UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

IDAHO POWER

Employer

and — Case 27-RC-093439

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 125

Petitioner

DECISION AND ORDER

On November 19, 2012, International Brotherhood of Electrical Workers, Local 125 (Petitioner), filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of employees who work in Boise, Idaho for Idaho Power (Employer), which is a public electric utility. In its petition, the Petitioner sought to include in the unit the Employer's Senior Grid Operators, Grid Operators, Entry Grid Operators, Trainee Grid Operators, Generation Dispatchers, Balancing Operator I's, and Balancing Operator II's, and to exclude all supervisors, guards, clerical employees, confidential employees, all employees whom the Act prohibits from inclusion, and all other employees. On November 27 and 28, 2012, a hearing officer of the National Labor Relations Board conducted a hearing in Boise. Following the close of the hearing, the parties timely filed briefs.

I. PARTIES' POSITIONS

At the hearing, to conform its petition to the Employer's current job titles, the Petitioner clarified that it seeks to represent the following current job classifications. The approximate number of employees in each classification is in parentheses: Senior Load Serving Operator (7), Load Serving Operator (Generation Dispatch, 5), Load Serving Operator (Interchange, 5), Load Serving Operator (Entry, 5), and Balancing Operator I (1) and II (8).

There are approximately 31 employees in the petitioned-for unit. Most of these employees work in an area called the "control room." A few of them work in a room adjacent to the control room, which is called the "back office." These petitioned-for employees are a part of a larger department known as "Load Serving Operations," which is under Director of Load Serving Operations Tessia Park.[1]

The Petitioner has not proposed any other alternative appropriate bargaining unit, and has not asserted that it would proceed to an election in any particular alternative unit in the event that its petitioned-for unit was deemed inappropriate.[2]

The Employer contends that the petitioned-for unit is not appropriate. The Employer's position is that the smallest possible appropriate bargaining unit consists of 50 job classifications (including approximately 504 employees) that fall under one of the Employer's business units called the "Power Supply" business unit. The Power Supply business unit encompasses Director Park's entire Load Serving Operations department, plus eight other departments. The Power Supply business unit includes even more job

[1] As noted *infra,* the other classifications in the Load Serving Operations department that the Petitioner is not seeking to include in the petitioned-for unit are the Outage Coordinators, Operations Analysts, Transmission Schedulers, Regional System Operators, Mobile Workforce Operators and Trainers.
[2] In response to the Hearing Officer's question posed at the end of the hearing as to whether the Petitioner would be willing to proceed to an election in an alternative unit, the Petitioner answered only that it would depend on the unit.

classifications than the 50 that the Employer proposes to include in its requested unit, but the Employer's position is that not every one of those classifications must be included in the smallest possible appropriate bargaining unit.[3]

Although the Employer does not insist that every Power Supply job classification be included in what it considers to be the smallest possible appropriate unit, it does contend that the 50 classifications that it has identified must be included in such a unit.[4] In addition to the various types of Load Serving Operators (Senior, Generation Dispatch, Interchange and Entry) and Balancing Operators I and II sought by Petitioner, the Employer asserts that the smallest appropriate unit must include 50 job classifications. Thus, the Employer's proposed unit would include the various types of Load Serving Operators, Balancing Operators, Generation Specialists, Regional System Operators, Mobile Workforce Operators, Operations Analysts, Outage Coordinators, Energy Transaction Specialists, Technicians, Groundmen, Linemen, and Trainers.

[3] The classifications that the Employer would include in the proposed unit, along with the approximate number of such employees, are as follows. The petitioned-for job classifications are in bold type: **Balancing Operator I (1)**, **Balancing Operator II (8)**, Term Balancing Operator (1), Communication Technician Apprentice (2), Communication Technician (11), Control Equipment Technician II (4), Energy Transaction Specialist I (6), Energy Transaction Specialist II (3), Term Transaction Specialist I (1), Generation Specialist Apprentice I – Hydro Operator (8), Generation Specialist Apprentice II – Hydro Operator (7), Generation Specialist – Hydro Operator (38), Generation Specialist Apprentice II – Simple Cycle Operator (1), Generation Specialist – Simple Cycle Operator (7), Generation Specialist Apprentice II – Mechanic (7), Generation Specialist – Mechanic (33), Generation Specialist Apprentice II – Circuit Breaker (1), Generation Specialist – Circuit Breaker (1), Generation Specialist – Combined Cycle Operator (11), Generation Technician Apprentice II (4), Generation Technician (10), Grid Operations Trainer II (2), Groundman (3), Lineman Apprentice I (3), Lineman Apprentice II (27), Lineman (105), Lineman (Patrol) (10), Lineman (Trouble Work) (48), Line Operations Technician Apprentice (1), Line Operations Technician II (9), **Load Serving Operator Entry (5)**, **Load Serving Operator (Gen Dispatch) (5)**, **Load Serving Operator (Interchange)(5)**, **Senior Load Serving Operator (7)**, Grid Operations Outage Coordinator (1), Mobile Workforce Operations Analyst (1), Mobile Workforce Operator I (2), Mobile Workforce Operator II (9), Operations Analyst I (1), Operations Analyst II (1), Regional Outage Coordinator (2), Regional System Operator II (17), Relay Technician Apprentice (3), Relay Technician (14), Station Technician Apprentice II (10), Station Technician (43), Training Specialist II (1), Transmission Scheduler II (2), and Underground Serviceman II (2).

[4] The Employer's justification for not including classifications in certain departments listed under the Power Supply Business Unit in its proposed smallest unit, is not clear from the record. I note, as discussed *infra*, that some of these departments employ engineers and scientists who might be deemed to be professional employees that would be excluded from any unit pursuant to the stipulation of the parties.

The parties agreed, by stipulation, to exclude from any appropriate unit the Employer's office clericals, managers, guards, professional employees, and supervisors as defined in the Act.

II. ISSUES

The only issue to be addressed herein is whether the Petitioner's proposed unit is an appropriate bargaining unit. Relying on *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (August 26, 2011), the Petitioner contends that the job classifications that it seeks to represent constitute an appropriate unit, because they share a community of interest among themselves and they do not have an overwhelming community of interest with excluded job classifications. In contrast, the Employer relies on cases in which the Board addressed appropriate units in public utility industries to contend that the Petitioner's proposed unit is too narrow to be an appropriate unit of its employees. As I discuss further below, I conclude that the Petitioner's petitioned-for unit is not appropriate for purposes of collective bargaining.[5]

III. INITIAL FINDINGS

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings:

1. **Hearing and Procedures**: The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

[5] In these circumstances, as explained *infra*, where the petitioned-for unit is not appropriate and the Petitioner has not suggested an alternative broader unit it would consider representing at this time, it not necessary to determine whether the Employer's proposed unit is appropriate.

