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TABLE OF CONTENTS

	<u>Page</u>
1. The Application	1
2. The Proposed Transaction	2
2.1. General.	2
2.2. Conditions Precedent to the Proposed Transaction.	3
3. Purposes and Objectives of the Sale and Leaseback Financing Transaction	4
4. Description of the Proposed Sale and Leaseback Financing Transaction	6
4.1. Sale of Unit 1.	6
4.2. Purchase Price.	8
4.3. Lease Term and Renewal Options.	9
4.4. Purchase Option.	9
4.5. Quiet Enjoyment; Rights of PNM.	9
4.6. Net Lease.	10
4.7. Capital Improvements.	10
4.8. Support Agreements.	10
4.9. Lease Payments.	11
4.10. Debt Obligations.	11
5. The ANPP Participation Agreement	12
5.1. The Existing Participation Agreement.	12
5.2. Amendment No. 10 of the ANPP Participation Agreement.	15
6. Relief Requested by the Application	17
7. Basis for the Relief Requested by the Application	18
7.1. The Interest of PNM in PVNGS Unit 1.	18
7.2. The Interest of the Owner Trustee and Equity Investors.	19

TABLE OF CONTENTS, Continued

Appendices

<u>Appendix Designation</u>	<u>Description</u>
A	Order of New Mexico Public Service Commission, dated December 31, 1984 (including Recommended Decision of the Hearing Examiner, dated December 27, 1984).
B	Order of Federal Energy Regulatory Commission re Public Service Company of New Mexico, Docket Nos. EC85-4-000 and EL85-9-000, dated December 31, 1984.
C	Application of First PV Funding Corporation, dated September 20, 1985, filed with the Securities and Exchange Commission.
D	Arizona Nuclear Power Project Participation Agreement, dated August 23, 1973, as amended by Amendments 1 through 9 thereto.
E	Amendment No. 10 to the Arizona Nuclear Power Project Agreement (Proposed).
F	Graph Showing a Comparison of the Consequences of Lease vs. Ownership Under Traditional Ratemaking Revenue Requirements.
G	Public Service Company of New Mexico Investment Memorandum, dated August, 1985: Transaction Description and Summary of Terms.
H	Diagrammatic Rendering of a Sale and Leaseback of an Undivided Interest in Unit 1 of PVNGS.



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the matter of.	:	
	:	
ARIZONA PUBLIC SERVICE	:	Docket No. STN 50-528
COMPANY, et al.,	:	
	:	
(Palo Verde Nuclear	:	
Generating Station, Unit 1)	:	
	:	
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MEMORANDUM IN SUPPORT OF THE APPLICATION
IN RESPECT OF A SALE AND LEASEBACK
FINANCING TRANSACTION BY
PUBLIC SERVICE COMPANY OF NEW MEXICO

1. The Application

Arizona Public Service Company (APS), as Project Manager and Operating Agent of Palo Verde Nuclear Generating Station (PVNGS), has filed in the captioned docket an application (the Application) on behalf of Public Service Company of New Mexico (PNM) and The First National Bank of Boston, as Owner Trustee under two or more separate grantor trust agreements (the Owner Trustee). The Application requests the Commission to enter an order authorizing the transfer of title to all or a portion of PNM's interest in PVNGS Unit 1 and related common facilities to the Owner Trustee through a sale and leaseback financing transaction as hereinafter more particularly described.



2. The Proposed Transaction

SECTION 2.1. General. PNM proposes to refinance its construction financing for PVNGS Unit 1 by selling to two or more grantor trusts, the beneficiaries of which will be institutional equity investors, all or a portion of PNM's 10.2% undivided ownership interest in PVNGS Unit 1, including without limitation PNM's 10.2% Generation Entitlement Share¹ in PVNGS Unit 1 and all or a proportionate share of one-third of PNM's undivided interest in PVNGS common facilities. Such investors will enter into two or more trust agreements with the Owner Trustee, who will take and hold title to all of the PVNGS interests sold by PNM. The Owner Trustee will in turn lease such interests back to PNM for a basic term of approximately 28-1/2 years for a stipulated basic rent. The sale and lease-back financing transaction is more fully described in Section 4 hereof.

Sale and leaseback financing is a recognized and accepted mechanism that has been used for many years by a number of commercial institutions involving a wide variety of property types: APS and a number of other electric utilities have used this mechanism to finance or refinance their investments in non-nuclear generating facilities. In the past year PNM refinanced its investment in its

1. "Generation Entitlement Share" is defined in Section 3.28 of the Arizona Nuclear Power Project Participation Agreement as amended (see Appendix D attached hereto) as: "The percentage entitlement of each Participant to the Net Energy Generation and to the Available Generating Capability . . ."

transmission line, known as the Eastern Interconnection Project (EIP), using sale and leaseback documentation similar to that proposed for refinancing its interest in PVNGS Unit 1. When used by electric utilities, sale and leaseback transactions have been subjected to review and approval of state and/or federal regulatory agencies. [See, for example, Appendices A and B attached hereto.]

While this will be the first occasion of the use of a sale and leaseback transaction in financing a nuclear power facility, the secured financing of the nuclear fuel used in such facilities utilizing a lease format is not unique.

SECTION 2.2. Conditions Precedent to the Proposed Transaction. The proposed financing transaction is subject to the following conditions precedent, in addition to others commonly associated with any financial transaction of this nature:

2.2.1. Approval of the transaction by the New Mexico Public Service Commission (NMPSC) as required by the laws of the State of New Mexico, such approval to be satisfactory in form and substance to all the parties. [The New Mexico Public Service Commission by its order dated December 31, 1984, approved and authorized the sale and leaseback financing by PNM of the EIP. See Appendix A attached hereto.]

2.2.2. The issuance of a declaratory order by the Federal Energy Regulatory Commission (FERC), satisfactory in form and substance to all the parties, ruling that the equity investors and the Owner Trustee will not, as a result of their holding title to the



Facilities (as hereinafter defined), become "public utilities" as defined in Section 203(a) of the Federal Power Act. [FERC issued such an order in connection with the sale and leaseback financing of the EIP referred to in Section 2.1 hereof. See Appendix B attached hereto.]

2.2.3. The actions of the Commission requested by the Application.

2.2.4. The present terms of the ANPP Participation Agreement are such that the consent of all PVNGS Participants to the proposed sale and leaseback of the Facilities is required. [See Section 15 of Appendix D attached hereto.] The Participants have agreed in substance to amend said agreement by the execution of Amendment No. 10, the proposed form of which appears as Appendix E attached hereto. In essence, such amendment will remove the requirement of consent to any sale and leaseback financing transaction by any Participant if the transaction meets specified criteria. In each such case (including the PNM sale and leaseback financing transactions), the ANPP Administrative Committee will be required to make the determination that such criteria have been met.

3. Purposes and Objectives of the Sale and Leaseback Financing Transaction

PNM proposes to refinance its construction financing for PVNGS Unit 1 by entering into two or more sale and leaseback transactions relating to all or a portion of its 10.2% undivided

ownership interest in Unit 1 and all or a proportionate share of one-third of its 10.2% undivided ownership interest in the common facilities at PVNGS. Such transactions will provide benefits to PNM's customers through two channels. First, the net present value of capital costs (and the total nominal costs) will be reduced by the transfer of tax benefits and by the recapitalization of the plant financing with greater debt leverage. Second, the revenue requirements associated with PNM's capital costs in PVNG's Unit 1 will be levelized over the life of the Unit. The objective which PNM expects to achieve is illustrated by the graph attached hereto as Appendix F.

Because the lessors in the proposed sale and leaseback transactions will recapitalize the Unit with greater debt leverage, the required lease payments represent a lower cost of capital than would PNM's composite cost of capital. Also, PNM's tax situation is such that it cannot take full advantage of tax benefits at the present time. The sales will transfer the benefits of tax depreciation to such lessors.

The leveling of revenue requirements over time yields several benefits. Under conventional utility regulation, carrying charges are determined by the asset's net book value, which declines over time as the asset is depreciated. This produces so-called "front-end" loading--the familiar situation in which the stream of revenue requirements falls over time while the actual value of the plant output rises over time. Front-end loading is eliminated with



the proposed sale and leaseback transactions because a fixed lease payment replaces the conventional "high front-end" revenue requirements stream, thus benefiting PNM's ratepayers by insulating them from potential "rate shock".

The net effect of proceeding with the proposed sale and leaseback transactions, which will have been reviewed and authorized by the NMPSC, will be the enhancement of PNM's financial stability and the provision of long-term benefits to PNM's ratepayers.

4. Description of the Proposed Sale and Leaseback Financing Transaction

At the time of filing of the Application, the form of documents relating to the proposed transactions have not been prepared. However, the Summary of Terms of the Investment Memorandum (see Appendix G attached hereto) does spell out certain terms which are customary in sale and leaseback transactions, and it is not expected that future negotiations change in basic concepts of such terms. In light of such circumstances, the following description is offered as a summary of certain significant aspects of the transaction. See Appendix H hereto for a diagrammatic rendering of the proposed financing transaction. Copies of the final transaction documents will be filed as the Commission's order may require.

SECTION 4.1. Sale of Unit 1. PNM proposes to refinance its construction financing for PVNGS Unit 1 by entering into two or more sale and leaseback transactions relating to all or a portion of

PNM's 10.2% undivided ownership interest in Unit 1 and all or a proportionate share of one-third of PNM's 10.2% undivided ownership interest in PVNGS common facilities (said interest in Unit 1 and in the common facilities so leased being hereinafter referred to collectively as the Facilities). The leases will be with the Owner Trustee (in such capacity, the Lessors) acting for the several institutional investors (the Equity Investors). Trusts formed by the Equity Investors would hold title to the respective purchased shares in the Facilities. The Lessors would lease the Facilities to PNM under separate, but simultaneously executed, leases (the Leases). PNM would retain ownership of easements, rights-of-way and certain other real property assets and rights associated with the Facilities, including property referred to under the Internal Revenue Code as "Section 1250 property" (such as the Administration Building at PVNGS). PNM would also retain ownership of the nuclear fuel and the electric transmission facilities associated with the Facilities. If the sale and leaseback transactions are completed as to less than all of PNM's interest in Unit 1 and one-third of its interest in the related common facilities, PNM would either retain an undivided interest in such interests or restructure the transaction by eliminating the common facilities from the property to be transferred to the Lessors.

It is typical in a large leasing transaction to have multiple equity investors. Because of this structure, there will be multiple sets of documents (including lease agreements) in



substantially the same form, with one set for each of the Equity Investors.

Because discussions with potential Equity Investors are continuing, the identity of such Investors who will participate in the proposed transactions is not known. Based upon those discussions, PNM believes that an unregulated subsidiary of an exempt utility holding company and an indirect unregulated subsidiary of an electric utility (such utility having been a participant in PVNGS until about August, 1975) may participate in the proposed transaction. Such entities have the same investment purposes as the other Equity Investors. Such participation would have no impact on the requested relief because such participation bears no relation whatsoever to any utility activity.

SECTION 4.2. Purchase Price. The Facilities will be sold to the Lessors at a fair market price that is expected to result in no book gain or loss to PNM and which may be as much as \$400 million if all of PNM's interest in Unit 1 and the related common facilities is sold. Prior to the closing of the lease transactions, an appraisal will confirm that the purchase price is a reasonable estimate of fair market value. The appraisal, to be conducted by an appraiser selected by the Equity Investors, will also determine that, after approximately 31 years, the estimated remaining economic life of the Facilities will be long enough and their estimated value will be great enough to establish the Leases as true leases for Federal tax purposes.

SECTION 4.3. Lease Term and Renewal Options. The basic term of each of the Leases is expected to be 28-1/2 years. At the end of the basic term, PNM expects to have an option, but no obligation, to renew each of the Leases for a renewal term of approximately 2-1/2 years at a rental payment equal to 50 percent of the original rent. The fixed rent renewal period may be extended under limited circumstances, but in any event, PNM will have the option, but no obligation, to continue renewing each of the Leases at fair market rentals for the remaining life of the Facilities.

SECTION 4.4. Purchase Option. PNM will have the option, but no obligation, at the end of the basic term and at the end of each renewal term to purchase the Facilities at their fair market value at that time.

SECTION 4.5. Quiet Enjoyment; Rights of PNM. During the term of the Leases, the Lessors will warrant that, so long as PNM is in compliance with the terms of the Leases, PNM's sole possession and use of, and rights with respect to, the Facilities shall not be interrupted by the Lessors or any person claiming through the Lessors. PNM will be empowered with respect to the Facilities to be and act as the "Participant" under the ANPP Participation Agreement [see Section 5 below] with full and exclusive authority to exercise and perform all of the rights and duties of a Participant thereunder. Additionally, PNM will retain the exclusive right to sell and dispose of the power and energy derived from the Generation Entitlement Share in PVNGS Unit 1 associated with the Facilities.

SECTION 4.6. Net Lease. The Leases will be "net leases" under which PNM will be responsible for paying all taxes, insurance premiums, operating and maintenance costs, and all other similar costs associated with the Facilities (including obligations as the Participant in respect of the Facilities under the ANPP Participation Agreement, see Section 5 below). The purpose of these provisions is to ensure that the Lessors are subject only to normal financing risks and not to operational risks or responsibilities.

SECTION 4.7. Capital Improvements. Any addition, betterment or enlargement of the Facilities, or replacement of units of property within the Facilities (Capital Improvement) will be PNM's obligation under the Leases. PNM may, but will not be obligated to, request that the Lessors provide financing (Supplemental Financing) for their respective shares of Capital Improvements. The aggregate amount of all Supplemental Financings under the Leases is expected to be limited to approximately \$200,000,000, assuming all of PNM's interest in Unit 1 and one-third of its interest in related common facilities are sold. Concurrently with any Supplemental Financing, the lease payments will be adjusted to support the amortization of the additional debt issued in connection with the Supplemental Financing and to preserve the Equity Investors' net economic return.

SECTION 4.8. Support Agreements. PNM and the Lessors will enter into support agreements which will provide the Equity Investors with such rights in parts of PVNGS not constituting Facilities as may be necessary to enable them to realize the residual value of their

interests. In particular, effective upon termination of the leases, certain rights in nuclear fuel and real property will be granted to the Lessors for the estimated economic life of the Facilities to satisfy Internal Revenue Service requirements for a true lease classification.

SECTION 4.9. Lease Payments. PNM will make semiannual lease payments to the Lessors which will repay and provide a return on the Equity Investors' capital investment and which will pay principal and interest on the debt obligations issued for this financing.

SECTION 4.10. Debt Obligations. The Lessors will borrow approximately 70 percent to 80 percent of the purchase price of the Facilities from a funding corporation (the Funding Corporation) formed for that purpose. The Funding Corporation, in turn, will borrow the debt portion of the purchase price by issuing public debt that will be non-recourse to the Lessors and the Equity Investors. The public debt, which must be issued on terms acceptable to PNM, will be indirectly secured by a security interest in the Facilities and will be payable from the rentals due from PNM under the Leases. The public debt will be structured to have principal and interest payments that correspond to the receipt of rental payments under the Leases. The public debt will be issued in serial form, i.e., obligations with different maturities and principal amounts. Private interim financing may be required pending the issuance of such debt.

The details of the debt funding arrangements of the proposed sale and leaseback transaction are more fully described in the application of First PV Funding Corporation filed with the Securities and Exchange Commission requesting an order exempting First PV Funding Corporation from the provisions of the Investment Company Act of 1940. [See Appendix C attached hereto.]

5. The ANPP Participation Agreement

The construction, operation and maintenance of PVNGS and the rights and duties of the joint owners or Participants in PVNGS are governed by the ANPP Participation Agreement [See Appendix D attached hereto]. It is expected that such agreement will be amended in the manner described below to permit the type of sale and lease-back financing transaction presently contemplated by PNM.

SECTION 5.1. The Existing Participation Agreement. The ANPP Participation Agreement appoints APS to act as the agent for all of the Participants as the Project Manager responsible for the construction of PVNGS [see Section 7 of Appendix D] and as the Operating Agent responsible for the operation and maintenance of PVNGS [see Section 8 of Appendix D]. The Agreement provides the requisite delegations of authority to APS necessary to permit APS to carry out such functions in a manner which complies with all laws, regulations, permits and licenses.

The ANPP Participation Agreement also establishes the rights and obligations of the Participants who jointly own PVNGS as

tenants in common with shares equal to their respective Generation Entitlement Shares. [See footnote 1, supra.] One of the primary obligations assumed by the Participants under the agreement is the obligation to share the costs of construction, operation, maintenance, decommissioning and capital improvements of PVNGS, also in accordance with their respective Generation Entitlement Shares. [See Sections 10 and 11 of Appendix D hereto.] So long as any Participant is not in default of its obligations under the agreement, such Participant is entitled to schedule the operation of each PVNGS unit to generate power and energy in any amount which does not exceed its Generation Entitlement Share of the generating capability of such unit available at the time of such scheduling. [See Section 5 of Appendix D hereto.]

Sales of power and energy generated by each unit through the utilization by each Participant of its Generation Entitlement Share in such unit can be made only by such Participant. PVNGS, as a project, can make no sales of power or energy, and, except under certain circumstances relating to default, no Participant can utilize the Generation Entitlement Share of any other Participant.

In the event of a default by any Participant in its obligations under the ANPP Participation Agreement, the non-defaulting Participants are obligated to contribute pro rata an amount equal to that due from the defaulting Participant. [See Section 23, especially Section 23.5, of Appendix D hereto.]

The agreement provides the Participants with oversight of PVNGS and the actions of APS as Project Manager and Operating Agent through participation in three standing committees: the Administrative Committee, the Engineering and Operating Committee, and the Auditing Committee. With respect to the operation of PVNGS, perhaps the principal mechanism for exercising such oversight is the right to review and approve annual budgets for operating and maintenance expenses and for capital improvements. All actions which each of the committees is authorized to take must be approved by the unanimous vote of all members entitled to vote on such committee. [See Section 6 of Appendix D hereto]. In the event any committee is unable to agree on any matter which the committee is authorized to determine, or in the event of an emergency, the Project Manager and Operating Agent are each authorized and obligated to take such action and expend such funds as in its discretion is necessary to the proper construction, operation and maintenance of PVNGS. [See Sections 6.11 and 8.3.26 and Appendix H of the ANPP Participation Agreement included as Appendix D hereto.]

The Administrative Committee consists of an executive of each Participant who is authorized to obligate such Participant in all matters delegated to the committee. The Engineering and Operating Committee is composed of two members (only one of whom has the right to vote) designated by each Participant. This committee provides a means for oversight of the Operating Agent in technical matters and direction to the Operating Agent in operational policies,



fuel management and other technical areas and in the review and approval of annual budgets for "operating" and maintenance expenses and for capital improvements. The Auditing Committee, as the name implies, provides the oversight mechanism for the accounting and auditing of expenditures by the Project Manager and Operating Agent. It is comprised of two members (only one of whom has the right to vote) designated by each Participant.

SECTION 5.2. Amendment No. 10 of the ANPP Participation Agreement. The existing ANPP Participation Agreement permits any Participant to sell and transfer without the consent of the other Participants all or any portion of its interest in PVNGS as a whole to any electric utility, provided that the transferee shall assume the obligations of a Participant under such Agreement. Also, such Agreement contemplates that each Participant shall be a joint owner. Under the PNM sale and leaseback financing transaction, PNM will sell interests in PVNGS Unit 1 only, and the sales will be made to a non-utility. Therefore, consent of all Participants to the transfer would be required.

The Participants have determined that, in lieu of providing such consent to PNM, the ANPP Participation Agreement should be amended in a manner which extends the "no consent required" provisions to sale and leaseback financing transactions of any Participant which meet specified criteria. Amendment No. 10 [See Appendix E hereto] has been prepared and tentatively agreed upon by the Participants to accomplish this purpose.

Amendment No. 10 reflects the Participants' agreement on three basic premises which should govern participation in PVNGS or any of its units. First, each Participant must have a Generation Entitlement Share in one or more of the units and, if the right to a Generation Entitlement Share arises from a lease, the initial term of the lease must be at least 25 years. This premise stems from the recognition that the parties who have a direct interest in the safe, reliable and economic operation of a unit are those who have a right to the electric output of the unit. Accordingly, it was determined that Participants must be limited to those who possess a Generation Entitlement Share either in fee or through a leasehold with a duration of at least 25 years. Second, Participants (and representation on ANPP Committees which accompanies Participant status) should be restricted to those parties who have the primary obligation to pay the costs of operation and maintenance and of capital improvements. Under the proposed PNM sale and leaseback, PNM clearly has this primary obligation. Third, no one may be or become a Participant unless it assumes and is bound by the ANPP Participation Agreement. Thus, upon the termination of any lease held by any Participant, the transferee of such Participant's Generation Entitlement Share must assume and become bound by the Participation Agreement.

Thus, in effect, Amendment No. 10 recognizes that sale and leasebacks are indeed financing transactions, and the Participants have endeavored to treat Owner Trustee and equity investors in as nearly the same manner as possible (consistent with the type of

transaction being proposed) as trustees under mortgage indentures typically used in traditional utility debt financing.

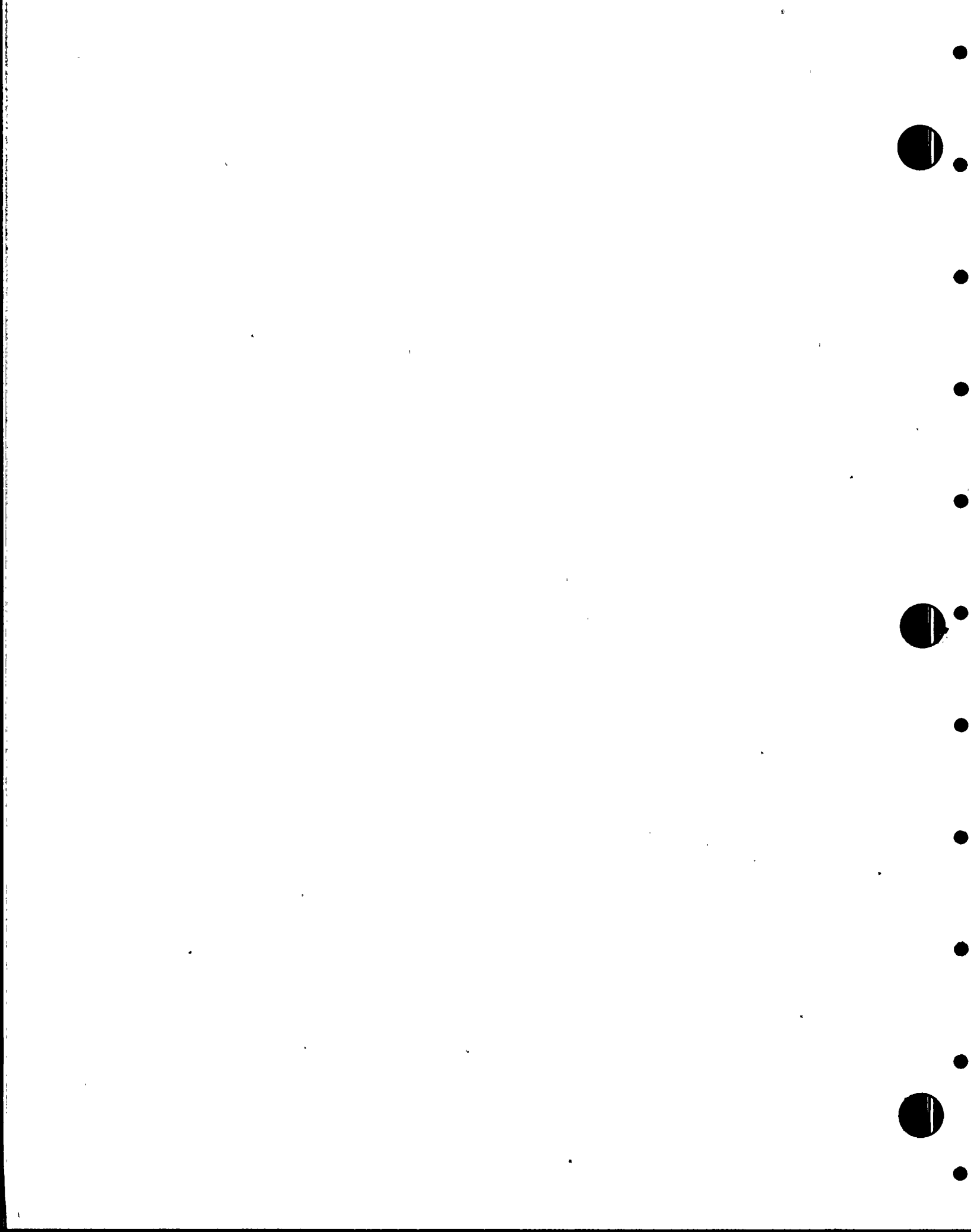
6. Relief Requested by the Application

The relief requested by the Application is the issuance of an order (i) authorizing the transfers of the Facilities through the sale and leaseback financing transaction, pursuant to Sections 50.22 and 50.54(c) of the Commission's regulations (10 CFR 50.22 and 50.54(c)), subject to the conditions that:

(a) The rights acquired by the Owner Trustee and any equity investor and any successors and assigns (including any mortgagee or secured party of such Owner Trustee) in and to FVNGS Unit 1 may be exercised only in compliance with and subject to the same requirements and restrictions as would apply to PNM pursuant to the provisions of the Facility Operating License No. NPF-41 (the License), the Atomic Energy Act of 1954, as amended (the Act), and the regulations issued by the Commission pursuant to the Act; and

(b) Neither the Owner Trustee nor any equity investor nor any of their respective successors or assigns may take possession of any interest in FVNGS Unit 1 prior to either (1) the issuance of a license from the Commission authorizing such possession or (2) the transfer of the License authorizing PNM to possess an interest in FVNGS Unit 1 upon an application for transfer of such License filed pursuant to 10 CFR 50.80(b);

and (ii) acknowledging that neither the Owner Trustee nor any equity investor nor any of their respective successors and assigns is or shall become a licensee under the License unless and until the Commission shall have issued an amendment of such License authorizing



such Owner Trustee, equity investor, successor or assign to take possession of an interest in PVNGS Unit 1 or shall have approved a transfer of PNM's License to such Owner Trustee, equity investor, successor or assign.

7. Basis for the Relief Requested by the Application

SECTION 7.1. The Interest of PNM in PVNGS Unit 1. The License authorizes PNM to possess an interest in PVNGS Unit 1 pursuant to Section 103 of the Act and Part 50 of the Commission's regulations. Neither the Act nor the Commission's regulations explicitly define the kind of title through which a licensee acquires a right of possession which must be licensed pursuant to Section 101 of the Act. Customarily in the past, all licensees authorized to possess utilization facilities, including each of the licensees named in the License, have owned a fee title interest in the licensed facilities. Neither the Act nor the Commission's regulations require that a licensee's right of possession of a utilization facility be founded upon a fee title interest.

On the contrary, it is implicit in Section 184 of the Act and Section 50.81 of the Commission's regulations (10 CFR 50.81) that the right of possession of a utilization facility may rest upon a leasehold interest. Pursuant to the authority granted by Section 184 of the Act, Section 50.81 grants the Commission's generic conditional consent without individual application:



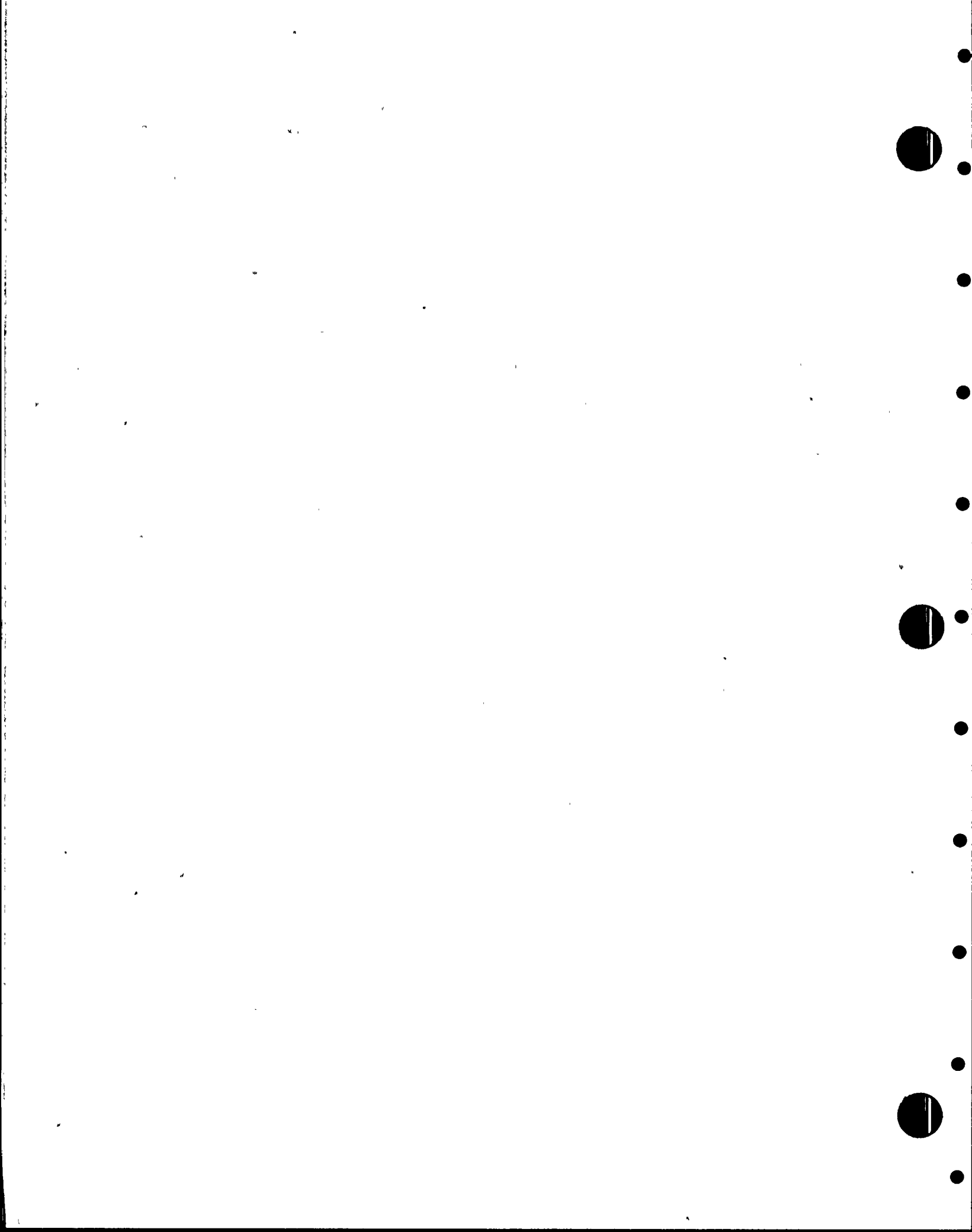
"to the creation of any mortgage, pledge, or other lien upon any production or utilization facility, . . . which is the subject of a license or upon any leasehold or other interest in such facility: . . . " [Emphasis supplied.]

The consent given by Section 50.81 to the creation of any mortgage, pledge, or other lien "upon any leasehold or other interest" (precisely the same phraseology as is found in Section 184 of the Act) implies that a licensee's right of possession of a utilization facility may be derived from a leasehold interest. Indeed, to conclude otherwise would render the phrase "upon any leasehold or other interest" in the Act and the regulations meaningless - a result which must be avoided by the rules of statutory construction.

Under the leases contemplated in PNM's sale and leaseback transaction, the right of possession of the Facilities is continued exclusively in PNM. Accordingly, the Act and the Commission's regulations permit and require that the authority of PNM to possess an interest in PVNGS Unit 1 be subject to the License.

This result is also necessary for an additional reason. Under the sale and leaseback transaction, PNM will retain fee title interest and the right of possession in significant portions of the property constituting PVNGS Unit 1 and the common facilities at PVNGS required for the operation and maintenance of such Unit.

SECTION 7.2. The Interest of the Owner Trustee and Equity Investors. Under the proposed sale and leaseback transactions PNM will convey legal title to the Owner Trustee, and the equity investors will acquire equitable title, to a portion of PNM's



interest in PVNGS Unit 1. PNM will retain the exclusive right of possession of such portion of its interests for the duration of the leases, as well as its remaining interests in such Unit which are not conveyed to the Owner Trustee. However, it is not contemplated or required that PNM's License in PVNGS Unit 1 be transferred to the Owner Trustee or the Equity Investors as a part of the transaction.

Since the transaction does not involve a transfer, assignment or other disposition of the License or, directly or indirectly, a transfer of control of PNM's license to possess an interest in PVNGS Unit 1 during the term of the leases, Section 50.80 of the Commission's regulations (10 CFR 50.80) has no application in this matter.

Upon the termination of PNM's leasehold interest, a new lessee or a new owner (other than PNM) may become empowered to take possession of all or a portion of PNM's interests in PVNGS Unit 1. The conditions of the order requested by the Application defer any licensing or other Commission action until such occasion arises. This approach is appropriate because the circumstances at such time are not and cannot be known at this time. However, the inclusion of such conditions places all parties to the sale and leaseback transaction and their successors and assigns on notice that, in the event of the termination of the leases for any cause prior to the end of the term of the License, action by the Commission will be required to amend or transfer the License.

The remaining questions are whether or not the Owner Trustee and/or the Equity Investors must be licensed to hold legal or equitable title to a portion of PNM's interest in PVNGS Unit 1, and whether or not the Commission should disclaim jurisdiction over the Owner Trustee and the Equity Investors. It is submitted that, for several reasons, the answer to the first question is negative and the answer to the second question is affirmative.

Neither the Owner Trustee nor the Equity Investors will operate or have any voice in or dominion over the operation of PVNGS Unit 1. None of them is in the business of producing, selling, or transmitting electric power; although certain affiliates of certain possible Equity Investors may be in such business. In fact, it is a condition precedent of the transaction that FERC issue a declaratory order ruling that none of them will be deemed to be a "public utility" under the Federal Power Act by virtue of participation in the proposed transactions.

Sale and leaseback transaction is essentially a financing transaction, and the Owner Trustee and the Equity Investors are, for the term of the leases, essentially the same as secured creditors under conventional utility mortgages. The provisions of Section 50.81 of the Commission's regulations (10 CFR 50.81), which (i) consent to the creation of mortgages, pledges or other liens on licensed facilities and (ii) in effect, disclaim jurisdiction over creditors secured by such liens until such time as such creditors seek to exercise the lien rights or to take possession of a licensed

facility pursuant to such liens, should be applied in equal measure to the holders of legal and equitable titles under a sale and leaseback financing transaction.²

In this connection the decisions of FERC with respect to sale and leaseback financings are persuasive precedent for the Commission. In the matter of Pacific Power & Light Co., 3 FERC 61,118(1978), FERC concluded:

"... that the [non-utilities'] participation in the proposed transaction is not such that they should be deemed public utilities for the purpose of Section 201(e) of the [Federal Power] Act. It would be inconsistent with the intent of the Act to label the Parties as public utilities and include them within our jurisdiction just because the [non-utilities] hold mere equitable or legal title to the subject electric facilities and where they are clearly removed from the actual operation of the facilities and the sale of power. The leveraged lease arrangement is essentially a financing device which serves to reduce [utility's] cost of service, and the [non-utilities] participation does not make them public utilities. . ."

More recently, FERC iterated the same conclusion in its order approving the sale and leaseback by PNM of its EIP transmission line:

"These considerations are present with equal force in this proceeding. The Owner Participants and Owner Trustee will

2. The proposed sale and leaseback financing transaction is clearly not, however, a Section 50.81 transaction. Among other things, PNM will have the option to purchase the Facilities for a fair market value at the end of the leases [See Section 4.5 hereof]. Under these circumstances, PNM's leaseback of the facilities is not a mortgage or secured transaction. See Public Service Company of New Mexico, 29 FERC ¶61,387 (1984), note 7 [see Appendix B hereto] and Pacific Power and Light Co., 52 FPC 244(1974).

not operate or have a voice in the operation of the EIP. Further, these entities are not in the business of producing, selling, or transmitting electric power.¹⁰ Accordingly, we shall disclaim jurisdiction over the Owner Participants and Owner Trustee as requested by PNM."

* * * *

"¹⁰ With respect to similar requests arising under the Natural Gas Act, we have also expressed the concern of whether a disclaimer would deprive the Commission of its regulatory authority. See, e.g., Southwest Gas Corp., 20 FERC ¶61,175 (1982); Northern Natural Gas Co., 8 FERC ¶61,111 (1979). Since PNM is already subject to Commission jurisdiction under the FPA, the requested disclaimer would not affect our authority over the utility's operations." [See Appendix B attached hereto at page 5.]

The concern which FERC expressed in its footnote respecting the retention of jurisdiction over PNM operations may be analogous to any concern which the Commission may have over continuing its jurisdiction over PNM's possession of an interest in PVNGS Unit 1. Any such concern is adequately dealt with through the License, which will continue to name PNM as a licensee and through the conditions of the order which reserve jurisdiction of the Commission as to any successor in interest to PNM.

8. Conclusion

In light of the foregoing, it is respectfully submitted that the relief requested in the Application is justified and appropriate.

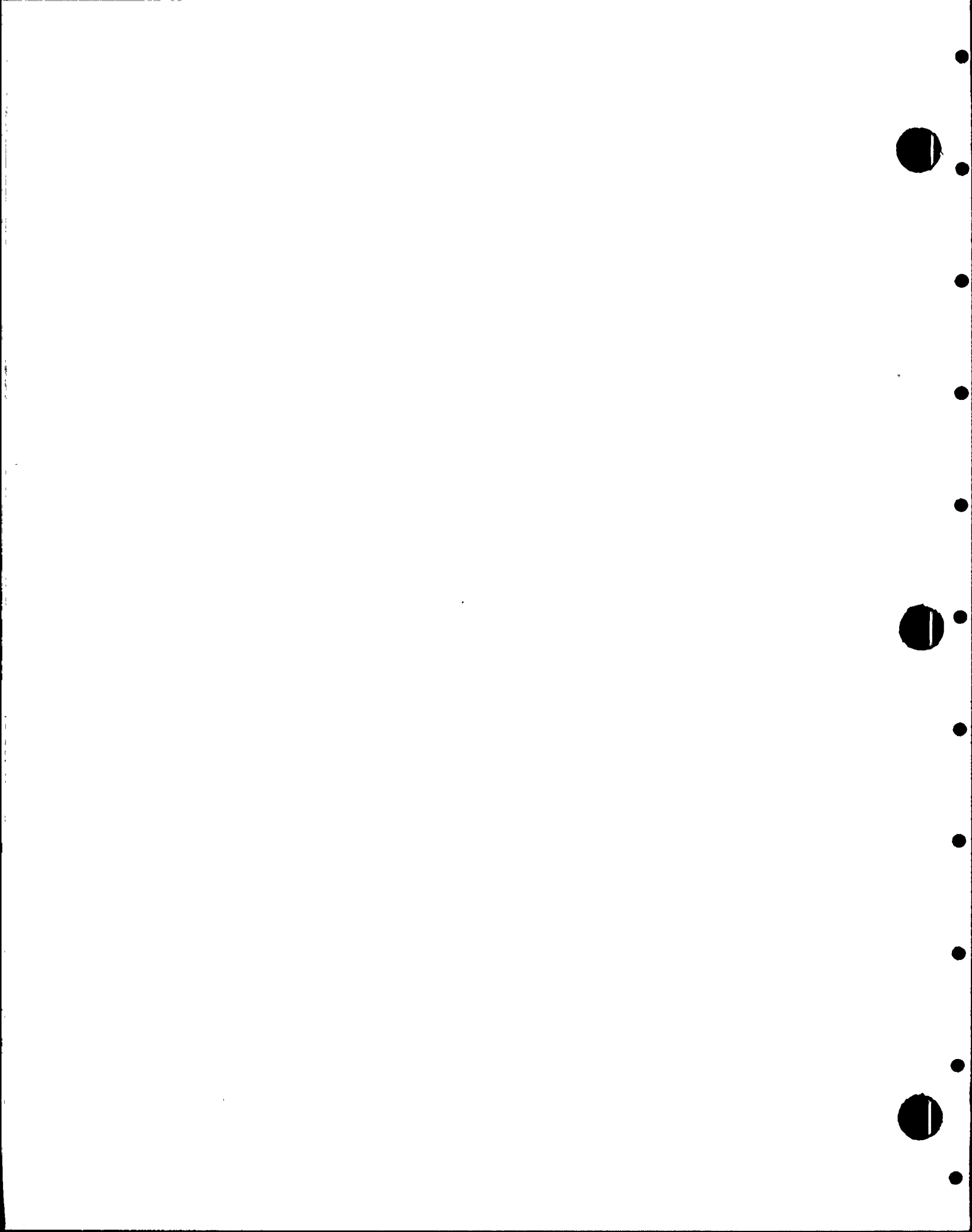
Respectfully submitted,

ARIZONA PUBLIC SERVICE COMPANY

By Edwin E. Van Brunt /EBK
Edwin E. Van Brunt, Jr.
Executive Vice President-ANPP

On behalf of Public Service
Company of New Mexico and The
First National Bank of
Boston, as Owner Trustee

Dated: October 18, 1985



STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

I, Donald B. Karner, represent that I am Assistant Vice President, Nuclear Production of Arizona Nuclear Power Project, that the foregoing document has been signed by me on behalf of Arizona Public Service Company with full authority to do so, that I have read such document and know its contents, and that to the best of my knowledge and belief, the statements made therein are true.

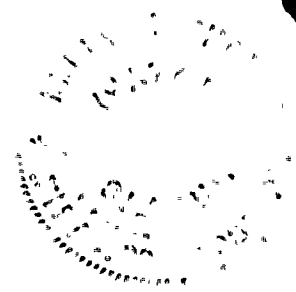

Donald B. Karner

Sworn to before me this 17 day of OCT, 1985.


Notary Public

My Commission Expires:

My Commission Expires Jan. 23, 1987



In the matter of
ARIZONA PUBLIC SERVICE
COMPANY, et al,

(Palo Verde Nuclear
Generating Station, Unit 1)

DOCKET NO. STN 50-528

TO

**ORDER OF NEW MEXICO PUBLIC SERVICE COMMISSION,
DATED DECEMBER 31, 1984, (INCLUDING
RECOMMENDED DECISION OF THE HEARING EXAMINER,
DATED DECEMBER 27, 1984)**

BEFORE THE NEW MEXICO PUBLIC SERVICE COMMISSION

JAN 02 1985

IN THE MATTER OF THE APPLICATION
OF PUBLIC SERVICE COMPANY OF NEW
MEXICO FOR AUTHORIZATIONS RELATED
TO THE PROPOSED SALE AND LEASE BACK
OF A 345 kV TRANSMISSION LINE,
ASSOCIATED SWITCHING EQUIPMENT
AND DC CONVERTING FACILITIES
(NORTHEASTERN INTERCONNECT PROJECT),

PUBLIC SERVICE COMPANY OF
NEW MEXICO,

Applicant.

Case No. 1930

ORDER ADOPTING RECOMMENDED DECISION OF THE HEARING EXAMINER

THIS MATTER having come before the New Mexico Public Service Commission ("Commission") at the emergency open meeting held today, upon the Recommended Decision of the Hearing Examiner dated December 27, 1984, and upon a Motion to Amend Recommended Decision of the Hearing Officer filed today by the Attorney General, Public Service Company of New Mexico (PNM) and Commission Staff and the Commission finding and concluding that it has jurisdiction over the utility, and being otherwise fully informed of the premises:

THE COMMISSION FINDS AND CONCLUDES that the Recommended Decision of the Hearing Examiner is well taken and should be adopted (except as noted below).

NOW, THEREFORE, IT IS ORDERED by the New Mexico Public Service Commission that:

A. The Statement of the Case recited on page 1 of the Hearing Examiner's Recommended Decision is modified by inserting after the words, "Northeastern Interconnect Project", in the parentheses in the fifth line of the Statement of the Case the following language: This revised name is being utilized instead of the historically used name, Eastern Interconnect Project, to avoid confusion with the

COPY FORWARDED TO:

Begley O'Rourke, Wilkinson
ON 1-2-85

project of the same name earlier constructed by El Paso Electric Company and Texas New Mexico Power Company.

B. The findings and conclusions of the Hearing Examiner as set forth in Exhibit A attached hereto and incorporated by reference, are adopted as the findings and conclusions of the Commission.

C. The Orders recommended by the Hearing Examiner as set forth in Exhibit A attached hereto and incorporated by reference, are ADOPTED, APPROVED and ACCEPTED as orders of the Commission except as noted in paragraph D of today's Order.

D. The language in the Recommended Decision at page 8, paragraph 11, lines 14 through 18 is stricken, and in lieu thereof the following language is inserted: PNM is hereby authorized to seek Commission approval to include the jurisdictional portion of the Northeastern Interconnect Project revenue requirements as a cost of service item to be effective with the expiration of Service Schedule D of the Interconnect Agreement.

E. The Recommended Decision of the Hearing Examiner is ADOPTED, APPROVED and ACCEPTED by this Commission in its entirety except as modified by today's Order.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 31st day of December, 1984.

NEW MEXICO PUBLIC SERVICE COMMISSION



Suede G. Kelly
SUEDEEN G. KELLY, CHAIRMAN

Patrick T. Ortiz
PATRICK T. ORTIZ, COMMISSIONER

BEFORE THE NEW MEXICO PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF)
PUBLIC SERVICE COMPANY OF NEW MEXICO FOR)
AUTHORIZATIONS RELATED TO THE PROPOSED)
SALE AND LEASE BACK OF A 345 kV)
TRANSMISSION LINE, ASSOCIATED SWITCHING)
EQUIPMENT AND DC CONVERTING FACILITIES)
(NORTHEASTERN INTERCONNECT PROJECT),)

CASE NO. 1930

PUBLIC SERVICE COMPANY OF NEW MEXICO,)

APPLICANT.)

RECOMMENDED DECISION OF THE HEARING EXAMINER

COMES NOW Peter E. Springer, Hearing Examiner in this case, and presents the following Recommended Decision to the New Mexico Public Service Commission pursuant to Rule R 20-2, Second Revised General Order No. 1.

STATEMENT OF THE CASE:

On November 7, 1984, Public Service Company of New Mexico ("PNM" or the "Company") filed with the New Mexico Public Service Commission ("Commission") its Application for authorizations related to the proposed sale and lease-back of a 345 kV transmission line, associated switching equipment and DC converting facilities ("Northeastern Interconnect Project") as more fully explained in the Application.

On November 21, 1984, the Commission issued its Memorandum appointing Peter E. Springer as Hearing Examiner in this case.

On November 27, 1984, the Hearing Examiner issued an Order which, among other things, set this matter for public hearing on December 20, 1984, at 9:00 o'clock a.m., at the offices of the Commission, Second Floor, Bataan Memorial Building, Santa Fe, New Mexico, provided for publication of notice and continued this case beyond the thirty day period provided in NMSA 1978, Section 62-6-9 (Repl.Pamp.1984).

An affidavit of publication in the case record file attests that notice of this case

and hearing was published in the Albuquerque Journal on November 30, 1984.

On December 5, 1984, the Attorney General of the State of New Mexico ("AG") filed his Motion to Intervene which was not opposed.

On December 17, 1984, Staff filed an unopposed Motion for Extension of Time which was orally granted at the hearing. Staff filed testimony on December 18, 1984. The AG filed no testimony.

Upon notice duly given, this matter came on for hearing before the Hearing Examiner at the designated time and place.

APPEARANCES:

For the Company:

Keleher & McLeod, P.A.
Richard B. Cole, Esq.
Brian J. O'Rourke, Esq.
Albuquerque, NM

For the AG:

Gary Epler, Esq.
Assistant Attorney General
Santa Fe, NM

For the Commission Staff:

Charles F. Noble, Esq.
Staff Counsel
Santa Fe, NM

Other Appearances:

None

On December 26, 1984 the Staff and PNM filed a joint Proposed Ordering Section of Recommended Decision in 1930.

Having reviewed the Application and the exhibits and having heard the evidence and statements of counsel and being otherwise fully informed of the premises, the Hearing Examiner recommends that the Commission F I N D that:

1. The Company is a New Mexico corporation which owns, operates, leases or controls plant, property or facilities for the generation, transmission, distribution, sale or furnishing to or for the public of electricity for light, heat, power or other uses within the State of New Mexico.

2. The Company is certified and authorized to conduct the business of providing public utility service within the State of New Mexico.

3. The Company is a public utility as defined in the Public Utility Act, NMSA 1978, Sections 62-3-1 et seq., (Repl.Pamp.1984) .

4. PNM proposes to enter into a leveraged lease financing of the Northeastern Interconnect Project. Specifically, PNM proposes to sell the Northeastern Interconnect Project to, and then lease it back from, institutional investors. Through a process of competitive bidding and negotiation, Emerson Leasing Ventures, Inc., and General Foods Credit Corporation (the "Owner Participants") have tentatively been selected as the institutional investors. Under the proposed lease financing, each of the Owner Participants would form a trust for the purpose of holding title to its undivided interest in the Northeastern Interconnect Project. The trustees under the trusts would act as lessors (the "Lessors") of the Northeastern Interconnect Project and would lease it to PNM under one or more leases ("Leases"). PNM would retain ownership of easements, rights-of-way and other real property rights associated with the Northeastern Interconnect Project, but would convey such rights to the Lessors for a term equal to the economic life of the Northeastern Interconnect Project. PNM would retain the right to use the real property rights during the term of the Leases.

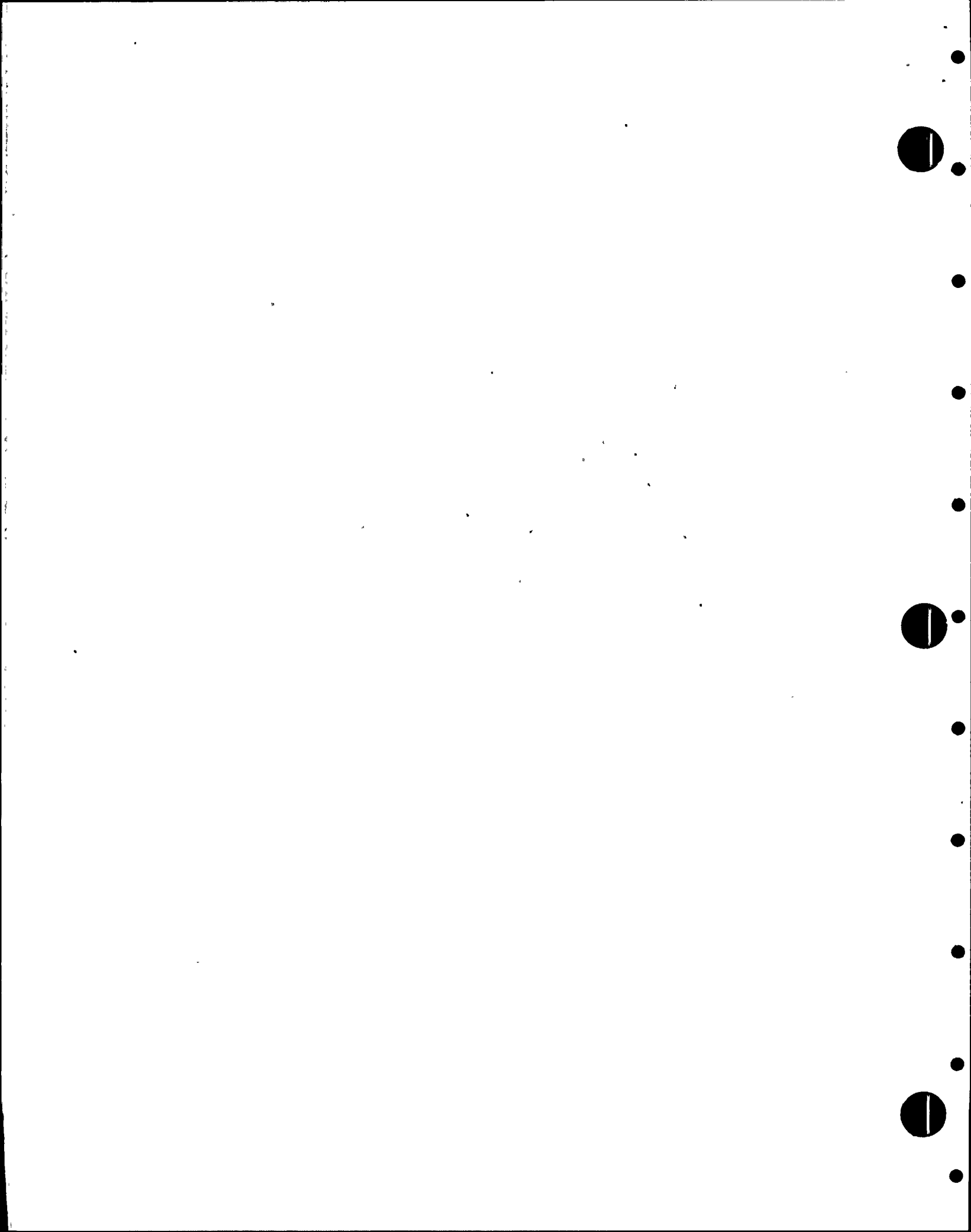
5. The sale price for the Northeastern Interconnect Project would be set at a level that would result in no gain or loss to PNM and which is expected to be approximately \$80,000,000. Prior to closing of the lease transaction, an appraisal would verify that the purchase price is no greater than fair market value in order to comply with

certain I.R.S. requirements to preserve the tax benefits of the transaction. The Lessors would raise approximately 70% to 80% of the purchase price by causing public debt (in the form of secured facility bonds) to be issued by a funding corporation (the "Funding Corporation") that would be formed solely for that purpose. Although the public debt would be issued by the Funding Corporation, such debt would be non-recourse to the Lessors and the Owner Participants. The public debt would be secured by a security interest in the Northeastern Interconnect Project and would be payable from the rentals due from PNM under the Leases. PNM would be the named "registrant" in the Registration Statement that would be filed with the United State Securities and Exchange Commission in connection with issuance of the public debt.

6. Although the Lessors would be the owners of the Northeastern Interconnect Project, PNM would remain responsible for its operation and maintenance. The initial term of the Leases would be thirty years and would provide for certain renewal options. In addition, PNM would have certain options to repurchase the Northeastern Interconnect Project. PNM will pay rent over the term of the Leases which will be set as a function of the interest rates set for the secured facility bonds (presently anticipated to be around 13% per annum). The rent may be raised up to a 6% maximum, should the 99th Congress enact legislation reducing certain tax benefits. The transactions described in Finding Nos. 4, 5 and 6 and in PNM's Application and testimony herein are hereinafter referred to as the "lease transactions."

7. The evidence shows that the present value cost of the Northeastern Interconnect Project will be significantly lower under the lease transactions than under PNM ownership both under traditional ratemaking (using discount rates as low as 5%) and under Case No. 1804 Inventory (using nominal dollars; i.e. 0% discount rate). The Company estimates a \$23 million savings even with the full 6% rent increase.

8. The proceeds to PNM from the lease transactions will only be used for one or



more of the following purposes: the acquisition of property; the construction, completion, extension, or improvement of Company's service; the discharge or lawful refunding of its obligations; the reimbursement of monies actually expended for such purposes from income or from any other monies in the Company's treasury not secured by or obtained from the issue, assumption or guarantee of securities within five years prior to this filing. The purposes of the lease transactions are permitted by the Public Utility Act, as amended.

9. The aggregate amount of securities outstanding after the consummation of the lease transactions will not exceed the fair value of the properties and business of the Company.

10. The lease transactions are not unlawful or inconsistent with the public interest.

11. Due and timely notice of this proceeding was published in a newspaper of general circulation in the county in which the Company's principal office in New Mexico is located.

12. The lease transactions are not exempt within the meaning of NMSA 1978, Section 62-6-8 (Repl.Pamp.1984).

13. The lease transactions should be approved on the terms and conditions set forth in this Order and the Application.

The Hearing Examiner recommends that the Commission C O N C L U D E that:

1. The Commission has jurisdiction over the parties to this proceeding and the subject matter herein.

2. Due and timely notice of this proceeding has been given.

3. The lease transactions are not unlawful or inconsistent with the public interest.

4. The purposes of the lease transactions are permitted under NMSA 1978,



Section 62-6-6 (Repl.Pamp.1984).

5. The prior approval by the Commission of the lease transactions is required under NMSA 1978, Section 62-6-6 (Repl.Pamp.1984).

6. The lease transactions should be approved on the terms and conditions set forth in this Order and the Application.

The Hearing Examiner recommends that the Commission O R D E R that:

1. To the full extent that the approval and authorization of the Commission are required by the laws of the State of New Mexico, the Commission hereby approves the Application herein and authorizes PNM to undertake and consummate the lease transactions substantially in accordance with the structure and business terms reflected in the testimony of PNM, (whether such transaction is consummated with one or more than one Owner Participant and Lessor).

2. The Company is hereby authorized to take such other action as may be necessary, required or appropriate to enable the Company to consummate the lease transactions.

3. PNM is hereby granted authority to sell the Northeastern Interconnect Project, pursuant to NMSA 1978, Section 62-6-12 (1984 Repl. Pamp.).

4. PNM is hereby granted authority to exercise its options to renew the Leases or either of such Leases and to repurchase the Northeastern Interconnect Project in accordance with the terms of the Leases, with the rate treatment therefor to be determined at a later date.

5. PNM is hereby granted the authority, under NMSA 1978, Section 62-6-6 (Repl. Pamp.1984), to issue, assume and guarantee securities in order to consummate the lease transactions.

6. PNM is hereby authorized to enter into the Leases, pursuant to a stipulation entered into in Commission Case No. 1602 requiring Commission approval of certain

leases.

7. The Commission hereby acknowledges that, by virtue of NMSA 1978, Section 62-3-4.1(A) (Repl.Pamp.1984), the lease transactions shall not cause any of the Owner Participants or Lessors to be deemed to be a "public utility" subject to the jurisdiction, control or regulation of the Commission.

8. The terms of the Leases and other documents to be entered into in connection with the lease transactions are hereby approved, as such terms are outlined in the written testimony of Company witness Gaudin, as orally revised by him.

9. The terms of the Leases and other documents to be entered into in connection with the lease transactions are hereby approved for the purpose, pursuant to NMSA 1978, Section 62-3-4.1(B) (Repl.Pamp.1984), of enabling each of the Owner Participants and Lessors to qualify for an exemption by the United States Securities and Exchange Commission from the Public Utility Holding Company Act of 1935, as amended (Chapter 2C of Title 15 of the United States Code).

10. The Certificate of Convenience and Necessity issued in Commission Case No. 1794 is hereby modified to reflect the approval of the lease transactions granted herein; i.e. to operate rather than own and operate the Northeastern Interconnect Project during the Leases and to repurchase the Northeastern Interconnect Project in accordance with the Leases.

11. The regulatory treatment proposed in the testimony presented by PNM in this case is hereby approved. Specifically, the Company is hereby authorized to recover the revenue requirements of the Northeastern Interconnect Project from the incentives from any sales transactions over the Northeastern Interconnect Project during the period that the Company is making sales to Southwestern Public Service Company ("SPS") under Service Schedule D of the Interconnection Agreement dated November 23, 1982, between PNM and SPS. Such recovery would occur prior to any other allocation of such incentives.

In the event the Company makes a purchase over the Northeastern Interconnect Project during such period, the Company is hereby authorized to recover a pro rata allocation of the Northeastern Interconnect Project revenue requirement based on the capacity of the line and the amount of energy purchased, to be recovered through the fuel adjustment clause as a purchased power expense, thereby reducing the amount of SPS incentives applied against the Northeastern Interconnect Project revenue requirements. The incentive revenues remaining after all Northeastern Interconnect Project revenue requirements are met shall offset costs associated with uncommitted capacity, to the extent such sales have been made from inventoried plant under the terms of the Stipulation regarding Inventory Capacity in Case 1804 (Inventory Stipulation). To the extent ratebase capacity is required to make such sales the incentive revenues remaining after all Northeastern Interconnect Project revenue requirements are met shall be credited against jurisdictional fuel costs as required under the 1804 Inventory Stipulation. PNM is hereby authorized, upon the expiration of Service Schedule D of the Interconnection Agreement with SPS, to include the jurisdictional portion of Northeastern Interconnect Project revenue requirements in its cost-of-service if so requested in a rate case, subject to Commission authority to review and exclude such costs according to standard ratemaking criteria.

12. The Company is hereby authorized from time to time to use and apply the proceeds received from the lease transactions for any purpose specified by the Company in this case.

13. Except as expressly determined herein, nothing contained herein shall be considered as a determination by the Commission of the value of any of the Company's properties or the justness or reasonableness of any cost or expense incurred by the Company.

14. Nothing contained herein shall be construed to mean or to imply that the State



of New Mexico, or any officer, agent or employee thereof, has verified the accuracy, completeness or fairness of any factual information contained in any offering circular, registration statement, prospectus, or any other document prepared or delivered in connection with the lease transactions or the accuracy, completeness or fairness of any statements made in connection with the lease transactions. Accordingly, nothing contained herein shall be construed to mean or to imply that the State of New Mexico, or any officer, agent or employee thereof, has expressed or expresses an opinion as to whether any statement made or document delivered in connection with the lease transactions contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

15. Nothing contained herein shall be construed to mean or to imply that the State of New Mexico, or any officer, agent or employee thereof, shall have any responsibility for the application of or disposal by the Company, or its officers, agents or employees, of any of the proceeds derived from the lease transactions.

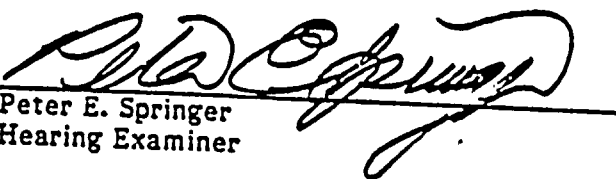
16. The Company shall, within ninety (90) days following the closing of the lease transactions, file with this Commission a report verified by an officer of the Company before a notary public, stating the consummation, the amount of proceeds, the expenses actually incurred by the Company, the terms and conditions thereof; and the Company shall cause to be attached to said report true and correct copies of all documents executed in connection with the lease transactions, all filings with any governmental authority required to consummate with the lease transactions, and any Order or other official action taken by any other governmental authority which is required to consummate to the lease transactions.

17. The Company shall file with this Commission within six months from the date of this Order, a report verified by an officer of the Company before a notary public,

which report reflects the application made by the Company of the proceeds of the lease transactions to the purposes herein authorized, and the amounts applied to each such purpose; and the Company shall file like reports at intervals of not more than six months thereafter, until the company has accounted for the application of the entire proceeds of the lease transactions.

17. This Order is effective immediately.

I S S U E D and respectfully submitted to the Commission at Santa Fe, New Mexico
this 27th day of December, 1984.


Peter E. Springer
Hearing Examiner



-----X
In the matter of
ARIZONA PUBLIC SERVICE
COMPANY, et al,
(Palo Verde Nuclear
Generating Station, Unit 1)
-----X

DOCKET NO. STN 50-528

TO

**ORDER OF FEDERAL ENERGY REGULATORY COMMISSION
RE PUBLIC SERVICE COMPANY OF NEW MEXICO,
DOCKET NOS. EC85-4-000 AND EL85-9-000,
DATED DECEMBER 31, 1984**

COPY FORWARDED TO:

Bob Starnes & Brian O'Reilly
ON January 14, 1985
JW

29 FERC 161, 387

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ELECTRIC RATES: Sale of Assets;
Disclaimer of Jurisdiction;
Declaratory Order

Before Commissioners: Raymond J. O'Connor, Chairman;
Georgiana Sheldon, A. G. Sousa,
Oliver G. Richard III and Charles G. Stalon.

Public Service Company of) Docket Nos. EC85-4-000 and
New Mexico) EL85-9-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER, AUTHORIZING
SALE OF FACILITIES, NOTING INTERVENTION, AND TERMINATING DOCKETS

(Issued December 31, 1984)

On November 13, 1984, as supplemented by documents filed on December 10, 1984, Public Service Company of New Mexico (PNM) filed a petition for a declaratory order and application for approval, pursuant to section 203 of the Federal Power Act (FPA or Act), 1/ of the sale of jurisdictional facilities.

PNM's filing involves the proposed sale and lease-back of a newly constructed 216 mile, 345 kV transmission line and related facilities that will interconnect the electric systems of PNM and Southwestern Public Service Company. The line, known as the Eastern Interconnection Project (EIP), is expected to become commercially operational on January 1, 1985. PNM proposes to sell the EIP to Emerson Leasing Ventures, Inc. (Emerson) and General Foods Credit Corporation (GF). 2/ In turn, Emerson and GF are to enter into a trust agreement with the First National Bank of Boston (Owner Trustee or Lessor), which is to take title to the EIP for the benefit of the Owner Participants and lease the transmission line back to PNM. The Owner Trustee is to purchase the facility for a price such that no after-tax book gain or loss on the sale results.

