriate Production and Maintenance Unit at CPSG Must Include All Production and Maintenance Employees, Including FEMD 25 Employees

With regard to the petition for a separate mobile maintenance unit in 5-RC-14906, I find that traditional community of interest factors, when considered in light of the PECO standard, militate in favor of finding that a separate mobile maintenance unit limited to Department 25 is not an appropriate unit. As described herein, CPSG's fossil plants are operated, maintained and supported through the coordinated activities of four highly integrated departments. One department is responsible for purchasing and delivering fossil fuels to the plants and for training, two departments are charged with the daily operation of the generating plants, and the fourth department provides major maintenance and engineering support to the plants and supplements their routine

maintenance. The employees who staff these departments and units perform interrelated duties and each department and unit plays an indispensable role in CPSG's or the former FED's operations.

In addition, even accepting that Petitioner's Exhibit 22 is accurate (see supra p. 49-50), my unit scope determinations in Cases 5-RC-14906 and 5-RC-14907 are based on the strong community of interest that is shared by the plant and mobile maintenance employees. Specifically, the plant technicians and operators and mobile maintenance employees are subject to the same wage scale and manner of determining earnings. All plant and FEMD employees fall under the same weekly compensation system. All plant and FEMD employees participate in the same RIA & ERAP programs. All plant and FEMD employees participate in the same employee benefit programs. All plant and FEMD employees work similar schedules, although some work shifts and some do not perform shift work. All plant and FEMD employees spend most of their time working in the power plants, under the same safety rules and work conditions. The work they perform is similar. Thus, plant technicians and FEMD employees work on the very same pieces of equipment, using the same types of tools. Plant technicians and FEMD employees often perform identical work concerning plant operations and routine maintenance.

There is similarity in qualifications, skills and training. All plant technicians and FEMD employees are multi-skilled employees, with primary and secondary skills in plant operations and a variety of maintenance disciplines. The skills and qualifications of employees in the plants are similar, if not identical, to employees in the FEMD with the same primary skill (*e.g.*, welder, mechanic, electrical, etc.). Plant and FEMD personnel receive the same safety, equipment operation and technical training from the CPSG or former FED training unit, often in combined classes. The record established that Department 28 has employed temporary training instructors, one modifications mechanic and one machinery mechanic, from Department 25 to train mobile forces in technical skills and equipment operation.

With regard to frequency of contact or other evidence of temporary interchange, the record established that plant and FEMD employees are in constant contact because FEMD employees work in all the fossil power plants on a regular and substantial basis. FEMD employees are regularly assigned to various plants to work side-by-side with plant technicians on an outage or capital project, on routine maintenance and balance of plant work, or as plant operators. With regard to geographic proximity, FEMD employees spend the vast majority of their time working in the same plants as the plant technicians and other undisputed production and maintenance classifications.

With regard to continuity or integration of production processes, the record established that in order to maximize efficiency, CPSG is organized in such a manner that each plant relies heavily on the FEMD to provide it with maintenance support. In addition, the record established that without FEMD, no plant could fully handle its maintenance needs.

With regard to common supervision and determination of labor relations policies, the record established that when assigned to the plants to do routine maintenance, balance of plant, or plant operational work, the FEMD employees are generally supervised by plant supervisors. A single vice-president heads CPSG (the former FED). All of the CPSG employees fall under the same company-wide labor relations policies. With regard to the relationship to the administrative organization, it is clear that Departments 21, 23, 25 and 28 are all integral parts of CPSG.

In these circumstances, I find that the FEMD employees do not share a community of interest separate and apart from the production and maintenance employees throughout the other interrelated departments of CPSG.