2. **Jurisdiction**: The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it is subject to the jurisdiction of the Board. [6]

3. **Labor Organization Status**: The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. **Statutory Question**: Based upon the record and for the reasons set forth below, no question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

IV. DECISION

A. General Principles of Unit-Determinations for Public Utilities

The Board has long held that in public utility industries a systemwide bargaining unit is optimal. *See New England Telephone Co.*, 280 NLRB 162, 164 (1986). The Board has explained that the reason underlying this preference for systemwide utility-industry bargaining units is that "the economic reality [is] that the public utility industry is characterized by a high degree of interdependence of its various segments and that the public has an immediate and direct interest in the uninterrupted maintenance of the essential services that this industry alone can adequately provide." *Baltimore Gas & Electric Co.*, 206 NLRB 199, 201 (1973). The Board has observed that, "if [it] did not require comprehensive units, labor disputes or stoppages at any one facility could have a domino effect across the entire utility system, halting the provision of essential services to the public in places likely far removed from the situs of the dispute." *Verizon Wireless*, 341 NLRB 483, 484 (2004). The Board, therefore, has been reluctant to

[6] As noted *infra*, the Board has asserted jurisdiction over this Employer in two prior cases (*Idaho Power I*, 126 NLRB 547 (1960), and *Idaho Power II*, 179 NLRB 22 (1969).

"fragmentize" a utility's operations. *See Baltimore Gas & Electric Co.*, 206 NLRB at 201.

While the Board has recognized that public utilities may be, in comparison to other industries, more intimately interrelated and interdependent throughout a widespread system, it has also been the Board's policy to permit the establishment of a unit less than systemwide in scope where the particular circumstances involved show that a narrower unit also is appropriate. *See Colorado Interstate Gas Co.*, 202 NLRB 847, 848-849 (1973). In the utility industry, the Board allows smaller than systemwide bargaining units only if there is compelling evidence that collective bargaining in a unit less than systemwide in scope is warranted. *See Baltimore Gas & Electric Co.*, 206 NLRB at 201.

In determining whether less than systemwide bargaining is warranted, the Board looks to various factors to "balance[ ] the employees' Section 7 rights against the public's interest in uninterrupted utility service that only a single entity provides." *Alyeska Pipeline Service Co.*, 348 NLRB 808, 809 (2006). The Board's policy for public utilities has been to permit the establishment of a unit less than systemwide in scope only where the employees requested have no history of bargaining on a broader basis, they work either in an administrative subdivision or a distinct geographic service area of the utility, and they enjoy a substantial community of interest sufficient to make separate bargaining for them a feasible undertaking. *See Colorado Interstate Gas Co.*, 202 NLRB at 848-849. For the Board to deem a less-than-systemwide unit to be appropriate, the boundaries of the requested unit must conform to a "well-defined administrative segment of the utility company's organization" and the unit must not result in undue disturbance to the company's ability to perform its necessary functions.

Baltimore Gas & Electric Co., 206 NLRB at 201. Where the scope of a proposed bargaining unit does not conform to the boundaries of a well-defined administrative segment of the company's organization, the unit is not appropriate. *See PECO Energy Co.*, 322 NLRB 1074, 1080-1081 (1997).

As stated above, the Petitioner relies on *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (August 26, 2011), to contend that its petitioned-for unit is an appropriate one. In *Specialty Healthcare*, the Board addressed the proper standard to apply to unit determinations in nonacute-care health-care facilities. The Board determined that "traditional" community-of-interest unit-determination principles should apply in such settings, and it overruled its previous holding in *Park Manor Care Center*, 305 NLRB 872 (1991), which had held that a modified standard applies to units in nonacute-care health-care facilities.

In *Specialty Healthcare*, 357 NLRB No. 83, slip op. at 8-13, the Board described the analysis that applies to bargaining unit determinations under the traditional unit-determination principles. The Board summarized its explanation of that analysis as follows:

> We therefore take this opportunity to make clear that, when employees or a labor organization petition for an election in a unit of employees who are readily identifiable as a group (based on job classifications, departments, functions, work locations, skills, or similar factors) and the Board finds that the employees in the group share a community of interest after considering the traditional criteria, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that employees in the unit could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an overwhelming community of interest with those in the petitioned-for unit.

Id. at 12-13.

The Board's decision in *Specialty Healthcare* did not overturn or modify the case law discussed above pertaining to appropriate units in public utility industries. In *Specialty Healthcare*, the Board specifically recognized that it previously had created a presumption that systemwide units are "optimal" for public utilities and that it is reluctant to fragmentize such units, absent compelling circumstances. *Id.* at 7 and n.17. Moreover, the Board expressly stated the following:

> We note that the Board has developed various presumptions and special industry and occupation rules in the course of adjudication. Our holding today is not intended to disturb any rules applicable only in specific industries other than the rule announced in *Park Manor*.

Id. at 13. n.29. *Accord Northrop Gruman Shipbuilding, Inc.*, 357 NLRB No. 163, slip op. at 4 (December 30, 2011); *DTG Operations, Inc.*, 357 NLRB No. 175, slip op. at 4 n.16 (December 30, 2011). Thus, it is clear that the Board did not change any specific standards previously established for public utility industries.

Consequently, contrary to the Petitioner's contention, the Board's decision in *Specialty Healthcare* does not establish the proper framework for resolving this case. Instead, the proper analysis for this case is set forth in the public utility cases discussed above.

B. Previous Board Decisions Involving This Employer

In two reported Board cases in the 1960s, the Board applied the principles discussed above in making unit determinations regarding petitioned-for units consisting of employees of the Employer. As described more fully below, the Board found in one of those cases that a systemwide unit of production and maintenance employees was the smallest appropriate unit, and in the other case it found that a unit consisting of the employees in one of the Employer's administrative subdivisions was the smallest appropriate unit.

In *Idaho Power Co.*, 126 NLRB 547 (1960) ("*Idaho Power I*"), the petitioning union proposed two alternative units and it also made clear that it was willing to participate in an election in any unit that the Board deemed appropriate. The Union primarily sought to represent a unit of the Employer's production and maintenance employees who were directly engaged in the production, transmission, and distribution of electrical energy. Alternatively, the union sought to represent a unit of production and maintenance employees in other specified Employer divisions.

In that case, the Board concluded that the petitioner's proposed units were inappropriate because the units sought did not correspond to any administrative subdivision of the Employer's operations, and there was no prior bargaining history that supported a conclusion that either of the petitioned-for units was appropriate. However, because the petitioning union expressed a willingness to participate in an election in any unit that the Board found appropriate, the Board proceeded to determine the appropriate unit for the Employer's workforce. The Board concluded the following:

> Upon the entire record, including the nature and integration of Employer's operations, the centralized control of management over the operation, and the uniformity of employee benefits, we find that a systemwide unit of production and maintenance employees . . . is appropriate.

