



DOCKET NUMBER
PROPOSED RULE PR 50
(66FR 29244)

DOCKETED
USMRC

4

01 AUG 13 A9:14

August 7, 2001

OFFICE OF SECRETARY
REGULATIONS
ADJUDICATIONS STAFF

Secretary, U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff

**Re: Comments Relative The Proposed Changes in Regulations 10 CFR 50.75
Governing Decommissioning Trust Agreements**

Dear Secretary:

Omaha Public Power District is a political subdivision of the State of Nebraska that provides electricity to approximately 300,000 customers in Eastern Nebraska and is the owner and licensed operator of the Fort Calhoun Nuclear Power Station. Between 1982 and 1990, the District funded Fort Calhoun Station decommissioning in a non-mandated external fund. Since 1990, the District has funded Fort Calhoun Station's decommissioning expense under the Fort Calhoun Station Unit No. 1 Decommissioning Funding Plan Trust Agreement (see attached copy) per NRC regulations 10 CFR 50.75. Since that time the District has also notified the NRC of its annual external audits and annual accountings of the Trust. As required under current regulations, the District's Decommissioning Trust Fund is held externally by Trustee First National Bank of Omaha, a federally chartered national bank.

As a political subdivision of the State of Nebraska, the District is limited to "prudent man" and "investment grade" type of investments by State of Nebraska statute. Additionally, the District's investment purchase policy is to "buy-and-hold" securities until maturity. The District's practice when a security matures in the Decommissioning Fund is to inform the Decommissioning Fund Trustee to purchase and settle specific investments from specific brokers.

The District has reviewed the May 30, 2001 proposed modifications to NRC regulations 10 CFR 50.75(e)(1)(i) and (ii) and new paragraph 10 CFR 50.75(h) relating to decommissioning trust provisions for nuclear power plants. The District does not believe that the investment direction it provides to its Decommissioning Fund Trustee is exercising "day-to-day investment management control" under the proposed new paragraph 10 CFR 50.75(h). However, The District is concerned that the NRC under 10 CFR 50.75(h) could interpret the District's investment direction as "day-to-day investment management control" and cause the District to pay for external investment management services to direct the Trust's investments.

Template = SECY-067

SECY-02

Secretary, U.S. Nuclear Regulatory Commission
August 7, 2001
Page Two

The change in this provision resulted from the NRC's stated concerns about whether decommissioning trusts are placing appropriate limits on the investments that the trustee may make (see Section IV Discussion – "Test 5" from the Summary of the proposed changes). It is OPPD's belief that as a political subdivision of the State of Nebraska with its accompanying investment restrictions, the District's "buy-and-hold" philosophy and a publicly elected Board of Directors oversight, the District is, by its nature, placing appropriate limits on the investments in the trust. Given the State limitation on investments, the District's limitation on trading and methodology of selecting investments, oversight by publicly elected officials, it is felt that an external manager as required under proposed 10 CFR 50.75 (h)(1)(i) would simply add an unnecessary cost.

The District has contacted Mr. Robert S. Wood of the NRC and he indicated that we should submit our concerns during the regulatory public comment period. He also stated that it was his interpretation that based on its current investment practices the District would not be in violation of the proposed new regulations.

Therefore, the District asks that you clarify that the District's Decommissioning Trust Fund investment procedures do not violate the new regulations prohibiting licensee day-to-day investment management control. In conclusion, the District recommends that an exception be made to 10 CFR 50.75 (h)(1)(i) for political subdivisions of States where investment management is addressed by State statute and meets "prudent man" restrictions.

If you have any questions, please contact me at 402-636-3055.



C. P. Moriarty
Division Manager – Finance

C: Robert S. Wood, NRC
Steve Olson, Fraser Stryker
C. N. Eldred
J. W. Thurber

Fort Calhoun Station Unit No. 1

Decommissioning Funding Plan
(the "1990 Plan")

Fort Calhoun Station Unit No. 1
Decommissioning Funding Plan (the "1990 Plan")

Section 1 - Introduction

Omaha Public Power District's (the "District") Fort Calhoun Nuclear Power Generating Station Unit No. 1's (the "Station") current operating license (the "License") issued by the Nuclear Regulatory Commission (the "NRC") expires in the year 2008. For planning purposes, it is assumed the Station will be retired at that time. In order to terminate the License, it will be necessary to Decommission the Station which the NRC defines as: "to remove [the Station] safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the License" (the "Decommissioning").

