

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Arizona Public Service) Docket No. ER14-2430
Company)**

**COMMENTS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“CAISO”) files comments in support of Arizona Public Service Company’s (“APS”) filing of three unexecuted Non-Conforming Large Generator Interconnection Agreements with Hyder Solar 1, LLC, Hyder Solar 2, LLC and Hyder Solar 3, LLC (collectively “Hyder”).¹ The CAISO, APS, Imperial Irrigation District (“IID”), and San Diego Gas & Electric Corporation (“SDG&E”), are all counterparties to the three Hyder interconnection agreements (“Hyder LGIAs”).²

APS filed the three Hyder interconnection agreements unexecuted because of a disagreement regarding a provision that requires the Hyder projects to enter and be studied in the CAISO’s interconnection queue in order for the agreements to be effective as to the CAISO and SDG&E. The CAISO and SDG&E insisted on the inclusion of this provision because the point of interconnection for all three Hyder projects is a transmission facility that is jointly owned by SDG&E, APS, and IID, with SDG&E’s ownership interest having been placed under the CAISO’s operational control. Because the CAISO operates

¹ The three Hyder LLC entities were originally owned by U.S. Solar Holdings but were purchased in 2012 by NRG Renew LLC (“NRG”). NRG is the current owner of the Hyder entities.

² APS originally filed the three Hyder LGIAs on July 14, 2014. Due to an error with the effective date indicated on the cover pages, APS re-filed the LGIAs on July 31, 2014.

SDG&E's majority ownership interest in the jointly owned facility, and because that facility is located within the CAISO's balancing authority area, the Hyder projects will need to receive interconnection service from the CAISO in order to interconnect their generating facilities to the HNG Line. Under Commission policy, in order to receive interconnection service a customer must submit an interconnection request to the interconnection service providers and successfully complete the providers' study procedures. Therefore, it is appropriate that the three Hyder interconnection agreements each contain a provision that requires the project to enter and be studied in the CAISO's interconnection queue, as a condition of receiving interconnection service from the CAISO. None of the parties to the Hyder LGIAs except for the projects' sponsor dispute that the Hyder projects must enter and be studied in the CAISO's interconnection queue.

In its request to APS to file the Hyder agreements unexecuted, NRG, the current owner of the Hyder projects, claims there is a dispute between APS and CAISO regarding which interconnection queue the Hyder projects must enter, and that the CAISO has only recently insisted the Hyder projects be studied in the CAISO's queue. NRG alleges that doing so would unfairly require that the Hyder projects "start over again" and "go through two separate full interconnection processes."³ These assertions have no factual basis. First, the CAISO has, throughout the development of the Hyder projects, consistently made clear to the project owners that generator interconnections to the HNG Line require the submission of an interconnection request to the CAISO.

³ A copy of NRG's letter to APS is included with this filing as Attachment C.

Second, APS has never objected to the CAISO's position. APS filed the Hyder LGIAs with the provision that requires the Hyder projects to comply with the CAISO's interconnection procedures and is also a party to a similar five-party interconnection agreement for another generating facility that was studied in both the APS and the CAISO queues. Third, requiring the Hyder projects to enter the CAISO's queue is not tantamount to subjecting them to two entirely separate interconnection processes because the CAISO is not proposing to duplicate the APS studies and would study the projects only for the purpose of identifying upgrades necessary for the non-jointly owned portions of the CAISO controlled grid. Also, the five-party LGIAs eliminate the need for NRG to negotiate multiple agreements and streamline the relationship between the interconnection customer and the owners and operators of the HNG Line.

Finally, any claim of surprise or unfair delay by NRG as to having to participate in the CAISO's interconnection queue is belied by the fact that interconnection requests for the Hyder projects were submitted in the CAISO's interconnection queue on two previous occasions, and on both occasions the project owner decided, in its sole discretion, to withdraw the requests.

In the event the Commission determines that the projects should not be required to enter the CAISO's queue, then the Commission should dismiss the five-party interconnection agreements and direct APS to develop and file interconnection agreements removing the CAISO and SDG&E as parties. Under these circumstances, the Hyder generators would be treated as resources external to the CAISO balancing authority area, and the CAISO and SDG&E

would be considered “affected systems.” Because the interconnection of the Hyder projects has significant reliability implications for the CAISO Controlled Grid, as demonstrated by the phase I study report completed before the projects withdrew from the CAISO queue, the CAISO will need to study the impacts of the interconnections, and the projects sponsor will be required to mitigate any reliability impacts to the non-jointly owned portions of the CAISO controlled grid before the projects can safely commence service.

I. Background

On December 31, 2008, Hyder Solar 1, LLC., Hyder Solar 2, LLC., and Hyder Solar 3, LLC submitted individual requests to APS to interconnect three solar photovoltaic generating facilities to the Hassayampa – North Gila #1 500kV transmission line (“HNG Line”), which is a part of the “Arizona Transmission System.”⁴ The Arizona Transmission System is owned, in varying percentages, by APS, IID and SDG&E, with SDG&E having the majority ownership interest in the HNG Line.⁵ Under the terms of the Arizona Transmission System Participation Agreement, the entire Arizona Transmission System is located within the CAISO’s Balancing Authority Area. APS acts as the “operating agent” for the portion of the system to which the Hyder projects propose to interconnect,

⁴ Each of these interconnection requests was submitted by a separate limited liability corporation, Hyder Solar 1, LLC for 99 MW, Hyder Solar 2, LLC for 99 MW, and Hyder Solar 3, LLC for 40 MW.

⁵ The Hassayampa-North Gila line is owned in the following proportions as set forth in the CAISO’s Transmission Control Agreement: SDG&E: 76 percent; IID: 13 percent; APS: 11 percent.

while SDG&E is the “scheduling agent” for the same.⁶ SDG&E has turned over operational control of its ownership rights in the Arizona Transmission System to the CAISO. Accordingly, this portion of the Arizona Transmission System, including the HNG Line, is part of the CAISO controlled grid, as that term is defined in the CAISO tariff.⁷

As the Balancing Authority for the HNG Line, the CAISO is, per NERC definitions, responsible for such functions as integrating resource plans, maintaining load-interchange-generation balance, and supporting interconnection frequency in real time for the HNG Line and any interconnected generators.⁸ In addition, by assuming operational control over SDG&E’s ownership rights, the CAISO exercises Planning Authority functions over the Arizona Transmission System including the HNG Line. This means that the CAISO is responsible for coordinating and integrating transmission facility service plans, resource plans and protection systems for these facilities.⁹

⁶ These roles are defined in the Arizona Transmission System Participation Agreement, which is included with this filing as Attachment B.

⁷ See CAISO Tariff, Appendix A. “CAISO Controlled Grid” is defined as “[t]he system of transmission lines and associated facilities of the Participating TOs that have been placed under the CAISO’s Operational Control.”

⁸ See Glossary of Terms Used in NERC Reliability Standards, definition of “Balancing Authority,” available at http://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.

⁹ See Glossary of Terms Used in NERC Reliability Standards, definition of “Planning Authority,” available at http://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf. A diagram of the relevant portion of the Arizona Transmission System, including the HNG Line and the proposed point of interconnection of the Hyder projects, is included in Appendix C of each of the Hyder LGIAs.

In the case of new generators seeking to interconnect to the CAISO controlled grid, the CAISO tariff, consistent with Commission policy, requires the generator to submit an interconnection request to the CAISO and be studied pursuant to the CAISO's interconnection procedures.¹⁰ The CAISO has consistently taken the position that, due to its operational control over SDG&E's ownership rights on the HNG Line, the fact that SDG&E's majority ownership rights are part of the CAISO controlled grid, its balancing authority and planning responsibilities with respect to that facility, and its responsibilities to ensure the reliability of other portions of the CAISO controlled grid that would potentially be impacted by interconnections to the HNG Line, generators wishing to interconnect to the HNG Line must do so subject to the CAISO tariff's interconnection procedures.¹¹

In accordance with this technical bulletin and the relevant CAISO tariff requirements, the then-owner of the Hyder projects, U.S. Solar Holdings, submitted an interconnection request to the CAISO for the projects on July 31, 2010.¹² The CAISO studied the Hyder projects as part of its Phase I study in Queue Cluster 3 and issued study reports to the interconnection customer on

¹⁰ See CAISO Tariff, Section 25.1 (stating that the CAISO's interconnection rules shall apply to "each new Generating Unit that seeks to interconnect to the CAISO Controlled Grid"); Section 25.1.1 (stating that the owner of a new Generating Unit "shall be an Interconnection Customer required to submit an Interconnection Request" and comply with the CAISO's interconnection procedures).

¹¹ The ISO articulated this policy in 2009 in a technical bulletin posted to its website at <http://www.caiso.com/Documents/TechnicalBulletin-Hassayampa-NorthGilaInterconnection.pdf>

¹² This interconnection request was submitted as a single project with a capacity equal to the three requests submitted to APS. In the CAISO request, the project was referred to as the "Palmas" project. See Attachment A, Declaration of Deborah A. Le Vine at P 11. For the sake of clarity, this pleading will refer to the projects as the "Hyder projects" throughout.

May 27, 2011. These reports identified significant reliability impacts to both SDG&E's and Southern California Edison's solely-owned transmission networks that are part of the CAISO controlled grid, along with network upgrades necessary to mitigate these impacts. The reports also identified delivery network upgrades necessary to provide the customer with its request for Full Capacity Deliverability Status under the CAISO tariff, a status that is necessary for generators to be considered as "resource adequacy" resources.¹³

On September 9, 2011, U.S. Solar Holdings notified the CAISO it did not plan to post the required financial security for the network upgrades identified in the Phase I study reports, even though it was required to do so to continue in the CAISO interconnection process. Following the customer's failure to post the required financial security, on September 12, 2011, the CAISO notified the customer that the projects were deemed withdrawn from the CAISO's interconnection queue.

On April 2, 2012, the new owner of the Hyder projects, NRG, submitted a second interconnection request to the CAISO.¹⁴ NRG withdrew that request on May 18, 2012.

On July 16, 2012, APS, the CAISO SDG&E, and IID met with US Solar Holdings and NRG on behalf of the Hyder entities. The CAISO and SDG&E reiterated the need to study the projects through the CAISO's interconnection

¹³ See CAISO Tariff, Appendix A, definitions of "Energy-Only Deliverability Status" and "Full Capacity Deliverability Status."

¹⁴ As with the previous interconnection request to the CAISO, this request was submitted as a single project for the entire capacity of the Hyder facilities under the Palmas name.

procedures. The parties also discussed using a five-party LGIA to memorialize the various interconnection contractual obligations among the projects, the CAISO, and the owners of the HNG Line, similar in structure to the LGIA that was filed in 2010 for the Agua Caliente project that also planned to interconnect to the HNG Line.¹⁵

The parties commenced negotiations of a five-party LGIA for the Hyder projects on February 3, 2014 based on the five-party LGIA that the Commission approved for the Agua Caliente project, which was studied in both the APS and CAISO interconnection queues. During these negotiations, the CAISO and SDG&E reiterated to NRG that, just as with Agua Caliente, the Hyder projects would need to enter and be studied in the CAISO interconnection queue as a condition to interconnecting to the HNG Line. Therefore, the CAISO and SDG&E insisted on adding language reflecting this obligation to the LGIA. Specifically, Section 2.1 (c) of the LGIA provides as follows:

The Parties acknowledge that, as of May 1, 2014, the Interconnection Customer does not have an active Interconnection Request in the CAISO generation interconnection procedures and that the CAISO and SDG&E assert that submittal an Interconnection Request to the CAISO and completion of an Interconnection Study pursuant to such procedures is an essential element to the subject matter of this Agreement, that being the providing of Interconnection Service to Interconnection Customer, due to the fact that certain portions of the Transmission System providing such Interconnection Service, and certain portions of the Network Upgrades and Transmission Owners' Interconnection Facilities are jointly owned by SDG&E and operated by the CAISO.

¹⁵ See Large Generator Interconnection Agreement Between and Among Arizona Public Service Company, Imperial Irrigation District, San Diego Gas & Electric Company, the California Independent System Operator Corporation, Agua Caliente Solar LLC, and North Gila River Development, LLC, filed in Docket No. ER10-1376 (May 28, 2010) ("Agua Caliente Filing"); Letter Order, Docket No. ER10-1376 (July 7, 2010).

Accordingly, if the Interconnection Customer causes this Agreement to be filed for acceptance by FERC prior to Interconnection Customer's completion of the CAISO generation interconnection procedures, then the Effective Date of the Agreement shall not commence as to CAISO or SDG&E until the Agreement has been amended to incorporate any Network Upgrades and Participating Transmission Owners' Interconnection Facilities, or modifications thereof, required as an outcome of the CAISO's generation interconnection procedures, and such agreement has been accepted by FERC by lawful order and the date of the Agreement specified in the order with respect to such Parties that are FERC-jurisdictional entities as specified in the order.

Pursuant to a request from NRG, APS filed the Hyder LGIAs unexecuted on July 14, 2014.

II. Comments¹⁶

In its letter requesting that APS file the five-party Hyder LGIAs unexecuted, NRG states that it has followed the requirements of APS's interconnection process. NRG claims there is a dispute between APS and CAISO regarding which interconnection queue the Hyder projects must enter, and that the CAISO has only recently insisted the Hyder projects be studied in the CAISO's queue, and that this would effectively require Hyder to "start over again."¹⁷ NRG alleges that this would require the Hyder projects to "go through two separate full interconnection processes" and that such a result would be

¹⁶ The CAISO filed a motion to intervene in this proceeding on August 4, 2014, the comment date set by the Commission for APS's original filing of the Hyder LGIAs.

¹⁷ See Attachment C.

“unfair and unnecessary to ensure safe and appropriate interconnection.”¹⁸ None of NRG’s arguments are correct.

A. CAISO Has Made Its Position Regarding Interconnections to the HNG Line Clear to All Parties Since 2009, and APS Has Not Objected

There is no merit either to NRG’s characterization that there is a disagreement between APS and the CAISO, or its suggestion that only recently has the CAISO insisted that the Hyder projects must be studied in the CAISO’s interconnection process. As explained above, the CAISO has consistently taken the position that generator interconnections to the HNG Line require the interconnection customer to submit an interconnection request to the CAISO. The CAISO has, on multiple occasions, made that position clear to the previous owner of the Hyder projects, as well as to NRG.¹⁹ APS has never objected to the CAISO’s position. Indeed, APS is a party to a similar five-party interconnection agreement for the Agua Caliente generating facility, in which the interconnection customer was studied in both the APS and the CAISO queues.

As described above, the Hyder projects entered the CAISO interconnection queue as a single interconnection request submitted on July 31, 2010 and the CAISO studied the request in the first phase of its two phase cluster study process. The customer subsequently failed to post security, and the request was deemed withdrawn from the CAISO queue in September of 2011. NRG’s suggestion that the CAISO’s position is an eleventh hour

¹⁸ *Id.*

¹⁹ See Le Vine Declaration at PP 9, 14.

requirement of which NRG was previously unaware is both disingenuous and in direct conflict with the record of communication between the parties. Specifically, the CAISO discussed with the owner of the Hyder projects in 2008 the need to submit an interconnection request to the CAISO.²⁰ Also, to ensure that this knowledge was available to all market participants and consistently applied, the CAISO posted a technical bulletin addressing generator interconnections to the HNG Line on October 2, 2009 in which the CAISO discussed its authority regarding the need for generators proposing to interconnect to the HNG Line to submit an interconnection request to the CAISO.

B. It Is Appropriate to Require the Hyder Projects to Enter the CAISO's Interconnection Queue Because They Are Requesting Interconnection Service from the CAISO

NRG's claim that it is unfair and unnecessary to require the Hyder projects to go through the CAISO's interconnection process is also without merit. In essence, NRG's argument is that because it chose to interconnect to a jointly-owned facility, it should have the option of electing the single interconnection process that it believes would be more convenient and/or less expensive, without any regard to the legal, technical, operational, or service-related implications of its interconnection.