Nine years later, in *Idaho Power Co.*, 179 NLRB 22 (1969) ("*Idaho Power II*"), the Board again addressed the appropriateness of a petitioned-for unit of the Employer's employees. In that case, the petitioning union sought to represent all of the employees in the Employer's Eastern Division, including the employees of the Employer's American Falls power plant, with appropriate exclusions. Alternatively, the union sought to represent the same unit but with the American Falls employees excluded. The Employer opposed either proposed unit, on the grounds that only a systemwide unit of production and maintenance employees was appropriate.

The Board determined - based on evidence showing at that time (1969) that the Employer had four separate and distinct administrative divisions with each division headquartered in a major town - that "[t]he Employer's divisional structure corresponds to natural geographic demands, and the employees assigned to the Eastern Division service a well-defined geographic area and are located a considerable distance from the Employer's general office and from employees in other divisions."[7] *Id.* at 24. The Board also found that each division had been invested with "substantial autonomy, particularly in the area of personnel practices." *Id.* In that regard, the Board found the following:

> The division manager exercises a large measure of, for all practical purposes, unfettered discretion with regard to decisions as to hiring, discharge, promotions, and vacations of employees within the division. It is also apparent that the Employer considers the division a necessary and meaningfully distinct entity, as evidenced by the separate seniority system and divisional meetings. Interchange of employees between divisions is not only negligible, but it is also in some measure discouraged by the Employer.

Id.

Citing the principle that "[w]here, on balance, all of 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, the Board may find that a less-than-systemwide unit is appropriate for collective-bargaining purposes[,]" the Board concluded the following:

> In view of the geographic coherence of the requested unit, the distinctiveness of its functions, and the relative autonomy of operation with which its managing official has been entrusted, we conclude that the employees of the Employer's Eastern Division share a sufficiently separate community of interests from other employees as to warrant a separate bargaining relationship, should they so desire.

[7] The Board stated that in its earlier case involving the Employer "the nature of the [p]etitioner's request and the presentation of the evidence did not focus upon the possibility of finding appropriate an 'administrative subdivision of the Employer's operations,' . . . ."

Id. The Board decided to exclude the employees in the American Falls power plant because they were not under the jurisdiction of the Eastern Division and, therefore, did not share such a community of interest with Eastern Division employees as to warrant their inclusion. *Id.* at 25.

C. Consolidation/Centralization of Employer Operations Since the 1960's

The evidence shows that, since the Board decided those previous cases in the 1960s, the Employer's operations have become much more consolidated and centralized and the Employer no longer operates along the divisional lines that the Board described in *Idaho Power II*. Lisa Grow, the Employer's Senior Vice-President of the Power Supply business unit, testified that she has been with the Employer for 25 years in various capacities, starting with the Employer as an electrical engineer, then working in a variety of positions dealing with operation of the power grid, and ultimately moving into management.

Grow testified that, since 1969, there have been substantial changes in Idaho's power industry which have resulted, over time, in the Employer shifting to more centralization, consolidation, and uniformity of systems, operations, and policies and procedures. She described how in the 1960s agriculture was a key industry in Idaho's economy and how water needed to be pumped to the agriculture fields. With that economic base, the Employer did not have as much of an interconnected electric system as it does now, and in those earlier years it organized its operations around "self-contained" regional units with regional managers. However, from then until now, Idaho's population and industry grew, and the economy developed into one that involves more manufacturing companies and high-tech businesses. The Employer responded to those economic changes by building more generators and transmission lines and by shifting away from the divisional structure that had existed in 1969, but no longer does.

D. Bargaining History

The record does not show that there has been any history of actual bargaining between the Employer and any collective-bargaining representative for its employees. The only evidence about prior bargaining history is set forth in the two previous reported cases in the 1960's involving this Employer (*Idaho Power I* and *Idaho Power II*), which were described above. Apparently, the Board's decisions in those cases did not lead to the formation of any bargaining relationships between the Employer and the petitioning labor organizations.

Although the record does not show any actual bargaining history involving this Employer, it does include evidence about bargaining units involving other electric utility employers. The Petitioner in this case represents employees of Portland General Electric Company in a broad unit consisting of "all bargaining unit employees working with tools, equipment, or materials in Company stores, shops, electrical distribution, electrical construction, [and] power production and transmission . . . ." Other local unions affiliated with the International Brotherhood of Electrical Workers represent employees of NorthWestern Energy (IBEW Local 44), Rocky Mountain Power (IBEW Local 57), Avista Utilities (IBEW Local 77), Public Utility District No. 1 of Chelan County (IBEW Local 77), Public Utility District No. 2 of Grant County (IBEW Local 77), and Sierra Pacific Power Company (IBEW Local 1254) in units much broader and larger than the unit that the Petitioner requests here.

E. The Employer's Operations

1. **Background:**

The Employer is an investor-owned monopoly public electric utility that is engaged in the generation, transmission, distribution, sale, and purchase of electric energy. The Employer sells electricity to retail customers (such as residences and businesses) and wholesale customers (such as other utilities and energy marketing companies). It is the chief operating subsidiary of a holding company, IDACORP, Inc., that is traded on the New York Stock Exchange.

As a monopoly public utility, the Employer's operations are subject to regulation by governmental bodies. The U.S. Federal Energy Regulatory Commission (FERC) and state agencies of Idaho and Oregon are the primary regulators. A body known as the North American Electric Reliability Council (NERC) handles actual oversight of electric operations on behalf of FERC. A subpart of NERC, known as the Western Energy Coordinating Council (WECC), administers NERC's authority in the western United States. Together, these governmental bodies issue rules and regulations, including reliability standards, to govern electric operations like the Employer's.

The Employer's service area covers southern Idaho and eastern Oregon. That area covers approximately 24,000 square miles. Within that area, the Employer has almost half a million residential and business customers. The Employer calculates the number of customers by the number of electric meters there are. Because many meters serve more than one person, the Employer provides electricity to a population of over one million people (which is approximately two-thirds of the total population of Idaho).

The Employer's service area consists of three regions, known as the Capital Region, the Canyon-West Region (which runs into eastern Oregon), and the South-East Region. The Capital Region includes Boise, which is the largest city in Idaho. There is no evidence showing that these regions have any independent operational authority or that they have any regional managers or supervisors.

The Employer generates electrical energy through 17 hydroelectric generating plants on the Snake River and several thermal facilities consisting of 3 natural gas-fired plants (located in Idaho), 3 jointly-owned coal-fired plants (located in Oregon, Nevada, and Wyoming), and a small diesel plant that is used for emergency backup (also located in Idaho).

Additionally, the Employer is part of an interconnected power grid in the western United States. Consequently, the Employer can obtain power by purchasing energy from the wholesale energy market when it needs additional energy to serve customer loads or when purchasing energy is less costly than running its own generating plants. Through the interconnected grid, the Employer also can transfer to other utilities any excess energy that it generates but cannot use due to lower than anticipated demand from its customers.

