

1	<p>1 IN ARBITRATION PROCEEDINGS PURSUANT TO THE</p> <p>2 AGREEMENT BETWEEN THE PARTIES</p> <p>3 ---o0o---</p> <p>4 In the Matter of a Controversy</p> <p>5 between</p> <p>6 INTERNATIONAL BROTHERHOOD OF</p> <p>7 ELECTRICAL WORKERS, LOCAL UNION 1245,</p> <p>8 Complainant,</p> <p>9 and</p> <p>10 PACIFIC GAS &amp; ELECTRIC COMPANY,</p> <p>11 Respondent.</p> <p>12 Re: Gain sharing.</p> <p>13 _____/</p> <p>14 PG&amp;E 375 North Wiget Lane, 15 Suite 130 Moffat Conference Room 16 Walnut Creek, California Thursday, July 21, 2016</p> <p>17 Met, pursuant to notice, at 10:00 a.m.</p> <p>18 Before: DANIEL F. ALTEMUS, Arbitrator 735 Rosemount Road Oakland, California 94610 dan.altemus@gmail.com; The Chairperson.</p> <p>21 KIT STICE, Union board member. 22 BOB GERSTLE, Union board member. 23 JOHN PARKS, Company board member. 24 CLAIRE IANDOLI, Company board member.</p> <p>24 Reported by: JULIEANN HAMILL, CSR 5151 25 Job No.: 5891FG</p>	3
2	<p>1 APPEARANCES</p> <p>2 ON BEHALF OF THE UNION:</p> <p>3 INTERNATIONAL BROTHERHOOD OF ELECTRICAL</p> <p>4 WORKERS, LOCAL UNION 1245</p> <p>5 By: ALEX PACHECO, Esq. 30 Orange Tree Circle Vacaville, California 95687 Phone: (707) 452-2751 Email: AJP3@IBEW1245.com</p> <p>8 ON BEHALF OF THE COMPANY:</p> <p>9 PACIFIC GAS and ELECTRIC COMPANY</p> <p>10 By: PHILIP A. SIMPKINS, Esq. 77 Beale Street, B30A San Francisco, California 94105 11 Phone: (415) 973-2873 Email: P3SR@pge.com</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	4
1	<p>1 INDEX</p> <p>2 OPENING STATEMENT ON BEHALF OF THE UNION 12</p> <p>3 OPENING STATEMENT ON BEHALF OF THE COMPANY 15</p> <p>4</p> <p>5 EXHIBITS</p> <p>6 Joint Exhibits Ident. Evid.</p> <p>7 1 Agreement between the parties 11 12</p> <p>8 effective 7/25/12 - 2nd</p> <p>9 Edition - Revised February 2013</p> <p>10 2 Letter Agreement No. 05-23-PGE 11 12</p> <p>11 3 Business Manager Grievance 15-02 11 12</p> <p>12 (22940) LIC report</p> <p>13 4 Grievance No. 22940 LIC Report - 11 12</p> <p>14 Exhibits</p> <p>15 5 PG&amp;E and IBEW Letter Agreement 11 12</p> <p>16 90-34-PGE dated 3/2/1990</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	3
1	<p>1 WALNUT CREEK, CALIFORNIA JULY 21, 2016</p> <p>2 10:05 a.m.</p> <p>3 --o0o--</p> <p>4 PROCEEDINGS ON THE RECORD</p> <p>5 --o0o--</p> <p>6 THE CHAIRPERSON: Okay. Let's be on the</p> <p>7 record.</p> <p>8 Show that this is a labor arbitration between</p> <p>9 the employer, Pacific Gas and Electric Company, and the</p> <p>10 union, International Brotherhood of Electrical Workers,</p> <p>11 Local 1245.</p> <p>12 Pursuant to the parties' collective bargaining</p> <p>13 agreement, the parties have chosen Daniel Altemus to</p> <p>14 serve as the chair of the arbitration panel.</p> <p>15 I'm going to ask the members of the employer</p> <p>16 and union panel members to identify themselves.</p> <p>17 The employer members of the panel are?</p> <p>18 MR. PARKS: My name is John Parks. I am the</p> <p>19 senior director of PG&amp;E's electric transmission lines</p> <p>20 department.</p> <p>21 MS. IANDOLI: I'm Claire Iandoli. I'm a</p> <p>22 principal negotiator in the labor relations department.</p> <p>23 THE CHAIRPERSON: Okay. And for the union?</p> <p>24 MR. STICE: Kit Stice, assistant business</p> <p>25 manager, Local 1245.</p>	4

<p style="text-align: right;">5</p> <p>1 MR. GERSTLE: Bob Gerstle, assistant business  2 manager, IBEW 1245.  3 THE CHAIRPERSON: Okay. Thank you, all.  4 And would counsel state their appearance for  5 the record.  6 For the employer?  7 MR. SIMPKINS: Philip Simpkins with Pacific Gas  8 and Electric.  9 MR. PACHECO: Alex Pacheco with -- on behalf of  10 IBEW.  11 THE CHAIRPERSON: And before we begin the  12 proceedings, may I have a stipulation from the parties  13 that all prior steps in the grievance and arbitration  14 procedures have been met or waived and the case is ready  15 for final and binding decision by the panel?  16 MR. SIMPKINS: So stipulated at least with  17 respect to what our position is going to be as far as  18 what the issue is for arbitration.  19 MR. PACHECO: So stipulated.  20 THE CHAIRPERSON: Okay. I gather the parties  21 have not been able to agree upon a statement of the  22 issue.  23 Both parties will state their view of the issue  24 for the record and have delegated the panel to make a  25 determination or a finding of what the issue is based on</p>	<p style="text-align: right;">7</p> <p>1 or discuss those issues cannot be blamed solely on the  2 company. The only way the company could have failed in  3 its portion of the joint obligation is if the company  4 refused to participate in the overview committee or,  5 when the overview committee did meet, refuse to allow  6 the committee to look at gain sharing or other economic  7 consideration.  8 By definition, mutual acquiescence is not  9 enough to lay blame at the feet of the company for the  10 failure of a joint committee to meet and discuss issues.  11 As such, the issue to be decided in this arbitration is  12 whether the company refused to participate in overview  13 committee discussions to look at gain sharing or other  14 economic consideration for added skills and training per  15 letter of agreement 05-23.  16 I'd also like to note that because the terms of  17 the parties' collective bargaining agreement require a  18 grievance to be filed within 30 days of the alleged  19 violation, this grievance, which was filed on  20 January 12th, 2015, is limited to any alleged failures  21 of the company that occurred after December 12th, 2014.  22 And, sorry, I'm going to continue with a little  23 bit more.  24 Even if the company is determined to be at  25 fault in some way, the only appropriate remedy that can</p>
<p style="text-align: right;">6</p> <p>1 the record as a whole.  2 So inasmuch as I assume this is a contract  3 interpretation case, I'll ask the union for their view  4 of the issue at this time.  5 MR. PACHECO: The union's statement of the  6 issue is whether the company has met its obligation to  7 help convene an overview committee or otherwise to,  8 quote, look at the gain sharing or other economic  9 consideration for added skills and training, end quote,  10 per letter of agreement 0523 -- sorry -- 05-23 and, if  11 not, what shall be the appropriate remedy.  12 THE CHAIRPERSON: And the employer's view?  13 MR. SIMPKINS: So just to clarify, we are --  14 well, I'll just go ahead and state it. It's,  15 unfortunately, a little bit clunky because it takes some  16 explanation.  17 So the letter agreement that Mr. Pacheco just  18 mentioned refers to a joint obligation of the parties to  19 participate in a joint overview committee that would be  20 responsible to look at gain sharing or any other  21 economic consideration for the added skills and  22 training.  23 Despite the wording of the grievance submitted  24 by the union, because the overview committee was a joint  25 committee, any failure of the overview committee to meet</p>	<p style="text-align: right;">8</p> <p>1 be imposed in this case is compelling the parties to  2 reengage in overview committee meetings to discuss gain  3 sharing or other economic consideration for added skills  4 and training, which is what was agreed to in letter of  5 agreement 05-23. That's because absent the mutual  6 agreement that's set forth in that letter agreement,  7 these issues -- the company would only otherwise be  8 required to discuss these issues as a matter of  9 bargaining.  10 Any remedy that purports to order the company  11 to share gains or provide other economic consideration  12 that determines that gains or other economic  13 consideration is in fact owed, or that attempts to  14 measure such gains or other economic consideration,  15 would invade the province of the company's right to  16 bargain over those issues; would be beyond the scope of  17 the grievance procedure that's provided for under the  18 CBA, because the CBA does not allow either party to file  19 a grievance over bargaining; and would be beyond the  20 actual agreed to scope of the grievance, because at the  21 LIC stage, the parties both agreed that discussion of  22 whether or not there should be gains is to be handled in  23 the overview committee and not as part of the grievance  24 process.  25 As such, the company has not and does not agree</p>

9	<p>1 to submit the issue of whether or not there should be                  2 gains or other economic consideration shared to                  3 arbitration.                  4 THE CHAIRPERSON: Okay. And just -- I would                  5 get to it at some point, but I'll just ask Mr. Pacheco,                  6 as the grieving party, what remedy is the grieving party                  7 seeking?                  8 MR. PACHECO: I think I'm going to leave that                  9 purposely ambiguous in this case and just let you                  10 exercise appropriate judgment as the arbitrator; but I                  11 think at the very minimum, we're asking for a bargaining                  12 order or something like that to compel the parties, as                  13 opposing counsel stated, to actually negotiate over this                  14 issue.                  15 THE CHAIRPERSON: Well, are you -- do you want                  16 to compel negotiations, or do you want to compel the                  17 convening of the joint committee?                  18 MR. PACHECO: Both. I suppose they go hand in                  19 hand because compelling the convening of the overview                  20 committee and as well as percipient to that the                  21 negotiations over a gain sharing.                  22 THE CHAIRPERSON: Okay. I'll give you both an                  23 opportunity to educate me a little bit more when I ask                  24 for opening statements here in a minute, so thank you.                  25 Do the parties agree that the arbitrator -- or</p>	11	<p>1 the grievance process per the CBA.                  2 Tab 4, these are the exhibits to the                  3 investigating committee report. So, in other words, the                  4 exhibits that were presented at that investigating                  5 meeting.                  6 And tab 5 is letter agreement 90-34-PGE. And                  7 that's a four-page document.                  8 (Joint Exhibits 1 - 5 were marked for                  9 identification.)                  10 THE CHAIRPERSON: Okay. I gather just from                  11 having heard both of you speak before we started, the                  12 term "LIC" is for the investigating committee, right?                  13 MR. SIMPKINS: It's the local investigating                  14 committee.                  15 THE CHAIRPERSON: Local investigating                  16 committee.                  17 So feel free to use that acronym and not have                  18 to say the whole thing.                  19 Okay. Any objection to the receipt of Joint                  20 Exhibits 1 through 5?                  21 MR. PACHECO: No objection.                  22 MR. SIMPKINS: No objection with the exception                  23 of the --                  24 THE CHAIRPERSON: Some authentication.                  25 MR. SIMPKINS: -- authentication issues for</p>
10	<p>1 the panel will retain jurisdiction in this matter in the                  2 event of any disagreement that may occur with respect to                  3 any remedy that may be issued?                  4 MR. SIMPKINS: Yes.                  5 MR. PACHECO: Yes.                  6 THE CHAIRPERSON: Okay. I understand we do                  7 have some joint exhibits that we can get started with.                  8 Would one of you like to identify the joint                  9 exhibits?                  10 MR. SIMPKINS: Do you want me to do that?                  11 MR. PACHECO: Yeah, go ahead.                  12 MR. SIMPKINS: Sure.                  13 So there's an index in the binder that was                  14 passed out, but Joint Exhibit No. 1 is the collective                  15 bargaining agreement between Pacific Gas and Electric                  16 and Local Union No. 1245 of the IBEW. This is the 2012                  17 edition revised in February 2013. And per stipulation                  18 of the parties, it does not include all of the exhibits                  19 that would go along with that.                  20 The second exhibit is the letter of agreement                  21 that forms the -- kind of the underpinnings of this                  22 dispute, letter of agreement number 05-23-PGE.                  23 The third exhibit is the local investigating                  24 committee report for the investigating committee that                  25 investigated the grievance. That's one of the steps of</p>	12	<p>1 tab 4.                  2 THE CHAIRPERSON: Okay. With that                  3 consideration in mind, I'll receive Joint Exhibits 1                  4 through 5.                  5 (Joint Exhibits 1 -5 were admitted into                  6 evidence.)                  7 THE CHAIRPERSON: Any other factual                  8 stipulations we want to discuss or propose at this time?                  9 MR. PACHECO: None from the union.                  10 MR. SIMPKINS: No.                  11 THE CHAIRPERSON: Okay. All right. So I will                  12 ask -- turn to Mr. Pacheco and ask that can we -- or                  13 present an opening statement on this matter.                  14 OPENING STATEMENT ON BEHALF OF THE UNION                  15 MR. PACHECO: Good morning, Mr. Arbitrator.                  16 Hopefully this will be a pretty straightforward                  17 case for you.                  18 First a quick introduction, quick and dirty                  19 introduction on rubber gloving.                  20 Until 1990, linemen working for Pacific Gas and                  21 Electric worked on any energized primary above four kV                  22 with hot sticks or they had to de-energize that line.                  23 In 1990 -- and we actually have the agreement here, it                  24 would be tab 5, 90-34, the parties agreed to utilize                  25 rubber gloving with three men, two men in the air with</p>