The debt financing for the transaction is to be provided through the sale of secured facility bonds by EIP Funding Corporation

Docket Nos. EC85-4-000 and
EL85-9-000

- 2 -

(Funding Corp.). 3/ Funding Corp. is to loan the proceeds of the facility bond sale to the Owner Trust in exchange for secured promissory notes to be issued by the Owner Trustee. The principal and interest obligations of the secured promissory notes are to cover those of the secured facility bonds issued by Funding Corp. PNM's payments under the lease are designed to cover the principal and interest obligations of the secured notes. In effect, then, PNM's lease obligations are to be the source of payment for the secured facility bonds.

PNM proposes to lease the transmission facility back from the Owner Trustee for a 30-year term. The utility is to make semi-annual lease payments sufficient to pay the debt obligations issued to finance the EIP and provide a return on capital invested by Emerson and GF. The proposed semi-annual payment would amount to 5.39 percent of the EIP equipment cost. At the end of the lease term, PNM is to have the option to renew the lease at 50 percent of the original rent. Any subsequent renewal would be charged at fair market rental value. PNM also is to have the option to purchase the EIP at its fair market value at the end of the original lease or any renewal period.

PNM states that the sale and lease-back arrangement is simply a means of financing the construction of the EIP. PNM would operate and maintain the facility and have the right to make virtually all decisions concerning construction of, modifications to, and operations of the EIP. PNM thus requests that the Commission issue an order: (1) declaring that the Owner Participants and Owner Trustee will not, as a result of their holding title to the EIP, become "public utilities," as defined in section 201(e) of the FPA; 4/ and (2) approving the sale by PNM of jurisdictional facilities to the Lessor pursuant to section 203(a) of the Act. In order to obtain certain tax benefits from the proposed transaction, PNM requests Commission action by December 31, 1984.

Notice of PNM's filing appeared in the Federal Register, 5/ with comments due on or before December 5, 1984. A timely notice of intervention was filed by the New Mexico Public Service Commission (NMPSC), although that agency does not raise any particular substantive issues regarding PNM's application.

3/ The parties anticipate that the Lessor will finance the EIP with approximately 70 to 80 percent of debt and the balance with equity capital.

4/ 16 U.S.C. § 824(e).

5/ 49 Fed. Reg. 45919 (1984).

1/ 16 U.S.C. § 824(b)(5).

2/ Emerson is to acquire a 60 percent undivided interest in the EIP, and GF is to acquire the remaining 40 percent. The two companies are referred to in the proposed transaction as "Owner Participants."

1

2



Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 6/ the timely notice of intervention filed by the NHPSC serves to make it a party to this proceeding.

PNM's filing involves sections 201 and 203 of the FPA. 7/ Section 201(b) of the FPA states, in part:

The provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce,.... The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy,....

Section 201(e) of the Act, in turn, defines a "public utility" as "any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part...."

Finally, section 203(a) of the FPA provides:

No public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission,.... or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so.... After notice and opportunity for hearing, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will be consistent with the public interest, it shall approve the same.

6/ 18 C.F.R. § 385.214 (1984).

7/ Arguably, PNM's lease-back of the EIP would constitute the granting of a security interest in the property subject to review under section 204(a) of the FPA, 16 U.S.C. § 824(c). However, we note that the agreement provides that the utility would have the option to purchase the transmission line for a fair market price at the expiration of the lease. Under these circumstances, PNM's lease does not constitute a security. Pacific Power & Light Co., 52 PFC 244 (1974). See also U.C.C. § 1-201 (37).

Because the property which PNM proposes to sell consists of jurisdictional transmission facilities, the sale of the EIP is subject to Commission review under section 203(a).

The information submitted by PNM indicates that the proposed sale lease-back arrangement would result in cost savings representing: (1) the Lessor's ability to finance a greater proportion of the EIP with debt than could PNM; (2) more favorable utilization by the Lessor of investment tax credits and accelerated depreciation benefits; and (3) the use by PNM of "off-balance sheet" financing, by which the lease payments are expensed rather than capitalized, so as to represent 100 percent debt financing and not to require a higher cost of equity capitalization. PNM estimates that the proposed transaction would reduce its present value revenue requirements associated with the EIP by approximately \$10 million in 1985 and \$35 million (present value dollars) over the life of the facilities. Lower revenue requirements would be translated into lower rates charged to the company's customers. In addition, the sale of the EIP would provide the company with cash to finance its construction program and to retire maturing short-term debt. We therefore find that PNM's sale of assets under the proposed transaction is consistent with the public interest.

In addition to seeking approval of its proposed sale of the EIP, PNM requests that the Commission issue an order declaring that the Owner Participants and Lessor will not, by virtue of their ownership of the project, become "public utilities" as defined in the FPA. In support, the utility cites cases arising under the FPA and the Natural Gas Act, 8/ in which the Commission has ruled, in similar sale and lease-back situations, that non-utility participants did not become "public utilities" or "natural gas companies" by reason of their obtaining title to facilities used to provide electric or gas services.

Disclaimer of Commission jurisdiction over entities which own jurisdictional facilities by virtue of a sale and lease-back arrangement was addressed in Pacific Power & Light Co., 3 PERC § 61,118 (1978). In that case, the Commission granted a request for waiver of jurisdiction over financial institutions which took title to facilities as part of a leveraged lease transaction. The Commission's decision was based primarily on two factors. First, the financial institutions were not operating the facilities, nor would they have any voice in or dominion over such operations. Second, none of the parties actually taking title

8/ 15 U.S.C. §§ 717, et seq.

were in the business of producing or selling electric power and all had a principal business other than that of a public utility. They were involved in the transaction to obtain the tax benefits accruing from the transaction. The Commission concluded:

. . . that the Parties' participation in the proposed transaction is not such that they should be deemed public utilities for the purpose of Section 201(e) of the Act. It would be inconsistent with the intent of the Act to label the Parties as public utilities and include them within our jurisdiction just because the Parties hold mere equitable or legal title to the subject electric facilities and where they are clearly removed from the actual operation of the facilities and the sale of power. The leveraged lease arrangement is essentially a financing device which serves to reduce Applicant's cost of service, and the Parties participation does not make them public utilities. . . .

3 PERC at 61,337 (1978). 9/

These considerations are present with equal force in this proceeding. The Owner Participants and Owner Trustee will not operate or have a voice in the operation of the EIP. Further, these entities are not in the business of producing, selling, or transmitting electric power. 10/ Accordingly, we shall disclaim jurisdiction over the Owner Participants and Owner Trustee as requested by PNM.

With respect to PNM's proposed accounting treatment of the sale and lease-back of the EIP, we note that PNM intends to lease, rather than sell, the easements and rights-of-way associated with the transmission line to the Lessor for an annual rental of \$600,000, paid semi-annually. We shall require PNM to record the income and expenses associated with these leases in Accounts 412 (revenues from electric plant leased to others) and 413

9/ See also Chase Manhattan Service Corp., Docket No. E-8870, Letter Order (1974).

10/ With respect to similar requests arising under the Natural Gas Act, we have also expressed the concern of whether a disclaimer would deprive the Commission of its regulatory authority. See, e.g., Southwest Gas Corp., 20 PERC ¶ 61,175 (1982); Northern Natural Gas Co., 8 PERC ¶ 61,111 (1979). Since PNM is already subject to Commission jurisdiction under the PPA, the requested disclaimer would not affect our authority over the utility's operations.

(expenses of electric plant leased to others) of the Uniform System of Accounts, respectively.

The Commission orders:

(A) PNM's proposed sale of the above-described assets is hereby approved, upon the terms and conditions stated in its application, and subject to the provisions of this order.

(B) PNM shall record the proposed transaction herein authorized and the facilities and properties described above as proposed in its application (with the exception noted in Ordering Paragraph (C) below) and as provided in the Commission's Uniform System of Accounts.

(C) PNM shall record all income and expenses resulting from the lease of its easements and rights-of-way for the EIP in Accounts 412 and 413 of the Uniform System of Accounts, respectively.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost or any other matter which is now pending or which may come before this Commission.

(E) PNM's petition for a declaratory order is hereby granted. The Owner Participants and Owner Trustee, all as described above, are not by virtue of the proposed transaction deemed "public utilities" pursuant to section 201(e) of the Federal Power Act.

(F) Docket Nos. EC85-4-000 and EL85-9-000 are hereby terminated.

By the Commission.

(S E A L)

Kenneth F. Plumb
Kenneth F. Plumb,
Secretary.

In the matter of

(Palo Verde Nuclear
Generating Station, Unit 1)

DOCKET NO. STN 50-528

TO

APPLICATION OF FIRST PV FUNDING CORPORATION,
DATED SEPTEMBER 20, 1985,
FILED WITH THE
SECURITIES AND EXCHANGE COMMISSION

Exempted
Gehr

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

Application for an Order Under
Section 6(c) of the Investment Company
Act of 1940 Exempting First PV Funding
Corporation from all Provisions of
such Act.

FIRST PV FUNDING CORPORATION
(Name of Applicant)

1209 Orange Street
Wilmington, Delaware 19801
(Address of Principal Office of Applicant)

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UNITED STATES OF AMERICA

Before the Securities and Exchange Commission

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In the Matter of : Application for an
: Order Pursuant to
: Section 6(c) of the
FIRST PV FUNDING CORPORATION : Investment Company
: Act of 1940 Exempting
: Applicant from All
: Provisions of the Act
- - - - - x

The undersigned applicant, First PV Funding Corporation (hereinafter called the Applicant), hereby applies, pursuant to Section 6(c) of the Investment Company Act of 1940 (hereinafter called the Act), for an Order unconditionally exempting it from each and every provision of the Act on the ground that such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. No form having been specifically prescribed for this Application, the Applicant proceeds under Rule 0-2 of the General Rules and Regulations of the Securities and Exchange Commission (hereinafter called the Commission) under the Act and pursuant to Release No. IC-14492, dated April 30, 1985.

I. FACTUAL BASIS OF APPLICATION

The documentation relating to the establishment of the Applicant and the structure and documentation of the transactions for which the Applicant has been formed (as hereinafter described), represent a combination of the elements set forth in (and, to the extent relevant for purposes of this Application, are the same as) the documentation and structure used by (i) E.I.P Funding Corporation, as described in its application for an order pursuant to the Act (hereinafter E.I.P. Funding Corp. Application) which was the subject of a Notice issued on January 16, 1985 (Investment Company Act Release No. 14322) and an Order of the Commission granted on February 5, 1985 (Investment Company Act Release No. 14352) and (ii) SBD Lease Funding Corporation, as described in its application for an order pursuant to Section 6(c) of the Act and Amendment No. 1 thereto (hereinafter SBD Lease Funding Corp. Application) which was the subject of a Notice issued on June 18, 1985 (Investment Company Act Release No. 14584) and an Order of the Commission granted on July 23, 1985 (Investment Company Act Release No. 14646).

As was the case with the applicant in the E.I.P. Funding Corp. Application, the Applicant has been created for the sole purpose of assisting Public Service Company of New Mexico, a New Mexico corporation (hereinafter called PNM), in the financing and refinancing of property through leveraged lease financing transactions in which PNM will be the lessee.

A statement of the facts relied on as a basis for the action of the Commission herein requested is as follows:

A. The Applicant and Summary of Transactions

The Applicant is organized under the laws of the State of Delaware and will have nominal paid-in capital. A copy of its Certificate of Incorporation is included herewith as Exhibit A. The address of the Applicant is Corporation Trust Center, 1209 Orange Street, City of Wilmington, Delaware 19801.

All of the shares of Common Stock, \$1.00 par value, of the Applicant authorized to be issued under the terms of its Certificate of Incorporation will be issued to, and in the future all outstanding shares of such Common Stock are expected to be owned by, The Corporation Trust Company, a Delaware corporation, or a company controlled by it (hereinafter called CT). After such issuance all of the directors and officers of the Applicant are expected to be officers or other employees of CT. The Applicant represents that there has been, and undertakes that in the future there will be, no public offering of the Applicant's Common Stock or of any other equity security of the Applicant. The Applicant represents that there is, and in the future there will be, no class of equity securities of the Applicant authorized other than its Common Stock.

The Applicant has been created for the sole purpose of assisting PNM in the refinancing, in whole or in part, of PNM's 10.2% undivided ownership interest in Palo Verde Nuclear Generating Station (hereinafter called PVNGS). PVNGS consists primarily of three 1,270 megawatt units, each containing a pressurized water reactor nuclear steam supply system, and certain facilities the use of which is common to all three units. PVNGS is located approximately 55 miles west of downtown Phoenix, Arizona. PNM participates in the ownership of PVNGS with three other investor-owned utilities -- Arizona Public Service Company (APS) (29.1%), Southern California Edison Company (15.8%) and El Paso Electric Company (15.8%) -- and three public utilities -- Salt River Agricultural Improvement and Power District (23.19%, anticipated to become 17.49% after the date of commercial operation of PVNGS Unit 1), Southern California Public Power Authority (5.91%), and, after the date of commercial operation of PVNGS Unit 1, the Department of Water and Power of the City of Los Angeles (5.7%). Ownership of PVNGS is governed by the Arizona Nuclear Power Project Participation Agreement, dated August 23, 1973,

as amended, among the owners of PVNGS. Under such Project Participation Agreement, APS is authorized to act as agent for the other owners of PVNGS, and has responsibility and control over construction, operation and maintenance of PVNGS.

Fuel loading was completed at PVNGS, Unit 1, on January 11, 1985. On June 1, 1985, the Nuclear Regulatory Commission issued Facility Operating License No. NPF-41 for Unit 1. Such License authorizes operation of Unit 1 at reactor core levels not in excess of 3,800 megawatts thermal (100% power) for 40 years from December 31, 1984, subject to certain limited conditions. PVNGS, Unit 2, is approximately 99% complete and is scheduled for firm power operation in the second quarter of 1986. Unit 3 is approximately 98% complete and is scheduled for firm power operation in the second quarter of 1987.

PNM is an investor-owned utility engaged principally in the generation, transmission, distribution and sale of electricity and, since January 28, 1985, in the gathering, transmission, distribution and sale of natural gas within the State of New Mexico. PNM also owns facilities for the pumping, storage, transmission, distribution and sale of water. In addition, PNM, through its subsidiaries, is engaged in a program of diversification into non-utility areas. PNM is subject to, and during the preceding 12 months has filed all documents required to be filed pursuant to, the reporting requirements of Section 13 of the 1934 Act (see Commission File Number 1-6986), and has securities registered under both Section 12(b) and Section 12(g) of the 1934 Act.

The Applicant will assist PNM's financing and refinancing of PNM's ownership interest in PVNGS by participating as lender in one or more leveraged lease transactions to be selected by PNM in which PNM is lessee (in such capacity, hereinafter called the Lessee). At or near the time each PVNGS Unit receives an operating license from the NRC, PNM will make an initial determination as to whether or not the financing or refinancing of such Unit will be accomplished in whole or in part through one or more leveraged lease financing transactions and whether or not the debt portion of such transaction will be funded through the Applicant's sale of Secured Facility Debt (as defined below). With respect to PVNGS, Unit 1, PNM has determined to utilize such transactions and so to use the Applicant. Because significant capital improvements (additions, betterments and enlargements of property in place and replacements of such property with other property) will be required to be installed at PVNGS from time to time, each leveraged lease financing transaction will also provide for the financing thereunder (via lease supplements) of capital improvements relating to property subject to such transaction. Such leveraged lease financing transactions, including any applicable supplemental financings, are hereinafter individually called a Lease and collectively the Leases.

The participation of the Applicant as lender in the Leases will be limited to making loans to the lessors under such Leases which will be repayable primarily from rentals and other payments by the Lessee pursuant to such Leases. It is expected that such lessors (hereinafter called the Lessors) will be grantor trusts formed exclusively for the purpose of the lease financing. The beneficiary of such a grantor trust may be an institutional or other investor or a direct or indirect subsidiary of PNM. The loans to be made by the Applicant will be without recourse to the general credit of the Lessors or their respective beneficiaries and will be evidenced by non-recourse obligations of the respective Lessors (hereinafter called the Lessor Notes) which will be secured as more fully described herein. Each of the Leases will be required to provide for the payment of rentals and other payments by the Lessee in amounts and at times sufficient to provide for the payment and performance of all the obligations of the related Lessor under its Lessor Note. Such obligation of the Lessee will be required to be absolute and unconditional, without right of counterclaim, set off, deduction or defense. In this regard, the terms of the Lessor Notes and the Leases and the obligations of the Lessee to make payments under the Leases will be typical of those in customary leveraged lease financing transactions.

Neither PNM nor its subsidiaries will have any right by stock ownership, contract or otherwise to control the management or operation of the Applicant. It is expected, however, that the Applicant will enter into a Commitment Agreement (hereinafter called the Commitment Agreement) with PNM pursuant to which the Applicant will agree to participate in one or more Leases relating to PVNGS. Such participation will be more specifically identified with respect to each Lease by the term of a Participation Agreement relating to such Lease in which the Applicant will agree to make loans to the Lessor therein designated. Such loans will have interest rates, maturities, sinking fund provisions and other terms as shall be approved by the Lessee and the Lessor to which the loan is to be made. The obligation of the Applicant to participate in such Leases and to make such loans will be subject to certain terms and conditions, including (a) the ability of the Applicant to issue Secured Facility Debt (as defined below) on such terms and conditions as shall, in the opinion of the Applicant after consultation with its financial advisor, permit the Applicant to make such loans on a financially prudent basis, (b) the execution and delivery by each Lessor to which a loan is to be made of a Lease Indenture (as defined below) or Lease Indenture supplement and one or more related Lessor Notes, (c) the receipt by the Trustee under the Collateral Trust Indenture (as defined below) of the original Lessor Note and copies of the agreements relating thereto, (d) the receipt by the Trustee under the Lease Indenture (as defined below) of the original executed counterpart of the related Lease or Lease supplement, (e) the receipt by the Applicant of opinions of counsel for the Lessee, the related Lessor and/or its beneficiaries with respect to, among other things,

the due authorization, execution, delivery and binding effect of agreements and documents and the priority of the lien and security interest granted by the Lease Indenture and (f) such other matters as the Applicant may reasonably request.

The Applicant intends to acquire the funds necessary for the purchase of the Lessor Notes through the issuance of its debt securities in one or more series (the Secured Facility Debt) which will be secured on a parity basis by a first lien on, and security interest in, all of the assets of the Applicant, consisting primarily of the Lessor Notes so acquired and theretofore acquired. Lessor Notes acquired and held by the Applicant may include only Lessor Notes issued in connection with any Leases to which PNM is a party, as lessee, in connection with its ownership interest in PVNGS.

B. The Leases

It is expected that the Lessor in each of the Leases will be a bank or trust company acting as trustee for one or more beneficiaries pursuant to a trust agreement (hereinafter called a Trust Agreement) entered into exclusively for the purpose of the particular lease financing. A portion of the purchase price of the property owned by the Lessor and leased to the Lessee pursuant to a Lease will be paid by the beneficiaries of the grantor trust that acts as Lessor as the beneficiaries equity investment in the property. The balance of the purchase price of such property will be borrowed from the Applicant by the Lessor, which borrowings will be evidenced by one or more Lessor Notes issued by such Lessor pursuant to a Trust Indenture and Security Agreement (hereinafter called a Lease Indenture). It is expected that the Lessor Notes will be issued under circumstances making such transactions exempt from registration under the Securities Act of 1933, as amended (hereinafter called the Securities Act). The Applicant will receive assurances from each Lessor and each beneficiary thereof that at the time the Applicant acquires Lessor Notes issued by such Lessor and so long as the Lessor Notes issued by such Lessor are outstanding (a) neither such Lessor nor any beneficiary thereof is or will be an investment company within the meaning of Section 3(a) of the Act or (b) such Lessor and any beneficiary thereof is and will be deemed to be excluded from the definition of an investment company by virtue of the provisions of Section 3(b) or Section 3(c) of the Act.

Each Lease will be required to provide for the payment of rentals and other payments by the Lessee in amounts and at times sufficient to provide for the payment and performance of all of the obligations of the related Lessor under its Lessor Note or Notes and its Lease Indenture. Each Lease will be required to be a net lease and the obligations and liabilities of the Lessee thereunder will be

required to be absolute and unconditional without any right of counterclaim, setoff, deduction or defense on the part of the Lessee. Each Lease will be required to include, without limitation, as events of default (a) failure by the Lessee to make payments customarily referred to as basic rent, stipulated loss value or casualty value that are intended to be the source of payment of the related Lessor Notes, (b) failure by the Lessee to make payments customarily referred to as supplemental rent or other payments thereunder, and (c) certain bankruptcy-related events involving the Lessee.

Under each Lease, the Lessee will be obligated to make rental payments sufficient to pay principal of and premium, if any, and interest on the Lessor Notes issued in connection therewith and such rental payments are also anticipated to provide an investment return to the beneficiaries of the Lessor which provide financing for the property that is the subject of such Lease.

C. The Lease Indentures and the Lessor Notes

Lessor Notes will be issued by the applicable Lessor under and pursuant to the terms of separate but substantially identical Lease Indentures with a bank or trust company acting as trustee for the holder of the Lessor Notes issued thereunder. Each Lease Indenture will require the Lessor to grant to the Applicant a first lien on and security interest in the property which is the subject of the Lease (the Leased Property), as well as such Lessor's rights under such Lease, including its rights to the basic rentals and other payments to be made by the Lessee thereunder. The Applicant will be precluded from purchasing any Lessor Note unless (i) such Lessor Note is secured by Leased Property having a fair market sales value at the time of purchase at least equal to 110% of the original principal amount of such Lessor Note or (ii) such Lessor Note and all other Lessor Notes (if any) issued by the relevant Lessor are secured by Leased Property having an aggregate fair market sales value (measured, in each case, as of the date such Leased Property was first financed under the Lease) at least equal to 110% of the original principal amount of such Lessor Note and such other Lessor Notes. For example, if the initial financing under a particular Lease involved \$100 million of Leased Property and the issuance of \$85 million in Lessor Notes (117.6% coverage of the Lessor Notes by Leased Property) and one year later \$10 million in capital improvements were to be financed under such Lease, the entire \$10 million could be financed with Lessor Notes and Secured Facility Debt in accordance with clause (ii) of the preceding sentence because the resulting percentage overall would be 115.8% (\$95 million in Lessor Notes secured by \$110 million in Leased Property). Each Lease Indenture will include as events of default, without limitation, payment defaults on the Lessor Notes issued thereunder and events of default under the related Lease.

The aggregate of the principal amount of all Lessor Notes issued pursuant to all Lease Indentures will be required to be equal to the sum of the aggregate principal amount of the related Secured Facility Debt issued to fund the loans evidenced by such Lessor Notes. The interest payable with respect to each Lessor Note will be the related Lessor's share of the Applicant's Cost of Money as of any interest payment date for such Lessor Note. The Applicant's Cost of Money in respect of any period will be equal to the total interest and other costs and expenses which the Applicant has incurred or accrued with respect to the Secured Facility Debt and its obligations incurred in the performance of its agreements under the Lease Indenture, reduced by any income which it has received or expects to receive on or prior to the next succeeding payment on the Secured Facility Debt and not expended as of such date resulting from the temporary investment of payments made in respect of Lessor Notes prior to the date on which payments are required in respect of Secured Facility Debt.

D. Secured Facility Debt

The various series of Secured Facility Debt will have terms which may differ as to maturity dates, interest rates, sinking fund obligations of the Applicant, the right of the Applicant to redeem such Secured Facility Debt and other matters. Such Secured Facility Debt, which may include commercial paper and intermediate-term and long-term obligations, may be issued in the private or public markets in the United States, and in offerings outside the United States under circumstances reasonably designed to assure that such Secured Facility Debt is not offered or sold to citizens and/or residents of the United States. Individual series of Secured Facility Debt may be supported by bank letters of credit, bank lines of credit, bonds of insurance or other credit or liquidity support facilities. The terms and manner of offering of Secured Facility Debt of a particular series will be determined by prevailing market conditions and the terms of the Lessor Notes held or to be acquired by the Applicant with the proceeds of such Secured Facility Debt, although there will be no requirement that the scheduled payment dates on the Secured Facility Debt match the payment dates on the Lessor Notes.

All Secured Facility Debt will be issued under a common indenture and a separate supplemental indenture for each series (other than the initial series) (hereinafter collectively called the Collateral Trust Indenture) which will establish the terms of the Secured Facility Debt of that series. It is expected that the trustee under the Collateral Trust Indenture (hereinafter called the Trustee) will be a bank or trust company not affiliated with any of the Lessors and will not be a trustee under any indenture of PNM or its subsidiaries. All series of Secured Facility Debt of the Applicant will be issued under the Collateral Trust Indenture and

will be *pari passu*. If the registration requirements of the Securities Act are applicable to a particular issuance of Secured Facility Debt, PNM will file a registration statement under the Securities Act covering such Secured Facility Debt.

The Applicant proposes that the initial issuance of Secured Facility Debt will be through an underwritten public offering of one or more series having an aggregate principal amount of approximately \$300 to \$320 million. It is expected that the initial series of Secured Facility Debt will be registered under the Securities Act, and that the Collateral Trust Indenture will be qualified under the Trust Indenture Act of 1939, as amended (hereinafter the 1939 Act). Although PNM will not be the actual obligor of the Secured Facility Debt, it will be considered the issuer thereof for purposes of the Securities Act and the obligor with respect thereto for purposes of the 1939 Act. Any registration statement filed under the Securities Act relating to the Secured Facility Debt will name PNM as the sole registrant and will be signed on behalf of PNM as the sole registrant and by such officers and directors of PNM as may be required under the Securities Act and the rules, regulations and forms of the Commission thereunder, all in accordance with such practice and procedures as the Commission shall from time to time require or permit. The net proceeds to the Applicant from the initial issuance of Secured Facility Debt will be used by the Applicant principally to purchase Lessor Notes issued by the Lessors in connection with the currently contemplated leveraged lease financings of PVNGS, Unit 1.

The Applicant may seek approval for the listing of one or more series of Secured Facility Debt on one or more national securities exchanges if the Applicant and such series of Secured Facility Debt meet the requirements of such an exchange for the listing of securities thereon. In connection with any such listing, such series of Secured Facility Debt will be registered with the Commission pursuant to Section 12 of the 1934 Act.

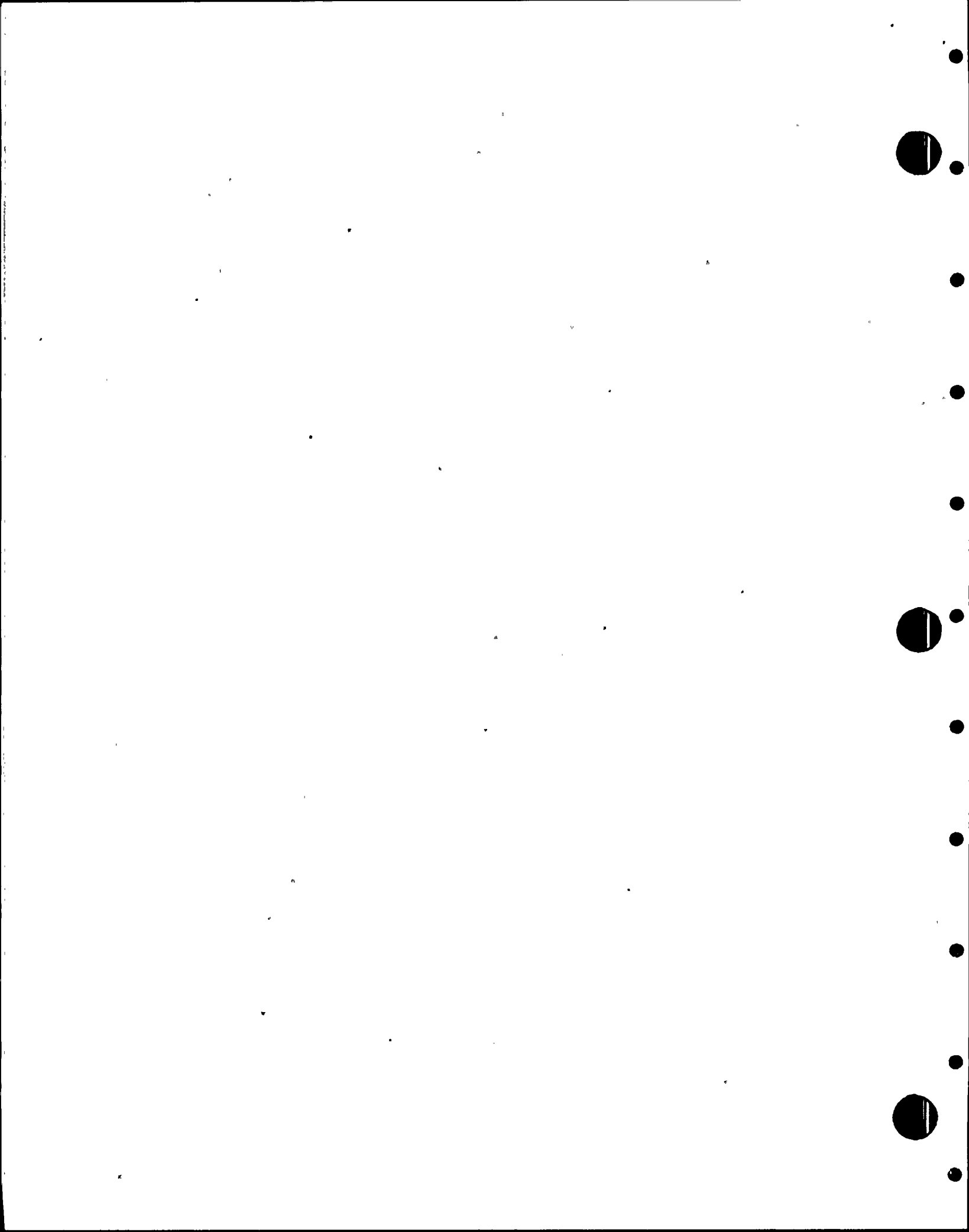
As security for the due and punctual payment of the principal of and premium, if any, and interest on all Secured Facility Debt, the Applicant will assign and pledge to the Trustee under the Collateral Trust Indenture, as security for the equal and ratable benefit of the holders from time to time of all Secured Facility Debt, the Lessor Notes and any other assets held by the Applicant. Each such Lessor Note will in turn be secured by a security interest in the related Lease and the Leased Property thereunder.

Except to the extent payable from the proceeds of refunding Secured Facility Debt, the proceeds of temporary investments as described below or the proceeds of the initial issuance of Secured Facility Debt where the relevant Lease Closing Date does not occur as described below, due to the non-recourse nature of the Lessor Notes and the limited scope of the Applicant's activities, payment of the principal of and premium, if any, and interest on the Secured

Facility Debt will be made exclusively from amounts paid by the Lessee under the Leases and from the other proceeds (up to the unpaid amount of the relevant Lessor Notes) of the security held by the Trustee under the Lease Indentures which are related to such Leases.

The interest rates, maturities and principal amounts and other terms of each series of Secured Facility Debt will be established based on prevailing market conditions and the Applicant expects to have the flexibility to take advantage of changing market conditions by issuing Secured Facilities Debt from time to time in such markets and on such terms as are required under the terms of the Applicant's Commitment Agreement with PNM and are, in the judgment of the Applicant, after consultation with its financial advisor, financially prudent to the Applicant. Furthermore, as mentioned above, there will be no requirement that the payment dates on the Secured Facility Debt correspond exactly to the scheduled payment dates on the Lessor Notes. As a consequence, the cash flow of the Applicant derived from payments of principal of and premium, if any, and interest on the Lessor Notes may from time to time exceed the cash requirements of the Applicant at such times for the payment of principal of and premium, if any, and interest on the Secured Facility Debt. Until such funds (hereinafter called Temporary Funds) are required by the Applicant for the payment of principal of and premium, if any, and interest on the Secured Facility Debt, the Applicant will be permitted to invest Temporary Funds in permitted investments (such investments being hereinafter called Temporary Holdings), in each case maturing at such times as are required to pay the Applicant's obligations under the Secured Facility Debt, after taking into account the then scheduled payments under the Lessor Notes. Permitted Investments will be defined under the Collateral Trust Indenture as follows:

- (i) direct obligations of the United States of America, or
- (ii) obligations fully guaranteed by the United States of America, or (iii) certificates of deposit issued by, or bankers' acceptances of, or time deposits with, any bank, trust company or national banking association incorporated or doing business under the laws of the United States of America or one of the States thereof (but not exceeding \$15,000,000 in principal amount or in deposits at any given time for any one bank, trust company or national banking association) having a combined capital and surplus of at least \$300,000,000 (including the Trustee, a Lease Indenture Trustee, a Lessor and any Paying Agent if such conditions are met), or (iv) commercial paper of companies incorporated or doing business under the laws of the United States of America or one of the States thereof (but not exceeding \$15,000,000 in principal amount at any given time for any one company) and in each case having a rating assigned to such commercial paper by Standard & Poor's Corporation or Moody's Investors Service, Inc. (or, if



neither such organization shall rate such commercial paper at any time, by any nationally recognized rating organization in the United States of America) equal to the highest rating assigned by such organization, or (v) repurchase agreements fully collateralized by an obligation of the type described in clauses (i) through (iv) above, pursuant to which a bank, trust company or national banking association referred to in clause (iii) above or another financial institution having a net worth of at least \$200,000,000 is obligated to repurchase any such obligation not later than 90 days after the purchase of any such obligation.

Temporary Funds of the Applicant may also be used to acquire all or a portion of the Secured Facility Debt of any series in order to meet required sinking fund redemptions. During any fiscal year of the Applicant, the average of the daily balance of the amount of the Temporary Holdings plus the amount of Temporary Funds will not exceed ten percent of the average of the daily balance of the aggregate principal amount of the Secured Facility Debt outstanding during such fiscal year. Temporary Funds and Temporary Holdings arising in connection with the issuance of Secured Facility Debt prior to the acquisition of the related Lessor Notes as described in the preceding paragraph are to be disregarded for purposes of this ten percent limitation.

In order to provide flexibility so that the Applicant may be able to take advantage of market conditions without being tied to a particular date for the closing of a leveraged lease financing transaction (the Lease Closing Date), it is proposed that the issue, sale and delivery of a particular series of Secured Facility Debt may take place up to two months prior to the Lease Closing Date applicable to the property being financed with the proceeds thereof. Pending the Lease Closing Date, the net proceeds from sale of the Secured Facility Debt would be held by the Collateral Trust Indenture Trustee pursuant to the terms of the Collateral Trust Indenture, which would permit the investment of such proceeds in Temporary Holdings.

If Secured Facility Debt has been sold in advance of the Lease Closing Date for the property financed thereby, then, pending the Lease Closing Date, such Debt, and any other Secured Facility Debt theretofore issued, will be secured by (i) the proceeds of the sale of such Debt, (ii) Temporary Holdings and Temporary Funds, if any, (iii) Lessor Notes previously pledged to the Trustee under the Collateral Trust Indenture and (iv) with respect to the new series of Secured Facility Debt only, an obligation of the Lessee which will expire on the related Lease Closing Date and which will provide for the payment of amounts sufficient for the payment of such series of Secured Facility Debt. At the applicable Lease Closing, PNM will pay to the Collateral Trust Indenture Trustee an amount equal to the

difference between (i) the interest accrued on the new series of Secured Facility Debt from the date of issuance to the Lease Closing Date and (ii) the income derived from Temporary Holdings, if any, through the Lease Closing Date. In the event that the Lease Closing does not take place by the date which is two months from issuance of such new series of Secured Facility Notes, PNM may at any time (but must by the date which is three months after the expiration of such two month period) cause (and, if necessary, provide funds necessary for) the redemption of all Secured Facility Debt of such series only.

On the Lease Closing Date, pursuant to a supplement to the Collateral Trust Indenture (Indenture Supplement), the Lessor Notes issued on such date will be subjected to the lien of the Collateral Trust Indenture (securing all outstanding Secured Facility Debt including the new series) and will serve as the basis for the release from such lien of the net cash proceeds held by the Trustee under the Collateral Trust Indenture which are necessary to purchase such Lessor Notes. The Indenture Supplement and the mechanics of this release will be in accordance with the 1939 Act and the terms of the Collateral Trust Indenture (which will have been qualified under such Act).

E. Interrelation of the Lease Indentures and the Collateral Trust Indenture for the Protection of Holders of Secured Facility Debt

At each Lease Closing, the Lessor Notes will be pledged and assigned directly to the Collateral Trust Indenture Trustee who will hold the Lessor Notes under the terms of the Collateral Trust Indenture as security for the Secured Facility Debt. As a holder of the Lessor Notes, the Collateral Trust Indenture Trustee will have the right to exercise any voting powers and give consents and waivers in respect of such Lessor Notes and the Lease Indentures under which such Lessor Notes are issued and to exercise the rights and remedies afforded a holder of such Lessor Notes under the respective Lease Indentures, including the right to exercise remedies under the Leases and with respect to the portion of PVNGS securing such Lessor Notes, provided such Leases are then in default.

To the extent that the Trustee under the Collateral Trust Indenture has the right to exercise any voting powers in respect of the Lessor Notes, to give any consents or waivers with respect thereto or to exercise any rights or remedies in respect thereof, the Collateral Trust Indenture Trustee will be obligated to give immediate notice of such fact to the holders of the Secured Facility Debt. The Collateral Trust Indenture under which the Secured Facility Debt will be issued will authorize the Secured Facility Debtholders to direct by notice to the Collateral Trust Indenture Trustee within a specific period of time that it take any action or cast any vote in its capacity as the holder of the Lessor Notes. As a result of this

pass-through voting mechanism, the rights and remedies of the holders of the Lessor Notes will be exercisable directly by the Secured Facility Debtholders through their fiduciary, the Collateral Trust Indenture Trustee. The principal amount of the Lessor Notes directing any action or being voted for or against any proposal will be the principal amount of the Secured Facility Debt taking the corresponding position. To the extent that the Collateral Trust Indenture Trustee has not received any such instructions it would be required to take such action with respect to the Lessor Notes as a prudent man would take in respect of his own property.

Thus, if PNM were to default in the payment of rent (or were otherwise in default under any Lease), the Trustee under the related Lease Indenture would have the right, and, upon the direction of a majority in principal amount of the Lessor Notes relating to such Lease (which by virtue of the pass-through voting mechanism, would be a majority of the principal amount of the Secured Facility Debt), would be required to declare all of such Lessor Notes to be due and payable and to exercise the remedies available under such Lease Indenture. These remedies include the right (1) to terminate the related Lease, demand the redelivery of the Leased Property thereunder and exercise rights in respect of such Property and (2) to demand after a specified grace period that PNM pay all unpaid basic rent plus a stipulated amount which, in all cases, will be sufficient to pay the principal of and premium, if any, and interest on all such Lessor Notes. To the extent that the Collateral Trust Indenture Trustee has not received any such instructions in the event of a default in payment under any Lease, it would be required to cause such action to be taken by the Lease Indenture Trustee with respect to such Lease and Leased Property thereunder as a prudent man would take in respect of his own property. The amounts payable by PNM under the Leases, at least to the extent of the amount of the principal of and interest and premium, if any, on the related Lessor Notes, will be required to be paid directly to the Collateral Trust Indenture Trustee for distribution to the Secured Facility Debtholders.

The Secured Facility Debtholders would therefore have access under the Collateral Trust Indenture and the Lease Indentures to the credit of PNM. In addition, by exercising such rights, Secured Facility Debtholders would be entitled to realize on the security afforded by the Leased Property up to the aggregate unpaid amount of the relevant Lessor Notes secured by the such Leased Property, free of any rights of PNM or any creditor thereof. This results from the fact that PNM will have transferred legal ownership of an undivided interest in the applicable PVNGS Unit to the Lessor free from the lien of the mortgage indenture securing PNM's first mortgage bonds.

Based on the foregoing and the other information included in this Application, the Applicant believes that the combination of

the Lessor Notes and the Leases ultimately constitutes an obligation of PNM with respect to the debt service on the Secured Facility Debt and serves as a functional equivalent of a guaranty by PNM. In light of the nature of PNM's obligations in this financing and the remedies available to the Secured Facility Debtholders, it is appropriate to view the Secured Facility Debt as essentially the debt of PNM for purposes of the Act.

II. ORDER REQUESTED

The Applicant may be deemed to be an "investment company" as defined in either Section 3(a)(1) or 3(a)(3) of the Act (i) by reason of its proposed acquisition of the Lessor Notes, which will constitute substantially all of its assets and (ii) because the Secured Facility Debt which it intends to offer may be held by more than 100 persons.

The Applicant respectfully requests that the Commission consider this Application and issue an Order pursuant to Section 6(c) of the Act unconditionally exempting it from each and every provision of the Act.

III. REASONS FOR GRANTING THE ORDER REQUESTED

Subsection 6(c) of the Act provides that the Commission upon application may by order conditionally or unconditionally exempt any person from the provisions of the Act if the exemption would be (i) either necessary or appropriate in the public interest; (ii) consistent with the protection of investors; and (iii) consistent with the purposes fairly intended by the policy and provisions of the Act. On the basis of the facts stated in this Application and the reasons set forth below, Applicant believes that the exemption requested in this Application would fulfill each of these three conditions.

Because the Applicant will not be engaged in the business of issuing "redeemable securities", "face-amount certificates of the installment type" or "periodic payment plan certificates" (as such terms are defined in the Act) and will be primarily engaged in purchasing the Lessor Notes which will represent a portion of the sales price of the property leased to the Lessee under the Leases, pursuant to the provisions of Section 3(c)(5) of the Act the Applicant would appear to be excluded from the definition of investment company. The activities of the Applicant are essentially those of a special purpose finance company which will advance funds to, or acquire notes of, the purchasers of property constituting merchandise, or which will purchase or otherwise acquire mortgages and other liens on and interests in real property, which merchandise and real property are

to be leased to the Lessee by such purchasers. The Lessor Notes will represent loans to the Lessors, as purchasers, incurred to finance a portion of the purchase price of such property. Notwithstanding the exemption provided by Section 3(c)(5) of the Act, because of the complexity of the structure of the proposed issuance of the Applicant's Secured Facility Debt and in order to eliminate any uncertainty as to the status of the Applicant as an investment company under the Act, it seeks an exemption from all of the provisions of the Act pursuant to Section 6(c) thereof.

The Applicant believes that the response of the Commission to this Application should be governed by the position taken by the Commission (i) on February 5, 1985 (Investment Company Act Release No. 14322) in granting the Order requested in the E.I.P. Funding Corp. Application pursuant to Section 6(c) of the Act and (ii) on July 23, 1985 (Investment Company Act Release No. 14646) in granting the Order requested in the SBD Lease Funding Corp. Application pursuant to Section 6(c) of the Act. Reference is also made to the position taken by the Commission on December 18, 1984 (Investment Company Act Release No. 14250) in granting the Order requested by C-U Funding Corporation in its Application for an Order pursuant to Section 6(c) of the Act.

A. Order is Necessary or Appropriate in the Public Interest and Consistent with the Purposes Fairly Intended by the Policy and Provisions of the Act

The business in which the Applicant proposes to engage is not of the type intended to be regulated by the Act. The activities of the Applicant are similar to those of certain finance subsidiaries which the Commission has (pursuant to Release No. 1C-14275, dated December 14, 1984, adopting new Rule 3a-5 under the Act) exempted from the Act. Although the Applicant is not a subsidiary of, or in any way affiliated with, PNM or any of its subsidiaries and the Applicant's Secured Facility Debt will not be guaranteed by PNM or any of its subsidiaries, as a special purpose corporation engaged only in the business of the issuance of the Secured Facility Debt, the Applicant and its activity come within the general policies expressed in Rule 3a-5. PNM is obligated to make payments under the respective "come hell or high water" Leases. Although these Lease obligations are technically not a guarantee of the Secured Facility Debt, the flow-through of such obligations under the related Lessor Notes and ultimately the Secured Facility Debt makes such Lease obligations the functional equivalent of a guaranty by PNM. The Leases, pursuant to which rental payments by PNM will be applied to payment of the Lessor Notes and ultimately to payment of the Applicant's Secured Facility Debt, provide the mechanism by means of which holders of the Applicant's Secured Facility Debt will look to PNM for their assurance of repayment.

The grant to the Applicant of an exemption from all of the provisions of the Act is appropriate in the public interest. Leveraged leases are a widely accepted form of financing designed to provide business, financial and other benefits to the lessees, lessors and lenders involved. Such transactions provide companies such as PNM with a financially favorable method of acquiring the use of capital assets necessary to conduct their businesses. Heretofore, parties to leveraged lease financings have faced a limited source of debt financing for the purchase of leased property, particularly when the term of the debt is in excess of 20 years. Such financing has been obtainable almost exclusively from the institutional private placement market. As a consequence, lessees, whose rental payments must be sufficient to service the debt incurred by their lessors in connection with such financings, have been generally confined to structuring their financing transactions on the basis of the terms offered by the institutional private placement market. The proposed issuance of the Applicant's Secured Facility Debt would provide a convenient mechanism for PNM to obtain the benefits of access to public as well as other segments of the debt capital markets.

B. Order is Consistent with the Protection of Investors

The grant to the Applicant of an exemption from all of the provisions of the Act would also be consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. The Applicant's operations do not lend themselves to the abuses against which the Act was directed--excessive management and brokerage fees, insider loans at highly favorable terms, investments in companies in which the managers of the investment company have a personal interest, pyramiding of control, issuances of new securities, reorganizations and excessive borrowings in derogation of the rights of holders of existing securities, and operation without adequate assets or reserves. Because all of the securities issued by the Applicant, other than its outstanding Common Stock, will be pari passu secured debt securities, none of the inherent conflicts between holders of different classes of securities will exist. The debt securities will not be redeemable at the option of the holder at a price based on the net asset value of the Applicant. Valuation questions and similar problems raised by such redeemable securities will not be present in respect of the Applicant's Secured Facility Debt.

Similarly, the Applicant will not purchase or hold securities of other investment companies so there will be no pyramiding of control of investment companies or other inequitable methods of control. The financial statements of the Applicant will be reported on by independent auditors. In the case of the Applicant's Secured Facility Debt which will be publicly offered in the United States, disclosure with respect to the Applicant, the terms of such securities, the security therefor and the underlying arrangements with the Lessors and with PNM pursuant to the Leases will be made in

a prospectus forming part of a registration statement that will have been declared effective under the Securities Act.

By virtue of the Collateral Trust Indenture, the Lease Indentures, the Lessor Notes and the Leases, the purchasers of the Applicant's Secured Facility Debt will have access to the credit of PNM. As the assignee of the rights of the Lessors under the Leases as security for the payment of the Lessor Notes, the Trustees under the Lease Indentures will be entitled to exercise, on behalf and for the benefit of all holders of the Applicant's Secured Facility Debt, all of the rights and remedies against PNM provided in the Leases. The exercise of such rights and remedies will be at the direction of holders of the Secured Facility Debt through the Collateral Trust Indenture Trustee's instructions to the Lease Indenture Trustees. Purchasers of the Applicant's Secured Facility Debt will enjoy essentially the same assurances that the principal of and premium, if any, and interest on these obligations will be paid when due as purchasers of similar obligations issued directly by PNM would have. Because investors will be well protected under the proposed arrangements which are independent of the applicability of the Act, the protection of investors does not require subjecting the Applicant to the Act and, accordingly, it is appropriate for the Applicant to be exempted from the Act.

CONCLUSION

The Applicant's proposed activities are necessary or appropriate in the public interest and are consistent with the protection of investors and the purposes of the Act. Denial of this Application would advance no interests sought to be achieved by the Act.

WHEREFORE, the Applicant requests that the Commission enter an order pursuant to Section 6(c) of the Act exempting the Applicant from all of the provisions of the Act.

AUTHORIZATION REQUIRED BY RULE 0-2 UNDER THE ACT

Section 141(a) of the General Corporation Law of the State of Delaware provides in pertinent part that:

The business and affairs of every Corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may otherwise be provided in this chapter or in its certificate of incorporation.

Section 1 of Article III of the By-Laws of the Applicant provides in pertinent part that:

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

The Board of Directors of the Corporation duly adopted on September 19, 1985 the following resolution authorizing the filing of this Application:

RESOLVED, that the President, any Vice President or the Secretary of the Corporation be, and they each hereby are, authorized to prepare, execute, and file with the United States Securities and Exchange Commission (SEC) on behalf of the Corporation an Application for an Order under Section 6(c) of the Investment Company Act of 1940, as amended (the Act) exempting the Corporation from the provisions of the Act, and in connection therewith, to appear before the SEC and to prepare, execute and file with the SEC, all other documents or instruments necessary or desirable, and to take any further steps which may be necessary or desirable, all in furtherance of said Application.

* * *

The Applicant therefore respectfully submits that all the requirements in Rule 0-2 of the General Rules and Regulations of the Commission under the Act have been complied with and that Timothy Michael Toy, Secretary of the Applicant, who signed and filed this Application, is duly authorized to do so.

Pursuant to Rule 0-2(g) of the General Rules and Regulations of the Commission under the Act, the Applicant attaches hereto as Exhibit B a proposed Notice of Application For an Order Pursuant to Section 6(c) of the Act Exempting Applicant From All Provisions of the Act.

IV. COMMUNICATIONS

Please direct any questions and send all communications relating to this Application to the following:

Timothy Michael Toy, Esq.
Mudge Rose Guthrie
Alexander & Ferdon
180 Maiden Lane
New York, New York 10038
(212) 510-7750

Dated: September 20, 1985

FIRST PV FUNDING CORPORATION

By


Timothy Michael Toy
Secretary

STATE OF NEW YORK)
) .SS:
COUNTY OF NEW YORK)

The undersigned, being duly sworn deposes and says that he has duly executed the attached Application dated September 20, 1985 for and on behalf of FIRST PV FUNDING CORPORATION, that he is Secretary of such company; and that all actions by stockholders, directors and other bodies necessary to authorize deponent to execute and file such instrument has been taken. Deponent further states that he is familiar with such instrument, and the contents thereof, and that the facts set forth therein are true to the best of his knowledge, information and belief.

Timothy Michael Toy
Timothy Michael Toy

Subscribed and sworn to before me a notary public this 20th day of September, 1985.

[Notary Seal]

Anna Marie Napoli

ANNA MARIE NAPOLI
Notary Public, State of New York
No. 24-4759288
Qualified in Kings County
Certificate filed in New York County *fc*
Commission expires March 30, 19__

CERTIFICATE OF INCORPORATION

of

First PV Funding Corporation

FIRST: The name of the corporation (hereinafter referred to as the Corporation) is

First PV Funding Corporation

SECOND: The registered office of the Corporation is to be located at Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, State of Delaware. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation are:

(1) To lend funds on a non-recourse basis to each Owner Trust or corporation acting as lessor on one or more leveraged lease transactions in which Public Service Company of New Mexico, a New Mexico Corporation (PNM), acts as lessee and which relates to any portion of PNM's 10.2% undivided ownership interest in the three 1,270 megawatt electric generating units, each containing a pressurized water reactor nuclear steam supply system, and certain facilities the use of which is common to all such units, such units and facilities being known variously as Palo Verde Nuclear Generating Station and Arizona Nuclear Power Project, under construction at a site located approximately 55 miles west of downtown Phoenix, Arizona, and to acquire, own, hold, sell, transfer, assign, pledge, finance, exercise any and all rights with respect to and otherwise deal with such loans, including exercising all rights and remedies upon the occurrence of a default with respect to any thereof, such rights and remedies to include the foreclosure upon or other acquisition of the collateral securing such loans;

(2) To authorize, issue, sell and deliver notes, bonds or other evidences of indebtedness (or warrants, options or other rights to purchase any such bonds, notes or other evidences of indebtedness) other than "redeemable securities" (as that term is defined in the Investment Company Act of 1940, as amended) in order to provide funds

for the purpose described in clause (1) of this Article THIRD; and

(3) To engage in any activity permitted to corporations under the laws of the State of Delaware, but only to the extent that such activities are incident to any of the foregoing or are necessary or convenient to accomplish any of the foregoing.

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is one thousand (1,000), all of which are to be of \$1 par value per share and of one class, which class is hereby designated as Common Stock.

FIFTH: The name and mailing address of the sole incorporator is Timothy Michael Toy, 180 Maiden Lane (35th Floor), New York, New York 10038.

SIXTH: Notwithstanding any other provision of this Certificate and any provision of law that may otherwise so empower the Corporation, the Corporation shall not, without the prior written consent of each trustee from time to time under any indenture pursuant to which the Corporation shall issue and have outstanding notes, bonds or other evidences of indebtedness (which consent must be given in accordance with the terms of the applicable indenture), do any of the following:

(1) Dissolve or liquidate, in whole or in part;

(2) Merge or consolidate with, or sell all or any part of its assets to, any person, firm, corporation, partnership or other entity unless, in the case of a merger or consolidation, the surviving corporation in such merger or the corporation resulting from such consolidation shall have a certificate of incorporation containing provisions identical to the provisions of Article THIRD and this Article SIXTH and, in the case of a sale of assets, the acquiring corporation shall have assumed all of the liabilities and obligations of the Corporation and shall have a certificate of incorporation containing provisions identical to the provisions of Article THIRD and this Article SIXTH, provided that nothing herein contained shall prevent or restrict in any manner the Corporation from assigning or pledging its assets to secure its outstanding indebtedness;

(3) Declare or pay any dividend on any of the Corporation's stock; or

(4) Amend this Certificate to alter in any manner or to delete Article THIRD or this Article SIXTH.

SEVENTH: Subject to the limitation provided in Article SIXTH of this Certificate, the Corporation reserves the right to amend the provisions contained in this Certificate and in any certificate amendatory hereof in the manner now or hereafter prescribed by law, and all rights conferred on stockholders or others hereunder or thereunder are granted subject to such reservation.

IN WITNESS WHEREOF, the undersigned, the incorporator hereinbefore named, does hereby certify that the facts herein stated are true, and has accordingly hereunto set his name the 19th day of September, 1985.

/s/ Timothy Michael Toy

Timothy Michael Toy

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. _____ / _____, 1985

- - - - - x
In the Matter of :
FIRST PV FUNDING CORPORATION :
1209 Orange Street :
Wilmington, Delaware 19801 :
(File No. 812-_____) :
- - - - - x

NOTICE OF APPLICATION FOR AN ORDER PURSUANT TO
SECTION 6(c) OF THE ACT FOR EXEMPTION FROM ALL
PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that First PV Funding Corporation (Applicant), a Delaware corporation, filed an application on September 20, 1985, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 (Act), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the text of its relevant provisions.

Applicant expects to have all of its shares of common stock owned by The Corporation Trust Company (CT) or a company controlled by it. Applicant has been created for the sole purpose of participating as lender in one or more leveraged lease transactions (the Leases) in which Public Service Company of New Mexico, a New Mexico corporation (PNM), is the lessee (the Lessee).

Applicant states that its participation as lender in the Leases will be limited to making loans, pursuant to a Trust Indenture and Security Agreement (Lease Indenture) to the lessors under such Leases which will be payable primarily from rentals and other payments by the Lessee pursuant to such Leases. Applicant expects that such lessors (Lessors) will be grantor trusts formed exclusively for the purpose of the lease financing. Applicant states that a portion of the purchase price of the property owned by the Lessors and leased

to the Lessee will be paid by the beneficiary of the grantor trust that acts as Lessor as such beneficiary's equity investment in the leased property. The loans by Applicant will be without recourse to the general credit of the Lessors or their respective beneficiaries, and will be evidenced by non-recourse obligations of the respective Lessors (Lessor Notes). Applicant states that under each Lease, the Lessee will be obligated to make rental payments sufficient to pay principal of and premium, if any, and interest on the Lessor Notes issued in connection therewith. Applicant also expects that such rental payments will also provide an investment return to the beneficiaries of the Lessors. Applicant further states that such obligations of the Lessee will be required to be absolute and unconditional; without right of counterclaim, setoff, deduction or defense. Applicant expects to enter into a Commitment Agreement with PNM pursuant to which Applicant will agree to make loans to one or more Lessors designated by PNM from time to time.

Applicant intends to acquire the funds necessary for the purchase of the Lessor Notes through the issuance of its debt securities in one or more series (Secured Facility Debt) which will be secured on a parity basis by a first lien on and security interest in, all of the assets of Applicant, consisting primarily of the Lessor Notes. Applicant expects that the Lessor Notes will be issued under circumstances making such transactions exempt from registration under the Securities Act of 1933, as amended (Securities Act).

Applicant states that the Lease Indentures will set forth the terms and conditions under which the Lessor Notes will be issued. Applicant represents that each Lease Indenture will require the Lessor to grant Applicant a first lien on and security interest in the property which is the subject of the Lease (Leased Property), as well as the Lessor's rights under such Lease, including its rights to the basic rentals and other payments to be made by the Lessee thereunder. Applicant states that it will be precluded from purchasing any Lessor Note unless (i) such Lessor Note is secured by Leased Property having a fair market sales value at the time of purchase at least equal to 110% of the original principal amount of such Lessor Note or (ii) such Lessor Note and all other Lessor Notes (if any) issued by the relevant Lessor are secured by Leased Property having an aggregate fair market sales value (measured, in each case, as of the date such Leased Property was first financed under the Lease) at least equal to 110% of the original principal amount of such Lessor Note and such other Lessor Notes. Further, Applicant states that each Lease Indenture will include as events of default, without limitation, payment defaults on the Lessor Notes issued thereunder and events of defaults under the related Lease.

According to the application, the various series of Secured Facility Debt will have terms which may differ as to maturity dates, interest rates, sinking fund obligations of Applicant, the right of Applicant to redeem such Secured Facility Debt and other matters.

Applicant states that such Secured Facility Debt, which may include commercial paper and intermediate-term and long-term obligations, may be issued in the private or public markets in the United States, and in offerings outside the United States under circumstances reasonably designed to assure that such Secured Facility Debt is not offered or sold to citizens and/or residents of the United States.

Applicant states that the Secured Facility Debt will be issued under a common indenture and a separate supplemental indenture for each series (other than the initial series) (collectively the Collateral Trust Indenture) which will establish the terms of the Secured Facility Debt of that series. It is expected that the trustee under the Collateral Trust Indenture (Trustee) will be a bank or trust company not affiliated with any of the Lessors and will not be a trustee under any Indenture of PNM or its subsidiaries.

Applicant proposes that the initial issuance of Secured Facility Debt will be through an underwritten public offering of one or more series having an aggregate principal amount of approximately \$300 to \$320 million. Applicant represents that, although PNM will not be the actual issuer of the Secured Facility Debt, it will be considered the "issuer" thereof for purposes of the Securities Act and that any registration statement filed under the Securities Act relating to the Secured Facility Debt will name PNM as the sole registrant and will be signed on behalf of PNM as the sole registrant and by such officers and directors of PNM as may be required under the Securities Act and the rules, regulations and forms of the Commission thereunder.

Applicant represents that it will assign and pledge to the Trustee under the Collateral Trust Indenture, as security for the payment of the principal of and premium, if any, and interest on all Secured Facility Debt, the Lessor Notes and other assets held by the Applicant. Each such Lessor Note will in turn be secured by a security interest in the related Lease and Leased Property thereunder. Applicant represents that, as holder of the Lessor Notes, the Trustee will have the right to exercise any voting powers and to give consents and waivers in respect of such Lessor Notes and the respective Lease Indentures under which they are issued. The Trustee may also exercise the rights and remedies afforded a holder of such Lessor Notes under the respective Lease Indentures, including the right to exercise remedies under the Leases and with respect to the property which secures such Lessor Notes, provided such Leases are then in default.

The remedies included under the Lease Indenture are the right to (1) terminate the related Lease and demand the redelivery of the Leased Property thereunder, and (2) demand after a specified grace period that the Lessee pay all unpaid basic rent plus a stipulated amount which, in all cases, will be sufficient to pay the principal of and premium, if any, and interest on the related Lessor

Notes. Amounts payable by the Lessee under the Leases, at least to the extent of the amount of the principal, interest and premium, if any, on the relevant Lessor Notes, will be required to be paid directly to the Trustee for distribution to the Secured Facility Debtholders. Consequently, the application asserts, Secured Facility Debtholders have access under the Collateral Trust Indenture and the Lease Indentures to the credit of PNM. Moreover, Applicant asserts that Secured Facility Debtholders will be entitled to realize on the security afforded by the Leased Property subject to the Leases in an amount up to the aggregate unpaid amount of the related Lessor Notes secured by such Leased Property, free of any rights of PNM or any creditor thereof. The combination of the Lessor Notes and the obligation of PNM under the Leases, Applicant asserts, constitutes the functional equivalent of a guaranty by PNM of the Secured Facility Debt.

Applicant also proposes that the issue, sale and delivery of a particular series of Secured Facility Debt take place up to two months prior to the date for the consummation of the Leases ("Lease Closing Date") applicable to the property being financed with the proceeds thereof. Pending the Lease Closing Date, the net proceeds of the Secured Facility Debt will be held by the Trustee, pursuant to the terms of the Collateral Trust Indenture, which could invest proceeds in certain permitted investments, which include direct obligations of the United States or obligations fully guaranteed by the United States, and certificates of deposits issued by or bankers' acceptances of, or time deposits with, banks organized under United States law and limited to amounts less than \$15 million in principal at any one time for any one bank, and the highest rated commercial paper.

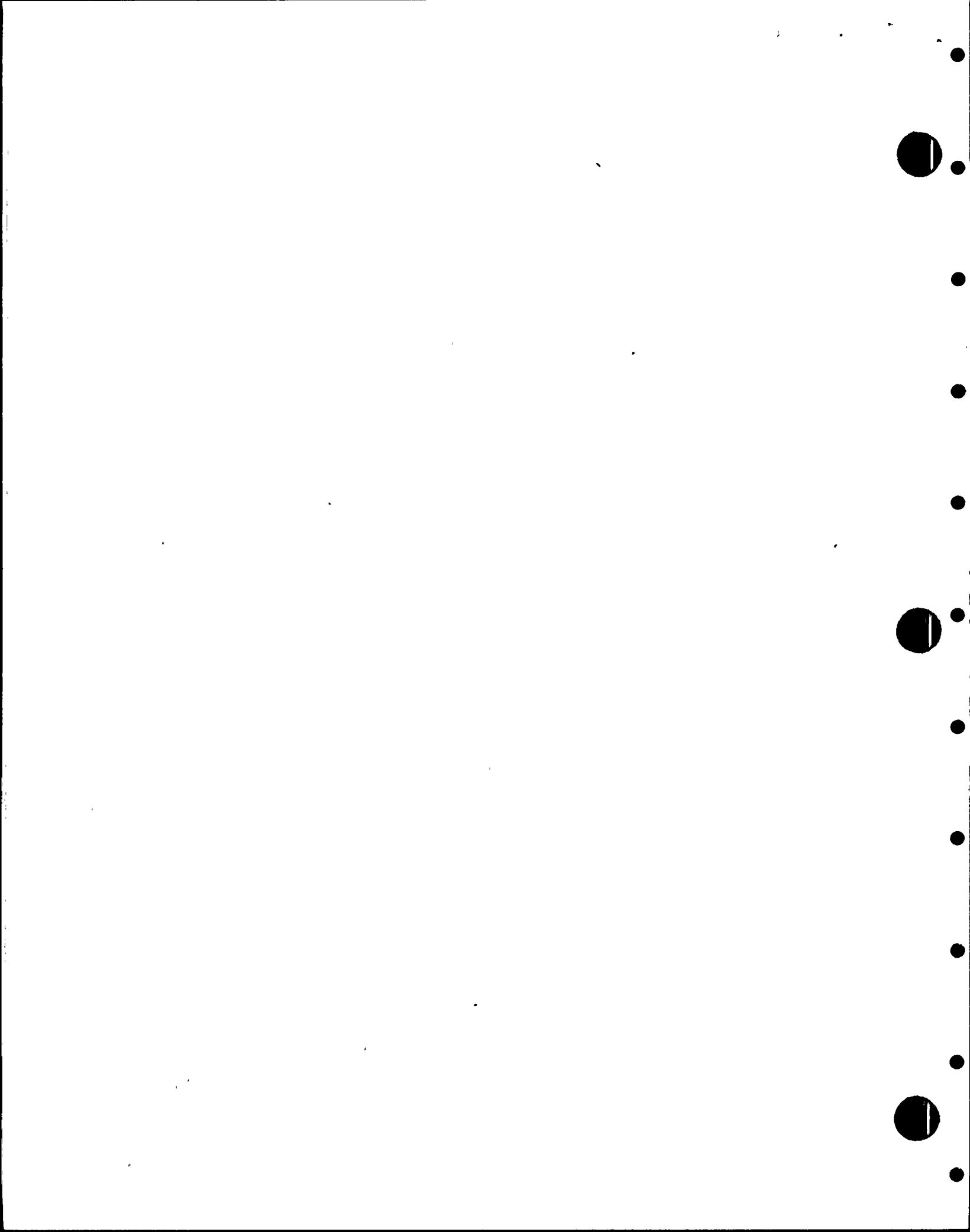
Applicant asserts that its proposed activities are appropriate in the public interest because the proposed issuance of Secured Facility Debt would provide a convenient mechanism for PNM to obtain the benefits of access to segments of the debt capital markets other than the institutional private placement market. Applicant further asserts that an exemption would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because, among other things, investors will be equally well protected under the proposed arrangements as under functionally equivalent arrangements that would not result in the applicability of the Act.