The Employer uses transmission power lines to move generated energy, which is very high voltage, over long distances. The high-voltage energy that flows through the transmission lines goes to a series of substations established at various locations throughout the Employer's system. The Employer has approximately 4800 miles of transmission lines.

When the high-voltage energy passes through the substations, equipment at those locations reduces the energy level so that it can flow safely into the homes and businesses of electricity end users. From the substations, the Employer distributes energy to homes and businesses through smaller, lower-voltage distribution lines. The Employer has approximately 26,700 miles of distribution lines.

The Employer has over 2000 employees, who work in a wide variety of job classifications. The employees work in various parts of a large integrated system that is designed to ensure the availability and delivery of sufficient power to keep the many users of the Employer's electrical system supplied with enough energy to run their homes and businesses.

The Employer's corporate headquarters building is located in downtown Boise. Many of the Employer's managers, supervisors, and employees work in that building. Although the record does not reveal all the job classifications and the specific number of personnel who work in that building, the record demonstrates that several different job classifications work at least on the fourth and sixth floors. Presumably, numerous other employees work on the other floors of the building.

Additionally, the Employer has other offices in downtown Boise, in a separate building known as the Banner Bank Building. The Banner Bank Building is located approximately five blocks from the corporate headquarters building. Many of the Employer's employees have offices in this building.

Due to the nature of the Employer's operations, many of its employees work in the field, outside of the downtown Boise office buildings. For example, some employees work at the power stations located by the water resources that the Employer uses to generate energy. Other employees who handle repairs and maintenance have variable work locations, going to wherever there is a need for repair or maintenance on the system.

The Employer has plans to move some of its operations in approximately October 2013 from the Banner Bank Building to a new site in west Boise. The new site will be approximately five miles from the downtown. The reason for the planned move is that there are concerns about potential flooding in downtown Boise. The Employer expects to move some technology operations to the new site, along with some employees who work on the distribution side of the operations. The move will not change the nature of any employee's work, nor will it have any impact on how employees do their jobs or with whom they interact to complete their job tasks.

2. The Petitioned-For Unit

Of the Employer's approximately 2000 employees, the Petitioner seeks to represent approximately 31 employees who work as Senior Load Serving Operators, Load Serving Operators (Generation Dispatch), Load Serving Operators (Interchange), Load Serving Operators (Entry), and Balancing Operators I and II. All of these job classifications are included as part of a larger work unit that functions as a department. That department is known as "Load Serving Operations." The head of that department is Director of Load Servicing Operations Tessia Park.

As described further below, most of these petitioned-for employees work in the control room in positions that give them responsibility for controlling and monitoring the Employer's electrical grid, and some of them work in the back office in positions that tie into the control room's operations. The functions that these employees perform are indispensable to the Employer's operations. Most of the petitioned-for unit employees directly operate and oversee the system in real time, on an hour-to-hour and minute-by-minute basis, to make sure that the right amount of power is available to handle the customer load on the system and to take appropriate actions to keep the system functioning safely and efficiently. Without these key employees, the entire electrical system simply could not function. The control room operates 24 hours per day, 7 days per week, including holidays.

Reflecting the crucial role that the employees in these job classifications play in the operation of the Employer's electrical system, NERC requires that all of the employees holding these positions be certified within a one-year grace period following their start dates. The only other personnel who need to have a NERC certification are some of the managers and leaders involved in overseeing these operations and a group of trainers who provide training to the personnel who will work in the control room. None of the other employees need to be certified.

To obtain a NERC certification, these employees must take and pass a test that NERC administers. They also have to go through on-the-job supervised training at control room desks. To maintain their certifications, the employees must take annual continuing education classes.

The discussion immediately below provides more detail about the control room and back office, and about the duties and responsibilities of the petitioned-for job classifications.

3. The Control Room and Back Office

The control room is located in the corporate headquarters building, on the fourth floor at the west side of the building. The control room has a series of six desks that are equipped with computers and monitors that are used to control energy generation and transmission resources. Four of these six desks are regular work desks, and the other two desks are backup desks for relief personnel to use in situations when additional assistance is needed, such as when there are significant outages or other similar problems.

The control room serves as the "nerve center" for the Employer's generation and transmission functions. As such, it is considered to contain critical "cyber assets" that must be protected from outside threats. Theoretically, it is possible that if someone were to gain access to the control room that person could seize control of the power grid.

Because the control room contains critical infrastructure, it is a high-security, access-controlled area. Only authorized personnel can access the control room, which is protected by a locked door. To gain access to the control area, employees first must go through a background check and obtain a security badge that allows access. The Employer utilizes a badge system to help it enforce the limited access to the control room. All of the Employer's employees have to wear a badge that is color-coded in one of three colors (green, purple, or blue) to identify their clearance level. Each employee who has authority to access the control room wears a green badge. Before authorized personnel can actually get into the control room, they must be escorted in. Inside the control room, there is a system that monitors activity to make sure that the room contains only the correct number of authorized people at any given time. Additionally, video cameras and security personnel continually monitor the control room.

In addition to the employees who regularly work in the control room, there is a limited set of other personnel who can access the control room. For example, employees who may have a need to be there can get into the control room, such as managers, Outage Coordinators, Transmission Schedulers, and technicians who perform repair and maintenance work in the control room. Also, the Trainers who train employees to work in control room positions can get access. Other employees, such as Regional System Operators and Mobile Workforce Operators, can get access to the control room area to be trained on various operations relating to their jobs.

The control room typically has a busy work environment. The desks located in that room must be attended constantly to ensure the safe and efficient operation of the electrical system. Employees are able to take only short breaks, for purposes such as going to the bathroom or heating up their lunches (which they eat at their desks). When the employees have to be away from their desks for short periods, other personnel in the control room assist in monitoring their desks, answering their phones, and taking messages.

The back office is located immediately to the south of the control room, in the southwest corner of the corporate headquarters building's fourth floor. The back office houses personnel who provide background service to the control room personnel, such as producing information about power levels. The back office area is not part of the high-security area for the control room. The back office can be accessed through use of a key card.

Among the personnel stationed in the back office are Director of Load Servicing Operations Tessia Park, a manager of balancing operations, and other employees as discussed further below.

