

10 CFR 50.75

2130-03-20230  
5928-03-20161  
July 29, 2003

U. S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, DC 20555-0001

Clinton Power Station  
Facility Operating License No. NPF-62  
NRC Docket No. 50-461

Oyster Creek Generating Station  
Facility Operating License No. DPR-16  
NRC Docket No. 50-219

Three Mile Island Nuclear Station, Unit 1  
Facility Operating License No. DPR-50  
NRC Docket No. 50-289

- References:
- 1) Letter from M. P. Gallagher (AmerGen Energy Company, LLC) to U. S. Nuclear Regulatory Commission, dated January 23, 2003
  - 2) Letter from M. P. Gallagher (AmerGen Energy Company, LLC) to U. S. Nuclear Regulatory Commission, dated March 19, 2003
  - 3) Letter from M. P. Gallagher (AmerGen Energy Company, LLC) to U. S. Nuclear Regulatory Commission, dated June 17, 2003

Subject: Additional Information Regarding the Notice of Proposed Amendments to Trust Agreement to Implement Assignment of Decommissioning Trust Funds for AmerGen Energy Company, LLC

In the referenced letters AmerGen Energy Company, LLC provided information regarding proposed amendments to its trust agreement in order to implement an assignment of the AmerGen Energy Company, LLC nonqualified and qualified decommissioning funds to wholly-owned single member limited liability companies located and organized in Nevada.

In response to discussions with the NRC Staff regarding the information presented in the referenced letters, AmerGen Energy Company, LLC has revised the Draft Master

A001

Assignment of Decommissioning Trust Funds for  
AmerGen Energy Company, LLC  
July 29, 2003  
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Terms for Trust Agreement for Mellon Bank, N. A., as contained in Attachment C to reflect NRC comments. A black-lined version of this document is included in Attachment C, along with a copy without the revisions highlighted.

Additionally, all other agreements are being provided as clean versions without previously submitted revisions highlighted. Accordingly, attached is the following information:

Attachment A – [Intentionally left blank]

Attachment B - Provides a response to two (2) questions discussed in conference calls with the NRC

Attachment C – Revised Draft Amended and Restated Master Trust Agreements (With Recent Comments Incorporated) (Mellon)

Attachment D – [Intentionally left blank]

Attachment E – Revised Draft Operating Agreement AmerGen NQF, LLC

Attachment F – Revised Draft Operating Agreement AmerGen Consolidation, LLC

If you have any questions about this letter, please contact T. Loomis at (610) 765-5510.

Respectfully,



Michael P. Gallagher  
Director, Licensing and Regulatory Affairs  
AmerGen Energy Company, LLC

Attachments

cc: NRC Director of Nuclear Material Safety and Safeguards  
Regional Administrator – NRC Region I  
Regional Administrator – NRC Region III  
NRC Senior Resident Inspector – Clinton Power Station  
NRC Senior Resident Inspector – Oyster Creek Generating Station  
NRC Senior Resident Inspector – Three Mile Island, Unit 1  
NRC Project Manager, NRR - Clinton Power Station  
NRC Project Manager, NRR - Oyster Creek Generating Station  
NRC Project Manager, NRR - Three Mile Island, Unit 1  
Office of Nuclear Facility Safety – IDNS  
OC File No. 03035  
TMI File No. 00127

**Attachment A**

**[Intentionally left blank]**

**Attachment B**  
**Response to Two (2) NRC Questions**

**Question 1:**

The proposed amendments assign the qualified funds to two new LLCs, Exelon Consolidation, LLC, and AmerGen Consolidation, LLC. The organization also establishes 23 LLCs, one LLC for each of the 23 facilities, for the nonqualified funds. These LLCs are transitional steps because the licensees have stated that they plan to assign the interests of the LLCs in the nonqualified funds to Exelon Consolidation, LLC and AmerGen Consolidation LLC. These two wholly-owned single member LLCs would then hold both the qualified and nonqualified funds.

What is the basis for the phased approach for the nonqualified funds?

**Response:**

AmerGen owns 3 Nonqualified Decommissioning Funds that currently are not characterized as separate entities for federal and state tax purposes. Although it is not a requirement for federal or state tax purposes, we have determined that the most prudent and optimal structure is to have each Nonqualified Fund owned by a separate and distinct LLC. Each NQF, LLC will have the flexibility to elect to be taxed as a corporation for federal and state income tax purposes and may or may not make that election.<sup>1</sup>

There are two methods to implement the desired structure, and both methods require two steps (i.e., a phased approach).

The first method, which is the one AmerGen proposes to implement, is preferable because only one transfer of the funds themselves is required. Under the proposed method, each nonqualified fund would be assigned to an NQF LLC, which is wholly owned by the transferor (i.e., AmerGen). All of the NQF LLCs would immediately be contributed by AmerGen to AmerGen Consolidation (again, a wholly owned subsidiary of the transferor). This method was chosen because we thought that it would be less administratively complex than the alternative method (discussed in the following paragraph).

The second method would require two assignments of the funds (i.e., assign nonqualified funds to Consolidation, then assign nonqualified funds to NQF LLCs), which is slightly more complicated than doing just a single assignment of the funds (as in the first method above). For this reason, we opted to use the first method in the preceding paragraph.

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<sup>1</sup> Note that we previously indicated to the NRC that the NQF LLCs would elect to be treated as corporations for federal and state income tax purposes, however, we are currently considering permanently or temporarily delaying the election. The decision as to the election will not affect the proposed transfers or legal structure described in the information and material previously provided to the NRC.

**Question 2:**

Please provide the Prohibited Transaction Exemption 95-96 for Mellon Bank, N.A.

**Response:**

Prohibited Transaction Exemption 95-96 is attached.

[Prohibited Transaction Exemption 95-56; Exemption Application No. D-09724, et al.]

**Grant of Individual Exemptions; Mellon Bank, N.A., and Its Affiliates (Collectively, Mellon), et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

**Mellon Bank, N.A., and Its Affiliates (Collectively, Mellon) Located in Pittsburgh, Pennsylvania**

[Prohibited Transaction Exemption 95-56; Application No. D-09724]

**Exemption**

*Section I—Exemption for Cross-Trading Between Certain Accounts*

The restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to (1) the purchase and sale of securities (including the stock of Mellon Bank Corporation (MBC)) between Indexed Accounts, as defined in Section IV(a); and (2) the purchase and sale of securities, including the common stock of MBC, between Indexed Accounts and various large accounts (the Large Accounts) pursuant to portfolio restructuring programs of the Large Accounts; provided that the following conditions and the General Conditions of Section III are met:

(a) The Indexed Account is based on an index which represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries. The organization creating and maintaining the index must be (1) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients, (2) a publisher of financial news or information, or (3) a public stock exchange or association of securities dealers. The index must be created and maintained by an organization independent of Mellon and its affiliates. The index must be a generally accepted standardized index of securities which is not specifically tailored for the use of Mellon or its affiliates.

(b) The price for the securities is set at the current market value for the securities on the date of the transactions. For equity securities, the price shall be the closing price for the security on the day of trading; unless the security was added to or deleted from an index underlying an Indexed Account after the close of trading, in which case the price shall be the opening price for that security on the next business day after the announcement of the addition or deletion. For debt securities, the price

shall be the fair market value determined as of the close of the day of trading pursuant to Rule 17a-7(b) issued by the Securities and Exchange Commission under the Investment Company Act of 1940.

(c) The transaction takes place within three business days of the "triggering event" giving rise to the cross-trade opportunity. A triggering event is defined as:

(1) A change in the composition or weighting of the index underlying an Indexed Account by the organization creating and maintaining the index;

(2) A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals made on the Account's opening date, where the Indexed Account is a collective investment fund, or on any relevant date, where the Indexed Account is not a collective investment fund; provided, however, that Mellon does not change the level of investment in the Indexed Account through investments or withdrawals of assets of any employee benefit plan maintained by Mellon or its affiliates (the Mellon Plans) other than any Mellon Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including Indexed Accounts; or

(3) A declaration by Mellon (recorded on Mellon's records) that a "triggering event" has occurred, which will be made upon an accumulation of cash in an Indexed Account attributable to interest or dividends on, and/or tender offers for, portfolio securities equal to not more than .5 percent of the Indexed Account's total value.

(d) With respect to any Indexed Account that is model-driven, no cross-trades are engaged in by the Account for 10 business days subsequent to any change made by Mellon to the model underlying the Account.