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1 gloves that go up to their elbow, and those are the  
 2 rubber gloves, and one on the ground. And so what this  
 3 did is this increased efficiencies and made it easier on  
 4 the linemen performing that type of work.  
 5 In 2005, the parties agreed to voluntary  
 6 two-man rubber gloving work where one employee, one  
 7 lineman, was in the air and one was on the ground. And  
 8 that was done pursuant to labor agreement 05-23, and  
 9 that would be tab No. 2. And this amended the existing  
 10 agreement on rubber gloving.  
 11 So the operative language we're really focusing  
 12 on in this arbitration is, quote, "The overview  
 13 committee will be responsible, after the procedures have  
 14 been in place, to look at gain sharing or any other  
 15 economic consideration for the added skills and  
 16 training." And I will point that out in my case in  
 17 chief exactly where that language comes from.  
 18 But for the next several years, despite  
 19 promises to IBEW membership from PG&E management, the  
 20 parties didn't address the gain sharing provision of  
 21 labor agreement 05-23. But there's a caveat here.  
 22 Considering that PG&E at this time between  
 23 about 2005 and 2010 rarely utilized two-man rubber  
 24 gloving, if ever, for certain work groups, there was  
 25 really not much concern from either party because there

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1 really were no measurable gains to be shared with the  
 2 membership.  
 3 So sometime after 2010, sometime between  
 4 2010-2011, PG&E implemented a crew-sizing initiative to  
 5 cut costs. And I'll allow the company to provide a  
 6 little more additional background on that, but it will  
 7 be mentioned in my case in chief as well.  
 8 But after that crew-sizing initiative was  
 9 underway, the company started utilizing two-man rubber  
 10 gloving with -- a lot more frequently. Because of that,  
 11 various union reps, a couple of which will be testifying  
 12 today, started hounding the company about initiating  
 13 negotiations over the gain sharing and convening the  
 14 overview committee. And this was done with informal  
 15 requests to meet and confer between the parties as well  
 16 as formal bargaining proposals that were actually done  
 17 during general bargaining between the parties for the  
 18 collective bargaining agreement.  
 19 However, despite being asked, the company kept  
 20 trying to kick the can down the road with respect to the  
 21 issue of gain sharing, all while experiencing  
 22 significant gains, monetary gains through increased  
 23 utilization of two-man rubber gloving.  
 24 And so to date the company has not accepted to  
 25 formally negotiate gain sharing through the overview

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1 committee or through -- or during general bargaining.  
 2 And for those reasons the union respectfully requests  
 3 this arbitrator to rule in its favor.  
 4 Thank you.  
 5 THE CHAIRPERSON: Mr. Simpkins.  
 6 MR. SIMPKINS: Can I just ask a question before  
 7 I start?  
 8 THE CHAIRPERSON: Sure.  
 9 MR. SIMPKINS: It has to go with the factual  
 10 stipulation.  
 11 It sounds like the union is not challenging  
 12 prior to 2010. Is that the case? That might shortcut  
 13 some of them.  
 14 MR. PACHECO: Can we go off the record quick?  
 15 THE CHAIRPERSON: Sure. We'll be off the  
 16 record.  
 17 (There was a discussion held off the record.)  
 18 THE CHAIRPERSON: All right. Let's go back on  
 19 the record.  
 20 Mr. Simpkins.  
 21 OPENING STATEMENT ON BEHALF OF THE COMPANY  
 22 MR. SIMPKINS: Thank you.  
 23 From the company's perspective this arbitration  
 24 is an abuse of the grievance procedure and is a waste of  
 25 the parties' and the arbitrator's time and efforts.

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1 This arbitration is proceeding only as a result  
 2 of the union's refusal to dismiss the underlying  
 3 grievance despite the company agreeing to reconvene the  
 4 overview committee to discuss gain sharing, when  
 5 ordering the parties to have such discussions in the  
 6 overview committee would be the only appropriate remedy  
 7 in this case.  
 8 I've explained a little bit of that, I think,  
 9 in my statement of the issues. And Mr. Pacheco already  
 10 explained the difference between three-person -- the  
 11 changes from three-person rubber gloving to two-person  
 12 rubber gloving, but let me just add a few more things  
 13 about the 2005 agreement.  
 14 So the 2005 agreement, the principal issue --  
 15 the principal difference that was implemented by the  
 16 2005 agreement was the use of two-man rubber gloving  
 17 procedures for some hot work or for work on energized  
 18 electrical lines.  
 19 As consideration for implementing those  
 20 two-person rubber glove work procedures, the 2005  
 21 agreement provides that all linemen in higher  
 22 classifications in the line of progression would receive  
 23 a six percent increase to all of their wages. And that  
 24 six percent increase applied to all their wages, not  
 25 just two-person rubber gloving work. So if they worked

<p style="text-align: right;">17</p> <p>1 an eight-hour day and did 20 minutes of two-person  2 rubber gloving, they still received a six percent  3 increase to all eight hours of their wages.  4 It also provided -- and this is the key  5 language that was referenced by Mr. Pacheco -- that a,  6 quote, overview committee will be responsible, after the  7 procedures have been in place, to look at gain sharing  8 or any other economic consideration for the added skills  9 and training, end quote.  10 It's important to note that that overview  11 committee was a joint committee comprised of both  12 company and union representatives. In other words, the  13 parties mutually agreed to a joint obligation to discuss  14 these issues in a joint committee.  15 There is nothing in the 2005 letter agreement  16 that actually obligates the company to agree to gain  17 sharing or to agree to provide any other economic  18 consideration in addition to the six percent wage  19 increase it specifically agreed to pay.  20 The language also -- so to boil it down, the  21 language about the overview committee meetings was, in  22 essence, an agreement by the company and union to meet  23 in a particular forum to bargain over a particular  24 issue.  25 The grievance that eventually led to this</p>	<p style="text-align: right;">19</p> <p>1 or if the company chose not to provide more vacation  2 time or overtime pay, or any other subject of mandatory  3 bargaining. The 2005 letter agreement did not change  4 any of that.  5 The company did not agree in the 2005 letter  6 agreement to pay any particular amount or any amount in  7 addition to the six percent raises that are specifically  8 referenced. Rather, the 2005 letter agreement only  9 provided that the joint overview committee would, quote,  10 look at the issue of additional pay.  11 The company specifically responded to the  12 grievance with this in mind, whereas a grievance over a  13 refusal to bargain an issue would have been rejected as  14 a non-grievable subject. The company allowed the  15 grievance to proceed because it addressed only whether  16 or not the company complied with its agreement to  17 discuss these issues in a joint overview committee. The  18 company made clear that this was its position in  19 response to the grievance.  20 And, in fact, at the local investigating  21 committee stage of this grievance, the parties agreed  22 that the issue of whether or not there should be gain  23 sharing was to be addressed only through the overview  24 committee, not through the grievance procedure. That  25 ultimately means, as I stated at the outset, that the</p>
<p style="text-align: right;">18</p> <p>1 arbitration alleged that PG&amp;E had failed in its  2 obligation to discuss with the union. And that's a  3 somewhat confusing way to state the issue, as I've  4 already mentioned, because it is a joint issue, a joint  5 obligation.  6 And I will get to the evidence -- I will get to  7 kind of a summary of the evidence we are going to  8 present that shows that we in fact have met with the  9 union and that any failure of the overview committee to  10 meet was a result of mutual acquiescence on the part of  11 the parties; but I'd like to start with the very simple  12 but important point I mentioned in our statement of the  13 issue, which is that this arbitration is not and cannot  14 be about whether PG&amp;E owes union members gain sharing or  15 any other additional money beyond the six percent it  16 specifically agreed to in the letter agreement, nor is  17 it about determining how to measure gains, which is  18 something that also needs to be bargained in the  19 overview committee.  20 Whether the company agrees to provide a raise  21 in wages or not as a result of bargaining is not a  22 grievable subject under the collective bargaining  23 agreement, just as the union cannot file a grievance if  24 the company agreed to only pay -- to raise wages by  25 two percent when the union had asked for three percent,</p>	<p style="text-align: right;">20</p> <p>1 only issue is whether or not the company has refused to  2 participate in overview committee meetings. And because  3 whether or not there should be gain sharing or other  4 economic consideration is not being arbitrated, the only  5 potential remedy in this case, even if the company is  6 found to somehow be at fault, which as I will show it's  7 not, would be for the arbitrator to order the parties to  8 reconvene the overview committee to discuss gain sharing  9 or other economic consideration as provided in the  10 letter of agreement, the 2005 letter agreement.  11 We can shortcut this whole procedure right now.  12 The company hereby invites the arbitrator to make that  13 order.  14 The parties have in fact already reconvened the  15 overview committee and have been in discussions about  16 gain sharing or other economic consideration for the  17 last eight months.  18 In fact, prior to the union filing this  19 grievance, the company specifically agreed to reconvene  20 the overview committee and to discuss gain sharing in  21 the overview committee. The union refused that offer  22 and instead filed this grievance. If anything, it is  23 the union who has violated the agreement to meet in the  24 joint overview committee to discuss gain sharing.  25 Absent an order from the arbitrator to that</p>