The District established a formal plan for the funding of the Decommissioning of the Station in February, 1983 (the "1983 Plan"). The 1983 Plan resulted from the efforts of an internal task force and a nationally recognized consultant. The District's Board of Directors have implemented the 1983 Plan and its current status is detailed further below.

Section 2 - NRC Financial Regulations For Decommissioning

The NRC issued regulations in June 1988 and a subsequent Regulatory Guide setting forth financial criteria for Decommissioning licensed nuclear facilities. This 1990 Plan addresses those regulations and criteria.

Section 3 - NRC Decommissioning Estimate - Fort Calhoun Station Unit No. 1

NRC regulation 10 CFR 50.75(c) elaborates on three items to provide adequate funding for Decommissioning.

First, a Minimum Decommissioning Amount for Decommissioning licensed facilities is calculated based on a pressurized water reactor ("PWR") and on the facility's megawatt thermal rating ("MWt"). The Station is a PWR of 1500 MWt rating. The computation for the Minimum Decommissioning Amount in 1986 dollars for the Station is as follows:

(\$75 million + \$8800 P),
where P equals the reactor's MWt rating

\$75 million + \$8800(1500 MWt)

\$75 million + \$13.2 million = \$88.2 million

"Annual Payments") will be calculated as follows:

First Year

The first Annual Payment to be deposited into the Fund will be the greater of the two following:

A. The District's Minimum Decommissioning Cost as determined using the herein defined NRC regulated formula divided by 26 (the years of remaining License life at the time of the 1983 Plan) times 7 (the number of years monies have been funded internally); or

B. The Balance Amount (as herein defined).

The first Annual Payment shall be met by depositing into the Fund, on the Effective Date of the Trust Agreement, such monies and unmatured securities (valued at amortized book cost) now held by the District in the District's presently existing internal Fort Calhoun Station Unit No. 1 Decommissioning Fund pursuant to the 1983 Plan, plus any additional funds, as are necessary to meet this first Annual Payment.

Subsequent Years

The Annual Payment required to be deposited to the Fund by the District for the second and subsequent years during the term of the Trust Agreement is calculated according to the following formula:

Decommissioning Cost Estimate
Revised for the Annual Adjustment
(as determined by NRC regulation 10 CFR 50.75(c))

- A. Equals the Estimated Revised Minimum Decommissioning Amount \$ _____
- B. Less the current balance in the Fund after the remittance of any "Paid Earnings", any "Certification" payments and any "General Withdrawals" (as defined in the Trust Agreement) made in the present year \$ _____
- C. Equals the Uncollected Estimated Minimum Decommissioning Amount \$ _____
- D. Divided by the Station's Remaining Years of Operating Life _____
- E. Equals Amount of Present Year's Annual Payment \$ _____

Section 6 - Normal Plant Life Decommissioning

As indicated in Section 1, the Station's License expires in 2008. That date is used for planning purposes and serves as a basis for this 1990 Plan. The District may apply for an extension of the License expiration date at some future time and in the event such application is made and approved by the NRC, the applicable Sections of this 1990 Plan will be changed accordingly.

This 1990 Plan is designed to cover a normal Decommissioning of the Station. In the event of a premature Decommissioning of the Station, separate financial considerations may become necessary and accordingly a new funding plan would be developed at that time in conformance with NRC direction.