4. The Job Classifications in the Petitioned-For Unit

a. Senior Load Serving Operators

The Senior Load Serving Operators have the highest authority in the control room. They are responsible for the overall operations of the high voltage transmission system and for monitoring an emergency management system to make sure that the system does not exceed its operating limits. They operate various devices and capacitors to increase or decrease voltage. They also direct the various tasks for which the other control room personnel are responsible, and they are in frequent communication with those personnel. Also, as part of the repair and maintenance process, they interact with Outage Coordinators, Regional System Operators, and substation personnel to remove substation devices, transformers, and other components from service. Additionally, in situations involving blackouts, the Senior Load Serving Operators direct the processes involved in starting generators that bring the system back up to running capacity. To hold this position, the Senior Load Serving Operators must have the highest-level certification from NERC. The Employer has six or seven Senior Load Serving Operators.

b. Load Serving Operators (Generation Dispatch)

The Load Serving Operators (Generation Dispatch),who also work in the control room, are responsible for communicating with employees at the actual power generation facilities to coordinate the level of power being generated and to check on the operational status of the generation facilities. For example, the Load Serving Operators (Generation Dispatch) may order the operators of those facilities – that is, the Generation Specialists - to generate more or less power, as needed. Also, these Load Serving Operators (Generation Dispatch) communicate with the facility operators to coordinate taking units off-line for maintenance. The Load Serving Operators (General Dispatch) work in concert with the other control room personnel, including the Senior Load Serving Operator and the Balancing Operator. The Employer has five Load Serving Operators (Generation Dispatch).

c. Load Serving Operators (Interchange)

The Load Serving Operators (Interchange) work directly with personnel from other utilities who have reserved power on the Employer's transmission system so that it can be transferred from the Employer's system to the outside parties. The Load Serving Operators (Interchange) take care of transferring the power through use of the interconnected grid system. They also communicate and interact with Transmission Schedulers stationed in the back office regarding reservations for transferring energy into and out of the Employer's system. During nights and on weekends, the Load Serving Operators (Interchange) perform tasks that the Transmission Schedulers handle during the regular work week (Monday through Friday) during the days. The Employer has five Load Serving Operators (Interchange)

d. Load Serving Operators (Entry)

The Load Serving Operators (Entry) are employees who are in training to take on desk positions inside the control room. They are trainees who can work on any of the desks relating to load serving operations, with proper supervision. The Load Serving Operators (Entry) also spend a significant amount of time in the training room, and they report to their assigned Trainers. The Employer has five Load Serving Operators (Entry).

e. Load Serving Balancing Operators

The Employer has approximately ten Load Serving Balancing Operators. They are classified either as Balancing Operator I or Balancing Operator II. The difference between them involves the amount of time spent in the job. The Balancing Operator I position is the entry-level position.

The basic responsibility of the Balancing Operators is to make sure that the correct amount of energy is available to meet the customer load, so that the available energy and load are in balance. The Balance Operators strive to keep generation and load in balance. They have to make forecasts based on various factors such as wind, temperature, and the availability of water resources. Sometimes there is more energy generated than there is load, and other times there is less energy generated than there is load. When generation and load are not in balance, the Balancing Operators take appropriate action.

The Employer assigns its several Balancing Operators to operate in different time horizons to plan for meeting generation and load. Some Balancing Operators analyze the various relevant factors with an eye toward projecting energy needs and resources in a time range from 60 days out before power is actually put to use through the day or few days before real time; they are called Term Balancing Operators. It appears that the Employer has one Term Balancing Operator. Other Balancing Operators function in the time horizon around a day or so out from real time; these Balancing Operators are called Day-Ahead Balancing Operators. The Employer apparently has three Day-Ahead Balancing Operators.

Still other Balancing Operators operate in real time, when power is being put to actual use, with fine tuning by the hour and minute; they are called Real-Time Balancing Operators. It appears that the Employer has approximately six Real-Time Balancing Operators. The work that the various types of Balancing Operators do fits together in that the ones who work in advance of real time make forecasts of energy availability and need so that, when real time comes, the correct balance is set up in advance as well as possible for the real-time operators. As the system gets closer to real time, the goal is to get more accurate in the forecasts, so that the Real-Time Balancing Operator has close to the correct balance of energy and load.

The Real-Time Balancing Operators work inside the control room. The Term and Day-Ahead Balancing Operators work in the back office. The Term and Day-Ahead Balancing Operators do not work in the control room unless they are called to fill in as a Real-Time Balancing Operator.

When there is not enough energy for the load, the Balancing Operators figure out how to get more energy to meet the load. The available options include generating more power from the Employer's own resources, or going to the energy market to buy power from other sources and have it transferred into the Employer's system.

To generate more power from the Employer's resources, the Balancing Operators communicate with other real-time personnel in the control room such as the Load Serving Operators (Generation Dispatch), who can direct control of generation resources.

To purchase electricity, the Balancing Operators communicate over the telephone or through other technology with other market participants, such as other utilities or energy brokers. They work with other control room and back office personnel (such as the Transmission Schedulers) to bring in the power.

When there is too much energy for the load, the Balancing Operators themselves cannot sell the power. The only personnel who can sell power work in a different department that is known as the "merchant group." The Balancing Operators can only make the decision that there is excess energy that is available for the merchant group employees to sell on the market. Once a Balancing Operator decides that there is excess energy available to sell, Energy Transaction Specialists in the merchant group handle the actual sale process.[8] FERC requires that there be a “firewall” between the Balancing Operators and the merchant group personnel to protect against manipulation in the energy markets. The merchant group personnel do not work either in the control room or in the back office; they work on the sixth floor of the corporate headquarters building. For the merchant group to do its work, the Balancing Operators have to communicate with the Energy Transactions Specialists, with the control room operators, and with back office Transmission Schedulers to move the energy out of the system.

5. The Load Serving Operations Department and Classifications

As stated above, the head of the department that includes all of the job classifications in the petitioned-for bargaining unit is Director of Load Servicing Operations Tessia Park.

In addition, Director of Load Serving Operations Park also has numerous other employees in the Load Serving Operations department whom the Petitioner does not seek to represent. Director Park’s Load Serving Operations department includes personnel who handle the electric system at various points from the generation facilities’ output all the way to delivery of electricity to customers, to ensure that the customers have ready access to electricity. There are a total of approximately 110 employees in Director Park’s Load Serving Operations department, including the approximately 31 employees that the Petitioner seeks to represent.

Among the other employees in Load Serving Operations whom the Petitioner does not seek to represent are additional personnel who work in the back office, next to the Term and Day-Ahead Balancing Operators and to Director Park and the manager of balancing operations. These employees are Outage Coordinators, Operations

[8] In addition to selling electricity, merchant group personnel also buy and sell natural gas on the energy market.

Analysts, and Transmission Schedulers. These employees do not sit at control room desks, but they do perform services and provide information that is related to the work done inside the control room. For example, the Outage Coordinators coordinate the temporary shutdown of power lines for repair and maintenance needs. The Operations Analysts provide calculations about how much capacity is available to sell to outside parties. The Transmission Schedulers accept reservations on the Employer's system for transferring energy out of the Employer's system to other utilities, checking those reservations for accuracy, and verifying after the transfer that the amount of energy transferred matches the scheduled amount. In carrying out these responsibilities, the Transmission Schedulers interact with the Senior Load Serving Operators, the Load Serving Operators (Interchange), and the Balancing Operators.

Other employees in Director Park's department handle issues and problems on the distribution side of the electrical system, which involves the part of the system that runs from the substations all the way to the final consumers. The work that these employees do involves the distribution lines that have lower voltages than on the transmission lines. These employees are classified as Regional System Operators and Mobile Workforce Operators. They do not work in the corporate headquarters building. Instead, they work near each other on the fourth floor of the Banner Bank Building, approximately five blocks from the corporate headquarters building.