21	<p>1 effect, the company will demonstrate the following in                  2 its presentation of evidence: First, the overview                  3 committee has in fact met and looked at gain sharing and                  4 other economic consideration for the added skills and                  5 training needed to implement two-person rubber gloving.                  6 As such, there has been no violation.                  7 Second, to the extent there have been periods                  8 of time over the last 11 years where the overview                  9 committee was not actively meeting to discuss those                  10 issues, that was due to the mutual acquiescence of the                  11 parties. The company has never refused a formal request                  12 to convene the overview committee. The union has                  13 admitted that it never made such a formal request to the                  14 company's chief negotiator. And the company has never                  15 refused to discuss gain sharing in an overview committee                  16 meeting.                  17 Third, even if there was some sort of failure,                  18 either mutual or on the part of the company, the company                  19 has already agreed to reconvene the overview committee                  20 so this issue is moot.                  21 In sum, the company has not refused to meet.                  22 And in the meetings that have taken place, the company                  23 has not refused to discuss gain sharing. Therefore,                  24 there has been no violation.                  25 The union will likely, as it did in the local</p>	23	<p>1 2014.                  2 In sum, there's no basis for this grievance,                  3 and the company would ask the arbitrator to decide in                  4 favor of the company and issue a ruling that the company                  5 has satisfied its obligations under letter of agreement                  6 05-23.                  7 THE CHAIRPERSON: Thank you.                  8 MR. SIMPKINS: And I would actually at this                  9 point like to make a formal request that the arbitrator                  10 order the parties to reconvene the overview committee to                  11 discuss gain sharing or other economic consideration as                  12 provided in the 2005 letter agreement.                  13 Mr. Pacheco, I believe, stated that at some                  14 point that that was his preferred remedy, and the                  15 company is willing to do that as well.                  16 THE CHAIRPERSON: Okay. Thank you.                  17 Let's go off the record.                  18 (There was a discussion held off the record.)                  19 (Recess.)                  20 THE CHAIRPERSON: All right. Let's go back on                  21 the record.                  22 In a series of off-the-record conversations,                  23 the parties have discussed both amongst their own group                  24 as well as with the arbitrator and mutually the various                  25 issues in this matter.</p>
22	<p>1 investigating committee procedure, attempt to                  2 demonstrate that various employees within the company                  3 were not receptive to requests to discuss gain sharing                  4 outside of the overview committee. And the union will                  5 likely present evidence that it raised the issue of gain                  6 sharing in other bargaining forums, including in ad hoc                  7 negotiations and during general bargaining discussions.                  8 All of that evidence is irrelevant, and it should be                  9 disregarded.                  10 This arbitration and the grievance that                  11 preceded it are all about whether the company violated a                  12 provision of letter of agreement 05-23, which only                  13 established a mutual obligation of the parties to                  14 discuss gain sharing in a joint overview committee.                  15 Also irrelevant, as I mentioned earlier, is any                  16 evidence the union attempts to provide regarding any                  17 refusal of the company that occurred prior to                  18 December 12th, 2014. That is because under the terms of                  19 the applicable collective bargaining agreement, a                  20 business manager's grievance must be filed within                  21 30 days to be timely.                  22 For the record, that is set forth in                  23 section 102.3(a) of the CBA which is Joint Exhibit 1.                  24 And, in any event, any remedy that is provided                  25 in this case cannot extend back beyond December 13th,</p>	24	<p>1 I'm going to turn to Mr. Simpkins for the                  2 company and have him restate his position an offer as it                  3 was made before we took a break, at which point I will                  4 entertain the motion with the panel in a panel                  5 deliberation, essentially an executive board meeting                  6 that will be on the record with the reporter.                  7 So with that in mind, Mr. Simpkins, would you                  8 state the company's position on the matter again?                  9 MR. SIMPKINS: Yes. Thank you.                  10 The company makes a motion -- call it a motion                  11 for summary judgment or motion for nonsuit, whatever --                  12 however you want to term it -- to dismiss this                  13 arbitration based on the company's stipulation to                  14 reconvene the overview committee in order to look at                  15 gain sharing or any other economic consideration for the                  16 added skills and training as set forth in letter of                  17 agreement 05-23-PGE.                  18 THE CHAIRPERSON: Okay. Mr. Pacheco, what's                  19 your position on the motion?                  20 MR. PACHECO: We'll accept the convening of the                  21 executive panel.                  22 THE CHAIRPERSON: Okay. At this time we'll                  23 recess the hearing, the formal hearing. I'll ask                  24 Mr. Simpkins and Mr. Pacheco to leave the room, and                  25 we'll convene a session of the executive panel on the</p>

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1 record.  
 2 So be off the record for a moment.  
 3 (Whereupon Mr. Simpkins and Mr. Pacheco  
 4 left the conference room and the following  
 5 executive session was held:)  
 6 THE CHAIRPERSON: Okay. We will be on the  
 7 record.  
 8 Let the record show this is a meeting of the  
 9 five-person executive -- or arbitration panel.  
 10 Just to start things off, just to recap what I  
 11 have expressed to the parties in off-the-record  
 12 meetings, it appears to me that the basic thrust of the  
 13 grievance here is to reconvene -- or have the employer  
 14 agree to convene the joint committee under the letter  
 15 agreement that's, I think, 05-23.  
 16 I have indicated to the parties that beyond  
 17 that I don't feel that this arbitrator or the panel has  
 18 any authority to go beyond that and that I'm inclined to  
 19 accept and grant the motion, however it's termed, to  
 20 have the parties accept the employer's agreement to  
 21 convene the joint committee.  
 22 With that said, I'll turn to my union panel  
 23 members, who I've discussed the matter with, but they  
 24 have some views and opinions on their own before we  
 25 took -- this is before we take a vote, so this is sort

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1 of an open session to discuss it.  
 2 MR. GERSTLE: Okay. As we talked about back  
 3 there, I believe since we filed the business manager's  
 4 grievance in November, the company has met -- the  
 5 overview committee has reconvened; but my feeling is we  
 6 haven't talked about gain sharing as much as we have  
 7 talked about changing language, which I feel is the crux  
 8 of language where the linemen in the field have the  
 9 ability to determine whether a job shall be performed  
 10 utilizing rubber gloves.  
 11 The company has expressed issues with certain  
 12 areas, a couple of yards that I know of that are not  
 13 rubber gloving, and we have offered to go up and talk to  
 14 those yards and determine what the problem is and find  
 15 a -- jointly find a solution.  
 16 But anything we have received on paper as a  
 17 proposal has always involved changing the consensus  
 18 language versus finding a solution at the less than  
 19 five percent of the yards where the rubber gloving is  
 20 not going on. And that's what I have had an issue with  
 21 as a lineman. That's critical language to us because  
 22 there are a lot of supervisors who never were linemen  
 23 and don't understand all the factors that go into  
 24 determining what work procedure we're going to use.  
 25 So, to me, that gain sharing language talks

27

1 about sharing the gains, not about redefining the  
 2 language.  
 3 THE CHAIRPERSON: Okay. Ty, did you have  
 4 anything you wanted to add?  
 5 MR. STICE: The language he's talking about is  
 6 implemented in there for a safety reason. If it can't  
 7 be done safely by consensus of the crew, right, then  
 8 they don't do it.  
 9 And the problem is, is they do have a lot of  
 10 supervisors that are new to the company, did not come  
 11 out of that line, right, so they do not understand line  
 12 work, and they are -- they are going to have some  
 13 changes where the supervisor can make the ruling. And  
 14 we just can't --  
 15 THE CHAIRPERSON: Can't accept that.  
 16 MR. STICE: Nope.  
 17 THE CHAIRPERSON: Okay. And as I -- again,  
 18 just so we have it on the record, as I've explained to  
 19 the union representatives, in the presence of some  
 20 company representatives as well, these are issues that  
 21 are a function of the bargaining process. They are not  
 22 a function of the grievance process under the agreement.  
 23 And there are remedies available with other agencies for  
 24 the union if they feel that the negotiations are not  
 25 being conducted in good faith and that information is

28

1 not being made available.  
 2 And while -- but as an arbitrator, I don't see  
 3 it within my authority -- in fact I'm certain it's not  
 4 within my authority to police the bargaining process.  
 5 And that is really something up to the parties.  
 6 Now, I -- without trying to ask -- suggest to  
 7 either side how they go about it, I think the union's  
 8 stated concern about what has happened in the joint  
 9 committee may have some legitimacy, and there may be a  
 10 way to reach some understanding between the parties that  
 11 addresses those concerns.  
 12 I mean, you've heard the concern that the union  
 13 has about the topics that have come up in the joint  
 14 committee. But, again, I have no authority to say  
 15 whether those are legitimate or illegitimate because  
 16 they just simply don't fall within the purview of the  
 17 arbitration panel's authority.  
 18 With that said, I'll turn to Mr. Parks and  
 19 Claire to see if they have anything to say on this  
 20 matter.  
 21 MS. IANDOLI: I just wanted to say,  
 22 Mr. Arbitrator, that obviously the company has the  
 23 ability to direct the work of others under our  
 24 management's rights clause, including rubber gloving.  
 25 And whether to rubber glove or not concerns terms and

29

1 conditions of employment which are mandatory subjects of  
 2 bargaining and would require the reconvening of the  
 3 committee to perhaps look at all of those issues, but  
 4 they are all negotiable subjects and the appropriate  
 5 forum is the oversight committee.  
 6 THE CHAIRPERSON: John.  
 7 MR. PARKS: Yeah. On behalf of the company, we  
 8 absolutely commit to reconvening the joint committee, as  
 9 we have over the past several months, and discussing the  
 10 issues and trying to come up with mutual language that  
 11 assures that we meet with the terms of the '05 letter  
 12 agreement, as well as assures that the company realizes  
 13 the benefits from two-person rubber gloving.  
 14 We have been stuck on some of the language, and  
 15 you've got the company's commitment to reconvene and  
 16 come up with what I believe will be mutually agreed to  
 17 language to help us resolve the issue.  
 18 For the record, however, the company has never  
 19 proposed anything in any language that would ever  
 20 compromise the safety of the employees. And from the  
 21 start, safety was always the most important issue that  
 22 we laid in front of it. And whenever employees are  
 23 unsure about their own capabilities or the capabilities  
 24 of their work partner, they have the right to stop the  
 25 job, request a supervisor to come to the job, and talk

30

1 about the work procedure for which they were about to  
 2 perform. And at any given point when someone is not  
 3 sure about safety or a procedure, they have the  
 4 obligation, the right, the authority to stop the job.  
 5 That has always been our position.  
 6 THE CHAIRPERSON: Okay. Anything else anybody  
 7 wishes to add?  
 8 And, you know, I encourage you to get a copy of  
 9 this transcript because I think representations have  
 10 been made on both sides that I think are both productive  
 11 and may be helpful to future meetings. And I appreciate  
 12 the input from all four of you.  
 13 With that said, I'm going to call for a vote on  
 14 the motion. I'll turn to the company first. It's your  
 15 motion. What is your view on the motion? Mr. Parks?  
 16 MR. PARKS: I vote in favor of the motion.  
 17 MS. IANDOLI: I do, too, Your Honor.  
 18 THE CHAIRPERSON: And with respect to the  
 19 union?  
 20 MR. GERSTLE: I'm thinking.  
 21 Yes.  
 22 MR. STICE: Yes.  
 23 THE CHAIRPERSON: Okay. We have a unanimous  
 24 agreement, as the chair also agrees with the motion. I  
 25 think this is the most productive and the quickest