The Commission should reject this attempt at interconnection forum shopping. The Commission's interconnection policies are clear that when a generator seeks to obtain interconnection service from a transmission provider, as the Hyder projects are with respect to the CAISO, the customer must enter the

²⁰ Le Vine Declaration at P 9.

transmission provider's interconnection queue and satisfy the applicable tariff obligations. The Commission has never stated that this requirement is contingent on the location on a transmission provider's system where a generator chooses to interconnect. In addition, exempting the Hyder projects from the requirement to proceed through the CAISO's study process would jeopardize the safety and reliability of the CAISO controlled grid, would be unfair and discriminatory to other generators seeking interconnection service from the CAISO, and would be inconsistent with the Agua Caliente precedent.

For these reasons, it is entirely appropriate to require the Hyder projects to be processed through the CAISO's interconnection queue as a condition of receiving interconnection service from the CAISO.

1. The Hyder Projects Are Requesting Interconnection Service from the CAISO, and Therefore Must Enter the CAISO's Interconnection Queue and Comply with the CAISO's Interconnection Procedures

In Order No. 2003, the Commission defined a "Transmission Provider" as "the public utility (or its designated agent) that *owns, controls, or operates transmission* or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service."²¹ The point of interconnection for the Hyder projects is a new substation to be constructed on the HNG Line. Because the CAISO has operational control over SDG&E's

²¹ , *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 815 (2003) ("Order No. 2003"), definition of "Transmission Provider" in pro forma Large Generator Interconnection Procedures (emphasis added).

majority ownership rights to the HNG Line and those rights to the line are part of the CAISO controlled grid, the CAISO meets the definition of a “transmission provider” with respect to the HNG Line. In addition, the HNG Line is located within the CAISO’s Balancing Authority Area.²² Under NERC’s reliability standards, the CAISO is responsible for integrating resource plans, maintaining load-interchange-generation balance, and supporting interconnection frequency within its Balancing Authority Area.²³ The CAISO also has Planning Authority obligations with respect to the HNG Line. This means that the CAISO is responsible for coordinating and integrating transmission facility and service plans, resource plans, and protection systems for this facility.²⁴ These important operational functions further reinforce the fact that the CAISO meets the definition of a “transmission provider” with respect to the HNG Line.

The Commission defines “Interconnection Service” as “the service provided by the Transmission Provider associated with interconnecting the Interconnection Customer's Generating Facility to the Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Standard Large Generator Interconnection Agreement and, if applicable, the

²² See Le Vine Declaration at P 6.

²³ See Glossary of Terms Used in NERC Reliability Standards, definition of “Balancing Authority,” available at http://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.

²⁴ See Glossary of Terms Used in NERC Reliability Standards, definition of “Planning Authority,” available at http://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.

Transmission Provider's Tariff.”²⁵ This definition suggests the general principle that whenever a generator seeks to interconnect to a transmission facility, the generator is, *ipso facto*, requesting interconnection service from the relevant transmission provider(s). The Hyder projects, by seeking to interconnect to the HNG Line, as to which the CAISO is a transmission provider, are therefore requesting interconnection service from the CAISO.

Regardless, any ambiguity as to whether the Hyder projects are requesting interconnection service from the CAISO is dispelled by the Hyder LGIAs themselves, which explicitly state that the CAISO will provide the Hyder projects with interconnection service. Section 4.1 states that “Interconnection Customer has selected Energy Resource Interconnection Service from APS to interconnect to the APS Transmission System and IID’s share of the JPP, *and Interconnection Service from the CAISO.*”²⁶ Similarly, Section 4.1.1, entitled “CAISO Interconnection Service” explains that the interconnection service provided by the CAISO and SDG&E will allow the Hyder projects “to connect . . . to the CAISO’s Transmission System and be eligible to deliver the [projects’] output using the available capacity of the CAISO’s Transmission System pursuant to the CAISO Tariff.”²⁷ More specifically, the Hyder LGIA includes various interconnection service-related provisions that reflect the CAISO’s role in

²⁵ Order No. 2003, definition of “Interconnection Service” in pro forma Large Generator Interconnection Procedures.

²⁶ Non-Conforming Large Generator Interconnection Agreements for Hyder Solar 1, LLC, Hyder Solar 2, LLC and Hyder Solar 3, LLC, Docket No. ER14-2430 (July 31, 2014), Service Agreements Nos. 332-334 at Section 4.1 (emphasis added).

²⁷ *Id.* at Section 4.1.1. See also *id.* at Section 4.2.

providing interconnection service to these projects, including reviewing interconnection facility design specifications, evaluating limited operation options, metering, operating communications, reactive power generation and payment obligations, and coordinating outages. In its communications with the parties during the LGIA negotiations, NRG did not object to any of these provisions, which are substantively identical to those included in the five-party interconnection agreement approved by the Commission for the Agua Caliente facility.²⁸

Both the Commission's *pro forma* interconnection procedures and the CAISO tariff make clear that in order to obtain interconnection service, a new generator must submit an interconnection request to a transmission provider and meet the requirements of the transmission provider's interconnection procedures, including completing the applicable studies and meeting any financial obligations, such as financial security postings.²⁹ Therefore, because the Hyder projects are requesting interconnection service from the CAISO in order to interconnect to the HNG Line, it is appropriate to require them to enter the CAISO's interconnection queue and comply with the CAISO's interconnection procedures.

²⁸ Agua Caliente Filing, Attachments B-1, B-2 and B-3 at Sections 4.1, 4.1.1. 4.2

²⁹ See *supra* FN 10; Order No. 2003 at PP 34-38 ("The Final Rule Standard Large Generator Interconnection Procedures (LGIP) document specifies the steps that must be followed and deadlines that must be met when an Interconnection Customer requests interconnection of either a new Generating Facility or the expansion of an existing Generating Facility with the Transmission Provider's Transmission System.")

2. CAISO Must Study the Hyder Projects Through Its Interconnection Process to Ensure Safety and Reliability and Fair Treatment Relative to Other Generators

One of the fundamental purposes underlying the obligation of developers to satisfy the requirements of a transmission provider's interconnection procedures is to ensure that the transmission provider can protect the safety and reliability of the grid by fully evaluating a proposed interconnection in detail, identifying any adverse impacts on its transmission system, and specifying and constructing the modifications necessary to reliably and adequately complete the interconnection.³⁰

The three Hyder projects have a planned capacity of 99 MW, 99 MW and 40 MW, respectively. The studies performed by APS were limited to identifying customer-specific interconnection facilities and upgrades needed on the jointly-owned Arizona Transmission System facilities. However, based on the size of these projects, and the CAISO's preliminary evaluation of their impact performed in the first phase of its two-phase study process, upgrades to other portions of the CAISO's transmission system will certainly be necessary.³¹ The CAISO's 2011 Phase I study reports for the Hyder projects revealed multiple reliability problems that would be caused on the CAISO's system by the interconnection of the Hyder projects and preliminarily identified fourteen network upgrades necessary to remediate those problems. These reports also identified

³⁰ See, e.g., Order No. 2003 at PP 11, 36.

³¹ Le Vine Declaration at P 16.

six additional network upgrades that would be needed to provide the projects with full capacity deliverability status on the CAISO system, which the projects requested in their interconnection requests to the CAISO. This analysis, although preliminary, belies NRG's assertion that having the CAISO study the Hyder projects is not necessary to ensure a reliable interconnection. Moreover, this analysis, coupled with the size of the projects and their location, means they will almost certainly have electrical impacts on other generators in the CAISO's queue. It would therefore be impractical for the CAISO to study the Hyder projects outside of its normal cluster procedures without interfering with the studies for other interconnection customers.³²

Exempting the Hyder projects from the requirement to proceed through the CAISO's interconnection queue would be unfair and discriminatory with respect to other generators seeking interconnection service from the CAISO, all of which are required to comply with the requirements of the applicable provisions of the CAISO tariff, including the CAISO's interconnection procedures. This is particularly true if the Hyder projects wish to participate in the CAISO's markets as resources internal to the CAISO balancing authority area, as opposed to being treated as imports.³³

³² *Id.*

³³ It is unclear from recent negotiations what NRG intends with respect to the output of these projects. Such uncertainty, however, should not provide NRG with a trump card that allows it to avoid responsibility for the impacts that it will certainly have on the CAISO's system.

For these reasons, the Commission should accept the the language in Section 2.1 of the five-party Hyder LGIAs requiring the Hyder projects to enter and be studied in the CAISO interconnection queue.

C. Requiring the Hyder Projects to Enter the CAISO Interconnection Queue Is Not Tantamount to Requiring Them to Go Through Two Entirely Separate Interconnection Processes

NRG's characterization of the CAISO's position as requiring the Hyder projects to go through two entirely separate interconnection processes is inaccurate. APS's study of the Hyder projects examined and identified only customer-specific interconnection facilities and network upgrades necessary to mitigate impacts on the jointly-owned Arizona Transmission System and APS's individual transmission system. The CAISO is not proposing to replicate these studies. Rather, the CAISO's studies would be limited to identifying upgrades necessary to mitigate impacts of the interconnections on the non-jointly owned portions of the CAISO controlled grid. Therefore, the costs of such studies, and any necessary upgrades to the non-jointly owned portions of the CAISO Controlled Grid, would not be duplicative of the costs incurred in APS's interconnection process.

In addition, both APS's and the CAISO's interconnection study procedures require the interconnection service provider and interconnection customer to negotiate and execute an interconnection agreement reflecting the various contractual obligations relating to the interconnection and operation of the proposed generator. However, rather than requiring NRG to negotiate separate agreements with each of the two entities providing interconnection service, APS

and the CAISO have, along with the other owners of the HNG Line, dedicated significant effort to developing a five-party LGIA that specifies all of NRG's obligations in a single agreement. The CAISO and APS, along with SDG&E and IID, originally developed this model for the Agua Caliente generating facility, in which the customer was studied both in the APS queue, which identified the upgrades necessary to the jointly-owned facilities, and the CAISO queue, which studied and identified the upgrades necessary to provide the interconnection service and deliverability requested by Agua Caliente on the CAISO system. The Agua Caliente LGIA was ultimately filed with and approved by the Commission. The five-party LGIAs here are largely based on the Agua Caliente agreement, and likewise provide the interconnection customer with significant benefits by ensuring that the generators are not subject to conflicting obligations between APS and the CAISO.³⁴

Moreover, NRG has no credible claim to unfair treatment. The CAISO informed the developer of the applicable interconnection requirements from the very outset, and the developer submitted interconnection requests to the CAISO on two separate occasions. In fact, the CAISO's studies for these projects were well underway when the developer deliberately decided to withdraw from the CAISO's queue the first time. Absent this decision, the CAISO's studies for

³⁴ See, e.g., Hyder LGIAs Section 9.7.1 (addressing outage coordination between the parties with respect to the generators and jointly-owned facilities); Section 9.7.2.5 (providing that the parties will coordinate in outage recovery measures); Section 9.7.3 (providing for coordination between APS and the ISO regarding under- and overfrequency deviations); Section 13.5.2 (providing for coordination between APS and the ISO and the interconnection customer to schedule any reductions in interconnection service or disconnections during periods of least impact to the interconnection customer). In addition, as explained in APS's filing, a number of provisions were added or modified in order to make the five-party LGIAs consistent with the requirements of both the APS and CAISO pro forma LGIAs.

these projects would have long since been completed, and any upgrades necessary to remediate the impacts of connecting the projects to the CAISO grid would have been incorporated into the five-party LGIAs. Even if the projects had remained in the ISO's queue after the second interconnection request, the resulting studies would have been completed in April of this year. Also, regardless of whether the Hyder projects are studied in APS's queue, the CAISO's queue, or both, they are responsible for funding upgrades necessary to mitigate the impacts on all affected transmission systems. In other words, continuing in the CAISO's queue would not have caused the projects to incur additional expense or inconvenience that they could have otherwise avoided. Therefore, any adversity resulting to the projects from the decision to withdraw from the CAISO queue is entirely the responsibility of NRG.

D. The Commission Must, at a Minimum, Allow the CAISO to Study the Hyder Projects as an "Affected System"

Both the CAISO and APS tariffs include the concept of an "affected system" which, consistent with the Commission's pro forma interconnection procedures, is defined as an "electric system *other than the Transmission Provider's Transmission System* that may be affected by the proposed interconnection."³⁵ The Commission's rules do not require a generator to submit a separate interconnection request to an affected system operator.³⁶ As demonstrated above, however, the HNG Line is part of the CAISO's transmission

³⁵ See Order No. 2003, pro forma Large Generator Interconnection Procedures, definition of "Affected System" (emphasis added).

³⁶ *Id.* at P 118.

system and the Hyder projects are seeking interconnection service from the CAISO.³⁷ Therefore, the CAISO's role with respect to the Hyder projects goes beyond that of an "affected system," and it is appropriate to require that the Hyder projects enter into the CAISO interconnection queue.

If, however, the Commission does not agree with this analysis, then the Commission should dismiss the five-party interconnection agreements so that the parties may negotiate appropriate arrangements regarding the study and financing of upgrades to the CAISO controlled grid as an "affected system." As with the Agua Caliente LGIA, one of the central premises of the Hyder five-party LGIAs is that they will comprehensively address the impacts of the Hyder projects on the jointly-owned Arizona Transmission System, as well as the individual APS and CAISO transmission systems.³⁸ If the Commission rejects the provision requiring the Hyder projects to be processed through the CAISO queue, the Hyder LGIAs will not address the impacts on the solely-owned portions of the CAISO transmission system. Under these circumstances, they will need to be either re-negotiated or discarded in favor of bilateral interconnection agreements between APS and the Hyder projects, along with separate agreements covering the study and financing of upgrades on the CAISO Controlled Grid pursuant to an "affected system" model.

³⁷ This is particularly true if the Hyder projects wish to participate in the CAISO markets as internal resources, as opposed to joining APS's balancing area, in which case they would be treated as imports under the CAISO Tariff. See, e.g., CAISO Tariff, Appendix A, definition of "System Resource"; Section 4.5.4.3.1.

³⁸ See Agua Caliente Filing, Transmittal Letter at 11.

III. Communications

The ISO requests that all communications and notices regarding this filing and this proceeding be provided to:

Sidney M. Davies
Assistant General Counsel
California Independent
System Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 608-7144
Fax: (916) 608-7222
E-mail: sdavies@caiso.com

Michael Kunselman
Bradley R. Miliauskas
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Tel: (202) 239-3300
Fax: (202) 239-3333
E-mail: michael.kunselman@alston.com
bradley.miliauskas@alston.com

IV. Conclusion

For the reasons stated above, the CAISO requests that the Commission grant the CAISO status as an intervenor and approve the Non-Conforming Large Generator Interconnection as filed.

Respectfully submitted,

Roger E. Collanton
General Counsel
Sidney M. Davies
Assistant General Counsel
California Independent
System Operator Corporation
250 Outcropping Way
Folsom, CA 95630

/s/ Michael Kunselman
Michael Kunselman
Bradley R. Miliauskas
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004

Attorneys for the California Independent System Operator Corporation

Dated: August 21, 2014

Attachment A

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Arizona Public Service Company)))	Docket No. ER14-2430
---	-------------	-----------------------------

**DECLARATION OF DEBORAH A. LE VINE ON BEHALF OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

I, Deborah A. Le Vine, hereby declare as follows:

1. I am employed as the Director of Infrastructure Contracts & Management at the California Independent System Operator Corporation (“CAISO”). My business address is 250 Outcropping Way, Folsom, CA 95630.
2. The CAISO created the position of Director of Infrastructure Contracts & Management in 2012 as a result of the increased number of generator interconnections required to meet the 33 percent renewable portfolio standard in California, in order to manage the CAISO’s generation interconnection queue and generation interconnection agreement portfolio, and other regulatory contracts required by the CAISO tariff. My responsibilities include proactively monitoring over 260 projects in the queue, aligning internal CAISO processes consistent with queue management efforts, and resolving interconnection customer issues. In addition, I am responsible for all regulatory contracts that are negotiated and executed between the CAISO and market participants, including QF conversions, Participating Generator Agreements, Meter Service Agreements, Adjacent Balancing Authority Operating Agreements and the Transmission Control Agreement.