(e) In the event that the amount of a particular security which all of the Indexed Accounts or Large Accounts propose to sell on a given day is less than the amount of such security which all of the Indexed Accounts or Large Accounts propose to buy, or vice versa, the direct cross-trade opportunity must be allocated by Mellon among potential buyers or sellers of the security on a pro rata basis.

(f) An Indexed Account does not participate in a cross-trade if more than 10 percent of the assets of the Indexed Account at the time of the proposed cross-trade are comprised of assets of Mellon Plans for which Mellon exercises investment discretion.

(g) Prior to any proposed cross-trading by an Indexed Account or a Large Account, Mellon provides to each employee benefit plan invested in the Account information which describes the existence of the cross-trading program, the "triggering events" which will create cross-trade opportunities, the pricing mechanism that will be utilized for securities purchased or sold by the Accounts, and the allocation methods and other procedures which will be implemented by Mellon for its cross-trading practices. Any employee benefit plan which subsequently invests in the Indexed Account or Large Account shall be provided the same information prior to or immediately after the plan's initial investment in the Account.

(h) With respect to cross-trade transactions involving a Large Account:

(1) Total assets of the Large Account are in excess of \$50 million.

(2) Fiduciaries or other appropriate decisionmakers of the Large Account who are independent of Mellon are, prior to any cross-trade transactions, fully informed of the cross-trade technique and provide advance written approval of the cross-trade transactions.

Such authorization shall be terminable at will by the Large Account upon receipt by Mellon of written notice of termination. A form expressly providing an election to terminate the authorization, with instructions on the use of the form, must be supplied to the authorizing Large Account fiduciary concurrent with the receipt of the written information describing the cross-trading program. The instructions for such form must include the following information:

(i) The authorization is terminable at will by the Large Account, without penalty to the Large Account, upon receipt by Mellon of written notice from the authorizing Large Account fiduciary; and

(ii) Failure to return the termination form will result in the continued authorization of Mellon to engage in cross-trade transactions on behalf of the Large Account.

(3) Within 45 days of the completion of the Large Account's portfolio restructuring program, the Large Account's fiduciaries shall be fully apprised in writing of the transaction results. However, if the program takes longer than three months to complete, interim reports of the transaction results will be made within 30 days of the end of each three month period.

(4) The Large Account transactions occur only in situations where Mellon has been authorized to restructure all or a portion of the Large Account's portfolio into an Indexed Account

(including a separate account based on an index or computer model) or to act as a "trading adviser" in carrying out a Large Account-initiated liquidation or restructuring of its portfolio.

(i) Mellon receives no additional direct or indirect compensation as a result of any cross-trade transactions.

(j) Mellon does not purchase or sell any debt securities issued by Mellon or an affiliate for the Indexed Accounts.

#### *Section II—Exemption for the Acquisition, Holding and Disposition of MBC Stock*

The restrictions of sections 406(a)(1)(D), 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding or disposition of the common stock of MBC (the MBC Stock) by Indexed Accounts, if the following conditions and the General Conditions of Section III are met:

(a) The acquisition or disposition of the MBC stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Indexed Account is based.

(b) In the event that MBC Stock is added to an index on which an Indexed Account is based or is added to the portfolio of the Indexed Account which tracks an index that includes MBC Stock, all acquisitions necessary to bring the Indexed Account's holdings of MBC Stock to its capitalization weighting in the index, other than cross-trade transactions meeting the conditions of Section I, shall comply with Rule 10b-18 of the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, including the limitations regarding the price paid for such stock.

(c) Subsequent to acquisitions necessary to bring the Indexed Account's holdings of MBC Stock to its capitalization weighting in the index pursuant to the restrictions of SEC Rule 10b-18, all aggregate daily purchases of MBC stock, other than cross-trade purchases meeting the conditions of Section I, shall not constitute more than the greater of: (1) 15 percent of the stock's average daily trading volume for the previous five days; or (2) 15 percent of the stock's trading volume on the date of the transaction.

(d) If the necessary number of shares of MBC stock cannot be acquired within 10 business days from the date of the event which causes the particular Indexed Account to require MBC stock, Mellon shall appoint a fiduciary which is independent of Mellon and its

affiliates to design acquisition procedures and monitor Mellon's compliance with such procedures.

(e) All purchases and sales of MBC stock, other than cross-trades meeting the conditions of Section I, shall be executed on the national exchange on which MBC stock is primarily traded.

(f) No transactions shall involve purchases from, or sales to, Mellon or any affiliate, officer, director or employee of Mellon or any party in interest with respect to a plan which has invested in an Indexed Account.<sup>1</sup> This requirement does not preclude purchases and sales of MBC stock in cross-trade transactions meeting the conditions of Section I, provided that the Indexed Accounts are not maintained by Mellon primarily for the investment of assets of Mellon or any affiliate, including officers, directors or employees of Mellon other than in connection with a Mellon Plan.

(g) No more than five (5) percent of the total amount of MBC stock issued and outstanding at any time shall be held in the aggregate by the Indexed Accounts which hold plan assets.

(h) MBC stock shall constitute no more than two (2) percent of the value of any independent third-party index on which the investments of an Indexed Account are based.

(i) A plan fiduciary independent of Mellon authorizes the investment of such plan's assets in an Indexed Account which purchases and/or holds MBC stock.

(j) A fiduciary independent of Mellon and its affiliates shall direct the voting of the MBC stock held by an Indexed Account on any matter in which shareholders of MBC stock are required or permitted to vote.

#### *Section III—General Conditions*

(a) Mellon maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of the exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Mellon, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Mellon shall be subject to the civil penalty that may be assessed under section 502(i) of the

<sup>1</sup> The Department notes that "blind transactions", in which the identity of the purchaser or seller is not known because the transaction is executed by an independent broker, acting as agent, on a national securities exchange, would not be subject to this requirement.

Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Indexed Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer with respect to any plan participating in an Indexed Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Indexed Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (b)(1)(B) through (D) shall be authorized to examine trade secrets of Mellon, any of its affiliates, or commercial or financial information which is privileged or confidential.

#### Section IV—Definitions

(a) Indexed Account—Any Index Fund or Model-Driven Fund.

(b) Index Fund—Any investment fund, account or portfolio sponsored, maintained, trustee, or managed by Mellon or an affiliate in which one or more investors invest that is designed to replicate the capitalization-weighted composition of an independently maintained securities index which satisfies the conditions of Section I(a) and Section II(h).

(c) Model-Driven Fund—Any investment fund, account or portfolio sponsored, maintained, trustee, or managed by Mellon or an affiliate, in which one or more investors invest which is based on computer models using prescribed objective criteria to transform an independently maintained securities index which satisfies the conditions of Section I(a) and Section II(h).

(d) Opening date—The date on which investments in or withdrawals from an Indexed Account that is a collective investment fund may be made.

(e) Large Account—An account of an investor that is either: (1) an employee

benefit plan within the meaning of section 3(3) of the Act that has \$50 million or more in total assets; or (2) an institutional investor, other than an investment company registered under the Investment Company Act of 1940 (i.e. a mutual fund) advised or sponsored by Mellon, such as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, or a trust or other fund which is exempt from taxation under section 501(a) of the Code, that has total assets in excess of \$50 million. As noted in Section I(g)(4), a "Large Account" shall only be an account to which Mellon has been authorized to restructure all or a portion of the portfolio for such account into an Indexed Account or to which Mellon has been authorized to act as a "trading adviser" (as defined below) in connection with a specific liquidation or restructuring program for the account.

(f) Trading adviser—A person whose role is limited to arranging a Large Account-initiated liquidation or restructuring of an equity or debt portfolio within a stated period of time so as to minimize transaction costs. The person must not be a fiduciary with investment discretion for any underlying asset allocation, restructuring or liquidation decisions for the account in connection with such transactions.

(g) Affiliate—Any person, directly or indirectly through one or more intermediaries, controlling, controlled by, or is under common control with Mellon (except Mellon/McMahon Real Estate Advisors, Inc.).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 7, 1995, at 60 FR 17814.

**WRITTEN COMMENTS AND MODIFICATIONS:** The applicant submitted the following comments and requests for modifications regarding the notice of proposed exemption (the Proposal).