31

1 fashion to get this rodeo back on the road again, and I  
 2 appreciate all your input.  
 3 The motion is passed five-zip, 5-0. And we'll  
 4 call the attorneys back in, and this matter is  
 5 concluded.  
 6 Thank you.  
 7 MS. IANDOLI: Thank you.  
 8 (Whereupon Mr. Simpkins and Mr. Pacheco  
 9 returned to the conference room and the  
 10 following session was held:)  
 11 THE CHAIRPERSON: All right. We'll be back on  
 12 the record.  
 13 The executive panel has met and concluded its  
 14 proceedings. We are now back on the record with the  
 15 attorneys present.  
 16 I'm pleased to inform the attorneys that by  
 17 unanimous five-zip vote, 5-0 vote, the panel has agreed  
 18 to grant the motion of the employer and that the parties  
 19 will reconvene the joint committee as soon as possible.  
 20 I would also note for the record that I think  
 21 there were constructive statements made by both sides  
 22 during the course of the panel. And hopefully we can --  
 23 the parties can get these joint negotiations off on a  
 24 good foot.  
 25 But with that in mind, there's nothing more for

32

1 all of us to do, and I will consider the hearing closed  
 2 and the matter concluded.  
 3 MR. PACHECO: Just one quick question. So that  
 4 means that the August 17th date is now off the docket?  
 5 THE CHAIRPERSON: Yes, the August 17th date is  
 6 off the record. We don't need it. You can use it for  
 7 more constructive things. So...  
 8 MR. PACHECO: Thank you.  
 9 THE CHAIRPERSON: Do either of you have  
 10 something you want to say before I close the record?  
 11 MR. SIMPKINS: No. Just thank you for your  
 12 time.  
 13 MR. PACHECO: Yeah, thank you.  
 14 THE CHAIRPERSON: Okay. Very good. We're  
 15 done.  
 16 (Time noted: 11:20 a.m.)  
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REPORTER'S CERTIFICATE

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I certify that the proceedings in the above-entitled cause were reported at the time and place therein named by me, a duly Certified Shorthand Reporter and a disinterested person, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said cause of proceedings, nor in any way interested in the outcome of the cause named in said caption.



JULIEANN HAMILL,  
CSR No. 5151

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<p><b>A</b></p> <p><b>ability</b> 26:9, 28:23  <b>able</b> 5:21  <b>above-entitled</b> 33:4  <b>absent</b> 8:5, 20:25  <b>absolutely</b> 29:8  <b>abuse</b> 15:24  <b>accept</b> 24:20, 25:19      25:20, 27:15  <b>accepted</b> 14:24  <b>acquiescence</b> 7:8, 18:10      21:10  <b>acronym</b> 11:17  <b>actively</b> 21:9  <b>actual</b> 8:20  <b>ad</b> 22:6  <b>add</b> 16:12, 27:4, 30:7  <b>added</b> 6:9, 6:21, 7:14, 8:3      13:15, 17:8, 21:4, 24:16  <b>addition</b> 17:18, 19:7  <b>additional</b> 14:6, 18:15      19:10  <b>address</b> 13:20  <b>addressed</b> 19:15, 19:23  <b>addresses</b> 28:11  <b>admitted</b> 12:5, 21:13  <b>agencies</b> 27:23  <b>agree</b> 5:21, 8:25, 9:25      17:16, 17:17, 19:5, 25:14  <b>agreed</b> 8:4, 8:20, 8:21      12:24, 13:5, 17:13, 17:19      18:16, 18:24, 19:21      20:19, 21:19, 29:16      31:17  <b>agreeing</b> 16:3  <b>agreement</b> 1:2, 3:7, 3:10      3:15, 4:13, 6:10, 6:17      7:15, 7:17, 8:5, 8:6, 8:6      10:15, 10:20, 10:22, 11:6      12:23, 13:8, 13:10, 13:21      14:18, 16:13, 16:14      16:16, 16:21, 17:15      17:22, 18:16, 18:23, 19:3      19:6, 19:8, 19:16, 20:10      20:10, 20:23, 22:12      22:19, 23:5, 23:12, 24:17      25:15, 25:20, 27:22      29:12, 30:24  <b>agrees</b> 18:20, 30:24  <b>ahead</b> 6:14, 10:11  <b>air</b> 12:25, 13:7  <b>AJP3@IBEW1245.com</b>      2:6  <b>Alex</b> 2:4, 5:9  <b>alleged</b> 7:18, 7:20, 18:1  <b>allow</b> 7:5, 8:18, 14:5  <b>allowed</b> 19:14  <b>Altemus</b> 1:18, 4:13  <b>ambiguous</b> 9:9  <b>amended</b> 13:9  <b>amount</b> 19:6, 19:6  <b>anybody</b> 30:6  <b>appearance</b> 5:4  <b>APPEARANCES</b> 2:1  <b>appears</b> 25:12  <b>applicable</b> 22:19  <b>applied</b> 16:24  <b>appreciate</b> 30:11, 31:2  <b>appropriate</b> 6:11, 7:25</p>	<p>9:10, 16:6, 29:4  <b>arbitrated</b> 20:4  <b>arbitration</b> 1:1, 4:8, 4:14      5:13, 5:18, 7:11, 9:3      13:12, 15:23, 16:1, 18:1      18:13, 22:10, 24:13, 25:9      28:17  <b>arbitrator</b> 1:18, 9:10      9:25, 12:15, 15:3, 20:7      20:12, 20:25, 23:3, 23:9      23:24, 25:17, 28:2, 28:22  <b>arbitrator's</b> 15:25  <b>areas</b> 26:12  <b>asked</b> 14:19, 18:25  <b>asking</b> 9:11  <b>assistant</b> 4:24, 5:1  <b>assume</b> 6:2  <b>assures</b> 29:11, 29:12  <b>attempt</b> 22:1  <b>attempts</b> 8:13, 22:16  <b>attorney</b> 33:9  <b>attorneys</b> 31:4, 31:15      31:16  <b>August</b> 32:4, 32:5  <b>authentication</b> 11:24      11:25  <b>authority</b> 25:18, 28:3      28:4, 28:14, 28:17, 30:4  <b>available</b> 27:23, 28:1</p>	<p>22:20, 26:3</p> <p><b>C</b></p> <p><b>California</b> 1:16, 1:19, 2:5      2:10, 4:1  <b>call</b> 24:10, 30:13, 31:4  <b>capabilities</b> 29:23, 29:23  <b>caption</b> 33:11  <b>case</b> 5:14, 6:3, 8:1, 9:9      12:17, 13:16, 14:7, 15:12      16:7, 20:5, 22:25  <b>cause</b> 33:4, 33:9, 33:11  <b>caveat</b> 13:21  <b>CBA</b> 8:18, 8:18, 11:1      22:23  <b>certain</b> 13:24, 26:11, 28:3  <b>CERTIFICATE</b> 33:1  <b>Certified</b> 33:5  <b>certify</b> 33:3, 33:8  <b>chair</b> 4:14, 30:24  <b>Chairperson</b> 1:20, 4:6      4:23, 5:3, 5:11, 5:20, 6:12      9:4, 9:15, 9:22, 10:6      11:10, 11:15, 11:24, 12:2      12:7, 12:11, 15:5, 15:8      15:15, 15:18, 23:7, 23:16      23:20, 24:18, 24:22, 25:6      27:3, 27:15, 27:17, 29:6      30:6, 30:18, 30:23, 31:11      32:5, 32:9, 32:14  <b>challenging</b> 15:11  <b>change</b> 19:3  <b>changes</b> 16:11, 27:13  <b>changing</b> 26:7, 26:17  <b>chief</b> 13:17, 14:7, 21:14  <b>chose</b> 19:1  <b>chosen</b> 4:13  <b>Circle</b> 2:4  <b>Claire</b> 1:23, 4:21, 28:19  <b>clarify</b> 6:13  <b>classifications</b> 16:22  <b>clause</b> 28:24  <b>clear</b> 19:18  <b>close</b> 32:10  <b>closed</b> 32:1  <b>clunky</b> 6:15  <b>collective</b> 4:12, 7:17      10:14, 14:18, 18:22      22:19  <b>come</b> 27:10, 28:13, 29:10      29:16, 29:25  <b>comes</b> 13:17  <b>commit</b> 29:8  <b>commitment</b> 29:15  <b>committee</b> 6:7, 6:19      6:24, 6:25, 6:25, 7:4, 7:5      7:6, 7:10, 7:13, 8:2, 8:23      9:17, 9:20, 10:24, 10:24      11:3, 11:12, 11:14, 11:16      13:13, 14:14, 15:1, 16:4      16:6, 17:6, 17:11, 17:11      17:14, 17:21, 18:9, 18:19      19:9, 19:17, 19:21, 19:24      20:2, 20:8, 20:15, 20:20      20:21, 20:24, 21:3, 21:9      21:12, 21:15, 21:19, 22:1      22:4, 22:14, 23:10, 24:14      25:14, 25:21, 26:5, 28:9      28:14, 29:3, 29:5, 29:8</p>	<p>31:19  <b>company</b> 1:10, 1:22, 1:23      2:8, 2:9, 3:3, 4:9, 6:6, 7:2      7:2, 7:3, 7:9, 7:12, 7:21      7:24, 8:7, 8:10, 8:25, 14:5      14:9, 14:12, 14:19, 14:24      15:21, 16:3, 17:12, 17:16      17:22, 18:20, 18:24, 19:1      19:5, 19:11, 19:14, 19:16      19:18, 20:1, 20:5, 20:12      20:19, 21:1, 21:11, 21:14      21:18, 21:18, 21:21      21:22, 22:2, 22:11, 22:17      23:3, 23:4, 23:4, 23:15      24:2, 24:10, 26:4, 26:11      27:10, 27:20, 28:22, 29:7      29:12, 29:18, 30:14  <b>company's</b> 8:15, 15:23      21:14, 24:8, 24:13, 29:15  <b>compel</b> 9:12, 9:16, 9:16  <b>compelling</b> 8:1, 9:19  <b>Complainant</b> 1:8  <b>complied</b> 19:16  <b>comprised</b> 17:11  <b>compromise</b> 29:20  <b>concern</b> 13:25, 28:8      28:12  <b>concerns</b> 28:11, 28:25  <b>concluded</b> 31:5, 31:13      32:2  <b>conditions</b> 29:1  <b>conducted</b> 27:25  <b>confer</b> 14:15  <b>conference</b> 1:15, 25:4      31:9  <b>confusing</b> 18:3  <b>consensus</b> 26:17, 27:7  <b>consider</b> 32:1  <b>consideration</b> 6:9, 6:21      7:7, 7:14, 8:3, 8:11, 8:13      8:14, 9:2, 12:3, 13:15      16:19, 17:8, 17:18, 20:4      20:9, 20:16, 21:4, 23:11      24:15  <b>Considering</b> 13:22  <b>constructive</b> 31:21, 32:7  <b>continue</b> 7:22  <b>contract</b> 6:2  <b>Controversy</b> 1:4  <b>convene</b> 6:7, 21:12      24:25, 25:14, 25:21  <b>convening</b> 9:17, 9:19      14:13, 24:20  <b>conversations</b> 23:22  <b>copy</b> 30:8  <b>costs</b> 14:5  <b>counsel</b> 5:4, 9:13, 33:8  <b>couple</b> 14:11, 26:12  <b>course</b> 31:22  <b>Creek</b> 1:16, 4:1  <b>crew</b> 27:7  <b>crew-sizing</b> 14:4, 14:8  <b>critical</b> 26:21  <b>crux</b> 26:7  <b>CSR</b> 1:24, 33:19  <b>cut</b> 14:5</p>	<p>1:20  <b>Daniel</b> 1:18, 4:13  <b>date</b> 14:24, 32:4, 32:5  <b>dated</b> 3:16  <b>day</b> 17:1  <b>days</b> 7:18, 22:21  <b>de-energize</b> 12:22  <b>December</b> 7:21, 22:18      22:25  <b>decide</b> 23:3  <b>decided</b> 7:11  <b>decision</b> 5:15  <b>definition</b> 7:8  <b>delegated</b> 5:24  <b>deliberation</b> 24:5  <b>demonstrate</b> 21:1, 22:2  <b>department</b> 4:20, 4:22  <b>despite</b> 6:23, 13:18      14:19, 16:3  <b>determination</b> 5:25  <b>determine</b> 26:9, 26:14  <b>determined</b> 7:24  <b>determines</b> 8:12  <b>determining</b> 18:17, 26:24  <b>difference</b> 16:10, 16:15  <b>direct</b> 28:23  <b>director</b> 4:19  <b>dirty</b> 12:18  <b>disagreement</b> 10:2  <b>discuss</b> 7:1, 7:10, 8:2, 8:8      12:8, 16:4, 17:13, 18:2      19:17, 20:8, 20:20, 20:24      21:9, 21:15, 21:23, 22:3      22:14, 23:11, 26:1  <b>discussed</b> 23:23, 25:23  <b>discussing</b> 29:9  <b>discussion</b> 8:21, 15:17      23:18  <b>discussions</b> 7:13, 16:5      20:15, 22:7  <b>disinterested</b> 33:6  <b>dismiss</b> 16:2, 24:12  <b>dispute</b> 10:22  <b>disregarded</b> 22:9  <b>docket</b> 32:4  <b>document</b> 11:7  <b>due</b> 21:10  <b>duly</b> 33:5</p>
<p><b>B</b></p> <p><b>B30A</b> 2:10  <b>back</b> 15:18, 22:25, 23:20      26:2, 31:1, 31:4, 31:11      31:14  <b>background</b> 14:6  <b>bargain</b> 8:16, 17:23      19:13  <b>bargained</b> 18:18  <b>bargaining</b> 4:12, 7:17      8:9, 8:19, 9:11, 10:15      14:16, 14:17, 14:18, 15:1      18:21, 18:22, 19:3, 22:6      22:7, 22:19, 27:21, 28:4      29:2  <b>based</b> 5:25, 24:13  <b>basic</b> 25:12  <b>basis</b> 23:2  <b>Beale</b> 2:10  <b>behalf</b> 2:2, 2:8, 3:2, 3:3      5:9, 12:14, 15:21, 29:7  <b>believe</b> 23:13, 26:3      29:16  <b>benefits</b> 29:13  <b>beyond</b> 8:16, 8:19, 18:15      22:25, 25:16, 25:18  <b>binder</b> 10:13  <b>binding</b> 5:15  <b>bit</b> 6:15, 7:23, 9:23, 16:8  <b>blame</b> 7:9  <b>blamed</b> 7:1  <b>board</b> 1:21, 1:22, 1:22      1:23, 24:5  <b>Bob</b> 1:22, 5:1  <b>boil</b> 17:20  <b>break</b> 24:3  <b>Brotherhood</b> 1:6, 2:3      4:10  <b>business</b> 3:11, 4:24, 5:1</p>	<p><b>E</b></p> <p><b>earlier</b> 22:15  <b>easier</b> 13:3  <b>economic</b> 6:8, 6:21, 7:6      7:14, 8:3, 8:11, 8:12, 8:14      9:2, 13:15, 17:8, 17:17      20:4, 20:9, 20:16, 21:4      23:11, 24:15  <b>edition</b> 3:9, 10:17  <b>educate</b> 9:23  <b>effect</b> 21:1  <b>effective</b> 3:8  <b>efficiencies</b> 13:3  <b>efforts</b> 15:25  <b>eight</b> 17:3, 20:17  <b>eight-hour</b> 17:1  <b>either</b> 8:18, 13:25, 21:18      28:7, 32:9, 33:9  <b>elbow</b> 13:1  <b>electric</b> 1:10, 2:9, 4:9</p>	<p><b>D</b></p> <p><b>dan.altemus@gmail.com</b></p>	<p><b>D</b></p>	<p><b>E</b></p>
<p><b>A</b></p>	<p><b>B</b></p>	<p><b>C</b></p>	<p><b>D</b></p>	<p><b>E</b></p>