3. I have been employed with the CAISO since January of 1998. Prior to assuming my current position, I was the Director of System Operations, in which I oversaw day-to-day grid and market operations. In this capacity, I also monitored compliance for the CAISO balancing authority area with North American Electric Reliability Corporation and the Western Electricity Coordinating Council standards and the market operations provisions of the CAISO tariff. I have also held Director positions at the CAISO in Contracts & Compliance, Contracts & Special Projects, Market Services, and Project Management for the CAISO's 2009 market redesign.
4. I earned a Bachelor of Science degree in Electrical Engineering from San Diego State University in San Diego, California in May 1981. In May 1987, I received a Master in Business Administration from Pepperdine University in Malibu, California. In December 2002, I completed an Executive Program from the John F. Kennedy School of Government, Harvard University, in Cambridge, Massachusetts. In August 2007, I completed an Advanced Masters Certificate program in Project Management from Villanova University in Villanova, Pennsylvania. Additionally, I am a registered Professional Electrical Engineer in the State of California.
5. My declaration will address the configuration and operation of the jointly-owned Hassayampa – North Gila #1 500kV transmission line (“HNG Line”), facilities to which the proposed Hyder Solar 1, LLC, Hyder Solar 2, LLC and Hyder Solar 3, LLC (collectively “Hyder”) solar generation plants plan to interconnect. I also discuss the history of negotiations between the project sponsors, the CAISO, and the owners of the HNG Line regarding the five-party large generator

interconnection agreements which were recently filed unexecuted by Arizona Public Service Company (“APS”).

CAISO’s Role in Operating the Hassayampa – North Gila Transmission Line

6. The HNG Line, to which the Hyder projects seek to interconnect, is part of the Arizona Transmission System. The Arizona Transmission System is owned, in varying percentages, by APS, IID and SDG&E, with SDG&E having the majority ownership interest in the HNG Line. Under the terms of the Arizona Transmission System Participation Agreement, the entire Arizona Transmission System is located within the CAISO’s Balancing Authority Area. APS acts as the “operating agent” for the portion of the system to which the Hyder projects propose to interconnect, while SDG&E is the “scheduling agent” for the same.
7. Prior to the creation of the CAISO, the HNG Line was in SDG&E’s Balancing Authority Area. Effective April 1, 1998, SDG&E turned over operational control to the CAISO of its portion of the Arizona Transmission System. As part of the CAISO’s operational control of SDG&E’s portion of the HNG Line the CAISO is responsible for assuming the “scheduling agent” functions assigned to SDG&E in the Arizona Transmission System Participation Agreement. These include scheduling all energy deliveries over the Arizona Transmission System, submitting proposed criteria regarding the operating capability of the system, managing congestion on the system and coordinating with the owners regarding outages on the system.¹

¹ See Arizona Transmission System Participation Agreement, Section 15.4, 15.6.2, 15.11. A copy of this agreement is included with this filing as Attachment B.

8. In addition, as the Balancing Authority for the HNG Line, the CAISO is, per NERC requirements, responsible for such functions as integrating resource plans, maintaining load-interchange-generation balance, and supporting interconnection frequency in real time for this facility and any interconnected generators in the CAISO Balancing Authority Area. Also, due to its assumption of operational control over SDG&E's ownership rights, the CAISO exercises Planning Authority functions over the Arizona Transmission System that includes the HNG Line, which means that, pursuant to NERC reliability standards, the CAISO is responsible for coordinating and integrating transmission facility service plans, resource plans and protection systems for these facilities.

Study of the Hyder Facilities and Negotiation of Five-Party Interconnection Agreements

9. On December 31, 2008, U.S. Solar Holdings, the original parent company of the Hyder projects², submitted interconnection requests to APS to interconnect three solar photovoltaic generating facilities totaling 238 MW to the HNG Line (APS queue numbers 58 – 60).³ In discussions with U.S. Solar Holdings and the owners of the HNG Line, as well as other potential developers seeking to interconnect in the same area, the CAISO indicated that generators planning to interconnect to the HNG Line would need to submit an interconnection request to the CAISO and comply with the CAISO's interconnection procedures. The CAISO took this position due to its operational control over SDG&E's ownership rights on the HNG Line, its balancing authority and planning responsibilities with respect to this

² Each of the projects was submitted by a separate limited liability corporation, Hyder Solar 1, LLC, Hyder Solar 2, LLC, and Hyder Solar 3, LLC.

³ APS Queue #58 is 99 MW, Queue #59 is 99 MW and Queue #60 is 40 MW.

facility, and its responsibilities to ensure the reliability of other portions of the CAISO Controlled Grid that would potentially be impacted by interconnections to the HNG Line. The CAISO subsequently published this policy in a technical bulletin posted to its website in 2009.⁴

10. In discussions between CAISO and U.S. Solar Holdings on July 30, 2010, U.S. Solar Holdings acknowledged that they understood they needed to file a duplicate request with the CAISO for interconnection services and stated they intended to do so.
11. On July 31, 2010, the Hyder Land Company, LLC, a subsidiary of U.S. Solar Holdings, submitted a single interconnection request to the CAISO for the 238 MW “Palmas” project, which was, in essence, a combination of the three Hyder projects. The CAISO studied the projects pursuant to the CAISO generator interconnection procedures in Queue Cluster 3, completing the Phase I study and issuing a study report to the customer on May 27, 2011. These reports identified significant reliability impacts to both SDG&E’s and Southern California Edison’s solely-owned transmission networks, along with network upgrades necessary to mitigate these impacts. The reports also identified delivery network upgrades necessary to provide the Hyder projects with their requested Full Capacity Deliverability Status under the CAISO tariff.
12. On September 9, 2011, the customer notified the CAISO it did not plan to post the financial security for the network upgrades identified in the Phase I study reports that would be required in order to continue in the CAISO’s queue. Following the customer’s failure to post the required financial security, on September 12, 2011,

⁴ <http://www.caiso.com/Documents/TechnicalBulletin-Hassayampa-NorthGilalInterconnection.pdf>

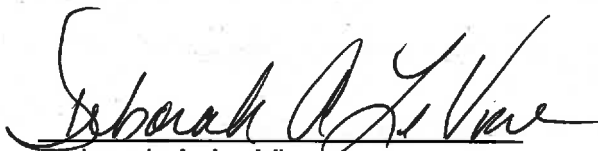
the CAISO sent the customer a notice deeming the projects withdrawn from the CAISO's interconnection queue.

13. On April 2, 2012, the Hyder projects under the NRG ownership submitted an interconnection request, again under the auspices of the Palmas single project configuration, in the CAISO queue cluster process for Queue Cluster 5. However, NRG withdrew the interconnection request on May 18, 2012.
14. On July 16, 2012, APS, the CAISO and SDG&E met with US Solar Holdings and the new owner of the Hyder projects, NRG. The parties discussed the process for interconnecting the projects to the HNG Line, at which time the CAISO and SDG&E reiterated the need to study the projects in the CAISO queue. The parties also discussed using a five-party LGIA to memorialize the various interconnection contractual obligations, similar to the one that had been developed and filed in 2010 for Aqua Caliente, which also interconnects to the HNG Line.
15. The parties commenced negotiations of a five-party LGIA for the Hyder projects on February 3, 2014. Due to NRG's continuing objections to including language in the LGIA obligating the Hyder projects to submit an interconnection request to the CAISO and be studied in the CAISO queue, NRG sent a letter to APS on June 27, 2014, requesting that APS file with the Commission an unexecuted version of the five-party LGIA for each of the three Hyder projects.
16. Based on the size of the projects, their location, and the previous study work done as part of the CAISO's Queue Cluster 3, I am confident that the Hyder projects will have significant electrical impacts on other generators in the CAISO's queue and will require upgrades on the non-jointly owned portions of the CAISO Controlled

Grid. Therefore, I do not believe it would be practical for the CAISO to study the Hyder projects outside of its normal cluster study procedures without undermining the CAISO's ability to conduct studies for other interconnection customers seeking to interconnect to the CAISO Controlled Grid.

I declare, under penalty of perjury, that the foregoing statements are true and correct.

Executed this 21st day of August, 2014, in Folsom, California.



Deborah A. Le Vine

Attachment B

78003

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	ARIZONA PUBLIC SERVICE COMPANY
11	AND
12	SAN DIEGO GAS & ELECTRIC COMPANY
13	ARIZONA TRANSMISSION SYSTEM
14	PARTICIPATION AGREEMENT
15	
16	
17	
18	
19	APS Contract No. 2326-610.00
20	SDG&E Transaction No. 790116
21	
22	
23	
24	
25	
26	

EXACT COPY OF
ORIGINAL SIGNED
CONTRACT

Arizona Public Service Company
San Diego Gas & Electric Company
Arizona Transmission System
Participation Agreement

Table of Contents

<u>Section</u>	<u>Caption</u>	<u>Page</u>
1	PARTIES	1
2	RECITALS	1
3	AGREEMENT	2
4	DEFINITIONS	2
4.1	Accounting Practice	2
4.2	Administrative Representative	2
4.3	Appendix	2
4.4	Arizona Transmission System	2
4.5	California Transmission System	2
4.6	Capacity	2
4.7	Capital Improvements	3
4.8	Construction Account	3
4.9	Construction Coordinator	3
4.10	Construction Costs	3
4.11	Construction Director	3
4.12	Construction Funds	3
4.13	Construction Insurance	3
4.14	Construction Schedule	4
4.15	Construction Work	4
4.16	Date of Approval	4
4.17	Date of Firm Operation	4

	<u>Section</u>	<u>Caption</u>	<u>Page</u>
1			
2		4.18 Division	4
3		4.19 Energy	4
4		4.20 FERC Accounts	4
5		4.21 Final Completion Report	5
6		4.22 Operating Agent	5
7		4.23 Operating Capability	5
8		4.24 Operating Committee	5
9		4.25 Operating Costs	5
10		4.26 Operating Emergency	5
11		4.27 Operating Funds	5
12		4.28 Operating Insurance	6
13		4.29 Operating Work	6
14		4.30 Palo Verde Switchyard	6
15		4.31 Palo Verde Termination	6
16		4.32 Palo Verde - Yuma 500kV Line	6
17		4.33 Participation Agreement	6
18		4.34 Power	6
19		4.35 Project Agreements	6
20		4.36 Project Insurance	7
21		4.37 Project Manager	7
22		4.38 Rated Capability	7
23		4.39 Request for Funds	7
24		4.40 Request for Information	7
25		4.41 Responsibility for Costs	7
26		4.42 Scheduled Date of Firm Operation	7

	<u>Section</u>	<u>Caption</u>	<u>Page</u>
1			
2	4.43	Scheduling Agent	8
3	4.44	Section	8
4	4.45	Sharable Units	8
5	4.46	Units of Property	8
6	4.47	Willful Action	8
7	4.48	Work Liability	9
8	4.49	Yuma - Border 500kV Line	9
9	4.50	Yuma 500kV Breaker Yard	9
10	4.51	Yuma Interconnection Facilities	10
11	4.52	Yuma Switchyard	10
12	5	ADMINISTRATION	10
13	6	OWNERSHIP	14
14	7	CONSTRUCTION BUDGET	15
15	8	CONSTRUCTION WORK	16
16	9	CONSTRUCTION LIAISON	25
17	10	OPERATING AGENT	26
18	11	CONSTRUCTION COSTS	33
19	12	OPERATION AND MAINTENANCE COSTS	35
20	13	ADVANCEMENT OF FUNDS	36
21	14	ADJUSTMENT FOR PAYMENT OF ACTUAL CONSTRUCTION COSTS	38
22	15	USE, SCHEDULING, AND LOSSES	38
23	16	OPERATING EMERGENCY	44
24	17	TAXES	45
25	18	BUDGETS AND CAPITAL IMPROVEMENTS	46
26	19	APPENDICES	48

	<u>Section</u>	<u>Caption</u>	<u>Page</u>
1			
2	20	INSURANCE	48
3	21	LIABILITY	53
4	22	DEFAULTS AND COVENANTS REGARDING PROJECT AGREEMENTS	54
5	23	NONPARTITIONMENT	56
6	24	SEVERENCE OF IMPROVEMENTS	56
7	25	RIGHT OF FIRST REFUSAL	57
8	26	ASSIGNMENT OF INTERESTS	58
9	27	NOTICES	58
10	28	DISPUTES	58
11	29	ARBITRATION	60
12	30	GOVERNING LAW	64
13	31	AUTHORIZATIONS AND APPROVALS	64
14	32	FEEs	65
15	33	ENVIRONMENTAL PROTECTION	66
16	34	UNCONTROLLABLE FORCES	66
17	35	BINDING OBLIGATIONS	67
18	36	NONDEDICATION OF FACILITIES	69
19	37	MORTGAGE AND TRANSFER OF INTEREST	69
20	38	GENERAL PROVISIONS GOVERNING PROJECT AGREEMENTS	71
21	39	TERM	73
22	40	RELATIONSHIP OF THE PARTIES	75
23	41	EXECUTION	76
24			
25			
26			

	<u>Appendix</u>	<u>Caption</u>
1		
2	A	Description of the Arizona Transmission System
3	B	Responsibility for Costs
4	C	Construction Schedule
5	D	Construction Costs
6	E	Costs of Operating Work
7	F	List of Project Agreements
8	G	Initial Budget for Construction Work
9	H	Initial Cash Flow
10	I	Right-of-Way Acquisition Practices & Procedures
11	J	Right-of-Way Acquisition Plan
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		

ARIZONA PUBLIC SERVICE COMPANY
AND
SAN DIEGO GAS & ELECTRIC COMPANY
ARIZONA TRANSMISSION SYSTEM
PARTICIPATION AGREEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1. PARTIES:

The Parties to this Participation Agreement are ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation hereinafter called "APS," and SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation hereinafter called "SDG&E," which are individually referred to as "Party," and collectively as "Parties."

2. RECITALS:

This agreement is made with reference to the following facts, among others:

2.1 SDG&E was conducting environmental studies and actively planning the construction of a 500kV transmission line from the SDG&E - Miguel Substation to the Palo Verde Units 1, 2 & 3 Switchyard, via Imperial Valley, when it learned that APS was also conducting environmental studies and actively planning the construction of a 230kV transmission line from the APS Cila Bend Substation to the Yuma area. Subsequent discussions between the Parties resulted in the Parties entering into the "Arizona - San Diego 500kV Interconnection Letter of Understanding," dated November 22, 1978 to jointly study, construct, own and operate a 500kV transmission line which would meet the needs of both Parties.

2.2 The Parties recognize that there are mutual benefits which result from cooperation and coordination in jointly plan-

1 ning, licensing, engineering, constructing, owning and
2 operating a transmission system as compared with doing so
3 separately.

4 2.3 The electrical systems of the Parties will be intercon-
5 nected by the transmission line constructed pursuant to
6 this Participation Agreement and the Parties intend to
7 enter into a separate agreement to govern the exchange of
8 Power and Energy.

9 3. AGREEMENT:

10 The Parties agree as follows:

11 4. DEFINITIONS:

12 The following terms when used herein shall have the meanings
13 specified:

14 4.1 Accounting Practice: Generally accepted accounting princi-
15 ples, in accordance with FERC Accounts.

16 4.2 Administrative Representative: The representative desig-
17 nated by each Party pursuant to Section 5.1.1.

18 4.3 Appendix: An Appendix to this Participation Agreement,
19 unless otherwise stated.

20 4.4 Arizona Transmission System: The transmission system
21 described in Appendix A.

22 4.5 California Transmission System: That portion of the Miguel
23 Substation to Yuma Switchyard 500kV line which is within
24 the state of California.

25 4.6 Capacity: Electrical rating expressed in megawatts (MW) or
26 megavolt-amperes (MVA).