With respect to the heading used in the Proposal, the applicant states that the term "Mellon" refers specifically to Mellon Bank, N.A., but not to its affiliates. The applicant notes that in various places throughout the Proposal, the relevant provisions refer to "Mellon and its affiliates". However, in numerous other provisions of the Proposal the reference is simply to Mellon which, as designated in the heading, is too narrow since the affiliates should also be covered. The

applicant requests that the reference to "Mellon" in the heading be changed to include both Mellon Bank, N.A. and its affiliates. The Department concurs with the applicant's requested clarification and has so modified the heading of the Proposal.

With respect to the definition of a "triggering event" in Section I(c) of the Proposal, the applicant states that subparagraph (2) limits investments and withdrawals from an Indexed Account to those occurring on a "regularly scheduled opening date" for the Indexed Account. The applicant represents that the concept of "an opening date", as defined in Section IV(d) of the Proposal, is not applicable to Indexed Accounts that are *not* collective investment funds, such as separate accounts for both employee benefit plans and other institutional clients. Since separate accounts would be encompassed within the definition of an Indexed Account under Section IV(a) of the Proposal, the applicant requests that an appropriate clarification be made. In addition, with respect to the concept of a "regularly scheduled" opening date, the applicant represents that the trend for collective investment funds is toward more frequent, and in many cases daily, opening dates. Thus, the applicant requests that the words "regularly scheduled" be deleted from Section I(c)(2) of the Proposal.

The Department concurs with the applicant's requested clarifications and has modified the language of Sections I(c)(2) and IV(d) of the Proposal. In this regard, Section I(c)(2) has been modified as follows:

\* \* \* A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals made on the Account's [regularly scheduled] opening date, *where the Indexed Account is a collective investment fund, or on any relevant date, where the Indexed Account is not a collective investment fund* \* \* \*. (emphasis added)

In addition, Section IV(d) has been modified as follows:

\* \* \* Opening date—The [regularly-scheduled] date on which investments in or withdrawals from an Indexed Account *that is a collective investment fund* may be made. (emphasis added)

With respect to the proviso in Section I(c)(2) of the Proposal relating to any Mellon Plans for which Mellon has investment discretion, the applicant states that its understanding of the intent of this proviso is to exclude from the definition of a "triggering event" those investments into or withdrawals from an Indexed Account which result from Mellon's exercise of its discretion

for a Mellon Plan. However, the applicant states that this proviso was not intended to cover changes in the level of investment in an Indexed Account which result from investment elections made by individual participants in a Mellon Plan (i.e. a defined contribution plan) that permits such participants to direct the investment of their accounts among various available investment options, including Indexed Accounts. Thus, the applicant maintains that the language of the proviso is too broad in that it would apply to any Mellon Plan as to which Mellon exercises any investment discretion, including discretion for the management of assets which have been allocated to an Indexed Account, even though participants have directed the investment of their assets to such Indexed Accounts. Therefore, the applicant suggests that this proviso be clarified by deleting the phrase "\* \* \*" for which Mellon has investment discretion" and substituting therefor the following:

\* \* \* other than any Mellon Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including Indexed Accounts.

The Department concurs with the applicant's requested clarification and has so modified the language of Section I(c)(2) of the Proposal.

With respect to Section II(f) of the Proposal, the applicant states that the first sentence sets forth a requirement that transactions by an Indexed Account involving MBC Stock not be with any affiliate, officer, director or employee of Mellon or any party in interest for any plan which has invested in the Indexed Account. The applicant requests that it be made clear that this limitation does not apply to any transaction on an exchange executed by an independent broker acting as agent, given that such transactions would be considered to be "blind transactions" for this purpose.

In this regard, the Department concurs with the applicant's requested clarification and has added a footnote at the end of the first sentence of Section II(f) stating that "blind transactions" executed on a national securities exchange by an independent broker will not be subject to the requirements of Section II(f).

Finally, with respect to the definition of "Large Account" in Section IV(e) of the Proposal, the applicant states that the definition excludes any investment company registered under the Investment Company Act of 1940 (i.e. any mutual fund). The applicant represents that Mellon had previously

agreed to exclude only *affiliated* mutual funds (i.e. mutual funds advised or sponsored by Mellon or an affiliate) from the definition of "Large Account". The Department acknowledges this error in the Proposal and concurs with the applicant's clarification. Thus, the Department has modified the language of Section IV(e)(2) of the Proposal by inserting the phrase "\* \* \* advised or sponsored by Mellon" following the reference to mutual funds in the definition of "Large Account".

No other comments, and no requests for a hearing, were received by the Department during the comment period.

Accordingly, based on the current exemption application file and record, the Department has determined to grant the proposed exemption as modified herein.

**FOR FURTHER INFORMATION CONTACT:** Mr. E.F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

**T.J. Lambrecht Construction, Inc.; Employees' Profit Sharing Plan and Trust; Brown & Lambrecht Earthmovers, Inc.; Employees' Profit Sharing Plan and Trust (collectively, the Plans) Located in Joliet, Illinois**

[Prohibited Transaction Exemption 95-57; Application Nos. D-09872 and D-09873]

#### Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale (the Sale) by each of the Plans of a 12.5% partnership interest in Prime Industries (the Partnership Interest) to Mr. Thomas J. Lambrecht, a party in interest with respect to the Plans; provided the following conditions are satisfied: (1) The Sale is a one-time transaction for cash; (2) the sale price for each Partnership Interest will be the higher of (a) the fair market value of the Partnership Interest as determined by a qualified independent appraiser at the time of the Sale or, (b) each Plan's total investment in the Partnership Interest (\$300,000); and (3) the Plans do not suffer any loss nor incur any expenses in connection with the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 10, 1995 at 60 FR 24899.

**FOR FURTHER INFORMATION CONTACT:** Virginia J. Miller of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

#### **Guarantee Mutual Life Company (Guarantee Mutual) Located in Omaha, NE**

[Prohibited Transaction Exemption 95-58; Exemption Application No. D-09941]

#### Exemption

##### Section I. Covered Transaction

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed receipt of common stock of The Guarantee Life Companies Inc., or the receipt of cash or policy credits by an eligible policyholder (the Eligible Policyholder) of Guarantee Mutual which is an employee benefit plan (the Plan), other than an Eligible Policyholder which is a plan sponsored by Guarantee Mutual for its own employees, in exchange for the termination of such Eligible Plan Policyholder's membership interest in Guarantee Mutual, in accordance with the terms of a plan of demutualization (the Plan of Conversion or the Conversion Plan) adopted by Guarantee Mutual and implemented pursuant to the Nebraska Insurers Demutualization Act, Nebraska Revised Statutes, Sections 44-6101 through 44-6120.

The exemption is subject to the general conditions set forth below in Section II.

##### Section II. General Conditions

(a) The Conversion Plan is implemented in accordance with procedural and substantive safeguards that are imposed under Nebraska law and is subject to the review and supervision by the Director of the Department of Insurance of the State of Nebraska (the Director).

(b) The Director reviews the terms of the options that are provided to Eligible Policyholders of Guarantee Mutual, as part of such Director's review of the Conversion Plan, and the Director only approves the Conversion Plan following a determination that such Conversion Plan is fair and equitable to all Eligible Policyholders.

(c) Each Eligible Policyholder has an opportunity to comment on the Conversion Plan and decide whether to vote to approve such Conversion Plan after full written disclosure is given such Eligible Policyholder by Guarantee Mutual, of the terms of the Conversion Plan.

