

FS Agreement No. 12-MU11050200-001
Cooperator Agreement No. 11PW5920

MEMORANDUM OF UNDERSTANDING
Between The
STATE OF CALIFORNIA PUBLIC UTILITIES COMMISSION
And The
USDA, FOREST SERVICE
CLEVELAND NATIONAL FOREST

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the State of California Public Utilities Commission, hereinafter referred to as "CPUC," and the USDA, Forest Service, Cleveland National Forest, hereinafter referred to as the "U.S. Forest Service."

Background: San Diego Gas & Electric Company (SDG&E) intends to submit a revised application for a Master Special Use Permit (MSUP) to the U.S. Forest Service that combines approximately 70 special use permits and other approvals for various existing electric transmission and distribution facilities located throughout the Cleveland National Forest (CNF). On March 10, 2009, the U.S. Forest Service circulated for public comment an Environmental Assessment (EA) of SDG&E's proposed MSUP prepared pursuant to the National Environmental Policy Act (NEPA). In response to public comments on the EA, the U.S. Forest Service determined that the proposed MSUP should be revised to include a robust fire safety component for the existing power line facilities, many of which were originally constructed over 70 years ago. The U.S. Forest Service also determined that an Environmental Impact Statement (EIS) under NEPA would be required for the project.

Title: Joint Environmental Analysis for the San Diego Gas & Electric MSUP

I. PURPOSE: The purpose of this MOU is to document the cooperation between the parties to cooperate as joint leading agencies in accordance with the following provisions.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The U. S. Forest Service, as lead agency under 40 CFR 1501.5(b), has determined that an Environmental Impact Statement (EIS) is required before a decision on the Project can be made. The EIS must comply with the National Environmental Policy Act of 1969, 42 U.S.C. 4371 et seq., (NEPA) and all other applicable laws, executive orders, regulations, and direction, including, but not limited to, the Council of Environmental Quality (CEQ) Regulations (40 CFR 1500-1508), Forest Service Regulations (36 CFR 220) Forest Service Manual 1950, and Forest Service Handbook 1909.15.



The CPUC, as the lead agency under the California Environmental Quality Act (CEQA) and as joint lead agency under 40 CFR 1501.5(b), has determined that an Environmental Impact Report (EIR) is required for the SDG&E application for a Permit to Construct (PTC) for the Project. The EIR must comply with CEQA, California Public Resource Code Division 13, and all other applicable laws and regulations.

CEQ regulations (40 CFR 1506.2) direct federal agencies to cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, including joint planning processes, environmental research and studies, public hearings, and environmental impact statements. CEQA Guidelines Sections 15222 and 15226 encourage similar cooperation by state and local agencies with federal agencies when environmental review is required under both CEQA and NEPA. Under these conditions, the Parties shall be joint lead agencies developing a joint EIS/EIR document that complies with all applicable laws.

This MOU meets the intent of these regulations and provides guidance on the roles each lead agency will take.

In consideration of the above premises, the parties agree as follows:

III. CPUC SHALL:

- A. As lead State agency, be responsible for ensuring compliance with all requirements of CEQA and shall be responsible for the scope and content of the EIR portion of the joint EIR/EIS document;
- B. Ensure that the approved Contractor will complete the environmental analysis and prepare the EIR/EIS in a form and in substance that is consistent with this MOU and agreeable to the Parties;
- C. Have the sole responsibility for all costs incurred pursuant to the Contract;
- D. Have the responsibility for managing the Contract, including the assignment of work, and review and payment of invoices for approved work; the Contractor may employ and/or substitute subcontractors and/or experts only after it receives CPUC approval;
- E. Act as the intermediary, when necessary, for communications between the U.S. Forest Service and the Contractor related to the EIS/EIR;
- F. Require full cooperation of the Contractor with respect to participation in public meetings required by the U.S. Forest Service or CPUC, as specified in the Contract, to foster public familiarity and participation with respect to the NEPA/CEQA process;