<p>4:19, 5:8, 10:15, 12:21  <b>electrical</b> 1:7, 2:3, 4:10                      16:18  <b>Email</b> 2:6, 2:11  <b>employee</b> 13:6  <b>employees</b> 22:2, 29:20                      29:22  <b>employer</b> 4:9, 4:15, 4:17                      5:6, 25:13, 31:18  <b>employer's</b> 6:12, 25:20  <b>employment</b> 29:1  <b>encourage</b> 30:8  <b>energized</b> 12:21, 16:17  <b>entertain</b> 24:4  <b>Esq</b> 2:4, 2:9  <b>essence</b> 17:22  <b>essentially</b> 24:5  <b>established</b> 22:13  <b>event</b> 10:2, 22:24  <b>eventually</b> 17:25  <b>Evid</b> 3:6  <b>evidence</b> 12:6, 18:6, 18:7                      21:2, 22:5, 22:8, 22:16  <b>exactly</b> 13:17  <b>exception</b> 11:22  <b>executive</b> 24:5, 24:21                      24:25, 25:5, 25:9, 31:13  <b>exercise</b> 9:10  <b>exhibit</b> 10:14, 10:20                      10:23, 22:23  <b>exhibits</b> 3:5, 3:6, 3:14                      10:7, 10:9, 10:18, 11:2                      11:4, 11:8, 11:20, 12:3                      12:5  <b>existing</b> 13:9  <b>experiencing</b> 14:21  <b>explained</b> 16:8, 16:10                      27:18  <b>explanation</b> 6:16  <b>expressed</b> 25:11, 26:11  <b>extend</b> 22:25  <b>extent</b> 21:7</p>	<p><b>find</b> 26:14, 26:15  <b>finding</b> 5:25, 26:18  <b>first</b> 12:18, 21:2, 30:14  <b>five</b> 26:19  <b>five-person</b> 25:9  <b>five-zip</b> 31:3, 31:17  <b>focusing</b> 13:11  <b>following</b> 21:1, 25:4                      31:10  <b>foot</b> 31:24  <b>formal</b> 14:16, 21:11                      21:13, 23:9, 24:23  <b>formally</b> 14:25  <b>forms</b> 10:21  <b>forth</b> 8:6, 22:22, 24:16  <b>forum</b> 17:23, 29:5  <b>forums</b> 22:6  <b>found</b> 20:6  <b>four</b> 12:21, 30:12  <b>four-page</b> 11:7  <b>Francisco</b> 2:10  <b>free</b> 11:17  <b>frequently</b> 14:10  <b>front</b> 29:22  <b>function</b> 27:21, 27:22  <b>further</b> 33:8  <b>future</b> 30:11</p>	<p>5:13, 6:23, 7:18, 7:19                      8:17, 8:19, 8:20, 8:23                      10:25, 11:1, 15:24, 16:3                      17:25, 18:23, 19:12                      19:12, 19:15, 19:19                      19:21, 19:24, 20:19                      20:22, 22:10, 22:20, 23:2                      25:13, 26:4, 27:22  <b>grieving</b> 9:6, 9:6  <b>ground</b> 13:2, 13:7  <b>group</b> 23:23  <b>groups</b> 13:24</p>	<p><b>introduction</b> 12:18, 12:19  <b>invade</b> 8:15  <b>investigated</b> 10:25  <b>investigating</b> 10:23                      10:24, 11:3, 11:4, 11:12                      11:13, 11:15, 19:20, 22:1  <b>invites</b> 20:12  <b>involved</b> 26:17  <b>irrelevant</b> 22:8, 22:15  <b>issue</b> 5:18, 5:22, 5:23                      5:25, 6:4, 6:6, 7:11, 9:1                      9:14, 14:21, 16:14, 17:24                      18:3, 18:4, 18:13, 19:10                      19:13, 19:22, 20:1, 21:20                      22:5, 23:4, 26:20, 29:17                      29:21  <b>issued</b> 10:3  <b>issues</b> 7:1, 7:10, 8:7, 8:8                      8:16, 11:25, 16:9, 17:14                      19:17, 21:10, 23:25                      26:11, 27:20, 29:3, 29:10</p>	<p>6:17, 7:15, 8:4, 8:6, 10:20                      10:22, 11:6, 17:15, 18:16                      19:3, 19:5, 19:8, 20:10                      20:10, 22:12, 23:5, 23:12                      24:16, 25:14, 29:11  <b>LIC</b> 3:12, 3:13, 8:21                      11:12  <b>limited</b> 7:20  <b>line</b> 12:22, 16:22, 27:11                      27:11  <b>lineman</b> 13:7, 26:21  <b>linemen</b> 12:20, 13:4                      16:21, 26:8, 26:22  <b>lines</b> 4:19, 16:18  <b>little</b> 6:15, 7:22, 9:23                      14:6, 16:8  <b>local</b> 1:7, 2:3, 4:11, 4:25                      10:16, 10:23, 11:13                      11:15, 19:20, 21:25  <b>look</b> 6:8, 6:20, 7:6, 7:13                      13:14, 17:7, 19:10, 24:14                      29:3  <b>looked</b> 21:3  <b>lot</b> 14:10, 26:22, 27:9</p>	
<p><b>F</b></p> <p><b>fact</b> 8:13, 18:8, 19:20                      20:14, 20:18, 21:3, 28:3  <b>factors</b> 26:23  <b>factual</b> 12:7, 15:9  <b>failed</b> 7:2, 18:1  <b>failure</b> 6:25, 7:10, 18:9                      21:17  <b>failures</b> 7:20  <b>faith</b> 27:25  <b>fall</b> 28:16  <b>far</b> 5:17  <b>fashion</b> 31:1  <b>fault</b> 7:25, 20:6  <b>favor</b> 15:3, 23:4, 30:16  <b>February</b> 3:9, 10:17  <b>feel</b> 11:17, 25:17, 26:7                      27:24  <b>feeling</b> 26:5  <b>feet</b> 7:9  <b>field</b> 26:8  <b>file</b> 8:18, 18:23  <b>filed</b> 7:18, 7:19, 20:22                      22:20, 26:3  <b>filing</b> 20:18  <b>final</b> 5:15</p>	<p><b>G</b></p> <p><b>gain</b> 1:12, 6:8, 6:20, 7:6                      7:13, 8:2, 9:21, 13:14                      13:20, 14:13, 14:21                      14:25, 16:4, 17:7, 17:16                      18:14, 19:22, 20:3, 20:8                      20:16, 20:20, 20:24, 21:3                      21:15, 21:23, 22:3, 22:5                      22:14, 23:11, 24:15, 26:6                      26:25  <b>gains</b> 8:11, 8:12, 8:14                      8:22, 9:2, 14:1, 14:22                      14:22, 18:17, 27:1  <b>Gas</b> 1:10, 2:9, 4:9, 5:7                      10:15, 12:20  <b>gather</b> 5:20, 11:10  <b>general</b> 14:17, 15:1, 22:7  <b>Gerstle</b> 1:22, 5:1, 5:1                      26:2, 30:20  <b>give</b> 9:22  <b>given</b> 30:2  <b>glove</b> 16:20, 28:25  <b>gloves</b> 13:1, 13:2, 26:10  <b>gloving</b> 12:19, 12:25                      13:6, 13:10, 13:24, 14:10                      14:23, 16:11, 16:12                      16:16, 16:25, 17:2, 21:5                      26:13, 26:19, 28:24                      29:13  <b>go</b> 6:14, 9:18, 10:11                      10:19, 13:1, 15:9, 15:14                      15:18, 23:17, 23:20                      25:18, 26:13, 26:23, 28:7  <b>going</b> 4:15, 5:17, 7:22                      9:8, 18:7, 24:1, 26:20                      26:24, 27:12, 30:13  <b>good</b> 12:15, 27:25, 31:24                      32:14  <b>grant</b> 25:19, 31:18  <b>grievable</b> 18:22  <b>grievance</b> 3:11, 3:13</p>	<p><b>H</b></p> <p><b>HAMILL</b> 1:24, 33:18  <b>hand</b> 9:18, 9:19  <b>handled</b> 8:22  <b>happened</b> 28:8  <b>heard</b> 11:11, 28:12  <b>hearing</b> 24:23, 24:23                      32:1  <b>held</b> 15:17, 23:18, 25:5                      31:10  <b>help</b> 6:7, 29:17  <b>helpful</b> 30:11  <b>higher</b> 16:21  <b>hoc</b> 22:6  <b>Honor</b> 30:17  <b>hopefully</b> 12:16, 31:22  <b>hot</b> 12:22, 16:17  <b>hounding</b> 14:12  <b>hours</b> 17:3</p>	<p><b>I</b></p> <p><b>Iandoli</b> 1:23, 4:21, 4:21                      28:21, 30:17, 31:7  <b>IBEW</b> 3:15, 5:2, 5:10                      10:16, 13:19  <b>Ident</b> 3:6  <b>identification</b> 11:9  <b>identify</b> 4:16, 10:8  <b>illegitimate</b> 28:15  <b>implement</b> 21:5  <b>implemented</b> 14:4, 16:15                      27:6  <b>implementing</b> 16:19  <b>important</b> 17:10, 18:12                      29:21  <b>imposed</b> 8:1  <b>inasmuch</b> 6:2  <b>inclined</b> 25:18  <b>include</b> 10:18  <b>including</b> 22:6, 28:24  <b>increase</b> 16:23, 16:24                      17:3, 17:19  <b>increased</b> 13:3, 14:22  <b>index</b> 3:1, 10:13  <b>indicated</b> 25:16  <b>inform</b> 31:16  <b>informal</b> 14:14  <b>information</b> 27:25  <b>initiating</b> 14:12  <b>initiative</b> 14:4, 14:8  <b>input</b> 30:12, 31:2  <b>interested</b> 33:10  <b>International</b> 1:6, 2:3                      4:10  <b>interpretation</b> 6:3</p>	<p><b>J</b></p> <p><b>January</b> 7:20  <b>job</b> 1:25, 26:9, 29:25                      29:25, 30:4  <b>John</b> 1:22, 4:18, 29:6  <b>joint</b> 3:6, 6:18, 6:19, 6:24                      7:3, 7:10, 9:17, 10:7, 10:8                      10:14, 11:8, 11:19, 12:3                      12:5, 17:11, 17:13, 17:14                      18:4, 18:4, 19:9, 19:17                      20:24, 22:14, 22:23                      25:14, 25:21, 28:8, 28:13                      29:8, 31:19, 31:23  <b>jointly</b> 26:15  <b>judgment</b> 9:10, 24:11  <b>JULIEANN</b> 1:24, 33:18  <b>July</b> 1:16, 4:1  <b>jurisdiction</b> 10:1</p>	<p><b>M</b></p> <p><b>management</b> 13:19  <b>management's</b> 28:24  <b>manager</b> 3:11, 4:25, 5:2  <b>manager's</b> 22:20, 26:3  <b>mandatory</b> 19:2, 29:1  <b>marked</b> 11:8  <b>matter</b> 1:4, 8:8, 10:1                      12:13, 23:25, 24:8, 25:23                      28:20, 31:4, 32:2  <b>mean</b> 28:12  <b>means</b> 19:25, 32:4  <b>measurable</b> 14:1  <b>measure</b> 8:14, 18:17  <b>meet</b> 6:25, 7:5, 7:10                      14:15, 17:22, 18:10                      20:23, 21:21, 29:11  <b>meeting</b> 11:5, 21:9, 21:16                      24:5, 25:8  <b>meetings</b> 8:2, 17:21, 20:2                      21:22, 25:12, 30:11  <b>member</b> 1:21, 1:22, 1:22                      1:23  <b>members</b> 4:15, 4:16, 4:17                      18:14, 25:23  <b>membership</b> 13:19, 14:2  <b>men</b> 12:25, 12:25  <b>mentioned</b> 6:18, 14:7                      18:4, 18:12, 22:15  <b>met</b> 1:17, 5:14, 6:6, 18:8                      21:3, 26:4, 31:13  <b>mind</b> 12:3, 19:12, 24:7                      31:25  <b>minimum</b> 9:11  <b>minute</b> 9:24  <b>minutes</b> 17:1  <b>Moffat</b> 1:15  <b>moment</b> 25:2  <b>monetary</b> 14:22  <b>money</b> 18:15  <b>months</b> 20:17, 29:9  <b>moot</b> 21:20  <b>morning</b> 12:15  <b>motion</b> 24:4, 24:10, 24:10</p>