ATTACHMENT "A"

TRUST AGREEMENT

This Trust Agreement, (the "Agreement") dated as of July 2, 1990, by and between Omaha Public Power District, a public corporation and political subdivision of the State of Nebraska (the "District") and The First National Bank of Omaha, a National Bank chartered and doing business by virtue of the laws of the United States of America with its principal place of business in Omaha, Nebraska, as External Fund Trustee (the "Trustee");

WITNESSETH

WHEREAS, the District presently owns and operates the Fort Calhoun Nuclear Power Generating Station Unit No. 1 (the "Station") under Operating License Number DPR-40 (the "License") issued by the Nuclear Regulatory Commission (the "NRC"); and

WHEREAS, the License is expected to expire on June 7, 2008, at which time the District desires to remove the Station safely from service and reduce residual radioactivity to a level that permits termination of the License (the "Decommissioning"); and

WHEREAS, to ensure that sufficient funds are available to pay the costs of Decommissioning the Station, NRC regulations 10 C.F.R. Part 50, as amended from time to time, require the District to establish and maintain an External Trust Fund (hereinafter defined) by depositing funds in an account segregated from the District's assets; and

WHEREAS, Resolution No. 3945 was adopted by the Board of Directors of the District on June 7, 1990, (the "Resolution") which Resolution permits the District to establish such External Trust Fund with the Trustee upon the terms and conditions hereinafter set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the parties hereto agree as follows:

SECTION 1. RESOLUTION

The Trustee hereby acknowledges receipt of a true and correct copy of the Resolution establishing the Fund (as herein defined).

SECTION 2. ESTABLISHMENT OF FUND

There is hereby established for the benefit of the NRC, the customer-owners of the District and the citizens of the State of Nebraska; and for the purpose of discharging the District's legal obligation to accomplish the Decommissioning, a segregated External Trust Fund designated the "Omaha Public Power District Fort Calhoun Station Decommissioning External Trust Fund" (the "Fund") to be held in the custody of the Trustee. On the Effective Date (hereinafter defined) of the Agreement, there shall be deposited in the Fund, the First Annual Payment (as herein defined). After the date of the aforementioned First Annual Payment, the District shall make periodic additional deposits to the Fund, the frequency of which shall be determined by the District in its sole discretion; except that such additional deposits must be remitted to the Trustee at least annually, and in such amounts which at least equal the Annual Payment (hereinafter defined) required for each twelve (12) month period during the term of the Agreement. The minimum aggregate annual amount of such deposit or deposits required by the Agreement to be deposited in the Fund shall be determined in the manner set forth in Section 4 herein.

SECTION 3. GRANTOR TRUST

The parties hereby acknowledge that the District is an entity exempt from taxation under Section 501(c) of the Internal Revenue Code of 1986, as amended. The parties agree that the Fund herein established is a Grantor Trust pursuant to Section 671 et. seq. of the Internal Revenue Code of 1986, as amended; that the District is the owner of the entire Fund for federal income tax purposes; and that the Trustee shall not be required to file a federal income tax return with respect to the Fund for any taxable year

during which the Fund is in existence.

SECTION 4. MINIMUM ANNUAL DEPOSIT

In order to ensure that as of the Termination Date, (hereinafter defined), the Fund will contain sufficient monies to meet estimated costs of Decommissioning, the following computations shall be used to determine the minimum aggregate annual amount (the "Annual Payment") which the District shall be required to deposit into the Fund:

A. First Year. The Annual Payment to be deposited in the Fund during the first twelve (12) month period from the Effective Date (the "First Annual Payment") shall be that amount as calculated pursuant to the formula set forth in Section 5 of the District's Fort Calhoun Station Unit No. 1 Decommissioning Funding Plan (the "1990 Plan").

On the Effective Date, the District shall deposit into, or assign to, the Fund all or that part of such monies and securities then held by the District in the District's presently existing internal Fort Calhoun Station Unit No. 1 Decommissioning Fund as required to meet the First Annual Payment; which monies and securities are delineated in Exhibit "1" attached hereto. Should the funds held in the existing internal Fort Calhoun Station Unit No. 1 Decommissioning Fund be insufficient to meet the First Annual Payment, the District shall make up any such deficiency by an additional deposit or deposits to the Fund during the twelve (12) month period from and after the Effective Date of the Agreement.

B. Subsequent Years. The Annual Payment required to be deposited into the Fund by the District for the second and all subsequent years during the term of the Agreement, shall be determined as set forth in the 1990 Plan. The Trustee hereby acknowledges receipt of the 1990 Plan which is incorporated herein by this reference and made a part hereof. The District and the Trustee hereby acknowledge that the 1990

Plan may be amended from time to time by the NRC, and that any and all such amendments to the 1990 Plan effectuated during the term hereof shall constitute a part of the Agreement.