(d) Any election by an Eligible Plan Policyholder to receive stock, cash or policy credits, pursuant to the terms of the Conversion Plan is made by one or more independent fiduciaries of such

**Attachment C**

**Draft Amended and Restated Master Trust Agreements with  
MELLON BANK, N.A.**

- 1. Revised Draft Master Terms for Trust Agreements (With Recent  
Comments Incorporated)**
- 2. Revised Draft Amended and Restated Nonqualified Nuclear  
Decommissioning Master Trust Agreement**
- 3. Revised Draft Amended and Restated Qualified Nuclear  
Decommissioning Master Trust Agreement**

**1. Revised Draft Master Terms for Trust Agreements (With Recent  
Comments Incorporated) (Mellon Bank, N. A.)**

This redlined draft, generated by CompareRite (TM) - The Instant Redliner, shows the differences between -

original document : C:\WINDOWS\TEMP\WDC99\_767969\_3  
and revised document: C:\WINDOWS\TEMP\WDC99\_767969\_4

CompareRite found 3 change(s) in the text  
CompareRite found 6 change(s) in the notes

Deletions appear as Overstrike text  
Additions appear as Bold-Underline text

**MASTER TERMS FOR  
TRUST AGREEMENTS**

Between

**EXELON GENERATION CONSOLIDATION COMPANY, LLC  
EXELON BRAIDWOOD 1 NQ, LLC  
EXELON BRAIDWOOD 2 NQ, LLC  
EXELON BYRON 1 NQ, LLC  
EXELON BYRON 2 NQ, LLC  
EXELON DRESDEN 1 NQ, LLC  
EXELON DRESDEN 2 NQ, LLC  
EXELON DRESDEN 3 NQ, LLC  
EXELON LASALLE 1 NQ, LLC  
EXELON LASALLE 2 NQ, LLC  
EXELON QUAD CITIES 1 NQ, LLC  
EXELON QUAD CITIES 2 NQ, LLC  
EXELON ZION 1 NQ, LLC  
EXELON ZION 2 NQ, LLC**

and

**THE NORTHERN TRUST COMPANY**

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## MASTER TERMS FOR TRUST AGREEMENTS

The following Master Terms for Trust Agreements (the “Master Terms”) shall apply for purposes of the Amended and Restated Tax-Qualified Nuclear Decommissioning Master Trust Agreement by and between Commonwealth Edison Company (for the limited purposes of confirming the assignment reflected in Section 3.11 of the Tax-Qualified Agreement hereof and its rights as stated in Section 1.04 of said Agreement and Sections 2.8 and 2.9 hereof), Exelon Generation Company, LLC (“ExGen”), Exelon Generation Consolidation Company, LLC (“Consolidation”) and the Northern Trust Company as Trustee (the “Trustee”), and for purposes of the Amended and Restated Non-Tax Qualified Nuclear Decommissioning Master Trust Agreement by and between Commonwealth Edison Company (for the limited purposes of confirming the assignment reflected in Section 3.11 of the Non-Tax Qualified Agreement and its rights as stated in Section 1.04 of said Agreement and Sections 2.8 and 2.9 hereof), ExGen, the limited liability companies identified on Schedule A of such agreement (the “NQF Companies”) and the Trustee.

Any terms capitalized but not defined herein shall have the same meaning as assigned to such terms in the Trust Agreements.

### ARTICLE 1: DEFINITIONS, NAME, AUTHORIZED ACTORS AND PURPOSE

1.1 *Definitions.* For purposes of the Master Terms, the following terms shall have the following meanings:

“*Agreements*,” and “*Trust Agreements*” shall mean and include the Amended and Restated Tax-Qualified Nuclear Decommissioning Master Trust Agreement and the Amended and Restated Non-Tax Qualified Nuclear Decommissioning Master Trust Agreement as they may from time to time be amended, modified, or supplemented.

“*Applicable Regulatory Requirements*” shall mean laws, rules, regulations, orders and license requirements applicable to the retention, investment and utilization of funds for the costs of the decommissioning of any Plant, including, without limitation, rules, regulations and orders issued by the NRC and any requirements set forth in the NRC-issued license to operate that Plant and any amendments thereto.

“*Code*” shall mean the Internal Revenue Code of 1986, as it may be amended from time to time, and the regulations promulgated thereunder. “*Section 468A*” shall mean that section of the Code, as it may be amended from time to time, and any successor provision thereto, and the regulations promulgated thereunder. “*Section 4951*” shall mean that section of the Code, as it may be amended from time to time, and any successor provision thereto, and the regulations promulgated thereunder.

“*ComEd*” shall mean Commonwealth Edison Company, an Illinois corporation, and its successors and assigns. Such term shall include, for purposes of Sections 2.8 hereof and Section 3.07 of the Trust Agreements (and Section 2.9 hereof, to the extent that Section addresses

amendments of Sections 2.8 hereof or Section 3.07 of the Trust Agreements), the entity that is then responsible for effecting any refunds to ratepayers as contemplated by the Order, dated December 20, 2000, and Amendatory Order dated February 21, 2001, entered by the Illinois Commerce Commission in Docket No. 00-0361, as such Orders may be amended, modified, replaced or superceded by any subsequent Illinois Commerce Commission or judicial order or any legislative enactment or provision.

**“Consolidation”** shall mean the Exelon Generation Consolidation Company, LLC.

**“Disbursement Certificate”** shall mean a document properly completed and executed by Consolidation or any of the NQF Companies substantially in the form of Exhibit A hereto.

**“Excess Contribution”** shall have the meaning set forth in Section 2.4 hereof.

**“Final Tax Liabilities”** shall mean any and all tax liabilities of a Tax-Qualified Trust determined to be owing but not paid out of the assets of a seller’s or transferor’s trust prior to the transfer of the assets of a seller’s or transferor’s trust to the Trust.

**“Final Tax Refunds”** shall mean any and all tax refunds of a Tax-Qualified Trust determined to be receivable but not collected by a seller’s or transferor’s trust prior to the transfer of the assets of a seller’s or transferor’s trust to the Trust.

**“Future Orders”** shall mean any orders of applicable regulatory bodies, including the NRC, and any Federal or state laws adopted, in connection with the retention, investment and utilization of funds for the costs of the decommissioning of any Plant.

**“Master Terms”** shall mean this Master Terms for Trust Agreements.

**“Non-Tax Qualified Trust”** shall mean each, and **“Non-Tax Qualified Trusts”** shall mean all, of the separate funds established for nuclear decommissioning, which are not tax qualified under Section 468A.

**“NQF Company”** shall mean any, and **“NQF Companies”** shall mean all of the the limited liability companies identified on Schedule A of the Amended and Restated Non-Tax Qualified Nuclear Decommissioning Master Trust Agreement.

**“Plant”** shall mean each, and **“Plants”** shall mean all, of the nuclear power plants listed on the separate Schedules attached to the Trust Agreements, as such Schedules may be supplemented from time to time by Consolidation and the NQF Companies by written notice to the Trustee. Each unit of a multi-unit nuclear power plant site shall be considered as a separate Plant for the purposes of this Agreement.

**“Qualified Costs”** shall mean the costs incurred in the decommissioning of a Plant (including, in the case of a multi-unit nuclear power plant site, any related common facilities), to the extent that such costs may be paid out of a Trust without contravening Applicable Regulatory Requirements. For a Tax-Qualified Trust, the applicable regulations will include the provisions of Section 468A.

“*Service*” shall mean the Internal Revenue Service.

“*Substantial Completion of Decommissioning*” shall mean the date at which the maximum acceptable radioactivity levels mandated by the NRC with respect to the decommissioned nuclear power plant are satisfied and the NRC license is terminated.

“*Tax-Qualified Trust*” shall mean each, and “*Tax-Qualified Trusts*” shall mean all, of the separate funds established for nuclear decommissioning under Section 468A.

“*Trust*” shall mean each, and “*Trusts*” shall mean all, of the funds created under the Trust Agreements, as such Agreements may be supplemented from time to time by Consolidation and the NQF Companies by written notice to the Trustee.

“*Withdrawal Certificate*” shall mean a document properly completed and executed by Consolidation or any of the NQF Companies substantially in the form of Exhibit B hereto.

1.2 *Names of Trusts.* Each Non-Tax Qualified Trust created under the Amended and Restated Non-Tax Qualified Nuclear Decommissioning Master Trust Agreement shall be known as the “[Name of Plant] Non-Tax Qualified Trust.” Non-Tax Qualified Trusts, collectively, shall be known as the “Non-Tax Qualified Trust Funds.” Each Tax-Qualified Trust created under the Amended and Restated Tax-Qualified Nuclear Decommissioning Master Trust Agreement shall be known as the “[Name of Plant] Tax-Qualified Trust”, collectively, shall be known as the “Tax-Qualified Trust Funds.”

1.3 *Purpose of Trust Agreement.* The purpose of this Trust Agreement is to provide funds for the contemplated decommissioning of the Plants listed on the separate Schedules attached hereto, and to comply with Applicable Regulatory Requirements. Tax-Qualified Trusts shall constitute “nuclear decommissioning reserve funds” within the meaning of Section 468A, and the assets of the Tax-Qualified Trusts must be used as authorized by Section 468A.