1	4.7 <u>Capital Improvements</u> : Any Units of Property, land or land
2	rights which are added to the Arizona Transmission System,
3	the betterment of land and land rights or the enlargement
4	or betterment of any Units of Property constituting a part
5	of the Arizona Transmission System, and the replacement of
6	any Units of Property for other Units of Property or the
7	replacement of land or land rights constituting a part of
8	the Arizona Transmission System, irrespective of whether
9	such replacement constitutes an enlargement or betterment
10	of that which it replaces, which additions, betterments,
11	enlargements, and replacements in accordance with Account-
12	ing Practice would be capitalized.
13	4.8 <u>Construction Account</u> : An account used by the Project
14	Manager's accounting department to receive and disburse
15	Construction Funds pursuant to Section 13.
16	4.9 <u>Construction Coordinator</u> : The representative designated by
17	SDG&E pursuant to Section 5.1.3.
18	4.10 <u>Construction Costs</u> : The costs of constructing the Arizona
19	Transmission System, as described in Section 11.
20	4.11 <u>Construction Director</u> : The representative designated by
21	APS pursuant to Section 5.1.2.
22	4.12 <u>Construction Funds</u> : Monies advanced to the Project Manager
23	on behalf of the Parties in accordance with this Participa-
24	tion Agreement.
25	4.13 <u>Construction Insurance</u> : Policies of insurance relating to
26	the Arizona Transmission System during the construction

1	thereof as provided in Section 20.1.
2	4.14 <u>Construction Schedules</u> : The schedule of Construction Work
3	as set forth in Appendix C, or as revised pursuant to
4	Sections 8.3.2 or 8.3.3.
5	4.15 <u>Construction Work</u> : All work undertaken by the Project
6	Manager pursuant to Section 8, including but not limited
7	to, all engineering, design, construction, contract prepara-
8	tion, purchasing, supervision, expediting, accounting,
9	inspection, testing and the placing in service of the
10	Arizona Transmission System.
11	4.16 <u>Date of Approval</u> : The date on which each Party has given
12	written notice to the other Party that all approvals have
13	been received without unacceptable conditions in compliance
14	with the provisions of Section 31.5.
15	4.17 <u>Date of Firm Operation</u> : The first day on which deliveries
16	of Power and Energy may be scheduled on a firm basis over
17	the Arizona Transmission System as designated by the Con-
18	struction Director and the Construction Coordinator.
19	4.18 <u>Division</u> : A group of employees headed by a vice president
20	consisting of all persons on the APS organizational chart
21	which report to him.
22	4.19 <u>Energy</u> : Kilowatt-hours (KWH).
23	4.20 <u>FERC Accounts</u> : The Federal Energy Regulatory Commission's
24	"Uniform System of Accounts Prescribed for Public Utilities
25	and Licensees (Class A and Class B)," in effect as of the
26	date of this Participation Agreement, and as such system of

1	accounts may be in effect from time to time. References in
2	this Participation Agreement to any specific FERC Account
3	number shall mean the FERC Account number in effect as of
4	the effective date of this Participation Agreement or any
5	successor FERC Account.
6	4.21 <u>Final Completion Report</u> : A complete summary of Construc-
7	tion Costs, including surplus equipment disposal, a de-
8	scription of the Arizona Transmission System as constructed
9	and a summary of each Party's contributions to Construction
10	Costs.
11	4.22 <u>Operating Agent</u> : The Party responsible for the performance
12	of Operating Work, except scheduling Power and Energy
13	deliveries over the Arizona Transmission System pursuant to
14	Section 15.4.
15	4.23 <u>Operating Capability</u> : The capability of the Arizona Trans-
16	mission System to transmit Power and Energy scheduled by
17	the Parties in each direction between the Palo Verde
18	Switchyard and the Yuma Switchyard.
19	4.24 <u>Operating Committee</u> : The committee established pursuant to
20	Section 5.1.4.
21	4.25 <u>Operating Costs</u> : The costs of performing Operating Work.
22	4.26 <u>Operating Emergency</u> : An unplanned event or circumstance
23	caused by the failure or threat of failure of the Arizona
24	Transmission System facilities which reduces or may reduce
25	the Operating Capability of the Arizona Transmission System.
26	4.27 <u>Operating Funds</u> : Monies advanced to the Operating Agent on

1	behalf of the Parties in accordance with this Participation
2	Agreement.
3	4.28 <u>Operating Insurance</u> : Policies of insurance relating to the
4	Arizona Transmission System to be procured and maintained
5	as provided in Section 20.2.
6	4.29 <u>Operating Work</u> : All work undertaken by the Operating Agent
7	or the Scheduling Agent pursuant to Project Agreements,
8	including but not limited to, all engineering, contract
9	preparation, purchasing, repair, supervision, training,
10	expediting, inspection, testing, protection, facility
11	operation, retirement, maintenance, use, management, and
12	making Capital Improvements to and for the Arizona Trans-
13	mission System.
14	4.30 <u>Palo Verde Switchyard</u> : The high voltage switchyard which
15	is associated with the Palo Verde Nuclear Generating Sta-
16	tion located west of Phoenix, Arizona.
17	4.31 <u>Palo Verde Termination</u> : A component of the Arizona Trans-
18	mission System described in Appendix A.1.
19	4.32 <u>Palo Verde - Yuma 500kV Line</u> : A component of the Arizona
20	Transmission System described in Appendix A.2.
21	4.33 <u>Participation Agreement</u> : This agreement titled "Arizona
22	Public Service Company and San Diego Gas & Electric Company
23	Arizona Transmission System Participation Agreement."
24	4.34 <u>Power</u> : Kilowatts (KW) or megawatts (MW).
25	4.35 <u>Project Agreements</u> : This Participation Agreement and any
26	agreement entered into by the Project Manager in connection

1	with the performance of Construction Work, and any other
2	agreement which the Parties agree to designate as a Project
3	Agreement, including those agreements listed in Appendix F,
4	as such agreements are originally executed or as they may
5	thereafter be supplemented or amended.
6	4.36 <u>Project Insurance:</u> Construction Insurance and Operating
7	Insurance.
8	4.37 <u>Project Manager:</u> The Party responsible for the performance
9	of Construction Work.
10	4.38 <u>Rated Capability:</u> The transfer capability for resource and
11	transmission planning and reporting purposes of the Arizona
12	Transmission System in either direction between the Palo
13	Verde Switchyard and the Yuma Switchyard, expressed in
14	megawatts and determined in accordance with Section 15.7.
15	4.39 <u>Request for Funds:</u> The written request of the Project
16	Manager or Operating Agent for funds required for
17	Construction Work or Operating Work.
18	4.40 <u>Request for Information:</u> A request made in writing by one
19	Party upon another Party, specifying the records, documen-
20	tation or information for which the request is made.
21	4.41 <u>Responsibility for Costs:</u> The percentage of financial
22	liability of each Party for costs of Construction Work and
23	Operating Work for each component of the Arizona Transmis-
24	sion System, which is the same as the percentage owner-
25	ship established in Section 6.
26	4.42 <u>Scheduled Date of Firm Operation:</u> The target Date of Firm

1 Operation contained in Appendix C or its most recent revision.
2 sion.

3 4.43 Scheduling Agent: The Party responsible for scheduling ^{SUC-12}
4 Power and Energy deliveries over the Arizona Transmission
5 System pursuant to Section 15.4.

6 4.44 Section: A Section of this Participation Agreement, unless
7 otherwise stated.

8 4.45 Sharable Units: Departments which incur costs that are
9 part of the administrative and general expenses which are
10 sharable with the costs of the Arizona Transmission System
11 as defined in Exhibit E-1 to Appendix E.

12 4.46 Units of Property: Units of property as described in the
13 Federal Energy Regulatory Commission's "List of Units of
14 Property for Use in Connection with Uniform System of
15 Accounts Prescribed for Public Utilities and Licensees" in
16 effect as of the date of this Participation Agreement, and
17 as such list may be amended from time to time.

18 4.47 Willful Action: Action taken or not taken by a Party at
19 the direction of its directors or officers affecting its
20 performance under this Participation Agreement, which
21 action:

22 4.47.1 Is knowingly or intentionally taken or not taken
23 with conscious indifference to the consequences
24 thereof or with intent that injury or damage would
25 result or would probably result therefrom;

26 4.47.2 Has been determined by final arbitration award or

1 final judgment or judicial decree to be a breach of
 2 contract under this Participation Agreement and
 3 which occurs or continues beyond the time specified
 4 in such arbitration award or judgment or judicial
 5 decree for curing such default or, if no time to
 6 cure is specified therein, occurs or continues
 7 thereafter beyond a reasonable time to cure such
 8 default;

9 4.47.3 Is knowingly or intentionally taken or not taken
 10 with knowledge that such action constitutes a
 11 breach of contract under this Participation Agree-
 12 ment; or

13 4.47.4 Does not include any act or failure to act which is
 14 merely involuntary, accidental or negligent.

15 4.48 Work Liability: Liability of one or both Parties for
 16 damage suffered by anyone other than a Party, whether or
 17 not resulting from the negligence of a Party, its direc-
 18 tors, officers, employees or any person or entity whose
 19 negligence could be imputed to such Party resulting from:

20 4.48.1 The performance of Construction Work or Operating
 21 Work; or

22 4.48.2 The use or ownership of the Arizona Transmission
 23 System.

24 4.49 Yuma - Border 500kV Line: A component of the Arizona
 25 Transmission System described in Appendix A.4.

26 4.50 Yuma 500kV Breaker Yard: A component of the Arizona

DEC-28-2000 11:32

SDG&E GRID OPERATION SKULS

P. 102

1	Transmission System described in Appendix A.3.4.
2	4.51 <u>Yuma Interconnection Facilities</u> : A component of the Ari-
3	zona Transmission System described in Appendix A.3.3.
4	4.52 <u>Yuma Switchyard</u> : A component of the Arizona Transmission
5	System described in Appendix A.3.
6	5. <u>ADMINISTRATION</u> :
7	5.1 To secure effective cooperation and interchange of informa-
8	tion and to provide prompt and orderly consultation between
9	the Parties concerning administrative and technical matters
10	which may arise in connection with the terms and conditions
11	of the Project Agreements, the Parties hereby establish the
12	following:
13	5.1.1 One Administrative Representative and an alternate
14	shall be designated by each Party.
15	5.1.2 A Construction Director and an alternate shall be
16	designated by APS.
17	5.1.3 A Construction Coordinator and an alternate shall
18	be designated by SDG&E.
19	5.1.4 An Operating Committee member and an alternate
20	shall be designated by each Party.
21	5.2 The Administrative Representatives shall, among other
22	things:
23	5.2.1 Provide liaison between the Parties at the vice
24	presidential level.
25	5.2.2 Supervise generally the Construction Director,
26	Construction Coordinator, and Operating Committee.

1	and any other committee or representative estab-
2	lished pursuant to the Project Agreements.
3	5.2.3 Review, discuss and attempt to resolve all disputes
4	referred to them by: (i) the Construction Director
5	or the Construction Coordinator, (ii) the Operating
6	Committee, or (iii) any other committee or repre-
7	sentative established by the Project Agreements.
8	5.2.4 Review and approve, modify or otherwise act upon
9	recommendations of the Project Manager, the Operat-
10	ing Agent, or the Scheduling Agent made pursuant to
11	the Project Agreements.
12	5.2.5 Approve budgets for Construction Work and Operating
13	Work.
14	5.2.6 Approve the Final Completion Report.
15	5.2.7 Approve all revisions of Appendices A, F, I, and
16	J.
17	5.2.8 Perform such other duties as may be designated in
18	the Project Agreements.
19	5.3 The Construction Director and the Construction Coordinator
20	shall jointly, among other things:
21	5.3.1 Provide liaison between the Parties with regard to
22	Construction Work.
23	5.3.2 Perform such other duties as may be designated in
24	the Project Agreements or assigned by the Admini-
25	strative Representatives.
26	5.3.3 Provide for the development of procedures for

DEC-20-2000 11:33

SWE-UNIT OPERATIONS SWPL

P. 10

1	written notice thereof to the other Party.
2	5.7 Each Party shall notify the other Party in writing promptly
3	of any change of its designated representatives.
4	5.8 On the Date of Firm Operation, control of the Arizona
5	Transmission System shall transfer from the Construction
6	Director and Construction Coordinator to the Operating
7	Committee.
8	5.9 The Construction Director and Construction Coordinator
9	shall have no responsibilities or authority hereunder fol-
10	lowing the Administrative Representatives' approval of the
11	Final Completion Report.
12	5.10 All matters pertaining to Construction Work, which must be
13	referred to the Administrative Representatives pursuant to
14	the Project Agreements, shall be reviewed by the Construc-
15	tion Director and Construction Coordinator before such
16	referral to the Administrative Representatives.
17	5.11 All matters pertaining to Operating Work, which must be
18	referred to the Administrative Representatives pursuant to
19	the Project Agreements, shall be reviewed by the Operating
20	Committee before such referral to the Administrative Repre-
21	sentatives.
22	5.12 Either Administrative Representative may upon sufficient
23	advance notice call meetings as he deems necessary and
24	shall notify the other Administrative Representative in
25	writing and supply a written agenda for such meetings. The
26	Administrative Representatives or their designated alter-

SWPL 2614

-13-

K270-00E

1	following components of the Arizona Transmission System:
2	6.1.1 The Palo Verde Termination.
3	6.1.2 The Palo Verde - Yuma 500kV Line.
4	6.1.3 The Palo Verde - Yuma 500kV Line Termination.
5	6.2 APS shall own a 66.7% undivided interest and SDG&E shall
6	own a 33.3% undivided interest as tenants in common in the
7	Yuma 500kV Breaker Yard.
8	6.3 SDG&E shall solely own the following components of the
9	Arizona Transmission System.
10	6.3.1 The Yuma - Border 500kV Line Termination.
11	6.3.2 The Yuma - Border 500kV Line.
12	6.4 APS shall solely own the Yuma Interconnection Facilities.
13	7. <u>CONSTRUCTION BUDGET:</u>
14	7.1 The initial budget in Appendix C is approved, and upon
15	determination that the total estimated costs of construc-
16	tion exceed the most recently approved budget by 10% or
17	more, the Project Manager shall develop a revised budget
18	and submit it to the Administrative Representatives for
19	their approval, modification, or other action.
20	7.2 The initial cash flow is included in Appendix H and the
21	Construction Director shall develop and forward to the Con-
22	struction Coordinator a revised cash flow in similar form
23	(i) on September 1 of each year during Construction Work,
24	and (ii) within 30 days after a new budget is approved.
25	Such cash flow shall be divided by calendar months through
26	the Scheduled Date of Firm Operation.

1	7.3 Revisions in the budget for Construction Work shall be
2	accompanied by supporting information whenever:
3	7.3.1 The revision for any work activity category exceeds
4	110% of the previously approved budget for such
5	work activity category, or
6	7.3.2 The revision is due to a change in scope of any
7	work activity category.
8	8. CONSTRUCTION WORK:
9	8.1 The Project Manager for the Arizona Transmission System
10	shall be APS.
11	8.2 SDG&E hereby appoints the Project Manager as its agent, and
12	the Project Manager shall undertake as SDG&E's agent and as
13	principal on its own behalf, to perform Construction Work
14	and to carry out the duties and responsibilities provided
15	hereunder to be performed by it.
16	8.3 The Project Manager shall:
17	8.3.1 Submit any change in the description of the Arizona
18	Transmission System contained in Appendix A, to the
19	Administrative Representatives for their review and
20	approval, modification, or other action.
21	8.3.2 Prepare and issue a quarterly progress report which
22	shall contain at least a trend report, a Construc-
23	tion Schedule, a forecast of expenditures, a report
24	of expenditures to date, and a report of construc-
25	tion progress to date.
26	8.3.3 Submit any proposed change in the Scheduled Date of

1	Firm Operation to the Administrative Representa-
2	tives for approval.
3	8.3.4 With respect to all aspects of Construction Work,
4	subject to the provisions of Sections 5.2, 5.3,
5	8.4, and 8.7 negotiate and enter into any agreement
6	for Construction Work, and purchase and procure
7	such equipment, apparatus, machinery, materials,
8	tools, supplies and services as it may deem neces-
9	sary or useful for the performance and completion
10	of the Construction Work from any source or sources
11	it may select, including SDG&E.
12	8.3.5 Obtain all right-of-way for the Arizona Transmis-
13	sion System in accordance with Appendices I and J.
14	8.3.6 Arrange for placement of Construction Insurance
15	pursuant to Section 20.1.
16	8.3.7 Determine which contractors, if any, shall be
17	required to furnish any portion of the Construction
18	Insurance, other insurance and faithful performance
19	and payment bonds.
20	8.3.8 Assist any insurer in the investigation, adjustment
21	and settlement of any loss or claim arising out of
22	Construction Work.
23	8.3.9 Present and prosecute claims against insurers and
24	indemnitors providing Construction Insurance or
25	indemnities in respect of any loss of or damage to
26	any property of the Arizona Transmission System or

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	8.3.10
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	

liability of either Party to third parties covered by Construction Insurance or any indemnity agreement, and to the extent that any such loss, damage or liability is not covered by Construction Insurance or by any indemnity agreement, present and prosecute claims against any parties who may be liable therefor. If the cost of repair, replacement or correction of such loss or damage arising out of a single incident or event exceeds \$100,000 or such other amount as may be set by the Administrative Representatives, the Project Manager shall not settle any claims with respect thereto without the consent and approval of the Administrative Representatives.