<p>24:11, 24:19, 25:19 30:14, 30:15, 30:15 30:16, 30:24, 31:3, 31:18 <b>mutual</b> 7:8, 8:5, 18:10 21:10, 21:18, 22:13 29:10 <b>mutually</b> 17:13, 23:24 29:16</p>	<p><b>ordering</b> 16:5 <b>outcome</b> 33:10 <b>outset</b> 19:25 <b>outside</b> 22:4 <b>oversight</b> 29:5 <b>overtime</b> 19:2 <b>overview</b> 6:7, 6:19, 6:24 6:25, 7:4, 7:5, 7:12, 8:2 8:23, 9:19, 13:12, 14:14 14:25, 16:4, 16:6, 17:6 17:10, 17:21, 18:9, 18:19 19:9, 19:17, 19:23, 20:2 20:8, 20:15, 20:20, 20:21 20:24, 21:2, 21:8, 21:12 21:15, 21:19, 22:4, 22:14 23:10, 24:14, 26:5 <b>owed</b> 8:13 <b>owes</b> 18:14</p>	<p><b>perspective</b> 15:23 <b>PG&amp;E</b> 1:14, 3:15, 13:19 13:22, 14:4, 18:1, 18:14 <b>PG&amp;E's</b> 4:19 <b>Philip</b> 2:9, 5:7 <b>Phone</b> 2:5, 2:11 <b>place</b> 13:14, 17:7, 21:22 33:4 <b>pleased</b> 31:16 <b>point</b> 9:5, 13:16, 18:12 23:9, 23:14, 24:3, 30:2 <b>police</b> 28:4 <b>portion</b> 7:3 <b>position</b> 5:17, 19:18, 24:2 24:8, 24:19, 30:5 <b>possible</b> 31:19 <b>potential</b> 20:5 <b>preceded</b> 22:11 <b>preferred</b> 23:14 <b>presence</b> 27:19 <b>present</b> 12:13, 18:8, 22:5 31:15 <b>presentation</b> 21:2 <b>presented</b> 11:4 <b>pretty</b> 12:16 <b>primary</b> 12:21 <b>principal</b> 4:22, 16:14 16:15 <b>prior</b> 5:13, 15:12, 20:18 22:17 <b>problem</b> 26:14, 27:9 <b>procedure</b> 8:17, 15:24 19:24, 20:11, 22:1, 26:24 30:1, 30:3 <b>procedures</b> 5:14, 13:13 16:17, 16:20, 17:7 <b>proceed</b> 19:15 <b>proceeding</b> 16:1 <b>proceedings</b> 1:1, 4:4 5:12, 31:14, 33:3, 33:10 <b>process</b> 8:24, 11:1, 27:21 27:22, 28:4 <b>productive</b> 30:10, 30:25 <b>progression</b> 16:22 <b>promises</b> 13:19 <b>proposal</b> 26:17 <b>proposals</b> 14:16 <b>propose</b> 12:8 <b>proposed</b> 29:19 <b>provide</b> 8:11, 14:5, 17:17 18:20, 19:1, 22:16 <b>provided</b> 8:17, 17:4, 19:9 20:9, 22:24, 23:12 <b>provides</b> 16:21 <b>province</b> 8:15 <b>provision</b> 13:20, 22:12 <b>purports</b> 8:10 <b>purposely</b> 9:9 <b>pursuant</b> 1:1, 1:17, 4:12 13:8 <b>purview</b> 28:16</p>	<p style="text-align: center;"><b>R</b></p> <p><b>raise</b> 18:20, 18:24 <b>raised</b> 22:5 <b>raises</b> 19:7 <b>rarely</b> 13:23 <b>reach</b> 28:10 <b>ready</b> 5:14 <b>realizes</b> 29:12 <b>really</b> 13:11, 13:25, 14:1 28:5 <b>reason</b> 27:6 <b>reasons</b> 15:2 <b>recap</b> 25:10 <b>receipt</b> 11:19 <b>receive</b> 12:3, 16:22 <b>received</b> 17:2, 26:16 <b>receptive</b> 22:3 <b>recess</b> 23:19, 24:23 <b>reconvene</b> 16:3, 20:8 20:19, 21:19, 23:10 24:14, 25:13, 29:15 31:19 <b>reconvened</b> 20:14, 26:5 <b>reconvening</b> 29:2, 29:8 <b>record</b> 4:4, 4:7, 5:5, 5:24 6:1, 15:14, 15:16, 15:17 15:19, 22:22, 23:17 23:18, 23:21, 24:6, 25:1 25:2, 25:7, 25:8, 27:18 29:18, 31:12, 31:14 31:20, 32:6, 32:10 <b>redefining</b> 27:1 <b>reengage</b> 8:2 <b>referenced</b> 17:5, 19:8 <b>refers</b> 6:18 <b>refusal</b> 16:2, 19:13, 22:17 <b>refuse</b> 7:5 <b>refused</b> 7:4, 7:12, 20:1 20:21, 21:11, 21:15 21:21, 21:23 <b>regarding</b> 22:16 <b>rejected</b> 19:13 <b>relations</b> 4:22 <b>remedies</b> 27:23 <b>remedy</b> 6:11, 7:25, 8:10 9:6, 10:3, 16:6, 20:5 22:24, 23:14 <b>report</b> 3:12, 3:13, 10:24 11:3 <b>reported</b> 1:24, 33:4 <b>reporter</b> 24:6, 33:5 <b>REPORTER'S</b> 33:1 <b>representations</b> 30:9 <b>representatives</b> 17:12 27:19, 27:20 <b>reps</b> 14:11 <b>request</b> 21:11, 21:13 23:9, 29:25 <b>requests</b> 14:15, 15:2 22:3 <b>require</b> 7:17, 29:2 <b>required</b> 8:8 <b>resolve</b> 29:17 <b>respect</b> 5:17, 10:2, 14:20 30:18 <b>respectfully</b> 15:2 <b>responded</b> 19:11 <b>Respondent</b> 1:11 <b>response</b> 19:19</p>	<p><b>responsible</b> 6:20, 13:13 17:6 <b>restate</b> 24:2 <b>result</b> 16:1, 18:10, 18:21 <b>retain</b> 10:1 <b>returned</b> 31:9 <b>revised</b> 3:9, 10:17 <b>right</b> 8:15, 11:12, 12:11 15:18, 20:11, 23:20, 27:7 27:11, 29:24, 30:4, 31:11 <b>rights</b> 28:24 <b>road</b> 1:19, 14:20, 31:1 <b>rodeo</b> 31:1 <b>room</b> 1:15, 24:24, 25:4 31:9 <b>Rosemount</b> 1:19 <b>rubber</b> 12:19, 12:25, 13:2 13:6, 13:10, 13:23, 14:9 14:23, 16:11, 16:12 16:16, 16:20, 16:25, 17:2 21:5, 26:10, 26:13, 26:19 28:24, 28:25, 29:13 <b>rule</b> 15:3 <b>ruling</b> 23:4, 27:13</p>
<p style="text-align: center;"><b>N</b></p> <p><b>name</b> 4:18 <b>named</b> 33:5, 33:11 <b>need</b> 32:6 <b>needed</b> 21:5 <b>needs</b> 18:18 <b>negotiable</b> 29:4 <b>negotiate</b> 9:13, 14:25 <b>negotiations</b> 9:16, 9:21 14:13, 22:7, 27:24, 31:23 <b>negotiator</b> 4:22, 21:14 <b>never</b> 21:11, 21:13, 21:14 26:22, 29:18 <b>new</b> 27:10 <b>non-grievable</b> 19:14 <b>nonsuit</b> 24:11 <b>Nope</b> 27:16 <b>North</b> 1:14 <b>note</b> 7:16, 17:10, 31:20 <b>noted</b> 32:16 <b>notice</b> 1:17 <b>November</b> 26:4 <b>number</b> 10:22</p>	<p style="text-align: center;"><b>P</b></p> <p><b>P3SR@pge.com</b> 2:11 <b>Pacheco</b> 2:4, 5:9, 5:9 5:19, 6:5, 6:17, 9:5, 9:8 9:18, 10:5, 10:11, 11:21 12:9, 12:12, 12:15, 15:14 16:9, 17:5, 23:13, 24:18 24:20, 24:24, 25:3, 31:8 32:3, 32:8, 32:13 <b>Pacific</b> 1:10, 2:9, 4:9, 5:7 10:15, 12:20 <b>panel</b> 4:14, 4:16, 4:17 5:15, 5:24, 10:1, 24:4 24:4, 24:21, 24:25, 25:9 25:17, 25:22, 31:13 31:17, 31:22 <b>panel's</b> 28:17 <b>paper</b> 26:16 <b>Parks</b> 1:22, 4:18, 4:18 28:18, 29:7, 30:15, 30:16 <b>part</b> 8:23, 18:10, 21:18 <b>participate</b> 6:19, 7:4 7:12, 20:2 <b>particular</b> 17:23, 17:23 19:6 <b>parties</b> 1:2, 3:7, 4:12 4:13, 5:12, 5:20, 5:23 6:18, 7:17, 8:1, 8:21, 9:12 9:25, 10:18, 12:24, 13:5 13:20, 14:15, 14:17 15:25, 16:5, 17:13, 18:11 19:21, 20:7, 20:14, 21:11 22:13, 23:10, 23:23 25:11, 25:16, 25:20, 28:5 28:10, 31:18, 31:23, 33:9 <b>partner</b> 29:24 <b>party</b> 8:18, 9:6, 9:6 13:25 <b>passed</b> 10:14, 31:3 <b>pay</b> 17:19, 18:24, 19:2 19:6, 19:10 <b>percent</b> 16:23, 16:24 17:2, 17:18, 18:15, 18:25 18:25, 19:7, 26:19 <b>percipient</b> 9:20 <b>perform</b> 30:2 <b>performed</b> 26:9 <b>performing</b> 13:4 <b>periods</b> 21:7 <b>person</b> 33:6</p>	<p style="text-align: center;"><b>Q</b></p> <p><b>question</b> 15:6, 32:3 <b>quick</b> 12:18, 12:18, 15:14 32:3 <b>quickest</b> 30:25 <b>quote</b> 6:8, 6:9, 13:12 17:6, 17:9, 19:9</p>	<p style="text-align: center;"><b>S</b></p> <p><b>safely</b> 27:7 <b>safety</b> 27:6, 29:20, 29:21 30:3 <b>San</b> 2:10 <b>satisfied</b> 23:5 <b>scope</b> 8:16, 8:20 <b>second</b> 10:20, 21:7 <b>section</b> 22:23 <b>see</b> 28:2, 28:19 <b>seeking</b> 9:7 <b>senior</b> 4:19 <b>series</b> 23:22 <b>serve</b> 4:14 <b>session</b> 24:25, 25:5, 26:1 31:10 <b>set</b> 8:6, 22:22, 24:16 <b>share</b> 8:11 <b>shared</b> 9:2, 14:1 <b>sharing</b> 1:12, 6:8, 6:20 7:6, 7:13, 8:3, 9:21, 13:14 13:20, 14:13, 14:21 14:25, 16:4, 17:7, 17:17 18:14, 19:23, 20:3, 20:8 20:16, 20:20, 20:24, 21:3 21:15, 21:23, 22:3, 22:6 22:14, 23:11, 24:15, 26:6 26:25, 27:1 <b>shortcut</b> 15:12, 20:11 <b>Shorthand</b> 33:5 <b>show</b> 4:8, 20:6, 25:8 <b>shows</b> 18:8 <b>side</b> 28:7 <b>sides</b> 30:10, 31:21 <b>significant</b> 14:22 <b>Simpkins</b> 2:9, 5:7, 5:7 5:16, 6:13, 10:4, 10:10 10:12, 11:13, 11:22 11:25, 12:10, 15:5, 15:6 15:9, 15:20, 15:22, 23:8 24:1, 24:7, 24:9, 24:24 25:3, 31:8, 32:11 <b>simple</b> 18:11 <b>simply</b> 28:16</p>	
<p style="text-align: center;"><b>O</b></p> <p><b>oOo</b> 1:3, 4:3, 4:5, 32:17 33:21 <b>Oakland</b> 1:19 <b>objection</b> 11:19, 11:21 11:22 <b>obligates</b> 17:16 <b>obligation</b> 6:6, 6:18, 7:3 17:13, 18:2, 18:5, 22:13 30:4 <b>obligations</b> 23:5 <b>obviously</b> 28:22 <b>occur</b> 10:2 <b>occurred</b> 7:21, 22:17 <b>off-the-record</b> 23:22 25:11 <b>offer</b> 20:21, 24:2 <b>offered</b> 26:13 <b>Okay</b> 4:6, 4:23, 5:3, 5:20 9:4, 9:22, 10:6, 11:10 11:19, 12:2, 12:11, 23:16 24:18, 24:22, 25:6, 26:2 27:3, 27:17, 30:6, 30:23 32:14 <b>open</b> 26:1 <b>opening</b> 3:2, 3:3, 9:24 12:13, 12:14, 15:21 <b>operative</b> 13:11 <b>opinions</b> 25:24 <b>opportunity</b> 9:23 <b>opposing</b> 9:13 <b>Orange</b> 2:4 <b>order</b> 8:10, 9:12, 20:7 20:13, 20:25, 23:10 24:14</p>	<p style="text-align: center;"><b>O</b></p> <p><b>ordering</b> 16:5 <b>outcome</b> 33:10 <b>outset</b> 19:25 <b>outside</b> 22:4 <b>oversight</b> 29:5 <b>overtime</b> 19:2 <b>overview</b> 6:7, 6:19, 6:24 6:25, 7:4, 7:5, 7:12, 8:2 8:23, 9:19, 13:12, 14:14 14:25, 16:4, 16:6, 17:6 17:10, 17:21, 18:9, 18:19 19:9, 19:17, 19:23, 20:2 20:8, 20:15, 20:20, 20:21 20:24, 21:2, 21:8, 21:12 21:15, 21:19, 22:4, 22:14 23:10, 24:14, 26:5 <b>owed</b> 8:13 <b>owes</b> 18:14</p>	<p style="text-align: center;"><b>Q</b></p> <p><b>question</b> 15:6, 32:3 <b>quick</b> 12:18, 12:18, 15:14 32:3 <b>quickest</b> 30:25 <b>quote</b> 6:8, 6:9, 13:12 17:6, 17:9, 19:9</p>	<p style="text-align: center;"><b>R</b></p> <p><b>raise</b> 18:20, 18:24 <b>raised</b> 22:5 <b>raises</b> 19:7 <b>rarely</b> 13:23 <b>reach</b> 28:10 <b>ready</b> 5:14 <b>realizes</b> 29:12 <b>really</b> 13:11, 13:25, 14:1 28:5 <b>reason</b> 27:6 <b>reasons</b> 15:2 <b>recap</b> 25:10 <b>receipt</b> 11:19 <b>receive</b> 12:3, 16:22 <b>received</b> 17:2, 26:16 <b>receptive</b> 22:3 <b>recess</b> 23:19, 24:23 <b>reconvene</b> 16:3, 20:8 20:19, 21:19, 23:10 24:14, 25:13, 29:15 31:19 <b>reconvened</b> 20:14, 26:5 <b>reconvening</b> 29:2, 29:8 <b>record</b> 4:4, 4:7, 5:5, 5:24 6:1, 15:14, 15:16, 15:17 15:19, 22:22, 23:17 23:18, 23:21, 24:6, 25:1 25:2, 25:7, 25:8, 27:18 29:18, 31:12, 31:14 31:20, 32:6, 32:10 <b>redefining</b> 27:1 <b>reengage</b> 8:2 <b>referenced</b> 17:5, 19:8 <b>refers</b> 6:18 <b>refusal</b> 16:2, 19:13, 22:17 <b>refuse</b> 7:5 <b>refused</b> 7:4, 7:12, 20:1 20:21, 21:11, 21:15 21:21, 21:23 <b>regarding</b> 22:16 <b>rejected</b> 19:13 <b>relations</b> 4:22 <b>remedies</b> 27:23 <b>remedy</b> 6:11, 7:25, 8:10 9:6, 10:3, 16:6, 20:5 22:24, 23:14 <b>report</b> 3:12, 3:13, 10:24 11:3 <b>reported</b> 1:24, 33:4 <b>reporter</b> 24:6, 33:5 <b>REPORTER'S</b> 33:1 <b>representations</b> 30:9 <b>representatives</b> 17:12 27:19, 27:20 <b>reps</b> 14:11 <b>request</b> 21:11, 21:13 23:9, 29:25 <b>requests</b> 14:15, 15:2 22:3 <b>require</b> 7:17, 29:2 <b>required</b> 8:8 <b>resolve</b> 29:17 <b>respect</b> 5:17, 10:2, 14:20 30:18 <b>respectfully</b> 15:2 <b>responded</b> 19:11 <b>Respondent</b> 1:11 <b>response</b> 19:19</p>	<p style="text-align: center;"><b>S</b></p> <p><b>safely</b> 27:7 <b>safety</b> 27:6, 29:20, 29:21 30:3 <b>San</b> 2:10 <b>satisfied</b> 23:5 <b>scope</b> 8:16, 8:20 <b>second</b> 10:20, 21:7 <b>section</b> 22:23 <b>see</b> 28:2, 28:19 <b>seeking</b> 9:7 <b>senior</b> 4:19 <b>series</b> 23:22 <b>serve</b> 4:14 <b>session</b> 24:25, 25:5, 26:1 31:10 <b>set</b> 8:6, 22:22, 24:16 <b>share</b> 8:11 <b>shared</b> 9:2, 14:1 <b>sharing</b> 1:12, 6:8, 6:20 7:6, 7:13, 8:3, 9:21, 13:14 13:20, 14:13, 14:21 14:25, 16:4, 17:7, 17:17 18:14, 19:23, 20:3, 20:8 20:16, 20:20, 20:24, 21:3 21:15, 21:23, 22:3, 22:6 22:14, 23:11, 24:15, 26:6 26:25, 27:1 <b>shortcut</b> 15:12, 20:11 <b>Shorthand</b> 33:5 <b>show</b> 4:8, 20:6, 25:8 <b>shows</b> 18:8 <b>side</b> 28:7 <b>sides</b> 30:10, 31:21 <b>significant</b> 14:22 <b>Simpkins</b> 2:9, 5:7, 5:7 5:16, 6:13, 10:4, 10:10 10:12, 11:13, 11:22 11:25, 12:10, 15:5, 15:6 15:9, 15:20, 15:22, 23:8 24:1, 24:7, 24:9, 24:24 25:3, 31:8, 32:11 <b>simple</b> 18:11 <b>simply</b> 28:16</p>