## **ARTICLE 2: ESTABLISHMENT OF SEPARATE TRUSTS AND DISPOSITIVE PROVISIONS**

The Trustee shall manage, invest, reinvest and, after payment of the expenses described in Section 4.1 hereof, distribute each Trust as follows:

2.1 [This Section Intentionally Deleted]

2.2 *Payment of Nuclear Decommissioning Costs.*

(a) Subject to the restrictions contained in Section 2.2(d), the Trustee shall make payments of Qualified Costs in accordance with the following procedures:

(i) *Disbursements to Third Parties.* The Trustee shall make payments of Qualified Costs to any person (other than Consolidation or the NQF Companies) for goods provided or labor or other services rendered to

Consolidation or a NQF Company in connection with the decommissioning of a Plant as described in a Disbursement Certificate.

(ii) *Reimbursement.* The Trustee shall make payments to Consolidation or the appropriate NQF Company or Companies in reimbursement of Qualified Costs actually incurred and paid to any other person as described in a Withdrawal Certificate.

(b) The Trustee shall be under no duty to inquire into the correctness or accuracy of matters contained in a Disbursement Certificate or Withdrawal Certificate unless representatives of the Trustee then approving any withdrawal or disbursement based on such certificate have actual knowledge of the falsity of any statements made therein.

(c) ExGen (as to both the Tax-Qualified Trusts and the Non-Tax Qualified Trusts), Consolidation (as to the Tax-Qualified Trusts) and the NQF Companies (as to the Non-Tax Qualified Trusts) hereby agree to indemnify the Trustee and hold it harmless from any tax imposed pursuant to Section 4951 with respect to a disbursement or reimbursement made by the Trustee pursuant to this Section 2.2 in reliance on a Disbursement Certificate or a Withdrawal Certificate, *provided* representatives of the Trustee then approving such disbursement or reimbursement do not have actual knowledge of the falsity of any statements made in the related Disbursement Certificate or Withdrawal Certificate that would have prevented the imposition of such tax.

(d) Except for administrative costs and taxes as provided in Sections 2.5 and 4.1 hereof, no disbursements or payments for decommissioning costs from the Trusts shall be made by the Trustee:

(i) unless the Trustee has first provided thirty days' prior written notice of such disbursement or payment to the NRC Director, Office of Nuclear Reactor Regulation;

(ii) if, within thirty days of providing the notice referred to in clause (i) of this Section 2.2(d), the Trustee receives written notice of an objection from the NRC Director, Office of Nuclear Reactor Regulation or if the Trustee receives such notice at any later time that is nevertheless sufficiently timely so as to allow the Trustee to prevent the disbursement.

(iii) where the purpose of such proposed disbursement or payment either in whole or in part is for activities not within the NRC definition of decommissioning, that portion of the disbursement or payment shall be separately identified by Consolidation and/or the NQF Company and accounted for in such notice.

**2.3 Additions to Trusts.** From time to time prior to the termination of each Trust held hereunder, Consolidation and the NQF Companies may make, and the Trustee shall accept,

additional contributions of funds to any separate Trust held hereunder to satisfy the purpose of the Trust Agreements as set forth in Section 1.4 of these Master Terms. The making of a contribution by Consolidation or the NQF Companies shall constitute the certification of Consolidation or the NQF Companies, as the case may be, that all necessary consents and approvals to such contribution have been obtained, and that in the case of Tax-Qualified Trusts, the contribution meets the requirements of Section 468A.

#### 2.4 *Subsequent Adjustments.*

(a) *For a Tax-Qualified Trust:* The Trustee and Consolidation understand that the contributions (excluding any Final Tax Refunds) made by Consolidation and allocated to a Trust from time to time may subsequently be determined to exceed the amounts determined pursuant to Section 468A and paragraph (c)(2)(ii) of Treasury Regulation § 1.468A-5 thereunder (any such excess being hereinafter referred to as an "**Excess Contribution**"). Upon the written certification of Consolidation, setting forth the amount of the Excess Contribution, and upon receipt of the opinion of legal counsel described below, the Trustee shall distribute such amount to the Trustee of the appropriate Non-Tax Qualified Trust, or, if so requested in such written certification, transfer all or a portion of such amount to one or more other separate Trusts held under the Trust Agreements. Any income attributable to any such Excess Contribution shall be allocated to the Trust to which such Excess Contribution relates.

(b) *For a Non-Tax Qualified Trust:* The Trustee and the NQF Companies understand that all or a portion of the contributions made by the NQF Companies and allocated to a Trust from time to time may subsequently be determined to be amounts that may be contributed to the Tax-Qualified Trust pursuant to Section 468A (any such excess also being hereinafter referred to as an "**Excess Contribution**"). Upon the written certification of Consolidation and the appropriate NQF Company, setting forth the amount of the Excess Contribution, and upon receipt of the opinion of legal counsel described below, the Trustee shall transfer such amount to the Trustee of the Tax-Qualified Trust, *provided, however*, that such transfer shall be made prior to the expiration of 2-1/2 months after the close of the taxable year for which the contribution was made. Income attributable to any such Excess Contribution shall not be transferred.

(c) Distributions and transfers of any Excess Contribution shall not be made unless Consolidation and the appropriate NQF Company furnish the Trustee with an opinion of legal counsel to the effect that such distribution or transfer will not result in disqualification of the Trust under Section 468A or constitute a violation of Applicable Regulatory Requirements, and that all necessary consents and approvals to such distribution or transfer have been obtained.

#### 2.5 *Remittance and Payment of Taxes*

(a) *Payment of Taxes Owed on Tax-Qualified Trusts.* The Trustee shall pay out of each separate Trust any Federal and, if applicable, state and local taxes on the

income of such Trust, including any Final Tax Liability, as and when due in accordance with the returns prepared pursuant to Section 3.5 hereof.

(b) *Remittance of Taxes for Non-Tax Qualified Trusts.* The Trustee shall remit to each of the NQF Companies, annually within 15 business days after a NQF Company requests therefor the amount from each Trust which said NQF Company certifies as the amount by which said NQF Company's Federal and, if applicable, state income taxes for the preceding fiscal year were increased by the net income of such Trust. The Trustee shall be under no duty to inquire into the correctness or accuracy of any such certificate.

(c) *Unrelated Business Taxable Income.* To the extent that assets of any Trust(s) are segregated in an investment management account pursuant to Section 3.8(a) hereof, the Investment Manager shall have the sole responsibility to make any determination as to whether any investment of such assets results in unrelated business taxable income and shall prepare any applicable tax returns, tax information returns and/or other reports pursuant to Section 3.5. The Trustee shall act at the direction of the Investment Manager consistent with the provisions of Section 2.5(a), 2.5(b) and 3.5 hereof.

2.6 [Intentionally Deleted]

2.7 *Time of Termination.* Each Trust under the Trust Agreements shall terminate in whole, to the extent provided in this Section 2.7, upon the earlier to occur of the following events:

(a) The Substantial Completion of Decommissioning of the Plant (including, in the case of a multi-unit nuclear power plant site, any related common facilities) for which such Trust was created and named, as evidenced to the Trustee by the written certification of Consolidation or the appropriate NQF Company.

(b) The distribution of all of the assets from the Trust.

The Trust Fund shall terminate when all of the separate Trusts have terminated.

2.8 *Distribution of Trust Upon Termination.* Upon the later of termination of the Tax-Qualified Trust or the Non-Tax Qualified Trust for the Plant, the Trustee shall distribute the entire remaining amount of the Trust for the Plant, including all accrued, accumulated, and undistributed net income, to ComEd. The interest of ComEd in any Trust is not subject to the claims of creditors of ComEd.

2.9 *Alterations and Amendments.* The Trustee and Consolidation and the NQF Companies understand and agree that amendments may be required to the Trust Agreements and/or these Master Terms from time to time to effectuate the purpose of the Trust Agreements and to comply with amendments to or changes in Applicable Regulatory Requirements, changes in tax laws (including Section 468A), regulations or rulings (whether published or private) of the Service (whether or not directly relating to Section 468A), and any other changes in the laws

applicable to Consolidation and the NQF Companies, the Plants or the Trusts created in the Trust Agreements. Consolidation and the NQF Companies and the Trustee may amend the Trust Agreements and/or these Master Terms to the extent necessary or desirable to effectuate such purpose or to comply with such changes; *provided, however*, that neither the Trust Agreement nor these Master Terms may be amended so as to violate Section 468A; *provided further* that Sections 2.8, and Section 2.9 of the Master Terms and Sections 1.04, 3.07 and 3.11 of the Trust Agreements may not be amended without the approval of ComEd; and *provided further* that neither the Trust Agreements and nor these Master Terms may be modified in any material respect without first providing thirty days' prior written notice to the NRC Director, Office of Nuclear Reactor Regulation and to ComEd, and absent notice of objection from the NRC Director, Office of Nuclear Reactor Regulation, prior to the effective date of any such amendment. Consolidation and the NQF Companies shall furnish the Trustee with an opinion of legal counsel that any such amendment does not violate Applicable Regulatory Requirements, and would not result in the disqualification of the Tax-Qualified Trusts as "nuclear decommissioning reserve funds" under Section 468A, and that all necessary approvals to such amendment have been obtained. Notwithstanding the foregoing, the Trustee may decline to adopt such amendment, if such amendment materially increases the expenses or responsibilities of the Trustee and no adequate provision has been made to compensate the Trustee for such increase, or if the Trustee would be unable with reasonable effort to comply with its duties as to be amended.