The Regional System Operators are responsible for coordinating the process of getting work crews (including Troublemen, Linemen, and other similar employees) out to make repairs on the distribution system. They are involved in dispatching and monitoring repair crews to fix problems that prevent electricity from flowing to customer locations. Although the Regional System Operators do not handle the high-voltage lines for which the control room personnel are responsible, they perform similar operations in that they control energy on the Employer's distribution lines. The Regional System Operators communicate with control room personnel, for example, to make sure that power is cut off to substations and lines on which the repair crews are working. To prevent injury, the Regional System Operators and personnel in the control room coordinate their efforts to make sure that there is no power going to any of the lines or devices under repair. They have a system of clearances to eliminate or reduce the chance that field employees will touch a hot line. The Regional System Operators also communicate with customers regarding outages.

The Mobile Workforce Operators take calls about problems with distribution lines, such as when a car hits a power pole that results in the disruption of power. They enter trouble orders into an outage management system and use laptop computers and other electronic media to pass orders and information to the Regional System Operators and the work crews who deal directly with the outages.

Director Park's unit also includes employees who coordinate training of employees in Load Serving Operations. These Trainers are responsible for training the control room personnel and helping them obtain their NERC certifications. The Trainers usually conduct training for these personnel inside the control room, and they have badge access to the control room. The Trainers also train other personnel in the Load Serving Operations department, including Regional System Operators. This training usually is conducted in the Banner Bank Building, but sometimes it takes place in or near the control room.

The Trainers have their own NERC certifications, and they sometimes work in the control room desks when there is a need for them to fill in (which happens approximately once every three months).

The Trainers have desks at the Banner Bank Building, but they move between that building and the corporate headquarters building in order to train the various groups of employees. One of the trainers, Frank Hahn, has his office located at the corporate headquarters building on the fourth floor, in the back office adjacent to the control room.

Director of Load Serving Operations Park reports to the head of the Power Supply business unit, which is a larger business unit that encompasses Load Serving Operations and eight other departments. Senior Vice-President Lisa Grow is the head of the Power Supply business unit.

6. The Power Supply Business Unit

The Power Supply business unit that Senior Vice-President Lisa Grow oversees is a large business unit that deals with a very broad range of responsibilities related to the process of generating power and delivering it to customers, including issues that go beyond the load serving operations that Director Park's unit handles. There are over 500 employees who occupy positions that fall under the Power Supply unit. As stated above, the Employer's proposed appropriate bargaining unit of approximately 504 employees consists of many, but not all, of the Power Supply job classifications.

Senior Vice-President Grow oversees several senior directors and managers who are responsible for managing department-level supervisors and staff who deal with various day-to-day operations and work tasks within the scope of their respective authorities. The directors and managers who report to Senior Vice-President Grow are the following: Director Tessia Park (Load Serving Operations), Manager Mark Stokes

(Power Supply Planning), Director Karl Bohenkamp (Operations Strategy), Director Chris Randolph (Environmental Affairs), Manager Michael Polito (Power Supply Operations), Manager Roger Fuhrman (Water Management), Manager Tom Harvey (Joint Products), Manager Dale Koger (Power Production), and Manager Scott Larrondo (Power Production Engineering and Construction).

Manager Mark Stokes (Power Supply Planning) oversees power supply planning for the long-term (approximately 20 years) and the short-term. He oversees a team that creates an Integrated Resources Plan, which must be done every two years.

Director Karl Bohenkamp (Operations Strategy) deals with issues of operational strategy and sustainability. He oversees a small group of two professional employees.

Director Chris Randolph (Environmental Affairs) handles environmental issues pertaining to licensing and relicensing the water facilities that the Employer uses to generate electricity. His department also deals with archeological issues, water quality issues, and issues involving endangered species. His department employs a number of scientists who specialize in fields such as archeology and biology.

Manager Michael Polito (Power Supply Operations) oversees the merchant group that sells electricity and buys and sells natural gas, which was discussed above. This department includes several Energy Transaction Specialists.

Manager Roger Fuhrman (Water Management) deals with long-term hydrology forecasting and related issues, such as mapping river systems and conducting studies about how fast water flows from aquifers into the river systems. This department employs several employees with higher degrees such as PhDs.

Manager Tom Harvey (Joint Products) handles the assets and relationships associated with the Employer’s three jointly-owned coal-fired plants.

Manager Dale Koger (Power Production) is responsible for taking care of all generation facilities in the Employer's generation system within Idaho. He oversees the employees who have responsibility for direct operation of the power production facilities (that is, the Generation Specialists) and other employees who work at the generation facilities.

Manager Scott Larrondo (Power Production Engineering and Construction) deals with construction and maintenance of generation facilities. His work unit employs a number of engineers.

It appears that the bulk of the employees whom the Employer seeks to include in its proposed bargaining unit (in addition to the employees in Load Serving Operations) work under Michael Polito in Power Supply Operations (the merchant group) and under Dale Kroger in Power Production.

As the head of the Power Supply business unit, Senior Vice-President Lisa Grow reports to Executive Vice-President/Chief Operating Officer Dan Minor. Minor also receives reports from the heads of four other business units, who are the following: Vice-President Warren Kline (Customer Operations), Vice-President Vern Porter (Delivery Engineering and Construction), Vice-President and Chief Information Officer Dennis Gribble, and Vice-President Luci McDonald (Human Resources and Corporate Services).

Executive Vice-President/Chief Operating Officer Minor reports to President and Chief Financial Officer Darrel Anderson who, in turn, reports to the head of the company, Chief Executive Officer LaMont Keen.

7. Terms and Conditions of Employment

The Employer has a central Human Resources department, with a Director of Human Resources named Lonnie Krawl. Krawl receives reports from several individuals who specialize in particular subject areas. Angelique Keavney reports to Krawl on hiring and recruiting; Caroline McNeely reports on training and development; Chad Holt reports on benefits; Toni Olson reports on retirement plans; Sarah Griffin reports on employment/employee relations; and Robin Sexton reports on disability issues. Director Krawl reports to the Vice-President of Human Resources and Corporate Services, Luci McDonald.

Through the Human Resources department, the Employer has developed several policies and practices that apply to all employees in common, excluding executives and senior managers. For example, the Human Resources department has policies governing hiring, compensation and benefits, employee conduct and performance, and discipline.