NOTICE IS FURTHER GIVEN that any interested person wishing to request a hearing on the application may, not later than _____, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service

(by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler
Secretary



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

-----X
In the matter of :
ARIZONA PUBLIC SERVICE :
COMPANY, et al, : DOCKET NO. STN 50-528
(Palo Verde Nuclear :
Generating Station, Unit 1) :
-----X

APPENDIX D

TO

MEMORANDUM IN SUPPORT OF THE APPLICATION
IN RESPECT OF A SALE AND LEASEBACK
FINANCING TRANSACTION BY
PUBLIC SERVICE COMPANY OF NEW MEXICO

ARIZONA NUCLEAR POWER PROJECT
PARTICIPATION AGREEMENT,
DATED AUGUST 23, 1973,
AS AMENDED BY AMENDMENTS 1 THROUGH 9 THERETO

REFORMED COPY

ARIZONA NUCLEAR POWER PROJECT

PARTICIPATION AGREEMENT

(Including Amendments 1-9)

(PROOFED AGAINST EXECUTED COPIES
9/17/85)

AMONG

ARIZONA PUBLIC SERVICE COMPANY

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

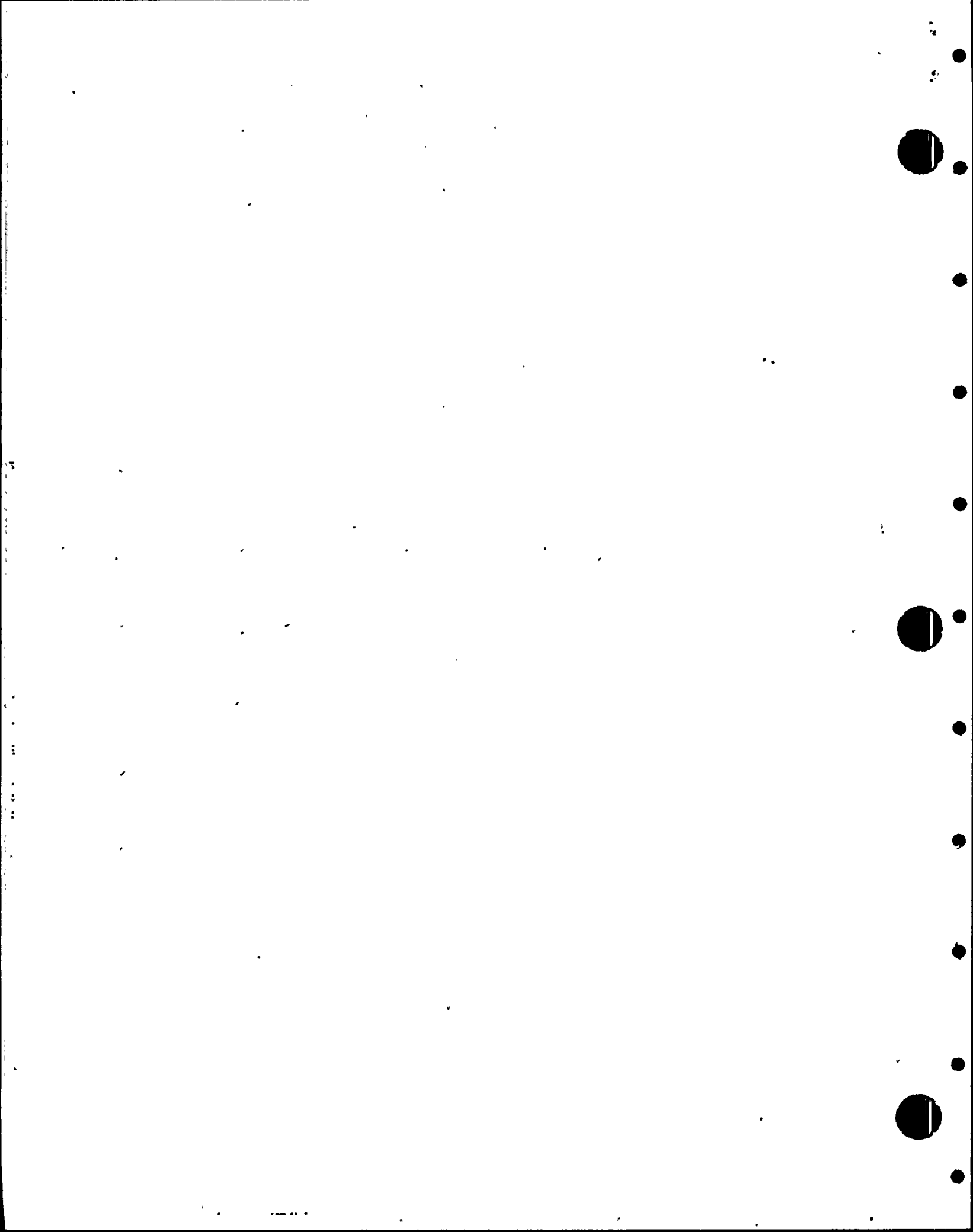
SOUTHERN CALIFORNIA EDISON COMPANY

PUBLIC SERVICE COMPANY OF NEW MEXICO

EL PASO ELECTRIC COMPANY

AND

SOUTHERN CALIFORNIA
PUBLIC POWER AUTHORITY



REFORMED COPY
ARIZONA NUCLEAR POWER PROJECT
PARTICIPATION AGREEMENT

TABLE OF CONTENTS

Section No.	Caption	Page
1.	PARTIES	1
2.	AGREEMENT	1
3.	DEFINITIONS	1
3.1	Accounting Practice	1
3.1A	Additional Uranium Concentrates	1
3.2	Administrative Committee	1
3.3	ANPP	1
3.4	ANPP High Voltage Switchyard(s)	1
3.5	Arizona Nuclear Power Project	1
3.6	Auditing Committee	2
3.7	Available Generating Capability	2
3.8	Base Load Period	2
3.9	Capacity	2
3.10	Capital Improvements	2
3.11	Construction Account	2
3.12	Construction Agreement	2
3.13	Construction Costs	2
3.14	Construction Funds	2
3.15	Construction Insurance	2
3.16	Construction Schedule	2
3.17	Construction Work	2
3.18	Date of Firm Operation	3
3.19	Emergency Spare Parts	3
3.20	Engineering and Operating Committee	3
3.21	Energy	3
3.21A	Estimated Monthly Requirements	3
3.22	Final Completion Report	3
3.23	FPC Accounts	3
3.24	Fuel Assembly	3
3.25	Fuel Expense	3
3.26	Fuel Financier	3
3.27	General Service Requirements	3
3.28	Generation Entitlement Share	3
3.29	Generating Unit	4
3.30	Materials and Supplies	4
3.31	Maximum Generating Capability	4
3.32	Minimum Generating Capability	4
3.33	Net Energy Generation	4
3.34	Nuclear Fuel	4
3.35	Nuclear Fuel Agreement	4
3.36	Nuclear Plant Site	4
3.37	Operating Account	4

<u>Section No.</u>	<u>Caption</u>	<u>Page</u>
3.38	Operating Agent.....	4
3.39	Operating Emergency.....	5
3.40	Operating Funds	5
3.41	Operating Insurance.....	5
3.42	Operating Work	5
3.43	Participant.....	5
3.44	Payroll Taxes.....	5
3.45	Power	5
3.46	Project Agreements	5
3.47	Project Director	5
3.48	Project Insurance	5
3.49	Project Manager.....	5
3.50	Protective Action Plan	5
3.51	Reactor	5
3.52	Scheduled Date of Firm Operation	5
3.52A	Short Term Requirements	5
3.53	Start-Up Period	5
3.54	Target Capacity	6
3.54A	Testing and Start-Up Power and Energy	6
3.54B	Transmission Agreements	6
3.55	Units of Property.....	6
3.55A	Uranium Concentrates	6
3.56	Willful Action	6
3.57	Work Liability	7
3.58	Zero Net Load	7
4.	OWNERSHIP OF AND TITLE TO ARIZONA NUCLEAR POWER PROJECT.....	7
5.	POWER AND ENERGY ENTITLEMENTS AND REQUIREMENTS.....	7
6.	ADMINISTRATION	8
7.	PROJECT MANAGER	13
8.	OPERATING AGENT	18
9.	INTERCONNECTIONS AND TRANSMISSION LINES	22
10.	CONSTRUCTION COSTS.....	22
11.	OPERATION AND MAINTENANCE COSTS.....	22
12.	ADVANCEMENT OF FUNDS.....	23
13.	TAXES	25
14.	NONPARTITIONMENT	25
15.	MORTGAGE AND TRANSFER OF INTEREST.....	25
16.	DESTRUCTION	26
17.	SEVERANCE OF IMPROVEMENTS	27
18.	CAPITAL IMPROVEMENTS	27
19.	PROJECT INSURANCE	28
20.	GENERAL PROVISIONS AFFECTING PROJECT INSURANCE	30
21.	LIABILITY	32
22.	AUTHORIZATIONS AND APPROVALS	33

<u>Section No.</u>	<u>Caption</u>	<u>Page</u>
23	DEFAULTS AND COVENANTS REGARDING OTHER AGREEMENTS	34
24	ARBITRATION	36
25	ACTIONS PENDING RESOLUTION OF DISPUTES	37
26	REMOVAL OF PROJECT MANAGER OR OPERATING AGENT	37
27	RELATIONSHIP OF PARTICIPANTS	38
28	FEES	39
29	ENVIRONMENTAL PROTECTION	39
30	UNCONTROLLABLE FORCES	39
31	GOVERNING LAW	40
32	BINDING OBLIGATIONS	40
33	NONDEDICATION OF FACILITIES	40
34	GENERAL PROVISIONS GOVERNING PROJECT AGREEMENTS	40
35	TERMS AND TERMINATION	41
36	ASSIGNMENT OF INTERESTS	42
37	EQUAL OPPORTUNITY	42
38	NOTICES	44
39	EXECUTION	45

APPENDICES

<u>Appendix Letter</u>	<u>Caption</u>	<u>Page</u>
A	DESCRIPTION OF ARIZONA NUCLEAR POWER PROJECT	A-1
B	DESCRIPTION OF THE NUCLEAR PLANT SITE	B-1
C	CONSTRUCTION SCHEDULE	C-1
D	CONSTRUCTION COSTS OF ARIZONA NUCLEAR POWER PROJECT	D-1
E	COSTS OF OPERATING WORK AND CAPITAL IMPROVEMENTS	E-1
F	INVESTMENTS IN AND ACCOUNTING FOR NUCLEAR FUEL	F-1
G	PRE-OPERATIONAL OPERATING WORK	G-1
H	OPERATING EMERGENCY	H-1
I	PRINCIPLES FOR OWNERSHIP, CONSTRUCTION AND OPERATION OF THE ANPP HIGH VOLTAGE SWITCHYARD(S)	I-1
J	PRINCIPLES OF INTERCONNECTED OPERATION FOR FOUR CORNERS INTERCONNECTION AGREEMENT	J-1
K	URANIUM CONCENTRATES ACQUISITION PROGRAM	K-1

ARIZONA NUCLEAR POWER PROJECT PARTICIPATION AGREEMENT

1 1. **PARTIES:**

2 The parties to this Participation Agreement are: ARIZONA PUBLIC SERVICE COMPANY, a
3 corporation organized and existing under and by virtue of the laws of the State of Arizona,
8 hereinafter referred to as "Arizona", SALT RIVER PROJECT AGRICULTURAL IMPROVE-
MENT AND POWER DISTRICT, an agricultural improvement district organized and existing
under and by virtue of the laws of the State of Arizona, hereinafter referred to as "Salt River
Project", SOUTHERN CALIFORNIA EDISON COMPANY, a corporation organized and existing
under and by virtue of the laws of the State of California, hereinafter referred to as "Edison",
PUBLIC SERVICE COMPANY OF NEW MEXICO, a corporation organized and existing under
and by virtue of the laws of the State of New Mexico, hereinafter referred to as "PNM", EL PASO
ELECTRIC COMPANY, a corporation organized and existing under and by virtue of the laws of
the State of Texas, hereinafter referred to as "El Paso", and SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY, a joint powers agency organized and existing under and by virtue of the
laws of the State of California, doing business in the State of Arizona as SOUTHERN CALIFOR-
NIA PUBLIC POWER AUTHORITY ASSOCIATION, hereinafter referred to as "SCPPA", and
their respective assignees who shall have assumed all or part of the obligations of a Participant
hereunder in accordance with the terms hereof.

2. **AGREEMENT:**

In consideration of the mutual covenants herein, the Parties agree as follows:

3. **DEFINITIONS:**

The following terms, when used herein and in the Appendices attached hereto, shall have the meanings specified:

3.1 **Accounting Practice:** Generally accepted accounting principles in accordance with the FPC Accounts.

6 3.1A **Additional Uranium Concentrates:** The quantity of Uranium Concentrates required in any year for the operation of all Generating Units at their respective Target Capacities (except during scheduled outages) less the sum of (i) the quantities of Uranium Concentrates committed under the Agreement, dated March 14, 1979, between The Anaconda Company and Arizona Public Service Company acting for itself as a Participant and as agent for all other Participants, as it may be amended pursuant to the letter, dated July 30, 1981, from H. L. Storey to Russell D. Hulse, and all other contracts executed by the Operating Agent on behalf of all Participants pursuant to Section K.2.2.2 of Appendix K hereof and (ii) the quantities of Uranium Concentrates furnished by the Palo Verde Uranium Venture, established by the Palo Verde Uranium Venture Agreement, dated as of January 7, 1977, as amended.

3.2 **Administrative Committee:** The committee established pursuant to Section 6.1.1 hereof.

1 3.3 **ANPP:** The Arizona Nuclear Power Project, which shall, after January 1, 1974, be known and referred to as the Palo Verde Nuclear Generating Station (the "Palo Verde Station").

3.4 **ANPP High Voltage Switchyard(s):** The facilities, described generally in Section 9 hereof and Appendix I attached hereto.

3.5 **Arizona Nuclear Power Project:** One or more nuclear steam electric Generating Units, together with all facilities, structures and Nuclear Fuel used or to be used therewith or related thereto, including the Nuclear Plant Site, all facilities and rights-

- of-way for the collection, transportation, treatment, storage and disposal of water required for Construction Work, Operating Work and Capital Improvements and for rail access wherever such facilities and rights-of-way are located, but excluding the ANPP High Voltage Switchyard(s), and all transmission facilities connected thereto, all as described generally in Appendix A attached hereto which may be revised from time to time by the Administrative Committee pursuant to Section 6.2.9 hereof.
- 3.6 **Auditing Committee:** The Committee established pursuant to Section 6.1.3 hereof.
 - 3.7 **Available Generating Capability:** The Maximum Generating Capability of each Generating Unit as of any time less that amount of Power equal to the product of (i) the Power then used for the General Service Requirements and (ii) the ratio of the then Maximum Generating Capability of such Generating Unit to the sum of the then Maximum Generating Capabilities of all Generating Units.
 - 3.8 **Base Load Period:** Any period of time during which any Generating Unit is scheduled, pursuant to Section 6.3.2.12 hereof, to be operated to achieve and maintain its then Maximum Generating Capability.
 - 3.9 **Capacity:** The rate at which electrical Energy can be generated expressed in megawatts (MWe).
 - 3.10 **Capital Improvements:** Any Units of Property, land or land rights which are added to ANPP, the betterment of land or land rights or the enlargement or betterment of any Units of Property constituting a part of ANPP, and the replacement of any Units of Property for other Units of Property or the replacement of land or land rights constituting a part of ANPP, irrespective of whether such replacement constitutes an enlargement or betterment of that which it replaces, which additions, betterments, enlargements and replacements in accordance with Accounting Practice would be capitalized and are not included or reflected in the Final Completion Report.
 - 3.11 **Construction Account:** Any bank account or accounts selected and established by the Project Manager to receive and disburse construction funds pursuant to Section 12.4 hereof.
 - 3.12 **Construction Agreement:** Any agreement entered into by the Project Manager for the design, engineering, construction or installation of any component or system for ANPP, including without limitation the nuclear steam supply system and the initial Nuclear Fuel Agreement for Fuel Assemblies to be fabricated for use in a Reactor, containment, turbine-generator, radioactive waste treatment system, architectural, engineering, design, construction, supervisory, licensing or consulting services in connection with the Construction Work, siting studies, pre-operational environmental studies or reports, and for any other services or things necessary or useful in the performance of the Construction Work.
 - 3.13 **Construction Costs:** The costs of constructing ANPP as described in Section 10 hereof.
 - 3.14 **Construction Funds:** Monies advanced to the Project Manager for Construction Work by or on behalf of the Participants in accordance with this Participation Agreement.
 - 3.15 **Construction Insurance:** Policies of insurance to be procured and maintained or caused to be procured and maintained by the Project Manager in accordance with Sections 19 and 20 hereof.
 - 3.16 **Construction Schedule:** The schedule of Construction Work to be prepared and from time to time revised by the Project Manager as set forth in Appendix C attached hereto.
 - 3.17 **Construction Work:** All engineering, design, contract preparation, purchasing, construction, supervision, negotiation, preparation and performance of Construction Agreements, acquisition of land and water rights, expediting, inspection, accounting,

testing and start-up for each Generating Unit and preparation of operating and equipment manuals, quality assurance manuals, Protective Action Plans, all reports required by regulatory authorities and the conduct of hearings, conferences and other activities incidental to obtaining requisite permits, licenses and certificates for the construction and operation of each Generating Unit prior to the Date of Firm Operation of such Generating Unit.

3.18 **Date of Firm Operation:** The date with respect to each Generating Unit on which the Engineering and Operating Committee determines it to be reliable as a source of Power and on which such Generating Unit can reasonably be expected to operate steadily at any load up to its Target Capacity.

3.19 **Emergency Spare Parts:** Spare parts or equipment, the cost of which is capitalized, which are stocked for ANPP.

3.20 **Engineering and Operating Committee:** The committee established pursuant to Section 6.1.2 hereof.

3.21 **Energy:** Kilowatt-hours (kwh).

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3.21A **Estimated Monthly Requirements:** The estimated monthly quantities of Uranium Concentrates required to be delivered to a conversion facility in any year in accordance with the operating schedules for all Generating Units and fuel management plant(s) in effect at the time that the estimate is made, including the schedule, by months, for delivery of such Uranium Concentrates to a conversion facility.

3.22 **Final Completion Report:** A complete summary of Construction Costs, a description of ANPP and a summary of each Participant's contributions to Construction Costs.

3.23 **FPC Accounts:** The Federal Power Commission's "Uniform System of Accounts Prescribed for Public Utilities and Licensees (Class A and Class B)," in effect as of the date of this Participation Agreement, and as such system of accounts may be in effect from time to time. References in this Participation Agreement to any specific FPC Account number shall mean the FPC Account number in effect as of the effective date of this Participation Agreement or any successor FPC Account.

3.24 **Fuel Assembly:** An integral unit of fabricated Nuclear Fuel prepared for insertion into a Reactor, including all hardware incorporated in such integral unit.

3.25 **Fuel Expense:** The net costs of the character directly or indirectly includable in FPC Account 518, but excluding from such costs any interest during construction as well as any other interest, rental, carrying or use charges, costs of fuels, other than Nuclear Fuel, used for ancillary steam facilities including superheat, and, except as provided in Section 13.3 hereof, any *ad valorem* taxes or payments in lieu thereof.

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3.26 **Fuel Financer:** Each ^dand every person, corporation, partnership, joint venture, bank, trust company or other entity of any nature who under a Nuclear Fuel financing arrangement with any Participant shall either pay or assume the obligation to pay on behalf of such Participant its share of any Nuclear Fuel Expenditure or Project Uranium Costs or shall reimburse such Participant for all or any portion of any such expenditures or who shall take and hold legal title to or any beneficial interest in, as trustee or otherwise, such Participant's undivided ownership in any Nuclear Fuel.

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3.27 **General Service Requirements:** The Power and Energy, including without limitation Testing and ~~Start-Up~~ ^{Startup} Power and Energy, required during any period and supplied from one or more Generating Units for testing, start~~up~~^{up}, or operation of all process and auxiliary equipment and systems used or useful in connection with the operation and maintenance of all Generating Units.

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3.28 **Generation Entitlement Share:** The percentage entitlement of each Participant to the Net Energy Generation and to the Available Generating Capability. Each Participant

part's percentage entitlement is as follows:

3.28.1	Arizona	= 29.1 percent
3.28.2	Salt River Project	= 23.19 percent
3.28.3	Edison	= 15.8 percent
3.28.4	PNM	= 10.2 percent
3.28.5	El Paso	= 15.8 percent
3.28.6	SCPPA	= 5.91 percent

- 3.29 **Generating Unit:** A complete system of ANPP for generating electricity, including without limitation the nuclear steam supply system and its containment, resident Fuel Assemblies, the turbine-generator, all auxiliary structures, system facilities and equipment necessary for or useful in the operation of the unit and any structures, systems, facilities and equipment shared with any other Generating Unit at the Nuclear Plant Site, such as the radioactive waste treatment systems, fire protection systems, water supply and treatment systems, all as more specifically described in Appendix A attached hereto and as revised from time to time.
- 3.30 **Materials and Supplies:** Materials and supplies which are stocked for ANPP, as defined in FPC Account 154.
- 3.31 **Maximum Generating Capability:** The maximum capability of any Generating Unit to produce Power, measured at the high side of its main generator step-up transformer, for sustained periods under conditions existing from time to time, including without limitation restrictions imposed by any law, regulation, license or permit, derating due to fuel conditions, water and atmospheric conditions or any other conditions other than an Operating Emergency.
- 3.32 **Minimum Generating Capability:** The lowest Power level at which each Generating Unit can be reliably maintained in service on a continuous basis.
- 3.33 **Net Energy Generation:** The Energy generated over any period of time by each Generating Unit measured at the high side of its main generator step-up transformer less the Energy generated by said Generating Unit and allocated for General Service Requirements pursuant to Sections 6.3.2.5 and 8.3.25 hereof.
- 3.34 **Nuclear Fuel:** Any source, special nuclear or by-product material as defined in the Atomic Energy Act of 1954, as amended as of the date of this Agreement, including any ores, mined or unmined, or concentrates from which any such material can be obtained, and any Fuel Assemblies.
- 3.35 **Nuclear Fuel Agreement:** Any agreement entered into by the Project Manager or the Operating Agent relating to the purchase, sale, lease, transfer, disposition, storage, transportation, mining, conversion, milling, enrichment, processing, fabrication and reprocessing of any Nuclear Fuel for use in, used in or removed from a Reactor.
- 3.36 **Nuclear Plant Site:** The land to be acquired for the construction, operation and maintenance of ANPP, including all exclusionary areas and any lands held for future use, the boundaries of which shall be established initially and revised from time to time as circumstances warrant by the Administrative Committee. When the boundaries are so established or revised, a plat of the Nuclear Plant Site, as it may from time to time be constituted, shall be prepared and incorporated in this Agreement as Appendix B pursuant to Section 6.2.8 hereof.
- 3.37 **Operating Account:** Any bank account or accounts selected and established by the Operating Agent to receive and disburse funds, pursuant to Section 12 hereof, for Operating Work and Capital Improvements and for payments under any Nuclear Fuel Agreement.
- 3.38 **Operating Agent:** The Participant responsible for the performance of Operating Work and making Capital Improvements.

- 3.39 **Operating Emergency:** An unplanned event or circumstance which reduces or may reduce the availability of Power from or the generation of Energy by any Generating Unit.
- 3.40 **Operating Funds:** Monies advanced to the Operating Agent for Operating Work, Capital Improvements and payments due under any Nuclear Fuel Agreement by or on behalf of the Participants or others in accordance with this Participation Agreement.
- 3.41 **Operating Insurance:** Policies of insurance to be procured and maintained or caused to be procured and maintained by the Operating Agent in accordance with Sections 19 and 20 hereof.
- 3.42 **Operating Work:** Engineering, contract preparation, purchasing, repair, supervision, recruitment, training, expediting, inspection, accounting, testing, protection, operation, use, management, retirement, reconstruction, and maintenance associated with operating ANPP, including any work undertaken by the Operating Agent pursuant to Section 16 hereof and any work necessitated by an Operating Emergency, but excluding all work undertaken to make any Capital Improvements.
- 3.43 **Participant:** Any party hereto and any successor or assignee of such party under either Section 15.2 or Section 15.3 hereof.
- 3.44 **Payroll Taxes:** Taxes based on payroll.
- 3.45 **Power:** Megawatts electric (MWe).
- # 7 3.46 **Project Agreements:** This Participation Agreement, any Construction Agreement, any Nuclear Fuel Agreement, but excluding any Nuclear Fuel Agreements for the supply of Uranium Concentrates to which all Participants are not parties, and any agreements between the Participants or any of them and any third party for land, land rights or water rights for ANPP, as such agreements are originally executed or as they may thereafter be supplemented or amended and any other agreements as the Participants agree to designate as Project Agreements.
- 3.47 **Project Director:** The individual designated by the Project Manager to be in charge of the Construction Work pursuant to Section 7.5 hereof.
- 3.48 **Project Insurance:** Construction Insurance and Operating Insurance.
- 3.49 **Project Manager:** The Participant responsible for the performance of Construction Work.
- 3.50 **Protective Action Plan:** A plan providing for the coordinated mobilization and control of action and communications by and between any and all Participants, Federal, state and local authorities and any public or private institutions in the event of an abnormal occurrence at the Nuclear Plant Site when any protective action outside the Nuclear Plant Site may be warranted to minimize exposure of the public to radiation.
- 3.51 **Reactor:** The pressure vessel of each Generating Unit in which Fuel Assemblies are placed for the purpose of generating heat.
- 3.52 **Scheduled Date of Firm Operation:** The target date established by the Administrative Committee, pursuant to Section 6.2.7.1 hereof for each Generating Unit on which the Construction Work shall be completed and the Generating Unit shall be available to operate continuously at its Target Capacity.
- # 6 3.52A **Short Term Requirements:** The summation at any time of the Estimated Monthly Requirements for each of the 36 months following the month in which the summation is made.
- 3.53 **Start-Up Period:** The period with respect to each Generating Unit commencing with the date on which the first Fuel Assembly is inserted into the Generating Unit's Reactor and terminating with its Date of Firm Operation.

- 3.54 Target Capacity: The Maximum Generating Capability established by the Administrative Committee pursuant to Section 6.2.7.1 hereof, for each Generating Unit at which such Generating Unit is expected to be capable of operating continuously with new, undamaged Fuel Assemblies.
- # 5 3.54A Testing and ~~Start-Up~~^{Startup} Power and Energy: The amount of Power and Energy required for the purposes of testing of any component or system of any Generating Unit before, during, or after its ~~Start-Up Period~~^{Startup}.
- # 5 3.54B Transmission Agreements: Transmission Agreements which may be entered into between and among the Parties and third parties for the explicit purpose of defining transmission arrangements and charges for the delivery of each Participant's Generation Entitlement Share and/or Testing and ~~Start-Up~~^{Startup} Power and Energy.
- 3.55 Units of Property: Units of property as described in the Federal Power Commission's "List of Units of Property for Use in Connection with Uniform System of Accounts Prescribed for Public Utilities and Licensees" in effect as of the date of this Participation Agreement, and as such list may be amended from time to time.
- # 6 3.55A Uranium Concentrates: Natural uranium conforming to specifications established by an operator of a domestic conversion facility designated by the Operating Agent for conversion without any surcharges.
- # 9 3.56 Willful Action:
- 3.56.1 Action taken or not taken by a Participant (including the Operating Agent), at the direction of its directors, members of its governing bodies, officers or employees having management or administrative responsibility affecting its performance under any of the Project Agreements, which action is knowingly or intentionally taken or not taken with conscious indifference to the consequences thereof or with intent that injury or damage would result or would probably result therefrom.
- 3.56.2 Action taken or not taken by a Participant (including the Operating Agent), at the direction of its directors, members of its governing bodies, officers or employees having management or administrative responsibility affecting its performance under any of the Project Agreements, which action has been determined by final arbitration award or final judgment or judicial decree to be a material default under any of the Project Agreements and which action occurs or continues beyond the time specified in such arbitration award or judgment or judicial decree for curing such default or, if no time to cure is specified therein, occurs or continues beyond a reasonable time to cure such default.
- 3.56.3 Action taken or not taken by a Participant (including the Operating Agent), at the direction of its directors, members of its governing bodies, officers or employees having management or administrative responsibility affecting its performance under any of the Project Agreements, which action is knowingly or intentionally taken or not taken with the knowledge that such action taken or not taken is a material default under any of the Project Agreements.
- 3.56.4 The phrase "employees having management or administrative responsibility" as used in this Section 3.56 means employees of a Participant who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling, and supervising such Participant's performance under any of the Project Agreements; provided however, that, with respect to employees of the Operating Agent acting in its capacity as such and not in its capacity as a Participant, such phrase shall refer only to (i) the senior employee of the Operating Agent on duty at ANPP who is responsible for the operation of the Generating Units and (ii) anyone in the organizational structure of the Operating Agent between such senior employee and an officer.

- 3.56.5 Willful Action does not include any act or failure to act which is merely involuntary, accidental or negligent.
- 3.57 **Work Liability:** Liability of one or more Participants for damage suffered by anyone other than a Participant, whether or not resulting from the negligence of any Participant, its directors, officers, employees or any other person or entity whose negligence could be imputed to such Participant, resulting from:
 - 3.57.1 The performance or non-performance of Construction Work or Operating Work.
 - 3.57.2 The use or ownership of ANPP.
- 3.58 **Zero Net Load:** The Power load upon a Generating Unit when its gross Power production equals its share of the then General Service Requirements allocated in accordance with policies, criteria and procedures approved by the Engineering and Operating Committee pursuant to Section 6.3.2.5 hereof.

4. OWNERSHIP OF AND TITLE TO ARIZONA NUCLEAR POWER PROJECT:

- 4.1 Each Participant shall accept, acquire and own an undivided interest as a tenant in common in ANPP and all Project Agreements in proportion to its Generation Entitlement Share, but excluding (i) Option and Purchase of Effluent Agreement, Agreement No. 13904, dated April 23, 1973, between Arizona and Salt River Project and the Cities of Phoenix, Glendale, Mesa, Scottsdale and Tempe and the Town of Youngtown, except to the extent only that said agreement governs the rights and obligations for the purchase and delivery of wastewater effluent required for Construction Work, Operating Work and Capital Improvements and (ii) any Project Agreement which by its terms establishes an ownership interest or rights of any Participant in the subject matter thereof which differs from its Generation Entitlement Share under this Participation Agreement.
- 4.2 The ownership of and title to ANPP described or to be described in this Participation Agreement and all Capital Improvements shall be deemed to have vested simultaneously in the Participants so that the estate of each of them shall be deemed to be concurrent as to time, right and priority.
- 4.3 At any time as any Participant may reasonably demand in writing, the Participants shall jointly make, execute and deliver one or more supplements to this Participation Agreement in recordable form which shall describe with such particularity and detail as may be warranted under the circumstances the property and facilities then constituting ANPP and the rights, titles and interests of each Participant therein.
- 4.4 In the event any Participant transfers or assigns any of its rights, title or interest in and to ANPP in accordance with Section 15 hereof and other terms and conditions of this Participation Agreement, the Participants and any successor shall jointly make, execute and deliver a supplement to this Participation Agreement in recordable form which shall describe with such particularity and detail as may be warranted under the circumstances the rights, titles and interests of each Participant and any successor following such transfer or assignment.

5 5. POWER AND ENERGY ENTITLEMENTS AND REQUIREMENTS:

- 5.1 During the Start-Up Period and any Base Load Period of any Generating Unit each Participant shall schedule and be obligated to take delivery of its Generation Entitlement Share of the Net Energy Generation of such Generating Unit.
- 5.2 At all times after the Date of Firm Operation of each Generating Unit other than those referred to in Section 5.1 hereof each Participant shall be entitled to schedule for its account Power from such Generating Unit equal to the product of its Generation Entitlement Share and the Available Generating Capability of such Generating Unit:

and each Participant shall be obligated to provide its own reserve requirements, including spinning reserves, for its Generation Entitlement Share of the Available Generating Capability of all Generating Units.

5.3 Whenever any Participant schedules for its account Power from a Generating Unit, the Operating Agent, unless otherwise established by the Administrative Committee, shall additionally schedule for each Participant a percentage, equal to its Generation Entitlement Share, of the Zero Net Load as effective during the period that such Generating Unit is operated to meet such schedule.

5.4 Operation of any Generating Unit by the Operating Agent shall be subject to scheduled outages or curtailments, restrictions imposed by any regulatory authority or by Operating Emergencies.

5.5 The delivery of Power and Energy from ANPP shall be scheduled by the Participants in advance with the Operating Agent and accounted for on the basis of such advance schedules.

5.6 The Operating Agent shall deliver Power and Energy to each Participant from each Generating Unit at the high side of its main generator step-up transformer in accordance with the schedule submitted by such Participant to the Operating Agent or in accordance with any revisions thereto.

5.7 In the event of an Operating Emergency, the Participants shall, if necessary, revise their schedules to reflect the actual Power and Energy available from ANPP during the period of the Operating Emergency.

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5.8 Each of the Participants shall, in accordance with any applicable Transmission Agreements or other agreements for the delivery or supply of ANPP Testing and ~~Start-Up~~ Power and Energy, deliver or have delivered to the 500 KV bus at the ANPP High Voltage Switchyard its share, equal to its Generation Entitlement Share, of all or a portion of the Testing and ~~Start-Up~~ Power and Energy requirements of any Generating Unit which the Project Manager or the Operating Agent shall have determined, in accordance with policies, criteria, and procedures approved by the Engineering and Operating Committee pursuant to Section 6.3.2.5 hereof, cannot or should not be supplied by any other Generating Unit and shall have scheduled for delivery in accordance with procedures approved by the Engineering and Operating Committee pursuant to Section 6.3.2.7. The costs of Testing and ~~Start-Up~~ Power and Energy delivered by each Participant shall be borne by such Participant consistent with any applicable Transmission Agreements or other agreements for the delivery or supply of ANPP Testing and ~~Start-Up~~ Power and Energy and shall be accounted for by such Participant in such manner as it deems appropriate.

6. ADMINISTRATION:

6.1 As a means of securing effective cooperation and interchange of information and of providing consultation on a prompt and orderly basis among the Participants in connection with various administrative and technical matters which may arise from time to time in connection with the terms and conditions of the Project Agreements, the Participants establish the committees described in this Section 6.1. The chairman of each of such committees shall be a representative of the Project Manager up to the Date of Firm Operation of the first Generating Unit and thereafter shall be a representative of the Operating Agent. The chairman shall be responsible for calling meetings and establishing agendas. The following committees are hereby established and shall have the functions and responsibilities described herein and in the Project Agreements:

6.1.1 An Administrative Committee consisting of one representative appointed by each Participant, who shall be an officer or the general manager or his authorized designee of a Participant.

6.1.2 An Engineering and Operating Committee consisting of not more than two (2) representatives appointed by each Participant; provided, however, in respect of each matter brought before the Committee, that if any Participant appoints two representatives, only one of such representatives shall have the right to vote thereon. In addition, until completion of the Construction Work, the Project Director shall be a member of the committee, but shall have the right to vote only on such matters as the Project Manager shall designate to him to act as its voting representative on the committee.

6.1.3 An Auditing Committee consisting of not more than two representatives appointed by each Participant; provided that in respect of each matter brought before the committee, if any Participant appoints two (2) representatives, only one of such representatives shall have the right to vote.

6.2 The Administrative Committee shall have the following functions, among others:

6.2.1 Provide liaison between the Participants at the management level.

6.2.2 Exercise general supervision over the Engineering and Operating Committee, the Auditing Committee and any other standing or *ad hoc* committees established pursuant to Section 6.13 hereof.

6.2.3 Consider and resolve matters referred to it by other committees.

6.2.4 Perform such other functions and duties as may be assigned to it in the Project Agreements.

6.2.5 Review, discuss and act upon disputes among the Participants arising under the Project Agreements.

6.2.6 Provide liaison between the Participants and the Project Manager and the Operating Agent with respect to progress, performance and completion of Construction Work and performance of Operating Work and the financial and accounting aspects thereof.

6.2.7 Review and approve, modify, or otherwise act on recommendations of the Project Manager or the Operating Agent, as the case may be, concerning:

6.2.7.1 The type^{and} capacity of the nuclear steam supply systems for each Generating Unit and the Target Capacity and Scheduled Date of Firm Operation of each Generating Unit and any recommended revisions thereof.

6.2.7.2 Any contract for nuclear steam supply systems, any Nuclear Fuel Agreement, and any contract with engineers or consultants related to the foregoing, but excluding any Nuclear Fuel Agreements for the supply of Uranium Concentrates to which all Participants are not parties.

6.2.7.3 The selection and arrangements for acquisition of the Nuclear Plant Site.

6.2.7.4 Contracts for and all other arrangements or actions necessary to obtain requisite water and water rights for ANPP.

6.2.8 Establish, and as circumstances from time to time warrant, revise the boundaries of the Nuclear Plant Site and cause Appendix B to be prepared or revised as the case may be and incorporated herein.

6.2.9 Revise the general description of ANPP as circumstances from time to time warrant and cause Appendix A, attached hereto to be revised accordingly and as so revised incorporated herein.

- # 8 6.2.10 On the request of any Participant authorize, on such terms and conditions as the committee may deem appropriate, the installation on the Nuclear Plant Site or any other property comprising ANPP of any structures, facilities or equipment by any one or more Participants or any third party for its or their own use, which structures, facilities or equipment shall be deemed not to be a part of ANPP.
- # 8 6.2.11 Review, modify if necessary and approve a form of contract recommended by the Engineering and Operating Committee pursuant to Section 6.3.5, which may be executed by the Project Manager, pursuant to Section 7.3.34, or the Operating Agent, pursuant to Section 8.3.27, as applicable, for and on behalf of all Participants concerning mutual assistance among the parties thereto in the nature of the temporary borrowing, loan or exchange of personnel, equipment or material.
- # 8 6.2.12 Review, modify if necessary and approve criteria and guidelines which are to be utilized by the Project Manager or Operating Agent, as the case may be, concerning (i) the sale, transfer or conveyance of equipment or materials acquired for use in the performance of Construction Work, Operating Work or the construction, operation or maintenance of Capital Improvements which are no longer required for such purposes and (ii) the disposal of retired Units of Property pursuant to Section 18.8. Such criteria and guidelines are to be developed by the Project Manager and shall be reviewed and modified as necessary by the Engineering and Operating Committee prior to being forwarded to the Administrative Committee. Such criteria and guidelines shall also include any specific requirements which may be deemed necessary with respect to the sale, transfer or conveyance, by a non-competitive bid process, of such equipment or materials or retired Units of Property to any Participant or subsidiary thereof, the Project Manager or the Operating Agent.
- # 5 6.3 The Engineering and Operating Committee shall have the following functions:
- 6.3.1 Provide liaison between Participants and the Project Manager with regard to the Construction Work, including without limitation the scheduling and delivery by the Participants of Testing and ~~Start-Up~~^{Startup} Power and Energy.
- 6.3.2 Review and approve, modify or otherwise act upon recommendations of the Operating Agent concerning the following items related to the performance of Operating Work or making Capital Improvements:
- 6.3.2.1 The annual capital expenditures budget, annual manpower table and budget, and annual operation and maintenance budget.
- 6.3.2.2 The planned outages scheduled for maintenance and the manner of selection of any maintenance contractor for contract maintenance included in the annual operation and maintenance budget.
- 6.3.2.3 The policies for establishing the Emergency Spare Parts inventory and Materials and Supplies inventory.
- 6.3.2.4 The written statistical and administrative reports, written budgets, and information and other similar records, and the form thereof, to be kept and furnished by the Operating Agent (excluding accounting records used internally by the Operating Agent for the purpose of accumulating financial and statistical data, such as books of original entry, ledgers, work papers, and source documents).

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6.3.2.5 The policies, criteria and procedures for determining Available Generating Capability, General Service Requirements, Maximum Generating Capability, Minimum Generating Capability, Net Energy Generation and Zero Net Load, and for allocating the General Service Requirements among the Generating Units and for determining the amounts of Testing and ~~Start-Up~~ ^{Startup} Power and Energy to be provided by the Participants.

6.3.2.6 The procedures for performance and efficiency testing.

6.3.2.6a The quality assurance program governing the conduct of Operating Work and Capital Improvements pursuant to Section 8.3.20 hereof.

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6.3.2.7 The procedures for scheduling deliveries of Power and Energy to the Participants, scheduling deliveries of Testing and Startup Power and Energy from the Participants, and for forecasting and estimating requirements for and scheduling deliveries of Nuclear Fuel, water, and Materials and Supplies.

6.3.2.8 The Operating Agent's analysis of the total expenditures caused by an Operating Emergency.

6.3.2.9 The written statement of operating practices and procedures.

6.3.2.10 The list of transportation and motorized equipment to be owned or leased by the Operating Agent for Operating Work or making Capital Improvements.

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6.3.2.11 The practices and procedures for keeping each Participant advised of (i) the Available Generating Capability of each Generating Unit, (ii) the delivery of Power and Energy from ANPP in accordance with the Participants' schedules, and (iii) the Testing and ~~Start-Up~~ ^{Startup} Power and Energy requirements to be provided by the Participants pursuant to schedules. Such practices and procedures shall provide for modifying said schedules to meet the needs of day-to-day or hour-by-hour operation, including emergencies on a Participant's system.

6.3.2.12 The scheduling, whenever fuel or other conditions warrant, of any Generating Unit to operate in a mode which restricts changes in Power of such Generating Unit for such specified periods as may be appropriate under such circumstances.

6.3.2.13 The policies, criteria and practices to be followed to optimize the use of the Nuclear Fuel in each Generating Unit.

6.3.2.14 Fuel management plans and the criteria and procedures for determining or estimating those factors, values, quantities, costs and expenses required to be determined or estimated as provided in Appendix F attached hereto.

6.3.2.15 The establishment of procedures for the operation of ANPP during periods of curtailed operations which reduce or may reduce the Available Generating Capability.

6.3.2.16 Arrangements for developing and implementing a Protective Action Plan.

6.3.3 Determine the Date of Firm Operation for each Generating Unit.

6.3.4 Perform such other duties as may be assigned to it in any Project Agreement or by the Administrative Committee.

- # 8 6.3.5 Develop and recommend to the Administrative Committee a form of contract which may be executed by the Project Manager, pursuant to Section 7.3.34, or the Operating Agent, pursuant to Section 8.3.27, as applicable, for and on behalf of all Participants concerning mutual assistance among the parties thereto in the nature of the temporary borrowing, loan or exchange of personnel, equipment or material.
- # 8 6.3.6 Review, modify as necessary and forward to the Administrative Committee for their approval, criteria and guidelines to be developed by the Project Manager which are to be utilized by the Project Manager or the Operating Agent, as the case may be, concerning (i) the sale, transfer or conveyance of equipment or materials acquired for use in the performance of Construction Work, Operating Work or the construction, operation or maintenance of Capital Improvements which are no longer required for such purposes and (ii) the disposal of retired Units of Property pursuant to Section 18.8.
- 6.4 The Auditing Committee shall have the following functions:
- 6.4.1 Development of procedures for accounting and auditing Construction Costs, and costs of Operating Work and Capital Improvements and Fuel Expenses and advances of Construction Funds and Operating Funds consistent with the provisions of the Project Agreements and Accounting Practice and development of procedures for making forecasts and requests for funds pursuant to Section 12 and 18 hereof.
- 6.4.2 Audit or cause to be audited the books and records of the Project Manager, Operating Agent, and any other Participant or contractor relevant to the performance of Construction Work and Operating Work and to the construction of Capital Improvements.
- 6.4.3 Establish the minimum amounts for the Construction Account and the Operating Account pursuant to Sections 12.5 and 12.7 hereof, respectively.
- 6.4.4 Perform such other duties as may be assigned to it in any Project Agreement or by the Administrative Committee.
- 6.5 Within thirty (30) days after the execution of this Participation Agreement, each Participant shall designate its representatives on the committees hereby established, with notice thereof given to the other Participants.
- # 6 6.6 Any action or determination of a committee must be unanimous except as otherwise provided in Section 35 or Appendix K hereof.
- 6.7 The Administrative Committee, the Engineering and Operating Committee and the Auditing Committee shall each keep written minutes, and records of all meetings and all actions, agreements or determinations made by any such committee shall be reduced to writing and shall be signed by a representative of each Participant on said committee or an authorized alternate.
- 6.8 The committees shall have no authority to modify any of the terms, covenants or conditions of the Project Agreements.
- 6.9 If the Engineering and Operating Committee or the Auditing Committee fails to agree while performing the functions and duties delegated to it in this Participation Agreement or in the Project Agreements, then such disagreement shall be referred to the Administrative Committee for determination.
- 6.10 If the Administrative Committee fails to reach agreement while performing the respective functions and duties assigned to it in this Participation Agreement or in the other Project Agreements, then such disagreement shall be referred to higher authority within each Participant's organization before proceeding to arbitration as provided in Section 24 hereof.

- 6.11 In the event any committee established in accordance with this Section 6 is unable or fails to agree in respect of any matter which such committee is authorized to determine, approve or otherwise act upon after a reasonable opportunity so to do, then the Project Manager or the Operating Agent is authorized and obligated to take such action as in its discretion is necessary, pending the resolution of any such inability or failure to agree by arbitration pursuant to Section 24 hereof or otherwise, to the successful and proper construction, operation and maintenance of ANPP as contemplated hereby; provided, however, this Section 6.11 shall not be applicable in respect of those matters required to be approved pursuant to Section 6.2.7 hereof.
- 6.12 Each Participant shall notify the other Participants promptly of any change in the designation of its representatives on the committees. A Participant may designate an alternate to act as its representative on any committee in the absence of the regular member or to act on specified occasions with respect to specified matters. Any alternate representative appearing at a committee meeting shall be deemed to have authority to act on behalf of the Participant he represents unless the committee chairman is furnished with written notice to the contrary.
- 6.13 The Participants, acting through the Administrative Committee, shall have the right to establish standing or *ad hoc* committees. The authority and duties of any such committee shall be set forth in writing and shall be subject to the provisions of the Project Agreements.
- 6.14 Any expenses incurred by any member of the Administrative Committee or any standing or *ad hoc* committees in connection with his duties on such committee shall be paid and borne by the Participant whom he represents and shall not be included in Construction Costs or in costs for Operating Work.

7. PROJECT MANAGER:

- 7.1 The Project Manager for ANPP shall be Arizona.
- 7.2 The Participants hereby appoint the Project Manager as their agent, and the Project Manager shall undertake as their agent and as principal on its own behalf to perform the Construction Work and to carry out the duties and responsibilities provided hereunder to be performed by it.
- 7.3 The Project Manager shall:
 - 7.3.1 Prepare and submit recommendations to the Administrative Committee concerning:
 - 7.3.1.1 The type and capacity of the nuclear steam supply systems for each Generating Unit and the Target Capacity and Scheduled Date of Firm Operation of each Generating Unit and any revisions thereof as circumstances may warrant.
 - 7.3.1.2 Contracts for nuclear steam supply systems, and any Nuclear Fuel Agreement, including any agreement for the fabrication of the initial supply of Fuel Assemblies, and the purchase of uranium and enrichment and conversion services necessary for such fabrication, including contracts with engineers or consultants related to the foregoing, but excluding any Nuclear Fuel Agreements for the supply of Uranium Concentrates to which all Participants are not parties.
 - 7.3.1.3 The selection of the Nuclear Plant Site.

- 7.3.1.4 Contracts for and all other pertinent arrangements or actions necessary to obtain requisite water and water rights for ANPP.
- 7.3.2 Carry out the directions of the Administrative Committee in respect of the matters set forth in Section 7.3.1.
- 7.3.3 With respect to all aspects of Construction Work not governed by Sections 6.2.7, 7.3.1 and 7.3.2, negotiate and enter into any Construction Agreement, and purchase and procure such equipment, apparatus, machinery, materials, tools, supplies and services as it in its sole discretion may deem necessary or useful for the performance and completion of the Construction Work from any source or sources it may select.
- 7.3.4 Transmit as and when received from the architect, engineer, constructor, consultants, contractors or vendors, any studies, specifications, drawings and any documentation related to the foregoing in respect of ANPP to each member of the Engineering and Operating Committee for review and comment. With respect to any such matters which under the provisions of any Construction Agreement the Project Manager shall have the right of approval or comment, the Project Manager shall notify each member of the Engineering and Operating Committee of the date on which comments from any such member must be received by the Project Manager for consideration; provided, however, that the opportunity for comment by such members need not be afforded with respect to changes in design or specifications where in the discretion of the Project Manager the need for prompt action is overriding. Each such member shall be advised of major meetings with the architect, engineer, constructor, consultants, contractors and vendors related to the foregoing matters and shall be permitted to have a representative to attend any such meeting and to offer comments at or in advance of such meetings on any aspects to be discussed thereat.
- 7.3.5 Furnish each member of the Administrative Committee with copies of all contracts with the architect, engineer, constructor, contractors and principal subcontractors, vendors and consultants.
- 7.3.6 Notwithstanding the provisions of Section 7.3.3, review with the Administrative Committee the Project Manager's proposal for awards to vendors for major equipment in advance of such awards, including the recommendations of the architect, engineer, constructor relating to the proposed award, at either a meeting called for such purpose by the Project Manager or by conference telephone call.
- 7.3.7 Arrange for placement of Construction Insurance pursuant to Sections 19 and 20 hereof.
- 7.3.8 Determine what contractors, if any, shall be required to furnish any portion of the Construction Insurance, other insurance and faithful performance and payment bonds.
- 7.3.9 Assist any insurer in the investigation, adjustment and settlement of any loss or claim covered by Construction Insurance.
- 7.3.10 Present and prosecute claims against insurers and provide Construction Insurance or indemnities in respect of any loss of or damage to any property of ANPP or liability of any Participant to third parties covered by Construction Insurance or indemnities, and to the extent that any such loss or damage is not covered by Construction Insurance, present and prosecute claims therefor against any parties who may be liable therefor. In the event the cost of repair, replacement or correction of such loss or damage arising out of a single incident or event exceeds \$250,000, the Project Manager shall not make any settlement of any claims in respect thereof without the consent and approval of the Administrative Committee.

- 7.3.11 Subject to the provisions of Section 21 hereof and except as hereinafter provided in this Section 7.3.11, investigate, adjust, defend and settle claims against any or all Participants arising out of or attributable to Construction Work, or the past or future performance or nonperformance of the obligations and duties of any Participant, including the Project Manager, under or pursuant to this Participation Agreement, 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 collectible insurance carried by any Participant, and, whenever and to the extent warranted, present and prosecute claims against any third party, including insurers, for any costs, losses and damages incurred in connection with said claims. The approval of the Administrative Committee shall be obtained by the Project Manager before any said claim or combination of said claims against any or all Participants arising out of the same transaction or incident is settled for more than \$250,000 unless it shall be established that the entire amount of the settlement in excess of \$250,000 is recoverable from an insurer providing Construction Insurance.
- 7.3.12 Execute, perform and enforce all Construction Agreements in the name of the Project Manager, acting as principal on its own behalf and as agent for all Participants, in which all Participants shall have undivided interests as tenants in common, equal to their respective Generation Entitlement Shares.
- 7.3.13 Comply with (i) any and all laws applicable to the performance of Construction Work, including without limitation all applicable laws, rules and regulations for protection of the environment and all applicable provisions of any workmen's compensation laws; and (ii) the terms and conditions of any contract, permit or license relating to ANPP.
- 7.3.14 Expend the funds advanced to the Project Manager only in the manner and for the purposes set forth in Sections 10 and 12 hereof.
- 7.3.15 Keep and maintain records of monies received and expended, obligations incurred, credits accrued, estimates of Construction Costs (excluding, subject to Section 13.3 hereof, *ad valorem* taxes or payments in lieu thereof and interest during construction) and contracts entered into in the performance of Construction Work, and make such records available for inspection by the Auditing Committee at reasonable times and places.
- 7.3.16 Not suffer any liens to remain in effect unsatisfied against ANPP (other than liens permitted under the Project Agreements, liens for taxes or assessments not yet delinquent, liens for labor and material not yet perfected, or undetermined charges or liens incidental to the performance of Construction Work); provided, however, that the Project Manager shall not be required to pay or discharge any such lien as long as the Project Manager in good faith shall be contesting the same, which contest shall operate during the pendency thereof to prevent the collection or enforcement of such lien so contested.
- 7.3.17 Obtain or cause to be obtained necessary construction permits, temporary access rights and other licenses and approvals requisite to the performance and completion of Construction Work and initiation of Operating Work.
- 7.3.18 As soon as practicable after the Date of Firm Operation of each Generating Unit, provide each Participant with a summary of the Construction Costs applicable to such Generating Unit in a form which will allow each such Participant to classify such Construction Costs to appropriate FPC Accounts.

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- 7.3.19 Provide the Participants with all necessary and required records and information pertaining to the performance of Construction Work, including progress reports at such regular intervals as the Administrative Committee or the Engineering and Operating Committee shall determine, and the amount and scheduling of delivery by the Participants of Testing and ~~Startup~~ ^{Startup} Power and Energy prior to the Date of Firm Operation of the first Generating Unit.
- 7.3.20 Keep the Participants fully and promptly informed of any known default by any Participant under the provisions of this Participation Agreement.
- 7.3.21 As soon as practicable after the commencement of Construction Work, furnish each Participant an estimate of total Construction Costs broken down by major categories of equipment and services and a forecast of the cash requirements of each Participant to meet such Construction Costs. Such forecast shall set forth such cash requirements (i) for each quarterly period commencing on the first day of January, April, July and October in which Construction Costs will become due and (ii) for each month of the first two quarterly periods immediately following the issuance of such forecast. Such forecast shall be revised and furnished to each Participant every three (3) months thereafter until completion of Construction Work. In addition, and as soon as practicable after commencement of Construction Work, the Project Manager shall furnish each Participant a detailed monthly forecast of each Participant's estimated expenditures during each week of the succeeding month for Construction Work, which said forecast shall be furnished each Participant monthly thereafter until completion of Construction Work.
- 7.3.22 Furnish a Participant any information reasonably available pertaining to the construction of ANPP that will assist said Participant in responding to a request for such information by any Federal, state or local regulatory authority.
- 7.3.23 Use its best efforts in the performance of its responsibilities hereunder to effect the completion of Construction Work in accordance with the Scheduled Date of Firm Operation for each Generating Unit. To achieve this objective and keep the Participants informed, the Project Manager shall from time to time revise the Construction Schedule attached to this Participation Agreement as Appendix C which shall include those milestones that the Project Manager shall deem significant and target dates for their accomplishment consistent with meeting the Scheduled Date of Firm Operation of each Generating Unit.
- 7.3.24 Keep the Participants fully and promptly advised of significant developments in connection with the progress, performance and completion of Construction Work.
- 7.3.25 Prepare and distribute the Final Completion Report to each Participant as soon as practicable but not later than twenty-four (24) months after the Date of Firm Operation of the final Generating Unit to be completed unless such time is extended by the Administrative Committee.
- 7.3.26 Provide the Administrative Committee with all necessary and required records and information for its use in the performance of its responsibilities under this Participation Agreement.
- 7.3.27 Construct ANPP so as to comply with the Project Agreements.
- 7.3.28 Conduct tests to verify that specified characteristics of major equipment items have been achieved and, if necessary, make or cause to be made final equipment modifications to meet the specified requirements thereof.

- # 5 7.3.29 Provide for and enforce any and all warranties on equipment, facilities, materials and services sold to or furnished for ANPP, except that any equipment warranties which expire more than one (1) year after the Date of Firm Operation of the final Generating Unit and all fuel warranties shall be enforced by the Operating Agent.
- 7.3.30 Conduct such environmental and economic studies of alternative sites as the Administrative Committee directs or as the Project Manager in its discretion deems necessary or appropriate in arriving at a recommendation to the Administrative Committee of a suitable site for ANPP.
- 7.3.31 Establish a quality assurance program to be observed in the design, fabrication, procurement, storage, handling, shipping, installation and construction of ANPP which shall at a minimum fully meet the requirements of the regulations set forth by the U.S. Atomic Energy Commission in 10 CFR, Part 50, Appendix B, as amended and in effect from time to time.
- 7.3.32 Establish a quality assurance organization to review and verify conformance with the established quality assurance procedures utilizing personnel from any source, provided no person assigned to audit any activity shall be or have been responsible for the conduct of such activity.
- # 5 7.3.33 Coordinate with the Operating Agent all arrangements (i) for shipment, transfer, receipt, inspection, storage and loading of Nuclear Fuel at the Nuclear Plant Site, (ii) for the preoperational testing and acceptance by the Operating Agent of components and systems of ANPP, (iii) for preoperational radiological, meteorological, and other environmental monitoring programs which are to be continued after the Date of Firm Operation of the first Generating Unit, (iv) for the start-up, operational testing, and operation of each Generating Unit prior to its Date of Firm Operation, (v) for the scheduling and delivery of Testing and ~~Start-Up~~ ^{Startup} Power and Energy required after the Date of Firm Operation of the first Generating Unit and (vi) for the preservation and organization of all quality assurance records accumulated in the performance of Construction Work and for the on-going quality assurance and surveillance programs to be conducted during ANPP operation.
- # 8 7.3.34 Enter into mutual assistance agreements with utilities and others providing for the temporary borrowing, loan or exchange of personnel, equipment or material upon request of any party to such agreement; provided that each such agreement shall be in a form as approved by the Administrative Committee pursuant to Section 6.2.11 and shall include such warranty, indemnity, insurance and other provisions as such committee may have deemed appropriate.
- # 8 7.3.35 Develop and recommend to the Engineering and Operating Committee for their review, modification if necessary and forwarding to the Administrative Committee for final review, modification if necessary and approval, criteria and guidelines to be utilized by the Project Manager or Operating Agent, as the case may be, concerning (i) the sale, transfer or conveyance of equipment or materials acquired for use in the performance of Construction Work, Operating Work or the construction, operation or maintenance of Capital Improvements which are no longer required for such purposes and (ii) the disposal of retired Units of Property pursuant to Section 18.8.
- # 8 7.3.36 Consistent with the criteria and guidelines approved by the Administrative Committee pursuant to Section 6.2.12(i), sell, transfer and convey for and on behalf of all Participants to any entity, including without limitation any Participant or the Operating Agent, any and all equipment or material acquired for use in the performance of Construction Work, provided that at the time of such sale, transfer or conveyance (i) the Project Manager shall

have determined that such equipment or material is no longer used or useful for ANPP, (ii) the Project Manager shall sell, transfer or convey any such equipment or material only on an "as is" basis without any representation or warranty as to quality, condition or fitness for any purpose and (iii) proceeds, if any, received therefrom shall be credited or distributed to the Participants in proportion to their Generation Entitlement Shares.

4 7.4 Each Participant shall provide to the extent possible all assistance required by the Project Manager in the performance of its obligations hereunder and such Participant shall be reimbursed for its costs and expenses incurred in providing such assistance on such terms and conditions as may be agreed upon by such Participant and the Project Manager. Each Participant shall, within sixty (60) days after the execution of this Participation Agreement, submit to the Project Manager any special requirement it may have regarding accounting, records, or information in order that all required records may be maintained in the same manner throughout the construction and final completion of ANPP. The Project Manager shall use its best efforts to accommodate said special requirements. Where acquisition or immediate possession of rights-of-way, easements or real property are necessary, and the Project Manager and a Participant determine that such acquisition may best be accomplished by the Participant, the Project Manager shall request assistance of the Participant in writing and the assistance shall be provided in conformance with the terms of this paragraph.

7.5 The Project Manager shall have the full responsibility and authority for the employment and organization of the personnel and staff required to prosecute the Construction Work. The Project Manager shall designate an individual to serve as Project Director who shall be responsible solely to the Project Manager and shall be charged with the duties of supervising and coordinating all Construction Work subject to the terms of the Project Agreements.

8. OPERATING AGENT:

8.1 The Operating Agent for ANPP shall be Arizona.

8.2 The Participants hereby appoint the Operating Agent as their agent, and the Operating Agent shall undertake as their agent and as principal on its own behalf, to perform the Operating Work and Capital Improvements and to carry out the duties and responsibilities provided hereunder to be performed by it.

8.3 The Operating Agent shall:

8.3.1 Administer, enforce and perform the Operating Work so as to comply with Project Agreements and in a manner consistent with generally accepted practices in the electric utility industry recognizing that such practices may be affected by the design and operational characteristics of ANPP, the rights and obligations of the Participants under this Participation Agreement and other special circumstances affecting the Operating Work.

8.3.2 Furnish from its own resources or contract for and obtain from any other sources it may select, including any Participant, the services and studies necessary for performance of Operating Work.

8.3.3 Execute, administer, perform and enforce contracts in the name of the Operating Agent, acting as principal on its own behalf and as agent for all of the other Participants, for Operating Work, including without limitation any and all warranties on equipment, facilities, materials and services furnished pursuant to any such contracts.

6 8.3.4 Administer, perform and enforce any Nuclear Fuel Agreements executed by the Project Manager pursuant to Section 7.3.2 hereof or by the Operating Agent pursuant to Appendix K hereof and, subject to the provisions of Section 6.2.7 hereof, execute, administer, perform and enforce all other Nuclear Fuel Agreements.

- 8.3.5 Administer, perform and enforce all other contractual obligations and arrangements, including all warranties applicable thereto, entered into by the Project Manager and continuing beyond the period ending one year after the Date of Firm Operation of the final Generating Unit.
- 8.3.6 Furnish or recruit the necessary personnel and provide for such training as may be required to qualify them to perform the Operating Work and to meet all licensing requirements established by law.
- 8.3.7 Comply with (i) any and all laws applicable to the performance of Operating Work and Capital Improvements, including without limitation all applicable laws, rules and regulations for protection of the environment and all applicable provisions of any workmen's compensation laws, and (ii) the terms and conditions of any contract, permit or license relating to ANPP.
- 8.3.8 Purchase and procure, through and from any source it may select, in the name of the Participants with undivided interests as tenants in common in accordance with their Generation Entitlement Shares, the equipment, apparatus, machinery, tools, Materials and Supplies and Emergency Spare Parts necessary for the performance of Operating Work and Capital Improvements.
- 8.3.9 Expend the Operating Funds advanced to the Operating Agent in accordance with the terms and conditions of this Participation Agreement.
- 8.3.10 Keep and maintain such records of monies received and expended, obligations incurred, credits accrued, the conduct of Operating Work and making Capital Improvements, and of contracts entered into in the performance of Operating Work as may be necessary or useful in carrying out Project Agreements or required to permit an audit of the Operating Work and Capital Improvements, and make such records available for inspection by the Auditing Committee.
- 8.3.11 Not suffer any liens to remain in effect unsatisfied against ANPP (other than the liens permitted under the Project Agreements, liens for taxes and assessments not yet delinquent, liens for labor and material not yet perfected or undetermined charges or liens incidental to the performance of the Operating Work); provided, that the Operating Agent shall not be required to pay or discharge any such lien as long as the Operating Agent in good faith shall be contesting the same which contest shall operate during the pendency thereof to prevent the collection or enforcement of such lien so contested.
- 8.3.12 Arrange for the placement and maintenance of Operating Insurance as provided in Sections 19 and 20 hereof.
- 8.3.13 Assist any insurer in the investigation, adjustment and settlement of any loss or claim covered by Operating Insurance.
- 8.3.14 Present and prosecute claims against insurers and indemnitors providing Operating Insurance or indemnities in respect of any loss of or damage to any property of ANPP or liability of any Participant to third parties covered by any indemnity agreement, and to the extent that any such loss, damage or liability is not covered by Operating Insurance or by any indemnity agreement, present and prosecute claims therefor against any parties who may be liable therefor. In the event the cost of repair, replacement or correction of such loss or damage arising out of a single incident or event exceeds \$250,000, the Operating Agent shall not make any settlement of any claims in respect thereof without the consent and approval of the Administrative Committee.

8.3.15 Subject to the provisions of Section 21 hereof and except as hereinafter provided in this Section 8.3.15, investigate, adjust, defend and settle claims against any or all Participants arising out of or attributable to Operating Work or Capital Improvements, or the past or future performance or non-performance of the obligations and duties of any Participant, including the Operating Agent, under or pursuant to this Participation Agreement, 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 Operating Insurance carried by any Participant, and whenever and to the extent reasonable present and prosecute claims against any third party, including insurers, for any costs, losses and damages incurred in connection with said claims. The approval of the Administrative Committee shall be obtained by the Operating Agent before any said claim or combination of said claims against any or all Participants arising out of the same transaction or incident is settled for more than \$250,000 unless the entire amount of the settlement in excess of \$250,000 is recoverable from an insurer providing Operating Insurance.

8.3.16 Keep the Participants fully and promptly advised of material changes in conditions or other material developments affecting the performance of Operating Work and furnish the other Participants with copies of any notices given or received pursuant to the Project Agreements.

8.3.17 Provide the Administrative, Engineering and Operating and Auditing Committees with all written statistical and administrative reports, accounting records, written budgets, information and other records relating to Operating Work and Capital Improvements necessary or useful in the performance of their respective responsibilities under this Participation Agreement.