In addition, I find that Petitioner's attempt to split the FEMD from the rest of CPSG (or the former FED) does not satisfy the PECO standard. As the Board recognized in Peco Energy Co., 322 NLRB 1074 (1997), a well-defined administrative segment of an organization can justify a smaller-than system-wide unit where "the requested unit conform[s] to a well-defined administrative segment of the utility company's organization and [can] be established without undue disturbance to the company's ability to perform its necessary functions." Id. at 1079 (quoting Baltimore Gas & Electric Co., 206 NLRB 199, 201 (1973)). I find that the unit petitioned for in 5-RC-14906 does not satisfy that criteria, in part, because the record established that CSPG cannot not operate the fossil plants without mobile maintenance assistance.⁴⁰ Mobile maintenance exists to provide maintenance support to the plants. The record clearly established that the fossil plants cannot handle their maintenance needs without mobile maintenance. Thus, if divided, a work stoppage, bargaining issue or other form of labor strife in FEMD 25 could effectively paralyze the fossil plants. Consequently, any subdivision of CPSG maintenance employees poses substantial risks of "undue disturbance to the company's ability to perform its necessary functions." See PECO Energy Co., 322 at 1079, quoting Baltimore Gas & Electric Co., 206 NLRB at 201. In these circumstances, I conclude that the mobile maintenance employees in the Fossil Engineering and Maintenance Department 25 do not constitute an appropriate separate unit that corresponds to an administrative segment of the Employer's operation as contemplated by Board precedent.

In making these unit scope determinations, I emphasize that the CPSG unit found appropriate, much like the units found appropriate in PECO, include production and maintenance employees regardless of the facilities at which they work. See PECO, supra 1080-81, at text accompanying n. 2. In PECO, many of the employees who traveled regularly among the various generating stations (like mobile maintenance employees here) were affiliated with the strategic business units (SBUs) or non-SBU components of PECO that were not petitioned-for. The Board excluded these traveling employees from the power generation group (PPG) and nuclear generation group (NGG) units found appropriate even if they spent most of their time at PGG or NGG stations. PECO, supra 1081, n. 2.

By contrast, although the instant record shows that the mobile maintenance employees petitioned-for in 5-RC-14906 travel regularly among the various generating stations in CPSG and to CCNPP, the record also shows they are affiliated with, regularly interchange and cross-train with, and share a close community of interest with plant technicians and other production and maintenance employees in CPSG. The record clearly established that the mobile maintenance classifications petitioned-for in 5-RC-14906 are cross-trained to possess a wide array of plant operational and maintenance skills. They perform major outage work at the plants in the spring and fall, plant maintenance and backlog work in the winter, and operate seasonal plants in the summer, often under plant supervision. These factors make the mobile maintenance employees distinguishable from the employees in PECO, who traveled regularly among the various generating stations, but who were excluded from the PGG and NGG units found appropriate, even if they spent the majority of their time at PGG or NGG generating stations, because they were affiliated with other SBUs or non-SBU components of PECO. See PECO, supra at 1081, n.2. Moreover, I note that other production and maintenance classifications that Petitioner seeks to include in its petition in 5-RC-14907 perform integrated mobile functions at various fossil plants during outages, but are not sought to be represented in a separate unit.⁴¹

⁴⁰ While the Calvert Cliffs Nuclear Power Plant uses mobile maintenance for major outages, it does not rely on the mobile maintenance work force for routine maintenance and daily operation during summer months like the fossil plants do. Moreover, the record clearly established that Calvert Cliffs can contract out the outage work.

⁴¹ As just one example, material handlers at the Fort Smallwood warehouse temporarily work in the Crane tool room or storeroom during outages.

In sum, given the close coordination, interdependence and functional integration of all CPSG departments, as specifically reorganized to prepare for industry deregulation, and in light of the strong community of interest shared between mobile maintenance employees and other production and maintenance employees throughout CPSG, I find that a unit of all production and maintenance employees in CPSG (BGE's former Fossil Energy Division), including mobile maintenance employees in FEMD 25, is the smallest appropriate unit.

**b. A Separate Technical Unit Limited to the ETDD
Is Not An Appropriate Unit**

In 5-RC-14908, the Petitioner seeks a unit of technical employees limited to BGE's ETDD and would specifically exclude all other technical employees in other divisions of BGE's former Utility Operations Group (UOG). The Petitioner concedes that there are similarly classified technical employees in the other divisions of BGE's former UOG. I find that the effect of this unit position would create unwarranted residual units of other technical employees at BGE and throughout its former UOG. I further find that Petitioner's proposed technical unit is contrary to Board precedent and inconsistent with Board policy, and would unnecessarily fragment technical employees in BGE and its former UOG.