SECTION 5. TRUSTEE DUTIES

The Trustee hereby establishes the Fund and accepts the cash and securities deposited therein pursuant to the Agreement. The Trustee has the duty to execute the investment of any and all monies held hereunder in the following investments:

A. Any obligations of the United States Government having the backing of the full faith and credit of the United States of America; and/or

B. Any and all investments permitted to be made by Public Power Districts under the laws of the State of Nebraska, as amended from time to time, (collectively the "Permitted Investments").

The Trustee shall exercise its investment duties pursuant to this Section 5 only in accordance with the oral instructions (followed by prompt written confirmation thereof) of the District. The District hereby retains sole authority to determine which among the Permitted Investments the Trustee shall make, and the District hereby agrees to be bound by the terms and conditions of the Agreement when making such investment determinations. Notwithstanding any of the foregoing to the contrary, the District may, in its sole discretion, and at any time during the term of the Agreement, delegate its power to direct the investment of the Fund's assets to an investment manager. Any such investment manager to whom the District may delegate its investment powers granted herein, shall be required to execute and deliver to the Trustee any and all documents as may be necessary to evidence said investment manager's agreement to be bound by all terms and conditions respecting the Permitted Investments contained in this Section 5 of the Agreement. In the event the Trustee follows all such directions received from the District or such investment manager appointed by the District, the Trustee shall not be liable

for any losses incurred by reason of any action taken pursuant to such directions provided such directions are in compliance with the requirements of this Section 5.

The maturity date of any Permitted Investment made pursuant to the Agreement shall not unreasonably extend beyond the Termination Date (hereinafter defined) of the Agreement.

If the District shall so request the Trustee, in writing, income received on the Permitted Investments shall be paid by the Trustee to the District as received (the "Paid Earnings"). All Paid Earnings shall be used by the District first in meeting its Annual Payment due to the Fund. Should the Paid Earnings exceed the Annual Payment due for any year during the term of the Agreement, any such excess may be used by the District for valid corporate purposes.

The Trustee shall submit to the District a written annual accounting of the Fund as of the end of each calendar year during which the Agreement shall be in effect (the "Accounting"). The Accounting, which shall be delivered to the District no later than January 31st of each year during the term hereof, shall include:

A. The balance of the Fund at the close of the last previous Accounting, and all amounts received from whatever source during the period covered by the Accounting;

B. A listing of all disbursements from the Fund;

C. An inventory of all investments held by the Trustee as of the date of the Accounting; and

D. Such other information as the District may, from time to time, request be included in any such Accounting.

A copy of all Accountings shall be submitted by the District to the NRC within thirty (30) days after receipt thereof by the District.

During the term of the Agreement, the Trustee shall give the District (or the District's representatives) full access, during Trustee's normal business hours, to all books and records relating to the Fund, and shall provide the District (or the District's representatives) with all such information regarding the Fund as

the District (or the District's representatives) may reasonably request.

SECTION 6. DECOMMISSIONING EXPENSES

To enable the District to meet Decommissioning expenses as they arise, the District is hereby empowered to make withdrawals from the Fund upon the following terms and conditions:

A. Four (4) times in every twelve (12) month period during the term of the Agreement, the District may submit to the Trustee an itemized written request for Decommissioning funds (the "Certification"). The Certification shall contain the following information and be calculated according to the following formula:

1. a) The total amount of Decommissioning expenditures, if any, actually incurred by the District during the prior three (3) month period,
- b) minus the total aggregate amount received by the District, if any, out of the Fund for Decommissioning purposes during the prior three month period,

EQUALS

- c) The total unfunded Decommissioning expenditures for the prior three (3) month period ("Prior Unfunded Expenditures")

¹\$ _____

PLUS

¹In the event that, during any three (3) month period, the District shall have received monies out of the Fund for Decommissioning purposes in excess of Decommissioning expenses actually incurred during the same period, the Prior Unfunded Expenditures would be a negative number thereby decreasing the Certification Amount received pursuant to any Certification submitted to the Trustee at the end of any such three (3) month period.

2. All expenditures for Decommissioning purposes, if any, which the District reasonably anticipates it shall incur in the ensuing three (3) month period ("Future Unfunded Expenditures") \$ _____

The net of Prior Unfunded Expenditures and Future Unfunded Expenditures shall constitute the "Certification Amount".