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8.3.18 Determine, in accordance with policies, criteria and procedures established by the Engineering and Operating Committee pursuant to Section 6.3.2.5 hereof, and keep the system dispatcher of each Participant advised of (i) the Maximum Generating Capability, Minimum Generating Capability, and the Available Generating Capability of each Generating Unit and (ii) the Testing and ~~Start-Up~~ Power and Energy to be provided by the Participants after the Date of Firm Operation of the first Generating Unit.

Startup

8.3.19 Upon the request of any Participant, provide such Participant, in reasonable quantity without direct charge therefor, a copy or copies of any report, record, list, budget, manual, accounting or billing summary, classification of accounts or other documents or revisions of any of the aforesaid items, all as prepared in accordance with this Participation Agreement.

8.3.20 Establish a quality assurance program to be followed in the operation and maintenance, changes in design, facilities or equipment and Capital Improvements of ANPP, including without limitation in-service inspections and other surveillance procedures and techniques, which shall, at a minimum, fully meet the requirements of the regulations the U.S. Atomic Energy Commission set forth in 10 CFR, Part 50, Appendix B, as amended and in effect from time to time, including without limitation those regulations governing the delegation of authority for checking, auditing, inspecting or other verifying compliances with the quality assurance program. [of]

8.3.21 Take custody of and maintain a suitable recovery system for all quality assurance records pertaining to Construction Work received from the Project Manager.

8.3.22 Take such action and responsibility for pre-operational Operating Work as required under Appendix G attached hereto.

- 8.3.23 Keep the Participants fully and promptly informed of any known default of the Project Agreements and submit to the Participants any recommendations for amendments of the Project Agreements.
- 8.3.24 by Prepare recommendations covering the matters which are to be reviewed and acted upon by the Administrative Committee pursuant to Section 6.2.7 hereof or by the Engineering and Operating Committee pursuant to Section 6.3.2 hereof.
- 8.3.25 Carry out and follow the practices and procedures and directions which have been approved and issued by the Administrative Committee, the Engineering and Operating Committee, or the Auditing Committee pursuant to the Project Agreements, except as otherwise provided in Section 8.3.26 hereof.
- 8.3.26 In the event of an Operating Emergency take such action as the Operating Agent in its sole discretion may deem prudent or necessary, notwithstanding any practices and procedures and directions approved and issued by the Administrative Committee or the Engineering and Operating Committee, to terminate the Operating Emergency, to preserve and maintain the safety, integrity and operability of ANPP, to maintain to the maximum extent the availability of Power and Energy from each Generating Unit, to protect the health and safety of the public or to minimize any adverse environmental effects and such other action as required by Appendix H attached hereto.
- # 8 8.3.27 Enter into mutual assistance agreements with utilities and others providing for the temporary borrowing, loan or exchange of personnel, equipment or material upon request of any party to such agreement; provided that each such agreement shall be in a form as approved by the Administrative Committee pursuant to Section 6.2.11 and shall include such warranty, indemnity, insurance and other provisions as such committee shall deem appropriate.
- # 8 8.3.28 Consistent with the criteria and guidelines approved by the Administrative Committee pursuant to Section 6.2.12(n), sell, transfer and convey for and on behalf of all Participants to any entity, including without limitation any Participant, any and all equipment or material acquired for use in the performance of Operating Work, or acquired for use in the construction, operation or maintenance of any Capital Improvement; provided that at the time of such sale, transfer or conveyance (i) the Operating Agent shall have determined that such equipment or material is no longer used or useful for ANPP, (ii) the Operating Agent shall sell, transfer or convey any such equipment or material only on an "as is" basis without any representation or warranty as to quality, condition or fitness for any purpose and (iii) proceeds, if any, received therefrom shall be credited or distributed to the Participants in proportion to their Generation Entitlement Shares.
- 8.4 The other Participants shall lend and be properly reimbursed for all necessary and available assistance as may be requested by the Operating Agent in the performance of Operating Work.
- 8.5 It is recognized that some Participants may have interests in training personnel in the operation and maintenance of a nuclear station and the Operating Agent shall institute a program to provide such training of personnel of any Participant as the Operating Agent may deem feasible and consistent with the performance of its other duties and responsibilities hereunder. The regular operating and maintenance staff assigned to ANPP, however, will be comprised of the Operating Agent's personnel solely unless the Operating Agent otherwise determines.

9. INTERCONNECTIONS AND TRANSMISSION LINES:

- 9.1 Power and Energy generated by ANPP shall be delivered to the Participants by means of (i) one or more ANPP High Voltage Switchyard(s) to be constructed on the Nuclear Plant Site and (ii) such high voltage transmission lines as the Participants or any of them shall determine to construct, operate and maintain to interconnect ANPP with either existing or planned transmission systems owned or to be owned, and operated by one or more Participants or any other party with whom any Participant has or will have a right to interconnect.
- 9.2 The Participants shall establish one or more task groups or committees to study, plan and coordinate transmission and interconnection arrangements suitable for delivery to the Participants of Power and Energy generated by ANPP and necessary to satisfy the transmission requirements of the Participants. Such group(s) shall further develop such transmission and interconnection agreements as may be appropriate, including without limitation an agreement governing the ownership, construction, operation and maintenance of the ANPP High Voltage Switchyard(s) which, unless otherwise agreed by all Participants, shall meet the principles established in and be otherwise consistent with Appendix I attached hereto and made a part hereof.
- 9.3 Since the Arizona Nuclear Power Project will interconnect the systems of the Participants, such interconnections shall be governed by the Principles of Interconnected Operation for Four Corners Interconnection Agreement attached as Appendix J hereto to the extent applicable and the Participants agree to proceed with due diligence to enter into a more definitive interconnection agreement for implementing said principles.

10. CONSTRUCTION COSTS:

- 10.1 Construction Costs of ANPP shall include all payments made and obligations incurred by the Project Manager for or in connection with Construction Work, including but not limited to those costs specified in Appendix D attached hereto and in Section 10.2 hereof.
- 10.2 Construction Costs shall also include the costs incurred by any Participant in developing ANPP prior to or after the effective date of this Participation Agreement, including (i) the costs incurred in preparation of this Participation Agreement and negotiation and preparation of other Project Agreements and the costs of studies associated therewith, (ii) the costs incurred or contributed by any Participant to make the studies and reports conducted and prepared by Arizona Nuclear Resource Study Group to investigate the feasibility of constructing and operating a nuclear power station in Arizona, and (iii) the costs incurred or contributed by any Participant in connection with the preparation of the Preliminary Evaluation Study for Nuclear Dual Purpose Plants in Southwest Arizona, dated June, 1972, and all studies associated therewith.
- 10.3 All Construction Costs shall be shared by the Participants in proportion to their respective Generation Entitlement Shares and shall be advanced by them and disbursed and accounted for by the Project Manager in accordance with Section 12 hereof.

11. OPERATION AND MAINTENANCE COSTS:

- 11.1 Operation and maintenance costs of ANPP shall include all payments made and obligations incurred by the ~~Operating Agent~~ ^{Operation [sic]} for or in connection with the performance of ~~Operating Work~~ ^{Operation [sic]}, including (i) those costs of Operating Work specified in Appendix E attached hereto, (ii) those costs specified in Section 13 hereof to the extent any tax or payment in lieu thereof is levied against a Participant in ~~benefit~~ ^{benefit} of all of the Participants, and in Section 19 hereof (excluding workmen's compensation expense for the Operating Agent's employees), (iii) those costs and expenses described in Section 21.3 hereof, and (iv) all costs, including option payments, for wastewater effluent under Agreement No. 13904 described in Section 4.1 hereof, required or reserved for operation and maintenance of ANPP, but excluding all such costs as may be included in Construction Costs or in the cost of Capital Improvements. [sic]

- 11.2 Except as provided in Section 11.3 hereof, the costs of Operating Work, including costs of water used for Operating Work, shall be shared by the Participants in proportion to their respective Generation Entitlement Shares and shall be advanced by them to the Operating Agent and disbursed and accounted for by it in accordance with Section 12 hereof.
- 11.3 Fuel Expenses of the character chargeable to FPC Account 518 and investments in Nuclear Fuel shall be shared among the Participants and accounted for in accordance with Appendix F attached hereto.

12. ADVANCEMENT OF FUNDS:

- 12.1 Each Participant shall advance its share of Construction Funds and Operating Funds prior to the date when funds are required by the Project Manager or Operating Agent to pay for Construction Work, Operating Work and Capital Improvements so that neither the Project Manager nor the Operating Agent in its capacity as such will have to advance any funds on behalf of another Participant.
- 12.2 Each Participant shall pay weekly in advance its share (equal to its Generation Entitlement Share) of all Construction Costs in accordance with the monthly forecasts of estimated weekly expenditures for Construction Work prepared by the Project Manager and furnished to each Participant pursuant to Section 7.3.21 hereof. Construction Funds on hand shall be invested to the maximum extent feasible. Earnings and losses, if any, shall be allocated to the Participants on the basis of such funds advanced. Following completion of the Construction Work, the Project Manager shall compute the total Construction Costs of ANPP, and each Participant shall promptly settle any balance of its share of such total Construction Costs in accordance therewith. If at any time it is determined that a Participant has made advances which are greater or less than its share of the Construction Costs, the difference shall be paid by or refunded to such Participant.
- 12.3 The sum of the advances by the Participants hereunder to the Project Manager shall not exceed 100 percent of the total Construction Costs forecasted to be expended as of the date specified in the detailed monthly forecast furnished to the Participants pursuant to Section 7.3.21 hereof plus or minus any adjustments of previous estimates to actual costs.
- 12.4 The Project Manager shall establish a Construction Account at a bank of its choice and notify the Participants in writing of the establishment of the Construction Account not later than five (5) days following its establishment.
- 12.5 Not less than sixty (60) days prior to the establishment of the Construction Account, the Auditing Committee shall establish a minimum amount for the Construction Account so that the Project Manager will have Construction Funds to pay for expenditures or obligations incurred by the Project Manager pursuant to this Participation Agreement. Such minimum amount may be revised by the Auditing Committee at any time. The original minimum amount and any increase therein shall be allocated among the Participants in accordance with their respective Generation Entitlement Shares and shall be due and payable within fifteen (15) business days following notification of the establishment of the Construction Account or of the date on which any increase in such minimum amount shall become effective. In the event the Auditing Committee authorizes a decrease in such minimum amount, then each Participant shall receive a credit which shall be in proportion to its Generation Entitlement Share.
- 12.6 Construction Funds required to be advanced by the Participants in accordance with this Participation Agreement shall be deposited in the Construction Account, and the Project Manager shall, unless otherwise agreed to by the Participants, make disbursements from the Construction Account only for expenditures or obligations incurred by it in the performance of Construction Work or for the investment of Construction Funds pursuant to Section 12.2 hereof.

- 12.7 Not less than sixty (60) days prior to the establishment of the Operating Account, the Auditing Committee shall establish a minimum balance for the Operating Account so that the Operating Agent will have Operating Funds to pay for expenditures or obligations incurred by the Operating Agent pursuant to this Participation Agreement. Such minimum balance may be revised by the Auditing Committee at any time. The original minimum balance and any increase therein shall be allocated among the Participants on the basis of their respective Generation Entitlement Shares and shall be due and payable within fifteen (15) business days following notification of the establishment of the Operating Account or of the date on which any increase in such minimum balance shall become effective. In the event the Auditing Committee authorizes a decrease in such minimum balance, then each Participant shall receive a credit on the next bills from the Operating Agent.
- 12.8 All Operating Funds required to be advanced by the Participants in accordance with this Participation Agreement shall be made payable to the account of the Operating Agent, or may be credited to the Operating Account by bank transfers. All Operating Funds shall be deposited in the Operating Account, and the Operating Agent shall, unless otherwise directed by the Administrative Committee, make disbursements from the Operating Account only for expenditures or obligations incurred by it in the performance of Operating Work or Capital Improvements or for payments due under any Nuclear Fuel Agreement.
- 12.9 Not less than thirty (30) days prior to incurring any cost for Operating Work or making any payment under any Nuclear Fuel Agreement, whichever occurs first, on behalf of the Participants pursuant to this Participation Agreement, the Operating Agent shall establish the Operating Account. The Operating Agent shall notify the Participants in writing of the establishment of the Operating Account not later than five (5) days following its establishment.
- 12.10 Each Participant shall advance Operating Funds to the Operating Account on the basis of bills it receives from the Operating Agent which reflect such Participant's share of the costs of Operating Work and Capital Improvements determined in accordance with this Participation Agreement as follows:
- 12.10.1 All costs of Operating Work and Capital Improvements (except for expenditures billed under Sections 12.10.2, 12.11 and 12.12 and Fuel Expenses billed under Appendix F attached hereto) shall be billed in writing as follows:
 - 12.10.1.1 On the 5th and 20th day of each month for the payroll paid to the Operating Agent's employees on the last preceding pay day.
 - 12.10.1.2 On the 20th day of each month for the total monthly expenditures for Operating Work and Capital Improvements except those expenditures billed under Section 12.10.1.1 hereof.
 - 12.10.2 Expenditures described in Sections 13, 19.2 (excluding workmen's compensation expenses for the Operating Agent's employees) and 21 and costs for any charitable contributions if such contributions are authorized by the Administrative Committee may be billed prior to their due dates and shall be due and payable not less than three (3) days prior to the date payment by the Operating Agent is due. If such expenditures have no specific due date, then they shall be billed and become due within a reasonable time.
- 12.11 Each Participant shall advance funds to the Operating Account for its share of all expenditures for Operating Emergencies (excluding those items billed under Sections 12.10.1.1 and 12.10.1.2 hereof) on the basis of estimates made in accordance with Section H.4 of Appendix H attached hereto.
- 12.12 Each Participant shall advance Operating Funds to the Operating Account for its share of all payments due under any Nuclear Fuel Agreement in accordance with Section F.3 of Appendix F attached hereto.

12.13 Funds not advanced to the Project Manager or the Operating Agent on or before the due date specified in Sections 12.2, 12.5, 12.7, 12.10, 12.11 and 12.12 hereof shall be payable with interest, if any, accrued as provided in Section 23.3 hereof.

12.14 If a Participant shall dispute any portion of any amount specified in a monthly forecast, billing or a request for funds, the disputant shall make the total payment specified in said forecast, billing or request for funds pursuant to Section 23.4 hereof.

13. TAXES:

7

13.1 The Participants shall use their best efforts to have any taxing or other authority levying any taxes or assessments, or payments in lieu thereof, or making any valuations for the purpose of levying any taxes or assessments or payments in lieu thereof, on ANPP, or any interest or rights therein, assess and levy such taxes or assessments or payments in lieu thereof directly against the ownership or beneficial interest of each Participant or its Fuel Financer, if any.

13.2 All taxes or assessments or payments in lieu thereof levied against each Participant's ownership or beneficial interest in ANPP, excepting those taxes or assessments or payments in lieu thereof levied against an individual Participant in behalf of any or all of the other Participants, shall be the sole responsibility of the Participant upon whose ownership or beneficial interest said taxes or assessments or payments in lieu thereof are levied.

13.3 If any property taxes or payments in lieu thereof or any other taxes or assessments are levied or assessed in a manner other than as specified in Section 13.1 hereof, it shall be the responsibility of the Administrative Committee to establish equitable practices and procedures for the apportionment among the Participants of such taxes and assessments or payments in lieu thereof.

13.4 No Participant who is exempt from any taxes assessed against any or all of the other Participants shall be obligated to make any contribution toward such taxes to the extent of the exemption.

14. NONPARTITIONMENT:

Each Participant hereby waives any rights which it may have to partition any component of ANPP or the Project Agreements, whether by partitionment in kind or by sale and division of the proceeds, and further agrees that it will not resort to any action in law or in equity to partition such component or the Project Agreements, and it waives the benefits of all laws that may now or hereafter authorize such partition for a term (i) which shall be coterminous with this Participation Agreement, or (ii) which shall be for such lesser period as may be required under applicable law.

15. MORTGAGE AND TRANSFER OF INTEREST:

15.1 Each Participant shall have the right at any time and from time to time to mortgage, create or provide for a security interest in or convey in trust all or a part of its ownership share in ANPP, together with an equal interest in the Project Agreements to a trustee or trustees under deed of trust, mortgage or indenture or to a secured party or parties under a security agreement, as security for its present or future bonds or other obligations or securities, and to any successors or assigns thereof, without need for the prior written consent of any other Participant and without such mortgagee, trustee or secured party assuming or becoming in any respect obligated to perform any of the obligations of the Participants.

15.2 Any mortgagee, trustee or secured party under present or future deeds of trust, mortgages, indentures or security agreements of any of the Participants and any successor or assignee thereof, and any receiver, referee or trustee in bankruptcy or reorganization of any of the Participants, and any successor by action of law or otherwise, and any purchaser, transferee or assignee of any thereof may, without need

for the prior written consent of any other Participant, succeed to and acquire all the rights, titles and interests of such Participant in ANPP and the Project Agreements, and may take over possession of or foreclose upon said property, rights, titles and interests of such Participant, and in such event shall assume and be obligated fully to perform and discharge all of the obligations hereunder and under any other Project Agreement of such Participant.

1 15.3 Without the prior written consent of any other Participant, each Participant shall have the right to transfer or assign all or part of its Generation Entitlement Share, together with an equal interest in the ownership of ANPP and in the Project Agreements, to any person, partnership, corporation or governmental corporation or agency engaged in the generation, transmission or distribution of Energy.

7 15.4 Unless otherwise determined by Administrative Committee, all Nuclear Fuel to be used in or removed from any Generating Unit of ANPP or recovered after reprocessing for reuse in any such Generating Unit or for sale to others shall be jointly-owned by the Participants in accordance with their respective Generation Entitlement Shares, subject to Section F.1.3.1 of Appendix F attached hereto, provided that any Participant may at any time finance (through a Fuel Financer) its undivided interest in any discrete portion or portions of such Nuclear Fuel in the manner provided in Section F.1.4 of Appendix F attached hereto, subject to the conditions set forth therein and to the further conditions that in each instance (a) any such Fuel Financer (i) shall waive all right to partitionment of such discrete portion or portions of Nuclear Fuel, (ii) shall not obtain any rights not possessed by such Participant with respect to the operation or scheduling of any Generating Unit or the removal of Nuclear Fuel therefrom and (iii) shall not become a Participant in ANPP unless or until it succeeds to all of such Participant's right, title and interest in ANPP, and agrees to assume and be fully obligated to perform and discharge all of such Participant's obligations hereunder and under any other Project Agreement, and (b) such Participant shall indemnify all other Participants against any costs or expenses incurred by them because of such Participant's financing of its undivided interest in such discrete portion or portions of the Nuclear Fuel.

15.5 Except as otherwise provided in Sections 15.1 and 15.2 hereof, any successor to the rights, titles and interests of a Participant in ANPP, together with an equal interest in the Project Agreements, shall assume and agree fully to perform and discharge all of the obligations hereunder of such Participant, and such successor shall notify each of the other Participants in writing of such transfer, assignment or merger, and shall furnish to each Participant evidence of such transfer, assignment or merger and thereupon shall be considered to be a Participant in ANPP and the transferring Participant shall thereupon, without the consent of any other Participant, be released from all obligations under the Project Agreements so assumed and agreed to by such successor.

16. DESTRUCTION:

16.1 If ANPP or any portion thereof should be damaged or destroyed to the extent that the cost of repairs or reconstruction is estimated to be less than 150% of the aggregate amount of Project Insurance coverage carried pursuant to Section 19 hereof, and covering the cost of such repairs or reconstruction, then the Project Manager or the Operating Agent shall cause such repairs or reconstruction to be made so that ANPP shall be restored to substantially the same general condition, character or use as existed prior to such damage or destruction and the Participants shall share the costs of such repairs or reconstruction in proportion to their Generation Entitlement Shares.

16.2 If ANPP or any portion thereof should be damaged or destroyed to the extent that the costs of repairs or reconstruction is estimated to be 150% or more of the aggregate amount of Project Insurance coverage carried and covering the cost of such repairs or reconstruction, then upon agreement of all Participants the Project Manager or the Operating Agent shall cause such repairs or reconstruction to be made as may be

agreed and the Participants shall share the costs of such repairs or reconstruction in proportion to their Generation Entitlement Shares; provided, however, that should all of the Participants not agree to restore or reconstruct the damaged portion of ANPP, but some of the Participants nevertheless desire to do so, then any Participant who does not agree to restore or reconstruct shall sell its Generation Entitlement Share and ownership interest in ANPP to the remaining Participants for a price equal in amount to its Generation Entitlement Share in the salvage value thereof. The Participants agreeing to repair or reconstruct such Generating Unit shall share the costs of repair or reconstruction in the proportion that the Generation Entitlement Share of each bears to the total Generation Entitlement Shares of such Participants.

17. SEVERANCE OF IMPROVEMENTS:

The Participants agree that all facilities, structures, improvements, equipment and property of whatever kind and nature constructed, placed or affixed on the rights-of-way, easements, patented and leased lands as part of or as a Capital Improvement to ANPP, as against all parties and persons whomsoever (including without limitation any party acquiring any interest in the rights-of-way, easements, patented or leased lands or any interest in or lien, claim or encumbrance against any of such facilities, structures, improvements, equipment and property of whatever kind and nature), shall be deemed to be and remain personal property of the Participant(s), not affixed to the realty.

18. CAPITAL IMPROVEMENTS:

18.1 The Participants recognize that from time to time it may be necessary or desirable to make Capital Improvements or that Capital Improvements may be required by laws and regulations applicable to ANPP.

18.2 If requested by a Participant, any such Capital Improvement shall be described in a supplement to this Participation Agreement executed in recordable form.

18.3 All Capital Improvements shall be included in the annual capital expenditures budget. After such budget has been approved by the Engineering and Operating Committee, each Participant shall be obligated for the costs incurred for such Capital Improvements in proportion to its Generation Entitlement Share.

18.4 At any time the Engineering and Operating Committee may authorize Capital Improvements not included in the annual capital expenditures budget if any such Capital Improvement is required to comply with any lawful order, rule or regulation of a regulatory agency or if the cost of any such Capital Improvement is less than \$500,000. All other Capital Improvements not included in the annual capital expenditures budget may only be authorized by the Administrative Committee.

18.5 The Operating Agent shall submit to the Participants a forecast of cash requirements for each authorized Capital Improvement. Such forecast shall set forth such cash requirements (i) for each quarterly period commencing on the first day of January, April, July and October in which costs for such Capital Improvements shall become due and (ii) for each month of the first two quarterly periods immediately following the issuance of such forecast. Such forecast shall be revised and furnished to each Participant every three (3) months thereafter until completion of the Capital Improvement.

18.6 The Operating Agent shall be responsible for the design and construction of all Capital Improvements unless otherwise agreed by the Administrative Committee.

18.7 The cost of Capital Improvements shall be determined in accordance with Appendix E attached hereto.

8

18.8 Units of Property retired from service, whether considered original construction or Capital Improvements, shall be disposed of by the Operating Agent on the best available terms as soon as practicable consistent with the criteria and guidelines approved by the Administrative Committee pursuant to Section 6.2.12(m), provided

that at the time of such disposal (i) the Operating Agent shall have determined that such Units of Property are no longer used or useful for ANPP, (ii) the Operating Agent shall dispose of such Units of Property only on an "as is" basis without any representation or warranty as to quality, condition or fitness for any purpose and (iii) proceeds, if any, received therefrom shall be credited or distributed to the Participants in proportion to their Generation Entitlement Shares.

19. PROJECT INSURANCE:

19.1 Unless otherwise specified by the Administrative Committee, during the performance of Construction Work the Project Manager shall procure and maintain in force, or cause to be procured and maintained in force, Construction Insurance providing coverage against the following risks, hazards and perils:

19.1.1 Comprehensive liability risks, including bodily injury, personal injury and property damage risks, hazards of automobile liability, contractual liability, contractor's protective liability and liability for products and completed operations, in an amount not less than \$10,000,000.

19.1.2 Risks covered by the standard form of All Risk Builder's Risk Insurance, including the transportation hazard. Such insurance shall be written with such deductibles(s) as shall be approved by the Administrative Committee or in the absence of any approval with the smallest deductible(s) normally available and shall afford coverage from the time that Construction Work is commenced or material and equipment is shipped, as to each Generating Unit, until such time as Nuclear Fuel arrives at the Nuclear Plant Site and coverage of such risks is provided by the Project Insurance required to be obtained pursuant to Section 19.4 hereof.

19.1.3 Risks covered by the standard form of All Risk Contractor's Equipment Floater Insurance covering owned, non-owned and leased equipment used in connection with the performance of Construction Work.

19.1.4 Risks covered by the standard form of employees' dishonesty bond covering loss of property or funds of ANPP due to dishonest or fraudulent acts committed by an officer or employee of the Project Manager, any Participant or contractor who is engaged in Construction Work.

19.1.5 Risks covered by the standard form of workmen's compensation and employer's liability insurance, covering officers and employees of the Project Manager, any Participant and contractors engaged in the performance of Construction Work. Unless otherwise directed by the Administrative Committee, workmen's compensation coverage for officers and employees of the Project Manager shall be written with a deductible of \$50,000. Coverage for employer's liability shall be written in an amount not less than \$500,000.

19.2 Unless otherwise specified by the Administrative Committee, the Operating Agent shall procure and maintain in force, or cause to be procured and maintained in force, so as to be effective not later than the date on which the Operating Agent shall first incur a risk of loss, damage or liability, Operating Insurance providing coverage against the following risks, hazards and perils:

19.2.1 Comprehensive liability risks, including bodily injury, personal injury and property damage risks, hazards of automobile liability, contractual liability, contractors' protective liability and liability for products and completed operations, in an amount not less than \$10,000,000.

19.2.2 Risks covered by the standard form of employee dishonesty bond covering loss of property or funds of ANPP due to dishonest or fraudulent acts committed by an officer or employee of the Operating Agent, any Participant or contractor who is engaged in Operating Work or Capital Improvements.

19.2.3 Risks covered by the standard form of workmen's compensation and employer's liability insurance covering officers and employees of the Operating Agent, any Participant and contractors and their employees engaged in the performance of Operating Work. Unless otherwise directed by the Administrative Committee, workmen's compensation coverage for the Operating Agent's officers and employees shall be written with a deductible of \$50,000. Coverage for employer's liability shall be written in an amount not less than \$500,000.

19.2.4 In the event any Capital Improvements are undertaken at the Nuclear Plant Site the Operating Agent, shall procure and maintain or cause to be procured and maintained Construction Insurance providing coverage for risks described in Section 19.1.1, 19.1.2 and 19.1.3 hereof in respect of the construction of such Capital Improvements.

19.3 Whenever there shall be Nuclear Fuel at the Nuclear Plant Site or in transit to or from the Nuclear Plant Site, the Project Manager prior to the Date of Firm Operation of the first Generating Unit and the Operating Agent thereafter shall have in force and effect (i) Project Insurance in such minimum amount and in such form or forms as may be required, approved or permitted from time to time by law, including the rules and regulations of the U.S. Atomic Energy Commission and (ii) an indemnity agreement executed and delivered by the U.S. Atomic Energy Commission as required by the Atomic Energy Act of 1954 as amended as of the date of this Participation Agreement. In the event that a construction permit required to be issued by the U.S. Atomic Energy Commission for any Generating Unit is not issued prior to August 1, 1977, and Section 170(c) of said Act shall not have been amended prior to such date to extend the availability of the financial protection currently afforded by said Section 170(c) or other legislation affording comparable financial protection in respect of such Generating Unit shall not have been enacted prior to such date or in the event that, prior to August 1, 1977, and the issuance of such a construction permit, said Act or the rules and regulations of the U.S. Atomic Energy Commission shall be further amended in a manner which substantially changes the limit of liability of "persons indemnified" or otherwise substantially increases the risk of "public liability" of any Participant arising out of or resulting from a nuclear incident, as such terms are defined in the Atomic Energy Act of 1954 as amended as of the date of this Participation Agreement, any Participant may terminate its participation in ANPP with respect to such Generating Unit upon the terms and conditions set forth in Section 35 hereof.

19.4 Unless otherwise directed by the Administrative Committee, at all times when it is required under Section 19.3 hereof, the Project Manager prior to the Date of Firm Operation of the first Generating Unit and the Operating Agent thereafter shall have and maintain in force and effect nuclear property insurance providing coverage against radioactive contamination and all other risks of loss except those risks excluded in the standard form of policy of the Nuclear Energy Property Insurance Association which are not insurable by any available endorsement thereto. Except as otherwise authorized herein or directed by the Administrative Committee, such insurance shall be maintained in an amount not less than 90% of either the actual cash value or replacement cost, as the Administrative Committee shall direct or in the absence of any such direction as the Project Manager or the Operating Agent may in its sole discretion determine, of all property at the Nuclear Plant Site as determined from time to time by independent qualified appraisers selected by the Project Manager prior to completion of Construction Work or the Operating Agent thereafter. At any time that the maximum amount of insurance available from all domestic insurers or pools of insurers or any utilities mutual insurance company to cover the risks required to be insured under this Section 19.4 is less than 90% of the actual cash value or replacement cost of all property at the Nuclear Plant Site, then the Project Manager or the Operating Agent shall report such fact in writing to each Participant and shall obtain an endorsement of any policy procured in compliance with this Section 19.4 to render

the conditions of any co-insurance clause therein inapplicable, provided that, if such an endorsement is not available, then the Project Manager or the Operating Agent shall use its best efforts to obtain, subject to Section 20.9 hereof, the maximum amount of nuclear property insurance available from all sources. Unless otherwise directed by the Administrative Committee the insurance policy or policies secured in compliance with this Section 19.4 shall be written with such deductibles as shall be approved by the Administrative Committee or in the absence of any approval with the lowest deductible amounts offered by the insurer or insurers providing such policy or policies for property situated at the Nuclear Plant Site in its entirety and any component thereof.

20. GENERAL PROVISIONS AFFECTING PROJECT INSURANCE:

Except as otherwise directed by the Administrative Committee, the following provisions shall apply to the Project Insurance obtained by the Project Manager or Operating Agent in compliance with Section 19 hereof.

- 20.1 Except for Project Insurance described in Sections 19.1.3, 19.1.4, 19.1.5, 19.2.2 and 19.2.3 hereof, each Participant shall be named ~~or~~ additional insured, individually and jointly with the other Participants, on all policies of Project Insurance, and the policies of Project Insurance referred to in Sections 19.1.1 and 19.2.1 hereof shall carry cross-liability endorsements. In lieu of naming Participants insureds on policies described in Section 19.1.1 hereof, the Project Manager may require contractors to procure owner's protective liability insurance naming the Participants as insureds therein, with limits similar to those required in Section 19.1.1 hereof. an
- 20.2 Any deductibles shall be apportioned among the Participants on the basis set forth in Section 21.3 hereof, except that deductibles under any workmen's compensation insurance carried for officers and employees of the Project Manager and Operating Agent shall be apportioned in the manner specified in Section E.7 of Appendix E attached hereto.
- 20.3 Project Insurance policies shall be primary insurance for all purposes and shall be so endorsed. Any other insurance carried by a Participant individually shall not participate with Project Insurance as to any loss or claim for which valid and collectible Project Insurance shall apply. Such other insurance shall apply solely as to the individual interest of the Participant carrying such other insurance; provided, however, that each Participant shall accept any reasonably restrictive endorsement to its separate insurance policies as may be required by an insurer as a condition precedent to the issuance of a policy of Project Insurance.
- 20.4 At the direction of the Project Manager or Operating Agent, any party furnishing services, materials, parts or equipment in connection with the planning, design, engineering, construction, maintenance, operation or use of property at the Nuclear Plant Site may be named as an insured as its interest may appear in any of the Project Insurance policies, and either the Project Manager or the Operating Agent may waive on behalf of each Participant its right of recovery against any such party for insured loss of or damage to any property covered by Project Insurance, provided that no such waiver shall impair the right to recover any sums otherwise payable to any Participant under the Project Insurance.
- 20.5 The Project Manager and Operating Agent respectively shall furnish the other Participants with a certified copy of each of the policy forms of Project Insurance, together with a line sheet therefor (and any subsequent amendments) naming the insurers and underwriters and the extent of their participation.
- 20.6 Each of the Project Insurance policies shall be endorsed so as to provide that the Participants and additional named insureds pursuant to Section 20.4 hereof shall be given the same advance notice of cancellation or material change as that required to be given to the Project Manager or Operating Agent.

- 20.7 In the event the Administrative Committee is unable to agree upon any matters relating to Project Insurance not governed by Sections 19 and 20 hereof, the Project Manager or Operating Agent, pending the resolution of such disagreement, shall procure or cause to be procured, such policies of Project Insurance as in its best judgment are necessary and required to protect the Participants against the insurable risks more particularly set forth in Section 19 hereof. During any period of negotiations with an insurer, or other negotiations which are pending at the expiration of the period of coverage of a Project Insurance policy, or in the event a Project Insurance policy is cancelled, the Project Manager and Operating Agent shall renew or bind policies as an emergency measure or may procure policies of insurance which are identical to those which were cancelled, or may, to the extent possible, secure replacement policies which will provide substantially the same coverage as the policy expiring or cancelled.
- 20.8 Each Participant shall have the right to have any mortgagee, trustee or secured party named on all or any of the Project Insurance policies as loss payee or additional insured as its interest may appear, by notice to the Project Manager or Operating Agent given in writing not less than ninety (90) days prior to the procurement or renewal of the Project Insurance policy(ies), which such notice shall specify the name or names of such mortgagee, trustee or secured party and such additional information as may be necessary or required to permit it to be included on the policy(ies) of Project Insurance.
- 20.9 Unless otherwise directed by the Administrative Committee, the Project Manager and Operating Agent shall obtain Project Insurance from such insurers or underwriters, including stock companies, mutuals and pools or groups of insurers or underwriters, as either of them in its sole discretion may select, provided that any policy which obligates any Participant to pay any assessment shall not be obtained unless such Participant has agreed in writing to undertake such obligation.
- 20.10 Any refunds of premiums or dividends received by the Project Manager or Operating Agent on any Project Insurance shall be allocated among the Participants in proportion to their Generation Entitlement Shares at the time of receipt thereof, provided that any reserve premium refunds received under any nuclear liability insurance policy or any other policy with a comparable retrospective rating plan shall be allocated among the Participants at the time of payment of the reserve premium in proportion to their Generation Entitlement Shares at such time.
- 20.11 Nothing herein shall prohibit the Project Manager or Operating Agent from combining the coverage required by this Participation Agreement with coverage outside the scope of that required by this Participation Agreement. If the Project Manager or Operating Agent does so combine coverages, the Administrative Committee shall determine the portion of the total premium cost which is allocable to Construction Insurance or Operating Insurance. If the Administrative Committee is unable to determine such allocation, the Project Manager or Operating Agent, as the case may be, may make an estimated allocation and bill the Participants on the basis thereof, with adjustment to be made when the dispute is resolved.
- 20.12 Except as provided in Section 20.8 hereof, if any Participant desires changes in any policy of Project Insurance, such Participant shall request in writing to the Project Manager or Operating Agent, as the case may be, to have the desired changes made. Upon receipt of any such request the Project Manager or Operating Agent shall promptly determine whether or not the desired changes can be made and the effect thereof upon the coverage afforded each other Participant and upon insurance premiums. If the Project Manager or Operating Agent determines that (i) the desired changes can be made, (ii) will not reduce the coverage otherwise afforded to any Participant and (iii) will not result in any increase in premium expense or if an increase in premium expenses will result and the requesting Participant agrees in writing to pay such increase, then the Project Manager or Operating Agent shall cause such desired changes to be made at the earliest feasible time. If the Project Manager or

Operating Agent determines that the desired changes can be made but to do so (i) will result in a reduction in coverage otherwise afforded to any Participant or (ii) will result in an increase in premium expense shared by the Participants, such request shall be referred to the Administrative Committee for resolution.

9 21. LIABILITY:

- 21.1 Except for any judgment debt for damage resulting from Willful Action and except to the extent any judgment debt is collectible from valid Project Insurance, and subject to the provisions of Sections 21.2, 21.4, 21.5, and 21.6 hereof, each Participant hereby extends to all other Participants, their directors, members of their governing bodies, officers and employees its covenant not to execute, levy or otherwise enforce a judgment obtained against any of them, including recording or effecting a judgment lien, for any direct, indirect or consequential loss, damage, claim, cost, charge or expense, whether or not resulting from the negligence of such Participant, its directors, members of its governing bodies, officers, employees, or any person or entity whose negligence would be imputed to such Participant from (i) Construction Work, Operating Work, the design and construction of Capital Improvements, or the use of or ownership of ANPP or (ii) the performance or nonperformance of the obligations of a Participant under the Project Agreements, other than the obligation to pay any monies which have become due.
- 21.2 In the event any insurer providing Project Insurance refuses to pay any judgment obtained by a Participant against another Participant, its directors, members of its governing bodies, officers or employees, on account of liability referred to in Section 21.1 hereof, the Participant, its directors, members of its governing bodies, officers or employees against whom the judgment is obtained shall, at the request of the prevailing Participant and in consideration of the covenant given in Section 21.1 hereof, execute such documents as may be necessary to effect an assignment of its contractual rights against the nonpaying insurer and thereby give the prevailing Participant the opportunity to enforce its judgment directly against such insurer. In no event when a judgment debt is collectible from valid Project Insurance shall the Participant obtaining the judgment execute, levy or otherwise enforce the judgment (including recording or effecting a judgment lien) against the Participant, its directors, members of its governing bodies, officers or employees, against whom the judgment was obtained.
- 21.3 Except as provided in Sections 21.4, 21.5, and 21.6 hereof, the costs and expenses of discharging all Work Liability or liability resulting from the design or construction of Capital Improvements imposed upon one or more of the Participants for which payment is not made by Project Insurance shall be shared among and paid by all Participants in proportion to their respective Generation Entitlement Shares.
- 21.4 Each Participant shall be responsible for any damage, loss, claim, cost, charge or expense that is not covered by Project Insurance and results from its own Willful Action as defined in Section 3.56.2 hereof and shall indemnify and hold harmless the other Participants, their directors, members of their governing bodies, officers and employees from any such damage, loss, claim, cost, charge or expense.
- 21.5 Except as provided in Section 21.4 hereof, the aggregate liability of any Participant to all other Participants for Willful Action not covered by Project Insurance shall be determined as follows:
 - 21.5.1 All such liability for damages, losses, claims, costs, charges or expenses of such Participant shall not exceed \$10,000,000 per occurrence. Each Participant extends to each other Participant, its directors, members of its governing bodies, officers and employees its covenant not to execute, levy or otherwise enforce a judgment obtained against any of them for any such aggregate liability in excess of \$10,000,000 per occurrence.

- 21.5.2 A claim based on Willful Action must be perfected by filing suit in a court of competent jurisdiction within three years after the Willful Action occurs. All claims made thereafter relating to the same Willful Action shall be barred by this Section 21.5.2. The award to each nonwillfully acting Participant from each Participant determined to have committed Willful Action shall be determined as follows: (i) Each Participant who successfully files suit for remuneration shall receive the lesser of (a) its final judgment awarded (or settlement made) or (b) its *pro-rata* Generation Entitlement Share of the \$10,000,000 maximum recovery established in Section 21.5.1 hereof. (ii) When all pending suits are resolved, those Participants who were awarded judgments or reached settlements but whose claims were not fully satisfied pursuant to Section 21.5.2(i) shall be entitled to participate in any remaining portion of the \$10,000,000 maximum recovery limit, based upon the ratio of the unsatisfied portion of such Participant's judgment or settlement to the total unsatisfied portion of all such judgments and settlements. Such participation shall be limited to the Participants' unsatisfied judgments or settlements. no italics
- 21.6 Except for liability resulting from Willful Action (which, subject to the provisions of Section 21.5 hereof, shall be the responsibility of the willfully acting Participant), any Participant whose electric customer shall have a claim or bring an action against any other Participant for any death, injury, loss or damage arising out of or in connection with electric service to such customer and caused by the operation or failure of operation of ANPP or any portion thereof, shall indemnify and hold harmless such other Participant, its directors, members of its governing bodies, officers and employees from and against any liability for such death, injury, loss or damage.
- 21.7 The provisions of this Section 21 shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible Project Insurance policies.
- 21.8 The Participants agree that the aggregate liability limit of \$10,000,000 referenced in Sections 21.5.1 and 21.5.2 hereof may be determined in the future to be inappropriate and shall make a good faith effort to evaluate and, if appropriate, revise said limit at the request of any Participant.

22. AUTHORIZATIONS AND APPROVALS:

- 22.1 The Project Manager shall be responsible for obtaining all licenses, permits and authorizations requisite to construct each Generating Unit and any components thereof and, in coordination with the Operating Agent, for obtaining all licenses, permits and authorizations requisite to operate and maintain such Generating Unit prior to the Date of Firm Operation, for the release of any effluents therefrom and the storage, shipment, use or disposal of any radioactive materials prior to such date and is authorized to submit and prosecute on behalf of each Participant any applications therefor, including the preparation and submission of any supplementary or supporting documentation or other evidence and appearing at any hearing. The Project Manager shall furnish each Participant with copies of all documents submitted as much in advance of the filing or submission date as may be reasonably possible without incurring a delay or risk of delay of the Date of Firm Operation of any Generating Unit and shall otherwise keep each Participant informed of the status of all applications. Each Participant shall cooperate with the Project Manager in the preparation, submission and execution of such information, records, statements or other material required to obtain any such licenses, permits or authorizations.
- 22.2 The Operating Agent shall be responsible for obtaining and continuing in effect all licenses, permits and authorizations requisite to (i) operate and maintain each Generating Unit, (ii) release of any effluents and (iii) store, ship or dispose of any wastes and to construct or install any Capital Improvements and is authorized on behalf of each

Participant to submit and prosecute any applications therefor, including the preparation and submission of any supplementary or supporting documentation or other evidence and appearance at any hearing. The Operating Agent shall furnish each Participant with copies of all documents submitted and all licenses, permits and authorizations received and shall otherwise keep each Participant informed of the status of all licenses, permits and authorizations in effect and any pending or proposed applications therefor or for changes thereto. Each Participant shall cooperate with the Operating Agent in the preparation, submission and execution of such information, records, statements or other material required to obtain and continue in effect any such licenses, permits or authorizations and any changes thereto.

- 22.3 Except as provided in Sections 22.1 and 22.2 hereof, each Participant shall be responsible for obtaining, at its own expense, its required authorizations and approvals, if any, relating to its participation in the construction or reconstruction and operation of ANPP and to its performance of the provisions of the Project Agreements, from Federal, state or local regulatory authorities having jurisdiction to issue such authorizations and approvals, and each Participant shall keep the Project Manager and Operating Agent informed of its applications therefor.

23. DEFAULTS AND COVENANTS REGARDING OTHER AGREEMENTS:

- 23.1 Each Participant hereby agrees that it shall pay all monies and carry out all other duties and obligations agreed to be paid and/or performed by it pursuant to all of the terms and conditions set forth and contained in the Project Agreements, and a default by any Participant in the covenants and obligations to be kept and performed pursuant to the terms and conditions set forth and contained in any of the Project Agreements shall be an act of default under this Participation Agreement.
- 23.2 In the event of a default by any Participant in any of the terms and conditions of the Project Agreements, then, within ten (10) days after written notice has been given by any non-defaulting Participant to all other Participants of the existence and nature of the default, the non-defaulting Participant shall remedy such default either by advancing the necessary funds and/or commencing to render the necessary performance, with each non-defaulting Participant contributing to such remedy in the ratio of its Generation Entitlement Share to the total of the Generation Entitlement Shares of all non-defaulting Participants. [s]
- 23.3 In the event of a default by any Participant in any of the terms and conditions of the Project Agreements and the giving of notice as provided in Section 23.2 hereof, the defaulting Participant shall take all steps necessary to cure such default as promptly and completely as possible and shall pay promptly upon demand to each non-defaulting Participant the total amount of money and/or the reasonable equivalent in money of non-monetary performance, if any, paid and/or made by such non-defaulting Participant in order to cure any default by the defaulting Participant, together with interest on such money and/or the costs of non-monetary performance at the rate of ten per cent (10%) per annum, or the maximum rate of interest legally chargeable, whichever is the lesser, from the date of the expenditure of such money and/or the date of completion of such non-monetary performance by each such non-defaulting Participant to the date of such reimbursement by the defaulting Participant, or such greater amount as may be otherwise provided in the Project Agreements.
- 23.4 In the event that any Participant shall dispute the existence or nature of a default asserted in a notice given pursuant to Section 23.2, then such Participant shall pay the disputed payment or perform the disputed obligation, but may do so under protest. The protest shall be in writing, shall accompany the disputed payment or precede the performance of the disputed obligation, and shall specify the reasons upon which the protest is based. Copies of such protest shall be mailed by such Participant to all other Participants. Payments not made under protest shall be deemed to be correct, except to the extent that periodic or annual audits may reveal over or under payments by Participants, necessitating adjustments. In the event it is determined by arbitration,

pursuant to the provisions of this Participation Agreement or otherwise, that a protesting Participant is entitled to a refund of all or any portion of a disputed payment or payments or is entitled to the reasonable equivalent in money of non-monetary performance of a disputed obligation theretofore made, then, upon such determination, the non-protesting Participants shall pay such amount to the protesting Participants, together with interest thereon at the rate of six per cent (6%) per annum from the date of payment or from the date of completion of performance of a disputed obligation to the date of reimbursement. Reimbursement of the amount so paid shall be made by the non-protesting Participants in the ratio of their respective Generation Entitlement Shares to the total of the Generation Entitlement Shares of all non-protesting Participants.

23.5 Unless otherwise determined by a board of arbitrators, in the event of a default by any Participant in the payment or performance of any obligation under the Project Agreements shall continue for a period of six (6) months or more without having been cured by the defaulting Participant or without such Participant, having commenced or continued action in good faith to cure such default, or in the event the question of whether an act of default exists becomes the subject of an arbitration pursuant to Section 24 hereof, and such act continues for a period of six (6) months following a final determination by a board of arbitrators or otherwise that an act of default exists and the defaulting Participant has failed to cure such default or to commence such action during said six (6) month period, then, at any time thereafter and while said default is continuing, all of the non-defaulting Participants, by written notice to all Participants, may suspend the right of the defaulting Participant (i) to be represented on and participate in the actions of all committees and (ii) to receive all or any part of its proportionate share of the Available Generating Capability and Net Energy in which event:

23.5.1 During the period that such suspension is in effect, the non-defaulting Participants (i) shall bear all of the operation and maintenance costs, insurance costs and other expenses, including Fuel Expenses and Nuclear Fuel Expenditures, otherwise payable by the defaulting Participant under the Project Agreements and (ii) shall be entitled to schedule and receive for their respective accounts the Generation Entitlement Share of the defaulting Participant of the Available Generating Capability and Net Energy Generation of all Generating Units, in the ratio of their respective Generation Entitlement Shares to the total of the Generation Entitlement Shares of all non-defaulting Participants.

23.5.2 A defaulting Participant shall be liable to the non-defaulting Participants in the proportion that the Generation Entitlement Shares of each non-defaulting Participant bears to the total of the Generation Entitlement Shares of all non-defaulting Participants for all costs incurred by such non-defaulting Participants pursuant to Section 23.5.1 hereof. The proceeds paid by any defaulting Participant to remedy any such default shall be distributed to the non-defaulting Participants in the ratio of their respective Generation Entitlement Shares to the total of the Generation Entitlement Shares of all non-defaulting Participants.

23.5.3 The suspension of any defaulting Participant shall be terminated and its full rights hereunder restored when all of its defaults have been cured and all costs incurred by non-defaulting Participants pursuant to Section 23.5.1 have been paid by the defaulting Participant or other arrangements suitable to all non-defaulting Participants have been made.

23.5.4 During the period that such suspension is in effect, no Fuel Expense Credits nor net credit adjustments to the Assigned Fuel Expense to which the defaulting Participant would in the absence of such suspension have been entitled, pursuant to Appendix F attached hereto, shall become due and

payable to the defaulting Participant and the non-defaulting Participants may apply all or any portion of any such Fuel Expense Credits and of any such net credit adjustments as offsets to the costs and expenses incurred by them and arising from or in connection with such default.

- 23.6 In addition to the remedies provided for in Section 23.5 hereof the non-defaulting Participants may, in submitting a dispute to arbitration in accordance with the provision of Section 24 hereof, request that the board of arbitrators determine what additional remedies may be reasonably necessary or required under the circumstances which give rise to the dispute. The board of arbitrators may determine what remedies are necessary or required in the premises, including but not limited to the conditions under which ANPP may be operated economically and efficiently during periods when the defaulting Participant's right to receive its proportionate share of the Available Generating Capability is suspended.

- 23.7 The rights and remedies of the Participants set forth in this Participation Agreement shall be in addition to the rights and remedies of the Participants set forth in any other of the Project Agreements.

24. ARBITRATION:

- 24.1 If a dispute between any of the Participants should arise under the Project Agreements, any Participant(s) may call for submission of the dispute to arbitration which shall be binding upon all of the other Participants.
- 24.2 The Participant(s) calling for arbitration shall give written notice to all other Participants, 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, any other Participant(s) involved may, by written response to the first Participant(s) and all other Participants, submit its or their own statement of the matter at issue and set forth in adequate detail additional related matters or issues to be arbitrated. Thereafter, the Participant(s) first submitting its or their notice of the matter at issue shall have ten (10) days in which to submit a written rebuttal statement, copies of which shall be given to all other Participants.
- 24.3 Within forty (40) days following delivery of the written notice pursuant to Section 24.2 hereof, the Participants, acting through their representatives on the Administrative Committee, shall meet for the purpose of selecting arbitrators. Each Participant or group of Participants representing one side of the dispute shall designate an arbitrator. The arbitrators so selected shall meet within twenty (20) days following their selection and shall select additional arbitrators, the number of which shall be one (1) less than the total number of arbitrators selected by the Participants. If the arbitrators selected by the Participants, as herein provided, shall fail to select such additional arbitrator(s) within said twenty (20) day period, then the arbitrators 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 Participants shall take turns striking names from the list of arbitrators furnished by the American Arbitration Association, and the last name(s) remaining on said list shall be the additional arbitrator(s). All arbitrators shall be persons skilled and experienced in the field which gives rise to the dispute, and no person shall be eligible for appointment as an arbitrator who is an officer or employee of any of the parties to the dispute or is otherwise interested in the matter to be arbitrated.
- 24.4 Except as otherwise provided in this Section 24, the arbitration shall be governed by the rules and practice of the American Arbitration Association (or the rules and practice of a similar organization if the American Arbitration Association should not at that time exist) from time to time in force, except that if such rules and practice, as modified herein, shall conflict with state or Federal law, as the case may be, then in force which are specifically applicable to such arbitration proceedings, such law shall govern.

- 24.5 Included in the issues which may be submitted to arbitration pursuant to this Section 24 is the issue of whether the right to arbitrate a particular dispute is permitted under the Project Agreements.
- 24.6 The arbitrators shall hear evidence submitted by the respective Participants and may call for additional information, which additional information shall be furnished by the Participant(s) having such information. The decision of a majority of the arbitrators shall be binding upon all the Participants.
- 24.7 The award of the arbitrators shall contain findings relative to the materiality of the default, the period of time within which the defaulting party must remedy the default or commence remedial action, and the remedies which may be exercised by the non-defaulting Participants in the event the default is not remedied within such period of time.
- 24.8 This agreement to arbitrate shall be specifically enforceable, and the award and findings of the arbitrators shall be final and binding upon the Participants to the extent permitted by applicable law. Any award may be filed with the clerk of any court having jurisdiction over the Participants, or any of them, against whom the award is rendered, and, upon such filing, such award, to the extent permitted by the laws of the jurisdiction in which said award is filed, shall be specifically enforceable or shall form the basis of a declaratory judgment or other similar relief.
- 24.9 The fees and expenses of the arbitrators shall be shared by the Participants equally, unless the decision of the arbitrators shall specify some other apportionment of such fees and expenses. All other expenses and costs of the arbitration shall be borne by the Participant incurring the same.
- 24.10 In the event that any Participant shall attempt to carry out the provisions herein set forth in regard to arbitration, and such Participant shall not be able to obtain a valid and enforceable arbitration decree, such Participant shall be entitled to seek legal remedies in the courts having jurisdiction in the premises, and the provisions of the Project Agreements referring to decision of a board of arbitration, to the extent allowable by law, shall be then deemed applicable to final decisions of such courts.

25. ACTIONS PENDING RESOLUTION OF DISPUTES:

- 25.1 If a dispute should arise which is not resolved by the Administrative Committee or the higher authorities within the Participants' organizations, then, pending the resolution of the dispute by arbitration or judicial proceedings, the Project Manager or Operating Agent shall proceed with Construction Work, Operating Work or Capital Improvements in a manner consistent with the Project Agreements and generally accepted practice in the electric utility industry, and the Participants shall advance the funds required to perform such Construction Work, Operating Work, or Capital Improvements in accordance with the applicable provisions of the Project Agreements. The resolution of any dispute involving the failure of the Administrative Committee to reach agreement upon matters involving future expenditures shall have prospective application from the date of final determination, and amounts advanced by the Participants pursuant to this Section 25 during the pendency of such dispute shall not be subject to refund except upon a final determination that the expenditures were not made in a manner consistent with the Project Agreement ~~and generally~~ [Cs] accepted practice in the electric utility industry.

26. REMOVAL OF PROJECT MANAGER OR OPERATING AGENT:

- 26.1 The Project Manager and Operating Agent shall serve during the term of and pursuant to this Participation Agreement unless either one resigns by giving written notice to the Participants at least one (1) year in advance of the date of resignation or until receipt by either one of notice of its removal following a determination that it is in default of this Participation Agreement as provided in Section 26.2.2 hereof. Upon the effective date of such resignation or removal, the Participants shall designate a new Project Manager or Operating Agent by written agreement.

26.2 The following provisions shall apply solely in regard to violations or allegations of violations of this Participation Agreement by the Project Manager or the Operating Agent on the basis of which removal of either one is sought:

26.2.1 In the event any Participant shall be of the opinion that an action taken or not taken by the Project Manager or Operating Agent constitutes a violation of this Participation Agreement, it may give written notice thereof to the Project Manager or the Operating Agent as the case may be and the other Participants, together with a statement of the reasons for its opinion. Thereupon, the Project Manager or the Operating Agent may prepare a statement of the reasons justifying its action or failure to take action. If agreement in settling the dispute is not reached between the Project Manager or the Operating Agent and the Participant which gave such notice, then the matter shall be submitted to arbitration in the manner provided in Section 24 hereof. During the continuance of the arbitration proceedings, the Project Manager or the Operating Agent may continue such action taken or not taken in the manner it deems most advisable and consistent with this Participation Agreement.

26.2.2 If it is determined that the Project Manager or the Operating Agent is violating this Participation Agreement, then it shall act with due diligence to end such violation and shall, within six (6) months or within such lesser time following the determination as may be prescribed in the determination, take action or commence action in good faith to terminate such violation. In the event that the Project Manager or the Operating Agent has failed either to correct, or to commence action to correct, the violation within such allowed period (which itself may be a subject of dispute for determination as above provided) it shall be deemed to be in default under this Participation Agreement and shall be subject to removal upon receipt of notice, executed by all the other Participants, in accordance with Section 26.1 hereof.

26.2.3 The provisions of Section 23 hereof shall not apply to disputes as to whether or not an action or non-action of the Project Manager or the Operating Agent, in its capacity as such, is a violation or a default under this Participation Agreement.

27. RELATIONSHIP OF PARTICIPANTS:

27.1 The covenants, obligations and liabilities of the Participants 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 any one or more of the Participants. Each Participant shall be individually responsible for its own covenants, obligations and liabilities as herein provided. No Participant or group of Participants shall be under the control of or shall be deemed to control any other Participant or the Participants as a group. No Participant shall be the agent of or have a right or power to bind any other Participant without its express written consent, except as expressly provided in this Participation Agreement or other Project Agreements.

27.2 The Participants 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 Participants under the Project Agreements.

28. FEES:

No Project Manager or Operating Agent shall receive any fee or profit hereunder.

29. ENVIRONMENTAL PROTECTION:

- 29.1 The Participants agree to design, construct, operate and maintain ANPP in a manner consistent with the Participants' objective of attaining the degree of environmental protection reasonably feasible. The Participants affirm their continuing obligation to comply fully with applicable Federal, state and local laws, orders, regulations, rules and standards relating to environmental protection. The Participants shall to the extent practicable anticipate and make provision for the future installation of any systems required to comply with changes in said laws, orders, regulations, rules and standards.
- 29.2 The Participants hereby direct that the Project Manager and Operating Agent shall install and diligently operate as part of ANPP such solid, gaseous and liquid effluent control and treatment systems as may be necessary to comply with and fulfill the objectives and obligations set forth in Section 29.1 hereof.
- 29.3 The Project Manager is hereby authorized and directed to conduct such studies and monitoring programs and employ such expert consultants as may be required or useful to properly evaluate alternative plant sites and feasible means of minimizing the impact of ANPP on the environment and of enhancing the incidental environmental benefits which may accrue from or be developed in connection with the operation and maintenance of ANPP. Further, the Project Manager shall take all appropriate measures to harmonize ANPP with the environment and shall exercise care to prevent any unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Nuclear Plant Site.
- 29.4 The Operating Agent shall continue or initiate such monitoring programs as may be appropriate to detect in their incipency any changes, anticipated and unanticipated, in the environment that may be attributable to the operation of ANPP and recommend to the Engineering and Operating Committee such Capital Improvements as may in the future with improvements in technology enhance the environmental benefits derivable from ANPP or minimize any adverse effects.

30. UNCONTROLLABLE FORCES:

- 30.1 No Participant shall be considered to be in default in the performance of any of its obligations under the Project Agreements (other than obligations of said Participant to pay costs and expenses) when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" shall be any cause beyond the control of the Participant affected, including but not restricted to failure of or threat of failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence such Participant could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a Participant to settle any strike or labor dispute in which it may be involved. Any Participant rendered unable to fulfill any of its obligations under the Project Agreements by reason of an uncontrollable force shall give prompt written notice of such fact to the other Participants and shall exercise due diligence to remove such inability with all reasonable dispatch. The term "Participant" as used in this Section 30 shall include the Project Manager and Operating Agent in their capacities as such.

31. GOVERNING LAW:

- 31.1 This Agreement shall be governed by and construed and enforceable in accordance with the laws of the State of Arizona.

32. BINDING OBLIGATIONS:

- # 7 32.1 All of the respective covenants and obligations of each of the Participants set forth and contained in the Project Agreements shall bind and shall be and become the respective covenants and obligations of:

32.1.1 Each such Participant;

32.1.2 All mortgagees, trustees and secured parties under all present and future mortgages, indentures and deeds of trust, and security agreements which are or may become a lien upon any of the interests of such Participant in ANPP; provided, however, that such covenants and obligations shall become binding upon such parties only at the time of taking possession.

32.1.3 All receivers, assignees for the benefit of creditors, bankruptcy trustees and referees of such Participant;

32.1.4 All other persons, firms, partnerships, or corporations claiming through or under any of the foregoing; and

32.1.5 Any successors or assigns of any of those mentioned in Sections 32.1.1 through 32.1.4 hereof,

and shall be covenants and obligations running with such Participant's respective rights, titles and interests in ANPP and in, to and under the Project Agreements, and shall be for the benefit of the respective rights, titles and interests of the Participants and their respective successors and assigns, in and to ANPP. It is the specific intention of this provision that all such covenants and obligations shall be binding upon any party which acquires any of the rights, titles, and interests of any such Participant in ANPP or in, to and under the Project Agreements and that all of the above-described persons and groups shall be obligated to use such Participant's rights, titles and interests in ANPP and/or in, to or under the Project Agreements for the purpose of discharging its covenants and obligations under the Project Agreements; except (i) that in the case of a partial assignment the assignee shall only be required to share in the cost of fulfilling the covenants and obligations of the assigning Participant in, to and under the Project Agreements to an extent proportionate or attributable to such assignment and (ii) the rights and obligations of any Fuel Financer of any Participant shall be governed by the provisions of Section 15.4 hereof.

33. NONDEDICATION OF FACILITIES:

- 33.1 The Participants do not intend to dedicate and nothing in this Participation Agreement or the Project Agreements shall be construed as constituting a dedication by any Participant of its properties or facilities, or any part thereof, to any other Participant or to the customers of any Participant.

34. GENERAL PROVISIONS GOVERNING PROJECT AGREEMENTS:

- 34.1 The Participants agree to negotiate in good faith and to proceed with diligence to obtain all of the Project Agreements among the Participants and between the Participants and other entities.

- 34.2 It is acknowledged by the Participants that one or more of the Project Agreements may contain provisions which are in conflict with or contrary to the terms of this Participation Agreement, and any such provision in a Project Agreement executed subsequent to the execution of this Participation Agreement and agreed to by the Participants shall be deemed to supersede, amend or modify any conflicting or contrary provision herein. The mutual agreement of the Participants to supersede, amend or modify the terms hereof shall constitute the legal consideration to support such change in the legal rights and obligations of the Participants.

- 34.3 Each Participant agrees, upon request by the other Participants, to make, execute and deliver any and all documents reasonably required to implement this Participation Agreement and the Project Agreements.
- 34.4 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 any Participant 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 Participants of any or all of the terms, covenants and conditions to be kept and performed by them.
[Section 34.5 does not exist in the original executed agreement.]
- 34.6 In the event that 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 be held invalid as to any person or circumstance by any court having jurisdiction in the premises, all other terms, covenants or conditions of such agreements and their application shall not be affected thereby, but shall remain in force and effect.
- 34.7 The Project Agreements shall be subject to filing with, and to such changes or modifications as may from time to time be directed by, competent regulatory authority, if any, in the exercise of its jurisdiction.
- 34.8 Except as otherwise specifically provided in this Participation Agreement or the Project Agreements, the Participants do not intend to create rights in or to grant remedies to any third party as a beneficiary of this Participation Agreement or the Project Agreements or of any duty, covenant, obligation or undertaking established therein.
- 34.9 Any waiver at any time by any Participant of its rights with respect to a default or any other matter arising in connection with this Participation Agreement or a Project Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

35. TERMS AND TERMINATION:

- 35.1 This Participation Agreement shall become effective on September 1, 1973, provided that it shall have been then duly executed by all of the Participants and shall have a term of fifty (50) years from its effective date or forty (40) years from the Date of Firm Operation of the last Generating Unit constructed hereunder whichever is later.
- 35.2 In the event any Participant elects to terminate its participation in ANPP in respect of any Generating Unit in accordance with Section 19.3 hereof, such election shall be exercised by delivery to each other Participant not later than September 1, 1977, of a written notice of such election and shall become effective as of December 1, 1977.
- 35.3 Upon delivery of any notice by any Participant pursuant to Section 35.2 hereof, each other Participant shall have (the) right to terminate its participation in ANPP in respect of the Generating Unit affected by such notice. Such right to terminate shall be exercised by delivery to each other Participant on or before December 1, 1977, of a written notice of the exercise of such right. Any such termination shall become effective on December 1, 1977.
- 35.4 No election or exercise of the right to terminate participation in respect of any Generating Unit pursuant to Section 35.2 or 35.3 hereof shall modify or alter the rights and obligations of any Participant in respect of any other Generating Unit.
- 35.5 In the event any Participant elects or exercises its right to terminate its participation in any Generating Unit pursuant to Section 35.2 or 35.3 hereof ("Terminating Participant"), the accumulated Construction Costs, charges and expenses paid or incurred by all Participants prior to the effective date of such termination and any termination costs shall be shared by all Participants on the basis of the respective Generation

Entitlement Shares of the Participants in the affected Generating Unit. All equipment, facilities and property theretofore acquired or constructed in connection with such Generating Unit shall, subject to Section 35.6 hereof, be disposed of by the Project Manager in the manner most beneficial to all Participants, and the benefits accruing therefrom shall be shared on the basis of the Participants' Generation Entitlement Shares.

35.6 Should any Participants desire to proceed with the construction of such Generating Unit or any component thereof, they shall have the right to purchase from each Terminating Participant and each Terminating Participant shall be obligated to sell to the continuing Participant(s) its right, title and interest in such Generating Unit, including any Project Agreement related thereto, for the amount that such Terminating Participant has expended therefor pursuant to this Participation Agreement, excluding interest during construction but including a proportionate share determined on the basis of ratios of Maximum Generating Capability of the cost of any facilities shared by such Generating Unit with any other Generating Unit, and upon receipt of payment thereof all rights and obligations of such Terminating Participant under this Participation Agreement in respect of such Generating Unit shall cease and terminate. If two or more Participants desire to exercise their rights to purchase under this Section 35.6, then, unless they shall otherwise agree, each of them shall be entitled to purchase a *pro rata* share, based upon their respective Generation Entitlement Shares, of the right, title and interest of the Terminating Participant(s) in such Generating Unit and this Participation Agreement shall remain in force and effect with respect to the continuing Participants until the expiration of the term provided in Section 35.1 hereof.

35.7 In any event this Participation Agreement shall continue in force and effect until (i) the expiration of the term set forth in Section 35.1 hereof, or (ii) all property comprising ANPP has been disposed of and all termination costs have been paid.