2.10 *No Authority to Conduct Business.* The purpose of the Trust Agreements is limited to the matters set forth in Section 1.4 above. Neither the Trust Agreement nor these Master Terms shall be construed to confer upon the Trustee any authority to conduct business.

### **ARTICLE 3: GENERAL PROVISIONS RELATING TO THE TRUSTEE**

The appointment of any successor Trustee, provisions governing resignation and compensation of the Trustee, and the general rules governing the relationships of the Trustee and Consolidation and the NQF Companies and any third parties are as follows:

3.1 *Designation and Qualification of Successor Trustees.* At any time during the term of the Trust Agreements, Consolidation and the appropriate NQF Company or Companies shall have the right, with respect to their respective Trust(s), to remove the Trustee acting under the Trust Agreements and appoint another qualified entity as a successor trustee upon 30 days' notice in writing to the Trustee, or upon such shorter notice as may be acceptable to the Trustee. Any Trustee shall have the right to resign at any time upon 30 days' notice in writing to Consolidation and/or the appropriate NQF Company or Companies for the affected Trust(s) and upon such resignation Consolidation and/or the appropriate NQF Company or Companies shall appoint another qualified entity as a successor Trustee for their respective Trust(s).

Any successor Trustee shall qualify by a duly acknowledged acceptance of the Trust Agreements, the Trusts created thereunder and these Master Terms, delivered to Consolidation and/or the appropriate NQF Company or Companies. Upon acceptance of such appointment by the successor Trustee, the Trustee shall transfer to such successor Trustee the Trust Fund. Any

successor Trustee shall have all the rights, powers, duties and obligations herein granted to the original Trustee.

If for any reason Consolidation or the appropriate NQF Company or Companies are unable to or do not appoint a successor Trustee within 90 days after the resignation or removal of the Trustee for their respective Trust(s) as provided above, Consolidation, the appropriate NQF Company or Companies, or the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee.

**3.2 Compensation and Reimbursement.** The Trustee shall be entitled to compensation from each Trust held under the Trust Agreements at such rates as may be approved in writing from time to time by Consolidation or the NQF Companies as the case may be. Subject to the approval of Consolidation and the NQF Companies (which shall not be unreasonably withheld or delayed), the Trustee shall be entitled to be reimbursed from each Trust held hereunder for out-of-pocket expenses, including, but not limited to, expenses of agents, auditors and counsel, incurred in connection with the administration of such Trust.

**3.3 Transactions With Third Parties.** No person or organization dealing with the Trustee shall be required to inquire into or to investigate its authority for entering into any transaction or to see to the application of the proceeds of any such transaction.

**3.4 Financial Statements.** The Trustee shall furnish monthly financial statements (audited by the Trustee's internal audit staff) for each Trust to Consolidation and the appropriate NQF Company or Companies not later than the 15th business day of the following month. The financial statements shall show the financial condition of the Trust, including, without limitation, the market value of the assets, and the income and expenses of each Trust for the period since the preceding statement. Any such financial statement may be approved by Consolidation and the appropriate NQF Company or Companies with respect to their respective Trust(s) by written notice to the Trustee or by failure to object to such financial statement within six months of the date upon which such financial statement was delivered to Consolidation and the appropriate NQF Company or Companies. The approval of any such financial statement shall constitute a full and complete discharge of the Trustee as to all matters set forth in such financial statement; *provided, however*, that the foregoing shall not relieve or absolve the Trustee from any liability associated with a failure to perform its fiduciary responsibilities. Effective January 1, 2000, the financial statements shall be audited upon direction of Consolidation or the appropriate NQF Company or Companies with respect to their respective Trust(s) by independent certified public accountants employed by the Trustee, subject to the limitations contained in Section 4.9 hereof.

**3.5 Tax Returns, Tax Information Returns and Other Reports.** The Trustee shall prepare or cause to be prepared such income or other tax returns for the Tax-Qualified Trusts, and tax information returns and such reports as may be required from time to time for the Non-Tax Qualified Trusts, and shall provide copies thereof to Consolidation or the appropriate NQF Company or Companies in advance of their filing for review. The Trustee shall provide to Consolidation or the appropriate NQF Company or Companies, as the case may be, all statements, documents, lists, or other information reasonably requested by Consolidation or the appropriate NQF Company or Companies. The Trustee shall also sign all such income or other

tax returns and information returns, and the Trustee shall file them or cause them to be filed with the appropriate government agencies. The Trustee shall cooperate with all requests made by regulatory agencies and shall provide copies to Consolidation and/or the appropriate NQF Company or Companies in advance of all information submitted to regulatory agencies. At the request of Consolidation or the appropriate NQF Company or Companies, the Trustee shall testify with respect to the Trusts and the Trust Fund in proceedings before the NRC and other regulatory agencies.

**3.6 Nominees; Depositories.** If the Trustee employs an agent or depository, specifically for purposes of providing services related to any Trust held hereunder (other than a securities broker), the Trustee shall disclose to such agent or depository that it is employed on behalf of such Trust. Subject to Section 3.10(b) hereof, the Trustee shall be liable for acts or omissions of the Trustee (and those of its officers and employees) occasioned by the willful misconduct or negligence of such Trustee (and that of its officers and employees). The Trustee shall further be liable for the acts of its nominee, or of any agent or depository or any nominee of any agent or depository with which any security of any Trust is deposited by the Trustee, as the case may be, with respect to any security registered in the name of the Trustee's nominee or in the name of the nominee of any such agent or depository, or with respect to any security of such Trust deposited with any agent or depository, and shall be liable for its acts and the acts of any such agent or depository with respect to the holding of securities in bulk.

With respect to the Tax-Qualified Trusts, the Trustee, or the Investment Manager with respect to an "investment manager account" (as hereinafter defined) (and, in either case, not the Trusts), shall also be liable for any tax imposed pursuant to Section 4951, as such section is made applicable to the Trusts, the Trust Fund, or the Trustee, and any applicable successor provision.

**3.7 Future Orders.** Consolidation and the NQF Companies shall promptly advise the Trustee in writing of the existence of any Future Orders having the effect of imposing new or different responsibilities upon the Trustee under the Trust Agreements or the Master Terms.

**3.8 Appointment of Investment Manager.**

(a) Consolidation and the NQF Companies shall have the right from time to time to appoint and remove one or more Investment Managers for their respective Trust(s) held under the applicable Trust Agreement and to direct the segregation of any part or all of any such Trust into one or more accounts to be known as "*investment manager accounts*" and if Consolidation or an NQF Company does so, it shall appoint an individual, partnership, association, or corporation as Investment Manager to manage the portion of any Trust so segregated, **provided, however, that the licensee, its affiliates, and its subsidiaries and persons representing them shall not provide day-to-day management direction of investments or direction on individual investments to either the Trustee or an investment manager.** Written notice of any such appointment and/or removal shall be given to the Trustee and the Investment Manager so appointed. The appointment, after the date hereof, shall be accomplished using an investment manager agreement signed by Consolidation or the appropriate NQF Company and the

Investment Manager. The Trustee may assume that any investment manager account previously established and the prior appointment of any Investment Manager for that account continues in force until receipt of written notice to the contrary from Consolidation or the appropriate NQF Company, as the case may be. As long as the Investment Manager is acting, the Investment Manager shall have full authority to direct the acquisition, retention and disposition of the assets from time to time comprising the investment manager account being managed by the Investment Manager, in accordance with Sections 2.5(c), 4.2, 4.3, 4.4 and 4.5 hereof. Upon the separation of the assets in accordance with Consolidation or the NQF Company instructions, the Trustee, as to those assets while so separated, shall be released and relieved of all investment duties, investment responsibilities and investment liabilities normally or statutorily incident to a trustee; *provided, however*, that the Trustee shall review the transactions in each investment manager account on a daily basis for the purpose of determining whether any assets acquired or any pending asset acquisitions (as to which the Trustee has been given information) are *Prohibited Investments* as provided in Section 4.3 hereof. In the event that the Trustee determines as a result of any such daily review that an investment is a *Prohibited Investment* as provided in Section 4.3, hereof, then it shall notify Consolidation or the appropriate NQF Company and the applicable Investment Manager within one business day of such determination by telephone, with confirmation in writing. The Trustee shall retain all other fiduciary duties with respect to assets the investment of which is directed by investment managers.

