

Problem 3.3

Four power companies (the “Participants”) are tenants–in–common of a nuclear steam electric generating facility, Regional Nuclear Project (the "Project"). The percentage shares of undivided ownership in the Project are:

Participant	Percent Interest
Reliable Power	30%
City Power	25%
Mammoth Power	25%
Affordable Power	20%

A Participation Agreement (the “Agreement”) governs the relationship between the Participants. Under the Agreement, the Project is managed by (i) a Management Committee, consisting of one representative from each Participant, and (ii) a Project Manager, Reliable Power. The vote of representatives representing a majority–in–interest of the Participants is required for action by the Management Committee. The Project Manager is responsible for the operation and management of the Project, subject to the Management Committee’s right to:

- (1) review and act upon the Project Manager's recommendations concerning (a) employees, (b) the annual budget, and (iii) operating practices and procedures;
- (2) approve all contracts to be entered into with respect to the Project (generally entered into in the name of the Project); and
- (3) remove the Project Manager.

The Agreement provides that costs and expenses arising out of, or related to, the ownership and operation of the Project are borne each Participant in proportion to its ownership interest.

Under the Agreement, the electric energy generated by the Project is divided among the Participants in proportion to their ownership interests. Such electricity is transmitted and sold to the public by each Participant individually through its own utility electric distribution system. No Participant has the right to sell electricity for the joint benefit of all Participants.

Ynder the Agreement, no Participant is liable for costs attributable to another's interest in the Project.

Giving reasons to support your answer, discuss whether the Participants are partners or joint–venturers in the Project. *See, State v. Houston Lighting & Power Co.*, 609 S.W.2d 263 (Tex. App. 1980).