- G. As required, the CPUC will be responsible for consulting with the California Department of Fish and Game;
- H. Be responsible for conducting joint public hearings;
- I. Will use its best efforts to ensure that the Contractors agree to all of the following conditions:
- (a) Contractor agrees to indemnify, defend and save harmless the CPUC and the U.S. Forest Service, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
 - (b) The Contractor shall sign a disclosure statement specifying that they have no financial or other interest in the outcome of the Project.
 - (c) The Contractor shall cooperate in defense of any appeal and/or suit involving the legality or adequacy of the U.S. Forest Service's or CPUC's compliance with NEPA or CEQA with regard to this EIS/EIR.
 - (d) The Contractor shall provide all graphic handouts and presentations for public meetings/hearings. The Contractor shall submit any such graphic presentations and/or handouts to the U.S. Forest Service and the CPUC for approval prior to distributing them at public meetings/hearings.
 - (e) The Contractor shall be responsible for all stenographic, clerical, graphics, layout, printing, and like work.
 - (f) The Contractor shall mail scoping letters and other correspondence, and arrange for publication of notices as required by the NEPA/CEQA processes.
 - (g) The Contractor shall produce an internal administrative Draft EIR/EIS for review by the U.S. Forest Service and CPUC prior to publication of the Draft EIR/EIS. The administrative draft shall include all text, maps, appendices, tables, charts, and other materials that will be incorporated in the Draft EIR/EIS for publication. As determined by both the U.S. Forest Service and CPUC, the Contractor shall provide a reasonable number of copies to each party to meet internal review needs.
 - (h) The Draft EIR/EIS shall include evaluation of potential routes, alternative designs, and impacts. The Draft and Final EIR/EIS will apply whichever NEPA and CEQA requirement is more stringent in the analysis. The Draft and Final



EIR/EIS will describe any inconsistencies between Federal plans or laws as they pertain to the proposed action and describe the extent to which the U.S. Forest Service would reconcile the proposed action with the plan or law.

(i) Subject to Parties' comments during the environmental analysis and responses to the administrative Draft and Final EIR/EIS, the Contractor shall have primary responsibility for writing and rewriting all sections, parts, and chapters of the EIR/EIS.

(j) The U.S. Forest Service is a third-party beneficiary to the Contract with the right to enforce Contract provisions affecting its interests.

IV. THE U.S. FOREST SERVICE SHALL:

- A. As lead Federal agency, be responsible for ensuring compliance with the requirements of NEPA and CEQ regulations, along with all applicable federal laws, executive orders, regulations and direction, and shall be responsible for the scope and content of the EIS portion of the joint EIR/EIS document;
- B. Provide updated mailing lists of stakeholders in affected National Forest or other Federal land to the CPUC/ Contractor for soliciting input and distributing the scoping letter, Draft and Final EIR/EIS, and Record of Decision as required by law;
- C. Review and, if acceptable by the U.S. Forest Service, approve Contractor's draft Notice Of Intent (NOI), public notices, and Notice of Availability of the document, before Contractor's publication in appropriate periodicals;
- D. Review and, if acceptable by the U.S. Forest Service, approve Contractor's draft scoping letter, before Contractor sends out letter to stakeholders in mailing list provided by the Forest Service;
- E. File Draft and Final EIR/EIS with the Environmental Protection Agency (EPA);
- F. Reserve the right to prepare, at its option, selected sections of the Draft and/or Final EIS portion of the EIR/EIS; as appropriate, the U.S. Forest Service will provide such prepared material in a time and manner consistent with the agreed upon schedule;
- G. Be responsible for arranging for and participating in agency coordination meetings with the United States Fish and Wildlife Service for a Section 7 Consultation and with the California State Historic Preservation Officer for a Section 106 Consultation regarding proposed federal action;



- H. Review and, if acceptable by the U.S. Forest Service, process SDG&E's applications for modifications to its Special Use Permits for those portions of the Project that are subject to U.S. Forest Service jurisdiction in a time and manner consistent with the agreed upon schedule; and
- I. To the extent that the Scenic Integrity Objectives or any other aspects of any Cleveland National Forest Land Management Plan may preclude, or are potentially inconsistent with, the rebuilding of existing transmission infrastructure or the construction of new transmission lines in connection with the proposed Project that is the subject of this MOU, the U.S. Forest Service will identify such potential inconsistencies at the beginning of the CEQA/NEPA scoping process, and shall collaborate with the CPUC and the Contractor to ensure that sufficient information is collected during the course of the environmental review process to propose alternative alignments or mitigation designed to meet plan objectives, or allow the U.S. Forest Service to amend its current Land Management Plan as part of the joint EIR/EIS for the Project to remove such inconsistencies and allow the Project to be carried forward.