36. ASSIGNMENT OF INTERESTS:

Any Participant who acquires in its name an interest in any real or personal property or contract which is part of ANPP shall transfer and assign an undivided interest therein to the other Participants so that the ownership and rights of the Participants in such property or contract shall be as provided for in this Participation Agreement and the Project Agreements.

37. EQUAL OPPORTUNITY:

37.1 During the term of this Participation Agreement, the Project Manager and the Operating Agent (hereinafter in this Section 37 referred to collectively as the "Contractor") agree as follows:

37.1.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

37.1.2 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

- 37.1.3 The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this Section 37, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 37.1.4 The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations and relevant orders of the Secretary of Labor.
- 37.1.5 The Contractor will furnish all information and reports required by Executive Order 11246 as amended by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 37.1.6 In the event of the Contractor's non-compliance with the non^adiscrimination clauses of this Participation Agreement or with any of the said rules, regulations or orders, this Participation Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in said Executive Order 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order as amended or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- 37.1.7 The Contractor will include the provisions of Sections 37.1.1 through 37.1.7 hereof in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of said Executive Order 11246 as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- 37.2 The parties recognize there are a number of Indian Reservations in the area in which the Contractor operates. Pursuant to the provisions of Title 42 U.S.C.A. §2000-e-2(i), the Contractor now has several agreements and contemplates it may have additional agreements with Indian Tribes providing for preference to qualified Indians for employment on the Reservation of such Indians. The parties agree that Contractor's act of giving preference to qualified Indians for employment on the Reservation of said Indians is not to be deemed inconsistent with the purposes or provisions of Section 37.1 hereof.

38. NOTICES:

- Participa[tion] 38.1 Except as set forth in Section 38.2 hereof, any notice, demand or request provided for in this Participant Agreement or any other Project Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:
- 38.1.1 Arizona Public Service Company
c/o Secretary
P. O. Box 21666
Phoenix, Arizona 85036
 - 38.1.2 Salt River Project Agricultural Improvement and Power District
c/o Secretary
P. O. Box 1980
Phoenix, Arizona 85001
 - # 2 38.1.3 Southern California Edison Company
c/o Secretary
P. O. Box 800
2244 Walnut Grove Avenue
Rosemead, California 91770
 - 38.1.4 Public Service Company of New Mexico
c/o Secretary
P. O. Box 2267
Albuquerque, New Mexico 87103
 - # 1 38.1.5 El Paso Electric Company
c/o Secretary
P. O. Box 982
El Paso, Texas 79999
 - # 1
3
8 38.1.6 Southern California Public Power Authority
c/o Executive Director
Room 300
613 East Broadway
Glendale, California 91205
 - 38.2 Communications of a routine nature, including requests for funds and related matters, shall be given in such manner as the Administrative Committee shall arrange.
 - 38.3 Any Participant may, at any time, by written notice to all other Participants, designate different or additional persons or different addresses for the giving of notices hereunder.

39. EXECUTION:

IN WITNESS WHEREOF, the Participants have caused this Participation Agreement to be executed as of the 23rd day of August, 1973.

ATTEST:

Assistant Secretary

ATTEST AND COUNTERSIGN:

Secretary

2

ATTEST:

Assistant Secretary

ATTEST:

Secretary

ATTEST:

Secretary

8

ATTEST:

Assistant Secretary

ARIZONA PUBLIC SERVICE COMPANY

By _____
President

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

By _____
President

SOUTHERN CALIFORNIA EDISON CO.

By _____
Vice President

PUBLIC SERVICE COMPANY OF
NEW MEXICO

By _____
President

EL PASO ELECTRIC COMPANY

By _____
President

SOUTHERN CALIFORNIA PUBLIC POWER
AUTHORITY, doing business in the State of
Arizona as SOUTHERN CALIFORNIA
PUBLIC POWER AUTHORITY
ASSOCIATION

By _____
President

STATE OF ARIZONA)
) ss.
 County of Maricopa)

On this the 23rd day of August, 1973, before me, the undersigned Notary Public, personally appeared Karl F. Abel and F. E. Smith who acknowledged themselves to be the President and Secretary of the SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an agricultural improvement district organized and existing under the laws of the State of Arizona, and that they, as such officers, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the company by themselves as such President and Secretary.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

 Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
 County of Maricopa)

On this the 23rd day of August, 1973, before me, the undersigned Notary Public personally appeared W. P. Reilly and Gerald J. Griffin who acknowledged themselves to be the President and Assistant Secretary of ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation, and that they as such officers, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the company by themselves as such President and Assistant Secretary.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

 Notary Public

My Commission Expires:

2 STATE OF CALIFORNIA)
) ss.
 County of Los Angeles)

On this 7th day of May, 1976, before me, the undersigned Notary Public, personally appeared J. T. Head, Jr. and R. D. Gorman who acknowledged themselves to be the Vice-President and Assistant Secretary of SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation, and that they as such officers, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the company by themselves as such Vice-President and Assistant Secretary.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

 Notary Public

My Commission Expires:

STATE OF NEW MEXICO)
) ss.
 County of Bernalillo)

On this the 30th day of August, 1973, before me, the undersigned Notary Public personally appeared G. A. Schreiber and D. E. Peckham who acknowledged themselves to be the President and Secretary of PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation, and that they as such officers, executed the foregoing instrument for the purposes therein contained by signing the name of the Company by themselves, as such President and Secretary.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

 Notary Public

My Commission Expires:

STATE OF TEXAS)
) ss.
 County of El Paso)

On this the 4th day of September, 1973, before me, the undersigned Notary Public personally appeared D. H. Lane and I. J. Lambka who acknowledged themselves to be the President and Secretary of EL PASO ELECTRIC COMPANY, a Texas corporation, and that they as such officers, executed the foregoing instrument for the purposes therein contained by signing the name of the company by themselves as such President and Secretary.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

 Notary Public

My Commission Expires:

1

APPENDIX A

DESCRIPTION OF ARIZONA NUCLEAR POWER PROJECT

- I. Three (3) Combustion Engineering "System 80" pressurized water reactor nuclear steam supply systems. Each NSSS is comprised of a reactor vessel containing 241 fuel assemblies with approximately 100 tons of enriched uranium, two steam generators, four reactor coolant pumps and various additional systems and subsystems. The thermal rating of each NSSS is 3817 MW_t.
- II. Three (3) GE TC6F-43, 1800 R/MIN tandem-compound, six flow, reheat turbine generators including turbines, generators, moisture separator-reheaters, exciters, controls, and auxiliary subsystems. The direct-driven generator is conductor cooled and rated at 1,554 MVA at 24,000 V, 3 phase, 60 Hz, 1.5 in Hg ABS back pressure, and approximately 1,363 MWe maximum gross output.
- III. Three (3) 146 ft. inside diameter, steel-lined, prestressed concrete cylindrical containment buildings with hemispherical domes designed for 60 psig. Each containment building houses the reactor systems.
- IV. Auxiliary systems and equipment including engineered safeguards systems, reactor auxiliary systems, turbine-generator auxiliary systems associated with I, II and III.
- V. Three (3) cooling tower systems, including closed cycle circulating water systems, make-up water systems and essential spray ponds.
- VI. Three (3) radioactive waste treatment systems, including liquid, gaseous, and solid waste subsystems, controls, instrumentation, storage, handling and shipment facilities.
- VII. An administration building, three (3) auxiliary buildings, three (3) turbine buildings, warehouse, visitor center, and other support buildings to be located adjacent to said units.
- VIII. All facilities and equipment to provide interconnection between each turbine generator and the High Voltage Switchyard, including startup transformers and standby equipment and systems.
- IX. Three (3) emergency diesel-generator systems, including three diesel generator buildings which contain two diesel generators each, fuel oil systems, storage tanks, emergency buses and control and instrumentation systems.
- X. Station internal and external communication systems, including associated interconnections and computer data links.
- XI. The Plant Site described in Appendix B.
- XII. Access roads, railroad spurs, security fencing and surveillance systems and guard facilities, including associated radioactive monitoring systems or equipment.
- XIII. Water treatment facilities and transport systems, including rights-of-way, for supply of waste water effluent from the 91st Avenue sewage treatment plant serving the Phoenix metropolitan area.

1

APPENDIX B

DESCRIPTION OF THE NUCLEAR PLANT SITE

The Palo Verde Nuclear Generating Station Site is located in Maricopa County, Arizona, approximately 36 miles west of the City of Phoenix and approximately 16 miles west of the City of Buckeye. The Plant Site is described as follows:

The West Half (W ½) of the Northwest Quarter (NW ¼) and the West Half (W ½) and the Southeast Quarter (SE ¼) of the Southwest Quarter (SW ¼) of Section Twenty-six (26), all of Section Twenty-seven (27) except the Northwest quarter (NW ¼) thereof, the Southeast Quarter (SE ¼) of Section Twenty-eight (28), the East Half (E ½) of Section Thirty-three (33), all of Section Thirty-four (34) and the West Half (W ½) of Section Thirty-five (35), all in Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; and

The West Half (W ½) of the West Half (W ½) of Section Two (2), all of Section Three (3), the East Half of Section Four (4), the East Half (E ½) of the Southeast Quarter (SE ¼) of Section Nine (9), all of Section Ten (10) except the West Half (W ½) of the Northwest Quarter (NW ¼) and the East Half (E ½) of the Southeast Quarter (SE ¼) thereof, all in Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

2

APPENDIX C (REVISED)
CONSTRUCTION SCHEDULE
ARIZONA NUCLEAR POWER PROJECT

<u>Milestone</u>	<u>Unit 1</u>	<u>Unit 2</u>	<u>Unit 3</u>
Selection of siting and environmental consultants and initiation of siting and environmental studies	6/29/72	6/29/72	6/29/72
Contract with engineer-constructor	1/15/73	1/15/73	1/15/73
Invitation for bids for supply of nuclear steam supply systems	2/27/73	2/27/73	2/27/73
Contract for wastewater effluent	4/23/73	4/23/73	4/23/73
Nuclear Plant Site selection	9/1/73	9/1/73	9/1/73
Contracts for nuclear steam supply systems and initial supply of Nuclear Fuel	8/20/73	8/20/73	8/20/73
Begin preliminary engineering	8/20/73	8/20/73	8/20/73
Contract for supply of turbine-generators	3/21/74	3/21/74	3/21/74
Submit applications to USAEC for construction permits	7/11/74	7/11/74	7/11/74
Submit applications to the Arizona Power Plant and Transmission Line Siting Committee for a Certificate of Environmental Compatibility	10/28/75	10/28/75	10/28/75
Obtain all authorizations required to commence construction and begin final design and engineering	5/1/76	5/1/76	5/1/76
Complete final design and engineering and submit applications to USNRC for operating licenses	11/1/78	11/1/78	11/1/78
Issuance of operating license and begin loading and start-up testing	11/1/81	11/1/83	11/1/85
Scheduled Date of Commercial Operation	5/1/82	5/1/84	5/1/86

APPENDIX D

CONSTRUCTION COSTS OF ARIZONA NUCLEAR POWER PROJECT

D.1 Construction Costs shall consist of payments made and obligations incurred for or in connection with Construction Work (excluding allowance for funds during construction and, except as provided in Section 13.3 of the Participation Agreement, *ad valorem* taxes or payments in lieu thereof) for the account of Construction Work and shall consist of the following:

D.1.1 All costs of labor, services and studies performed in connection with Construction Work, if authorized and approved by the Project Manager.

D.1.2 Payroll and other expenses of the Project Manager's employees while performing the Construction Work, including applicable allocated labor loading charges, such as department overhead, time-off allowances, Payroll Taxes (allocated in accordance with Section E.1.5 of Appendix E), workmen's compensation expenses (allocated in accordance with Section E.1.8 of Appendix E), retirement and death benefits and other employee benefits and any incidental expenses (*e.g.*, travel) incurred by the Project Manager in connection with the employment of any employees of any Participant assigned to the Project Manager.

D.1.3 Payroll and other expenses incurred by any Participant with respect to any of its employees who have been assigned to the Project Manager to perform Construction Work which expenses have not been paid by the Project Manager under Section D.1.2 hereof. All such payroll and other expenses, including applicable labor loading charges, such as vacation, sick, holiday and other time-off allowances, Payroll Taxes, workmen's compensation expenses, retirement and death benefits, other employee benefits, incidental expenses and applicable administrative and general expenses (excluding department overheads), shall be billed by the assigning Participant to the Project Manager at appropriate intervals not less frequently than once each year. The Project Manager shall pay any such bill within fifteen (15) days after receipt.

D.1.4 Overhead costs associated with Construction Work (including the allowance for the Project Manager's administrative and general expenses described in Section D.1.14 hereof), costs of temporary facilities, land and land rights, structures and improvements, and equipment for ANPP as set forth in the Electric Plant Instructions of the FPC Accounts.

D.1.5 All costs and expenses, including those of outside consultants and attorneys, incurred by the Project Manager or other Participants with respect to the securing of licenses, permits, certificates and any other authorizations required by law, compliance with any applicable laws, rules or regulations respecting the environment, conservation of the public health and safety, negotiation for and acquisition of land, land rights, water rights and fuel requirements and supply, and to the preparation of agreements and permits relating to Construction Work with entities other than the Participants. A Participant anticipating such costs and expenses shall submit an estimate thereof to the Project Manager for authorization and approval. Any Participant incurring such costs and expenses after such authorization and approval shall bill the Project Manager therefor.

5 D.1.6 Applicable costs of materials, supplies, tools, machinery, equipment, apparatus, construction Power and Energy (excluding Testing and ~~Start-Up~~ ^{Startup} Power and Energy supplied by the Participants pursuant to Section 5.8 of the Participation Agreement), including installation of any facilities necessary therefor, determined in accordance with the established charges, rates, rules, regulations, and practices of the utility furnishing such construction Power, Energy, and facilities, construction water in connection with Construction Work, including rental charges, and Emergency Spare Parts.

D.1.7 All costs of Construction Insurance, except costs of workmen's compensation insurance included in Section D.1.2 hereof.

- D.1.8 All costs of any loss, damage or liability arising out of or caused by Construction Work which are not satisfied under the coverage of Construction Insurance, and the expenses incurred in settlement of injury and damage claims, including the costs of labor and related supplies and expenses incurred in injury and damage activities, (all as referred to in FPC Account 925 and FPC Accounts Electric Plant Instruction 3(8), but excluding any costs or expenses included in Section D.1.2 hereof), because of any claim arising out of or attributable to the construction of ANPP, the past or future performance or nonperformance of the obligations and duties of any Participant (including the Project Manager) or the past or future performance or nonperformance of Construction Work, including but not limited to any claim resulting from death or injury to persons or damage to property.
- D.1.9 All Federal, state or local taxes of any character imposed upon Construction Work, except any tax assessed directly against an individual Participant unless such tax was assessed to such individual Participant ⁱⁿ ~~on~~ behalf of any or all of the Participants.
- D.1.10 Expenses of other Participants incurred in the performance of Construction Work, if authorized and approved by the Project Manager, and the expenses of the Operating Agent incurred prior to the Date of Firm Operation of each Generating Unit which are properly chargeable to Construction Costs and are billed by the Operating Agent to the Project Manager pursuant to Appendix G attached to the Participation Agreement.
- D.1.11 All costs and expenses of enforcing or attempting to enforce the provisions of Construction Insurance policies, payment and performance bonds, contracts executed as Project Manager and warranties extended to facilities constituting a part of ANPP, except any costs or expenses included in Section D.1.2 hereof.
- D.1.12 All costs and expenses, including those of attorneys and consultants, incurred by the Project Manager or a Participant with respect to environmental matters such as lawsuits, hearings and environmental studies related thereto. All Participants anticipating such costs and expenses shall submit an estimate thereof to the Project Manager for authorization and approval. Any Participant incurring such costs and expenses after such authorization and approval shall bill the Project Manager therefor.
- D.1.13. All costs for charitable contributions if authorized and approved by the Administrative Committee.
- D.1.14 An allowance for the Project Manager's administrative and general expenses deemed to have been incurred by it in the performance of Construction Work. Said expenses shall be allocated monthly at the rate of one percent (1%) of Construction Costs incurred and not previously billed, excluding from such Construction Costs:
 - D.1.14.1 Any allowance for administrative and general expenses provided for in this Section D.1.14.
 - D.1.14.2 Expenses described in Section D.1.3 hereof.
 - D.1.14.3 Expenses described in Section D.1.8 hereof.
 - D.1.14.4 Expenses described in Section D.1.10 hereof.
 - D.1.14.5 Expenses described in Section D.1.12 hereof when such expenses are incurred by a Participant other than the Project Manager.
- D.1.15 Miscellaneous costs and expenses, consisting of any and all other types of costs and expenses incidental to and necessary for the performance of Construction Work.
- D.2 In cases where the allocation of a cost item is made between Construction Work and the other work, such allocation shall be made on a fair and equitable basis.
- D.3 The Project Manager shall develop, or cause to have developed, and shall employ a project planning control system which recognizes and contains the elements of planning, scheduling, reporting, forecasting and analysis with the variables of time and money. Such control system employed must provide the tools for corrective action. The accounting classifications employed must be converted to the FPC Accounts for the Final Completion Report and any supplement thereto, of total cost of Construction Work.

- D.4 The Project Manager and the other Participants shall not be entitled to a fee, price, percentage or any other compensation over and above the costs of services rendered by them in performance of Construction Work.
- D.5 Travel and other related expenses of employees of the Project Manager whose salary costs are considered administrative and general expenses recoverable through the administrative and general expense allowance specified in D.1.14 hereof shall not be charged directly to Construction Work as Construction Costs.

APPENDIX E

COSTS OF OPERATING WORK AND CAPITAL IMPROVEMENTS

- # 5 E.1 Operation and Maintenance Expenses: In determining ANPP operating expenses, the Operating Agent shall include the following expenses to the extent that they are chargeable to ANPP in accordance with Accounting Practice, including Arizona's normal time-off allowances and Materials and Supplies stores load, but excluding the costs of Testing and ~~Start-up~~ ^{Startup} Power and Energy provided by the Participants:
- E.1.1 The operation expenses chargeable to FPC Accounts 517, 518 (excluding Fuel Expenses), 519 to 525, inclusive, 556, 557, 560, 561, 562, 565, 566 and 567.
 - E.1.2 The maintenance expenses chargeable to FPC Accounts 528 to 532, inclusive, 568, 569, 570 and 573.
 - E.1.3 All costs incurred by the Operating Agent directly associable with Operating Work and directly chargeable to FPC Accounts 408 (except Payroll Taxes which are allocated in accordance with Section E.1.5 hereof and *ad valorem* taxes, or payments in lieu thereof) 925 (except workmen's compensation expense allocated to ANPP pursuant to Section E.1.8) and 928.
 - E.1.4 Overhead expenses incurred by the Operating Agent which are allocable to the operation and maintenance of ANPP. Such overhead expenses shall be determined in accordance with Section E.3 hereof.
 - E.1.5 The portion of the Operating Agent's employee Payroll Taxes chargeable to FPC Account 408 determined by applying the Payroll Tax Ratio computed in accordance with Section E.4 hereof to labor charges of ANPP operating and maintenance expenses, including without limitation the labor portion of expenses chargeable to ANPP pursuant to Sections E.1.1, E.1.2, E.1.3 and E.1.4 hereof.
 - E.1.6 The portion of the Operating Agent's employee pensions and benefits expenses as defined under FPC Account 926 and determined by applying the Benefits Ratio computed in accordance with Section E.5 hereof to the total labor charges of ANPP operating and maintenance expenses, including without limitation the labor portion of expenses chargeable to ANPP pursuant to Sections E.1.1, E.1.2, E.1.3 and E.1.4 hereof.
 - E.1.7 The portion of the Operating Agent's administrative and general expenses chargeable to FPC Accounts 920, 921, 923 and 932 determined by applying the Operating and Maintenance A & G Ratio computed in accordance with Section E.6 hereof to the total labor charges of ANPP operating and maintenance expenses, including without limitation the labor portion of expenses chargeable to ANPP pursuant to Sections E.1.1, E.1.2, E.1.3 and E.1.4 hereof.
 - E.1.8 The portion of the Operating Agent's workmen's compensation expense, including premiums, payments and accruals, chargeable to FPC Account 925 (except amounts charged to ANPP pursuant to Section E.1.3) and allocable to ANPP which shall be determined by applying the Compensation Insurance Ratio computed in accordance with Section E.7 hereof to the total labor charges of ANPP operating and maintenance expense, including without limitation the labor portion of the expenses chargeable to ANPP pursuant to Sections E.1.1, E.1.2, E.1.3 and E.1.4 hereof.
 - E.1.9 The portion of the Operating Agent's administrative and general expenses for work performed by a contractor, the cost of which is chargeable to ANPP operation and maintenance expenses in accordance with Sections E.1.1, E.1.2 and E.1.3 hereof, determined by multiplying the total contract cost thereof by one percent (1%).

E.2 Cost of Capital Improvements. In determining the costs of Capital Improvements, the Operating Agent shall include all costs, including time-off allowances, incurred by the Operating Agent (other than allowance for funds used during construction) which conform to the provisions of Electric Plant Instruction 3 of FPC Accounts entitled "Components of Construction Cost": provided, that (i) charges for insurance other than workmen's compensation insurance for the Operating Agent's officers and employees shall be limited to (a) the cost of Construction Insurance obtained by the Operating Agent pursuant to Section 19.2.4 of the Participation Agreement and (b) any increases in the cost of Operating Insurance attributable to the construction of Capital Improvements, (ii) charges for injuries and damages shall be limited to those injuries or damages arising out of or in connection with and occurring in the course of construction of the Capital Improvements, and (iii) charges for taxes shall not include any taxes paid by any Participant pursuant to Section 13 of the Participation Agreement. In making such cost determinations the Operating Agent shall include the following:

E.2.1 Overhead expenses incurred by the Operating Agent which are allocable to the cost of Capital Improvements. Such overhead expenses shall be determined in accordance with Section E.3 hereof.

E.2.2 The portion of the Operating Agent's employee Payroll Taxes, workmen's compensation expense and an allowance for administrative and general expenses chargeable to ANPP construction accounts determined by multiplying (i) the Payroll Tax Ratio, the Compensation Insurance Ratio and the Capital A & G Ratio computed in accordance with Sections E.4, E.7 and E.9 respectively, by (ii) the sum of the Operating Agent's labor charges included in the cost of Capital Improvements, including the cost of Capital Improvements pursuant to Section E.3 hereof.

E.2.3 The portion of the Operating Agent's administrative and general expenses for work in making Capital Improvements performed by a contractor determined by multiplying the total contract cost thereof by one percent (1%).

E.3 Allocation of Overhead Expenses

E.3.1 Overhead expenses incurred by the Operating Agent which are allocable to ANPP are comprised of, but not limited to, the following:

E.3.1.1 All of the following expenses incurred at the Nuclear Plant Site:

E.3.1.1.1 The salaries and expenses of the Station Superintendent and his supervisory, administrative, engineering and clerical staff assigned to ANPP;

E.3.1.1.2 Stationery and office supplies expense;

E.3.1.1.3 The payroll and other costs incurred in processing grievances;

E.3.1.1.4 The payroll and other costs, excluding expenses for initial training, incurred in attending job training meetings by employees assigned to the ANPP; and

E.3.1.1.5 Miscellaneous expenses not assignable to other functions of ANPP.

E.3.1.2 A portion of the expenses incurred by the Operating Agent's Power Production Department, such portion to be determined by multiplying the total of such expenses by a ratio, the numerator of which is the total payroll for ANPP and the denominator of which is the total payroll supervised by the Vice President, Power Production. Such expenses shall include, but not be limited to, the following:

E.3.1.2.1 The salaries and expenses of the Vice President, Power Production, and his supervisory, administrative, engineering and clerical staff;

E.3.1.2.2 Stationery and office supplies expense;

E.3.1.2.3 Expenses (but not payroll costs) incurred in attending certain conventions and committee meetings; and

E.3.1.2.4 Miscellaneous expenses not assignable to other functions.

- E.3.1.3 A portion of the expenses incurred by the Operating Agent's Electric and Gas Operations Group, such portion to be determined by multiplying the total of such expenses by a ratio, the numerator of which is the total payroll for ANPP and the denominator of which is the total payroll supervised by the Executive Vice President, Engineering and Operations. Such expenses shall include, but not be limited to, the following:
 - E.3.1.3.1 The salaries and expenses of the Executive Vice President, Engineering and Operations, and his engineering and clerical staff, less that portion chargeable to administrative and general accounts;
 - E.3.1.3.2 Stationery and office supplies expense; and
 - E.3.1.3.3 Miscellaneous expenses not assignable to other functions.
- E.3.1.4 A portion of the expenses incurred by the Operating Agent's System Electric Operations Department, such portion to be determined by multiplying the total of such expenses by a ratio, the numerator of which is the total payroll for ANPP and the denominator of which is the total payroll supervised by the Executive Vice President, Engineering and Operations. Such expenses shall include, but not be limited to, the following:
 - E.3.1.4.1 The salaries and expenses of the Manager of System Electric Operations, his supervisory, administrative, engineering and clerical staff, and his lead supervisors;
 - E.3.1.4.2 Stationery and office supplies expense;
 - E.3.1.4.3 Expenses (but not payroll costs) incurred in attending certain conventions and committee meetings by System Electric Operations personnel; and
 - E.3.1.4.4 Miscellaneous expenses not assignable to other functions of the System Electric Operations Department.
- E.3.2 Overhead expenses described in Section E.3.1 of this Appendix shall be allocated to certain FPC Accounts and to Capital Improvements as follows:
 - E.3.2.1 The total direct labor expense incurred at the Nuclear Plant Site shall be deemed to be the sum of the following:
 - E.3.2.1.1 Direct operating labor chargeable to FPC Accounts 517 through 525;
 - E.3.2.1.2 Direct maintenance labor chargeable to FPC Accounts 528 through 532;
 - E.3.2.1.3 Direct maintenance labor chargeable to FPC Accounts 568, 569, 570 and 573; and
 - E.3.2.1.4 Direct labor chargeable to Capital Improvements.
 - E.3.2.2 Overhead expenses described in Sections E.3.1.1 and E.3.1.3 hereof shall be allocated to FPC Accounts 517, 528 and 568, and to Capital Improvements, as follows:
 - E.3.2.2.1 The portion of said overhead expenses to be allocated to FPC Account 517 shall be equal to said overhead expenses multiplied by a ratio, the numerator of which is the direct operating labor set forth in Section E.3.2.1.1 hereof and the denominator of which is the total direct labor expense set forth in Section E.3.2.1 hereof.

- E.3.2.2.2 The portion of said overhead expenses to be allocated to FPC Account 528 shall be equal to said overhead expenses multiplied by a ratio, the numerator of which is the direct maintenance labor set forth in Section E.3.2.1.2 hereof and the denominator of which is the total direct labor expense set forth in Section E.3.2.1 hereof.
- E.3.2.2.3 The portion of said overhead expenses to be allocated to FPC Account 568 shall be equal to said overhead expense multiplied by a ratio, the numerator of which is the direct maintenance labor set forth in Section E.3.2.1.3 hereof and the denominator of which is the total direct labor expense set forth in Section E.3.2.1 hereof.
- E.3.2.2.4 The portion of said overhead expenses to be allocated to Capital Improvements shall be equal to said overhead expenses multiplied by a ratio, the numerator of which is the direct labor set forth in Section E.3.2.1.4 hereof and the denominator of which is the total labor expense set forth in Section E.3.2.1 hereof.
- E.3.2.3 Overhead expenses described in Section E.3.1.2 hereof shall be allocated to FPC Accounts 517 and 528, and to Capital Improvements, as follows:
 - E.3.2.3.1 The portion of said overhead expenses to be allocated to FPC Account 517 shall be equal to said overhead expenses multiplied by a ratio, the numerator of which is the direct operating labor set forth in Section E.3.2.1.1 hereof and the denominator of which is the sum of the direct labor set forth in Sections E.3.2.1.1, E.3.2.1.2 and E.3.2.1.4 hereof.
 - E.3.2.3.2 The portion of said overhead expenses to be allocated to FPC Account 528 shall be equal to said overhead expenses multiplied by a ratio, the numerator of which is the direct maintenance labor set forth in Section E.3.2.1.2 hereof and the denominator of which is the sum of the direct labor set forth in Sections E.3.2.1.1, E.3.2.1.2 and E.3.2.1.4 hereof.
 - E.3.2.3.3 The portion of said overhead expenses to be allocated to Capital Improvements shall be equal to said overhead expenses multiplied by a ratio, the numerator of which is the direct labor set forth in Section E.3.2.1.4 hereof and the denominator of which is the sum of the direct labor set forth in Sections E.3.2.1.1, E.3.2.1.2 and E.3.2.1.4 hereof.
- E.3.2.4 Overhead expenses described in Section E.3.1.4 hereof shall be allocated to FPC Account 556.
- E.3.3 The job and department titles referred to in this Section E.3 are those currently in use by the Operating Agent, as follows: Station Superintendent; Vice President, Power Production; Executive Vice President, Engineering and Operations; Manager of System Electric Operations; Power Production Department; Electric and Gas Operations Group; and System Electric Operations Department. The provisions of this Section E.3 shall refer to those jobs and departments having generally the same responsibility and functions as those listed above without regard to any subsequent assignment of a different title by the Operating Agent.

E.4 Payroll Tax Ratio

- E.4.1 The Payroll Tax Ratio set forth below shall be applied to the labor expense portion of the ANPP operation and maintenance expenses, to the Operating Agent's direct labor charges incurred in effecting Capital Improvements, and to the labor expenses included in the Operating Agent's supervisory and administrative and general expense accounts. Estimated and actual Payroll Tax Ratios shall be determined, adjusted and used in the manner set forth in Section E.10 hereof.

$$\text{Payroll Tax Ratio} = \frac{T}{P}$$

Where: T = The Operating Agent's Payroll Tax expenses.

P = The Operating Agent's total labor distributed including accruals.

- E.4.2 The following example sets forth the method to be employed by the Operating Agent to determine the Payroll Tax Ratio:

EXAMPLE COMPUTATION OF PAYROLL TAX RATIO (Based on Operating Agent's 1972 Expenses)

Total Payroll Taxes:	
F.I.C.A.	\$ 1,543,360
F.U.T.A.	76,296
S.U.I.	<u>47,365</u>
Total Payroll Taxes.....	<u>\$ 1,667,021</u>
Total labor charged to operation and maintenance, construction and miscellaneous general ledger accounts.....	<u>\$44,502,733</u>

Payroll Tax Ratio: $\$1,667,021 \div \$44,502,733 = \underline{3.746\%}$

E.5 Benefits Ratio

- E.5.1 The Benefits Ratio set forth below shall be applied to the labor expense portion of the ~~incurred~~ ^{Operating} ANPP operations and maintenance expenses, to the ~~Operating~~ Agent's direct labor charges in effecting Capital Improvements, and to the labor expenses included in the Operating Agent's supervisory and administrative and general expense accounts. Estimated and actual Benefits Ratios shall be determined, adjusted and used in the manner set forth in Section E.10 hereof.

$$\text{Benefits Ratio} = \frac{B}{L}$$

Where: B = The Operating Agent's total system employee pensions and benefits (as defined in FPC Account 926), including Payroll Taxes and workmen's compensation expense on labor charged to employee pensions and benefits.

L = The Operating Agent's total labor distributed including accruals less labor charged to employee pensions and benefits.

- E.5.2 The following example sets forth the method to be employed by the Operating Agent to determine the Benefits Ratio:

EXAMPLE COMPUTATION OF BENEFITS RATIO

(Based on Operating Agent's 1972 Expenses)

	<u>Labor</u>	<u>Total</u>
Pensions and Benefits		
Employees Pensions and Benefits	\$624,964	\$ 5,590,439
Payroll Taxes @ 3.746% of labor (See Example in Section E.4.2)		23,411
Compensation Insurance @ 1.204% of labor (See Example in Section E.7.2)		7,525
Total Pensions and Benefits		<u>\$5,621,375</u>
Labor Base		
Labor charged to operation and maintenance, construction and miscellaneous general ledger accounts		\$44,502,733
Less total labor charged to Pensions and Benefits		<u>624,964</u>
Total applicable labor		<u>\$43,877,769</u>
Benefits Ratio: \$5,621,375 ÷ \$43,877,769		<u>12.811%</u>

E.6 Operation and Maintenance A & G Ratio

- E.6.1 The Operation and Maintenance A & G Ratio shall be the percentage computed by dividing (i) the sum of (a) the total amounts charged to FPC Accounts 920 and 921 multiplied by the O & M Ratio computed in accordance with Section E.8 hereof, (b) the total amounts charged to FPC Accounts 923 (except any amounts directly chargeable to ANPP pursuant to Section E.1.3), and 932, (c) the product of the portion of labor charges included within (a) and (b) above multiplied by the Payroll Tax Ratio computed in accordance with Section E.4 hereof, (d) the product of the labor charges included within (a) and (b) above multiplied by the Benefits Ratio computed in accordance with Section E.5 hereof, and (e) the product of the labor charges included within (a) and (b) above multiplied by the Compensation Insurance Ratio computed in accordance with Section E.7 hereof, less (f) that portion of the administrative and general expenses charged to FPC Accounts 920 and 921 allocable to contract operations and maintenance for ANPP by (ii) the total labor charged to the Operating Agent's system operations and maintenance less the labor charged to administrative and general expenses.

E.6.2 The following example sets for the method to be employed by the Operating Agent to determine the Operation and Maintenance A & G Ratio:

**EXAMPLE COMPUTATION
OF OPERATIONS AND MAINTENANCE A & G RATIO**

(Based on the Operating Agent's 1972 Experience)

	<u>Labor</u>	<u>Total</u>
Administrative and General Salaries charged to FPC Account 920.....	\$ 2,522,177	\$ 2,522,177
Office Supplies and Expenses charged to FPC Account 921.....		936,388
[Line 7] Total	<u>\$2,522,177</u>	<u>\$3,458,565</u>
Line 7, multiplied by O & M Ratio @ 41.421% (See Example in Section E.8.4)	\$ 1,044,711	\$ 1,432,572
FPC Account 923.....		431,901
FPC Account 932.....	490,695	930,635
[Line 11] Subtotal.....	<u>\$1,535,406</u>	<u>\$ 2,795,108</u>
Payroll Taxes @ 3.746% (See Example in Section E.4.2) on labor charges shown on line 11 above		57,516
Pensions and Benefits @ 12.811% (See Example in Section E.5.2) on labor charges shown on line 11 above		197,039
Compensation Insurance @ 1.204% (See Example in Section E.7.2) on labor charges shown on line 11 above		18,486
Less that portion of A & G allocable to Contract Operation and Maintenance for ANPP.....		-0-
Total administrative and general expenses allocable to operations and maintenance		<u>\$3,068,149</u>
Labor Base		
Labor charged to system operations and maintenance		\$15,696,110
Less labor charged to administrative and general expenses		2,672,578
Labor Base		<u>\$13,023,532</u>
Operation and Maintenance A & G Ratio for 1972 $\$3,068,149 \div \$13,023,532 =$ <u>23.566%</u>		

E.7 Compensation Insurance Ratio

E.7.1 The Compensation Insurance Ratio set forth below shall be applied to the labor expense portion of the ANPP operation and maintenance expenses, to the Operating Agent's direct labor charges incurred in effecting Capital Improvements, and to the labor expenses included in the Operating Agent's supervisory and administrative and general accounts. Estimated and actual Compensation Insurance Ratios shall be determined, adjusted and used in the manner set forth in Section E.10 hereof.

$$\text{Compensation Insurance Ratio} = \frac{I}{P}$$

Where: I = The Operating Agent's total system workmen's compensations insurance premiums and accruals for self-insurance as defined in FPC Account 925.

P = The Operating Agent's total labor distributed including accruals.

- E.7.2 The following example sets forth the method to be employed by the Operating Agent to determine the Compensation Insurance Ratio:

**EXAMPLE COMPUTATION
OF COMPENSATION INSURANCE RATIO**
(Based on Operating Agent's 1972 Expenses)

	<u>Total</u>
Workmen's Compensation Insurance premiums, payments and accruals as defined in FPC Account 925	\$ 534,767
Labor Base	
Total labor in operations and maintenance, construction and miscellaneous general ledger accounts:	\$ 44,502,733
Less labor charged to Compensation Account	91,905
Total applicable labor	<u>\$ 44,410,828</u>
Compensation Insurance Ratio:	
\$534,767 ÷ \$44,410,828	<u>1.204%</u>

E.8 O & M Ratio and Construction Ratio

- E.8.1 The O & M Ratio set forth below shall be applied to the amounts chargeable to FPC Accounts 920 and 921 for the purpose of determining one component in the computation of the Operations and Maintenance A & G Ratio as provided in Section E.6 hereof.

$$\text{O \& M Ratio} = \frac{O}{L}$$

Where: O = The Operating Agent's total labor charged to operation and maintenance accounts, less labor chargeable to FPC Accounts 920 through 932.

L = The Operating Agent's total labor distributed, including accruals, less labor charged to FPC Accounts 920 through 932.

- E.8.2 The Construction Ratio set forth below shall be applied to the amounts chargeable to FPC Accounts 920 and 921 for the purpose of determining one component in the computation of the Capital A & G Ratio as provided in Section E.9 hereof.

$$\text{Construction Ratio} = \frac{C}{L}$$

Where: C = The Operating Agent's total labor in construction accounts.

L = The Operating Agent's total labor distributed, including accruals, less labor chargeable to FPC Accounts 920 through 932.

- E.8.3 Estimated and actual O & M Ratios and Construction Ratios shall be determined, adjusted and used in the manner set forth in Section E.10 hereof.

- E.8.4 The following example sets forth the method to be employed by the Operating Agent to determine the O & M Ratio and the Construction Ratio:

**EXAMPLE COMPUTATION
O & M RATIO AND CONSTRUCTION RATIO**
(Based on the Operating Agent's 1972 Experience)

Total Labor in Operation and Maintenance Accounts.....	\$ 15,696,110
Less: Labor charged to FPC Accounts 920 through 932, inclusive....	<u>2,672,578</u>
Net Labor in O & M Accounts.....	\$ 13,023,532
Total Labor charged to General Ledger Accounts	4,217,335
Total Labor in Construction Accounts	<u>14,200,724</u>
Total Labor Base	<u>\$ 31,441,591</u>
Ratio of Net O & M Labor to Total Labor	$\frac{\$ 13,023,532}{\$ 31,441,591} = 41.421\%$
Ratio of Construction Labor to Total Labor	$\frac{\$ 14,200,724}{\$ 31,441,591} = 45.165\%$

Note: All labor figures include loading for allowed time.

E.9 Capital A & G Ratio

- #1 E.9.1 The Capital A & G Ratio shall be the percentage computed by dividing (i) the amounts equal to (A) the sum of (a) the total amounts charged to FPC Accounts 920 and 921 multiplied by the Construction Ratio computed in accordance with Section E.8 hereof, and (b) the product of the portion of labor charges included in (a) above multiplied by the sum of the Payroll Tax Ratio, the Benefits Ratio and the Compensation Insurance Ratio and (B) the portion of administrative and general expenses charged to FPC Accounts 920 and 921 allocable to contract construction for ANPP by (ii) the total labor in construction accounts (exclusive of overheads).
- #1 E.9.2 The following example sets forth the method to be employed by the Operating Agent to determine the Capital A & G Ratio:

EXAMPLE COMPUTATION OF CAPITAL A & G RATIO
(Based on the Operating Agent's 1972 Experience)

	Labor	Total
Administrative and General Salaries charged to FPC Account 920.....	\$ 2,522,177	\$ 2,522,177
Office Supplies and Expenses charged to FPC Account 921.....		<u>936,388</u>
[Line 7] Total	<u>\$ 2,522,177</u>	<u>\$ 3,458,565</u>
Line 7 multiplied by Construction Ratio @ 45.165%		
[Line 9] (See Example in Section E.8.4)	<u>\$ 1,139,141</u>	\$ 1,562,061
Payroll Taxes @ 3.746% (See Example in Section E.4.2) on labor charges shown on line 9 above		42,672
Pensions and Benefits @ 12.811% (See Example in Section E.5.2) on labor charges shown on line 9 above		145,935
Compensation Insurance @ 1.204% (See Example in Section E.7.2) on labor charges shown on line 9 above		<u>13,715</u>
Total administrative and general expense allocable to Construction.....		\$ 1,764,383
Less that portion allocable to Contract Construction for ANPP.....		<u>-0-</u>
Total A & G Expense plus pensions and benefits allocable to Construction.....		<u>\$ 1,764,383</u>
Construction Labor Base		<u>\$ 14,200,724</u>
Capital A & G Ratio for 1972 $\$1,764,383 \div \$14,200,724$		<u>12.425%</u>

E.10 Use and Adjustment of Estimated Ratios

E.10.1 At the start of each calendar year an estimated Payroll Tax Ratio, Benefits Ratio, Operation and Maintenance A & G Ratio, Compensation Insurance Ratio, O & M Ratio, Construction Ratio and Capital A & G Ratio shall be used, and such rates shall be determined in accordance with the methods set forth in Sections E.4, E.5, E.6, E.7, E.8, and E.9, respectively. Such rates shall be based on the Operating Agent's system-wide expenses for the preceding calendar year; provided, that by agreement of the Auditing Committee, such rates may be adjusted to more nearly reflect the expenses of the current year because of tax legislation, labor contract negotiations, or other factors not reflected in the prior year's costs.

E.10.2 As soon as practicable after the end of each calendar year the actual Payroll Tax Ratio, Benefits Ratio, Operation and Maintenance A & G Ratio, Compensation Insurance Ratio, O & M Ratio, Construction Ratio and Capital A & G Ratio for such year shall be ~~determined~~ in accordance with the method set forth in Sections E.4, E.5, E.6, E.7, E.8, and E.9, respectively, by using said year's actual system-wide expenses of the Operating Agent. Using said actual ratios, the portions of the Operating Agent's Payroll Taxes, workmen's compensation expenses, employee pensions and benefits expenses, and administrative and general expenses for which the Participants are obligated hereunder for costs of Operating Work and Capital Improvements shall be determined for such year. To the extent that such expenses are more than or less than those already paid by the Participants during said year, the Operating Agent shall bill or reimburse the Participants for the amount of such difference.

E.11 Modifications of Rate Computations and Application

E.11.1 If any Participant believes that the application of or the method used in determining the Payroll Tax Ratio, Benefit Ratio, Operation and Maintenance A & G Ratio, Construction Insurance Ratio, O & M Ratio, Construction Ratio or Capital A & G Ratio results in an unreasonable burden on said Participant, that Participant may request that such application or method be submitted to the Auditing Committee for review; provided, that such review shall not be requested prior to June 1, 1983, and thereafter at intervals of not less than two (2) years each. After any such request, subject to the time limitations set forth above, the Auditing Committee shall review such application or method and shall endeavor to agree upon whether or not said believed unreasonable burden does actually exist. If after such review, the Auditing Committee determines that such application or method does result in an unreasonable burden on one or more of the Participants, the Auditing Committee shall determine and recommend a modified application or method to the Administrative Committee so that such unreasonable burden would be eliminated if such modified application or method is adopted by the Administrative Committee.

E.11.2 The Administrative Committee shall review the recommendations submitted by the Auditing Committee, and if as a result of such review, the Administrative Committee agrees that such unreasonable burden does exist and that said modified application or method eliminates such unreasonable burden, then the Administrative Committee shall adopt said modified application or method. If the Auditing Committee has not submitted a recommendation and the Administrative Committee agrees that such unreasonable burden does exist, the Administrative Committee shall endeavor to agree on a modified application or method. If the Administrative Committee is unable to agree on any matter brought before it under this Section E.11.2, then any Participant may call for arbitration of such matter pursuant to Section 24 provided the procedures set forth in Section 6.10 of the Participation Agreement shall have been first invoked.

E.11.3 Any modified method adopted by the Administrative Committee or determined through arbitration shall be retroactive to the first day of the month in which the unreasonable burden began except that the retroactive period can be no more than two (2) years from the date of the requested review. Said modified method shall stay in effect until a new modified method is approved, but in no event less than two (2) years from the date of such adoption or determination.

APPENDIX F

INVESTMENTS IN AND ACCOUNTING FOR NUCLEAR FUEL

F.1 General Principles. The principles set forth in this Section F.1 shall govern (i) the responsibilities of the Operating Agent, (ii) the responsibilities of the Administrative Committee and the Engineering and Operating Committee, (iii) the rights and obligations of the Participants and (iv) the financing of Nuclear Fuel investments by the Participants. Such principles recognize that (a) investments in Nuclear Fuel will be made considerably in advance of its use, (b) some elements affecting Fuel Expense may not be known until several years after the related Nuclear Fuel is used, (c) the FERC Accounts impose certain requirements respecting Nuclear Fuel cost accounting, (d) the responsibilities for furnishing Uranium Concentrates are governed by Appendix K to the Participation Agreement, and (e) in the event any Participant (non-scheduling-Participant) fails to fully schedule its Generation Entitlement Share of the Available Generating Capability of any Generating Unit and one or more other Participants (scheduling-Participant(s)) have fully scheduled its (or their) Generation Entitlement Share(s) of such capability, then the scheduling-Participant(s) will in certain circumstances be utilizing the portion of the Nuclear Fuel owned by the non-scheduling Participant. If the event described in (e) above should occur (except in cases where the failure to fully schedule results in underutilization of the Nuclear Fuel), then this Appendix F provides that the scheduling-Participant(s) shall reimburse the non-scheduling Participant for its share of the direct costs of the Nuclear Fuel used by scheduling-Participant(s). Such reimbursements shall exclude the non-scheduling Participant's indirect costs, including carrying charges on its investment in such Nuclear Fuel. The Participants agree that this treatment is warranted because, among other reasons, during the foreseeable future the occurrence of the event is considered to be remote, the duration short and the risk equal for all Participants. Additionally, each Participant has the right under Section 5.2 of the Participation Agreement to schedule Generation up to its Generation Entitlement Share subject to the provisions of Appendix K. Under the circumstances described in (e) above, the additional accounting and auditing complexities which would be required to provide for reimbursement of indirect costs, including carrying charges, are not justified. Such principles and their application as hereinafter set forth are subject to such changes as the Administrative Committee may from time to time determine.

F.1.1 Responsibilities of the Operating Agent.

F.1.1.1 Subject to Sections 7.3 and 8.3 of the Participation Agreement and Appendix K thereto, the Operating Agent shall make and be responsible for all arrangements for the supply and disposal of Nuclear Fuel and the development and implementation of Nuclear Fuel management plans. In the event of any dispute among the Participants respecting any matter affecting the supply, disposal or management of Nuclear Fuel or in the event the Administrative Committee or Engineering and Operating Committee is unable or fails to approve, modify or otherwise act in a timely manner on any Nuclear Fuel Agreement or Nuclear Fuel management plan pursuant to Sections 6.2.7 and 6.3.2 of the Participation Agreement, the Operating Agent is authorized and obligated, pending the resolution of such dispute or action by the Administrative Committee or the Engineering and Operating Committee, to take such action, including without limitation, the execution and performance of any Nuclear Fuel Agreement, as it may in its discretion determine to be necessary to assure an adequate supply or appropriate disposition of Nuclear Fuel for the operation of each Generating Unit at its Maximum Generating Capability.

F.1.1.2 In the event any materials are recovered from the reprocessing of any irradiated Nuclear Fuel discharged from a Reactor and are suitable for recycling or sale, such recovered materials shall be recycled in one or more of the Generating Units unless the Engineering and Operating Committee

shall otherwise determine. If the Engineering and Operating Committee determines that such recovered materials should not be recycled, such recovered materials shall be disposed of by the Operating Agent subject to Section 6.2.7 of the Participation Agreement.

F.1.1.3 The Operating Agent shall provide to the Participants (i) those forecasts, determinations, estimates and reports as may be required to comply with Sections F.3 and F.4 hereof and (ii) any other information requested by a Participant which is necessary to fulfill its reporting requirements.

F.1.1.4 The Operating Agent shall collect and record such data and take such other action as the Operating Agent shall determine to be necessary to furnish the forecasts, determinations, estimates, reports and information as required by Section F.1.1.3 hereof.

F.1.1.5 In the event with respect to any Fuel Assembly any changes are made in any factor which affects the determination of the Adjusted Assigned Fuel Expense or any Fuel Expense Credits or Debits associated with such assembly, the Operating Agent shall make adjustments as may be appropriate to reflect such changes in the manner provided by Section F.4.4 hereof. Such adjustments made by the Operating Agent with respect to any Fuel Assembly shall be final and subject to correction only as may be required by subsequent audit; provided that no such audit may require a change in the Operating Agent's estimate of Net Salvage Values made at the time of discharge of such assembly in accordance with criteria approved by the Engineering and Operating Committee.

F.1.1.6 The Operating Agent shall determine and account for investments in Nuclear Fuel, Assigned Fuel Expenses and Adjusted Assigned Fuel Expenses, and Net Salvage Values on a Fuel Assembly basis and shall keep such records and follow such procedures as may be required to determine as accurately as is reasonably feasible the thermal output from each Fuel Assembly inserted into a Reactor.

F.1.2 Responsibilities of the Administrative Committee and the Engineering and Operating Committee.

F.1.2.1 The Administrative Committee is authorized, in addition to those authorities and responsibilities delegated to it pursuant to Sections 6.2.2, 6.2.7, 6.9 and 15.4 of the Participation Agreement, to make (i) any change in the principles set forth in this Section F.1 as may be proposed by the Operating Agent or any other Participant and the manner of implementation of any such principle as provided in this Appendix F and (ii) findings pursuant to Section F.1.4.2 hereof with respect to any fuel financing arrangement entered into or proposed to be entered into by any Participant.

F.1.2.2 The Engineering and Operating Committee, in addition to those authorities and responsibilities delegated to it pursuant to Section 6.3 of the Participation Agreement, is authorized to (i) approve, modify or otherwise act on criteria recommended by the Operating Agent for estimating Net Salvage Values, (ii) determine from time to time whether reprocessing of Fuel Assemblies is feasible, (iii) approve changes in the Estimated Thermal Output or Net Salvage Value of one or more Fuel Assembly(ies) at times other than as provided in this Appendix F and (iv) make determinations that materials recovered from reprocessing any Fuel Assembly should or should not be recycled in one or more of the Generating Units.

F.1.3 Participants' Rights and Obligations.

F.1.3.1 The Participants shall own undivided interests equal to their respective Generation Entitlement Shares (i) in all Nuclear Fuel in any form used or held for use for any Generating Unit, including Nuclear Fuel in storage, in

- process of conversion and in fabrication and materials recovered by reprocessing, but excluding any Additional Uranium Concentrates prior to delivery to a conversion facility by any Participant pursuant to Appendix K to the Participation Agreement, and (ii) in any monetary balance in any joint account of the Participants maintained under any Nuclear Fuel Agreement unless otherwise determined by the Administrative Committee.
- F.1.3.2 The Participants shall share in accordance with their respective Generation Entitlement Shares (i) all costs to obtain and transport Nuclear Fuel to the Nuclear Plant Site in a form ready for use in a Reactor other than costs incurred by the Participants to obtain and deliver Uranium Concentrates to a conversion facility pursuant to Appendix K to the Participation Agreement, (ii) Fuel Handling Expenses, (iii) Fuel Management Expenses, (iv) all costs incurred in connection with the shipment, storage, disposal or reprocessing of irradiated Nuclear Fuel and (v) the value of any materials recovered from reprocessing, but excluding from the costs described in (i) through (v) above any Participant's costs for interest on advanced funds, rental, carrying or use charges and, except as provided in Section 13.3 of the Participation Agreement, any *ad valorem* taxes or payments in lieu thereof.
- F.1.3.3 Each Participant shall pay its share of all Nuclear Fuel Expenditures in advance pursuant to Section F.3 hereof.
- F.1.3.4 The Participants' respective investments in Nuclear Fuel, including the Project Uranium Costs, less the related Net Salvage Values, shall be amortized during those periods when the Nuclear Fuel is in a Reactor on the basis of the thermal energy produced in such periods to start up the Reactor and to generate Energy.
- F.1.3.5 The amortization charges referred to in Section F.1.3.4 hereof shall be considered Fuel Expense which shall be shared by the Participants in accordance with the ratio of the Nuclear Fuel's thermal output used by them, respectively, to the total thermal output from the Nuclear Fuel.
- F.1.3.6 To the extent that the thermal output of any Fuel Assembly used by any Participant exceeds that Participant's Generation Entitlement Share of the total thermal output of such assembly, such Participant shall compensate the other Participants, subject to Section F.1.3.7 hereof, for the use of such excess thermal output. Such compensation shall be determined upon removal from a Reactor of such assembly for reprocessing or disposal or at other times as the Audit Committee shall establish. Such compensation shall be made by payment of the Assigned Fuel Expense Debits therefor to the Operating Agent who shall reimburse said other Participants as appropriate from such payments received for their respective Nuclear Fuel Expenditures and Project Uranium Costs.
- F.1.3.7 In the event the then current Estimated Thermal Output of any Fuel Assembly is not fully utilized prior to its discharge from a Reactor due to the failure of one or more Participants to schedule operation of the associated Generating Unit up to its or their Generation Entitlement Share or Shares, then such Participant or Participants shall be entitled to compensation, but only in the event that the total thermal output actually utilized plus the additional thermal output which would have been utilized if such Participant or Participants had scheduled operation of such Generating Unit up to its or their respective Generation Entitlement Share or Shares exceeds the Estimated Thermal Output.

- F.1.3.8 For the purpose of determining with respect to one or more Fuel Assemblies the amount of the Fuel Expense to be charged prior to the discharge of such Fuel Assembly(ies) from a Reactor for reprocessing or disposal, estimates of thermal output and salvage values shall be used. Such estimates shall be subject to change from time to time up to 30 days after such discharge or at such other times as the Engineering and Operating Committee shall direct.

F.1.4 Participant Financing of Nuclear Fuel .

- F.1.4.1 Any Participant may, subject to Section F.1.4.2 hereof and Section 15.4 of the Participation Agreement, arrange for the financing of all or any portion of its investment in Nuclear Fuel on such terms and conditions as it determines in its sole discretion to be acceptable, including without limitation, the conveyance and assignment of its undivided joint ownership interest in the Nuclear Fuel to its Fuel Financer.

- F.1.4.2 No financing arrangement shall relieve such Participant from any obligations under this Appendix F or any other provision of the Participation Agreement. No such financing arrangement shall give nor purport to give the Fuel Financer any different rights or obligations under the Participation Agreement than would be possessed or imposed upon such Participant in the absence of such financing arrangement. No such financing arrangement nor the rights of any Fuel Financer thereunder, shall be valid or enforceable against the Operating Agent or any other Participant until such arrangement has been found by the Administrative Committee to be consistent with this Appendix F and all other provisions of the Participation Agreement.

F.2 Definitions. The following terms, when used herein shall have the meanings hereinafter specified. Such terms have been separated into certain functional groupings to permit better understanding.

F.2.1 Amortized Costs .

- F.2.1.1 **Assembly Cost (AC):** The total costs incurred for a complete new Fuel Assembly ready for insertion into a Reactor and recorded in FERC Account 120.3, including the Project Uranium Costs for the Uranium Concentrates incorporated in such assembly or utilized or consumed in any and all processes involved in the manufacture of such assembly, less its estimated Net Salvage Value. Such total costs shall exclude (i) any Participant's costs for interest on advanced funds, rental, carrying or use charges and, except as provided in Section 13.3 of the Participation Agreement, any *ad valorem* taxes or payments in lieu thereof and (ii) all Fuel Handling Expenses and all Fuel Management Expenses.

- F.2.1.2 **Assigned Assembly Cost (AAC):** The portion of the Assembly Cost assignable to each Participant for any Fuel Assembly which shall be equal to the product of (i) such Participant's Generation Entitlement Share multiplied by (ii) the Assembly Cost for such assembly.

- F.2.1.3 **Net Salvage Value (NSV):** The amount, which may be either positive or negative, estimated for each Fuel Assembly by the Operating Agent in accordance with criteria approved by the Engineering and Operating Committee, including (i) all estimated costs of handling, transportation, offsite storage and disposal of such assembly or any portions thereof after its removal from a Reactor, but excluding all Fuel Handling Expenses and (ii) if such committee determines that reprocessing of such assembly is feasible, the estimated costs of reprocessing, including without limitation, the costs of waste disposal associated therewith, and the estimated value of any materials expected to be recoverable therefrom for reuse in any Reactor or for sale.

F.2.1.4 Project Uranium Costs (PUC): The total costs of obtaining and delivering Uranium Concentrates properly chargeable to FERC Account 120.1 which would have been incurred if all Uranium Concentrates required in the manufacture of a Fuel Assembly had been supplied at the average cost of those concentrates delivered in satisfaction of contracts to which the Operating Agent is a party pursuant to Appendix K to the Participation Agreement. Such average cost shall be determined by the Operating Agent using the weighted average inventory allocation method in accordance with Accounting Practice or such other method as the Audit Committee may establish.

F.2.2 Thermal Output - Estimated, Actual and Presumed.

F.2.2.1 Estimated Thermal Output (ETO): The total thermal energy, expressed in megawatt-days (MWD), expected to be produced from one or more Fuel Assemblies as specified in the applicable Nuclear Fuel management plan(s) in effect from time to time as proposed by the Operating Agent and approved by the Engineering and Operating Committee pursuant to Section 6.3.2 of the Participation Agreement.

F.2.2.2 Assigned Estimated Thermal Output (AETO): The portion of the Estimated Thermal Output from one or more Fuel Assembly(ies) that is (are) assignable to each Participant, which is equal to the product of (i) such Participant's Generation Entitlement Share multiplied by (ii) the Estimated Thermal Output of such assembly(ies).

F.2.2.3 Actual Thermal Output (ATO): The recorded thermal energy expressed in megawatt-days (MWD) produced from one or more Fuel Assemblies during any given period or periods of residence in a Reactor or Reactors which has or have been used to start up and operate such Reactor or Reactors at any Power level or levels.

F.2.2.4 Assigned Actual Thermal Output (AATO): The portion of the Actual Thermal Output of one or more Fuel Assemblies during any given period assignable to each Participant which shall be equal to the sum of (i) the product computed separately for each resident Fuel Assembly of (a) its total Actual Thermal Output during such period required for start-up and during operation of the Reactor in which such assembly(ies) is (are) residing at any Power level up to and including that required for such Reactor's Generating Unit to produce its Zero Net Load, multiplied by (b) such Participant's Generation Entitlement Share, and (ii) the product computed separately for each resident Fuel Assembly of (a) its total Actual Thermal Output during such period used for Net Energy Generation multiplied by (b) the percentage of the total Net Energy Generation from such Generating Unit during such period delivered to such Participant.

F.2.2.5 Presumed Thermal Output (PTO): The thermal output presumed to have been utilized by any Participant for the purpose of computing its Presumed Thermal Output Expense, if any, with respect to any Fuel Assembly whose Actual Thermal Output at the time of its discharge from a Reactor is less than its Estimated Thermal Output (as established at the time of its first insertion into a Reactor or such other time as the Engineering and Operating Committee shall specify) because such Participant, or such Participant and one or more other Participants, shall have failed to schedule operation of the associated Generating Unit up to its or their respective Generation Entitlement Share or Shares. Such Presumed Thermal Output shall be equal to the product of (i) the amount by which the Estimated Thermal Output for such assembly exceeded its Actual Thermal Output multiplied by (ii) the quotient of (a) the amount by which such

Participant's Assigned Estimated Thermal Output exceeded such Participant's Assigned Actual Thermal Output divided by (b) the total of such amounts for all Participants whose respective Assigned Estimated Thermal Outputs exceeded their respective Assigned Actual Thermal Output.

F.2.3 Fuel Expenses Chargeable to FERC Account 518.

F.2.3.1 Assigned Fuel Expense (AFE): The portion of the Fuel Expense assignable to each Participant in any month for one or more Fuel Assembly(ies) determined by multiplying (i) such Participant's Assigned Assembly Cost for such assembly(ies) by (ii) the quotient of (a) such Participant's Assigned Actual Thermal Output from such assembly(ies) in such month divided by (b) such Participant's Assigned Estimated Thermal Output from such assembly(ies).

F.2.3.2 Adjusted Assigned Fuel Expense (AAFE): The amount determined for each Participant for one or more Fuel Assemblies at the time such assembly(ies) is (are) removed from a Reactor for reprocessing or other disposal, equal to the summation of such Participant's (i) Assigned Fuel Expenses for assembly(ies) during all periods such assembly(ies) was (were) utilized in a Reactor and (ii) Presumed Thermal Output Expense, if any, during such period.

F.2.3.3 Presumed Thermal Output Expense (PTOE): The expense assignable to any Participant for the purpose of computing such Participant's Adjusted Assigned Fuel Expense for one or more Fuel Assembly(ies), which shall be equal to the product of (i) such Participant's Assigned Assembly Cost multiplied by (ii) the quotient of such Participant's Presumed Thermal Output (see Section F.2.2.5 hereof) divided by its Assigned Estimated Thermal Output of such assembly(ies).

F.2.4 Fuel Expense Credits and Debits.

F.2.4.1 Fuel Expense Credit (FEC): The amount, if any, determined for any Participant by which such Participant's Assigned Assembly Cost for such assembly(ies) exceeds such Participant's Adjusted Assigned Fuel Expense for such assembly(ies). This amount shall be determined upon the removal of one or more Fuel Assemblies from a Reactor for reprocessing or other disposal or at other times as the Audit Committee shall establish.

F.2.4.2 Assigned Fuel Expense Debits (AFED): With respect to one or more Fuel Assemblies, the portion of the sum of all Fuel Expense Credits chargeable to each Participant whose Assigned Actual Thermal Output from such assembly(ies) exceeds such Participant's Generation Entitlement Share of the Actual Thermal Output from such assembly(ies). This amount shall be equal to the amount determined by multiplying (i) the sum of all the Fuel Expense Credits for such assembly(ies) by (ii) the quotient of (a) the amount that such Participant's Assigned Actual Thermal Output from such assembly(ies) exceeds such Participant's Assigned Estimated Thermal Output from such assembly(ies) divided by (b) the sum of all such amounts for all such Participants.

F.2.5 Expenses Not Chargeable to FERC Account 518.

F.2.5.1 Fuel Handling Expense (FHE): All costs incurred by the Operating Agent in connection with the receipt, inspection, storage, insertion, removal, preparation for shipment and other handling of Nuclear Fuel at the Nuclear Plant Site, but excluding any costs which shall be capitalized in accordance with Accounting Practice.

F.2.5.2 Fuel Management Expense (FME): All costs incurred by the Operating Agent in connection with planning and ordering of, contracting, accounting for, and scheduling and managing the use of Nuclear Fuel, including any

computer charges, consultant's fees, costs of any advisory or management services furnished by any Nuclear Fuel supplier, payroll and associated costs of the Operating Agent's personnel and an allowance for administrative and general expense of the Operating Agent, but excluding Fuel Handling Expenses and any expense incurred by the Project Manager in connection with contracting for nuclear steam supply systems and for each Reactor's initially purchased supply of Fuel Assemblies, which expense shall be capitalized in accordance with Accounting Practice.

F.2.6 Miscellaneous.

F.2.6.1 Nuclear Fuel Expenditures (NFE): All expenditures which are made or scheduled pursuant to any Nuclear Fuel Agreement, but excluding (i) any expenditures payable to a Fuel Financer and (ii) all Project Uranium Costs.

F.3 Forecasts of Cash Requirements and Advances of Funds.

F.3.1 On or before the beginning of each quarter commencing on the first day of January, April, July and October, the Operating Agent shall furnish to each Participant, and, at the written request of such Participant, to its Fuel Financer, if any, a ten-year forecast of such Participant's cash requirements for its share of all Nuclear Fuel Expenditures, including all payments to become due under each Nuclear Fuel Agreement then in effect (including without limitation the contracts identified in Section K.3.1 of Appendix K to the Participation Agreement, but excluding all other contracts to purchase Additional Uranium Concentrates), and estimates of all other expenditures, including without limitation, shipping charges, cask rentals, charges for storage at places other than the Nuclear Plant Site, reprocessing costs, enrichment services and conversion costs, of the character chargeable to FERC Account 120.5. Such forecast shall set forth such cash requirements (i) for each month of the first two years following the date of the forecast and (ii) for each year of the last eight years of the forecast.

F.3.2 At least ten (10) days in advance of the date on which any Nuclear Fuel Expenditure shall become due the Operating Agent shall send a request for funds to each Participant and, upon request of a Participant, a copy of such request for funds to its Fuel Financer for such Participant's share of such Nuclear Fuel Expenditure. Each Participant shall advance or cause to be advanced to the Operating Agent the funds so requested on or before said due date. In the event the amount advanced by any Participant shall exceed such Participant's share of the amount of Nuclear Fuel Expenditures actually made, then any such excess advance shall be promptly returned to such Participant.

F.3.3 Funds not advanced to the Operating Agent as required pursuant to Section F.3.2 hereof shall be payable with interest from and after said due date at the rate provided in Section 23.3 of the Participation Agreement.

F.3.4 If a Participant shall dispute any portion of any amount specified in a forecast of Nuclear Fuel Expenditures or a request for funds, it shall make the total payment or advance specified in the request for funds and follow the procedures set forth in Section 23.4 of the Participation Agreement.