By grouping together and stipulating to the appropriateness of physical production and maintenance employees in the four divisions that comprise BGE and its former UOG in 5-RC-14909, Petitioner, at least implicitly, recognizes that the four divisions that comprise BGE's former UOG are interdependent and functionally related. In any event, the record established that BGE's ETDD, GDD, GSD and RSD divisions operate in a coordinated, cohesive fashion under central management in order to perform reliably the various functions that are necessary to the transmission and delivery of electricity and gas to the public.

The Petitioner does not deny that it is seeking to represent a segment of all the technical employees in BGE or its former UOG. Nor does it deny that the technical employees, whom it does not seek to include in the petitioned-for unit in 5-RC-14908, will remain unrepresented because (at least according to Petitioner) they generally do not share a community of interest with the BGE production and maintenance employees petitioned-for in the unit sought in 5-RC-14909. The thrust of Petitioner's evidence and argument on brief is that the ETDD is a well-defined administrative segment of BGE and that Petitioner seeks to represent separately all employees performing technical-like jobs in the ETDD. For the reasons explained below, and the fact that this unit scope issue concerns the "new BGE," a regulated entity in an industry where unnecessary fragmentation of units should be avoided, I reject Petitioner's evidence and argument as insufficient to carve out a technical unit limited to the ETDD of BGE or its former UOG.

The Board has long held that a unit of technical employees who are separate from similarly situated technical employees is not appropriate without a showing of a community of interest so distinguishable as to warrant the appropriateness of such a unit. In general, the smallest appropriate unit of technical employees working in similar jobs with similar working conditions and benefits comprises all such technical employees. Pratt & Whitney, a Division of United Technologies Corp., 327 NLRB No. 199, slip op. at 3-4 (1999) (citations omitted); New Orleans Pubic Service, 215 NLRB 834 (1974). When technical employees work in similar jobs and have similar working conditions and benefits, the only appropriate unit for a group of technicals must include all such employees similarly employed. Aerojet General Corp., 131 NLRB 1094 (1961).

Thus, when the Board approves the creation of a separate technical unit, it is the Board's policy to include in that unit all technical employees who work in similar jobs and have similar working conditions and benefits. TRW Carr Division, 266 NLRB 326 (1983); New Orleans Public Service, 215 NLRB 834 (1974); Aerojet General Corporation, 131 NLRB 1094 (1961). As the Board stated in New Orleans Public Service:

It is the Board's policy to join in a single unit all technical employees similarly employed and to find a unit of technical employees inappropriate where it does not include all the employees in that category. However, if the technical employees in the proposed unit perform functions which are sufficiently distinct from those of other employees, this will justify their inclusion in a separate unit to the exclusion of other employees who may be technical employees.

215 NLRB 834, 836 (1974) (citations omitted).

Thus, for a technical unit that includes some, but not all, technicals to be appropriate, the technical employees in the proposed unit must clearly have a separate and distinct community of interest from other technicals sufficient to justify their separation. A showing that some technical employees perform their duties in other divisions or departments of the employer's operation is not enough to establish affirmatively why the segmented group of technical employees should be represented separately. TRW Carr Division, 266 NLRB at 326, n.3 and 4; The Bendix Corp., Kansas City Division, 150 NLRB 718, 719 (1964); see also New Orleans Public Service, 215 NLRB at 836. Rather, it is the Board's policy to grant a unit including some, but not all, technical employees only when the employees in the requested unit are shown to possess a sufficiently distinct community of interest apart from other technicals to warrant their establishment as a separate appropriate unit. Whitehead & Kales Company, 196 NLRB 111 (1972). Neither the record nor Petitioner's arguments demonstrate sufficient grounds on which to base a finding that the employees in the petitioned-for technical unit limited to the ETDD have a sufficiently distinct community of interest from other technical employees throughout BGE or its former UOG.⁴²