8.3.10 Subject to the provisions of Section 21 and except as provided in this Section 8.3.10, investigate, adjust, defend and settle claims against either or both Parties arising out of or attributable to Construction Work, or the past or future performance or nonperformance of the obligations and duties of either Party, including the Project Manager, under or pursuant to the Project Agreements, including but not limited to any claim resulting from death or injury to persons or damage to property, when said claims are not covered by valid and collectible Construction Insurance or other valid and col-

1	lectible insurance carried by either Party, and,
2	whenever and to the extent warranted, present and
3	prosecute claims against any third party, including
4	insurers, for any costs, losses and damages incur-
5	red in connection with said claims. The Project
6	Manager shall obtain the approval of the Admini-
7	strative Representatives before any said claim or
8	combination of said claims against either or both
9	Parties arising out of the same transaction or
10	incident is settled for more than \$100,000 or such
11	other amount as may be set by the Administrative
12	Representatives, unless the entire amount of the
13	settlement in excess of said limit is recoverable
14	from an insurer providing Construction Insurance.
15	8.3.11 Execute, administer, perform and enforce all con-
16	struction agreements in the name of the Project
17	Manager, acting as principal on its own behalf and
18	as agent for SDG&E, in which the Parties shall have
19	undivided interests as tenants in common in propor-
20	tion to their Responsibility for Costs in the
21	Arizona Transmission System, and furnish a copy of
22	any such agreement to SDG&E upon request.
23	8.3.12 Comply with or with the approval of the Administra-
24	tive Representatives, administratively or judicial-
25	ly challenge (i) any and all laws applicable to the
26	performance of Construction Work, including without

1	limitation all applicable laws, rules, and regula-
2	tions for protection of the health, safety and wel-
3	fare of the public and environment and all applic-
4	able provisions of any workmen's compensation laws;
5	and (ii) the terms and conditions of any contract,
6	permit or license relating to the Arizona Transmis-
7	sion System.
8	8.3.13 Expend the Construction Funds in accordance with
9	the terms and conditions of this Participation
10	Agreement.
11	8.3.14 Keep and maintain records of monies received and
12	expended, obligations incurred, credits accrued,
13	estimates of Construction Costs (excluding, subject
14	to Section 17.3, ad valorem taxes or payments in
15	lieu thereof and allowance for funds used during
16	construction) and contracts entered into in the
17	performance of Construction Work, and make such
18	records available for inspection and copying by
19	SDG&E at reasonable times and places.
20	8.3.15 Not suffer any liens to remain in effect unsatis-
21	fied against the Arizona Transmission System, other
22	than liens permitted under the Project Agreements,
23	liens for taxes or assessments not yet delinquent,
24	liens for labor and material not yet perfected,
25	liens for workmen's compensation awards not yet
26	perfected, or undetermined charges or liens inci-

1	denial to the performance of Construction Work;
2	provided, however, that the Project Manager shall
3	not be required to pay or discharge any such lien
4	as long as it in good faith shall be contesting the
5	same, which contest shall operate during the pen-
6	dency thereof to prevent the collection or enforce-
7	ment of such lien so contested.
8	8.3.16 Obtain or cause to be obtained necessary construc-
9	tion permits, temporary access rights and other
10	licenses and approvals requisite to the performance
11	and completion of Construction Work and initiation
12	of Operating Work.
13	8.3.17 Develop and negotiate such agreements as shall be
14	required in order to interconnect at the Palo Verde
15	Switchyard. Such agreements shall be approved and
16	executed by the Parties.
17	8.3.18 Upon its Request for Information, provide SDG&E
18	with copies of records and information pertaining
19	to the performance of Construction Work. Notwith-
20	standing any provisions in the Project Agreements
21	to the contrary, in the event that the information
22	requested is voluminous, the information shall be
23	made available for inspection and copying at rea-
24	sonable times and places.
25	8.3.19 Furnish SDG&E any assistance and information rea-
26	sonably requested and available pertaining to the

1	construction of the Arizona Transmission System.
2	8.3.20 Use its best efforts in performing its responsibil-
3	ities hereunder to complete Construction Work by
4	the Scheduled Date of Firm Operation.
5	8.3.21 Keep SDG&E fully and promptly advised of signifi-
6	cant developments in connection with the progress,
7	performance, cost and completion of Construction
8	Work.
9	8.3.22 Prepare and deliver the Final Completion Report to
10	SDG&E as soon as practicable, but not later than
11	twenty-four (24) months after the Date of Firm
12	Operation, unless such time is extended by the
13	Administrative Representatives.
14	8.3.23 Upon his request, provide each representative
15	established hereunder with records and information
16	for his use in performing his responsibilities
17	under the Project Agreements.
18	8.3.24 Construct the Arizona Transmission System so as to
19	comply with the Project Agreements.
20	8.3.25 Conduct tests to verify that specified characteris-
21	tics of major equipment items have been achieved
22	and, if necessary, make or cause to be made those
23	final equipment modifications necessary to meet the
24	specified requirements.
25	8.3.26 Provide for and enforce any and all warranties on
26	equipment, facilities, materials and services sold

1	to or furnished for the Arizona Transmission System.
2	8.3.27 Conduct such environmental studies as the Admini-
3	strative Representatives direct.
4	8.3.28 Approve all press releases concerning the construc-
5	tion of the Arizona Transmission System before they
6	are released.
7	8.3.29 Have full responsibility and authority for employ-
8	ing and organizing the personnel and staff required
9	to complete the Construction Work.
10	8.3.30 Prepare recommendations covering matters to be
11	reviewed and acted upon by the Administrative
12	Representatives or the Construction Director and
13	the Construction Coordinator.
14	8.3.31 Carry out the directives of the Administrative
15	Representatives with respect to the matters set
16	forth in the Project Agreements.
17	8.4 The Construction Director shall prepare and submit the
18	following in a timely manner to the Construction Coordi-
19	nator for review and approval, modification or other action:
20	8.4.1 The bidding, purchasing, and change order proce-
21	dures to be used by the Project Manager for Con-
22	struction Work.
23	8.4.2 The design parameters which define the operating
24	characteristics of the Arizona Transmission System.
25	8.4.3 Any changes with regard to matters described in
26	Sections 8.4.1, 8.4.2 and 8.4.5.

1 8.4.4 A bidders list for any request for bids on equip-
2 ment or services which are anticipated to cost more
3 than \$200,000 shall be submitted at least 15 days
4 prior to mailing to the bidders. The insulators,
5 tower steel, conductors, 500kV breakers, and series
6 and shunt line compensation equipment are all anti-
7 cipated to cost more than \$200,000. Upon receiving
8 the bidders list, the Construction Coordinator
9 shall have 15 days to request any changes in the
10 bidders list. After such time the bidders list
11 shall be deemed approved.

12 8.4.5 The bid evaluation procedure to be used for each of
13 the equipment and services listed in Section 8.4.4.

14 8.3 As soon as the design specifications are available for
15 towers, conductors, shield wires, insulators, breakers, and
16 series and shunt line compensation, the Construction Direc-
17 tor shall forward the respective design specifications to
18 the Construction Coordinator for review and comment.

19 8.6 Contracts awarded on a cost reimbursable basis shall
20 include audit clauses providing for the right to audit by
21 the Project Manager.

22 8.7 The Project Manager shall not enter into construction
23 contracts nor make commitments for equipment or material
24 prior to the Date of Approval without the approval of the
25 Authorized Representatives.

26 8.8 SDG&E shall provide to the extent possible all assistance

1	required by the Project Manager in performing its obligations hereunder, and the Construction Director and Construction Coordinator shall allocate SDG&E's appropriate costs to Construction Costs according to Accounting Practice.
2	
3	
4	
5	
6	8.9 SDG&E shall, within sixty (60) days after this Participation Agreement becomes effective, submit to the Project Manager in writing any special requirements it may have regarding accounting, records, or information so that all required records may be maintained in the same manner throughout the construction of the Arizona Transmission System. The Project Manager shall use its best efforts to accommodate said special requirements.
7	
8	
9	
10	
11	
12	
13	
14	9. <u>CONSTRUCTION LIAISON:</u>
15	9.1 SDG&E may, at its option and entirely at SDG&E expense, assign one person to the project. The person assigned by SDG&E shall be a working member of the project and shall:
16	
17	
18	9.1.1 Report to a member of the Construction Director's staff.
19	
20	9.1.2 Submit a monthly report of activities, findings, conclusions and recommendations to the Construction Director.
21	
22	
23	9.1.3 Follow the Project Manager's rules and guidelines for conduct.
24	
25	9.1.4 Send the Construction Director copies of all correspondence with SDG&E.
26	

1 9.1.5 Have access to all files and documents pertaining
2 to the Arizona Transmission System to the same
3 extent as the Project Manager's engineers and
4 inspectors.

5 9.2 Upon written notice to SDG&E, the Construction Director may
6 require SDG&E to replace the assigned person. The grounds
7 for such replacement shall be reasonable and shall be
8 clearly stated in the notice.

9 9.3 The Project Manager shall furnish the necessary office
10 materials, services and facilities. Long distance tele-
11 phone costs of the person assigned by SDG&E shall be
12 charged to the Arizona Transmission System.

13 9.4 A project vehicle will be assigned to the person assigned
14 by SDG&E for normal project activities. Transportation to
15 and from San Diego or for off duty use will not be provided
16 by the Project Manager.

17 10. OPERATING AGENT:

18 10.1' The Operating Agent for the Arizona Transmission System
19 shall be APS.

20 10.2 SDG&E hereby appoints the Operating Agent as its agent, and
21 the Operating Agent shall undertake as SDG&E's agent and as
22 principal on its own behalf, to perform Operating Work and
23 to carry out the duties and responsibilities provided here-
24 under to be performed by it.

25 10.3 The Parties recognize that Salt River Project Agricultural
26 Improvement and Power District is the operating agent of

1	the Palo Verde Switchyard and will operate the Palo Verde
2	Termination pursuant to the proposed interconnection agree-
3	ment to be executed between the Arizona Nuclear Power
4	Project participants and the Parties.
5	10.4 The Operating Agent shall:
6	10.4.1 Prepare and submit recommendations to the Admini-
7	strative Representatives for their review and
8	approval, modification or other action with respect
9	to each of the following matters:
10	10.4.1.1 The proposed Capital Improvements budget
11	and proposed operation and maintenance
12	budget pursuant to Section 18.
13	10.4.1.2 The proposed form of written statistical
14	and administrative reports, written bud-
15	gets, and information and other similar
16	records to be kept by the Operating Agent
17	with respect to Operating Work.
18	10.4.2 Prepare and submit the following in a timely manner
19	to the Operating Committee for review and approval,
20	modification or other action:
21	10.4.2.1 The proposed outages of the Arizona Trans-
22	mission System for scheduled maintenance.
23	10.4.2.2 A proposed written statement of operating
24	practices and procedures.
25	10.4.2.3 Proposed procedures for accounting for
26	transmission losses.

1	10.4.2.4	Proposed procedures for dealing with
2		Operating Emergencies.
3	10.4.3	Perform Operating Work in accordance with gener-
4		ally accepted practices in the electric utility
5		industry as such practices may be affected by the
6		design and operational characteristics of the
7		Arizona Transmission System, the rights and obli-
8		gations of the Parties under this Participation
9		Agreement, and any other special circumstances
10		affecting Operating Work.
11	10.4.4	Contract for, furnish and obtain from any sources
12		it may select, including SDC&E, the services and
13		studies necessary to perform Operating Work pur-
14		suant to the Project Agreements. Contracts award-
15		ed on a cost reimbursable basis shall include audit
16		clauses providing for the right to audit by the
17		Project Manager.
18	10.4.5	Execute and enforce contracts necessary to perform
19		Operating Work.
20	10.4.6	Furnish and train the necessary personnel to per-
21		form Operating Work.
22	10.4.7	Comply with or with the approval of the Administra-
23		tive Representatives, administratively or judicial-
24		ly challenge (i) any and all laws and regulations
25		applicable to the performance of Operating Work,
26		including all applicable provisions of any work-

1	men's compensation laws; and (ii) the terms and
2	conditions of any contract, permit or license
3	relating to the Arizona Transmission System.
4	10.4.8 Purchase and procure, through and from any source
5	it may select, the equipment, apparatus, machin-
6	ery, tools, materials and supplies necessary to
7	perform Operating Work pursuant to the Project
8	Agreements.
9	10.4.9 Expend Operating Funds in accordance with the terms
10	and conditions of this Participation Agreement.
11	10.4.10 Keep and maintain records of monies received and
12	expended, obligations incurred, credits accrued,
13	and contracts entered into in the performance of
14	Operating Work and make such records available for
15	inspection and copying by SDG&E at reasonable times
16	and places.
17	10.4.11 Not suffer any liens to remain in effect unsatis-
18	fied against the Arizona Transmission System, other
19	than the liens permitted under the Project Agree-
20	ments, liens for taxes and assessments not yet
21	delinquent, liens for workmen's compensation
22	awards, liens for labor and material not yet per-
23	formed, or undetermined charges or liens inciden-
24	tal to the performance of Operating Work; provid-
25	ed, however, that the Operating Agent shall not be
26	required to pay or discharge any such lien as long

1 as it in good faith shall be contesting the same,
2 which contest shall operate during the pendency
3 thereof to prevent the collection or enforcement of
4 such lien so contested.

5 10.4.12 Arrange for the placement and maintenance of Oper-
6 ating Insurance pursuant to Section 20.2.

7 10.4.13 Present and prosecute claims against insurers and
8 indemnitors providing Operating Insurance or
9 indemnities in respect of any loss of or damage to
10 any property of the Arizona Transmission System or
11 liability of either Party to third parties covered
12 by Operating Insurance or by any indemnity agree-
13 ment, and to the extent that any such loss, damage
14 or liability is not covered by Operating Insurance
15 or by any indemnity agreement, present and prose-
16 cute claims against any parties who may be liable
17 therefor. If the cost of repair, replacement or
18 correction of such loss or damage arising out of a
19 single incident or event exceeds \$100,000 or such
20 other amount as may be set by the Administrative
21 Representatives, the Operating Agent shall not
22 settle any claims with respect thereto without the
23 consent and approval of the Administrative Repre-
24 sentatives.