F.4 Determinations, Estimates and Reports.

F.4.1 Upon receipt of Fuel Assemblies, Promptly after receipt of the last Fuel Assembly of the initial core and subsequently of each reload batch for any Generating Unit, the Operating Agent shall determine for each Participant, when applicable, for each Fuel Assembly of such initial core or reload batch, and for all such Fuel Assemblies the totals of, the following:

F.4.1.1 Assembly Cost, including costs of the individual Nuclear Fuel cost components comprising the Assembly Cost with the dates when such cost components were paid.

F.4.1.2 Estimate of the Net Salvage Value.

F.4.1.3 Assigned Assembly Cost for each Participant.

- F.4.1.4. Estimated Thermal Output.
 - F.4.1.5 Assigned Estimated Thermal Output.
 - F.4.2 **Upon Initial Fuel Loading:** At the time of the initial loading of Fuel Assemblies into a Reactor the Operating Agent shall update its determinations made in accordance with Section F.4.1 hereof making such adjustments as may be warranted due to changes in any factor affecting the Assigned Estimated Thermal Outputs or Assembly Cost.
 - F.4.3 **Monthly Determinations:** Not later than ten (10) days after the end of each month after the initial Nuclear Fuel loading, the Operating Agent shall determine with respect to each Fuel Assembly:
 - F.4.3.1 Actual Thermal Output and Assigned Actual Thermal Outputs during such month (i) for Reactor operation at any Power level up to that required for Zero Net Load and (ii) for Net Energy Generation.
 - F.4.3.2 Actual Thermal Output and Assigned Actual Thermal Outputs during entire period of residence in a Reactor or Reactors to the end of such month.
 - F.4.3.3 Assigned Fuel Expense for each Participant for such month.
 - F.4.3.4 The summation of the Assigned Fuel Expenses for each Participant as of the beginning and the end of such month.
 - F.4.3.5 In the event the Actual Thermal Output determined pursuant to Section F.4.3.2 hereof shall exceed the Estimated Thermal Output, net adjustments to be made in the Assigned Fuel Expenses for each Participant.
 - F.4.4 **Upon Shut down of a Reactor for Removal of Fuel Assemblies for Reprocessing or Other Disposal:** Within thirty (30) days after the removal of any Fuel Assembly for reprocessing or other disposal, the Operating Agent shall determine on the basis of the best information then available with respect to such Fuel Assembly:
 - F.4.4.1 Assembly Cost.
 - F.4.4.2 Estimate of the Net Salvage Value.
 - F.4.4.3 Assigned Assembly Cost.
 - F.4.4.4 Actual Thermal Output during entire period of residence in a Reactor or Reactors.
 - F.4.4.5 Assigned Actual Thermal Output during such period for each Participant.
 - F.4.4.6 Presumed Thermal Output, if any, for each Participant.
 - F.4.4.7 Adjusted Assigned Fuel Expense for each Participant.
 - F.4.4.8 Net adjustments, for each annual reporting period affected, to the Assigned Fuel Expense for each Participant due to (i) differences between Estimated and Actual Thermal Output and (ii) changes in any factor affecting the estimate of the Net Salvage Value.
 - F.4.4.9 Fuel Expense Credits and Assigned Fuel Expense Debits applicable to such removed Fuel Assembly after making the net adjustments determined pursuant to Section F.4.4.8 hereof in the event the sum of the Actual Thermal Output and all Presumed Thermal Outputs, if any, determined for such Fuel Assembly is equal to or greater than its Estimated Thermal Output used to compute such Presumed Thermal Outputs.
 - F.4.5 **Prior to Reactor Start-up after Refueling:** Prior to start-up of a Reactor after any refueling, the Operating Agent shall determine with respect to each new Fuel Assembly inserted and each partially irradiated Fuel Assembly reinserted into the Reactor during such refueling the same data as that required under Section F.4.2 hereof.
 - F.4.6 The Operating Agent shall furnish to each Participant a report of each determination made pursuant to this Section F.4 promptly after such determination is made in a form and manner as may be recommended by the Operating Agent and approved by the Engineering and Operating Committee.

F.5 Bills for Assigned Fuel Expense Debits and Adjustments •

- F.5.1 Within fifteen (15) days after making the determinations required under Section F.4.4.9 hereof, the Operating Agent shall bill each Participant having aggregate Assigned Fuel Expense Debits for the purpose of reimbursing those Participants having aggregate Fuel Expense Credits.
- F.5.2 Promptly upon receipt of payment of any such bills for Assigned Fuel Expense Debits or net adjustments, including any interest thereon pursuant to Section F.5.3 hereof, the Operating Agent shall pay the amounts so received to those Participants entitled thereto *pro rata*.
- F.5.3 Bills rendered pursuant to Section F.5.1 hereof shall be due and payable fifteen (15) days after receipt. Any bill not paid on its due date shall bear interest from and after said due date at the rate provided in Section 23.3 of the Participation Agreement.
- F.5.4 If any Participant shall dispute any determination made by the Operating Agent pursuant to Section F.4 hereof or any bill rendered pursuant to this Section F.5, the disputant shall make the total payment billed or accept the payment rendered and follow the procedures set forth in Section 23.4 of the Participation Agreement.

F.6 Example Calculations •

- F.6.1 The following examples illustrate the manner in which calculations of Assigned Fuel Expenses, Fuel Expense Credits and Assigned Fuel Expense Debits are made under four scenarios with differing assumptions.
- F.6.2 If a conflict arises between this Appendix F and the examples attached hereto, then this Appendix F shall govern.

SCENARIO 1
SAMPLE CALCULATION OF APPENDIX F
ALL PARTICIPANTS USE THEIR ENERGY ALLOTMENT

Participant	GES %	AAC \$	AETO MWD	AATO MWD	AFE \$	PTO MWD	PTOE \$	AAFE \$	FEC \$	AFED \$
A	10	100,000	3,000	3,000	100,000	-0-	-0-	100,000	-0-	-0-
B	20	200,000	6,000	6,000	200,000	-0-	-0-	200,000	-0-	-0-
C	30	300,000	9,000	9,000	300,000	-0-	-0-	300,000	-0-	-0-
D	40	400,000	12,000	12,000	400,000	-0-	-0-	400,000	-0-	-0-
Total	100	1,000,000	30,000	30,000	1,000,000	-0-	-0-	1,000,000	-0-	-0-

Notes:

1. ATO = ETO = 30,000 MWD
2. AC = \$1,000,000

CALCULATIONS:

1. GES Given
2. AAC = GES X AC
3. AETO = GES X ETO
 - a. AETO (A) = 3,000 MWD = .10 X 30,000 MWD
 - b. AETO (B) = 6,000 MWD = .20 X 30,000 MWD
 - c. AETO (C) = 9,000 MWD = .30 X 30,000 MWD
 - d. AETO (D) = 12,000 MWD = .40 X 30,000 MWD
4. AATO Given
5. AFE = AAC X (AATO ÷ AETO)
 - a. AFE (A) = \$100,000 = \$100,000 X (3,000 MWD ÷ 3,000 MWD)
 - b. AFE (B) = \$200,000 = \$200,000 X (6,000 MWD ÷ 6,000 MWD)
 - c. AFE (C) = \$300,000 = \$300,000 X (9,000 MWD ÷ 9,000 MWD)
 - d. AFE (D) = \$400,000 = \$400,000 X (12,000 MWD ÷ 12,000 MWD)
6.
$$PTO = (ETO - ATO) \times \frac{(AETO - AATO)}{\sum (AETO - AATO)}$$

Where ETO > ATO and AETO > AATO
ETO = ATO. Therefore PTO for each Participant is zero.
"Σ" denotes a summation for all Participants.
7.
$$PTOE = AAC \times (PTO \div AETO)$$

PTO = 0 for each Participant. Therefore PTOE for each Participant is zero.
8. AAFE = AFE + PTOE
 - a. AAFE (A) = \$100,000 = \$100,000 + 0
 - b. AAFE (B) = \$200,000 = \$200,000 + 0
 - c. AAFE (C) = \$300,000 = \$300,000 + 0
 - d. AAFE (D) = \$400,000 = \$400,000 + 0
9. FEC = AAC - AAFE if AAC ≥ AAFE
 - a. FEC (A) = 0 = \$100,000 - \$100,000
 - b. FEC (B) = 0 = \$200,000 - \$200,000
 - c. FEC (C) = 0 = \$300,000 - \$300,000
 - d. FEC (D) = 0 = \$400,000 - \$400,000
10.
$$AFED = \frac{\sum FEC \times (AATO - AETO)}{\sum (AATO - AETO)}$$

Where AATO > AETO
FEC (A) + FEC (B) + FEC (C) + FEC (D) = 0.
Therefore AFED for each Participant is zero.

SCENARIO 2
SAMPLE CALCULATION OF APPENDIX F
PARTICIPANTS A AND B USE ENERGY OF C AND D - NO PRESUMED THERMAL
OUTPUT

Participant	GES %	AAC \$	AETO MWD	AATO MWD	AFE \$	PTO MWD	PTOE \$	AAFE \$	FEC \$	AFED \$
A	10	100,000	3,000	3,300	110,000	0	0	110,000	0	10,000
B	20	200,000	6,000	6,600	220,000	0	0	220,000	0	20,000
C	30	300,000	9,000	8,700	290,000	0	0	290,000	10,000	0
D	40	400,000	12,000	11,400	380,000	0	0	380,000	20,000	0
Total	100	1,000,000	30,000	30,000	1,000,000	0	0	1,000,000	30,000	30,000

Notes:

1. ATO = ETO = 30,000 MWD
2. AC = \$1,000,000

CALCULATIONS:

1. GES Given
2. AAC = GES X AC
3. AETO = GES X ETO
 - a. AETO (A) = 3,000 MWD = .10 X 30,000 MWD
 - b. AETO (B) = 6,000 MWD = .20 X 30,000 MWD
 - c. AETO (C) = 9,000 MWD = .30 X 30,000 MWD
 - d. AETO (D) = 12,000 MWD = .40 X 30,000 MWD
4. AATO Given
 - a. A uses 300 MWD more than its allotment
 - b. B uses 600 MWD more than its allotment
 - c. C loses 300 MWD of its allotment
 - d. D loses 600 MWD of its allotment
5. AFE = AAC X (AATO ÷ AETO)
 - a. AFE (A) = \$110,000 = \$100,000 X (3,300 MWD ÷ 3,000 MWD)
 - b. AFE (B) = \$220,000 = \$200,000 X (6,600 MWD ÷ 6,000 MWD)
 - c. AFE (C) = \$290,000 = \$300,000 X (8,700 MWD ÷ 9,000 MWD)
 - d. AFE (D) = \$380,000 = \$400,000 X (11,400 MWD ÷ 12,000 MWD)
6.
$$PTO = (ETO - ATO) \times \frac{(AETO - AATO)}{\sum (AETO - AATO)}$$

Where ETO > ATO and AETO > AATO
 ETO = ATO. Therefore PTO for each Participant is zero.
 "Σ" denotes a summation for all Participants.
7.
$$PTOE = AAC \times (PTO \div AETO)$$

PTO = 0 for each Participant. Therefore PTOE for each Participant is zero.
8. AAFE = AFE + PTOE
 - a. AAFE (A) = \$110,000 = \$110,000 + 0
 - b. AAFE (B) = \$220,000 = \$220,000 + 0
 - c. AAFE (C) = \$290,000 = \$290,000 + 0
 - d. AAFE (D) = \$380,000 = \$380,000 + 0
9. FEC = AAC - AAFE if AAC ≥ AAFE
 - a. FEC (A) = 0 = \$100,000 - \$100,000
 - b. FEC (B) = 0 = \$200,000 - \$200,000
 - c. FEC (C) = 0 = \$10,000 = \$300,000 - \$290,000
 - d. FEC (D) = 0 = \$20,000 = \$400,000 - \$380,000
10.
$$AFED = \frac{FEC \times (AATO - AETO)}{\sum (AATO - AETO)}$$

Where AATO > AETO

 - a. AFED (A) = \$10,000 = \$30,000 X (300 MWD ÷ 900 MWD)
 - b. AFED (B) = \$20,000 = \$30,000 X (600 MWD ÷ 900 MWD)
 - c. AFED (C) = 0
 - d. AFED (D) = 0

SCENARIO 3
SAMPLE CALCULATION OF APPENDIX F
PARTICIPANTS A AND B LOSE PART OF THEIR ENERGY ALLOTMENT AND HAVE
PRESUMED THERMAL OUTPUT. PARTICIPANTS C AND D USE ALL OF THEIR
ENERGY ALLOTMENT

Participant	GES %	AAC \$	AETO MWD	AATO MWD	AFE \$	PTO MWD	PTOE \$	AAFE \$	FEC \$	AFED \$
A	10	100,000	3,000	2,700	90,000	300	10,000	100,000	-0-	-0-
B	20	200,000	6,000	5,400	180,000	600	20,000	200,000	-0-	-0-
C	30	300,000	9,000	9,000	300,000	-0-	-0-	300,000	-0-	-0-
D	40	400,000	12,000	12,000	400,000	-0-	-0-	400,000	-0-	-0-
Total	100	1,000,000	30,000	29,100	970,000	900	30,000	1,000,000	-0-	-0-

Notes:

1. ETO = 30,000 MWD
2. ATO = 29,100 MWD
3. AC = \$1,000,000

CALCULATIONS:

1. GES Given
2. AAC = GES X AC
3. AETO = GES X ETO
 - a. AETO (A) = 3,000 MWD = .10 X 30,000 MWD
 - b. AETO (B) = 6,000 MWD = .20 X 30,000 MWD
 - c. AETO (C) = 9,000 MWD = .30 X 30,000 MWD
 - d. AETO (D) = 12,000 MWD = .40 X 30,000 MWD
4. AATO Given
 - a. A used 300 MWD less than its allotment
 - b. B used 600 MWD less than its allotment
 - c. C used exactly its allotment
 - d. D used exactly its allotment
5. AFE = AAC X (AATO ÷ AETO)
 - a. AFE (A) = \$ 90,000 = \$100,000 X (2,700 MWD ÷ 3,000 MWD)
 - b. AFE (B) = \$180,000 = \$200,000 X (5,400 MWD ÷ 6,000 MWD)
 - c. AFE (C) = \$300,000 = \$300,000 X (9,000 MWD ÷ 9,000 MWD)
 - d. AFE (D) = \$400,000 = \$400,000 X (12,000 MWD ÷ 12,000 MWD)
6.
$$PTO = (ETO - ATO) \times \frac{(AETO - AATO)}{\sum (AETO - AATO)}$$
 Where ETO > ATO and AETO > AATO
 - a. PTO (A) = 300 MWD = (30,000 MWD - 29,100 MWD) X ((3,000 MWD - 2,700 MWD) ÷ 900 MWD)
 - b. PTO (B) = 600 MWD = (30,000 MWD - 29,100 MWD) X ((6,000 MWD - 5,400 MWD) ÷ 900 MWD)
 - c. PTO (C) = 0
 - d. PTO (D) = 0
7.
$$PTOE = AAC \times \frac{(PTO \div AETO)}$$
 - a. PTOE (A) = \$10,000 = \$100,000 X (300 MWD ÷ 3,000 MWD)
 - b. PTOE (B) = \$20,000 = \$200,000 X (600 MWD ÷ 6,000 MWD)
 - c. PTOE (C) = 0
 - d. PTOE (D) = 0
8. AAFE = AFE + PTOE
 - a. AAFE (A) = \$100,000 = \$ 90,000 + \$10,000
 - b. AAFE (B) = \$200,000 = \$180,000 + \$20,000
 - c. AAFE (C) = \$300,000 = \$300,000 + 0
 - d. AAFE (D) = \$400,000 = \$400,000 + 0
9. FEC = AAC - AAFE if AAC ≥ AAFE
 FEC = 0 for each Participant
10.
$$AFED = \frac{\sum FEC \times (AATO - AETO)}{\sum (AATO - AETO)}$$
 Where AATO > AETO
 AFED = 0 for each Participant

SCENARIO 4
SAMPLE CALCULATION OF APPENDIX F
PARTICIPANTS A AND B USE MORE THAN THEIR ALLOTMENT
PARTICIPANTS C AND D HAVE A PRESUMED THERMAL OUTPUT

Participant	GES %	AAC \$	AETO MWD	AATO MWD	AFE \$	PTO MWD	PTOE \$	AAFE \$	FEC \$	AFED \$
A	10	100,000	3,000	3,300	110,000	—	—	110,000	—	10,000
B	20	200,000	6,000	6,600	220,000	—	—	220,000	—	20,000
C	30	300,000	9,000	8,100	270,000	692	23,067	293,067	6,933	—
D	40	400,000	12,000	9,000	300,000	2,308	76,933	376,933	23,067	—
Total	100	1,000,000	30,000	27,000	900,000	3,000	100,000	1,000,000	30,000	30,000

Notes:

1. ETO = 30,000 MWD
2. ATO = 27,000 MWD
3. AC = \$1,000,000

CALCULATIONS:

1. GES Given
2. AAC = GES X AC
3. AETO = GES X ETO
 - a. AETO (A) = 3,000 MWD = .10 X 30,000 MWD
 - b. AETO (B) = 6,000 MWD = .20 X 30,000 MWD
 - c. AETO (C) = 9,000 MWD = .30 X 30,000 MWD
 - d. AETO (D) = 12,000 MWD = .40 X 30,000 MWD
4. AATO Given
 - a. A used 300 MWD more than its allotment.
 - b. B used 600 MWD more than its allotment
 - c. C used 900 MWD less than its allotment
 - d. D used 3,000 MWD less than its allotment
5. AFE = AAC X (AATO ÷ AETO)
 - a. AFE (A) = \$110,000 = \$100,000 X (3,300 MWD ÷ 3,000 MWD)
 - b. AFE (B) = \$220,000 = \$200,000 X (6,600 MWD ÷ 6,000 MWD)
 - c. AFE (C) = \$270,000 = \$300,000 X (8,100 MWD ÷ 9,000 MWD)
 - d. AFE (D) = \$300,000 = \$400,000 X (9,000 MWD ÷ 12,000 MWD)
6. PTO = (ETO - ATO) X $\frac{(AETO - AATO)}{\sum (AETO - AATO)}$

Where ETO > ATO and AETO > AATO

 - a. PTO (A) = 0
 - b. PTO (B) = 0
 - c. PTO (C) = 692 MWD = (30,000 MWD - 27,000 MWD) X ((9,000 MWD - 8,100 MWD) ÷ 3,900 MWD)
 - d. PTO (D) = 2,308 MWD = (30,000 MWD - 27,000 MWD) X ((12,000 MWD - 9,000 MWD) ÷ 3,900 MWD)
7. PTOE = AAC X (PTO ÷ AETO)
 - a. PTOE (A) = 0
 - b. PTOE (B) = 0
 - c. PTOE (C) = \$23,067 = \$300,000 X (692 MWD ÷ 9,000 MWD)
 - d. PTOE (D) = \$76,933 = \$400,000 X (2,308 MWD ÷ 12,000 MWD)
8. AAFE = AFE + PTOE
 - a. AAFE (A) = \$110,000 = \$110,000 + 0
 - b. AAFE (B) = \$220,000 = \$220,000 + 0
 - c. AAFE (C) = \$293,067 = \$270,000 + 23,067
 - d. AAFE (D) = \$376,933 = \$300,000 + 76,933
9. FEC = AAC - AAFE if AAC ≥ AAFE
 - a. FEC (A) = 0 = \$100,000 - \$100,000
 - b. FEC (B) = 0 = \$200,000 - \$200,000
 - c. FEC (C) = 6,933 = \$300,000 - \$293,067
 - d. FEC (D) = 23,067 = \$400,000 - \$376,933
10. AFED = $\sum \frac{FEC \times (AATO - AETO)}{\sum (AATO - AETO)}$

Where AATO > AETO

 - a. AFED (A) = \$10,000 = \$30,000 X ((3,300 MWD - 3,000 MWD) ÷ 900 MWD)
 - b. AFED (B) = \$20,000 = \$30,000 X ((6,600 MWD - 6,000 MWD) ÷ 900 MWD)
 - c. AFED (C) = 0
 - d. AFED (D) = 0

APPENDIX G

PRE-OPERATIONAL OPERATING WORK

G.1 Training

- G.1.1 The Operating Agent shall be responsible for the recruitment, employment, training and licensing of all personnel required for the operation and maintenance of ANPP, including without limitation senior reactor operators, reactor operators, equipment and maintenance personnel, fuel handling crews, engineering, nuclear, radiation protection and other supporting staff personnel and supervisors.
- G.1.2 Within 90 days after execution of the contract for one or more nuclear steam supply systems, the Operating Agent shall prepare an ANPP operating and maintenance organization chart and a program, schedule and budget of employment, training and licensing requirements. Such organization chart, program, schedule and budget shall be submitted to the Administrative Committee for its review and approval. Following such review the Operating Agent shall proceed with the implementation thereof with such changes as may be directed by the Administrative Committee.

G.2 Monitoring Programs

- G.2.1 From and after the issuance of a construction permit by the U. S. Atomic Energy Commission the Operating Agent shall assume responsibility for the conduct of all on-site and off-site environmental monitoring programs, including those continuing environmental monitoring programs initiated by the Project Manager, relevant to the protection of the environment, the implementation of Section 29 of the Participation Agreement or as required by law.
- G.2.2 In carrying out the responsibilities set forth in Section G.2.1 hereof the Operating Agent shall coordinate its activities, including those performed by any contractor, with the Project Manager so as to avoid or minimize any interference with any Construction Work.
- G.2.3 The transfer of responsibility for environmental monitoring programs to the Operating Agent shall not relieve the Project Manager of its responsibilities of conducting Construction Work in compliance with Section 29 of the Participation Agreement.

G.3 Pre-Operational Testing

- G.3.1 The Operating Agent shall participate in and furnish the personnel required for the pre-operational testing of all systems and components of each Generating Unit as such systems are turned over to ANPP for such testing.
- G.3.2 Such activities of the Operating Agent shall be coordinated with the Project Manager, and the Project Manager shall not accept any such systems or components without the consent of the Operating Agent.

G.4 Acceptance, Storage and Loading of Nuclear Fuel. In coordination with the Project Manager the Operating Agent shall be responsible, subject to the terms of any Nuclear Fuel Agreement, for delivery, schedules, inspection, acceptance and storage of Nuclear Fuel to or at the Nuclear Plant Site.

G.5 Operating Procedures and Equipment. The Operating Agent shall review, comment on and approve all operating procedures and equipment manuals prepared by any contractor or supplier of any system or component of each Generating Unit.

G.6 Fuel Loading and Initial Start-up. In coordination with the Project Manager and subject to the provisions of any Construction Agreement, the Operating Agent shall furnish such personnel as may be required to load Nuclear Fuel into each Reactor, conduct the initial start-up of each Generating Unit, including all operational testing of the systems and components thereof and all subsequent operation of the Generating Unit or any portion thereof prior to the Date of Firm Operation.

G.7 Pre-Operational and Training Expenses

- G.7.1** The Operating Agent shall establish a separate account for accumulation of all charges incurred (except training expenses) relating to the operation of each Generating Unit prior to its Date of Firm Operation. Charges to this separate account shall include (a) the Estimated Fuel Expense and other consumable supplies, items and equipment incidental to start-up and (b) the cost of all operation and maintenance expenses (exclusive of the cost of all operation and maintenance performed by start-up crews furnished by any contractor) determined in accordance with Section 11 of the Participation Agreement.
- G.7.2** The Project Manager shall charge all costs accumulated in such separate account to Construction Costs.
- G.7.3** The initial training expenses shall consist of labor (except for maintenance personnel engaged in actual construction), material, transportation, services and any other costs applicable to hiring and training, including any relocation of personnel, for Operating Work.
- G.7.4** Initial training expenses shall also include departmental overheads, time-off allowances, Payroll Taxes, employee pensions and benefits, workmen's compensation expenses and administrative and general expenses determined in accordance with Section 11 of the Participation Agreement.
- G.7.5** The Operating Agent shall accumulate the initial training expenses up to but not beyond the Date of Firm Operation in a manner to provide identification and basis for the monthly billing to the Participants in accordance with Section G.7.6 hereof.
- G.7.6** The Operating Agent shall bill each Participant and each Participant shall advance funds to the Operating Agent for the payment of training expenses in the manner set forth in Section 12 of the Participation Agreement.

APPENDIX H

OPERATING EMERGENCY

- H.1 In the event of an Operating Emergency, the Operating Agent shall, in addition to the action required to be taken pursuant to Section 8.3.26 of the Participation Agreement, take such steps as are required in this Appendix H.
- H.2 As soon as practicable after the commencement of an Operating Emergency, the Operating Agent shall advise each Participant of the occurrence of the Operating Emergency, its nature and the steps taken or to be taken to terminate the Operating Emergency.
- H.3 As soon as practicable after giving the advice required pursuant to Section H.2 hereof, the Operating Agent shall submit an estimate of expenses, incurred and projected, required to terminate the Operating Emergency and to restore the availability of each Generating Unit affected and the estimated time schedule within which such measures can be accomplished. In the event the uninsured cost of restoring the availability of such Generating Unit to its Rated Capacity shall exceed 10% of its original cost as defined in the FPC Accounts, the Operating Agent shall obtain the approval of the Administrative Committee before committing any expenditures therefor; provided however, that nothing herein shall prevent the Operating Agent from incurring any expense it deems in its sole discretion necessary to protect the health and safety of the public.
- H.4 Subject to Section H.3 hereof and Section 16 of the Participation Agreement, costs incurred in terminating an Operating Emergency and restoring the availability of each Generating Unit affected may be billed to the Participants by the Operating Agent on the basis of its estimate of such costs with adjustment to be made in accordance with Sections H.6 and H.7 hereof when a final cost determination has been made.
- H.5 Following the termination of the Operating Emergency, the Operating Agent shall submit to each Participant a report containing a summary of the costs incurred and expenditures made in connection with the repair, restoration or reconstruction and such other information as may be required by the Administrative Committee.
- H.6 The Operating Agent shall allocate to the Participants, in accordance with Section 11 of the Participation Agreement, the costs incurred or expenditures made in such repair, restoration or reconstruction which are charged as maintenance expense.
- H.7 The Operating Agent shall allocate to the Participants, in accordance with their respective Generation Entitlement Shares, the costs incurred or expenditures made in such repair, restoration or reconstruction which are capitalized.

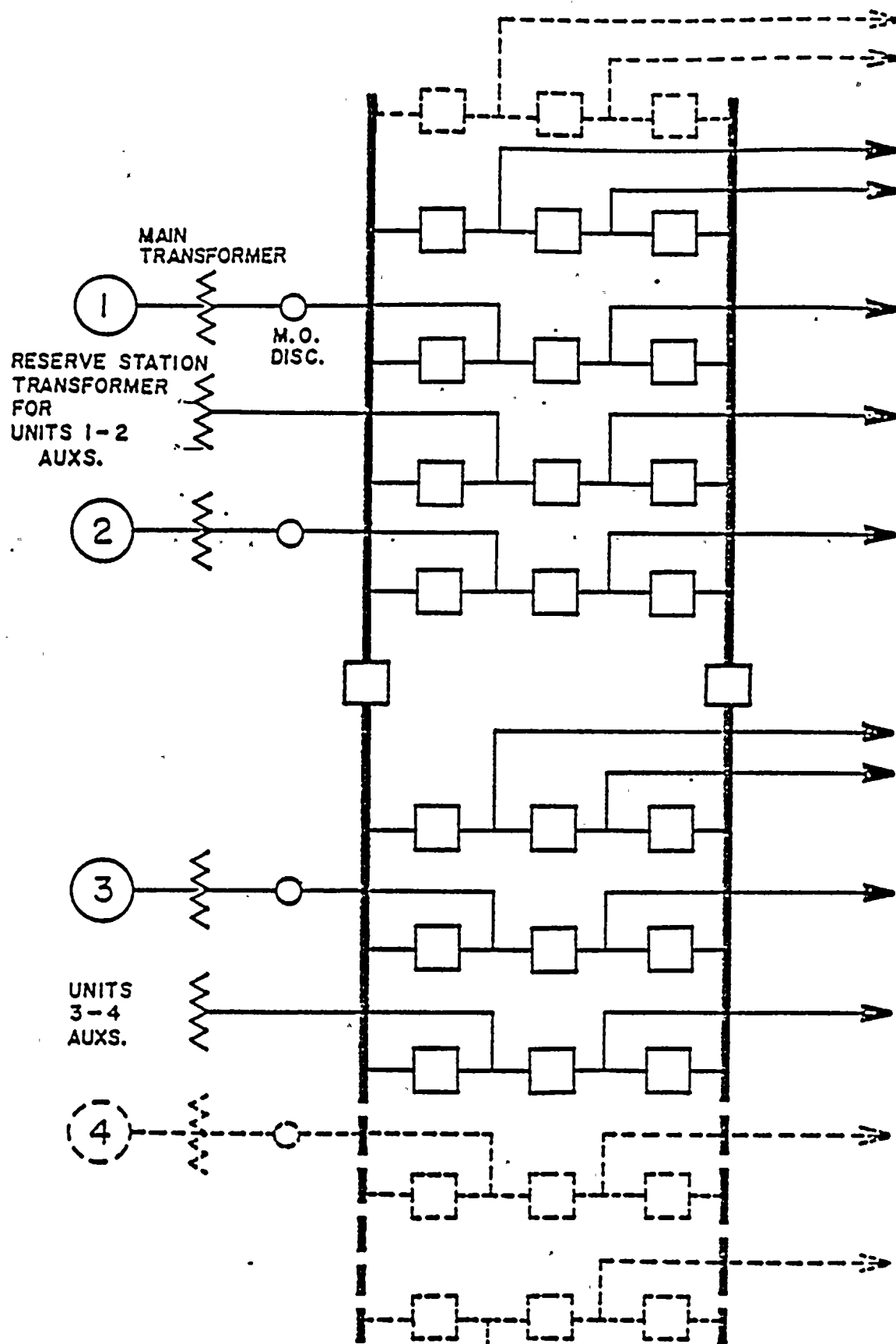
APPENDIX I

PRINCIPLES FOR OWNERSHIP, CONSTRUCTION AND OPERATION
OF THE ANPP HIGH VOLTAGE SWITCHYARD(S)

- 1.1 **Components of ANPP High Voltage Switchyard(s).** The ANPP High Voltage Switchyard(s) shall consist, as generally depicted on Exhibit I-1 attached to this Appendix I, of a basic breaker-and-a-half scheme, comprising the termination facilities for the transmission lines, generator step-up transformer high voltage leads and auxiliaries, including, but not limited to, the high voltage busses, structures, power circuit breakers, disconnect switches, control building, switchyard auxiliary and protection systems and fencing.
- 1.2 **Ownership, Titles and Cost Responsibilities.** The Participants shall acquire firm entitlement and shall acquire and own undivided interest as tenants in common in the components of the ANPP High Voltage Switchyard(s) as follows:
 - 1.2.1 Description of facilities associated with generator and auxiliary terminations to be developed, which facilities shall be owned and the cost responsibility shared by the Participants in proportion to their respective Generation Entitlement Shares.
 - 1.2.2 Description of facilities associated with outgoing lines to be developed which facilities shall be owned and the cost responsibility shared by the Participants on the basis of the ratio of the number of their respective bay positions to the total number of bay positions.
- 1.3 **Project Manager and Operating Agent:**
 - 1.3.1 Salt River Project shall be the "project manager" and "operating agent" for the ANPP High Voltage Switchyard(s), shall carry out the duties and responsibilities associated therewith pursuant to the provisions of the Participation Agreement applicable to the Project Manager and Operating Agent except as such provisions shall be inappropriate to a high voltage switchyard(s).
 - 1.3.2 The system studies, engineering, design, construction, operation and maintenance of the ANPP High Voltage Switchyard(s) performed by the "project manager" and "operating agent" shall be coordinated with ANPP and shall meet all requirements, including without limitation, reliability and quality assurance criteria, imposed by industry codes and standards and Federal and state regulatory agencies.
 - 1.3.3 The "project manager" for the ANPP High Voltage Switchyard(s) shall provide the Project Manager with such information, studies and documents respecting the ANPP High Voltage Switchyard(s) as it may request for the purpose of obtaining any requisite permit, license, certificate or authority to construct and operate ANPP, and shall make available to the Project Manager for ANPP qualified personnel for appearance at any meetings, conferences or hearings with or before any regulatory agency.
- 1.4 **Use of High Voltage Switchyard(s)**
 - 1.4.1 Each Participant shall have the right to use its firm entitlement in the ANPP High Voltage Switchyard(s) according to its cost responsibility to transmit to or from its designated delivery points under normal operating conditions Power in an amount equivalent to the sum of its Power entitlements in each Generating Unit when operated at its Target Capacity and to reserve the ANPP High Voltage Switchyard(s) for such other equivalent transmission capacity without regard to the origin, source, ownership or type of generation used to produce such Power.
 - 1.4.2 Any Participant may acquire firm entitlement, including additional delivery points, in and the right to use the ANPP High Voltage Switchyard(s) in addition to that provided for in Section 1.4.1 hereof, upon the written agreement of all Participants having cost responsibility under the Participation Agreement for the facilities over which such firm entitlement is sought, provided that said firm entitlement does not materially interfere with the right of any other Participant to utilize its entitlement as provided in Section 1.4.1 hereof. Such written agreement shall specify the amount of monetary compensation to be paid to and the allocation among the Participants for such firm entitlement.

- 1.4.3 Any Participant may make non-firm use of ANPP High Voltage Switchyard(s) capacity in addition to its uses under Sections 1.4.1 and 1.4.2 hereof to the extent that such capacity is determined to be available by the "operating agent" for the ANPP High Voltage Switchyard(s) in accordance with criteria to be approved by the Administrative Committee.
- 1.4.4 If two or more Participants concurrently desire to make non-firm use of ANPP High Voltage Switchyard(s) capacity in the same segment of the ANPP High Voltage Switchyard(s) pursuant to Section 1.4.3 hereof and the available capacity in such segment is not adequate to satisfy all such requests, then, unless otherwise agreed, the available capacity will be shared by those Participants concurrently requesting such capacity in proportion to their respective cost responsibilities in such segment.
- 1.4.5 The Participant's designated points of delivery shall be determined by system studies; however, each Participant shall have at least one designated delivery point at the ANPP High Voltage Switchyard(s).
- 1.4.6 Each Participant shall be entitled to interconnect its transmission system with the ANPP High Voltage Switchyard(s), and the costs of such interconnection shall be paid by such Participant.
- 1.4.7 It is not the intention of the Participants to dedicate any capacity in the ANPP High Voltage Switchyard(s) for use by third parties.
- 1.5 **Additions to ANPP High Voltage Switchyard(s)**
 - 1.5.1 In the event a Participant desires an additional bay position(s) in the ANPP High Voltage Switchyard(s), the ownership ratios prescribed in Section 1.2.2 hereof, and the cost responsibility associated therewith, shall be reallocated among all Participants having an interest therein based upon the ratio of the "revised" number of their respective bay positions to the "revised" total number of bay positions.
 - 1.5.2 A Participant desiring an additional bay position in the ANPP High Voltage Switchyard(s) pursuant to this Section 1.5, shall furnish, at its own expense, sufficient breakers to maintain the basic breaker-and-a-half scheme, and such other facilities as are necessary to provide an additional bay position, which facilities upon installation shall become part of the ANPP High Voltage Switchyard(s).
 - 1.5.3 The design of switchyard additions shall be approved by the "operating agent".
- 1.6 **Transfer or Assignment of Interest**
 - 1.6.1 The provisions of Section 15 of the Participation Agreement shall apply to the ANPP High Voltage Switchyard(s) subject to the following:
 - 1.6.1.1 Any transfer or assignment by a Participant of all or part of its Generation Entitlement Share, together with an equal interest in the ownership of ANPP and in the Project Agreements, shall include the transfer or assignment, as the case may be, of an equal interest in that portion of the ANPP High Voltage Switchyard(s) described in Section 1.2.1 hereof attributable to said Participant.
 - 1.6.1.2 In the event of a transfer or assignment by a Participant of part of its ownership interest in that portion of the ANPP High Voltage Switchyard(s) described in Section 1.2.2 hereof, the ownership ratios and cost responsibilities associated therewith shall be reallocated among all Participants having an ownership interest therein, said reallocation to be based on the ratio of the "revised" number of their respective bay positions to the "revised" total number of bay positions.
 - 1.6.1.3 Any transferee or assignee of that portion of the ANPP High Voltage Switchyard(s) described in Section 1.2.2 hereof, shall furnish, if necessary, at its own expense, sufficient breakers to maintain the basic breaker-and-a-half scheme, and such other facilities as are necessary to provide said transferee or assignee a bay position within the ANPP High Voltage Switchyard(s), which facilities, upon installation, shall become part of the ANPP High Voltage Switchyard(s).

EXHIBIT I-1 ANPP HIGH VOLTAGE SWITCHYARD



APPENDIX J

PRINCIPLES OF INTERCONNECTED OPERATION FOR FOUR CORNERS INTERCONNECTION AGREEMENT

The following principles with respect to Forecast Capacity Resources Margin, Spinning Reserve Capacity, Emergency Service, Interruptible Load as a substitute for Spinning Reserve Capacity, and System Operations are agreed to and shall be incorporated in the Four Corners Interconnection Agreement:

1.0 Forecast Capacity Resources Margin

- 1.1 The Forecast Capacity Resources Margin of each Participant for any month is the difference between its Capacity Resources for that month and its Estimated Peak Demand for that month where:
 - 1.1.1 Except as provided in Section 1.9 hereof, Capacity Resources are the sum of such Participant's Existing Capacity Resources and Planned Capacity Resources which have been accredited by the Interconnection Committee under the criteria set forth in Exhibit I hereto.
 - 1.1.2 Except as provided in Section 1.3 hereof, Estimated Peak Demand shall be based on historical Peak Demands and shall include provisions for such things as anticipated load growth and anticipated additions or deletions of large loads.
- 1.2 The Participants recognize that it is prudent practice that each provide a Forecast Capacity Resources Margin at least equal to 15% of the Estimated Peak Demand for each month of each calendar year, but the Interconnection Agreement shall not obligate any Participant to do so.
- 1.3 Except for uncontrollable forces, if any Participant is unable to provide an Actual Capacity Resources Margin at least equal to 15% of the Peak Demand for each month of any three consecutive calendar years when its Forecast Capacity Resources Margin has been 15% or greater for each month of the same three years, the Estimated Peak Demand to be submitted by such Participant during the next three consecutive calendar years shall be at least equal to the Estimated Peak Demand computed using the arithmetic average of such Participant's electric system load growth rate in per cent for the immediate preceding five years.
- 1.4 The Forecast Capacity Resources Margin factor of 15% referred to in Sections 1.2 and 1.3 hereof shall be subject to review by the Interconnection Committee at any time upon the request of any Participant and may be changed only by unanimous agreement of the Participants, acting through the Interconnection Committee.
- 1.5 Except as provided in Section 1.6 hereof, on or before November 1 of each calendar year until termination of the Interconnection Agreement, each Participant (hereinafter referred to as "First Participant") shall, and at any other time may, prepare for its electric system and submit to each other Participant (hereinafter referred to as "Second Participant") for review, its history and forecast, prepared on a monthly basis, of (i) Peak Demands, Existing Capacity Resources and Actual Capacity Resources Margin for the preceding calendar year, and (ii) Estimated Peak Demands, Existing Capacity Resources and Planned Capacity Resources for the next three consecutive calendar years (such history and forecast are hereinafter referred to as "Program"). Each Program shall contain such detailed information, be based on such assumptions and be in such form as the Interconnection Committee may from time to time specify. The three-year period may be changed only by unanimous agreement of the Participants, acting through the Interconnection Committee.
- 1.6 The initial Program submitted by each First Participant in accordance with Section 1.5 hereof shall contain information for the calendar year 1969 and the next three consecutive calendar years. Such initial Program of each First Participant shall not be subject to objection by any Second Participant.

- 1.7 Each Participant shall take all steps reasonably necessary to carry out its most recently submitted Program. Each First Participant shall promptly submit to each Second Participant a new Program if at any time such First Participant (i) establishes a new forecast of Estimated Peak Demand which differs from that in its most recently submitted Program, or (ii) determines it will be unable to retain the Existing Capacity Resources or provide the Planned Capacity Resources shown in its most recently submitted Program, or (iii) chooses to change its Capacity Resources as shown in its most recently submitted Program. Such new Program shall reflect such differences or changes and shall state the reasons therefor. The Program previously accepted will stay in force for sixty (60) days after submittal of the revised Program.
- 1.8 Each Program submitted in accordance with Section 1.5 hereof and each revised Program submitted in accordance with Section 1.7 hereof shall be reviewed by each Second Participant; provided, however, that:
- 1.8.1 For any Program submitted in accordance with Section 1.5 hereof, only the new information submitted for the calendar year furthest in the future in each Program shall be subject to acceptance or objection by each Second Participant. Each First Participant's Program shall be deemed to have been accepted by each Second Participant which has not notified such First Participant and all other Second Participants of an objection within sixty (60) days following submittal of the Program.
 - 1.8.2 For any revised Program submitted in accordance with Section 1.7 hereof, only that portion of the original Program which has been revised shall be subject to acceptance or objection by any Second Participant. Each revised Program shall be deemed to have been accepted by each Second Participant which has not notified the First Participant submitting such revised Program and all other Second Participants of an objection within sixty (60) days following submittal of the revised Program.
 - 1.8.3 If any Second Participant objects to the Program or the revised Program of any First Participant and so notifies such First Participant and all other Second Participants within sixty (60) days, such Second Participant shall be relieved of its obligation specified under Section 3.2 hereof to provide Emergency Service to such First Participant during the calendar year or portion thereof, as the case may be, corresponding to the part of the Program or revised Program to which the objection was made by such Second Participant. Such First Participant shall also be relieved of its obligation specified under Section 3.3 hereof to schedule Emergency Service from such Second Participant during such calendar year or such portion thereof.
 - 1.8.4 Except for uncontrollable forces, if under the revised Program submitted in accordance with Section 1.7 hereof, any First Participant (i) defers construction of a Planned Capacity Resource, or (ii) retires an Existing Capacity Resource included in its Program during the period of applicability of such revised Program, or (iii) terminates or fails to effect any purchase of a Capacity Resource during the period of applicability of such revised Program, which in any case causes such revised Program to result in a Forecast Capacity Resources Margin of less than 15% of the Estimated Peak Demand in any month, and such deficiency has not been waived by all Second Participants, the rate to such First Participant for purchasing Emergency Service from any Second Participant scheduled under this Interconnection Agreement during the period of applicability of such revised Program shall be as provided in Section 3.4.2 hereof.
 - 1.8.5 If under any revised Program submitted in accordance with Section 1.7 hereof, such First Participant's Capacity Resources are reduced because of uncontrollable forces, resulting in a Forecast Capacity Resources Margin of less than 15%, the rate to a First Participant for purchasing Emergency Service scheduled under this Interconnection Agreement during the period of such deficiency shall be as provided in Section 3.4.1 hereof.

1.9 If a Second Participant objects to a Planned Capacity Resource of a First Participant, the matter shall not be resolved until such Planned Capacity Resource under dispute is, in the opinion of such First Participant, capable of becoming an Existing Capacity Resource. At that time the Second Participant may request that the Interconnection Committee accredit the Existing Capacity Resource. If the Interconnection Committee is unable to make such accreditation, then either the First Participant or the Second Participant may submit the matter to arbitration. Prior to and during the dispute, and during arbitration, the Capacity Resource shall be deemed to have been accredited by the Interconnection Committee in accordance with Section 1.1.1 hereof as claimed by the First Participant submitting the Program.

1.10 When a Participant is involved in a future multiple-ownership Planned Capacity Resource, to the extent that such resource is planned for service at a date later within the same calendar year than such Participant would have been able to place an alternative resource in service on its own electric system during such calendar year, such Participant shall be allowed to include the amount of its participation in such resource in its Planned Capacity Resources beginning with the date it can demonstrate it would have been capable of placing such alternative resource in service.

2.0 Spinning Reserve Capacity

2.1 Except as provided in Section 3.3.1 hereof, each Participant shall at all times be obligated to maintain a minimum amount of Spinning Reserve Capacity equal to the larger of:

2.1.1 Seven per cent (7%) of its electric system Demand for the then-current clock-hour; or

2.1.2 The Existing Capacity Resources associated with the largest single contingency loss of generation due to the loss of any single synchronized generating unit or single transmission circuit on or serving its electric system.

2.2 During any period in any day when a Participant is receiving energy from any other Participant and/or third party pursuant to a contract which provides that such energy is interruptible at the discretion of the supplier, such receiving Participant shall maintain, in addition to the Spinning Reserve Capacity required under Section 2.1 hereof, an amount of Spinning Reserve Capacity equivalent to that generating capacity which would be required to generate such interruptible energy on the electric system of such receiving Participant.

2.3 The following constitutes Spinning Reserve Capacity or shall be considered a substitute for Spinning Reserve Capacity:

2.3.1 Unloaded generating capacity synchronized to an electric system on units and at locations whereby governor, load frequency response or other control action will cause such generating capacity to assume load.

2.3.2 Interruptible Load meeting the criteria set forth in Exhibit II hereto but not to exceed 15% of a Participant's obligation to maintain Spinning Reserve Capacity, as set forth in Section 2.1 hereof.

2.3.3 Existing Capacity Resources which are loaded with energy being supplied to another Participant and/or third party pursuant to contracts which provide that such energy is interruptible without notice at the discretion of such supplying Participant, and for which the purchaser is carrying an amount of Spinning Reserve Capacity equivalent to the amount of generating capacity required to generate such energy, in addition to the purchaser's other obligations to carry Spinning Reserve Capacity.

2.4 The obligation of each Participant to maintain the amount of Spinning Reserve Capacity set forth in Section 2.1 hereof shall be met:

2.4.1 By such Participant maintaining Spinning Reserve Capacity on its own electric system which is not contractually committed to other Participants and/or third parties as Spinning Reserve Capacity;

- 2.4.2 By such Participant purchasing Spinning Reserve Capacity from any other Participant or third party which is not being used by the seller to meet its obligation to maintain Spinning Reserve Capacity and which is not contractually committed to other Participants or third parties as Spinning Reserve Capacity; provided that sufficient unloaded transmission capacity and/or transmission capacity loaded with energy which is interruptible exists and is available between the electric systems of such Participant and the seller to enable such Participant to meet the obligation of Section 2.1 hereof;
- 2.4.3 By such Participant sharing Spinning Reserve Capacity with other Participants and/or third parties under contractual arrangements in full force; provided that the total amount of Spinning Reserve Capacity available to the sharing Participants and/or third parties must be at least equal to the greater of (i) 7% of the coincident clock-hour Demand on the combined electric systems of the sharing Participants and/or third parties for the then-current clock-hour, or (ii) the generating capacity associated with the largest single contingency loss of generation due to the loss of any single, synchronized generating unit or single transmission circuit on the combined electric systems of the sharing Participants and/or third parties or serving the combined electric systems of the sharing Participants and/or third parties for the purpose of transmitting generating capacity to which such sharing Participants and/or third parties are entitled from other electric systems; provided further, that sufficient unloaded transmission capacity and/or transmission capacity loaded with energy which is interruptible exists and is available between the electric systems of such Participant and the seller to enable such Participant to meet the obligation of Section 2.1 hereof; or
- 2.4.4 By any combination of Sections 2.4.1, 2.4.2 and 2.4.3 hereof.

3.0 Emergency Service

- 3.1 Emergency Service under this Interconnection Agreement shall consist of:
 - 3.1.1 Spinning Reserve Capacity (without energy) scheduled and purchased by a Participant from other Participants to meet the obligation of the purchasing Participant to maintain Spinning Reserve Capacity.
 - 3.1.2 Capacity Resources and associated energy scheduled and purchased by a Participant from another Participant to meet a part of the purchasing Participant's electric system load requirements.
- 3.2 Except as provided in Section 1.8.3 hereof, in the event of an Emergency affecting the electric system of any Participant, each other Participant shall make every reasonable effort to schedule requested Emergency Service to such Participant during the period of the Emergency as requested by such Participant; provided, that the supplying Participant shall be the sole judge of its ability to provide such Emergency Service without impairing reliability of service to its customers and its ability to fulfill its obligations to others.
- 3.3 Except as provided in Section 1.8.3 hereof, each Participant suffering an Emergency on its electric system shall be obligated to schedule Emergency Service under this Interconnection Agreement or similar service under contracts or arrangements with others as follows:
 - 3.3.1 Such Participant shall be relieved of its obligation to maintain the amount of Spinning Reserve Capacity set forth in Section 2.1 hereof, but not the obligation set forth in Section 2.2 hereof, for a period equal to the longer of (i) 12 hours or (ii) the remainder of that calendar day. Due diligence shall be used by such Participant to restore its Spinning Reserve Capacity and meet its obligation for maintaining Spinning Reserve Capacity as soon as practicable after the commencement of such Emergency. If such Participant, by utilizing Spinning Reserve Capacity on its own electric system and/or

Spinning Reserve Capacity of the other Participants and/or third parties with which it has contractual arrangements in full force to share Spinning Reserve Capacity, is unable to meet its obligation under Section 2.1 hereof by the time of the expiration of the aforesaid period of (i) 12 hours or (ii) the remainder of that calendar day, then such Participant shall purchase and schedule from other Participants and/or third parties the Spinning Reserve Capacity required to meet its obligation under Section 2.1 hereof.

3.3.2 Notwithstanding Section 3.3.1 hereof, if such Emergency causes Existing Capacity Resources to be less than load plus minimum regulating margin on a Participant's electric system, such Participant shall within one-half hour (i) schedule Emergency Service or similar service and/or (ii) reduce load on its electric system, in amounts sufficient to provide at least a minimum regulating margin on its electric system.

3.4 The rates of Emergency Service scheduled by a Participant under this Interconnection Agreement shall be as follows:

3.4.1 Except as provided in Section 3.4.2 hereof, if Emergency Service is scheduled by any Participant with any other Participant under this Interconnection Agreement, the receiving Participant shall pay the supplying Participant at a rate of \$0.10 per day for each kilowatt of demand scheduled up to a maximum of \$2.00 per kilowatt-month. The minimum rate for any Emergency Service scheduled for less than one day under this Section 3.4.1 shall be \$0.10 per kilowatt.

3.4.2 If Emergency Service shall be scheduled at any time during the calendar year for which the scheduling Participant has submitted a Program, in accordance with Section 1.5 hereof, or a revised Program in accordance with Section 1.7 hereof which shows the Forecast Capacity Resources Margin to be less than 15% of its Estimated Peak Demand for any month of the said calendar year, then the receiving Participant shall pay the supplying Participant at a rate of \$1.00 per kilowatt per week for each week in such calendar year in which it schedules Emergency Service under this Section 3. The minimum rate for any Emergency Service scheduled for less than one week under this Section 3.4.2 shall be \$1.00 per kilowatt.

3.4.3 The Participant furnishing energy with said Emergency Service shall receive payment for such energy at the rate of 115% of the Incremental Cost incurred by such Participant in furnishing such energy.

3.5 If an Emergency on a Participant's electric system causes its Existing Capacity Resources available to meet load to be less than load plus minimum regulating margin and such Participant has not within one-half hour (i) scheduled Emergency Service under this Interconnection Agreement or similar service under other contracts in full force and/or (ii) reduced load on its electric system in amounts sufficient to provide at least a minimum regulating margin on its electric system, then such Participant shall be deemed to have scheduled Emergency Service from the other Participants for the duration of such period in an amount equal to that which would have been required to meet its load and maintain such minimum regulating margin. Such Participant shall pay the other Participants at a rate of \$1.00 per kilowatt per week for each week in such calendar year in which such Emergency Service was deemed to have been scheduled. The minimum period for any such Emergency Service so deemed to have been scheduled shall be at least one week.

3.6 Payments made by a Participant under Section 3.5 hereof shall be distributed among the other Participants in proportion to their respective Participation ~~Shares~~; provided, that, if any Participant has entered into any other interconnection agreement containing provisions similar to Section 3.5 hereof, the payment of \$1.00 per kilowatt per week shall be divided equally among each of such interconnection agreements, including this Interconnection Agreement, and the total of such payments shall be \$1.00 per kilowatt per week. [sic]

4.0 Interruptible Load as a Substitute for Spinning Reserve Capacity

- 4.1 The amount of Interruptible Load which any Participant may use for Spinning Reserve Capacity shall not exceed 15% of such Participant's obligation to maintain Spinning Reserve Capacity in accordance with Section 2.1 hereof. The factor of 15% shall be reviewed from time to time by the Interconnection Committee and may be changed only by unanimous agreement of the Participants acting through the Interconnection Committee.
- 4.2 Interruptible Load shall meet the criteria set forth in Exhibit II hereto to be includible as a substitute for Spinning Reserve Capacity; provided, however, that each Participant shall submit evidence to the Interconnection Committee to verify that the proposed Interruptible Load meets the criteria set forth in Exhibit II hereto before such Participant may use Interruptible Load to meet a portion of its obligation to maintain Spinning Reserve Capacity. If none of the members of the Interconnection Committee object to such evidence within sixty (60) days of its submission, it shall be deemed to have met such criteria. If one or more members object and the matter cannot be resolved, then the matter of whether or not such criteria has been met by a Participant shall be submitted to arbitration. Such disputed Interruptible Load shall not be included as Spinning Reserve Capacity prior to completion of arbitration in this matter.
- 4.3 Interruptible Load shall not be included in Estimated Peak Demands or as a substitute for a Capacity Resource.

5.0 Systems Operations

- 5.1 The Participants shall operate their electric systems continuously in parallel; provided, however, each Participant shall have the right to separate the wholly-owned facilities of its electric system from the electric system of any other Participant(s):
 - 5.1.1 If, in the judgment of the separating Participant, abnormal operating conditions exist which require such separation to prevent damage to its facilities, injuries to personnel or unsatisfactory service to its customers; or
 - 5.1.2 Under certain conditions of high or low frequency or voltage, which conditions shall have been reviewed and coordinated by the Participants acting through the Interconnection Committee; or
 - 5.1.3 For necessary inspection, maintenance, repair or replacement of its facilities, or additional construction; provided, however, that reasonable advance notice of any scheduled outage of such facilities and the estimated duration thereof is given to the other Participant(s), if practicable, so as to minimize interference with the electric system operations of such other Participant(s).
- 5.2 Unless otherwise mutually agreed, each Participant shall provide the reactive power requirements of its own electric system, and each Participant shall cooperate to control the flow of such reactive power to prevent the introduction of objectionable operating conditions on the electric system of any Participant(s).
- 5.3 Each Participant shall use its best efforts to regulate continuously the generation of power within its Control Area so that the measured amount of net interchange of power between its Control Area and those Control Areas with which it is interconnected is equal to the scheduled amount of such net interchange of power, taking into account the frequency regulation contribution of its Control Area.
- 5.4 Operating procedures pertaining to interconnected system operations shall be established by the Participants acting through the Interconnection Committee.

EXHIBIT I

CRITERIA FOR ACCREDITING CAPACITY RESOURCES

1.0 Purchased Power

- 1.1 A purchased power source must be available to the purchasing Participant in a manner which is at least equivalent to a generating unit of equal size on the electric system of such purchasing Participant.
- 1.2 A purchased seasonal power source which meets the criteria of Section 1.1 shall be accredited to the extent it is capable of being used to meet electric system load requirements.
- 1.3 A power source which is secondary or interruptible will not be considered as a Capacity Resource.

2.0 Generation

- 2.1 Generating resources must meet the following requirements:
 - 2.1.1 All essential equipment is available for service, except during planned maintenance or Emergencies.
 - 2.1.2 The amount of capacity to be accredited is at that kilowatt rating for individual generating units which the owner is willing to use for continuous full-load operation as shown by each Participant's plant logs or documents issued to system dispatchers authorizing such unit loadings.
 - 2.1.3 Shall not be shut down or taken out of service without anticipation of being used again for any purpose, including cold stand-by.
 - 2.1.4 If a hydro resource, it shall be accredited to the extent it is capable of being used to meet electric system load requirements.

EXHIBIT II
CRITERIA FOR INTERRUPTIBLE LOAD

Interruptible Load can be used as Spinning Reserve Capacity when:

- 1.0 The Participant is legally entitled, and has made or will make a practice of curtailing such Interruptible Load, and is willing to so curtail for an Emergency on its own or another Participant's system.
- 2.0 All Interruptible Loads are isolated from firm loads on a separate circuit with appropriate circuit breakers.
- 3.0 Adequate telemetering equipment is available at the Participant's dispatching office for continuous recording of power on the interruptible circuit.
- 4.0 Underfrequency relays are in service at all times such that the Interruptible Load will be instantaneously tripped under predetermined conditions.
- 5.0 The necessary equipment is in service at all times such that the Interruptible Load will be automatically tripped for rapid changes in system area requirements of a predetermined magnitude as sensed by the automatic generating dispatching equipment on the Participant's electric system. The automatic tripping equipment shall respond at least as fast as generation under control.
- 6.0 The necessary equipment is provided for remote tripping and indication of the status of the circuit breakers on the customer's Interruptible Load.
- 7.0 The necessary facilities are installed to prevent unauthorized customer closure of the circuit breakers associated with the Interruptible Load.

APPENDIX K

URANIUM CONCENTRATES ACQUISITION PROGRAM

K.1 Purpose. This Appendix K sets forth the responsibilities and authority of the Operating Agent and each of the Participants to arrange for an adequate supply of Uranium Concentrates when needed to permit the timely fabrication of Fuel Assemblies required for operation of the Generating Units. It is intended that the arrangements for securing such supply of Uranium Concentrates shall provide the maximum flexibility for each Participant, should it elect to do so, to obtain and furnish to the Operating Agent all or part of its Generation Entitlement Share of the requisite Additional Uranium Concentrates from such sources and on such terms and conditions as such Participant in its own discretion and circumstances deems prudent. At the same time, it is intended to grant to the Operating Agent the requisite responsibility and authority to act for and on behalf of each Participant with its consent as provided herein to assure that the Short Term Requirements and delivery schedules of Uranium Concentrates are satisfied and the operation of any of the Generating Units is not curtailed or jeopardized due to a failure in the timely supply of Uranium Concentrates.

K.2 Responsibilities and Authorities of the Operating Agent.

- K.2.1 On or before November 30 of each year, and at such other times as the Operating Agent deems appropriate, the Operating Agent shall provide to the Participants a Uranium Concentrates report which shall include:
 - K.2.1.1 The amount of Uranium Concentrates received and to be received during the current year.
 - K.2.1.2 The current status of the Uranium Concentrates inventory.
 - K.2.1.3 An analysis of the Short Term Requirements for Uranium Concentrates, including the designation of the conversion facility(ies) to which Uranium Concentrates are to be delivered and the required schedules by months for the deliveries.
 - K.2.1.4 A forecast of the annual requirements for Uranium Concentrates during each of the subsequent fourth through thirteenth years consistent with current inventory, conversion and enrichment contract schedule commitments.
 - K.2.1.5 A summary of all current commitments or undertakings made by the Operating Agent and each other Participant for the supply of Uranium Concentrates for the periods covered by Sections K.2.1.3 and K.2.1.4 hereof, including without limitation data and evaluations relevant to the security of supply for each such commitment or undertaking.
 - K.2.1.6 The projected prices or costs of Uranium Concentrates to be delivered under each current commitment or undertaking.
 - K.2.1.7 The evaluation of the Operating Agent, together with any current evaluation from any consultants, respecting the availability of Uranium Concentrates in the future and projected market prices therefor.
 - K.2.1.8 Such other information as the Operating Agent deems relevant or, to the extent available, as may be requested by any Participant.
- K.2.2 The Operating Agent has the responsibility to insure that the Uranium Concentrates necessary for the operation of all of the Generating Units are available when required. In order to meet this responsibility, the Operating Agent shall make all reasonable efforts to maintain an assured source(s) of supply sufficient to meet current Short Term Requirements for Uranium Concentrates in accordance with a delivery schedule of Uranium Concentrates established pursuant to the procedures in Section 6.3.2.7 of the Participation Agreement.

- K.2.2.1** In the event the Operating Agent determines at any time that the then existing commitments made on behalf of all Participants for the supply of Uranium Concentrates are not sufficient for any reason to provide an assured source of supply of such commitments' share of Uranium Concentrates required to meet the then current Short Term Requirements, written notice shall be provided to the Participants outlining the deficiency. Any Participant, within 45 days of the receipt of such notice, may elect to supply all or part of its Generation Entitlement Share of such deficiency by giving written notice of its election to the Operating Agent; provided that if the Operating Agent elects to supply all or any part of the Operating Agent's Generation Entitlement Share of such deficiency from a source other than an offer or proposal accepted by it pursuant to Sections K.2.3 to K.2.9 hereof, inclusive, then each other Participant shall have the right to elect to supply all or any part of its Generation Entitlement Share of such deficiency from such source in proportion to its Generation Entitlement Share to the total Generation Entitlement Shares of all Participants who elect to utilize such source.
- K.2.2.2** The Operating Agent is authorized and directed to solicit, negotiate and execute, on behalf of all Participants who have not elected to supply all of their respective shares of the deficiency noticed in Section K.2.2.1 hereof, such contracts for the purchase of Uranium Concentrates as may be required to make up the balance of such deficiency in the assured source of supply required to meet Short Term Requirements, including such additional quantities of Uranium Concentrates to be delivered during or subsequent to the period covered by the Short Term Requirements if the Operating Agent determines that it is necessary to purchase such additional quantities in order to obtain Uranium Concentrates to make up any such deficiency.
- K.2.2.3** Notwithstanding Section 6.2.7.2 of the Participation Agreement, the authority and direction granted and given to the Operating Agent under Section K.2.2.2 hereof shall constitute the sole authorization and direction required to obligate all of the Participants on behalf of which the Operating Agent is acting, and no further authorization or approval of any such contract by the Administrative Committee shall be required except that, if any Participant has any direct or indirect interest in the Uranium Concentrates to be purchased under any such contract, unanimous approval of the purchase by the Administrative Committee will be required. A copy of any such contract upon its execution by the Operating Agent shall be promptly furnished to each Participant.
- K.2.3** In addition to the efforts which the Operating Agent is obligated to make pursuant to Section K.2.2 hereof to maintain an assured source(s) of supply to meet current Short Term Requirements, the Operating Agent shall also make reasonable efforts to solicit and negotiate viable offers and proposals for the supply of Uranium Concentrates during all or part of the period covered by Section K.2.1.4 hereof for and on behalf of any Participant who shall not have elected pursuant to Section K.3.2 hereof to furnish all of its Generation Entitlement Share of Uranium Concentrates as may be required during said period. The Operating Agent shall from time to time notify all Participants of such offers or proposals as it may receive which it deems are viable alternatives for the supply of Uranium Concentrates to ANPP which have not been accepted or executed in compliance with Section K.2.2 hereof, including without limitation offers or proposals of any of the following categories:

 - K.2.3.1** Offers for immediate spot purchases of a fixed quantity of Uranium Concentrates.
 - K.2.3.2** Offers for deliveries of specified quantities of Uranium Concentrates over any period of time.

- K.2.3.3 Proposals providing for rights to purchase Uranium Concentrates from any developed or undeveloped sources which would require advance funding.
- K.2.3.4 Proposals for the acquisition of an ownership interest by participation in a joint venture or otherwise in mined or unmined uranium reserves.

With respect to each such offer or proposal, the Operating Agent shall provide the other Participants with its evaluation thereof, its recommendations, if any, and a statement of its intent as a Participant to reject or to accept and participate with other Participants in such offer or proposal.