All Certifications shall be made by such Treasury Officer(s) as appointed by the District's Board of Directors (the "Treasury Officer") and shall be submitted to the Trustee in the form attached hereto as Exhibit "2". Provided a Certification is in compliance with the requirements of this Section 6, the Trustee shall pay to the District, out of the Fund, the Certification Amount on or before the date specified by the District in any such Certification.

B. Notwithstanding any of the foregoing, should the District be required to make any Decommissioning expenditure, which Decommissioning expenditure should exceed the sum of One Hundred Thousand Dollars (\$100,000.00), and for which prospective provision was not made in any prior Certification to the Trustee, the District may, at any time, submit a "Special Certification" to the Trustee in the same form required for a Certification. Upon receipt of a Special Certification, the Trustee shall pay to the District, out of the Fund, the amount so requested by the Special Certification on or before the date specified by the District in any such Special Certification.

No Certification, except a Special Certification, shall be made to the Trustee prior to the first day of the fourth month from the Effective Date (the "Initial Certification"). All subsequent Certifications shall be made at three month intervals from the date of the Initial Certification.

C. Notwithstanding anything in this Section 6 to the contrary, in the event that the amortized book value of the Fund should exceed the total cost estimate of Decommissioning (as determined pursuant to the NRC regulated formula set

forth in the 1990 Plan as amended) for any year during the term of the Agreement, the District may withdraw such excess funds from the corpus of the Fund to be used by the District for valid corporate purposes (a "General Withdrawal"). All requests for General Withdrawals: (1) shall be submitted to the Trustee in writing specifying the date by which any sums so requested must be received by the District; and (2) shall be made by a Treasury Officer. In no event shall the total amounts received by the District pursuant to General Withdrawals in any year during the term hereof exceed the difference between the adjusted book value of the Fund and the cost estimate of Decommissioning (as calculated pursuant to the NRC Regulated Formula set forth in the 1990 Plan, as amended) for the year in which such General Withdrawals are made.

D. The District shall submit copies of all Certifications, Special Certifications and General Withdrawals to the NRC.

SECTION 7. INDEPENDENT AUDIT

To provide adequate assurance to the NRC that the District and the Fund are in compliance with all NRC Regulations respecting Decommissioning funds, the District shall cause to be conducted an annual audit of the Fund and all transactions relating thereto (the "Annual Audit"). The Annual Audit shall be conducted by either: (1) the District's independent accountants (the "District's Auditor"); or (2) the auditors of the Trustee (the "Trustee's Auditor"). The District shall have sole discretion to determine whether the Annual Audit be conducted by the District's Auditor or the Trustee's Auditor; and all costs of each Annual Audit shall be borne by the District.

Each Annual Audit shall take place in the month immediately following each twelve (12) month period during which the Agreement shall be in effect. In the event the District shall direct the Trustee's Auditor to conduct any Annual Audit, the District shall give the Trustee's Auditor at least sixty (60) days' prior written notice thereof. Reports of all such Annual Audits shall be

submitted to the NRC, the District and the Trustee within sixty (60) days of the completion of each such Annual Audit. Such report shall contain, in addition to an analysis of the Fund and all transactions relating thereto, a certification by the District's Auditor, or the Trustee's Auditor (whichever is applicable), to the NRC that all payments from the Fund by the Trustee to the District were made pursuant to the terms of Sections 5 and 6 herein.

SECTION 8. COMPENSATION OF TRUSTEE

The District shall compensate the Trustee for its performance of the services specified in the Agreement. During the first five (5) years of the term of the Agreement, the Trustee shall be entitled to compensation as follows: year one - \$950.00 per quarter; year two - \$1,200.00 per quarter; year three - \$1,400.00 per quarter; year four - \$1,700.00 per quarter; and year five - \$2,000.00 per quarter. On a quarterly retrospective basis, the Trustee shall submit to the District an invoice for the Trustee's quarterly compensation as set forth in this Section 8, which quarterly compensation includes any and all administrative expenses incurred by the Trustee in connection with the administration of the Fund.