25 10.4.14 Subject to the provisions of Section 21 and except
26 as provided in this Section 10.4.14, investigate,

1	adjust, defend and settle claims against either or
2	both Parties arising out of or attributable to
3	Operating Work, or the past or future performance
4	or nonperformance of the obligations and duties of
5	either Party, under or pursuant to this Participa-
6	tion Agreement, including but not limited to any
7	claim resulting from death or injury to persons or
8	damage to property, when said claims are not cov-
9	ered by valid and collectible Operating Insurance
10	or other valid and collectible insurance carried by
11	either Party, and, whenever and to the extent war-
12	ranted, present and prosecute claims against any
13	third party, including insurers, for any costs,
14	losses and damages incurred in connection with said
15	claims. The Operating Agent shall obtain the
16	approval of the Administrative Representatives
17	before any said claim or combination of said claims
18	against either or both Parties arising out of the
19	same transaction or incident is settled for more
20	than \$100,000 or such other amount as may be set by
21	the Administrative Representatives, unless the
22	entire amount of the settlement in excess of said
23	limit is recoverable from an insurer providing
24	Operating Insurance.
25	10.4.15 Assist any insurer in the investigation, adjust-
26	ment and settlement of any loss or claim arising

1	out of Operating Work.
2	10.4.16 Keep SDG&E fully and promptly advised of material
3	changes in conditions or other material develop-
4	ments affecting the performance of Operating Work,
5	and furnish copies of any notices given or receiv-
6	ed pursuant to the Project Agreements.
7	10.4.17 Upon its Request for Information, provide SDG&E
8	with all written statistical and administrative
9	reports, operating reports, written budgets,
10	accounting records and information and other
11	records relating to Operating Work which may be
12	necessary for SDG&E to perform its responsibili-
13	ties under the Project Agreements.
14	10.4.18 Upon its Request for Information, provide SDG&E, in
15	reasonable quantity, a copy or copies of any
16	report, record, list, budget, manual, accounting or
17	billing summary, classification of accounts or
18	other documents or revisions of any of the afore-
19	said items pertinent to this Participation Agree-
20	ment.
21	10.4.19 Prepare recommendations covering matters to be
22	reviewed and acted upon by the Administrative
23	Representatives or the Operating Committee.
24	10.4.20 Carry out the directives of the Administrative
25	Representatives and the Operating Committee with
26	respect to the matters set forth in the Project

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	

Agreements.

10.4.21 Perform Operating Work with the objective of permitting each Party to use under normal operating conditions its share of Capacity in the Arizona Transmission System in a manner which will not unreasonably affect the operation of the Parties' electric systems or the electric systems of interconnected third parties. This Section 10.4.21 shall not be construed to create rights in or benefit any third party.

10.4.22 Defend title to the Arizona Transmission System held by the Parties.

10.5 SDG&E shall provide to the extent possible all assistance required by the Operating Agent in performing its obligations hereunder, and the Operating Committee shall allocate SDG&E's appropriate costs to Operating Costs according to Accounting Practice.

10.6 Materials, supplies and spare parts required for maintaining or making emergency repairs on the Arizona Transmission System shall be taken from the Project Manager's inventories and the charges for such equipment shall include the Project Manager's normal warehouse loadings.

11. CONSTRUCTION COSTS:

11.1 Construction Costs of the Arizona Transmission System shall include all payments made and obligations incurred by the Project Manager for or in connection with Construction Work,

1 including, but not limited to, those costs specified in
 2 Section 11.2 and in Appendix D.

3 11.2 Construction Costs shall also include all payments made and
 4 obligations incurred by the Project Manager pursuant to the
 5 Arizona - San Diego 500kV Interconnection Letter of Under-
 6 standing dated November 22, 1978, including any amendments
 7 thereto. Such costs shall include an A & G loading of 1%
 8 of Construction Costs as calculated in Appendix D.1.13,
 9 booked up to and including the month in which this Partici-
 10 pation Agreement becomes effective. Thereafter, the A & G
 11 loading on Construction Costs shall be the rate determined
 12 in Appendix E.9.

13 11.3 All Construction Costs, except as otherwise specifically
 14 provided in this Participation Agreement, shall be shared
 15 by the Parties in proportion to their Responsibility for
 16 Costs specified in Appendix B.

17 11.4 All Construction Costs which cannot be allocated to a
 18 specific component or components of the Arizona Transmis-
 19 sion System shall be shared by the Parties in proportion to
 20 the number of 500kV line miles and the percent ownership as
 21 shown in the following example:

22 EXAMPLE:

23 The Palo Verde - Yuma 500kV Line = 118 Miles

24 The Yuma - Border 500kV Line = 6 Miles

25 The APS Cost Allocation = $\frac{118 \text{ Miles} \times 11\%}{124 \text{ Miles}} = 10.47\%$

26

1	SDG&E Cost Allocation = $\frac{118 \text{ Miles} \times 89\% + 6 \text{ Miles} \times 100\%}{124 \text{ Miles}}$ =
2	<u>89.53%</u>
3	11.5 The cost of land, fencing, site preparation and all other
4	costs of constructing the Yuma Switchyard which are not
5	directly associated with a specific component listed in
6	Appendix A.3.1 through A.3.4, shall be allocated between the
7	Parties as follows:
8	APS - 66.7% SDG&E - 33.3%
9	12. <u>OPERATION AND MAINTENANCE COSTS:</u>
10	12.1 Operation and maintenance costs of the Arizona Transmission
11	System shall include all payments made and obligations
12	incurred by the Operating Agent for or in connection with
13	the performance of Operating Work, including (i) those costs
14	of Operating Work specified in Appendix E, and (ii) those
15	costs specified in Section 17 to the extent any tax or pay-
16	ment in lieu thereof is levied against a Party in behalf of
17	both Parties, and in Section 20.2 (excluding workmen's com-
18	penensation expense for the Operating Agent's employees);
19	provided, however, that Construction Costs and Capital
20	Improvement costs shall not be included in operation and
21	maintenance costs.
22	12.2 Cost of operation and maintenance of the Arizona Transmis-
23	sion System shall be shared in proportion to each Party's
24	Responsibility for Costs as shown in Appendix B.
25	12.3 All Operating Costs which cannot be allocated to a specific
26	component or components of the Arizona Transmission System

1 SDC&E at reasonable times and places its books and records
2 necessary for SDC&E to audit or have audited such books and
3 records with respect to Construction Work or Operating
4 Work. To the extent such audits reveal over or under
5 payments by a Party an adjustment shall be made with the
6 next Request for Funds.

7 14. ADJUSTMENT FOR PAYMENT OF ACTUAL CONSTRUCTION COSTS:
8 Within 30 days after approval of the Final Completion Report
9 pursuant to 5.2.6, cash adjustments shall be made between the
10 Parties so that each item of Construction Costs shall be shared by
11 each Party in proportion to its Responsibility for Costs. Any
12 Construction Costs which shall be attributable to more than one
13 component of the Arizona Transmission System shall be equitably
14 allocated by the Project Manager to the components of the Arizona
15 Transmission System, subject to the review and approval of the
16 Construction Director and Construction Coordinator.

17 15. USE, SCHEDULING, AND LOSSES:
18 15.1 For resource and transmission planning and reporting
19 purposes, the Parties shall be entitled to schedule Power
20 and Energy over the Arizona Transmission System for their
21 respective accounts at the Palo Verde Switchyard for deliv-
22 ery to the Yuma Switchyard, or at the Yuma Switchyard for
23 delivery to the Palo Verde Switchyard, in the following
24 percentage of Rated Capability:
25 15.1.1 APS - 11%
26 15.1.2 SDC&E - 89%

1	15.2	For operating purposes, the Parties shall be entitled to
2		schedule Power and Energy over the Arizona Transmission
3		System for their respective accounts at the Palo Verde
4		Switchyard for delivery to the Yuma Switchyard, or at the
5		Yuma Switchyard for delivery to the Palo Verde Switchyard,
6		in the following percentage of Operating Capability:
7	15.2.1	APS - 11%
8	15.2.2	SDG&E - 89%
9	15.3	SDG&E shall have the sole right to deliver Power and Energy
10		in either direction over the Yuma - Border 500kV Line.
11	15.4	The Scheduling Agent for the Arizona Transmission System
12		shall be SDG&E. The Scheduling Agent shall:
13	15.4.1	Schedule all Power and Energy deliveries over the
14		Arizona Transmission System.
15	15.4.2	Prepare and submit the proposed criteria for deter-
16		mining the Operating Capability of the Arizona
17		Transmission System to the Administrative Represent-
18		tatives for their review and approval, modification
19		or other action. Such criteria shall recognize the
20		necessity to maximize the Operating Capability at
21		all times, consistent with prudent electric utility
22		practices, and shall take into account loop flows,
23		equipment outages, emergency conditions and actual
24		operating experience.
25	15.4.3	At least two months before the Scheduled Date of
26		Firm Operation, prepare and submit to the Operating

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	

Committee for review, approval, modification or other action, the proposed procedure for Power and Energy scheduling and accounting.

15.4.4 At least six months before the Scheduled Date of Firm Operation, and from time to time as requested by the Operating Committee, prepare and submit to the Operating Committee for its review, approval, modification or other action, the practices, procedures and operating studies required to determine the Operating Capability. Such practices, procedures and operating studies shall be developed pursuant to the criteria approved pursuant to Section 15.4.2.

15.4.5 Establish and make known on an hourly basis the Operating Capability based on the procedures approved pursuant to Section 15.4.4.

15.5 Power and Energy scheduled by the Parties over the Arizona Transmission System between the Palo Verde Switchyard and the Yuma Switchyard shall be scheduled and controlled by the Parties under practices and procedures approved by the Operating Committee. The Scheduling Agent shall receive and deliver or cause to be received and delivered all Power and Energy which a Party has scheduled for its account (i) at the Palo Verde Switchyard for delivery to the Yuma Switchyard and (ii) at the Yuma Switchyard for delivery to the Palo Verde Switchyard; provided, however, that the

1 quantity of Power and Energy so delivered shall not exceed
2 the Operating Capability.

3 15.6 The procedure for accounting for transmission losses in the
4 Arizona Transmission System shall be developed and approved
5 by the Operating Committee five months prior to the Sched-
6 uled Date of Firm Operation as follows:

7 15.6.1 A table of loss adjustments for actual Energy
8 deliveries between the Palo Verde Switchyard and the
9 Yuma Switchyard 69kV billing meters shall be
10 approved by the Operating Committee prior to the
11 Date of Firm Operation so that net Energy schedules
12 shall be made to reflect average losses, taking into
13 account the direction of actual Energy flows. Such
14 table of loss adjustments shall be based on power
15 flow studies conducted jointly by the Parties and
16 shall take into account line, transformer and shunt
17 reactor losses. Losses shall be scheduled during
18 similar load hours within seven days after such
19 losses are incurred.

20 15.6.2 For Energy accounting purposes the Arizona Trans-
21 mission System shall be within the SDG&E accounting
22 area and APS shall schedule to SDG&E losses based
23 upon actual flows of Power and Energy at the Yuma
24 Switchyard 69kV metering point.

25 15.6.3 The table of transmission loss adjustments estab-
26 lished by the Parties shall be reviewed upon the

1 request of either Party. Revisions to the table
2 shall be made only when justified by changes in
3 electrical characteristics of the Arizona Transmis-
4 sion System, or when operating experience has dem-
5 onstrated that the loss adjustments are incorrect.

6 15.7 At least five months before the Scheduled Date of Firm
7 Operation the Operating Committee shall prepare and submit
8 to the Administrative Representatives for their review and
9 approval, modification or other action, a recommended Rated
10 Capability. The criteria for determining such capability
11 shall be based on the results of engineering studies. Rated
12 Capability shall be reviewed by the Operating Committee from
13 time to time and approved by the Administrative Representa-
14 tives.

15 15.8 Each Party shall have the non-exclusive right to use the
16 500kV portion of the Yuma Switchyard to transfer all Power
17 and Energy scheduled on its share of the Arizona Transmis-
18 sion System, as specified in Sections 15.1, 15.2 and 15.3.

19 15.9 Either Party may, at its expense and upon entering into an
20 agreement with the other Party, make interconnections to the
21 Yuma 500kV Breaker Yard. Such agreement shall specify the
22 terms and conditions under which such interconnections may
23 be made.

24 15.10 All transactions between the Parties shall be deemed to take
25 place at the Palo Verde Termination unless the Parties
26 otherwise agree. Upon mutual agreement, the Parties may use

1 the Yuma Switchyard 69kV metering point as a transaction
2 point.

3 15.11 Planned outages of the Arizona Transmission System for main-
4 tenance, repairs, replacements, installation of equipment,
5 investigation or inspection shall be coordinated by the
6 Parties and be scheduled as far in advance as practicable.
7 Planned outages of the Arizona Transmission System shall be
8 scheduled by and have the approval of the Operating Commit-
9 tee. Such planned outages shall not commence without the
10 prior approval of the Parties' load supervisors, resource
11 coordinators or schedulers as appropriate, which approval
12 shall not be unreasonably withheld.

13 15.12 Power flows over the Arizona Transmission System shall be
14 measured by metering equipment at the Palo Verde Termination
15 and the Yuma Switchyard. Such metering equipment shall be
16 maintained by, or caused to be maintained by, the Operating
17 Agent.

18 15.13 The Operating Agent shall periodically calibrate and test
19 all meters installed pursuant to this Participation Agree-
20 ment. In so doing, the Operating Agent shall follow the
21 practices and procedures approved by the Operating Commit-
22 tee.

23 15.14 Either Party may make non-firm use of unused Operating Capa-
24 bility in addition to its entitlement under Section 15.2 to
25 the extent that unused Operating Capability is determined to
26 be available by the Scheduling Agent; provided, however,

1 that neither Party shall have the right to sell to a third
2 party such non-firm use of unused Operating Capability.
3 15.15 A Party which sells Power and Energy to a third party
4 requiring use of Operating Capability in excess of its
5 entitlement listed in Section 15.2, shall pay a wheeling
6 charge to the other Party for use of such Capacity in excess
7 of its entitlement.
8 15.16 A Party making use of Operating Capability in excess of its
9 entitlement pursuant to Section 15.2, shall immediately
10 reduce such schedules to the extent required to accommodate
11 schedules of the other Party and operate within the Operat-
12 ing Capability.
13 15.17 An APS-SDG&E Communication Agreement shall be developed by
14 the Parties to provide for the communication system which
15 will be required to properly operate the Arizona Transmis-
16 sion System. Such agreement shall define the ownership,
17 rights to use, allocation of costs, and the operation and
18 maintenance of the communication equipment.
19 16. OPERATING EMERGENCY:
20 16.1 If an Operating Emergency occurs, the Operating Agent shall
21 take all steps reasonably necessary to end the Operating
22 Emergency, in accordance with generally accepted practices
23 in the electric utility industry.
24 16.2 As soon as practicable after an Operating Emergency begins,
25 the Operating Agent shall advise SDG&E of its occurrence and
26 nature, the steps taken or to be taken to end it, and an

1 estimate of its duration.

2 16.3 The Operating Agent's costs incurred and charged to mainte-

3 nance expense to repair, restore, and reconstruct the Ari-

4 zona Transmission System shall be allocated to the Parties

5 in proportion to their Responsibility for Costs for the

6 components of the Arizona Transmission System being repair-

7 ed, restored, or reconstructed. Costs incurred by the

8 Operating Agent for Capital Improvements shall be allocated

9 to the Parties in proportion to their Responsibility for

10 Costs in the components of the Arizona Transmission System

11 to which such Capital Improvements are made, and the Oper-

12 ating Agent shall bill the Parties therefor in accordance

13 with Section 13.

14 16.4 After the Operating Emergency ends, the Operating Agent

15 shall submit to SDG&E a summary of the costs incurred to

16 repair, restore, reconstruct or make Capital Improvements,

17 and such other information as may be required by the Oper-

18 ating Committee.

19 17. TAXES:

20 17.1 The Parties shall use their best efforts to have any author-

21 ity levying any taxes, assessments, or payments in lieu

22 thereof, or making any valuations for the purpose of levying

23 any taxes, assessments, or payments in lieu thereof, on the

24 Arizona Transmission System, or any interest or rights

25 therein, assess them directly against the ownership or bene-

26 ficial interest of each Party.

1 17.2 All taxes, assessments or payments in lieu thereof levied
2 against each Party's ownership or beneficial interest in the
3 Arizona Transmission System, except those taxes, assessments
4 or payments in lieu thereof levied against an individual
5 Party in behalf of both Parties, shall be the sole responsi-
6 bility of the Party upon whose ownership or beneficial
7 interest they are levied.

8 17.3 If any property taxes or payments in lieu thereof or any
9 other taxes or assessments are levied or assessed in a
10 manner other than as specified in Section 17.1, the Admini-
11 strative Representatives shall establish equitable prac-
12 tices and procedures for their apportionment between the
13 Parties.

14 18. BUDGETS AND CAPITAL IMPROVEMENTS:

15 18.1 At least five months before the Scheduled Date of Firm Oper-
16 ation, and no later than August 1 of each year thereafter,
17 the Operating Agent shall prepare and submit to the Admini-
18 strative Representatives for their review and approval the
19 proposed budget for Operating Work for the following calan-
20 dar year.