- K.2.4 Within the earlier of 45 days after the Operating Agent's notification of any offer or proposal similar in nature to the categories described in Section K.2.3 hereof or seven days prior to the expiration date, if any, of such offer or proposal, each Participant shall advise the Operating Agent of the Participant's (i) rejection of the offer or proposal, (ii) acceptance of the offer or proposal and the extent of its intended participation therein with any other Participants, or (iii) with respect to any proposal similar in nature to the categories described in Section K.2.3.3 or K.2.3.4 hereof its desire that the Operating Agent proceed with further specific negotiations, studies or analyses. A failure by any Participant to so advise the Operating Agent within the time specified shall be deemed a rejection by such Participant of the offer or proposal submitted.
- K.2.5 Upon receipt of the advice from all Participants with respect to any offer or proposal similar in nature to the categories described in Section K.2.3 hereof, the Operating Agent shall take such action as may be appropriate to comply therewith, provided that in no event shall any Participant be bound by any contract resulting therefrom without its written consent.
- K.2.6 In the event any two or more Participants shall decide to accept and participate in any offer or proposal similar in nature to the categories described in Section K.2.3 hereof, their respective shares therein shall be as they may agree or, in the absence of such agreement, equal to the ratio of their respective Generation Entitlement Shares to the sum of the Generation Entitlement Shares of all Participants accepting and participating in such offer or proposal.
- K.2.7. If the Operating Agent accepts and participates in any offer or proposal similar in nature to the categories described in Section K.2.3 hereof, it shall negotiate and execute a contract in connection therewith for and on behalf of all other Participants that may accept and participate therein. In the event the Operating Agent shall not accept and participate in any such offer or proposal which is accepted by one or more other Participants, then the Operating Agent shall, as directed by the accepting Participant(s), either finalize and execute a contract on behalf of such accepting Participant(s) or turn the matter over to such accepting Participant(s) for such action as it (they) may elect.
- K.2.8 In the event one or more Participants desires to pursue further studies and analyses of any proposal ("sharing-Participants") similar in nature to the categories described in Section K.2.3.3 or K.2.3.4 hereof, then the costs of any such studies or analyses shall be shared by the sharing-Participants in the proportion of their respective Generation Entitlement Shares to the total of the Generation Entitlement Shares of all sharing-Participants unless all such sharing-Participants shall otherwise agree. If the Operating Agent is not a sharing-Participant, then the sharing-Participants shall designate a Participant to interact and negotiate with the originator of the proposal on behalf of all sharing-Participants. Any sharing-Participant may, upon completion of such studies or analyses, accept such proposal, with such modifications as may have been negotiated with the originator of the proposal, provided that unless the sharing-Participants shall otherwise agree, (i) such sharing-Participant shall have promptly given written notice of its acceptance of such proposal or modified proposal and the terms thereof and (ii) for a period of 45 day after receipt of such written notice each other sharing-Participant shall have the option to participate in the accepted proposal

or modified proposal in any amount not greater than the ratio of its share in the costs of such studies and analyses to the total shares of all sharing-Participants who shall have accepted or shall have exercised their respective options to participate in such accepted proposal or modified proposal, which option shall be exercised by delivery within such 45-day period of written notice of its exercise to all other sharing-Participants.

- K.2.9 In the event (i) any Participant shall have rejected one or more of such offers or proposals and shall not have committed to furnish its Generation Entitlement Share of the Uranium Concentrates pursuant to Section K.3.2 hereof and (ii) one year prior to a date that Uranium Concentrates are required to be delivered pursuant to procedures in Section 6.3.2.7 of the Participation Agreement the Operating Agent determines that the quantity of Uranium Concentrates to be delivered on such date for and on behalf of such Participant from any and all sources is less than such Participant's Generation Entitlement Share of the total quantity of Uranium Concentrates required to be delivered on such date, then the Operating Agent is authorized to and shall, after giving written notice ~~45~~ ¹⁰ days in advance to such Participant, purchase on behalf of such Participant that quantity of Uranium Concentrates required to provide such Participant's full Generation Entitlement Share of such total quantity required to be delivered on such date (hereinafter "insufficient-Uranium Concentrates") on any terms and conditions as may be available or required to obtain delivery of the insufficient-Uranium Concentrates on such date. Additionally, any such Participant shall be obligated to reimburse each other Participant for its fixed charges on its investment in any Uranium Concentrates inventory used to provide substitute Uranium Concentrates and penalty costs, if any, and such Participant's right to schedule Power and associated Energy shall be subject to restriction to the same extent and manner provided in Section K.3.7 hereof with respect to those Participants who shall have committed to provide Additional Uranium Concentrates. For purposes of this Appendix K, "penalties" shall include without limitation any charges imposed under any Nuclear Fuel Agreement for conversion, enrichment and fabrication of Nuclear Fuel arising from a failure to deliver Nuclear Fuel as required thereunder and any other costs incurred to implement the then current fuel management plan.

K.3 Responsibilities and Authorities of the Participants.

- K.3.1 Each Participant shall advance Operating Funds to the Operating Account in the manner specified in Appendix F to the Participation Agreement (i) for its Generation Entitlement Share of all payments due under the agreement with The Anaconda Company identified in Section 3.1A added by Amendment No. 6 of the Participation Agreement, (ii) for its proportionate share of all payments due under each contract to purchase Uranium Concentrates executed by the Operating Agent pursuant to Section K.2.2 hereof and (iii) its proportionate share of all payments made under each contract for Uranium Concentrates executed and administered by the Operating Agent under Section K.2.7 hereof.
- K.3.2 Each participant shall have the right to furnish all or part of its Generation Entitlement Share of Additional Uranium Concentrates upon the terms set forth in this Section K.3. The acceptance and participation of any Participant in an offer similar in nature to the categories described in Sections K.2.3.1 and K.2.3.2 hereof shall constitute an exercise by such Participant of such right. In addition, any Participant may exercise such right at any time by giving to the Operating Agent its written commitment to furnish all or a stated portion of its share of the Additional Uranium Concentrates required for operation of the Generating Units in any year or years from any source as such Participant may elect, including without limitation any proposal similar in nature to the categories described in Sections K.2.3.3 and K.2.3.4 hereof which such Participant has accepted in whole or in part.

- K.3.3 If the quantities or delivery dates of Uranium Concentrates change due to fuel management decisions of the Operating Agent, operating circumstances, or changes in government policies or practices governing enrichment services or the recycle of Recovered Materials as defined in Appendix F to the Participation Agreement, then each Participant who shall have exercised its right to furnish all or any portion of its share of Additional Uranium Concentrates shall be responsible for supplying its share of any resulting increase in the requirements of Additional Uranium Concentrates or for inventorying and storing its share of any resulting decrease in such requirements not delivered to a conversion facility for the account of ANPP. In the event the responsibilities of any Participant under this Section K.3.3 arise in connection with a contract executed by the Operating Agent pursuant to Section K.2.7 hereof, the Operating Agent shall make on behalf of such Participant such arrangements as may be required to enable such Participant to meet such responsibilities.
- K.3.4 On or before March 1 of each year, each Participant shall provide the Operating Agent with information regarding the manner by which such Participant intends to provide all or any portion of its share of the Additional Uranium Concentrates for delivery to a conversion facility during such year and any of the subsequent three years. On or before September 30 of each year, each Participant shall also provide ~~to the~~ ^{the} Operating Agent a summary of all of its commitments to provide Additional Uranium Concentrates, schedules for the delivery thereof, and other information as may be requested by the Operating Agent.
- K.3.5 In the event that any Participant, which has committed to supply Additional Uranium Concentrates, shall consider in its discretion that its ability to deliver such concentrates on the schedules established by the Operating Agent pursuant to Section K.2.1.3 hereof may be in jeopardy, such Participant shall promptly notify the Operating Agent of the nature and basis of such Participant's concerns and of any remedial actions under consideration.
- K.3.6 In the event that, one year prior to a scheduled delivery date of Uranium Concentrates, the Operating Agent reasonably concludes that any Participant's ability to provide Uranium Concentrates as committed pursuant to Section K.2.2.1 or K.3.2 hereof is in doubt, and the failure of such Participant to provide such Uranium Concentrates on the delivery schedule established pursuant to the procedures in Section 6.3.2.7 of the Participation Agreement (i) could cause a reduction in the inventory of Uranium Concentrates or (ii) could lead to the breach of or the incurrence of any penalties under any Nuclear Fuel Agreement providing for the conversion, enrichment or fabrication of Nuclear Fuel, then the Operating Agent is authorized to and shall, after giving written notice 10 days in advance to such Participant, purchase on behalf of such Participant that quantity of Uranium Concentrates required to replace the Uranium Concentrates required to replace the Uranium Concentrates as to which delivery is in doubt on such terms as may be required to obtain delivery of substitute Uranium Concentrates in accordance with such schedule or at the earliest possible time thereafter, and such Participant shall be obligated to pay all costs incurred by the Operating Agent to obtain the substitute Uranium Concentrates. In the event such Participant (deficient-Participant) and the Operating Agent are unable to obtain delivery of the substitute Uranium Concentrates on or before the scheduled date, the Operating Agent is authorized to utilize the Uranium Concentrates inventory as a source of the substitute Uranium Concentrates if required to implement the then current fuel management plan; provided that the deficient-Participant shall reimburse each other Participant for its fixed charges on its investment in the Uranium Concentrates inventory used to provide the substitute Uranium Concentrates. If the inventory of Uranium Concentrates is insufficient to provide all of the substitute Uranium Concentrates and as a result any penalties are incurred, the deficient-Participant shall be obligated to pay all such penalties. In the event the obligations of one or more Participants under this Section K.3.6 arise as a result of a failure in the delivery of

Uranium Concentrates under any contract executed by the Operating Agent pursuant to Section K.2.7 hereof, then such obligations shall be shared by the Participants who are participating in such contract in proportion to their respective obligations to pay for Uranium Concentrates delivered thereunder.

K.3.7 In the event (i) any Participant shall have failed for any reason to deliver its entire share of the Uranium Concentrates required for the subsequent operation of any Generating Unit at its Target Capacity and (ii) the Operating Agent shall have been unable to obtain Uranium Concentrates to make up such Participant's deficiency, and as a result thereof the Maximum Generating Capability of such unit is reduced during any Refueling Cycle, as defined in Appendix F to the Participation Agreement, in which the deficient amount of Uranium Concentrates would have been utilized in such unit's Reactor, then such Participant's right to schedule Power and associated Energy from such unit during each such Refueling Cycle shall be subject to reduction in amount or restricted in time in proportion to such deficiency or such lesser amount as the representatives on the Engineering and Operating Committee, excluding the representative of such Participant, shall determine. In the event one or more Participants shall become subject to a reduction(s) in its (their) right to schedule Power and associated Energy pursuant to this Section K.3.7 as a result of the failure in the delivery of Uranium Concentrates under any contract executed by the Operating Agent pursuant to Section K.2.7 hereof, then any such reduction shall be shared by such Participant(s) in proportion to their respective obligations to pay for Uranium Concentrates delivered under such contract.

K.3.8 Notwithstanding the provisions of Section 30 of the Participant Agreement, the provisions of this Section K.3 shall be fully applicable and enforceable against any Participant who shall fail to deliver the quantities of Uranium Concentrates which it has committed to deliver pursuant to this Section K.3 because of any uncontrollable force, foreseeable or unforeseeable, adversely affecting such Participant or any of its agents, contractors or suppliers.

K.4 Existing Properties of the Operating Agent's Subsidiary. Malapai Resources Company (Malapai), a wholly owned subsidiary of the Operating Agent, as of October 16, 1981, has an ownership interest in certain properties, consisting of fee leases, state leases and mining claims, referred to as Christensen Ranch, located in Townships 44 and 45 North, Ranges 75, 76, and 77 West, Johnson and Campbell Counties, Wyoming, and Peterson Property, located in Townships 33 and 34 North, Ranges 72 and 73 West, Converse County, Wyoming. Such properties may become viable alternatives for a supply of Uranium Concentrates to ANPP and Malapai may offer its interest in the properties, or Uranium Concentrates from the properties, to the Operating Agent who shall then transmit such offer to the Participants pursuant to Section K.2.3 hereof. The principles by which such offer may be made are as follows:

K.4.1 If Uranium Concentrates are being mined, Uranium Concentrates shall be offered at a price that is the same for all Participants, including the Operating Agent.

K.4.2 If Uranium Concentrates have^{not} been mined, a proposal for a joint ownership interest shall be offered. The price for such a proposal shall be on the same basis for all Participants, including the Operating Agent, and mutually agreed upon by those Participants, including the Operating Agent, who ultimately accept the proposal.

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In the matter of :
:
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ARIZONA PUBLIC SERVICE :
COMPANY, et al, : DOCKET NO. STN 50-528
:
(Palo Verde Nuclear :
Generating Station, Unit 1) :
:
-----X

**AMENDMENT NO. 10
TO THE ARIZONA NUCLEAR POWER PROJECT AGREEMENT
(PROPOSED)**

[Execution Copy]

DRAFT

AMENDMENT NO. 10 TO THE

ARIZONA NUCLEAR POWER PROJECT

PARTICIPATION AGREEMENT

APS Contract No: _____

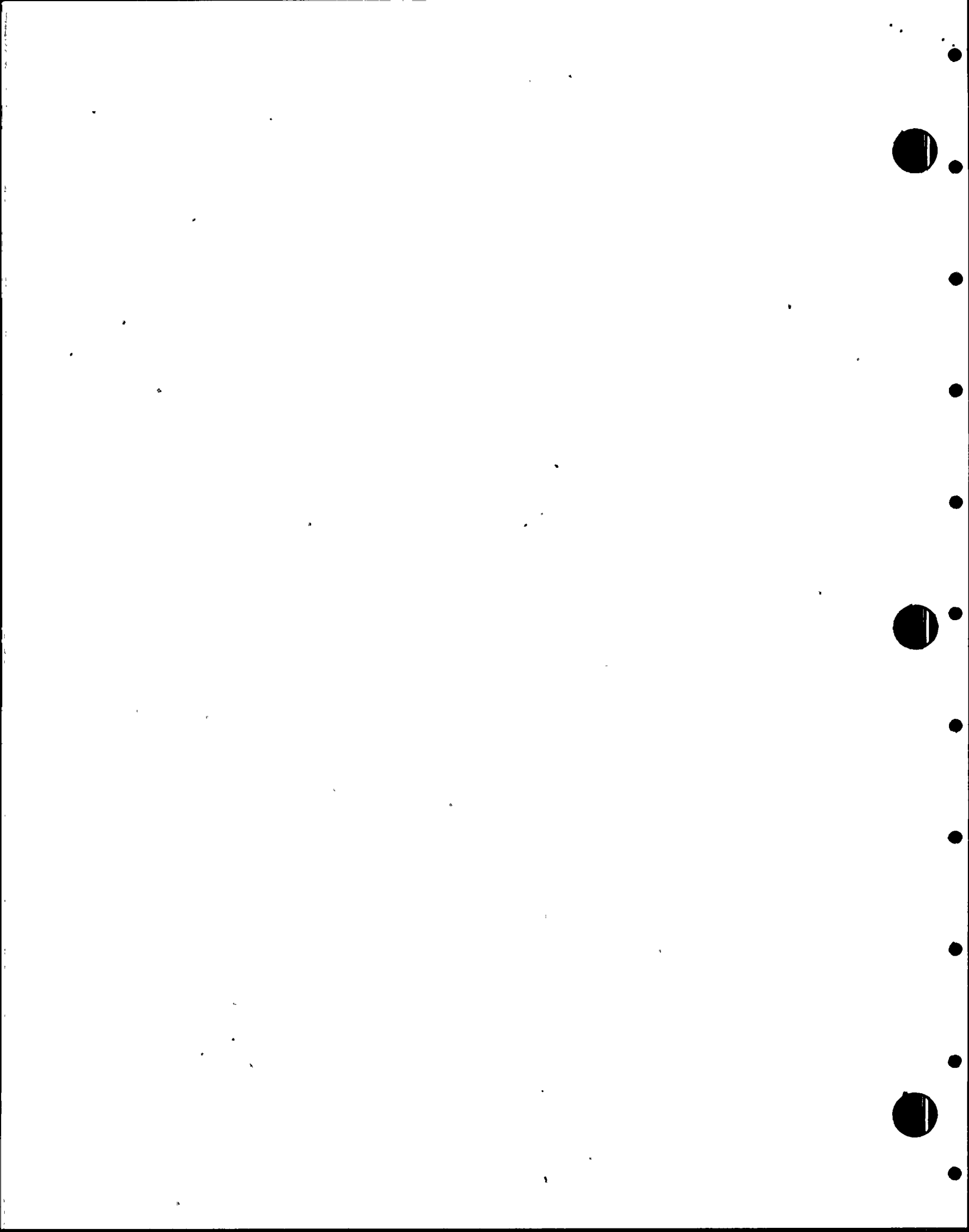
October , 1985

174-201

AMENDMENT NO. 10 TO THE
ARIZONA NUCLEAR POWER PROJECT
PARTICIPATION AGREEMENT

1. Parties:

The Parties to this Amendment No. 10 to the Arizona Nuclear Power Project Participation Agreement, hereinafter referred to as "Amendment No. 10", are: ARIZONA PUBLIC SERVICE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Arizona, hereinafter referred to as "Arizona"; SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an agricultural improvement district organized and existing under and by virtue of the laws of the State of Arizona, hereinafter referred to as "Salt River Project"; SOUTHERN CALIFORNIA EDISON COMPANY, a corporation organized and existing under and by virtue of the laws of the State of California, hereinafter referred to as "Edison"; PUBLIC SERVICE COMPANY OF NEW MEXICO, a corporation organized and existing under and by virtue of the laws of the State of New Mexico, hereinafter referred to as "PNM"; EL PASO ELECTRIC COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Texas, hereinafter referred to as "El Paso"; and SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency organized and existing under and by virtue of the laws of the State of California, doing business in the State of Arizona as SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY ASSOCIATION, hereinafter referred to as "SCPPA".



2. Recitals:

2.1. Arizona, Salt River Project, Edison, PNM, El Paso and SCPA are parties to a certain agreement entitled Arizona Nuclear Power Project Participation Agreement, dated as of August 23, 1973, as amended by Amendment No. 1, dated as of January 1, 1974, Amendment No. 2, dated as of August 28, 1975, Amendment No. 3, dated as of July 22, 1976, Amendment No. 4, dated as of December 15, 1977, Amendment No. 5, dated as of December 5, 1979, Amendment No. 6, dated as of September 28, 1981, Amendment No. 7, dated as of March 4, 1982, Amendment No. 8, dated as of June 17, 1983, and Amendment No. 9, dated as of June 12, 1984, hereinafter, as so amended, referred to as the "Participation Agreement".

2.2. The Participants desire to amend the Participation Agreement to make provision for sale and leaseback financing transactions involving the Participants.

3. Agreement:

3.1. In consideration of the terms and conditions contained in this Amendment No. 10 to the Participation Agreement, the parties agree as follows:

4. Effective Date:

4.1. This Amendment No. 10 shall become effective when executed by all Participants.

5. Amendment No. 10 to the Participation Agreement:

5.1. Section 3.43 is hereby deleted in its entirety and a new Section 3.43 is added as follows:

"3.43 Participant: Any party hereto and any successor or assignee of such party under Section 15.2 or Section 15.3 and any Transferee under Section 15.10 hereof."

5.2. Section 3.46 is deleted in its entirety and a new Section 3.46 is added as follows:

"3.46 Project Agreements: This Participation Agreement, any Construction Agreement, any Nuclear Fuel Agreement, but excluding any Nuclear Fuel Agreements for the supply of Uranium Concentrates to which all Participants are not parties, and any agreements between the Participants or any of them and any third party for land, land rights or water rights for ANPP, as such agreements are originally executed or as they may thereafter be supplemented or amended and any other agreements as the Participants agree to designate as Project Agreements. Project Agreements shall not include any deed of trust, mortgage, indenture, security agreement or any agreement or instrument relating to a sale and lease-back transaction, unless the Participants shall otherwise agree."

5.3. Section 4.1 is deleted in its entirety and a new Section 4.1 is added as follows:

"4.1 Except as otherwise permitted in Section 15.1.1(b) hereof, each Participant shall accept, acquire and own an undivided interest as a tenant in common in ANPP and all Project Agreements in proportion to its Generation Entitlement Share, but excluding (i) Option and Purchase of Effluent Agreement, Agreement No. 13904, dated April 23, 1973, between Arizona and Salt River Project and the Cities of Phoenix, Glendale, Mesa, Scottsdale and Tempe and the Town of Youngtown, except to the extent only that said agreement governs the rights and obligations for the purchase and delivery of wastewater effluent required for Construction Work, Operating Work and Capital Improvements and (ii) any Project Agreement which by its terms establishes an ownership interest or rights

of any Participant in the subject matter thereof which differs from its Generation Entitlement Share under this Participation Agreement."

5.4. The caption of Section 15 is hereby amended to read:

"15. Mortgage, Sale and Leaseback and Transfer of Interest:".

5.5. Section 15.1 is hereby deleted in its entirety and a new Section 15.1 is added as follows:

"15.1 The following provisions shall apply to the right of each Participant to enter into mortgage and sale and leaseback transactions.

"15.1.1 Each Participant shall have the right at any time and from time to time to

"(a) mortgage, create or provide for a security interest in or convey in trust all or a part of its ownership share in ANPP, together with an equal interest in the Project Agreements, to a trustee or trustees under deed of trust, mortgage or indenture or to a secured party or parties under a security agreement, as security for its present or future bonds or other obligations or securities, and to any successors or assigns thereof, or

"(b) sell and lease back, under a net lease having a primary term of not less than 25 years, all or any part of its interest in a Generating Unit and Capital Improvements made from time to time with respect thereto, together with all or any part of its Generation Entitlement Share with respect to such Generating Unit or part thereof, to a trustee or trustees under a grantor trust or trusts and to any successors or assigns thereof,

"without need for the prior written consent of any other Participant and without such mortgagee, trustee, secured party or lessor under such sale and leaseback transaction assuming or becoming in any respect obligated to perform any of the obligations of such Participant; provided, however, at or prior to any sale and leaseback pursuant to clause (b) of this Section 15.1.1, the conditions to such transaction set forth in Section 15.6 hereof shall have been satisfied.

"15.1.2 Each lessor under a sale and leaseback transaction permitted under clause (b) of Section 15.1.1 shall have the right at any time and from time to time to mortgage, create or provide for a security interest in or convey in trust all or any part of its ownership share in ANPP to a trustee or trustees under deed of trust, mortgage or indenture or to a secured party or parties under a security agreement, as security for its present or future bonds or other obligations or securities, and to any successors or assigns thereof, without need for the prior written consent of any Participant and without such mortgagee, trustee or secured party assuming or becoming in any respect obligated to perform any of the obligations of the Participants."

5.6. Section 15.2 is amended (i) to redesignate such Section as "15.2.1", (ii) by the addition of a new introductory Section 15.2 as follows:

"15.2 The following provisions shall apply to the exercise of rights in respect of transactions permitted by Section 15.1."

and (iii) by the addition of a new Section 15.2.2 which reads as follows:

"15.2.2 From and after, but in no event prior to, the date of a rejection or deemed rejection by any receiver, referee or trustee in bankruptcy or reorganization of any Participant of the lease or other executory contract constituting part of a sale and leaseback transaction relating to ANPP to which such Participant is a party, the lessor in such sale and leaseback transaction (or any mortgagee, trustee or secured party under present and future deeds of trust, mortgages, indentures or security agreements of such lessor and any successor or assignee thereof, and any receiver, referee or trustee in bankruptcy or reorganization of such lessor and any successor by action of law or otherwise, and any purchaser, transferee or assignee of any thereof) may, without need for the prior written consent of any other Participant, (i) succeed to and acquire all the rights, titles and interests of such Participant in ANPP and the Project Agreements, to the extent, but only to the extent, of the Generating Unit (or portion thereof) and the portion of

such Participant's Generation Entitlement Share acquired by such lessor in such transaction, and (ii) take over possession of or foreclose upon said property, rights, titles and interests of such Participant, and in such event such lessor or other party shall assume and be obligated fully to perform and discharge all obligations arising thereafter hereunder (subject, however, to the rights of the other Participants under the Project Agreements, including but not limited to, Section 23 hereof) and under any other Project Agreement of such Participant to the extent, but only to the extent, of the Generating Unit (or portion thereof) and the portion of such Participant's Generation Entitlement Share subject to such transaction."

5.7. Section 15 is amended by the addition of Sections 15.6, 15.7, 15.8, 15.9 and 15.10 which read as follows:

"15.6 The right of a Participant to enter into a sale and leaseback transaction as provided in clause (b) of Section 15.1.1 is subject to the following:

"15.6.1 The other Participants shall have received (1) an instrument of each lessor party to such transaction confirming the matters set forth in Section 15.6.3.2 hereof, (2) a certificate of such Participant to the effect that such transaction will satisfy the conditions set forth in Section 15.6 hereof, and all other provisions of this Participation Agreement and (3) an opinion of counsel to such Participant with respect to the matters set forth in Sections 15.6.3.1 and 15.6.3.4 hereof and to the effect that the documents and agreements relating to such transaction are not inconsistent with the requirements of Section 15.6.3 hereof.

"15.6.2 The Administrative Committee, based upon the instrument, the certificate and the opinion described in Section 15.6.1, shall have found such transaction to be consistent with Section 15 hereof.

"15.6.3 Such transaction, and the documents and agreements relating thereto, shall provide that:

"15.6.3.1 The rights and remedies of the parties thereto shall be subject and subordinate to the rights and remedies of the Participants (other than (i) the Participant party thereto or (ii) any person who shall become a Participant in respect of the lessor's interest

in ANPP under such transaction) under the Project Agreements;

"15.6.3.2 Except as provided in Sections 15.2.2, 15.6.4 and 15.10 hereof, the Participant party thereto shall be and remain the sole "Participant" for all purposes of this Participation Agreement and the sole representative (with power to bind each lessor party to such transaction and each mortgagee, trustee and secured party of such lessor described in Section 15.1.2 hereof) in all dealings with the other Participants in relation to the property, rights, titles and interests of such Participant transferred pursuant to such transaction;

"15.6.3.3 Any right conferred by Section 15.2.2 hereof shall be exercised only in concert (through a single nominee, agent, receiver or subsequent transferee) with similar rights conferred by Section 15.2.2 hereof on parties to other sale and leaseback transactions involving the same Participant and interests in the same Generating Unit;

"15.6.3.4 All right to partitionment with respect to the interest acquired shall be waived by the lessor party to such transaction;

"15.6.3.5 Upon the expiration of the lease in such transaction and upon the Participant party thereto failing to purchase all the right, title and interest in ANPP and contractual rights related thereto necessary for the operation of such interest (a "Lessor's Interest") acquired by the lessor in such transaction, such lessor shall entertain cash bids from each other Participant for such Lessor's Interest; and

"15.6.3.6 The provisions of such transaction responsive to the foregoing Sections of this Section 15.6.3 shall remain in full force and effect until such time as the Administrative Committee shall otherwise consent.

"15.6.4 Such transaction may provide that the authority of the Participant party thereto described in Section 15.6.3.2 hereof shall not extend to approval of any amendment to the Participation Agreement the effect of which would be to reduce the Generation Entitlement Share in which the lessor or lessors party to such transaction have acquired an interest.

"15.7 Except to the extent provided in Section 15.10 hereof, a Participant shall not be released from any obligation under the Project Agreements notwithstanding

any assumption of, or agreement to perform or discharge in whole or in part, such obligation by any other person in connection with a sale and leaseback transaction.

"15.8 Anything in a sale and leaseback transaction to the contrary notwithstanding: (1) the rights and remedies of the parties thereto shall be subject and subordinate to the rights and remedies of the Participants under the Project Agreements (including but not limited to Section 23 hereof), other than (i) the Participant party thereto and (ii) any person who shall become a Participant in respect of the lessor's interest in ANPP under such transaction; (2) no other Participant shall incur any obligations or liabilities in respect of such transaction; and (3) the lessor party thereto shall be bound by the provisions of Section 21 hereof (other than Section 21.3) to the same extent as if such lessor were a Participant.

"15.9 If a Participant enters into a sale and leaseback transaction as provided in clause (b) of Section 15.1.1, such Participant shall indemnify all other Participants against any costs and expenses incurred by them because of such Participant's entering into such transaction.

"15.10 Upon a lease or sale to a person, partnership, corporation or governmental corporation or agency engaged in the generation, transmission or distribution of Energy (a "Transferee") of a Lessor's Interest acquired by a lessor in a sale and leaseback transaction:

"15.10.1 The Transferee shall be and become the sole "Participant" for all purposes of this Participation Agreement and the sole representative (with power to bind any lessor) in all dealings with the other Participants in relation to such interest;

"15.10.2 The Transferee (1) shall assume and agree, and be deemed to have assumed and agreed, fully to perform and discharge all obligations under the Project Agreements relating to such interest to the extent arising subsequent to such lease or sale, except obligations in respect of decommissioning and removing from service the Generating Unit to which such interest relates (the "Termination Obligation"), (2) if such Transferee was not previously a Participant, may assume and agree fully to perform and discharge all or any part of the Termination Obligation and, (3) if such Transferee is and was previously a Participant, shall assume and agree, and be

deemed to have assumed and agreed, fully to perform and discharge the Termination Obligation;

"15.10.3 The Participant originally party to such transaction shall thereupon, with the consent (which consent shall not be withheld by any Participant unless a release would, in some manner, materially impair or materially adversely affect the rights of such Participant under this Participation Agreement or the rights or security of obligation holders of such Participant) of each other Participant, be released from all obligations under the Project Agreements so assumed and agreed to by the Transferee but only to the extent of such assumption and agreement; and

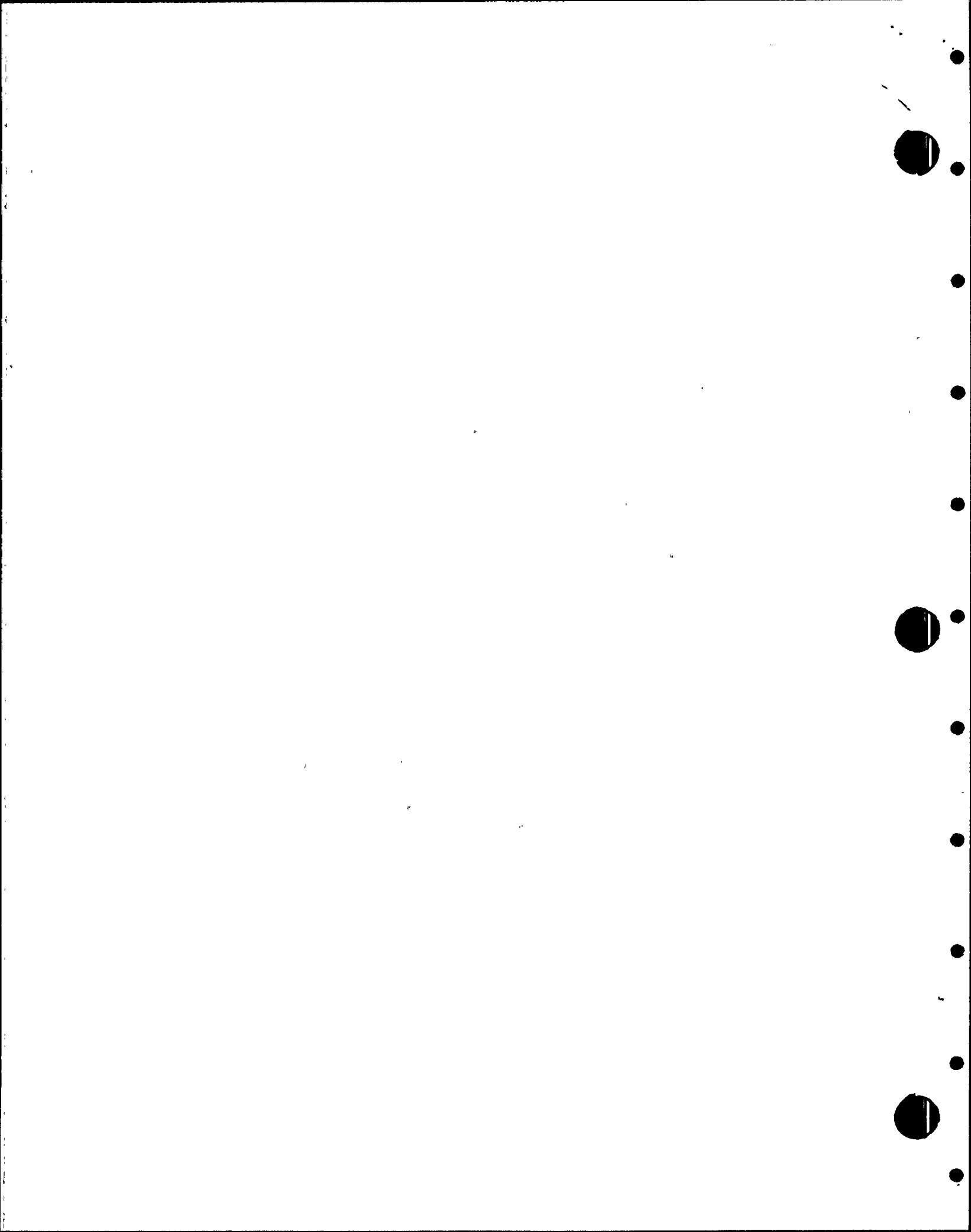
"15.10.4 The Transferee shall furnish to each other Participant evidence of such sale or lease and such assumption and agreement."

5.8. Section 20.8 is amended by the addition of the following sentence at the end thereof:

"Each Participant shall have the right to have any lessor (and any trustee or trustees under a deed of trust, mortgage or indenture or any secured party or parties under a security agreement) in a sale and leaseback transaction named on all or any of the Project Insurance policies as loss payee or additional insured as its interest may appear, by notice in writing to the Project Manager or Operating Agent given in writing not less than thirty (30) days prior to the date proposed for such naming, which notice shall specify the name or names of such lessor and such additional information as may be necessary or required to permit it to be included on the policy(ies) of insurance."

5.9. Section 32.1 is hereby deleted in its entirety and a new Section 32.1 is added as follows:

"32.1 All of the respective covenants and obligations of each of the Participants set forth and contained in the Project Agreements shall bind and shall be and become the respective covenants and obligations of:



"32.1.1 Each such Participant;

"32.1.2 All mortgagees, trustees and secured parties under all present and future mortgages, indentures and deeds of trust, and security agreements which are or may become a lien upon any of the interests of such Participant in ANPP; provided, however, that such covenants and obligations shall become binding upon such parties only at the time of taking possession;

"32.1.3 All receivers, assignees for the benefit of creditors, bankruptcy trustees and referees of such Participant;

"32.1.4 All lessors under all future sale and leaseback transactions (or other person described in Section 15.1.2 hereof) involving interests in ANPP; provided, however, that such covenants and obligations shall become binding on such lessors (or other persons) only in accordance with Section 15.2.2 hereof;

"32.1.5 All receivers, assignees for the benefit of creditors, bankruptcy trustees and referees of such lessors;

"32.1.6 All Transferees pursuant to Section 15.10 hereof; provided, however, that such covenants and obligations shall become binding on a Transferee only in accordance with Section 15.10.2 hereof;

"32.1.7 All other persons, firms, partnerships or corporations claiming through or under any of the foregoing; and

"32.1.8 Any successors or assigns of any of those mentioned in Sections 32.1.1 through 32.1.7 hereof,

"and shall be covenants and obligations running with such Participant's respective rights, titles and interests in ANPP and in, to and under the Project Agreements, and shall be for the benefit of the respective rights, titles and interests of the Participants and their respective successors and assigns, in and to ANPP. It is the specific intention of this provision that all such covenants and obligations shall be binding upon any party which acquires any of the rights, titles and interests of any such Participant in ANPP or in, to and under the Project

Agreements and that all of the above-described persons and groups shall be obligated to use such Participant's rights, titles and interests in ANPP and/or in, to or under the Project Agreements for the purpose of discharging its covenants and obligations under the Project Agreements: except (i) that in the case of a partial assignment the assignee shall only be required to share in the cost of fulfilling the covenants and obligations of the assigning Participant in, to and under the Project Agreements to an extent proportionate or attributable to such assignment, (ii) the rights and obligations of any Fuel Lessor of any Participant shall be governed by the provisions of Section 15.4 hereof and (iii) the rights and obligations of any person specified in Sections 32.1.2, 32.1.4 and 32.1.6 hereof shall be governed as set forth in such Sections."

5.10. Except as provided herein, the Participation Agreement, as amended by this Amendment No. 10, shall remain in full force and effect.

6. Execution by Counterparts:

6.1. This Amendment No. 10 may be executed in any number of counterparts, and upon execution by all Participants, each executed counterpart shall have the same force and effect as an original instrument and as if all Participants had signed the same instrument. Any signature page of this Amendment No. 10 may be detached from any counterpart of this Amendment No. 10 without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Amendment No. 10 identical in form hereto but having attached to it one or more signature pages.

7. Signature Clause:

7.1. The signatories hereto represent that they have been appropriately authorized to enter into this Amendment No. 10 on behalf of the party for whom they sign. This Amendment No. 10 is hereby executed as of the th day of October, 1985.

ARIZONA PUBLIC SERVICE COMPANY

By _____

Its _____

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

ATTEST AND COUNTERSIGN:

Its _____

By _____

Its _____

**SOUTHERN CALIFORNIA EDISON
COMPANY**

By _____

Its _____

PUBLIC SERVICE COMPANY OF NEW
MEXICO

By_____

Its_____

EL PASO ELECTRIC COMPANY

By_____

Its_____

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY, doing busi-
ness in the State of Arizona
as SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY ASSOCIATION

ATTEST:

Its_____

By_____

Its_____

STATE OF ARIZONA)
)ss.
County of Maricopa)

On this _____ day of October, 1985, before me, the undersigned Notary Public, personally appeared _____ who acknowledged himself to be the _____ of ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation, and that as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such _____.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My commission expires:

STATE OF ARIZONA)
)ss.
County of Maricopa)

On this _____ day of October, 1985, before me, the under-
signed Notary Public, personally appeared _____
and _____ who acknowledged themselves to be the
_____ and _____ of SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an Arizona agricultural
improvement district, and that they as such officers, being autho-
rized so to do, executed the foregoing instrument for the purposes
therein contained by signing the name of the district by themselves
as such _____ and _____.

IN WITNESS WHEREOF, I have hereunto set my hand and offi-
cial seal.

Notary Public

My commission expires:

STATE OF CALIFORNIA)
)ss.
County of Los Angeles)

On this ____ day of October, 1985, before me, the undersigned Notary Public, personally appeared _____ who acknowledged himself to be the _____ of SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation, and that as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such _____.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My commission expires:

STATE OF NEW MEXICO)

) ss.

County of Bernalillo)

On this _____ day of October, 1985, before me, the undersigned Notary Public, personally appeared _____ who acknowledged himself to be the _____ of PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation, and that as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such _____.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My commission expires:

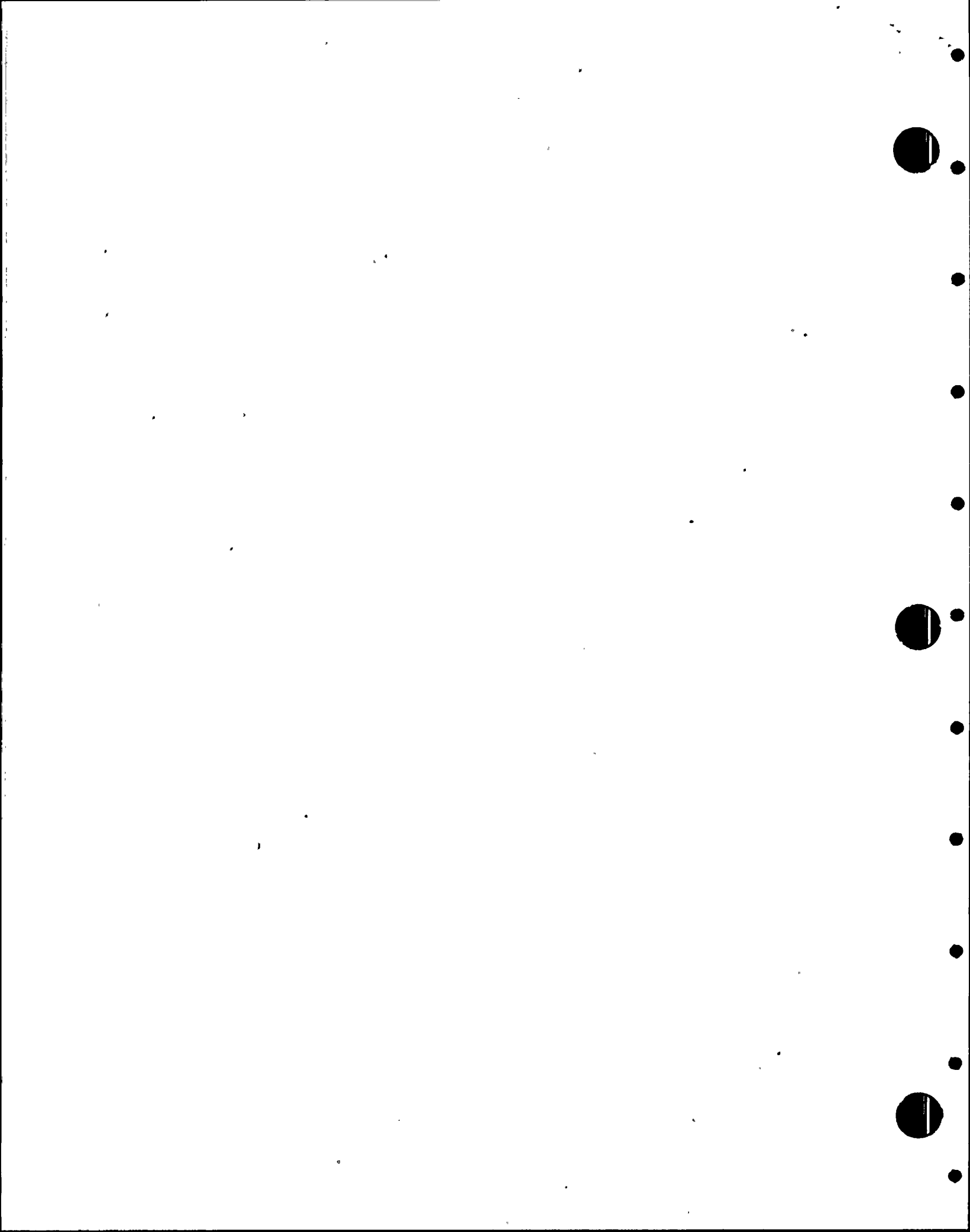
STATE OF TEXAS)
)ss.
County of El Paso)

On this _____ day of October, 1985, before me, the under-
signed Notary Public, personally appeared _____
who acknowledged himself to be the _____ of EL PASO
ELECTRIC COMPANY, a Texas corporation, and that as such officer,
being authorized so to do, executed the foregoing instrument for the
purposes therein contained by signing the name of the corporation by
himself as such _____.

IN WITNESS WHEREOF, I have hereunto set my hand and offi-
cial seal.

Notary Public

My commission expires:



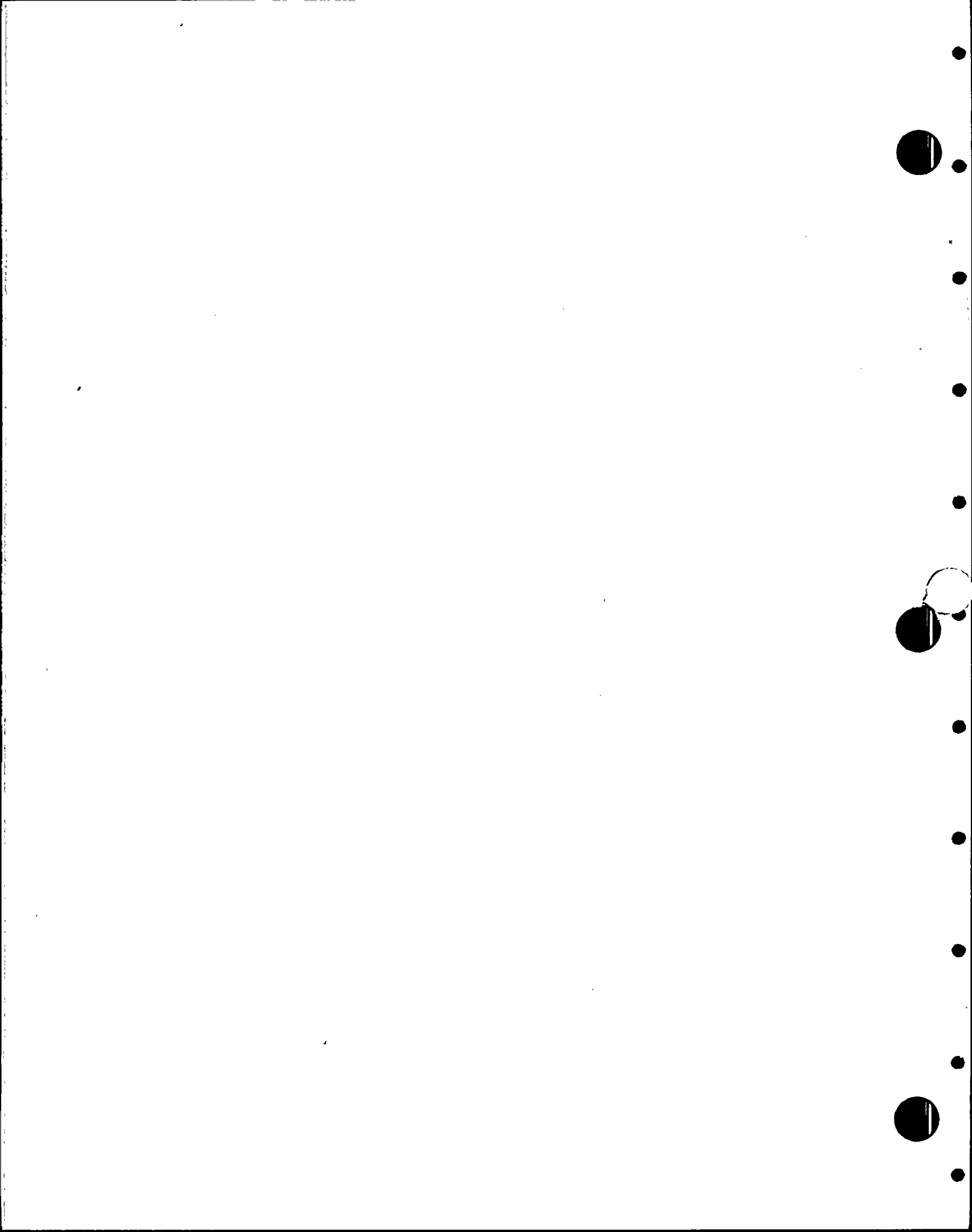
STATE OF CALIFORNIA)
)ss.
County of Los Angeles)

On this _____ day of October, 1985, before me, the under-
signed Notary Public, personally appeared _____
and _____ who acknowledged themselves to be the
_____ and _____ of SOUTHERN CALIFORNIA
PUBLIC POWER AUTHORITY (doing business in the State of Arizona as
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY ASSOCIATION), a California
joint powers agency, and that they as such officers, being authorized
so to do, executed the foregoing instrument for the purposes therein
contained by signing the name of the agency by themselves as such
_____ and _____.

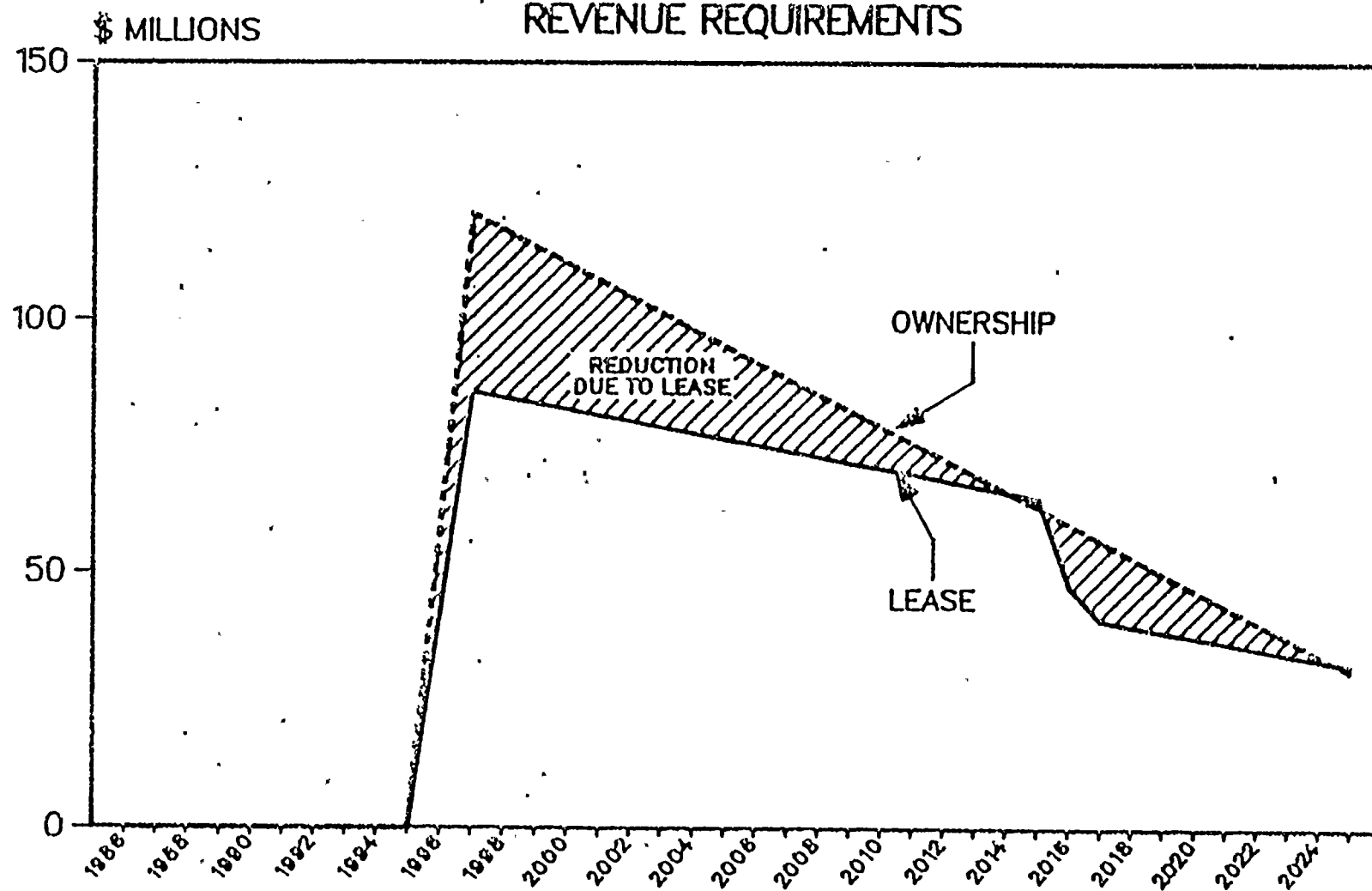
IN WITNESS WHEREOF, I have hereunto set my hand and offi-
cial seal.

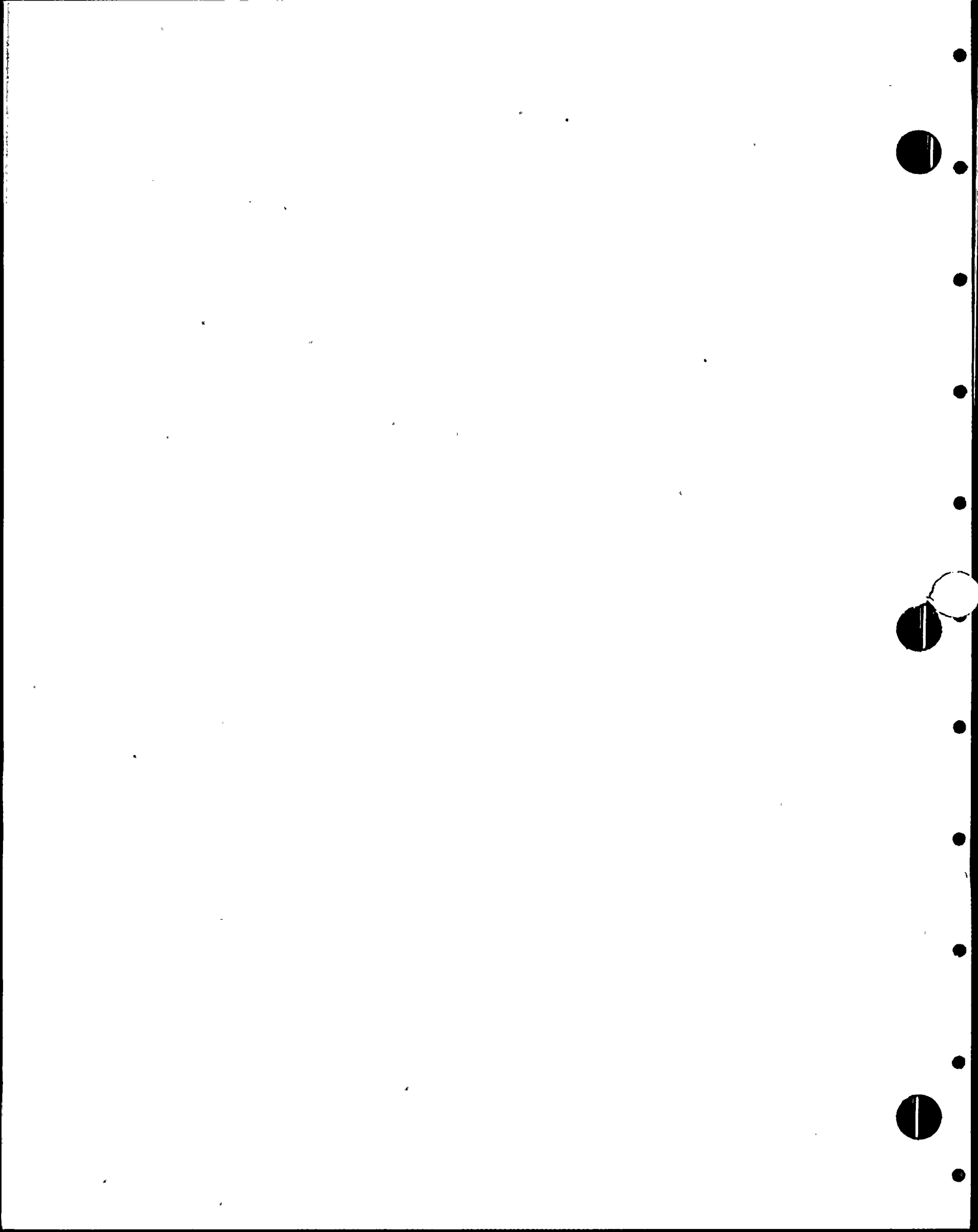
Notary Public

My commission expires:



PVNGS UNIT 1 LEASE VS. OWNERSHIP
UNDER INVENTORYING RATEMAKING
REVENUE REQUIREMENTS





-----X
In the matter of
ARIZONA PUBLIC SERVICE
COMPANY, et al,
(Palo Verde Nuclear
Generating Station, Unit 1)
-----X

DOCKET NO. STN 50-528

**PUBLIC SERVICE COMPANY OF NEW MEXICO
INVESTMENT MEMORANDUM DATED AUGUST, 1985:
TRANSACTION DESCRIPTION AND SUMMARY OF TERMS**

TRANSACTION DESCRIPTION

Public Service Company of New Mexico (*PNM*) wishes to sell and lease back its 10.2% undivided interest in Unit 1 (*Unit 1*) at the Palo Verde Nuclear Generating Station (*PVNGS*) and one-third of its 10.2% undivided interest in facilities the use of which is common (the *Common Facilities*) to all units at PVNGS. The assets to be leased by PNM are herein referred to collectively as the *Facility* and each undivided interest in the Facility acquired by an Owner Trustee, as contemplated hereby, is herein referred to as an *Interest*. Neither the Facility nor the Interest will include the nuclear fuel required for operation of Unit 1, the transmission facilities associated with PVNGS or property at PVNGS which would constitute "section 1250 property" under the Code, but such assets will be provided by PNM through the Support Agreements (as such term is hereinafter defined).

PVNGS consists of three 1,270 MW units, each containing a pressurized water reactor, located approximately 55 miles west of downtown Phoenix, Arizona. PNM participates in the ownership of PVNGS with three other investor owned utilities and three public utilities. Unit 2 is scheduled for firm power operation in the second quarter of 1986. Unit 3 is scheduled for firm power operation in the second quarter of 1987.

Fuel loading was completed at Unit 1 on January 11, 1985. On June 1, 1985, Facility Operating License No. NPF-41 (the *License*) was issued. The License authorizes operation of Unit 1 at reactor core power levels not in excess of 3,800 megawatts thermal (100% power) for 40 years from December 31, 1984, subject to certain limited conditions. On June 10, 1985, Unit 1 was synchronized with the main transmission grid.

Each Interest will be sold at a fair market value which is expected to permit PNM to recover its book cost after taxes. The fair market value of the Facility will approximate \$400,000,000. PNM will then lease each Interest back for a period of approximately 28 1/2 years. Unit 1 is expected to reach firm power operation by the end of 1985. Under the construction and completion schedule established by Arizona Public Service Company (*APS*), as operator of PVNGS, in early 1984 as part of the Unit 1 startup procedure, testing of Unit 1 and the Common Facilities is within the schedule. Testing which remains, and which must be completed prior to firm power operation, includes turbine and reactor operations at various power plateaus. To date Unit 1 has achieved at least 50% of full power.

Although, on the Closing Date, Unit 1 will not require investment by PNM in amounts exceeding the proceeds of the sale and leaseback transactions in order to achieve firm power operation, PNM has been advised by APS that significant capital improvements will be required to be installed in Unit 1 and the Common Facilities from time to time. As indicated in the Summary of Terms, PNM is seeking financing of such costs through the Lease by way of supplemental debt financing by the Lessor and additional equity investment by

the Owner Participant. See "Summary of Terms - Adjustments to Basic Rent, Casualty Value, Special Casualty Value and Termination Value - Financing of Capital Improvements".

The closing of the sale and leaseback transactions will occur on or before December 31, 1985. Due to the nature of this financing, Kidder, Peabody is soliciting proposals from a limited number of potential equity investors. Kidder, Peabody's objective is to expedite the completion of the sale and leaseback transactions by negotiating with as few individual equity investors as possible. An equity investor submitting a partial bid may acquire its Interest on the basis of a negotiation of the economic terms reflected in such bid. However, such equity investor will be required to join with other equity investors to negotiate common documentation of separate undivided interest Leases. Support Agreements (as such term is hereinafter defined) will be multi-party documents involving all Lessors. All equity investors will be encouraged to choose a single common legal counsel.

Given the schedule for obtaining required regulatory approvals, preparation of the Transaction Documents (as such term is hereinafter defined) must proceed immediately. The first draft of the Transaction Documents has been prepared by Mudge Rose Guthrie Alexander & Ferdon, special counsel to PNM, and will be distributed to Owner Participants upon award of the transaction. To the extent possible, the Transaction Documents have been modelled on PNM's leveraged lease of a \$73 million transmission line which closed on February 5, 1985. Such documents are familiar to the regulatory agencies (other than the Nuclear Regulatory Commission) which will have to approve this transaction.

Each Owner Participant will establish a trust (the *Owner Trust*, and the estate created thereby is herein referred to as the *Trust Estate*) with a single institutional trustee (the *Owner Trustee*) to acquire its Interest. The Owner Trustee will then lease the Interest to PNM subject to the terms and conditions described in the Summary of Terms. If there is more than one Lessor, the debt portion of the leveraged lease financing may be provided by a funding corporation (the *Funding Corp*) which would obtain the funds for its loans to the several Lessors through the sale of Funding Corp's bonds to the public (the *Public Bonds*) under a Collateral Trust Indenture qualified under the Trust Indenture Act of 1939.¹ The Public Bonds will be secured by non-recourse secured notes (the *Secured Notes*) of the respective Lessors; all Secured Notes acquired by Funding Corp will be pledged to a Collateral Trust Trustee under the Collateral Trust Indenture. The terms of the Secured Notes will correspond

1. PNM and Kidder, Peabody may ultimately decide to either place this debt privately, or recommend bridge financing for the period from the Closing Date of the sale and leaseback transactions to a later date on which the sale of the Public Bonds shall be closed.

to those of the Public Bonds. Secured Notes will be issued pursuant to separate Lease Indentures reflecting the individual borrowing needs of each Lessor. Kidder, Peabody will be the underwriter in the offering of the Public Bonds.

The transaction described in the Summary of Terms will be structured to qualify as a true lease for Federal income tax purposes and as an "operating lease" from the standpoint of the Lessee, as the term "operating lease" is defined in Statement of Financial Accounting Standards No. 13.

Proposals should be forwarded no later than August 27, 1985 to:

Kidder, Peabody & Co. Incorporated
10 Hanover Square, 22nd Floor
New York, New York 10005
Attention: Bruce E. Walenczyk

Copies of all proposals should be sent to:

Public Service Company of New Mexico
Alvarado Square
Albuquerque, New Mexico 87158
Attention: A.J. Robison,
Senior Vice President
and Chief Financial Officer

PNM requires execution of a commitment letter no later than September 3, 1985, in order to meet the deadlines for receipt of final and non-appealable regulatory approvals.

PNM RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO REJECT ANY OR ALL OF THE PROPOSALS SUBMITTED IN RESPONSE TO THIS SOLICITATION AND TO SELL AND LEASE BACK INTERESTS CONSTITUTING LESS THAN THE ENTIRE FACILITY.

All inquiries regarding this Memorandum and the transaction described herein should be directed to one of the following individuals:

Bruce E. Walenczyk	(212)510-4227
Richard J. Markowitz	(212)510-4212
Ronald A. Zaroni	(212)510-4200



**TABLE OF CONTENTS
FOR
SUMMARY OF TERMS**

	<u>Page</u>
Lessor	1
Lessee	1
Lease	1
Owner Participant	1
Lender	1
Indenture Trustee	1
Closing Date	2
Facility	2
Lessor's Cost	2
Owner Participant's Investment	2
Project Agreement	2
Project Site	2
Consent and Amendment	3
Support Agreements	4
Transaction Documents	5
License	5
Lease Term	6
Basic Lease Term	6
Notice of Purchase or Renewal	6
Lease Renewal Terms	7
Purchase Option	9
Lease Commencement Date	9
Interim Rent Payment Date	9
First Basic Rent Payment Date	9
Last Basic Rent Payment Date	9
Interim Rent	9
Basic Rent	9
Basic Rent Payment Dates	10
Supplemental Rent	10
Adjustments to Basic Rent, Casualty Value, Special Casualty Value and Termination Value	11
Net Economic Return	14
Net Lease	15
Return of Interest	15
Quiet Enjoyment	15
Liens	15
Operation and Maintenance, Inspection and Capital Improvements	15
Damage or Destruction; Payment of Casualty Value	16
Tax Assumptions	17
Insurance	17
Deemed Loss Event	18
After-Tax Basis	19
General Indemnity	19
General Tax Indemnity	20
Special Tax Indemnity	21
Rights to Assign or Sublease	21
Special Termination	21
Conditions to Obligations	22
Transaction Costs	22



SUMMARY OF TERMS

LESSOR:	A single institutional trustee which will serve as Owner Trustee under each Trust Agreement.
LESSEE:	Public Service Company of New Mexico.
LEASE:	A true lease of an Interest.
OWNER PARTICIPANT:	One or more equity investors to be identified pursuant hereto.
LENDER:	<p>PV Funding Corporation, a Delaware corporation (<i>Funding Corp</i>), all of the stock of which will be owned by CT Corporation, will lend to the respective Lessors the debt portion of the sale and leaseback transactions and acquire Secured Notes of the respective Lessors issued under the respective Lease Indentures. PNM will be the registrant under a registration statement on Form S-3 with respect to the Public Bonds which will be filed with the Securities and Exchange Commission (the <i>SEC</i>). The Public Bonds will have terms which mirror the terms of the Secured Notes.</p> <p>PNM reserves the right to place the debt portion of the sale and leaseback transactions privately. PNM, through Kidder, Peabody, may arrange bridge financing for the period from the Closing Date to a later date on which the sale of the Public Bonds shall be closed.</p> <p>PNM has heretofore issued pollution control bonds to fund, among other purposes, its share of qualified expenditures for pollution control equipment included in the Facility. The pollution control bonds will remain outstanding and will not be assumed by the Lessor. Pollution control bonds will not constitute a claim against, or an encumbrance on, the Facility or any Interest.</p>
INDENTURE TRUSTEE:	A single institutional trustee which will serve as Indenture Trustee under each Lease Indenture in respect of the Secured Notes and also as Collateral Trust Trustee under the Collateral Trust Indenture in respect of the Public Bonds.



CLOSING DATE: December 18, 1985 (assumed), but no later than December 31, 1985.

FACILITY: A 10.2% undivided interest in Unit 1 at the Palo Verde Nuclear Generating Station (PVNGS) and one-third of PNM's 10.2% undivided interest in PVNGS Common Facilities. See "List of Primary Unit 1 and Common Facility Systems" at Tab 6.

LESSOR'S COST: Approximately \$400,000,000 in the aggregate for the Facility, which is the estimated fair market value. Fair market value will be determined by a single appraiser selected by the Owner Participants, collectively, and approved by the Lessee.

OWNER PARTICIPANT'S INVESTMENT: An amount equal to the sum of (i) _____% of Lessor's Cost (to be determined pursuant hereto) payable on the Closing Date, (ii) Transaction Costs (as defined below), and (iii) an amount, payable on April 1, 1986, equal to interest on the Secured Notes from the Closing Date to April 1, 1986. See the second paragraph under "Basic Rent".

The minimum Lessor's Cost of any Interest shall be \$75,000,000.

PROJECT AGREEMENT: The Arizona Nuclear Power Project (ANPP) Participation Agreement, dated August 23, 1973, as amended to the date hereof and as hereafter amended by action of the parties to the Project Agreement (the ANPP Participants). The Lessor will have no control over the timing or substance of any amendments to the Project Agreement so long as the Generation Entitlement Share (as defined in the Project Agreement) of PNM thereunder shall not be reduced in respect of Unit 1.

PROJECT SITE: The real property on which PVNGS is located.

CONSENT AND
AMENDMENT:

(A) An instrument under which the ANPP Participants (other than PNM) shall acknowledge that the Transaction Documents evidence fulfillment of the conditions set forth in the amendment to the Project Agreement described in paragraph (B) below.