With regard to hiring, the Employer has procedures in place to find appropriate candidates. For jobs that are to be filled internally, the Human Resources department posts the jobs on the internal intranet, at a career board section. Employees can apply for these positions by submitting an on-line application or by submitting a hard copy application. For jobs that may be filled externally, the Human Resources department posts jobs and accepts applications and resumes through on-line filing. After the application period closes, the Human Resources department conducts an initial screening to determine which applicants meet the basic job requirements. Human Resources forwards that pool of applications to the manager who has the need to hire. The hiring manager does a “technical screen” of the better applicants, which usually consists of a telephone call between the manager and each of the applicants. At that point, the applicants again are filtered down to a few candidates who are brought in for face-to-face interviews with a hiring team. With the assistance of Human Resources personnel, the hiring team scores interviewed applicants and eventually makes a decision about which candidate to hire.

The Employer has a wage scale that applies to all employees. The wage scale establishes 39 pay grades, each of which has 13 steps. To illustrate pay levels for 2012, grade 1 hourly pay ranged from $11.55 at step 1 to $14.44 at step 13, while grade 39 hourly pay ranged from $47.47 at step 1 to $59.34 at step 13. For annual pay amounts for 2012, grade 1 annual pay ranged from $29,024.00 at step 1 to $30,035.20 at step 13, while grade 39 annual pay ranged from $98,737.60 at step 1 to $123,427.20 at step 13. The Employer arrives at these amounts through consideration of market wage data and issues relating to internal job equity. When employees are hired, the hiring manager works with Human Resources personnel to determine the employees' starting grade and step. Pay increases as employees move from step to step within each grade, and as they progress to higher grades. Employees can progress to higher pay through performance that justifies a merit increase. Managers and supervisors review personnel approximately every six months. These evaluations determine whether employees will advance to higher steps and grades. Supervisors can authorize up to a two-step increase every six months to reward employees for good performance. Only a senior vice-president or executive vice-president can approve more than a two-step increase during one six-month period. The Employer adjusts the wage-scale amounts annually, based on the results of surveys that the Human Resources department conducts. The Employer pays employees once every two weeks.

The petitioned-for employees are paid near the high end of the Employer's wage scale. For example, the evidence shows that one of the Senior Load Serving Operators is at grade 36 and one of the Load Serving Operators (Generation Dispatch) is at grade 35. It appears that the Load Serving Operators (Entry) and Balancing Operator I's are paid at approximately grade 32.

The Employer offers a common set of benefits to its employees. It has a pension plan and a separate 401(k) plan that provides for an Employer match on employee contributions up to a specified percentage of the individual employee's contribution. Employees also can elect to have health, dental, and/or vision insurance. Additionally, the Employer offers employees the opportunity to purchase long- and short-term disability plans, accidental death and dismemberment plans, and supplemental life insurance plans. The Employer typically has an open enrollment period during the fourth quarter during which employees can make their insurance selections. The Employer also provides for flexible time off that provides employees with paid time away from their jobs that can be used for any reason, and it has nine observed holidays and two floating holidays that can be used at any time.

The Employer makes available to its employees several lengthy, detailed written manuals that cover various topics relating to employment issues. One of those manuals is the Employee Standards Manual, which contains an outline of benefits and general information about standards governing the work (including, for example, information about the Employer's equal employment opportunity policies and procedures, education and training, safety, working rules, and heath and benefits information). The Employer also provides employees with a manual on safety standards and instructions and accident prevention rules. Additionally, there is Code of Business Conduct that establishes standards relating to employees' responsibilities to fellow employees, customers and market participants, shareowners, and the communities that they serve.

The Employer has established procedures for handling instances of employee discipline. For performance-based discipline, the Employer's policy calls for there to be verbal counseling between the supervisor and employee, along with a mediator's assistance if requested. If the performance does not improve, then there is supervisory documentation of the problem. The Human Resources department gets involved in the issuance of written discipline to provide assistance and consistency. For violations of the code of conduct, a screening committee reviews the matter and recommends whether there should be further investigation by inside or outside counsel or a member of the Human Resources department. Following any such investigation, the committee makes a final decision regarding discipline.

IV. Analysis

In light of the Board case law and unit-determination principles discussed above regarding appropriate units in public utility industries, I conclude that analysis of the relevant factors set forth in those cases dictates the conclusion that the Petitioner's proposed unit is not appropriate for collective-bargaining purposes.

Clearly, the Petitioner's proposed unit is only a small portion of the Employer's total workforce and of any of its administrative divisions. Assuming that the Employer's workforce totals 2000 employees, the petitioned-for unit of 31 employees constitutes a mere 1.5 percent of the Employer's full employee complement. Of the over 500 employees in the Power Supply business unit (which includes the employees whom the Employer contends must be included in the smallest possible appropriate unit), the proposed bargaining unit amounts to at most 6.2 percent of that group. Moreover, the petitioned-for group of 31 employees constitutes just 28.2 percent of the 110 employees in Director Park's Load Serving Operations department. Although the number of employees involved is not dispositive of the unit issue, neither is it irrelevant. *See Deposit Telephone Co.*, 328 NLRB 1029, 1030 and n.7 (1999).

Additionally, the evidence demonstrates that this small petitioned-for unit does not conform to any of the Employer's defined administrative segments. The Petitioner's proposed unit consists only of the employees who work in the control room and a few of the employees who work in the nearby back office. This small group of petitioned-for employees does not constitute an entire administrative grouping on its own. These employees in the proposed unit are only a portion of the employees who are under the oversight of Director of Load Servicing Operations Tessia Park or Senior Vice-President of Power Supply Lisa Grow. The Union does not propose to represent the other approximately 80 employees in Load Serving Operations (who greatly outnumber the employees in the petitioned-for unit) or any of the other employees in Power Supply whom the Employer contends should be included. The evidence shows that all these employees in Load Serving Operations – and more broadly in Power Supply - are part of an integrated operation, with each part relating to the other parts. Also, the petitioned-for employees all share several common terms and conditions of employment, as described above, with the other employees in Load Serving Operations and in the Employer's proposed unit.

In these circumstances, it cannot be said that the Petitioner has established that its proposed unit is appropriate. *See*, *e.g.*, *Baltimore Gas & Electric Co.*, 206 NLRB at 201 (finding a requested unit confined to the production, operation, and maintenance employees at a particular nuclear power plant to be inappropriate, where the plant was “neither a separately administered segment of the Company’s operations nor a plant which services one distinctly identifiable geographic area”); *Montana-Dakota Utilities Co.*, 115 NLRB 1396, 1396-1398 (1956) (concluding that the petitioner’s requested units consisting of employees of only part of an administrative division was inappropriate, and stating that “the Board has not considered appropriate units such as those proposed alternatively by the [p]etitioner, which comprise only parts of the Billings division, and therefore correspond to no administrative division of the [e]mployer’s operation . . .”).

Nor does the petitioned-for unit of employees in and near the control room constitute all the employees of a distinct geographic area. The petitioned-for employees are only a small part of the employees who work in the corporate headquarters building in downtown Boise. Additionally, there are many other employees who work just blocks away in downtown Boise, in the Banner Bank Building. The Petitioner does not seek to represent any of these other employees who are based in the same geographic location as the petitioned-for employees. Moreover, the petitioned-for employees do not cover any of the Employer’s particular service areas, as the Employer’s operations are centralized and all employees generally work to provide electricity to all customers throughout its wide geographic service area covering southern Idaho and eastern Oregon.