21 18.2 At least three months before the Scheduled Date of Firm
22 Operation and no later than October 1 of each year there-
23 after, the Administrative Representatives shall approve a
24 budget for Operating Work for the following calendar year.

25 18.3 SDG&E shall supply any information the Operating Agent
26 requires from it to prepare the proposed budgets.

SWPL 2644

1	18.4	The Administrative Representatives may at any time approve
2		revisions to the budget for Operating Work.
3	18.5	All proposed expenditures for Capital Improvements, includ-
4		ing a contingency allowance for capital expenditures if
5		necessitated by an Operating Emergency, shall be included in
6		the budget for Operating Work. After such budget has been
7		approved by the Administrative Representatives, each Party
8		shall be obligated for the costs incurred thereunder in
9		proportion to its Responsibility for Costs.
10	18.6	All Capital Improvements which are for the sole use or bene-
11		fit of one Party shall be owned and paid for by such Party.
12	18.7	The Operating Agent shall submit to the Operating Committee
13		annually a forecast of cash requirements by month for the
14		budget year for all Operating Work. Said forecast shall be
15		submitted annually within 30 days after final budget approv-
16		als have been made. A revised forecast shall be submitted
17		whenever the budget for Operating Work is revised and
18		approved, or whenever significant changes in monthly expen-
19		ditures from those previously forecast are anticipated.
20	18.8	The Operating Agent shall be responsible for the design and
21		construction of all Capital Improvements.
22	18.9	The cost of Capital Improvements shall be determined in
23		accordance with Appendix E.
24	18.10	Units of Property retired from service shall be disposed of
25		by the Operating Agent on the best available terms as soon
26		as practicable, and the proceeds, if any, received therefrom

1 shall be credited or distributed to the Parties in propor-
 2 tion to their Responsibility for Costs associated with such
 3 units.

4 19. APPENDICES:
 5 Appendices A through J as they presently appear or as they may be
 6 revised are hereby made a part of this Participation Agreement.

7 20. INSURANCE:
 8 20.1 Unless otherwise specified by the Administrative Representa-
 9 tives, during the performance of Construction Work the
 10 Project Manager shall procure and maintain in force, or
 11 cause to be procured and maintained in force, policies of
 12 Construction Insurance of the following types:

13 20.1.1 Comprehensive bodily injury, personal injury and
 14 property damage liability insurance covering the
 15 Parties and contractors, including automobile lia-
 16 bility, contractual liability, owners' and contrac-
 17 tors' protective liability and liability for pro-
 18 ducts and completed operations.

19 20.1.2 All Risk Builder's Risk Insurance, covering the
 20 Arizona Transmission System and Construction Work.
 21 Such insurance shall apply to all Construction Work
 22 and to materials while in transit and while stored
 23 at the job site and shall afford coverage from the
 24 beginning of Construction Work until the Final Com-
 25 pletion Report is filed.

26 20.1.3 All Risk Contractor's Equipment Insurance, covering

1	owned, hired or furnished equipment used in connec-
2	tion with the performance of Construction Work for
3	which the Parties are responsible.
4	20.1.4 Employee Dishonesty Bond, covering employees of the
5	Project Manager while engaged in Construction Work.
6	20.1.5 Workmen's Compensation and Employer's Liability
7	Insurance, including all states endorsement covering
8	employees of the Project Manager and contractors
9	engaged in the performance of Construction Work.
10	The Project Manager may at its option be a self-
11	insurer in whole or in part for workmen's compensa-
12	tion for its own employees.
13	20.2 Unless otherwise specified by the Administrative Representa-
14	tives, the Operating Agent shall, on or before the date of
15	firm operation of the first component of the Arizona Trans-
16	mission System to be completed and during the performance of
17	Operating Work, procure and maintain in force, or cause to
18	be procured and maintained in force, policies of Operating
19	Insurance for the Parties of the following types:
20	20.2.1 Physical damage insurance, covering all facilities
21	except transmission towers, conductors and ground
22	wires. Coverage for facilities at the Palo Verde
23	Termination may include coverage for nuclear contam-
24	ination. Excepted property may be covered at the
25	option of the Operating Agent.
26	20.2.2 Comprehensive bodily injury, personal injury and

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	

property damage liability insurance, including coverage for hazards of automobile liability, contractual liability, owners' and contractors protective liability and liability for products and completed operations.

20.2.3 Workmen's Compensation and Employer's Liability Insurance, covering employees of the Operating Agent performing Operating Work, in a manner sufficient to satisfy applicable statutory requirements. The Operating Agent may at its option be a self-insurer in whole or in part for Workman's Compensation coverage.

20.2.4 Employee Dishonesty Bond covering dishonest or fraudulent acts committed by employees of the Operating Agent while performing Operating Work.

20.3 Except for Project Insurance described in Sections 20.1.3, 20.1.4, 20.1.5, 20.2.3, and 20.2.4 each Party shall be a named insured, individually and jointly with the other Party, on all Project Insurance, and the policies of Project Insurance referred to in Sections 20.1.1 and 20.2.2 shall include severability of interest provisions.

20.4 In lieu of naming the Parties insured in policies described in Section 20.1.1, the Project Manager may require contractors to procure owners' protective liability coverage, naming the Parties insureds therein.

20.5 Any deductibles or self-insured retentions in Project Insur-

1 ance shall be apportioned between the Parties on the basis
 2 of the ownership in the respective components of the Arizona
 3 Transmission System, except that the deductible or self-
 4 insured retention under any workmen's compensation insurance
 5 carried for officers and employees of the Project Manager
 6 and Operating Agent shall be apportioned in the manner
 7 specified in Section E.7 of Appendix E.

8 20.6 Each Party shall have the right to have any mortgagee,
 9 trustee or secured party named on all or any of the Project
 10 Insurance policies as loss payee or additional insured as
 11 its interest may appear, by notice to the Project Manager or
 12 Operating Agent which shall specify the name or names of
 13 such mortgagee, trustee or secured party and such additional
 14 information as may be necessary to permit it to be included
 15 on the policy(ies) of Project Insurance.

16 20.7 The Project Manager or Operating Agent shall furnish SDG&E
 17 with a certificate of each Project Insurance policy,
 18 together with a line sheet therefor (and any subsequent
 19 amendments) naming the insurers and underwriters and the
 20 extent of their participation. Said Project Insurance
 21 policies are subject to the approval of SDG&E and shall not
 22 be modified or changed by the Project Manager or the Operat-
 23 ing Agent without written approval of SDG&E, except for
 24 minor or insubstantial modifications or changes.

25 20.8 Each of the Project Insurance policies shall be endorsed so
 26 as to provide that all named insureds shall be given the

1	same advance notice of cancellation or material change as
2	that required to be given to the Project Manager or Operat-
3	ing Agent.
4	20.9 Project Insurance policies shall be primary insurance for
5	all purposes and shall be so endorsed. Any other insurance
6	carried by a Party individually shall not participate with
7	Project Insurance as to any loss or claim for which valid
8	and collectible Project Insurance shall apply. Such other
9	insurance shall apply solely as to the individual interest
10	of the Party carrying such other insurance; provided, how-
11	ever, that such Party shall accept any reasonable restric-
12	tive endorsement to its separate insurance policies as may
13	be required by an insurer as a condition precedent to the
14	issuance of a policy of Project Insurance.
15	20.10 Notwithstanding the provisions of Section 20.7, if the
16	Parties are unable to agree upon any matters relating to
17	Project Insurance, the Project Manager or Operating Agent,
18	pending the resolution of such disagreement, shall procure
19	or cause to be procured, such policies of Project Insurance
20	as in its judgment are necessary to protect the Parties
21	against the insurable risks set forth in Sections 20.1 and
22	20.2. During any period of negotiations with an insurer, or
23	other negotiations which are pending at the expiration of
24	coverage of a Project Insurance policy, or if a Project
25	Insurance policy is cancelled, the Project Manager or Oper-
26	ating Agent shall renew or bind policies as an emergency

1 measure or may procure policies of Project Insurance which
2 are identical to those which were cancelled, or may, to the
3 extent possible, secure replacement policies which will
4 provide substantially the same coverage as the policy expir-
5 ing or cancelled.

6 21. LIABILITY:

7 21.1 Except for liability resulting from Willful Action and
8 subject to the provisions of Section 21.3 and 21.4, neither
9 Party, its directors, officers, or employees, shall be lia-
10 ble to the other Party for any uninsured loss, damage,
11 claim, cost, charge, or expense of any kind or nature
12 resulting from Construction Work, Operating Work, use or
13 ownership of either Party's electric system or the perfor-
14 mance or nonperformance of the obligations of a Party under
15 this Participation Agreement, and each Party releases and
16 waives any or all right of recovery against the other Party,
17 its directors, officers and employees from any such
18 liability.

19 21.2 Except as provided in Sections 21.3 and 21.4, the costs and
20 expenses of discharging all Work Liability imposed upon
21 either Party for which payment is not made by Project
22 Insurance, shall be shared and paid for by both Parties in
23 proportion to their respective Responsibility for Costs.

24 21.3 Each Party shall be responsible for any direct, indirect, or
25 consequential damage, loss, claim, cost, charge, or expense
26 that is not covered by Project Insurance and results from

1 28.6 If a dispute between the Parties should arise under the Pro-
2 ject Agreements after the Date of Firm Operation concerning
3 Capital Improvements, the Operating Agent shall delay making
4 such Capital Improvements until the dispute is settled.

5 28.7 If a dispute between the Parties should arise under the Pro-
6 ject Agreements after the Date of Firm Operation, the Oper-
7 ating Agent is authorized and obligated to take such action,
8 consistent with the Project Agreements and generally accept-
9 ed practice in the electric utility industry applicable to
10 500kV transmission facilities, as is necessary or appro-
11 priate to repair and maintain the Arizona Transmission
12 System.

13 28.8 The Project Manager or the Operating Agent shall give prior
14 notice to the Parties of any action to be taken pursuant to
15 Sections 28.5 or 28.7.

16 28.9 Any funds which are advanced by the Parties to the Project
17 Manager during the pendency of a dispute shall not be sub-
18 ject to refund except upon a final determination that the
19 expenditures were not made in a manner consistent with the
20 Project Agreements and generally accepted practice in the
21 electric utility industry as such practices relate to elec-
22 tric transmission systems.

23 29. ARBITRATION:

24 29.1 If either Party shall call for submission of a dispute to
25 arbitration pursuant to Section 28.4, such request shall be
26 binding upon the other Party.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

29.2 The Party calling for arbitration shall give written notice to the other Party, setting forth in such notice in adequate detail the nature of the dispute, the amount or amounts, if any, involved in such dispute, and the remedy sought by such arbitration proceedings, and, within twenty (20) days from receipt of such notice, the other Party may, by written response, submit its own statement of the matter at issue and set forth in adequate detail additional related matters or issues to be arbitrated. Thereafter, the Party first submitting its notice of the matter at issue shall have ten (10) days after receipt of the response in which to submit a written rebuttal statement.

29.3 Within forty (40) days after delivery of the written notice calling for arbitration pursuant to Section 29.2, the Parties shall meet for the purpose of selecting arbitrators. Each Party shall designate an arbitrator. The arbitrators so selected shall meet within twenty (20) days after their selection and shall select one additional arbitrator. If the arbitrators selected by the Parties shall fail to select such additional arbitrator within said twenty (20) day period, then they shall request from the American Arbitration Association (or a similar organization if the American Arbitration Association should not at the time exist) a list of arbitrators who are qualified and eligible to serve as hereinafter provided. The arbitrators selected by the Parties shall take turns striking names from that list and the last

1	name remaining on the list shall be the additional arbitra-
2	tor. All arbitrators shall be persons skilled and experi-
3	enced in the field which gives rise to the dispute, and no
4	person shall be eligible for appointment as an arbitrator
5	who is or has been an officer or employee of either of the
6	Parties to the dispute or is otherwise interested in the
7	matter to be arbitrated.
8	29.4 Except as otherwise provided in this Section 29, the arbi-
9	tration shall be governed by the rules and practices of the
10	American Arbitration Association (or the rules and practice
11	of a similar organization if the American Arbitration Asso-
12	ciation should not at that time exist) from time to time in
13	force, except that if such rules and practice, as modified
14	herein, shall conflict with state or Federal laws then in
15	force which are specifically applicable to such arbitration
16	proceedings, such laws shall govern.
17	29.5 Included in the issues which may be submitted to arbitration
18	pursuant to this Section 29 is the issue of whether the
19	right to arbitrate a particular dispute is permitted under
20	the Project Agreements.
21	29.6 The arbitrators shall hear evidence submitted by the respec-
22	tive Parties and may call for additional information, which
23	additional information shall be furnished by the Party hav-
24	ing such information. The decision of a majority of the
25	arbitrators shall be binding upon the Parties.
26	29.7 The award of the arbitrators shall contain findings relative

1	to the materiality of the default, the period of time within
2	which the defaulting Party must remedy the default or com-
3	mence remedial action, and the remedies which may be exer-
4	cised by the non-defaulting Party in the event the default
5	is not remedied within such period of time.
6	29.8 This agreement to arbitrate shall be specifically enforce-
7	able, and the award and findings of the arbitrators shall be
8	final and binding upon the Parties to the extent permitted
9	by applicable law. Any award may be filed with the clerk of
10	any court having jurisdiction over the Party against whom
11	the award is rendered, and upon such filing, such award, to
12	the extent permitted by the laws of the jurisdiction in
13	which said award is filed, shall be specifically enforceable
14	or shall form the basis of a declaratory judgment or other
15	similar relief.
16	29.9 The fees and expenses of the arbitrators shall be shared by
17	the Parties equally, unless the decision of the arbitrators
18	shall specify some other apportionment of such fees and
19	expenses. All other expenses and costs of the arbitration
20	shall be borne by the Party incurring the same.
21	29.10 If either Party shall attempt to carry out the provisions
22	herein set forth in regard to arbitration, and such Party
23	shall not be able to obtain a valid and enforceable arbitra-
24	tion decree, such Party shall be entitled to seek legal
25	remedies in the courts having jurisdiction in the premises,
26	and the provisions of the Project Agreements referring to

1	decision of a board of arbitration, to the extent allowable
2	by law, shall be then deemed applicable to final decisions
3	of such courts.
4	30. <u>GOVERNING LAW:</u>
5	This Participation Agreement shall be governed by and construed
6	and enforceable in accordance with the laws of the State of
7	Arizona.
8	31. <u>AUTHORIZATIONS AND APPROVALS:</u>
9	31.1 Each Party shall be responsible for obtaining, at its own
10	expense, its required authorizations and approvals relating
11	to its participation in the construction of the Arizona
12	Transmission System and to its performance of the provisions
13	of this Participation Agreement, from Federal, state or
14	local regulatory authorities having jurisdiction to issue
15	such authorizations and approvals, and each Party shall keep
16	the other informed of its applications therefor.
17	31.2 The Project Manager shall use its best efforts to obtain the
18	following prior to March 1, 1982:
19	31.2.1 A Certificate of Environmental Computability for the
20	Arizona Transmission System issued by the Arizona
21	Corporation Commission.
22	31.2.2 Approval of the Final Environmental Statement for
23	the Arizona Transmission System by the U. S. Bureau
24	of Land Management.
25	31.3 SDG&E shall use its best efforts to obtain the following
26	prior to March 1, 1982:

1	31.3.1 A Certificate of Public Convenience and Necessity
2	for the California Transmission System issued by the
3	California Public Utilities Commission.
4	31.3.2 Approval of the Final Environmental Statement for
5	the California Transmission System by the U. S.
6	Bureau of Land Management.
7	31.4 The expenses incurred in acquiring the items described in
8	Section 31.2 shall be a part of Construction Costs.
9	31.5 Within ten (10) days after each approval in Sections 31.2
10	and 31.3 has been issued to the requesting Party, such Party
11	shall give written notice to the other Party that it has
12	received such approval and shall state whether or not such
13	approval has conditions which are unacceptable to it. With-
14	in ten (10) days of receiving the notice from the first
15	Party, the second Party shall likewise give notice to the
16	first Party whether or not such approval has conditions
17	which are unacceptable to it. If an approval has conditions
18	unacceptable to either Party, the Parties shall negotiate in
19	good faith terms and conditions to mitigate such unaccept-
20	able conditions; provided, however, that no Party shall be
21	required to agree to any term or condition which is unac-
22	ceptable to it.
23	32. <u>FEES:</u>
24	The Project Manager or Operating Agent shall not receive any fee
25	or profit hereunder.
26	