(b) ExGen (as to both the Tax-Qualified Trusts and the Non-Tax Qualified Trusts), Consolidation (as to the Tax-Qualified Trusts) and the NQF Companies (as to the Non-Tax Qualified Trusts) hereby agree to indemnify the Trustee and hold it harmless from any liability or expense incurred without gross negligence, willful misconduct, recklessness or bad faith on the part of the Trustee, in connection with or arising out of: (i) any action taken or omitted or any investment or disbursement of any part of the investment manager account made by the Trustee at the direction of the Investment Manager, or (ii) any action taken by the Trustee pursuant to notification of an order issued by an Investment Manager to purchase or sell securities directly to a broker or dealer under a power of attorney.

(c) To the extent that Consolidation or the appropriate NQF Company or Companies notify the Trustee with respect to their respective Trust(s) that any Trust assets are currently not allocated to an investment manager account, the Trustee shall have investment responsibility for such assets until further notice from Consolidation or the appropriate NQF Company or Companies, and shall hold, invest and reinvest such assets subject to any investment guidelines issued to it by Consolidation or the appropriate NQF Company or Companies, and subject further to the provisions of Sections 4.2 and 4.3 hereof.

3.9 *Use of Subordinated Trusts.* Consolidation and each of the NQF Companies shall have the right to direct the segregation of any part of the Trusts into one or more "*Subordinated Trusts.*" If Consolidation and/or the NQF Companies do so, they shall appoint a corporate trustee as Subordinated Trustee to manage the portion of any trust so segregated. Written notice

of any such appointment and/or removal shall be given to the NRC, Trustee and Consolidation and/or the NQF Companies shall direct the Trustee to enter into such trust agreement with each Subordinated Trustee as Consolidation and/or the NQF Companies determine is appropriate. A copy of the subordinated trust will be provided to the NRC by Consolidation and/or the NQF Companies prior to its creation.

The Subordinated Trust shall be under the control of the Subordinated Trustee. The Subordinated Trustee shall be responsible for complying with the provisions of Sections 2.2, 4.2, 4.3 and 4.4 hereof, and the Trustee shall have no responsibility therefore; *provided, however*, that if the Trustee has actual knowledge of an action taken by the Subordinated Trustee in violation of or noncompliance with any of the provisions of Sections 2.2, 4.2, 4.3 or 4.4 hereof, the Trustee shall have a duty to promptly inform Consolidation and/or the NQF Companies, as the case may be, of such violation or noncompliance.

Consolidation and the NQF Companies will indemnify the Trustee and hold it harmless from any liability or expense in connection with or arising out of the actions of the Subordinated Trustee with respect to the Subordinated Trust account.

### **3.10 *Certain Duties and Responsibilities of the Trustee.***

(a) In the absence of bad faith on its part, the Trustee may conclusively rely upon certificates or opinions furnished to the Trustee and conforming to the requirements of the Trust Agreements and the Master Terms; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall have no duty to examine the same to determine whether they conform to the requirements of the Trust Agreements and these Master Terms unless the representative of the Trustee involved with the certificate in question has actual knowledge of the falsity of any statement made therein.

(b) No provision of the Trust Agreements or these Master Terms shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that (i) this subsection shall not be construed to limit the effect of subsection (a) of this section; (ii) the Trustee shall not be liable for any error of judgment made in good faith by a responsible officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts or was otherwise negligent in making the judgment; and (iii) no provision of the Trust Agreements or these Master Terms shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

### **3.11 *Certain Rights of Trustee.*** Except as otherwise provided in Section 3.10 hereof:

(a) Any request or direction of Consolidation or any of the NQF Companies mentioned herein shall be sufficiently evidenced by a written request or direction signed,

prepared or furnished by an authorized representative of Consolidation or the appropriate NQF Company, or an oral or telephonic request or order confirmed within a reasonable time by such a written request or direction, and any action of the board of directors of Consolidation and any of the NQF Companies may be sufficiently evidenced by a certificate of Consolidation or the appropriate NQF Company's secretary or assistant secretary;

(b) Whenever in the administration of any Trust created under the Trust Agreements the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon the certificate of an authorized representative of Consolidation or the NQF Companies;

(c) The Trustee may consult with legal counsel and the written advice of such counsel or any opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in reliance thereon; and

(d) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by the Trust Agreements at the request or direction of Consolidation or the NQF Companies pursuant to the Trust Agreements or these Master Terms, unless Consolidation or the NQF Companies, as the case may be, shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

#### **ARTICLE 4: TRUSTEE'S POWERS**

The Trustee shall have, with respect to each Trust held under the Trust Agreements, the following powers, all of which powers are fiduciary powers to be exercised in a fiduciary capacity and in the best interests of such Trust, and which are to be exercised as the Trustee, acting in such fiduciary capacity, in its discretion, shall determine, except that the Trustee shall not act in its discretion but only at the direction of an appointed Investment Manager in the exercise of those powers given in Sections 4.2, 4.3, 4.4 and 4.5 hereof with respect to the acquisition, retention, and disposition of the assets of an investment manager account, and, except as otherwise provided, which are intended in no way to limit the general powers of the office. The Subordinated Trustee shall have those powers set forth in an appropriate Subordinated Trust Agreement, which shall not be inconsistent with the material terms of the Trust Agreement or these Master Terms.

4.1 *Payment of or Provision for Expenses of Administration.* The Trustee shall have the power to incur, pay or make provision for any and all charges, taxes, and expenses upon or connected with each Trust held under the Trust Agreements in the discharge of its fiduciary obligations thereunder (and other incidental expenses of the Fund (including legal, accounting, actuarial and trustee expenses)), but to charge said amounts to such Trust only to the extent that

such amounts are directed to be paid from such Trust by Consolidation or any of the NQF Companies pursuant to Section 2.4 or 3.2 hereof or, in the case of Tax-Qualified Trusts, as may be incurred and paid from such Trust without causing the Trust to become disqualified under Section 468A.

**4.2 Investment of Trust Fund: Prudent Investor Standard.**

(a) Pending any other permissible use of any Trust held under the Trust Agreements, and subject to the limitations provided in Section 4.3 of these Master Terms, the Trustee shall have the power and authority to invest and reinvest all or any part of the assets of such Trust, including any undistributed income therefrom, in a manner consistent with the "prudent investor" standard as specified in 18 CFR § 35.32(a)(3) of the Federal Energy Regulatory Commission regulations and in such a way as to attempt to maximize the after-tax returns thereon.

(b) In the exercise of the power and authority set forth in Section 4.2(a) hereof, the Trustee has the following powers and authority:

(i) to purchase, receive or subscribe for any securities or other property and to retain in trust such securities or other property;

(ii) to sell, exchange, convey, transfer, lend, or otherwise dispose of any property held in the Trusts and to make any sale by private contract or public auction; and no person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale or other disposition;

(iii) to vote in person or by proxy any stocks, bonds or other securities held in the Trusts;

(iv) to exercise any rights appurtenant to any such stocks, bonds or other securities for the conversion thereof into other stocks, bonds or securities, or to exercise rights or options to subscribe for or purchase additional stocks, bonds or other securities, and to make any and all necessary payments with respect to any such conversion or exercise, as well as to write options with respect to such stocks and to enter into any transactions in other forms of options with respect to any options which the Trusts have outstanding at any time;

(v) to join in, dissent from or oppose the reorganization, recapitalization, consolidation, sale or merger of corporations or properties of which the Trusts may hold stocks, bonds or other securities or in which it may be interested, upon such terms and conditions as deemed wise, to pay any expenses, assessments or subscriptions in connection therewith, and to accept any securities or property, whether or not trustees would be authorized to invest in such securities or property, which may be issued upon any such reorganization, recapitalization, consolidation, sale or merger and thereafter to hold the same. To

the extent that any securities that are accepted are attributable to an investment manager account, the provisions of Section 3.8(a) apply with respect to Trustee review for Prohibited Investments under Section 4.3 and notification of Consolidation or the appropriate NFQ Company and the applicable Investment Manager.