The District shall pay such quarterly invoices no later than thirty (30) days following the end of the applicable calendar quarter or ten (10) days following the receipt by the District of such quarterly invoices, whichever occurs later.

For all successive years that the Agreement shall be in effect, the Trustee shall receive compensation for its services hereunder in such amounts and upon such terms as shall be agreed upon by the parties hereto in writing. In the event that the parties are unable to agree upon the Trustee's compensation for any such successive year, the Trustee shall continue to receive the quarterly compensation for year five as stated in the preceding paragraph of this Section 8 for each such successive year.

SECTION 9. LIMITED USE

Except as provided in Sections 5 and 6 of the Agreement, all monies, deposits, and securities held in the Fund pursuant to the Agreement shall be used solely for the costs of Decommissioning. No principal or income payable to, or to become payable under, the Fund shall vest in the District for any other purposes except those specifically authorized herein. No principal or income of the Fund shall be taken or reached by any legal or equitable process in satisfaction of any debt of the District.

SECTION 10. TERMINATION

This Agreement shall terminate on such date as the Decommissioning shall be completed (the "Termination Date").

Prior to the Termination Date, the District shall submit its final Certification to the Trustee which shall disburse funds to cover final Decommissioning costs. On the Termination Date, the Trust herein established shall terminate, and any amounts remaining in the Fund shall be returned to the District.

SECTION 11. STANDARD OF CARE

The Trustee shall perform such duties as are specifically set forth in the Agreement. The Trustee shall exercise its duties with the degree of care and skill that a prudent person would exercise in the conduct of his own affairs.

No provision of the Agreement, however, shall be construed to relieve Trustee from liability for its own neglect or willful misconduct except that:

A. In the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to truth, authenticity and correctness, upon all documents and writings, including but not limited to all investment instructions, Certifications, Special Certifications and General Withdrawals pursuant to Sections 5 and 6 of the Agreement, furnished to the Trustee by the District, or by any investment manager appointed under Section 5 of the

Agreement;

B. The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith at the direction of the District or any investment manager respecting any Permitted Investments allowed by the Agreement; and

C. The Trustee shall have no responsibility to collect from the District any payments necessary to discharge any liabilities of the District established by the NRC.

SECTION 12. MAINTENANCE OF OFFICE

There shall at all times be a Trustee hereunder which shall be a national bank organized, chartered and doing business by virtue of the laws of the United States of America and authorized under such laws to exercise corporate trust powers, having combined capital and surplus and retained earnings of at least Fifty Million Dollars (\$50,000,000.00), and subject to supervision or examination by Federal authority. For purposes of determining whether such corporation meets the requirement of the preceding sentence, the combined capital and surplus and retained earnings of such corporation shall be deemed to be its combined capital and surplus and retained earnings as set forth in its most recent published report of condition. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 12, the District shall have the authority to request the immediate resignation of the Trustee in the manner and with the effect specified in Section 13 below.

SECTION 13. RESIGNATION OR REMOVAL OF TRUSTEE

The Trustee may at any time resign by giving 90 days' prior written notice to the District and the NRC by certified mail of such resignation, provided that no such resignation shall take effect until a successor Trustee is appointed. If a successor Trustee has not: (1) been so appointed; and (2) accepted such appointment within ninety (90) days after the District has

received Trustee's notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee. Such court may thereupon, after receiving such petition, appoint a successor Trustee.

Upon written notification by the District to the NRC, the Trustee may be removed by the District, and a Successor Trustee appointed, upon the occurrence of any of the following:

A. The Trustee ceases to be eligible in accordance with the provisions of Section 12 above and fails to resign after request therefore by the District;

B. The Trustee shall become incapable of acting or shall be adjudged bankrupt or insolvent, or a receiver shall have been appointed of the Trustee, or of its property or affairs for the purpose of rehabilitation, conservation or liquidation; or

C. The District shall determine, in its sole discretion, that the Trustee should be removed.

Should the Trustee resign or be removed for any reason, an independent audit of the Fund, pursuant to the terms of Section 7 herein, shall be conducted prior to the appointment of any successor Trustee. Any resignation or removal of the Trustee and appointment of a successor Trustee pursuant to the provisions of this Section 13 shall become effective only upon acceptance of appointment by the successor Trustee as provided in Section 14 below.