1 33. ENVIRONMENTAL PROTECTION:

2 The Project Manager shall design and construct the Arizona Trans-

3 mission System in conformance with the terms and conditions of any

4 contract, permit, or license required for the construction of the

5 Arizona Transmission System.

6 34. UNCONTROLLABLE FORCES:

7 No Party shall be considered to be in default in the performance

8 of any of its obligations under the Project Agreements (other than

9 obligations of said Party to pay costs and expenses) when a fail-

10 ure of performance shall be due to an uncontrollable force. The

11 term "uncontrollable force" shall be any cause beyond the control

12 of the Party affected, including but not restricted to failure of

13 or threat of failure of facilities, flood, earthquake, tornado,

14 storm, fire, lightning, epidemic, war, riot, civil disturbance or

15 disobedience, labor dispute, labor or material shortage, sabotage,

16 restraint by court order or public authority (whether valid or

17 invalid), and action or non-action by or inability to obtain or

18 keep the necessary authorizations or approvals from any governmen-

19 tal agency or authority, which by exercise of due diligence such

20 Party could not reasonably have been expected to avoid and which

21 by exercise of due diligence it shall be unable to overcome. It

22 is the intent of the Parties that the principle of Ejusdem Generis

23 shall not be used as a limitation on the term "uncontrollable

24 force" in interpreting or construing this Participation Agree-

25 ment. Rather the Parties intend a liberal interpretation of that

26 term, and accordingly intend that in questions of assumption of

1 risk or contingencies, whether foreseen or not, the presumption
 2 shall be that risks not explicitly assumed by a Party are not
 3 assumed by said Party if, in fact, they are uncontrollable even
 4 with foresight. Nothing contained herein shall be construed so as
 5 to require a Party to settle any strike or labor dispute in which
 6 it may be involved. Either Party rendered unable to fulfill any
 7 of its obligations under the Project Agreements by reason of an
 8 uncontrollable force shall give prompt written notice of such fact
 9 to the other Party and shall exercise due diligence to remove such
 10 inability with all reasonable dispatch. The term "Party" as used
 11 in this Section 34 shall include the Project Manager, Operating
 12 Agent and Scheduling Agent in their capacities as such.

13 **35. BINDING OBLIGATIONS:**

14 **35.1 All of the respective covenants and obligations of each of**
 15 **the Parties set forth and contained in the Project Agree-**
 16 **ments shall bind and shall be and become the respective**
 17 **covenants and obligations of:**

18 **35.1.1 Each such Party;**

19 **35.1.2 All mortgagees, trustees and secured parties under**
 20 **all present and future mortgages, indentures and**
 21 **deeds of trust and security agreements which are or**
 22 **may become a lien upon any of the interests of the**
 23 **Parties in the Arizona Transmission System; provid-**
 24 **ed, however, that such covenants and obligations**
 25 **shall become binding upon such parties only at the**
 26 **time of taking possession;**

1 35.1.3 All receivers, assignees for the benefit of credi-
2 tors, bankruptcy trustees and referees of the Party;
3 35.1.4 All other persons, firms, partnerships or corpora-
4 tions claiming through or under any of the fore-
5 going; and
6 35.1.5 Any successors or assigns of any of those mentioned
7 in Sections 35.1.1 through 35.1.4.
8 35.2 All of the respective covenants and obligations of each of
9 the Parties set forth and contained in the Project Agree-
10 ments shall be covenants and obligations running with such
11 Party's respective rights, titles and interests in the Ari-
12 zona Transmission System and in, to and under the Project
13 Agreements, and shall be for the benefit of the respective
14 rights, titles and interests of the Parties and their
15 respective successors and assigns, in and to the Arizona
16 Transmission System. It is the specific intention of this
17 provision that all such covenants and obligations shall be
18 binding upon any party which acquires any of the rights,
19 titles and interests of any such Party in the Arizona Trans-
20 mission System or in, to and under the Project Agreements
21 and that all of the above-described persons and groups shall
22 be obligated to use such Party's rights, titles and interest
23 in the Arizona Transmission System and/or in, to or under
24 the Project Agreements for the purpose of discharging its
25 covenants and obligations under the Project Agreements;
26 except that in the case of a partial assignment the assignee

1 shall only be required to share in the cost of fulfilling
 2 the covenants and obligations of the assigning Party in, to
 3 and under the Project Agreements to an extent proportionate
 4 or attributable to such assignment.

5 **36. NONDEDICATION OF FACILITIES:**

6 The Parties do not intend to dedicate and nothing in this Partici-
 7 pation Agreement or the Project Agreements shall be construed as
 8 constituting a dedication by either Party of its properties or
 9 facilities, or any part thereof, to the other Party or to the
 10 customers of the other Party.

11 **37. MORTGAGE AND TRANSFER OF INTEREST:**

12 **37.1** Each Party shall have the right to mortgage, create or pro-
 13 vide for a security interest in or convey in trust all or a
 14 part of its ownership share in the Arizona Transmission
 15 System, together with an equal interest in the Project
 16 Agreements, to a trustee or trustees under a deed of trust,
 17 mortgage or indenture or to a secured party or parties under
 18 a security agreement, as security for its present or future
 19 bonds or other obligations or securities, and to any succes-
 20 sors or assigns thereof, without need for the consent of the
 21 other Party and without such mortgage, trustee or secured
 22 party assuming or becoming in any respect obligated to per-
 23 form any of the obligations of the Party.

24 **37.2** Any mortgages, trustee, or secured party under present or
 25 future deeds of trust, mortgages, indentures or security
 26 agreements of either Party, and any successor or assignee

1	thereof, and any receiver, referee or trustee in bankruptcy
2	or reorganization of either Party, and any successor by
3	action of law or otherwise, and any purchaser, transferee or
4	assignee of any of them may, without the consent of the
5	other Party, succeed to and acquire all the rights, titles
6	and interests of such Party in the Arizona Transmission Sys-
7	tem and the Project Agreements, and may take over possession
8	of or foreclose upon said property, rights, titles and
9	interests of such Party, and in such event shall assume and
10	be obligated fully to perform and discharge all of the obli-
11	gations of such Party hereunder and under any other Project
12	Agreement.
13	37.3 Except as provided in Section 25, each Party shall have the
14	right to transfer or assign all or part of its Rated Capa-
15	bility in the Arizona Transmission System, together with an
16	equal interest in the ownership of the Arizona Transmission
17	System and in the Project Agreements, to any person, part-
18	nership, corporation, or governmental corporation or agency
19	engaged in the generation, transmission or distribution of
20	energy.
21	37.4 Except as otherwise provided in Sections 37.1 and 37.2, any
22	successor to the rights, titles and interests of a Party in
23	the Arizona Transmission System, together with an equal
24	interest in the Project Agreements, shall assume and agree
25	fully to perform and discharge all of the obligations here-
26	under of such Party, and such successor shall notify the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

other Party in writing of such transfer, assignment or merger, and shall furnish evidence of such transfer, assignment or merger and thereupon shall be considered to be a Party in the Arizona Transmission System and the transferring Party shall thereupon, without the consent of the other Party, be released from all obligations under the Project Agreements so assumed and agreed to by such successor.

38. GENERAL PROVISIONS GOVERNING PROJECT AGREEMENTS:

38.1 The Parties agree to negotiate in good faith and to proceed with diligence to obtain all of the Project Agreements between the Parties and between the Parties and other entities.

38.2 Each Party agrees, upon request by the other Party, to make, execute and deliver any and all documents reasonably required to implement this Participation Agreement and the Project Agreements.

38.3 Each term, covenant and condition of this Participation Agreement and the Project Agreements is deemed to be an independent term, covenant and condition, and the obligation of each Party to perform any or all of the terms, covenants and conditions to be kept and performed by it is not dependent on the performance by the other Party of any or all of the terms, covenants and conditions to be kept and performed by them.

38.4 If any of the terms, covenants or conditions of this Participation Agreement or any of the Project Agreements, or the application of any such term, covenant or condition, shall

1	be held invalid as to any person or circumstance by any
2	court having jurisdiction in the premises, all other terms,
3	covenants or conditions of such agreements and their appli-
4	cation shall not be affected thereby, but shall remain in
5	force and effect.
6	38.5 The Project Agreements shall be subject to filing with, and
7	to such changes or modifications as may from time to time be
8	directed by, competent regulatory authority, if any, in the
9	exercise of its jurisdiction.
10	38.6 Except as otherwise specifically provided in this Participa-
11	tion Agreement or the Project Agreements, the Parties do not
12	intend to create rights in or to grant remedies to any third
13	party as a beneficiary of this Participation Agreement or
14	the Project Agreements or of any duty, covenant, obligation
15	or undertaking established therein.
16	38.7 Any waiver at any time by any Party of its rights with
17	respect to a default or any other matter arising in connec-
18	tion with this Participation Agreement or a Project Agree-
19	ment shall not be deemed a waiver with respect to any subse-
20	quent default or matter.
21	38.8 All costs or expenses, including all taxes that the Operat-
22	ing Agent is required to pay (but not specifically referred
23	to in other sections of this Participation Agreement), which
24	are incurred by the Operating Agent in connection with the
25	performance of its obligations under this Participation
26	Agreement and which are not specifically allocated to the

1	Parties in accordance with this Participation Agreement
2	shall be equitably allocated among the Parties in a manner
3	to be mutually agreed upon by both Parties.
4	38.9 Should a change in circumstances, economic factors, or basic
5	technology occur which results or may result in a substan-
6	tial increase or decrease in the benefits to or expenses
7	incurred by a Party, including the Operating Agent, which
8	such change was not within the reasonable contemplation of
9	the Parties at the time of the execution of this Participa-
10	tion Agreement, the Parties, including the Project Manager
11	or Operating Agent, shall negotiate in good faith in order
12	that an appropriate and equitable adjustment shall be made
13	in the payments to the Project Manager or Operating Agent
14	and in the allocation of expenses among the Parties. Such
15	adjustment shall be fair and equitable as to both the Pro-
16	ject Manager or Operating Agent and the other Party. Any
17	dispute under this Section 38.9 shall be subject to arbitra-
18	tion.
19	39. <u>TERM:</u>
20	39.1 This Participation Agreement shall become effective when
21	signed by the Parties and shall have a term of seventy (70)
22	years from its effective date unless terminated earlier
23	pursuant to Section 39.3 or 39.4.
24	39.2 This Participation Agreement supersedes and cancels the
25	Arizona - San Diego 500kV Interconnection Letter of
26	Understanding dated November 22, 1978.

1 39.3 This Participation Agreement shall terminate on March 1,
2 1982 unless the Parties have given written notice that each
3 certificate or approval in Sections 31.2 and 31.3 has been
4 issued without conditions which are unacceptable to both
5 Parties.
6 39.4 If any certificate or approval in Sections 31.2 or 31.3 has
7 been issued with conditions which are unacceptable to a
8 Party and the Parties have been unable to agree within sixty
9 (60) days after such issuance to terms and conditions to
10 mitigate the unacceptable conditions, then either Party may
11 give written notice to terminate this Participation Agree-
12 ment. Thirty (30) days after such notice to terminate, this
13 Participation Agreement shall terminate.
14 39.5 Upon termination of this Participation Agreement, the Par-
15 ties shall have no further obligation to each other here-
16 under except the following:
17 39.5.1 Each Party shall be responsible for its Responsibil-
18 ity for Costs incurred up to the date of termina-
19 tion, and
20 39.5.2 The Project Manager or the Operating Agent shall
21 sell the property jointly owned by the Parties
22 pursuant to this Participation Agreement for the
23 maximum reasonable value and the costs of such sale
24 and all income, if any, derived therefrom shall be
25 shared by the Parties in proportion to their respec-
26 tive ownership interests therein.

40. RELATIONSHIP OF THE PARTIES:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

40.1 The covenants, obligations and liabilities of the Parties are intended to be several and not joint or collective and nothing herein contained shall ever be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to either of the Parties. Each Party shall be individually responsible for its own covenants, obligations and liabilities as herein provided.

Neither shall be under the control of or shall be deemed to control the other. Neither Party shall be the agent of or have a right or power to bind the other without its express written consent, except as expressly provided in this Participation Agreement.

40.2 The Parties hereby elect to be excluded from the application of Subchapter "K" of Chapter 1 of Subtitle "A" of the Internal Revenue Code of 1954, or such portion or portions thereof as may be permitted or authorized by the Secretary of the Treasury or his delegate insofar as such Subchapter, or any portion or portions thereof, may be applicable to the Parties under this Participation Agreement.

/

/

/

/

/

1	41. <u>EXECUTION:</u>
2	IN WITNESS WHEREOF, the Parties have caused this Participation
3	Agreement to be executed and effective as of the <u>24th</u> day
4	of <u>June</u> 1981.
5	
6	
7	APPROVED AS TO FORM
8	APS L-101 - 03-1-1981
9	By: <u>J.L. Powell</u>
10	Date: <u>6-23-81</u>
11	
12	ARIZONA PUBLIC SERVICE COMPANY
13	By: <u>[Signature]</u>
14	President
15	
16	SAN DIEGO GAS & ELECTRIC COMPANY
17	By: <u>[Signature]</u>
18	Chairman Of The Board
19	and Chief Executive Officer
20	
21	
22	
23	
24	
25	
26	

Attachment C



NRG Renew LLC
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
(760) 710 2140

June 27, 2014

DELIVERED VIA EMAIL

Attn: Scott R. Swanson
Regulatory Contracts Advisor
Interconnections Development
Arizona Public Service
602-371-5069 Office
602-371-7084 Fax
Scott.swanson@aps.com

Regarding: NRG Solar Hyder I LLC, NRG Solar Hyder II LLC, and NRG Solar Hyder III LLC (Q-58, Q-59, Q-60) Solar Energy Large Generator Interconnection Requests, Notice to File Agreement Unexecuted to FERC

Dear Mr. Swanson,

This letter is to inform you of our request to file the above-referenced Solar Energy Large Generator Interconnection Agreements on an unexecuted basis with FERC. The reasoning for our request follows.

We request Arizona Public Service ("APS") to file the interconnection agreements for NRG Solar Hyder I LLC, NRG Solar Hyder II LLC, and NRG Solar Hyder III LLC (collectively, "Hyder") unexecuted with FERC, so that FERC may resolve a disagreement between APS and the California Independent System Operator, Inc. ("CAISO") over whether APS's or CAISO's interconnection process should be followed for a project to interconnect with a transmission substation jointly owned by APS, Imperial Irrigation District, and San Diego Gas & Electric (in particular, on the Hassayampa – North Gila 500 kV line at the Qx 500 kV Switchyard). Hyder's parent company, NRG Renew LLC, has previously sponsored projects interconnecting to the same substation, and used the APS process. Accordingly, Hyder dutifully followed all requirements of the APS Large Generator Interconnection Procedures, and now seeks Large Generator Interconnection Agreements. Now after having gone through the full APS interconnection process, CAISO is suggesting that Hyder should start over again in the CAISO interconnection queue, effectively requiring Hyder to go through two separate full interconnection processes in order to interconnect to this substation. Hyder believes that CAISO's request is unfair and unnecessary to ensure safe and appropriate interconnection. Therefore, Hyder requests APS to file the subject Interconnection Agreements with FERC on an unexecuted basis.

We appreciate your consideration regarding this matter, and please contact me if you have any questions.

Sincerely,

NRG Solar Hyder I LLC

By: Randall Hickok
Name: Randall Hickok
Title: Vice President

NRG Solar Hyder II LLC

By: Randall Hickok
Name: Randall Hickok
Title: Vice President

NRG Solar Hyder III LLC

By: Randall Hickok
Name: Randall Hickok
Title: Vice President

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C., this 21st day of August, 2014.

/s/ Michael Kunselman
Michael Kunselman