<p><b>six</b> 16:23, 16:24, 17:2 17:18, 18:15, 19:7 <b>skills</b> 6:9, 6:21, 7:14, 8:3 13:15, 17:8, 21:4, 24:16 <b>solely</b> 7:1 <b>solution</b> 26:15, 26:18 <b>somewhat</b> 18:3 <b>soon</b> 31:19 <b>sorry</b> 6:10, 7:22 <b>sort</b> 21:17, 25:25 <b>sounds</b> 15:11 <b>speak</b> 11:11 <b>specifically</b> 17:19, 18:16 19:7, 19:11, 20:19 <b>stage</b> 8:21, 19:21 <b>start</b> 15:7, 18:11, 25:10 29:21 <b>started</b> 10:7, 11:11, 14:9 14:12 <b>state</b> 5:4, 5:23, 6:14, 18:3 24:8 <b>stated</b> 9:13, 19:25, 23:13 28:8 <b>statement</b> 3:2, 3:3, 5:21 6:5, 12:13, 12:14, 15:21 16:9, 18:12 <b>statements</b> 9:24, 31:21 <b>steps</b> 5:13, 10:25 <b>Stice</b> 1:21, 4:24, 4:24 27:5, 27:16, 30:22 <b>sticks</b> 12:22 <b>stipulated</b> 5:16, 5:19 <b>stipulation</b> 5:12, 10:17 15:10, 24:13 <b>stipulations</b> 12:8 <b>stop</b> 29:24, 30:4 <b>straightforward</b> 12:16 <b>Street</b> 2:10 <b>stuck</b> 29:14 <b>subject</b> 18:22, 19:2 19:14 <b>subjects</b> 29:1, 29:4 <b>submit</b> 9:1 <b>submitted</b> 6:23 <b>suggest</b> 28:6 <b>Suite</b> 1:15 <b>sum</b> 21:21, 23:2 <b>summary</b> 18:7, 24:11 <b>supervisor</b> 27:13, 29:25 <b>supervisors</b> 26:22, 27:10 <b>suppose</b> 9:18 <b>sure</b> 10:12, 15:8, 15:15 30:3</p>	<p><b>thank</b> 5:3, 9:24, 15:4 15:22, 23:7, 23:16, 24:9 31:6, 31:7, 32:8, 32:11 32:13 <b>thing</b> 11:18 <b>things</b> 16:12, 25:10, 32:7 <b>think</b> 9:8, 9:11, 16:8 25:15, 28:7, 30:9, 30:10 30:25, 31:20 <b>thinking</b> 30:20 <b>third</b> 10:23, 21:17 <b>three</b> 12:25, 18:25 <b>three-person</b> 16:10 16:11 <b>thrust</b> 25:12 <b>Thursday</b> 1:16 <b>time</b> 6:4, 12:8, 13:22 15:25, 19:2, 21:8, 24:22 32:12, 32:16, 33:4 <b>timely</b> 22:21 <b>today</b> 14:12 <b>topics</b> 28:13 <b>training</b> 6:9, 6:22, 7:14 8:4, 13:16, 17:9, 21:5 24:16 <b>transcribed</b> 33:6 <b>transcript</b> 30:9 <b>transmission</b> 4:19 <b>Tree</b> 2:4 <b>trying</b> 14:20, 28:6, 29:10 <b>turn</b> 12:12, 24:1, 25:22 28:18, 30:14 <b>two</b> 12:25, 18:25 <b>two-man</b> 13:6, 13:23 14:9, 14:23, 16:16 <b>two-person</b> 16:11, 16:20 16:25, 17:1, 21:5, 29:13 <b>Ty</b> 27:3 <b>type</b> 13:4 <b>typewriting</b> 33:7</p>	<p><b>V</b></p> <p><b>vacation</b> 19:1 <b>Vacaville</b> 2:5 <b>various</b> 14:11, 22:2 23:24 <b>versus</b> 26:18 <b>view</b> 5:23, 6:3, 6:12 30:15 <b>views</b> 25:24 <b>violated</b> 20:23, 22:11 <b>violation</b> 7:19, 21:6 21:24 <b>voluntary</b> 13:5 <b>vote</b> 25:25, 30:13, 30:16 31:17, 31:17</p>	<p>3:13, 3:15 <b>1245</b> 1:7, 2:3, 4:11, 4:25 5:2, 10:16 <b>12th</b> 7:20, 7:21, 22:18 <b>130</b> 1:15 <b>13th</b> 22:25 <b>15</b> 3:3 <b>15-02</b> 3:11 <b>17th</b> 32:4, 32:5 <b>1990</b> 12:20, 12:23</p>	
<p><b>T</b></p> <p><b>tab</b> 11:2, 11:6, 12:1 12:24, 13:9 <b>take</b> 25:25 <b>taken</b> 21:22 <b>takes</b> 6:15 <b>talk</b> 26:13, 29:25 <b>talked</b> 26:2, 26:6, 26:7 <b>talking</b> 27:5 <b>talks</b> 26:25 <b>term</b> 11:12, 24:12 <b>termed</b> 25:19 <b>terms</b> 7:16, 22:18, 28:25 29:11 <b>testifying</b> 14:11</p>	<p><b>U</b></p> <p><b>ultimately</b> 19:25 <b>unanimous</b> 30:23, 31:17 <b>underlying</b> 16:2 <b>underpinnings</b> 10:21 <b>understand</b> 10:6, 26:23 27:11 <b>understanding</b> 28:10 <b>underway</b> 14:9 <b>unfortunately</b> 6:15 <b>union</b> 1:7, 1:21, 1:22, 2:2 2:3, 3:2, 4:10, 4:16, 4:23 6:3, 6:24, 10:16, 12:9 12:14, 14:11, 15:2, 15:11 17:12, 17:22, 18:2, 18:9 18:14, 18:23, 18:25 20:18, 20:21, 20:23 21:12, 21:25, 22:4, 22:16 25:22, 27:19, 27:24 28:12, 30:19 <b>union's</b> 6:5, 16:2, 28:7 <b>unsure</b> 29:23 <b>use</b> 11:17, 16:16, 26:24 32:6 <b>utilization</b> 14:23 <b>utilize</b> 12:24 <b>utilized</b> 13:23 <b>utilizing</b> 14:9, 26:10</p>	<p><b>W</b></p> <p><b>wage</b> 17:18 <b>wages</b> 16:23, 16:24, 17:3 18:21, 18:24 <b>waived</b> 5:14 <b>Walnut</b> 1:16, 4:1 <b>want</b> 9:15, 9:16, 10:10 12:8, 24:12, 32:10 <b>wanted</b> 27:4, 28:21 <b>waste</b> 15:24 <b>way</b> 7:2, 7:25, 18:3, 28:10 33:10 <b>Wiget</b> 1:14 <b>willing</b> 23:15 <b>wishes</b> 30:7 <b>wording</b> 6:23 <b>words</b> 11:3, 17:12 <b>work</b> 13:4, 13:6, 13:24 16:17, 16:17, 16:20 16:25, 26:24, 27:12 28:23, 29:24, 30:1 <b>worked</b> 12:21, 16:25 <b>Workers</b> 1:7, 2:3, 4:10 <b>working</b> 12:20</p>	<p><b>2</b></p> <p><b>2</b> 3:10, 13:9 <b>20</b> 17:1 <b>2005</b> 13:5, 13:23, 16:13 16:14, 16:16, 16:20 17:15, 19:3, 19:5, 19:8 20:10, 23:12 <b>2010</b> 13:23, 14:3, 15:12 <b>2010-2011</b> 14:4 <b>2012</b> 10:16 <b>2013</b> 3:9, 10:17 <b>2014</b> 7:21, 22:18, 23:1 <b>2015</b> 7:20 <b>2016</b> 1:16, 4:1 <b>21</b> 1:16, 4:1 <b>22940</b> 3:12, 3:13 <b>2nd</b> 3:8</p>	
		<p><b>Y</b></p> <p><b>yards</b> 26:12, 26:14, 26:19 <b>Yeah</b> 10:11, 29:7, 32:13 <b>years</b> 13:18, 21:8</p>	<p><b>3</b></p> <p><b>3</b> 3:11 <b>3/2/1990</b> 3:16 <b>30</b> 2:4, 7:18, 22:21 <b>375</b> 1:14</p>	
		<p><b>0</b></p> <p><b>05</b> 29:11 <b>0523</b> 6:10 <b>05-23</b> 6:10, 7:15, 8:5 13:8, 13:21, 22:12, 23:6 25:15 <b>05-23-PGE</b> 3:10, 10:22 24:17</p>	<p><b>4</b></p> <p><b>4</b> 3:13, 11:2, 12:1 <b>415</b> 2:11 <b>452-2751</b> 2:5</p>	
		<p><b>1</b></p> <p><b>1</b> 3:7, 10:14, 11:8, 11:20 12:3, 12:5, 22:23 <b>10:00</b> 1:17 <b>10:05</b> 4:2 <b>102.3(a)</b> 22:23 <b>11</b> 3:7, 3:10, 3:11, 3:13 3:15, 21:8 <b>11:20</b> 32:16 <b>12</b> 3:2, 3:7, 3:10, 3:11</p>	<p><b>5</b></p> <p><b>5</b> 3:15, 11:6, 11:8, 11:20 12:4, 12:5, 12:24 <b>5-0</b> 31:3, 31:17 <b>5151</b> 1:24, 33:19 <b>5891FG</b> 1:25</p>	
			<p><b>7</b></p> <p><b>7/25/12</b> 3:8 <b>707</b> 2:5 <b>735</b> 1:19 <b>77</b> 2:10</p>	
			<p><b>9</b></p> <p><b>90-34</b> 12:24 <b>90-34-PGE</b> 3:16, 11:6 <b>94105</b> 2:10 <b>94610</b> 1:19 <b>95687</b> 2:5 <b>973-2873</b> 2:11</p>	