SECTION 14. SUCCESSOR TRUSTEE

Any successor Trustee appointed as provided in Section 13 herein shall execute, acknowledge and deliver to the District, the NRC, and to its predecessor Trustee, an instrument accepting such appointment hereunder and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations hereunder, with like effect as if originally named as Trustee

herein. Notwithstanding anything in the foregoing sentence to the contrary, on the request of the District, or on the request of the successor Trustee, the Trustee ceasing to act hereunder shall execute and deliver all such instruments of transfer as may be necessary to transfer to such successor Trustee: (1) all assets of the Fund; and (2) all the rights and powers of the Trustee ceasing to act under the Agreement.

No successor Trustee shall accept appointment as provided in this Section 14 unless at the time of such acceptance such successor Trustee shall be eligible under the provisions of Section 12 of the Agreement.

SECTION 15. DEFAULT BY DISTRICT.

In the event of the District's failure, whether by default or inability, to exercise any of its rights or obligations under this Agreement, the NRC may assume any and all of such rights and/or obligations as the NRC may, in its sole discretion, deem necessary or appropriate. If, pursuant to the terms of this Section 15, the NRC assumes any rights and/or obligations of the District hereunder, the NRC shall provide the Trustee with written notification of any such assumption. Thereafter, the Trustee shall make payments from the Fund, as the NRC shall direct in writing, solely for: i) payment of the costs of the Decommissioning covered by this Agreement; and ii) payment of all other expenses incurred by the District, the NRC or any other party in the discharge of any obligations under this Agreement. In addition, the Trustee shall refund to the District any amounts as the NRC shall specify in writing, and upon such refund, such amounts shall no longer constitute part of the Fund.

In the event it becomes necessary for the NRC to undertake any rights or obligations of the District pursuant to this Section 15, the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith at the direction of the NRC.

SECTION 16. IRREVOCABLE TRUST.

The Fund herein established shall constitute an Irrevocable Trust as required by NRC regulations, as amended from time to time, for the purpose of providing sufficient available funds to accomplish Decommissioning. The District shall have no rights to the monies held in the Fund except as provided in the Agreement. Notwithstanding anything herein to the contrary, however, should NRC regulations be amended, the effect of which would be that the Fund is no longer required, the District may terminate the Agreement and revoke the Fund herein established and all assets of the Fund as of the date of any such termination shall be returned to the District.

SECTION 17. EFFECTIVE DATE

This Agreement shall commence and become operative on July 2, 1990 (the "Effective Date").

SECTION 18. SUCCESSORS AND ASSIGNS

All the covenants and representations made by the District and contained in the Agreement shall bind and inure to the benefit of its successors and assigns, whether so expressed or not.

SECTION 19. SEVERABILITY

If any provision of the Agreement should be determined by a court of competent jurisdiction to be contrary to law, such provision shall be deemed and construed to be severable from the remaining provisions herein contained, and shall in no way affect the validity of the remaining provisions of the Agreement.

SECTION 20. ENTIRE AGREEMENT

The Agreement supersedes all prior negotiations, agreements and understandings among the parties with respect to the subject matter hereof. To be effective, any amendment to, or modification of, the Agreement must be in writing, executed by the District and the Trustee, and approved by the NRC.

SECTION 21. NOTICES

Unless otherwise specified herein, all notices required to be given by or to either party pursuant to the terms of the Agreement, including but not limited to, all Certifications, Special Certifications, General Withdrawals, invoices, reports, requests and communications, shall be sufficiently given only if in writing and if sent by first class United States mail, postage prepaid, by or to the appropriate addressee indicated below:

To the Trustee:

First National Bank of Omaha
One First National Center
Omaha, NE 68102
Attn: Marc M Diehl, Trust Officer-Manager
Corporate Trust Division

To the NRC:

U. S. Nuclear Regulatory Commission
OWSN 12E4
Washington, DC 20555
Attn: Robert S. Wood

To the District:

The Division Manager - Finance
Omaha Public Power District
444 South 16th Street Mall
Omaha, NE 68102

With a Copy To:

Stephen G. Olson, Esq.
500 Energy Plaza
Omaha, NE 68102

Changes to the above addresses may be made from time to time by either of the above-listed entities, by notice to the other entity from the above-named representative of the respective entity or from any other duly authorized officer of that entity as certified by the Secretary of that entity.