(B) An amendment to the Project Agreement, executed by the ANPP Participants (including PNM) on or before the Closing Date, providing that any ANPP Participant may sell and transfer its interest in PVNGS, or any portion thereof or undivided interest therein, to a non-utility or non-utilities (or an owner trustee or owner trustees for such person or persons), subject to the following conditions and a determination of the ANPP Participants of the fulfillment thereof:

(i) concurrently with such sale and transfer, the interest so transferred shall be leased back to the transferring ANPP Participant under a net lease having a primary term of not less than 15 years;

(ii) the rights of such lessor shall be subject to the rights of all ANPP Participants, other than the transferring ANPP Participant, under the Project Agreement;

(iii) notwithstanding such sale and leaseback, the transferring ANPP Participant shall not be released from any of its payment obligations under the Project Agreement during the entire term of the Project Agreement, including, without limitation, its obligations with respect to the decommissioning of PVNGS or any Unit at PVNGS; and

(iv) notwithstanding such sale and leaseback, the transferring ANPP Participant shall continue as the sole representative of all interests of, and all interests derived from, such ANPP Participant for the entire term of the Project Agreement unless and until the transferring ANPP Participant shall have become the subject

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of a bankruptcy case and the trustee in bankruptcy shall have rejected the lease in the sale and leaseback transaction and other agreements between such bankrupt ANPP Participant and such lessor, in which case, without further action on the part of any ANPP Participants, such lessor and all lessors similarly affected, acting in concert, shall be entitled to become a party to the Project Agreement and an ANPP Participant for all purposes of the Project Agreement, as then in effect, in respect of the interest acquired in the sale and leaseback transaction.

SUPPORT AGREEMENTS: The Consent and Amendment and such other agreements, ground leases and easements, among the Lessee and all Lessors of Interests in the Facility, as shall be required to permit the Lessors, severally, to have and enjoy the economic use of their respective Interests, subject to the Project Agreement and the Consent and Amendment, for the period from the expiration or termination of the respective Leases to the date of expiration of the License (as defined below). The Support Agreements shall become operative, as to each Lessor, when its Lease expires or terminates in accordance with its terms. When the Support Agreements become operative, a Lessor will be obligated to pay to PNM, among other things, its proportionate share of (i) a fair market value ground lease rent and easement fee and (ii) all amounts payable by PNM from time to time under the Project Agreement.

The Support Agreements will also include a multi-party agreement (an *Operating Agreement*) under which PNM and the respective Lessors, among other things, will (i) establish a mechanism for voting and managing the respective Interests, (ii) allocate to, and provide for the unconditional obligation of, such Lessors, proportionately, to reimburse PNM for all amounts payable by PNM from time to time under the Project Agreement in respect of the Interest of each Lessor, and (iii) provide for the



decommissioning of the Facility and each Interest.

As to each Lessor, the Support Agreements shall be for a term commencing on the Closing Date and ending on the earlier of (i) the date of expiration of the License or (ii) the date of termination of the Support Agreements as to such Lessor by its voluntary act (which such Lessor may exercise at any time following expiration or termination of its Lease). No Lessor shall be obligated to make any payments under the Support Agreements until the date of the expiration or termination of its Lease.

**TRANSACTION
DOCUMENTS:**

The Participation Agreement, the Lease, the Trust Agreement, the Lease Indenture, the Tax Indemnification Agreement, the Purchase Documents and the Support Agreements. Except with respect to the Support Agreements, there will be separate Transaction Documents for each such Interest. There will be no assignment of contracts for design or construction of, or for the provision of nuclear fuel or other goods or services for, the Interest or the Facility.

LICENSE:

Facility Operating License No. NPF-41 issued by the Nuclear Regulatory Commission (NRC), which licenses PNM and the other ANPP Participants to possess, and APS to use and operate, PVNGS, and all licenses amending, modifying, extending or superseding such License. APS is also licensed to receive, possess and use the fuel for PVNGS. The existing License expires at midnight on December 31, 2024.

Under applicable law and NRC regulations, the Lessor must be licensed by the NRC in respect of the ownership of the Interest by such Lessor. Thus, the License will require modification to permit the transfer of any Interest by PNM to a Lessor. An application for such modification, and similar modifications with respect to all other Interests, will be filed with the NRC

following the award of the sale and leaseback transactions to the Owner Participants.

LEASE TERM:

The Basic Lease Term, each Fixed Rate Renewal Term and each Fair Rental Renewal Term.

BASIC LEASE TERM:

The period commencing on the Closing Date and ending September 30, 2014.

NOTICE OF PURCHASE
OR RENEWAL:

To provide to the Lessor adequate time to remarket the Interest by re-lease or sale, not less than three years prior to the date of expiration of the Basic Lease Term or any Renewal Term then in effect, the Lessee shall provide to the Lessor written notice of the Lessee's intention to either (i) purchase the Interest or renew the Lease, or (ii) allow the Lease to expire at the end of such Term. If such notice shall be to the effect set forth in (i) above, not less than one year prior to the expiration of the then effective Basic Lease Term or Renewal Term, the Lessee shall notify the Lessor in writing whether the Lessee intends to purchase the Interest or renew the Lease, and in the latter case, whether the renewal is for a Fixed Rate Renewal Term or a Fair Rental Renewal Term. During the two-year period between the date of the first notice above and the second notice above, in order to provide a basis for decision, the Lessee may request a valuation of the Interest for either purchase or renewal of the Lease. If such request includes a request for determination of either "fair market value" or "fair rental value" such value or values shall be determined by agreement of the Lessor and the Lessee or, absent such agreement, by an appraisal procedure. The Lessee's decision to either purchase or renew may be made separately with respect to each Interest and such decision may be different with respect to one Interest, compared to another Interest.

LEASE RENEWAL
TERMS:

(A) *Fixed Rate Renewal*. On the assumption that the appraisal supports a 31-year, 3-month lease at fixed rents, the Lessee may, subject to the notice requirements, elect to renew the Lease for a period of two and one-half years (the *Fixed Rate Renewal Term*) following the Basic Lease Term, in which case the Basic Rent payable on each Basic Rent Payment Date during such Fixed Rate Renewal Term shall be equal to one-half of the aggregate amount of Basic Rent actually payable during the Basic Lease Term, divided by 57.

(B) *Extensions of Fixed Rate Renewal Term*. Subject to the notice requirements, the Lessee may elect to extend the initial Fixed Rate Renewal Term for a period or periods not exceeding the remainder of the Maximum Option Period, as defined below, in which case the Basic Rent payable on each Basic Rent Payment Date during such extended Fixed Rate Renewal Term shall be equal to one-half of the aggregate amount of Basic Rent actually payable during the Basic Lease Term, divided by 57.

(C) *Maximum Option Period*. If (i) the Fixed Rate Renewal Term shall have been elected by the Lessee pursuant to paragraph (A) above, and (ii) the License shall have been extended, renewed or superseded, the Lessee's request for valuation under "Notice of Purchase or Renewal" above may include a request for the redetermination of the estimated useful life of Unit 1 and the residual value of the Interest as of the end of the initial Fixed Rate Renewal Term. Such redetermination shall take into consideration the existence and effect of the Project Agreement, the Support Agreements and the License (as so extended, renewed or superseded). The *Maximum Option Period* shall be the period (i) at the end of which the residual value of the Interest, without regard to inflation or deflation, but taking into consideration the existence and effect of the foregoing agreements

and the License (as so extended, renewed or superseded), shall be at least equal to 20% of Lessor's Cost, and (ii) which does not exceed 80% of the sum of the then appraised remaining economic useful life of Unit 1 and 31 years, 3 months.

(D) *Fair Rental Renewal.* Subject to the notice requirements, at the end of the Basic Lease Term, the Fixed Rate Renewal Term (including any extension thereof) and any then effective Fair Rental Renewal Term (as defined below), the Lessee may elect to renew the Lease for a Fair Rental Renewal Term (each a *Fair Rental Renewal Term*), in which case the Basic Rent payable on each Basic Rent Payment Date during each such Fair Rental Renewal Term shall be the fair rental value of the Interest. If the Fixed Rate Renewal Term (i) shall not have been elected by the Lessee, the first Fair Rental Renewal Term will be a period of not less than two years commencing on the Last Basic Rent Payment Date, and each subsequent Fair Rental Renewal Term shall be for a period of not less than two years commencing on the last Basic Rent Payment Date of the preceding Fair Rental Renewal Term; *provided, however*, that if the period from the commencement date of a Fair Rental Renewal Term to the date of expiration of the License shall be less than two years, such Fair Rental Renewal Term shall expire on the date of expiration of the License, or (ii) shall have been elected by the Lessee, the first Fair Rental Renewal Term will be a period commencing on the date of expiration of the Fixed Rate Renewal Term, including any extension thereof pursuant to paragraph (B) above, and each subsequent Fair Rental Renewal Term shall be as provided in clause (i) above.

(E) *Consecutive Renewals; Termination.* The Fixed Rate Renewal Term, if elected, and all Fair Rental Renewal Terms elected shall be consecutive. Each Renewal Term shall be subject to automatic termination, without penalty or further liability for the payment of



Basic Rent, if the ANPP Participants shall act to, or shall be required to, declare a "final shutdown" of Unit 1.

PURCHASE OPTION:

Subject to the notice requirements, at the expiration of the Basic Lease Term, the Fixed Rate Renewal Term (including any extension thereof) or the Fair Rental Renewal Term, as the case may be, the Lessee may elect to purchase the Interest for a purchase price equal to (i) the fair market value thereof, or (ii) a fixed price negotiated by the Lessee and the Owner Participant and reflected in the Lease as executed, whichever is less.

LEASE

COMMENCEMENT DATE: The Closing Date.

**INTERIM RENT
PAYMENT DATE:**

April 1, 1986.

**FIRST BASIC RENT
PAYMENT DATE:**

October 1, 1986.

**LAST BASIC RENT
PAYMENT DATE:**

October 1, 2014, unless the Fixed Rate Renewal Term or a Fair Rental Renewal Term shall have been elected, in which case the Last Basic Rent Payment Date shall be the last Basic Rent Payment Date of the last such Renewal Term so elected.

INTERIM RENT:

If the Owner Participant shall have failed to perform its covenant to pay interest on the Secured Notes accrued and unpaid on April 1, 1986, an amount equal to interest on the Secured Notes due and unpaid on the Interim Rent Payment Date. See "Owner Participant's Investment" and "Basic Rent".

BASIC RENT:

On the Interim Rent Payment Date, an amount equal to Interim Rent, if any; thereafter, semi-annually (in arrears) commencing October 1, 1986, an amount equal to the lease rate factor or factors determined pursuant hereto, multiplied by the Lessor's Cost of the Interest. See



"Proposal Assumptions and Requested Information" at Tab 4. See also "Adjustments to Basic Rent, Casualty Value, Special Casualty Value and Termination Value".

In the event that the Lessee shall be required to pay Interim Rent, the Lessee shall be permitted to recover the amount thereof by offset against the equity portion of Basic Rent (i.e. the amount of Basic Rent in excess of the amount required to pay principal and interest on the Secured Notes) payable from time to time.

Under the Lease and the Lease Indenture, PNM will have the right and opportunity to purchase Public Bonds maturing on a Basic Rent Payment Date in open market transactions and tender such Bonds to the Lessor in partial satisfaction of the Lessee's Basic Rent payment obligation. Such Public Bonds would be credited for such purpose at par, without regard to their then market value.

**BASIC RENT PAYMENT
DATES:**

Each April 1 and October 1 of each year, commencing on the First Basic Rent Payment Date, and, if the Lessee shall elect one or more Renewal Terms, each April 1 and October 1 of each year during each such Renewal Term, and ending on the Last Basic Rent Payment Date.

SUPPLEMENTAL RENT:

Any amount (other than Basic Rent) which the Lessee assumes the obligation to pay, or agrees to pay, under the Lease, the Participation Agreement, or the Tax Indemnification Agreement.



ADJUSTMENTS TO BASIC
RENT, CASUALTY
VALUE, SPECIAL
CASUALTY VALUE AND
TERMINATION VALUE:

The Transaction Documents shall provide that Basic Rent, Casualty Value, Special Casualty Value and Termination Value shall be adjusted in the following circumstances and upon the occurrence of the following events:

(A) *Interest Expense.* Basic Rent shall be based on the assumption that the Secured Notes shall bear interest at rates specified in the "Proposal Assumptions and Requested Information" at Tab 4. If any series of the Secured Notes shall bear interest at a rate which is different than the assumed rate, Basic Rent shall be increased or decreased so as to preserve Net Economic Return. Although the Secured Notes may be issued in series to take advantage of the yield curve, the rate of interest on each such series shall be fixed, and not floating, except for any period during which any interim indebtedness is outstanding.

(B) *Change of Assumptions.* If there shall be any change (i) in the "Proposal Assumptions and Requested Information" at Tab 4 (except to the extent such change is covered by clause (ii) below) or other assumptions agreed to in the Transaction Documents or (ii) in either (a) the assumed marginal Federal corporate income tax rate (i.e. 46%) or (b) the timing and amount of the Owner Participant's income in respect of the Lease as a result of the application of the so-called "claw-back" concept in the current Treasury proposal, which results from a change in the Code proposed by the Department of the Treasury or reported by the House Ways and Means Committee or the Senate Finance Committee prior to the Closing Date and enacted by the Ninety-ninth Congress, *then*, in the case of any change described in the foregoing clauses (i) and (ii), Basic Rent, Casualty Value, Special Casualty Value and Termination Value

shall be appropriately adjusted to preserve Net Economic Return (as defined below); *provided, however,* that the adjustment pursuant to clause (ii) above shall be made at one time, on April 1, 1987, and be limited to the extent that Basic Rent payable after giving effect to the adjustment pursuant to such clause (ii) shall not exceed Basic Rent payable under the Lease as originally executed and as adjusted pursuant to clause (i) above by more than a percentage to be determined by negotiation between Lessee and the Owner Participant and reflected in the commitment letter contemplated hereby and the Lease.

(C) *Verification.* The adjustment pursuant to clause (ii) of paragraph (B) above shall be in lieu of an indemnity under the Tax Indemnification Agreement. Each adjustment made as described in paragraph (A) above or paragraph (B) above shall be subject to verification by Kidder, Peabody; each adjustment made as described in paragraph (B) above shall, at PNM's request, be verified by the independent public accountants for each Owner Participant.

(D) *Financing of Capital Improvements.* *Capital Improvements* shall be defined to mean the addition, betterment or enlargement of any Unit of Property and the replacement of any Unit of Property with another Unit of Property, irrespective of whether such replacement Unit of Property constitutes an enlargement or betterment of the Unit of Property which it replaces, the cost of which addition, betterment, enlargement or replacement is required to be capitalized, and not charged to maintenance or repairs, in accordance with the Uniform System of Accounts adopted by the Federal Energy Regulatory Commission (the *FERC*) and, in the case of any addition, betterment or enlargement, is not included or reflected in the plans and specifications for Unit 1 of PVNGS and the Common Facilities, as built.



The term *Unit of Property* shall be defined with reference to the FERC Uniform System of Accounts.

The term *Supplemental Financing* shall be defined to mean a financing by the Lessor of a Supplemental Financing Amount (as defined below) through the issuance of additional series of Secured Notes under the Lease Indenture.

In the Lease, the Lessor will agree to finance, by a Supplemental Financing, the Lessor's share of that portion of the cost of each Capital Improvement which shall constitute an addition to the Lessor's basis in the Interest for purposes of section 1012 of the Code (the *Supplemental Financing Amount*); *provided, however*, that each such Supplemental Financing shall be subject to certain conditions (which shall be set forth in the Lease), including the following:

(i) no Default or Event of Default shall have occurred and be continuing;

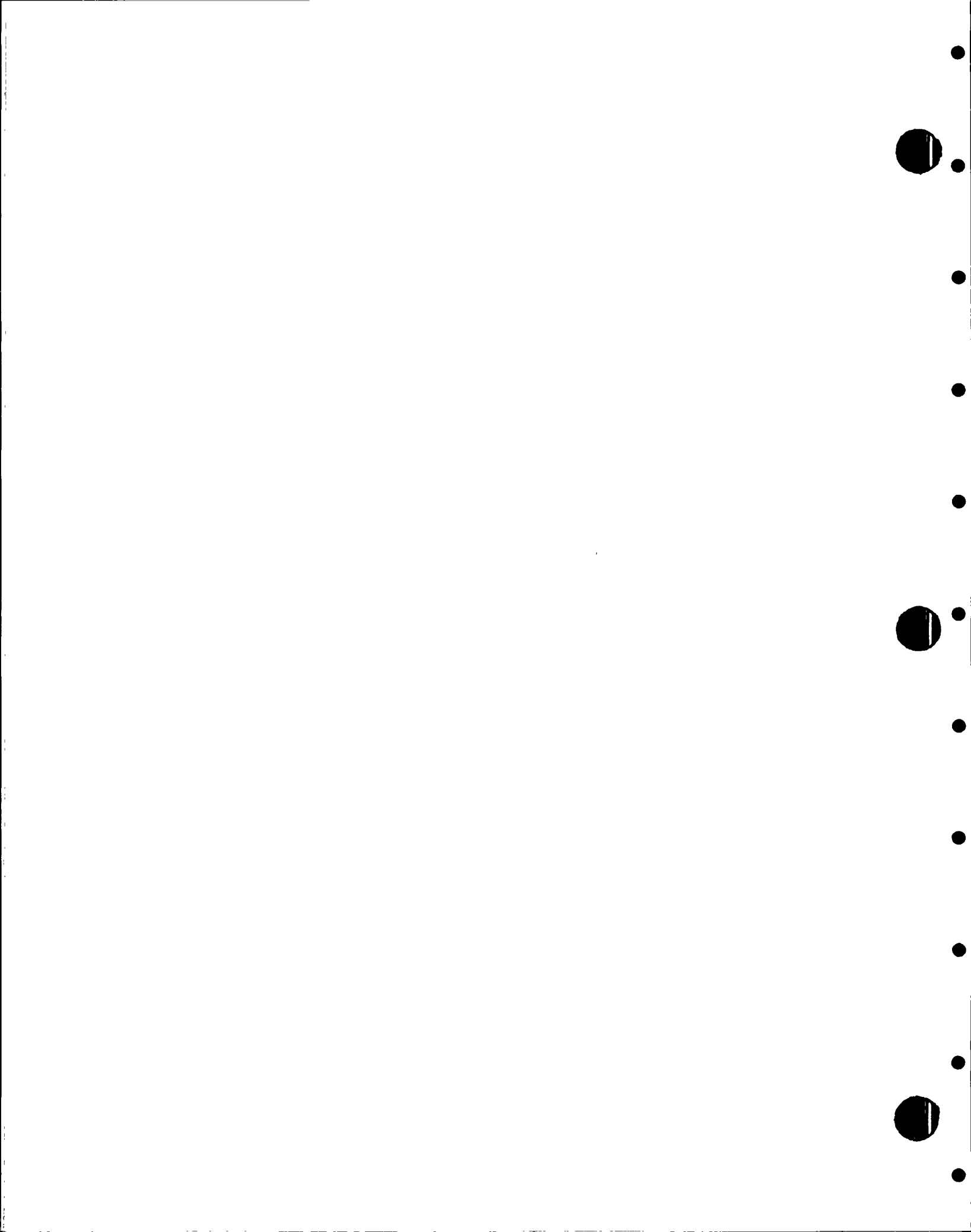
(ii) at the time of such Supplemental Financing the Lessee shall have outstanding one or more issues of its debt securities bearing an "investment grade" rating by Moody's or S&P;

(iii) the Lessor shall have received a Certificate of Acceptance with respect to the Lessor's Interest in each Capital Improvement which is the subject of such Supplemental Financing;

(iv) the original principal amount of all additional series of Secured Notes issued in respect of Supplemental Financings during the Basic Lease Term shall not exceed \$200,000,000 for all Interests, in the aggregate;

(v) the additional Secured Notes shall have a final maturity no later than October 1, 2014;

(vi) in the opinion of independent tax counsel for the Owner Participant such



Supplemental Financing shall not adversely affect the status of the Lease as a "true lease" for Federal tax purposes; and

(vii) unless and until the Lease Indenture shall have been discharged, such Supplemental Financing shall comply with applicable provisions in the Lease Indenture.

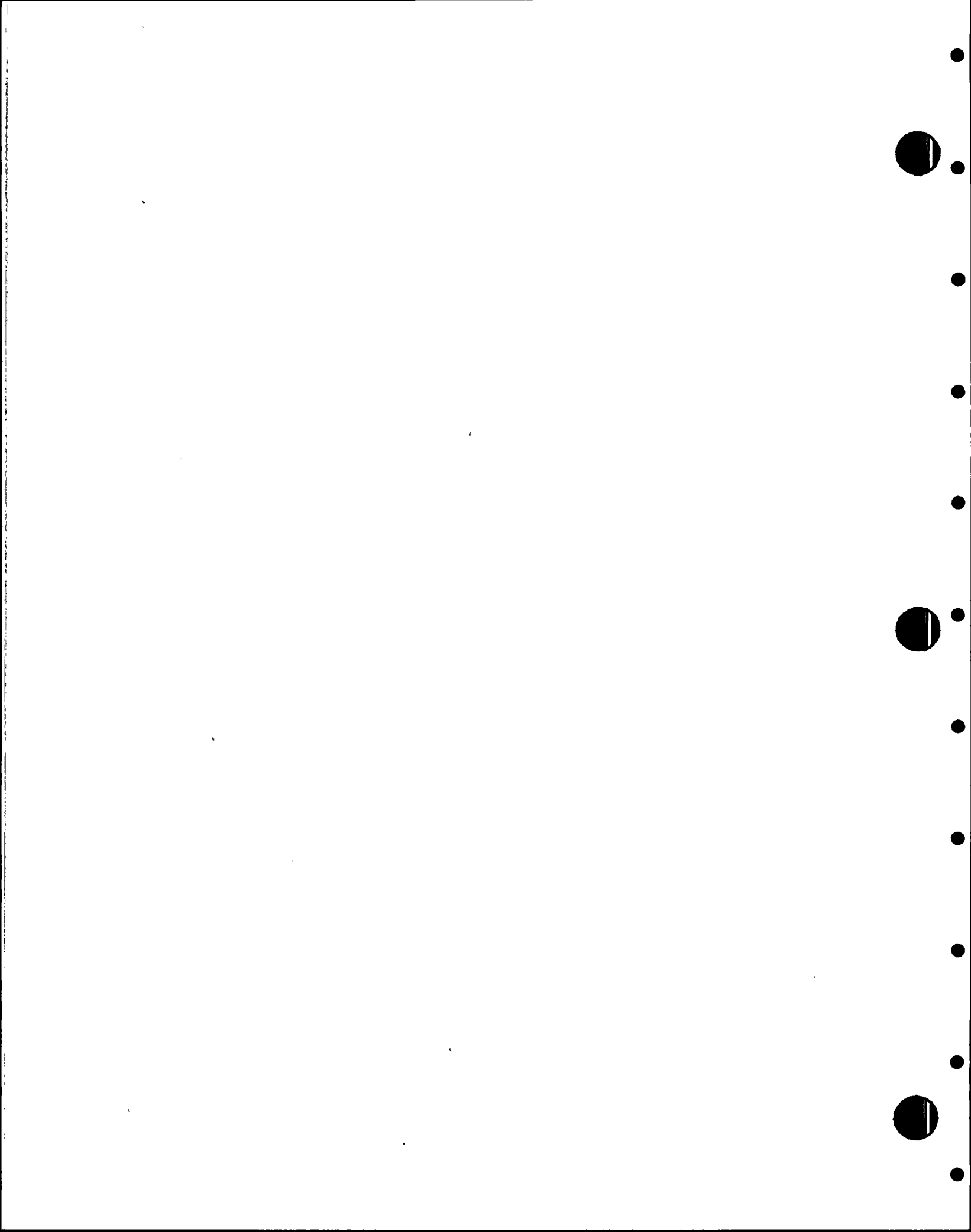
In addition, the Lease will provide that the Owner Participant may, in its sole discretion, make an additional equity investment in any Capital Improvement and thus reduce the amount of any Supplemental Financing.

Concurrently with each Supplemental Financing, (a) Basic Rent shall be adjusted to support the amortization of the additional series of Secured Notes issued in connection therewith and to preserve the Owner Participant's Net Economic Return, (b) the Lessor shall prepare schedules of Casualty Value, Special Casualty Value and Termination Value with respect to the Capital Improvements so financed, and (c) the Lessor and the Lessee shall execute a Lease Supplement.

The Lessor will, without further action on the part of the Lessee, acquire title to the Lessor's share of all Capital Improvements which are non-severable improvements, whether or not the Lessor's share of the Supplemental Financing Amount of such Capital Improvements shall have been financed with the proceeds of additional series of Secured Notes.

**NET ECONOMIC
RETURN:**

Net Economic Return shall be defined to mean the Owner Participant's after-tax yield and total after-tax cash flow, as reflected in, or determinable from, the "Proposal Assumptions and Requested Information" and the lease rate factor or factors developed pursuant hereto.



NET LEASE:

The Lease shall be a net lease under which the Lessee's obligation to pay all Rent thereunder, and the rights of the Lessor in and to such Rent, shall be absolute and unconditional. See, however, the second paragraph of "Basic Rent".

RETURN OF INTEREST:

Upon the expiration or termination of the Lease, the Lessee will relinquish all of its rights with respect to the Interest to the Lessor, subject to the terms and provisions of the Support Agreements, the Project Agreement, the Consent and Amendment and the License, free and clear of all Liens (other than Owner Participant's liens, Owner Trustee's liens and the lien of the Support Agreements, the Project Agreement and the Consent and Amendment). See "Operation and Maintenance, Inspection and Capital Improvements".

QUIET ENJOYMENT:

The Lessor shall warrant that during the Lease Term, if the Lessee is in compliance with each Transaction Document to which it is a party, the Lessee's use of, and rights with respect to, the Interest shall not be interrupted by the Lessor or any person claiming by or through the Lessor.

LIENS:

The Lessee will not directly or indirectly create, incur, assume or, subject to the terms and provisions of the Project Agreement, the Consent and Amendment and the License, suffer to exist any Liens on or with respect to, among other things, (i) the Project Site, (ii) Unit 1, the Common Facilities, the Facility or any Interest, or (iii) the Trust Estate (and the Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any such Lien), *except* such Liens as shall be defined as "Permitted Liens" in the Transaction Documents.

OPERATION AND
MAINTENANCE,
INSPECTION AND
CAPITAL
IMPROVEMENTS:

(A) *Operation and Maintenance.* In the Lease the Lessee will covenant that it will

exercise its rights under the Project Agreement to cause APS, as operator thereunder, to operate, service and maintain Unit 1 and the Common Facilities so that the condition and operating efficiency of Unit 1 and the Common Facilities will be maintained and preserved, ordinary wear and tear excepted, in accordance with the standards set forth in the Project Agreement.

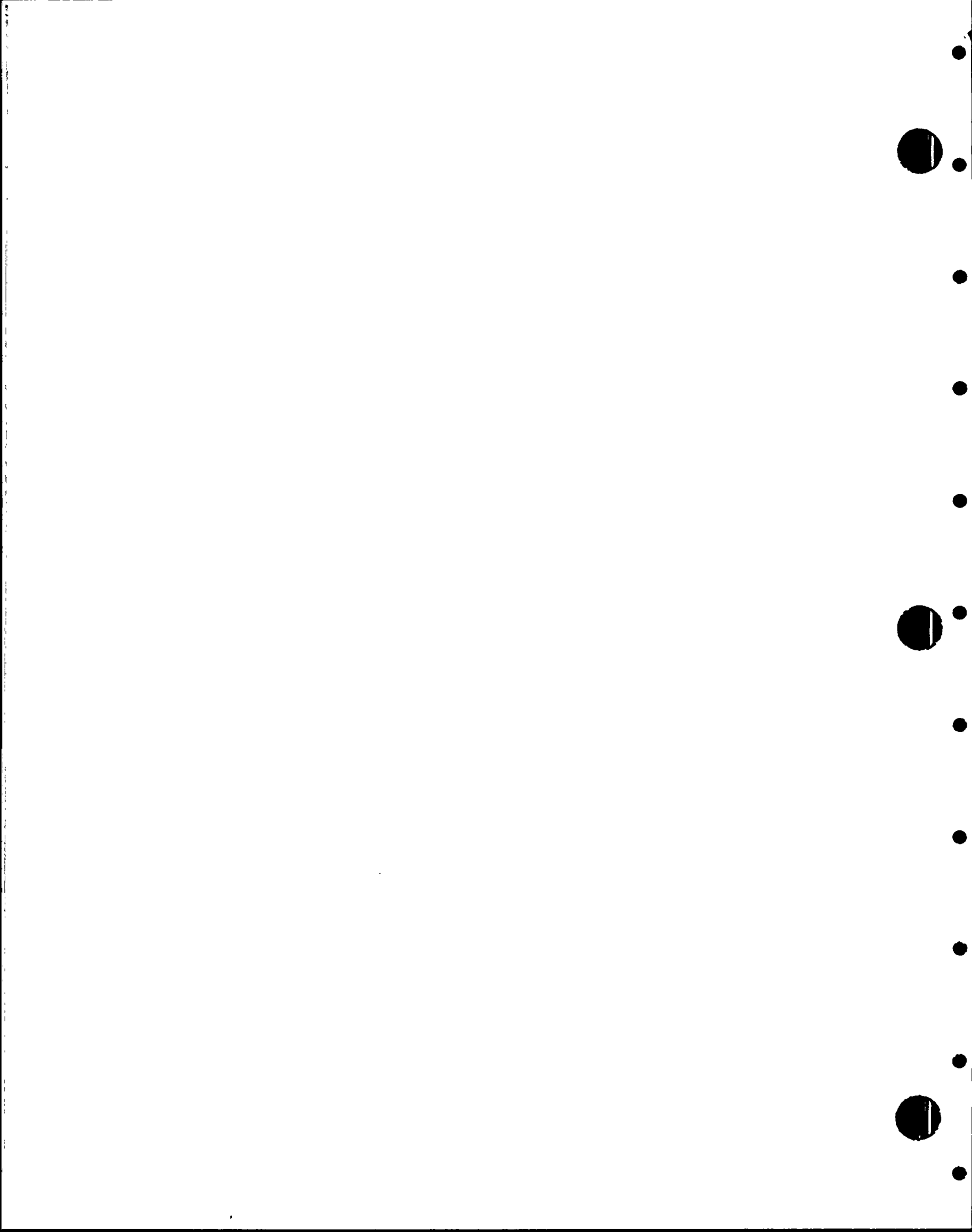
(B) *Inspection.* Subject to the terms and restrictions of the Project Agreement, the Consent and Amendment and any restrictions of the NRC, the Lessor shall have the right, but not the duty, to inspect Unit 1 and the Common Facilities at its expense and risk.

(C) *Capital Improvements.* If and to the extent required by the Project Agreement, *unless* prohibited by applicable law or regulation, the Lessee, at its sole expense (unless financed from the proceeds of a Supplemental Financing), will promptly participate under the Project Agreement in the making of any Capital Improvement so as to maintain the "Generation Entitlement Share" (as defined in the Project Agreement, as amended by the Consent and Amendment) of the Lessor in respect of its Interest.

DAMAGE OR
DESTRUCTION;
PAYMENT OF
CASUALTY VALUE:

(A) *Repair.* If APS, as operator, shall be required to repair or reconstruct Unit 1 pursuant to Section 16.1 of the Project Agreement, the Lessee shall pay that portion of the cost thereof equal to the Lessor's "Generation Entitlement Share" in respect of the Interest and the Lessee shall be entitled to reimbursement for such payment to the full extent of the Lessor's share of the proceeds of "Project Insurance" (as defined in the Project Agreement).

(B) *Destruction.* If Unit 1 shall have been destroyed under circumstances described in Section 16.2. of the Project Agreement and (i)



the Lessee and the other ANPP Participants fail to agree to repair or reconstruct Unit 1 and (ii) the Lessee, in its sole discretion, shall determine not to exercise its rights to effect restoration and reconstruction of Unit 1 as permitted by such Section (an *Event of Loss*), then the Lessee shall pay to the Lessor an amount equal to the Casualty Value of the Interest (including the Casualty Value of each Capital Improvement subject to a Lease Supplement). In such case, the Lessee shall be entitled to receive the Lessor's share of the proceeds of "Project Insurance" up to the amount of such Casualty Value actually paid and, if other ANPP Participants shall have elected to restore or reconstruct Unit 1 pursuant to such Section 16.2, the Lessor shall sell the Interest to such ANPP Participants for an amount equal to the salvage value thereof.

TAX ASSUMPTIONS:

The tax assumptions with respect to the sale and leaseback transaction contemplated hereby are set forth in the "Proposal Assumptions and Requested Information" at Tab 4.

INSURANCE:

The Lessee will use its best efforts to cause APS, as operator, to carry such insurance as shall be required from time to time under and pursuant to the Project Agreement.

Insurance in respect of "public liability" is provided for PVNGS on the basis of the limitation of liability prescribed by the Price-Anderson Act. See Legal Memorandum at Tab 7.

Casualty insurance in respect of the loss of Unit 1, as well as Unit 2 and Unit 3 at PVNGS, is provided through the Project Agreement. Although the ANPP Participants have obtained all the operating period casualty insurance that is presently available for Unit 1, the amount of such coverage available with respect to the Facility is substantially less than "casualty value" in a conventional facility sale and leaseback transaction. However, notwithstanding the limitation on the amount,

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nuclear insurance carriers have not imposed a typical co-insurance clause.

DEEMED LOSS EVENT:

A *Deemed Loss Event* shall occur if the Owner Participant or the Owner Trustee or any affiliate of either shall at any time have become subject to regulation by the New Mexico Public Service Commission, the public service or public utility commission or authority of any other state, the FERC pursuant to the Federal Power Act or the SEC pursuant to the Public Utility Holding Company Act, or any other Federal (other than the NRC) or state utility regulatory authority having jurisdiction, as a result of (a) the Lessor's ownership of the Interest, or (b) the undertaking or performance of the Owner Participant's or the Owner Trustee's obligations under any Transaction Document, *except* (i) to the extent of regulation to which the Owner Participant or the Owner Trustee or any affiliate of either is otherwise subject by reason of its lease financing or other activities and (ii) any use of the Interest pursuant to the Support Agreements, the Project Agreement and the Consent and Amendment following the expiration or termination of the Lease. If any such regulatory authority shall assert jurisdiction, the Lessee shall have an opportunity to contest such assertion.

If a *Deemed Loss Event* shall occur the Lessor may terminate the Lease, in which case the Lessee shall re-acquire the Interest by payment of a *Special Casualty Value*, which value shall be computed on the basis of a zero residual value of the Interest. Furthermore, if it so elects, the Lessee may assume the obligation of the Lessor in respect of the Secured Notes or any series thereof, in which case the *Special Casualty Value* shall be reduced by an amount equal to the unpaid principal amount of the Secured Notes, or the series thereof, so assumed.



AFTER-TAX BASIS:

The term *After-Tax Basis* shall be defined to mean, with respect to any indemnity payment to the Lessor, the Owner Participant, the Indenture Trustee, the Lender, or the Collateral Trust Trustee (each an *Indemnitee*), that such indemnity payment will be grossed-up by the Lessee to make the Indemnitee whole for the net amount of additional Federal, state and local income taxes payable as a result of the receipt of such indemnity payment.

GENERAL INDEMNITY:

Under the Transaction Documents the Lessee will indemnify and hold harmless each Indemnitee, on an After-Tax Basis, from and against all claims in any way relating to, or arising out of, (i) any nuclear incident or any extraordinary nuclear occurrence (See Legal Memorandum at Tab 7), (ii) the Transaction Documents or the performance or enforcement of any of the terms of the Transaction Documents, (iii) the disposition of the Interest (whether by the Lessor or APS under the Project Agreement) in connection with a termination of the Lease upon an Event of Default, an Event of Loss or a Deemed Loss Event, (iv) the design, manufacture, use or other events relating to the Project Site, Unit 1, the Common Facilities or any other facilities on the Project Site or any accident in connection therewith (including any nuclear incident or extraordinary nuclear occurrence), or (v) such other matters as are not unusual in sale and leaseback transactions; *provided, however* that the Lessee shall not be required to indemnify any Indemnitee for (A) any claim arising from acts or events which occur after relinquishment of the Interest in accordance with the Lease, subject, however, to the provisions of the Consent and Amendment, (B) any claim against any Indemnitee resulting from the willful misconduct or gross negligence of such Indemnitee, or (C) any voluntary transfer by the Owner Trustee of the Interest or any portion thereof or by the Owner Participant of all or any part of its interest in the Trust Estate. The Lessee shall have rights of subrogation with respect to any indemnity paid.



GENERAL TAX
INDEMNITY:

Under the Transaction Documents, except as provided below, on written demand, the Lessee will pay, and indemnify and hold each Indemnatee harmless from and against, on an After-Tax Basis, any and all fees, taxes (including gross receipts, sales, use, value added, ad valorem, property, personal and real, tangible and intangible, and stamp taxes) or other charges, including all penalties, fines, additions to tax and interest thereon (*Taxes*) imposed on or with respect to any such Indemnatee, the Facility, the Interest, the Project Agreement, the Project Site, the Trust Estate, any component or any part thereof or interest therein by any Federal, state or local government or other taxing authority in the United States or any foreign government or taxing authority in connection with or relating to (i) the construction, financing, purchase, ownership, lease, operation, redelivery or disposition of the Facility or the Interest (including any Capital Improvement), (ii) the payment of Rent, or (iii) otherwise with respect to or in connection with the transactions contemplated by the Transaction Documents.

The foregoing indemnity shall not apply to certain Taxes, including the following Taxes and such other Taxes as shall be agreed upon by the Lessee and the Owner Participant:

(1) any Tax based on, or measured by, the net income of the Indemnatee and imposed by (x) the United States, or (y) any state or local governmental or other taxing authority of a jurisdiction in the United States or any foreign country; *provided, however*, that the foregoing exception shall not apply to any Taxes imposed upon any indemnity payment to the extent that any such Taxes are taken into account in the determination of After-Tax Basis; and

(2) Taxes imposed solely as a result of the willful misconduct, gross negligence or default of such Indemnatee.



The Lessee shall be permitted to contest the imposition of any such Tax.

**SPECIAL TAX
INDEMNITY:**

The Lessee will indemnify the Owner Participant, on an After-Tax Basis, for (A) any disallowance, delay in obtaining, recapture, ineligibility to claim or reduction of the Federal, state and local income tax benefits contemplated by the Tax Assumptions and *resulting from the acts, omissions or misrepresentations of the Lessee*. The Lessee will provide representations in a Tax Indemnification Agreement with respect to the "Tax Assumptions" included in the Transaction Documents; *provided, however*, that the Lessor and the Owner Participant will bear all risks that the Lease is a true lease for Federal tax purposes.

**RIGHTS TO ASSIGN OR
SUBLEASE:**

The Lease will provide that, without the prior written consent of the Lessor (which consent shall not be unreasonably withheld), the Lessee shall not assign, sublease, transfer or encumber (except for Permitted Liens) its leasehold interest under the Lease; *provided, however*, that without such consent the Lessee may (i) transfer its interest to any affiliate of the Lessee under circumstances where the Lessee remains liable under the Lease, (ii) if permitted by the Project Agreement, merge or consolidate with another entity which assumes the liability of the Lessee under the Lease, or (iii) enter into power sales contracts, interconnection or other utility agreements with respect to Unit 1 or the Common Facilities or the sale of power and energy from the Facility.

SPECIAL TERMINATION: The Lessee shall have the option to terminate the Lease at any time on or after the twentieth Basic Rent Payment Date, upon giving notice to the Lessor that the Interest is (i) uneconomic to the Lessee or (ii) economically obsolete for any reason, including burdensome governmental regulations. Although the obligations of PNM under the Project Agreement, the Consent and Amendment and the Support Agreements shall continue unaffected, termination pursuant to this



option shall result in (i) the disposition of the Interest to a person other than the Lessee who is then or will become authorized to acquire and own the Interest under the License and (ii) the payment by the Lessee of the amount, if any, equal to the amount by which Termination Value (to protect a zero residual) exceeds the proceeds of such disposition.

CONDITIONS TO
OBLIGATIONS:

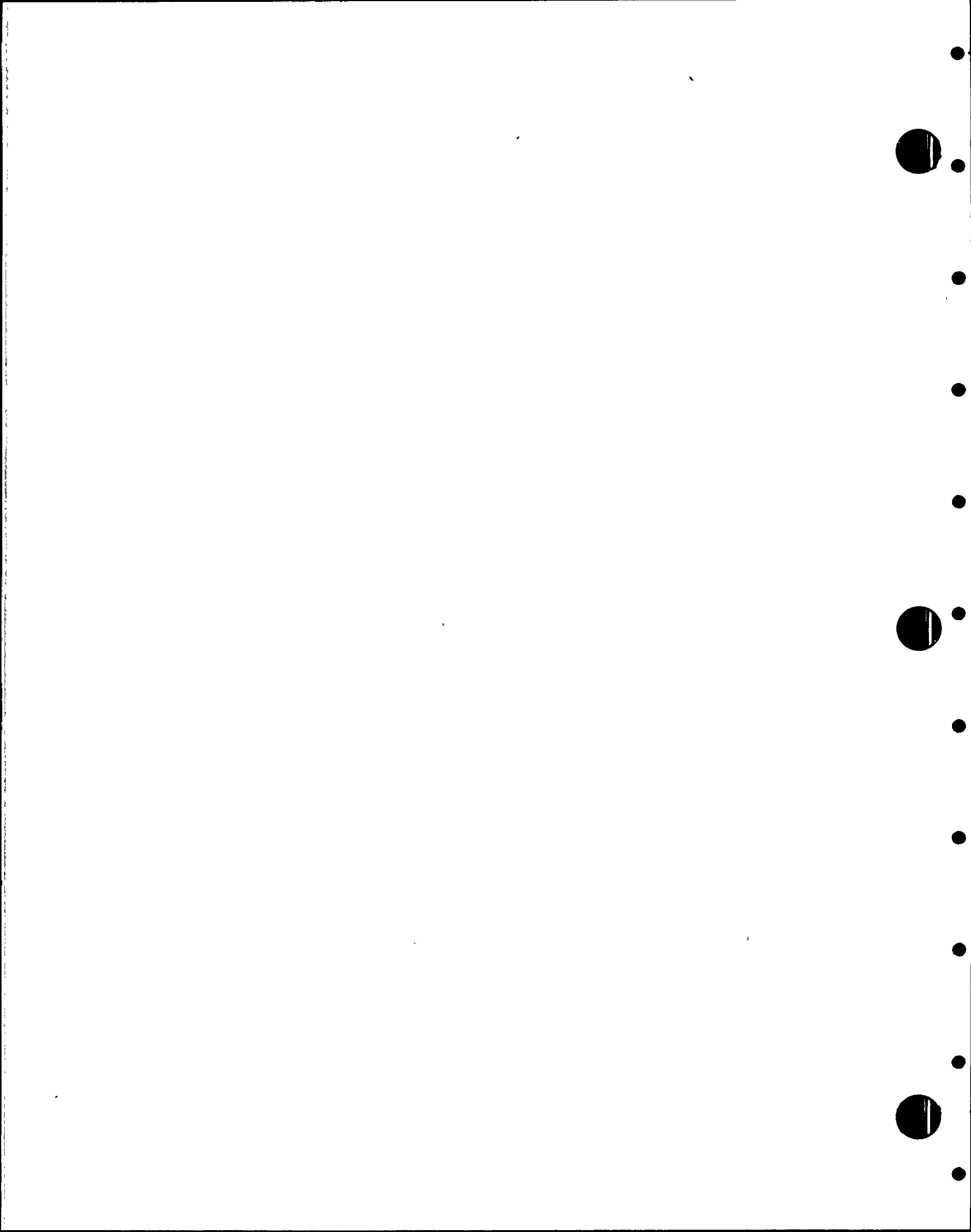
The Owner Participant's obligation to make its investment in the Interest on the Closing Date, the obligation of the Lessee to sell and lease back the Interest on the Closing Date, and the obligation of the Lessee and the Owner Participant, respectively, to complete the transactions contemplated hereby shall be subject to the execution and delivery of the Transaction Documents, in each case in form and substance acceptable to the Lessee and to the Owner Participant, respectively, and other conditions which are generally included in sale and leaseback transaction documents, including, without limitation,

(a) regulatory approvals, in form and substance satisfactory to the Lessee, of all regulatory authorities having jurisdiction; and

(b) the determination by the Lessee's certified public accountants that the Lease is an "operating lease" for the Lessee's accounting purposes under Statement of Financial Accounting Standards No. 13.

TRANSACTION COSTS:

The Owner Participant will pay Transaction Costs if the transaction is consummated. If, for any reason, the transaction is not consummated, Transaction Costs will be paid by the Lessee, unless such failure is caused by a default by the Owner Participant in the making of its investment or the performance of the duties of an Owner Participant contemplated hereby or by the Transaction Documents as executed.



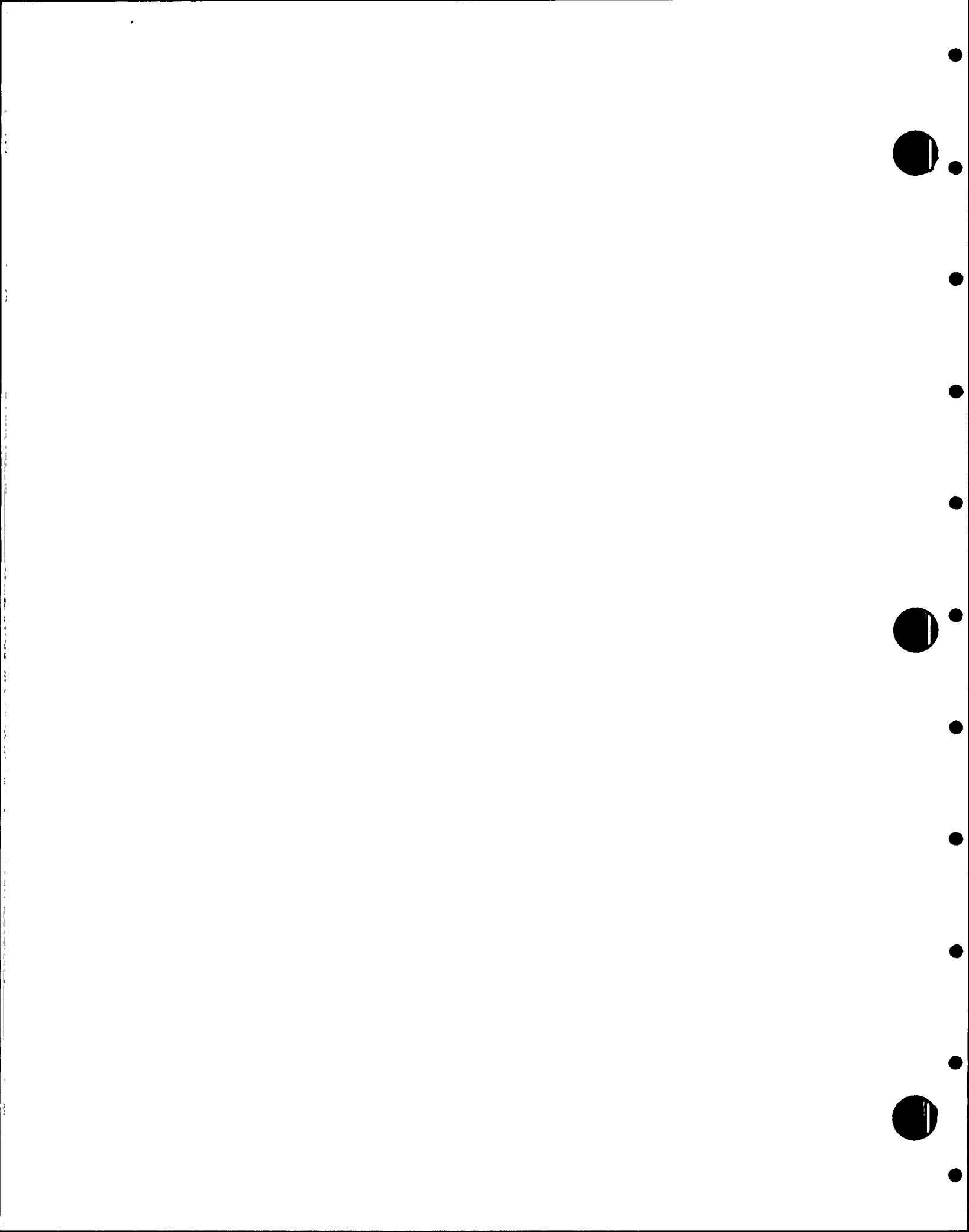
**PROPOSAL ASSUMPTIONS
AND
REQUESTED INFORMATION**

I. PROPOSAL ASSUMPTIONS

Respondents are requested to submit proposals on a level rent basis (when annualized). However, since PNM is interested in minimizing the present value of all lease rental payments when discounted, to the Closing Date, at a rate of 12% per annum, proposals utilizing unique rental structures will be considered. The Lessee will not accept the risk of tax indemnification resulting from any structure. All proposals should include a summary of terms in the form of the Summary of Terms set forth herein, with any additions, deletions and alterations specifically defined.

All proposals should be based on the following assumptions and should include the information requested in Part II hereof.

LESSOR'S COST:	\$400,000,000
CLOSING DATE:	December 18, 1985
LEASE COMMENCEMENT DATE:	The Closing Date
INTERIM RENT PAYMENT DATE:	April 1, 1986
BASIC RENT PAYMENT DATES:	Each April 1 and October 1 of each year, commencing October 1, 1986 and ending October 1, 2014.
SECURED NOTES:	Three series of Notes issued on the Closing Date and maturing as follows: Series A Secured Notes due April 1, 1991 Series B Secured Notes due April 1, 1996 Series C Secured Notes due October 1, 2014
INTEREST RATES ASSUMED ON THE SECURED NOTES:	Series A Secured Notes - 10.125% Series B Secured Notes - 11.125% Series C Secured Notes - 12.000%
TAX ACCOUNTING METHOD:	Accrual
INVESTMENT CREDIT:	The Lessee will retain the investment credit. The transaction will constitute a "sale-and-leaseback transaction" for purposes of §1.47-3(g) of the Treasury Regulations.
SECTION 168(F)(12) COMPONENTS:	None



ACRS CLASS: "10-year property"

FEDERAL TAX RATE: 46%

DEPRECIABLE BASIS: 100% of Lessor's Cost of the Interest

RECOVERY PERCENTAGE: Basis is equal to 100% of Lessor's Cost and is taken to a zero salvage value based upon the following schedule:

<u>Year</u>	<u>Percentage</u>	<u>Year</u>	<u>Percentage</u>
1985	8%	1990	10%
1986	14%	1991	9%
1987	12%	1992	9%
1988	10%	1993	9%
1989	10%	1994	9%

TRANSACTION COSTS: Assumed to be 1.5% of Lessor's Cost and to be paid by the Owner Participant on the Closing Date.

II. REQUESTED INFORMATION

EQUITY INVESTMENT (Percent of Lessor's Cost): _____% (excluding Transaction Costs and the interim payment of interest on April 1, 1986)

SECURED NOTES (Percent of Lessor's Cost):

Series A Secured Notes: _____%

Series B Secured Notes: _____%

Series C Secured Notes: _____%

SEMI-ANNUAL BASIC RENT FACTOR(S) (Percent of Lessor's Cost): _____%

PRE-TAX PRESENT VALUE OF LEASE RENTAL PAYMENTS (Discounted, to the Closing Date, at 12% and Expressed as a Percent of Lessor's Cost): _____%

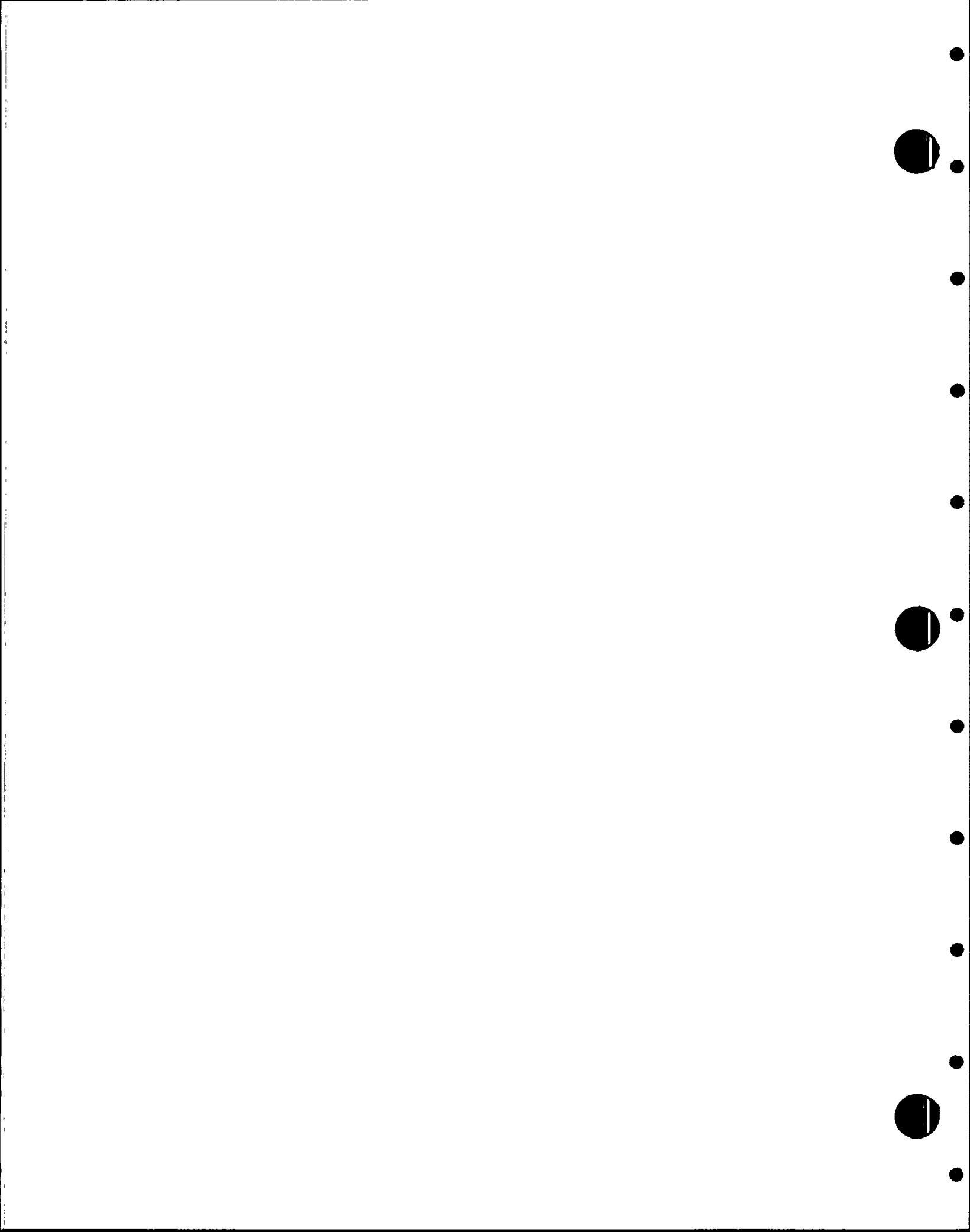
IMPLICIT LEASE RATE: _____% (for the period from the Closing Date to the Last Basic Rent Payment Date)

AVERAGE LIFE OF SECURED NOTES:

Series A Secured Notes: _____ years

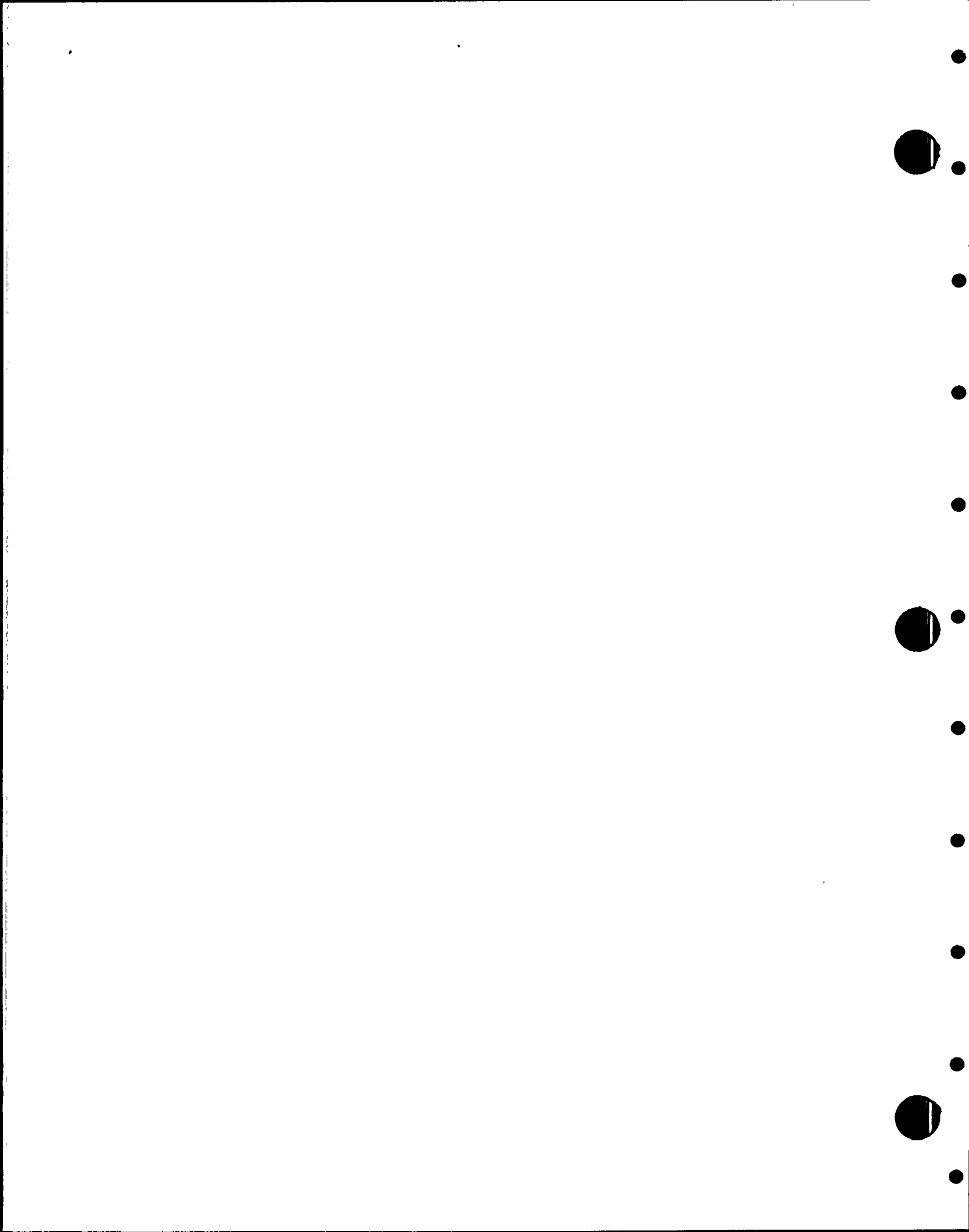
Series B Secured Notes: _____ years

Series C Secured Notes: _____ years



In addition, the following information should be provided with all proposals submitted:

- 1) Expiration date of equity commitment
- 2) The identity of acceptable Owner Participant's counsel
- 3) Amortization schedules for the Secured Notes
- 4) Casualty, Termination and Special Casualty Values
- 5) State tax rate assumption
- 6) The dates on which the Lessor's first tax year commences and concludes
- 7) Tax estimation method and the first estimated tax payment date on which the Lessor would take tax benefits associated with ownership of the Interest
- 8) The portion of transaction costs which is expected to be capitalized, if any, and that portion which will be amortized



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

-----X	:	
In the matter of	:	
ARIZONA PUBLIC SERVICE	:	
COMPANY, et al,	:	DOCKET NO. STN 50-528
(Palo Verde Nuclear	:	
Generating Station, Unit 1)	:	
-----X	:	

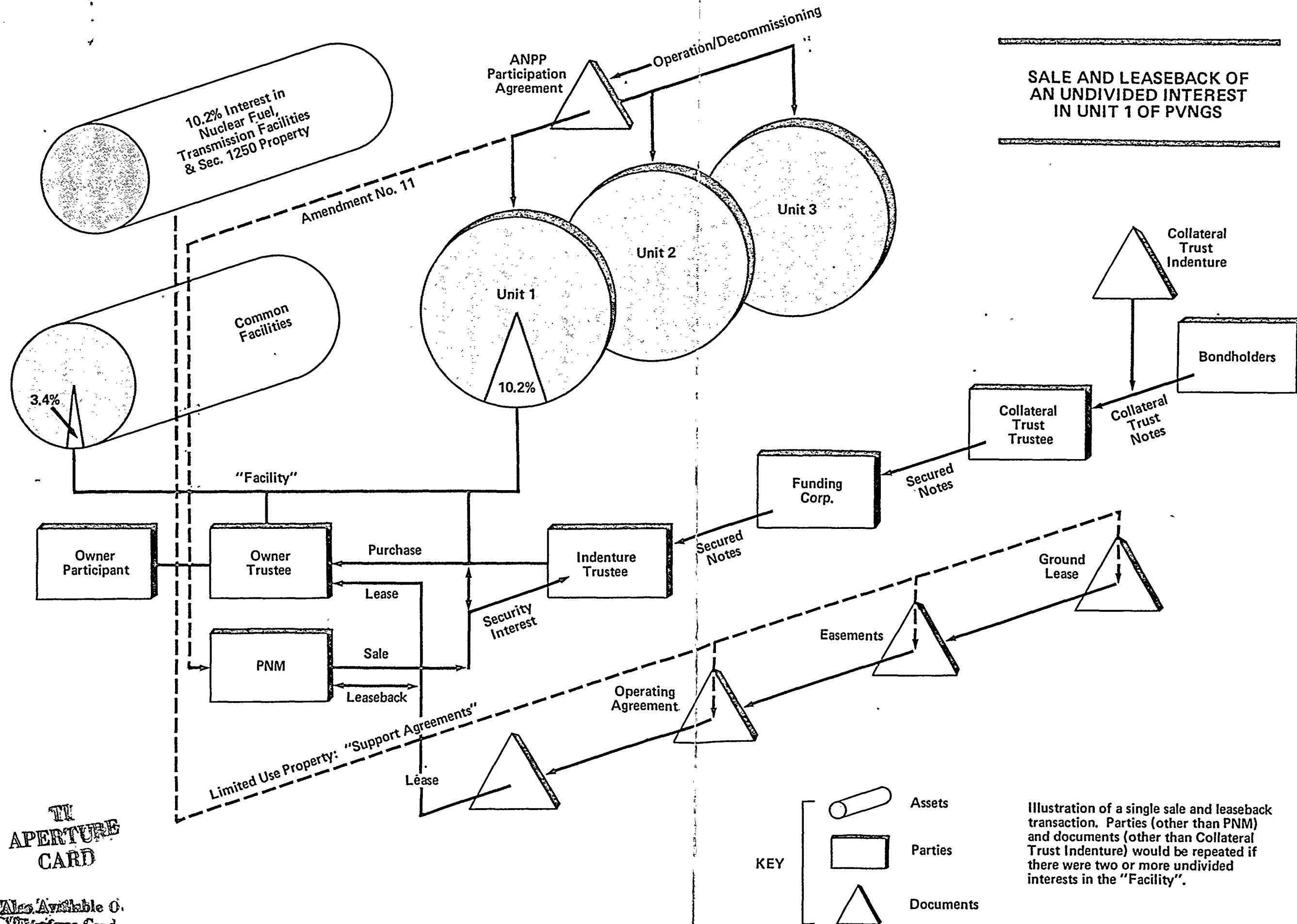
APPENDIX H

TO

MEMORANDUM IN SUPPORT OF THE APPLICATION
IN RESPECT OF A SALE AND LEASEBACK
FINANCING TRANSACTION BY
PUBLIC SERVICE COMPANY OF NEW MEXICO

DIAGRAMATIC RENDERING OF A SALE
AND LEASEBACK OF AN UNDIVIDED INTEREST
IN UNIT 1 OF PVNGS

SALE AND LEASEBACK OF AN UNDIVIDED INTEREST IN UNIT 1 OF PVNGS



TV
APERTURE
CARD

Also Available On
Vapor Card

KEY

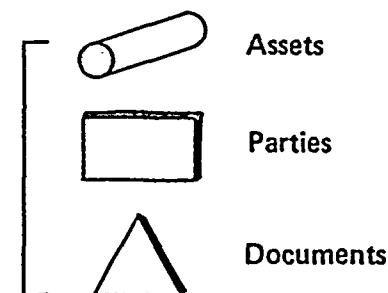


Illustration of a single sale and leaseback transaction. Parties (other than PNM) and documents (other than Collateral Trust Indenture) would be repeated if there were two or more undivided interests in the "Facility".

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