V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

- A. Schedule of Deadlines. The CPUC intends to make a decision on the Final EIR by the end of August 2013. Both Parties will attempt to meet this timeframe. Attached to this MOU is a draft detailed schedule, which the Parties intend to serve as a template for the actual schedule of deadlines that they intend to adhere to in completing the environmental review that is the subject of this MOU. Once the details of this schedule are agreed to, the Parties shall undertake their best efforts to comply with all deadlines set forth in said schedule.
- B. Contractor Selection. The CPUC has prepared and noticed a Request for Qualifications (RFQ) for the preparation of the EIR/EIS in accordance with State contracting requirements. The CPUC has selected a contractor in accordance with the provisions of the CPUC contracting procedures and California law and has informed the U.S. Forest Service of its selection. The U.S. Forest Service has agreed to the CPUC's selection. If for any reason, a change in the Contractor or subcontractor becomes necessary, the U.S. Forest Service and CPUC will jointly engage in selection procedures for a new Contractor.
- C. Agency Project Representatives. For the purpose of coordinating the responsibilities of the Parties for the preparation of the EIS/EIR on the Project, the persons listed below are the designated Agency Project Representatives of the Parties. Actual delivery of written notice to the following representatives, or such substitute representatives as the respective Parties may hereinafter designate, shall constitute notice to that organization.



D. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this instrument.

Principal Cooperator Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Attention: Lisa Orsaba California Public Utilities Commission 505 Van Ness Ave. 4 th Floor San Francisco, CA 94102 Telephone: (415) 703-1966 FAX: (415)703-2200 Email: lob@cpuc.ca.gov	Name: Same as Program Contact Address: City, State, Zip: Telephone: FAX: Email:

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Attention: Debbie Hobbs USFS, Cleveland National Forest 10845 Rancho Bernardo Road, STE 200 Rancho Bernardo, CA 92127 Telephone: (858) 674-2904 FAX: Email: dshobbs@fs.fed.us	Name: Karen McWilliams USFS, Grants Management Specialist 701 N. Santa Anita Ave. Arcadia, CA 91006 Telephone: (626) 574-5221 FAX: (626) 574-5363 Email: ktmcwilliams@fs.fed.us

E. NON-LIABILITY. The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this instrument.

F. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or CPUC is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To CPUC, at CPUC's address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.



- G. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service or CPUC from participating in similar activities with other public or private agencies, organizations, and individuals.
- H. ENDORSEMENT. Any of CPUC's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of CPUCs products or activities.
- I. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate instruments and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation instrument that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective instrument, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective instruments must comply with all applicable law

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- J. USE OF U.S. FOREST SERVICE INSIGNIA. In order for CPUC to use the U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.
- K. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this instrument, or benefits that may arise therefrom, either directly or indirectly.
- L. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept



confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).

The parties agree that confidential information received from the other party shall be treated and maintained as confidential to the extent allowed by federal and state laws, regulations, and policies.

- M. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned; a) while driving a Government owned vehicle(GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when performing any work for or on behalf of the Government.
- N. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. CPUC shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.
- O. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. CPUC shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

"This institution is an equal opportunity provider."

- P. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.



- Q. DEBARMENT AND SUSPENSION. CPUC shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should CPUC or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

- R. MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.

- S. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through November 30, 2016 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.

- T. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.



PAUL CLANON
Executive Director
California Public Utilities Commission

1-20-12

Date



WILLIAM METZ
Forest Supervisor
U.S. Forest Service, Cleveland National Forest

1/23/12

Date



The authority and format of this instrument have been reviewed and approved for signature.

Keillie L. Hamilton

1/19/12

KEILLIE L. HAMILTON

Date

U.S. Forest Service Grants & Agreements Specialist

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.