As noted, the parties stipulated that there are many technical employees in BGE's other three divisions in the former Utility Operations Group that are not part of the ETDD. As demonstrated below when discussing unit placement issues in Part II of this Decision and Direction of Election, many employees in the other BGE divisions, whom the Petitioner would exclude from its petitioned-for technical unit, perform substantially similar technical duties, have similar working conditions, receive the same base level of pay, receive the same benefits, receive the same training, and have substantially the same educational backgrounds. Indeed, many of these employees have identical job titles, job

⁴²There is no technical organizational component of BGE that is "coterminous or synonymous" with the scope of the Union's technical petition. BGE does not have a technical department or technical division. Rather, BGE's technical employees are dispersed both organizationally and geographically throughout its divisions and perform work functions that are highly integrated with the work of other technical employees in the former UOG. Similarly, there is no organizational structure or segment within the ETDD division that recognizes "technical" as a separate or distinct group. On the contrary, the evidence shows that many of the employees whom the Union would place in an ETDD technical unit have different reporting locations and work at BGE facilities which are geographically remote from one another. Many of these employees have little or no contact with other alleged ETDD "technical" employees. Thus, the fact that many ETDD technicals also have little, if any, contact with technicals in other BGE divisions, is not a persuasive factor in deciding the unit scope issue.

descriptions, pay grades, and job selection criteria. For example, there are similarly classified designers, drafters, engineering technicians, construction technicians, and project design coordinators in ETDD and in other divisions of BGE or its former UOG. These employees not only have the same job titles, job description numbers, and pay grades, but they perform similar job functions under similar working conditions and under a coordinated BGE or former UOG management structure.⁴³ In this regard, the record established that the job functions performed by several of the technical employees that the Petitioner seeks to include are closely related to the job functions performed by technical employees in the same or nearly identical job classifications that Petitioner seeks to exclude. For example, Petitioner seeks to include the distribution designers, designers, senior drafters, drafters, new business and distribution construction technician, project design coordinator, engineering technicians and systems support technicians in the ETDD in the petitioned-for technical unit in 5-RC-14908. On the other hand, Petitioner seeks to exclude the gas distribution designers, assistant gas distribution designers, gas distribution drafter, designers construction technician, facility project designer, project design coordinator, engineering technicians and systems support technicians (in either the Gas Distribution Division and/or General Services Division of the UOG) from the petitioned-for technical unit in 5-RC-14908. As demonstrated below when discussing the unit placement of specific technical classifications, the terms and conditions of employment of the foregoing technical classifications that Petitioner seeks to exclude are very similar to the terms and conditions of employment of the foregoing technical classifications that Petitioner seeks to include.

In sum, the record established that the technical employees that Petitioner seeks to exclude, and those that Petitioner seeks to include, receive comparable wages and benefits, have similar working conditions, share similar work interests, have similar skills and training, perform similar job functions, and sometimes work together on joint projects. In addition, they are subject to common personnel policies and programs that are centrally administered by BGE, such as the recently instituted early retirement incentive program for former UOG employees, and they are subject to common ultimate supervision at the Executive-Vice President level. In these circumstances, I find that a unit limited to technical employees in BGE's ETDD is inappropriate. Thus, consistent with Board precedent, and with the parties stipulation recognizing the appropriateness of a BGE-wide physical production and maintenance unit, I find that the technical unit petitioned for in BGE's ETDD in Case 5-RC-14908 is not an appropriate unit and that the smallest appropriate technical unit is a BGE-wide technical unit that includes technical employees in all divisions of BGE's former UOG. This unit consists of all the classifications in the former UOG that both parties agree are technical and those disputed classifications that I find should be included in the BGE-wide technical unit as explained in Part II of this Decision and Direction of Election below.

⁴³ The Atlas project and common training programs are examples of BGE's emphasis on the need for a coordinated work process. See Er. Exhs. 483-85.