In light of the Board’s decisions in the two previous reported cases discussed above that involved the Employer in the 1960s (*Idaho Power I*, 126 NLRB 547 (1960), and *Idaho Power II*, 179 NLRB 22 (1969)), it is apparent that the Petitioner’s proposed unit does not meet the standards for it be considered an appropriate unit for collective bargaining purposes. In those cases, the units that the Board deemed appropriate were far larger than the Petitioner’s proposed unit in this case. In *Idaho Power I*, the Board found the appropriate unit to be a systemwide unit of production and maintenance employees. In *Idaho Power II*, the Board found that a unit consisting of the entire group of employees in one of the Employer's then-existing administrative divisions was appropriate. Here, the Petitioner's proposed unit consists of only 31 employees who constitute a mere part of the Load Serving Operations department. Given that the proposed unit is far narrower than the smallest appropriate units that the Board found in these previous cases involving the Employer, the conclusion here must be that the Petitioner's proposed unit is not appropriate.

As discussed above, the evidence shows that, since the Board decided *Idaho Power I and II* in the 1960s, the Employer's operations have become much more consolidated and centralized, and the Employer no longer operates along the divisional lines that the Board described in *Idaho Power II*. Lisa Grow, the Employer's Senior Vice-President of the Power Supply business unit, testified that, since 1969, there have been substantial changes in Idaho's power industry which have resulted, over time, in the Employer shifting to more centralization, consolidation, and uniformity of systems, operations, and policies and procedures. With the growth in population and the economic shift from agricultural to manufacturing and high tech businesses, the Employer responded by building more generators and transmission lines and by shifting away from the divisional structure that had existed in 1969, but no longer does. Given that the Board in the 1960s found the smallest appropriate unit for the Employer's then more-decentralized operations to be a divisionwide unit, the subsequent development toward more Employer centralization and standardization shows that a proposed small unit consisting of only 31 employees, who are a mere part of a larger department and an even larger business unit, cannot be deemed appropriate.

Finally, the evidence demonstrates that this small group of petitioned-for employees occupies a central place in the Employer's overall operations. These employees all work in and near the control room that is the nerve center of the operations. The key role that these employees play in the delivery of electricity to the Employer's customers creates the possibility that a labor dispute in the proposed unit would have a strong tendency to disrupt operations and deprive the public of the necessary electric services that only the Employer, as a monopoly, can provide to its many customers who are dependent on this sole source of electricity. Given these employees' central role in the nerve center of the Employer's operations, a labor dispute involving the narrow petitioned-for unit could have the deleterious domino effect across the entire utility system that the Board sought to avoid through its development of the unit-determination principles applicable to public utilities. *See Verizon Wireless*, 341 NLRB 483, 484 (2004). That factor also favors a conclusion that the proposed unit is inappropriate.

To be sure, there are factors here that show that the employees in the petitioned-for unit share a separate community of interest among themselves. For example, the petitioned-for employees work together in a small work area and they frequently interact with each other, much more than they do with employees in other areas. Also, they have unique skills and responsibilities relating to their duties in connection with controlling the Employer's high-voltage electric system, and they are the only employees who need NERC certification. Presumably, their pay at the high end of the Employer's pay scale flows from these factors. Additionally, there is no history of actual bargaining on a broader basis than what the Petitioner proposes, and no labor organization now seeks to represent these employees in a broader unit.

Given those factors, if the traditional community-of-interest unit-determination principles that the Board explained in *Specialty Healthcare* were to apply here, then the proposed unit might be appropriate, absent a showing that excluded employees share an overwhelming community of interest with the included employees. However, as explained above, those traditional principles do not apply in the setting involved here. Instead, the unit determination here depends on analysis of the specific factors that the Board has deemed applicable to public utilities. As explained above, analysis of those factors yields the conclusion that the proposed unit is not appropriate.[9]

V. <u>CONCLUSION</u>

Inasmuch as I have found that the only unit in which the Petitioner has indicated a willingness to proceed to an election is not appropriate for the purposes of collective bargaining and the Petitioner has not made an alternative request for a broader unit, I shall dismiss the petition. *See*, *e.g.*, *Baltimore Gas & Electric Co.*, 206 NLRB at 202 (dismissing petition under these same conditions); *Colorado Interstate Gas Co.*, 202 NLRB 847, 849 (1973) (same).[10]

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[9] In its posthearing brief, at page 9 footnote 3, the Petitioner relies on *Avista Corporation*, NLRB Case No. 19-RC-15234 (2009), for the proposition that "there is precedent for the establishment of smaller units, such as the one proposed by the Petitioner in this case." In that case, the petitioning union (IBEW Local 77) sought a unit of the employer's central distribution dispatchers. The Regional Director rejected the employer's contention that the dispatchers were statutory supervisors, and he directed an election in that unit. On review, the Board affirmed the Regional Director's conclusion that the dispatchers were not statutory supervisors. In that case, although the employer was an electric utility, neither party raised any issue other than the supervisory issue. Consequently, neither the Regional Director nor the Board addressed an issue like the one presented in the present case, involving whether a less-than-systemwide bargaining unit is appropriate. Moreover, the record in this case includes a current collective-bargaining agreement between Avista Corporation and IBEW Local 77, showing that IBEW Local 77 represents another bargaining unit of Avista's employees that is very broad, including numerous job classifications. It is not clear whether in NLRB Case No. 19-RC-15234 the parties agreed to a narrow unit consisting only of central distributions dispatchers because they already had a bargaining relationship covering the other broad very-inclusive unit.

[10] In view of the dismissal of the petition on the grounds discussed above, there is no need to pass on the Employer's contention that the approximately 50 job classifications that it has identified constitute the smallest possible appropriate unit. *See*, *e.g.*, *Baltimore Gas & Electric Co.*, 206 NLRB at 202 n.7 (where the Board determined that the requested less-than-systemwide unit was not appropriate and the petitioner did not make an alternative request for a broader unit, the Board stated that there was no need to pass on the employer's contention that only a broader systemwide unit was appropriate). Although this Decision concludes that the petitioned-for unit is not an appropriate one, the Decision does not decide what the scope of an appropriate unit actually would be. Accordingly, this Decision does not reach the conclusion that the Employer's proposed unit is the smallest possible appropriate unit.

ORDER

IT IS ORDERED that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by January 22, 2013. The request may be filed electronically through the Agency's website, www.nlrb.gov,[11] but may not be filed by facsimile.

Dated at Denver, Colorado this 8th day of January, 2013.

/s/ Wanda Pate Jones
Wanda Pate Jones
Regional Director
National Labor Relations Board, Region 27
600 Seventeenth Street
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[11] To file the request for review electronically, go to www.nlrb.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.