SECTION 22. HEADLINES

The headings of the Sections used in the Agreement are for convenience only and shall not control or affect the meaning of any of the provisions thereof.

SECTION 23. REPRESENTATIONS

A. The Trustee represents that it has the power, authority and legal right to enter into and perform its obligations set forth in the Agreement and that the execution, delivery and performance hereof have been duly authorized and will not violate any applicable law, regulation or by-law of the Trustee.

B. The District represents that it has the power, authority and legal right to enter into and perform its obligations set forth in the Agreement, and that the Agreement and the Fund herein established have been duly approved by the NRC as being in conformity with its requirements set forth in 10 C.F.R. §50.75, as amended from time to time. The District further represents that the execution, delivery and performance of the Agreement have been duly authorized and will not violate any applicable law, regulation or by-law of the District.

SECTION 24. COUNTERPARTS

The Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as an original and shall constitute and be one and the same Agreement.

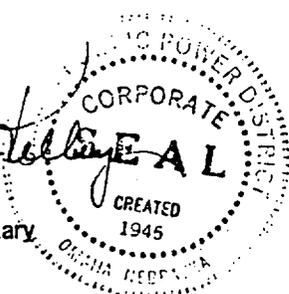
SECTION 25. GOVERNING LAW

The Agreement and any questions concerning its validity, construction or performance shall be governed by the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto have each caused the Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested as of the date first above written, but actually on June 27, 1990.

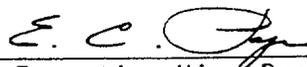
ATTEST:


Assistant Secretary

The seal is circular with a dotted border. The text inside the seal reads: "OMAHA PUBLIC POWER DISTRICT" around the top, "CORPORATE SEAL" in the center, and "CREATED 1945" at the bottom.

OMAHA PUBLIC POWER DISTRICT

By:
Its:


Executive Vice President

FIRST NATIONAL BANK OF OMAHA,
Trustee

ATTEST:

By: Norm M. Dill
Its: Trust Officer

ATTEST:

Alan E. Schulz
Alan E. Schulz Trust Officer

sgo/mmh

EXHIBIT "1"

THE FIRST ANNUAL PAYMENT

1. Cash: \$ _____

2. Securities:

	<u>Description of Security</u>	<u>Amortized Book Cost</u>
a.		\$ _____
b.		\$ _____
c.		\$ _____
d.		\$ _____
e.		\$ _____
f.		\$ _____
g.		\$ _____
etc.		

Subtotal \$ _____

FIRST ANNUAL PAYMENT \$ _____

EXHIBIT "2"

- Check One:
 Certification
 Special Certification

CERTIFICATION

[Insert name and address of Trustee]

Attention: Trust Department

In accordance with the terms of that certain Trust Agreement dated _____, I, _____, [insert title officer] of Omaha Public Power District (the "District") hereby request a withdrawal from the Omaha Public Power District Fort Calhoun Decommissioning External Trust Fund (the "Fund") as follows:

- Total Decommissioning Expenditures incurred during the prior 3 month period: \$ _____

minus

Aggregate amount of all withdrawals for Decommissioning during the prior 3 month period:
 \$ _____

equals

Prior Unfunded Expenditures: \$ _____

PLUS

- Anticipated Decommissioning Expenditures for the period _____, 19____ to _____, 19____:

\$ _____

EQUALS

CERTIFICATION AMOUNT \$ _____

The Certification Amount shall be paid to the District via wire transfer to the District's account number _____ at [insert name of Depository Bank] _____ on or before _____, 19____.

The undersigned hereby certifies that the Certification Amount requested from the Fund shall be used solely for the

purpose of meeting the District's expenses in connection with the Decommissioning of the District's Fort Calhoun Nuclear Power Generating Station Unit Number 1. The undersigned further certifies that a copy of this Certification has been submitted to the Nuclear Regulatory Commission.

DATED _____.

OMAHA PUBLIC POWER DISTRICT

By _____
Its _____