(vi) to enter into any type of contract with any insurance company or companies, either for the purposes of investment or otherwise; provided that no insurance company dealing with the Trustee shall be considered to be a party to the Trust Agreements and these Master Terms and shall only be bound by and held accountable to the extent of its contract with the Trustee. Except as otherwise provided by any contract, the insurance company need only look to the Trustee with regard to any instructions issued and shall make disbursements or payments to any person, including the Trustee, as shall be directed by the Trustee. Where applicable, the Trustee shall be the sole owner of any and all insurance policies or contracts issued. Such contracts or policies, unless otherwise determined, shall be held as an asset of the Trusts for safekeeping or custodian purposes only;

(vi) to invest assets of the Trust in foreign and domestic futures contracts, options on futures contracts, options contracts, swaps, short sales and other derivative investments, and, in connection with such investments, to transfer assets of the Trust to brokers or other third parties as margin or collateral at the direction of the Investment Manager; *provided, however*, that the Investment Manager and Trustee shall have first entered into an appropriate account agreement with such broker or third party. Notwithstanding anything to the contrary contained in the Trust Agreements or these Master Terms, the Trustee shall have no custodial responsibility for any assets so transferred;

(vii) to invest in any collective, common or pooled trust fund operated or maintained exclusively for the commingling and collective investment of monies or other assets including any such fund operated or maintained by the Trustee or an affiliate. Consolidation and the NQF Companies expressly understand and agree that any such collective fund may provide for the lending of its securities by the collective fund trustee and that such collective fund's trustee will receive compensation for the lending of securities that is separate from any compensation of the Trustee hereunder, or any compensation of the collective fund trustee for the management of such collective fund; and

(viii) to make foreign investments, including investments to be maintained abroad; provided, however, that such authority is limited to those foreign jurisdictions in which the Trustee has selected a foreign custodian in accordance with Section 4.7 hereof.

(c) Consolidation and the NQF Companies recognize that settlements of transactions may be effected in trading and processing practices customary in the

jurisdiction or market where the transaction occurs. Consolidation and the NQF Companies acknowledge that this may, in certain circumstances, require the delivery of cash or securities (or other property) without the concurrent receipt of securities (or other property) or cash and, in such circumstances, Consolidation and/or the appropriate NQF Company shall have sole responsibility for non-receipt of payment (or late payment) by the counterparty.

(d) All investments must be sufficiently liquid to enable each Trust to fulfill the purpose of the Trust Agreements and to satisfy obligations as they become due as communicated in writing to the Trustee, and absent a written communication, the Trustee shall invest each separate Trust as though such Trust had no short or intermediate term cash requirements. Nothing in this Section 4.2 shall be construed as requiring the Trustee to make any investigation as to when any of the Plants may be decommissioned or when obligations relating to such decommissioning may be expected to become due.

**4.3 Prohibited Investments.** The Trustee shall assure that the assets of the Trusts are not invested or reinvested in the following Prohibited Investments:

(a) Any deposit with a banking institution unless such banking institution has not less than \$350 million in equity capital on a current market value basis; or

(b) Any securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns; ~~provided, however, that the foregoing restriction shall not prevent investments tied to market indices or other non-nuclear sector collective, commingled or mutual funds; or~~

(c) Any securities or other obligations of any entity owning or operating one or more nuclear power plants; *provided, however,* that the foregoing restriction shall not prevent investments tied to market indices or other non-nuclear sector collective, commingled, or mutual funds; or

(d) Any investment which would contravene any Future Orders in effect at the time such investment or reinvestment is made and previously furnished to the Trustee with reference to the Trusts; or

(e) Any investment not permitted under Section 468A of the Code.

**4.4 Management of Trusts.**

(a) The Trustee shall have the power to sell, exchange or otherwise dispose of all or any part of any Trust held hereunder, without prior application to or approval by or order of any court, upon such terms and in such manner and at such prices as the Trustee shall determine; to modify, renew, or extend, bonds, notes, or other obligations or any installment of principal thereof or any interest due thereon and to waive any defaults in the performance of the terms and conditions thereof; and to execute and deliver any and all assignments, bonds, or other instruments in connection with these powers, at such

times, in such manner and upon such terms and conditions as the Trustee may be deemed expedient. The Trustee's determinations of manner of sales, terms, prices and the exercise of other powers granted herein, if reasonably made, are not to be questioned.

(b) Notwithstanding anything contained in the Trust Agreements or these Master Terms to the contrary, the Trustee may not authorize or carry out any sale, exchange, or other transaction between any Trust and the Trustee or any affiliate of the Trustee, or any "disqualified person" within the meaning of Section 4951, of the kind described in Treasury Regulation 1.468A-5(b), except the payment of compensation and expenses pursuant to Section 3.2 hereof, or unless such transaction is not an act of "self-dealing" within the meaning of Section 4951 of the Code. The Trustee shall not cause any Trust to engage in any act of self-dealing with Consolidation or the NQF Companies or any affiliate of Consolidation or the NQF Companies. Consolidation and the NQF Companies agree to furnish the Trustee with the identity of persons who are "disqualified persons" within the meaning of Section 4951 by reason of their affiliation with Consolidation and/or the NQF Companies.

**4.5 Extension of Obligations and Negotiation of Claims.** Subject to the limitations contained in Sections 4.2, 4.3 and 4.4 hereof, the Trustee shall have the power to renew or extend the time of payment of any obligation, secured or unsecured, payable to or by any Trust, for as long a period or periods of time and on such terms as it shall determine; and, subject to the approval of Consolidation or the appropriate NQF Company or Companies (which shall not be unreasonably withheld or delayed), to adjust, settle, compromise, and arbitrate claims or demands in favor of or against any Trust, including claims for taxes, upon such terms as it deems advisable.

**4.6 Registration of Securities.** The Trustee shall have the power to hold any stocks, bonds, securities, and/or other property in the name of a nominee, in a street name, or by other title-holding device, without indication of trust.

**4.7 Foreign Custodians.**

(a) The Trustee shall have the power to appoint foreign custodians as agent of the Trustee to custody foreign securities holdings of the Trust or any investment manager account. Custody of foreign investments shall be maintained with foreign custodians selected by the Trustee. In the case of an investment manager account, the Investment Manager shall have sole responsibility for the decision to maintain the custody of foreign investments in its investment manager account abroad, which decision shall be subject to the limitation contained in the foregoing second sentence of this Section 4.7(a). The Trustee shall have no responsibility for losses to the Trust resulting from the acts or omissions of any foreign custodian appointed by the Trustee unless due to the foreign custodian's fraud, negligence or willful misconduct.

(b) The Trustee shall have the power to utilize any tax reclaim procedures with respect to taxes withheld to which the Trust may be entitled under applicable tax

laws, treaties and regulations; provided that any exercise of such power by the Trustee shall be on a reasonable efforts basis.

4.8 *Securities Lending.* Pursuant to a written agreement between the Trustee and Consolidation or the appropriate NQF Company or Companies, Trustee shall have authority to lend the assets of the Trusts and, specifically, to loan any securities to brokers, dealers or banks upon such terms, and secured in such manner, as may be determined by the Trustee, to permit the loaned securities to be transferred into the name of the borrower or others and to permit the borrower to exercise such rights of ownership over the loaned securities as may be required under the terms of any such loan, and to receive and invest collateral provided by the borrower; provided that with respect to the lending of securities pursuant to the securities lending authorization agreement between the parties, (a) both parties intend that, for purposes of the relevant provisions of the US Bankruptcy Code, at all relevant times the Trustee/securities lending agent shall be deemed to be and to be acting as a “financial institution” as defined in section 101(22) of the US Bankruptcy Code, and each loan entered into by the Trustee/securities lending agent with borrowers under authority of the securities lending authorization agreement (a “Loan”) shall be deemed to be a “securities contract” as defined in section 741 of the US Bankruptcy Code; and (b) each Loan shall be made in conformity with all applicable laws governing such Loan and all applicable rules, regulations and exemptions from time to time promulgated and issued under the authority of those laws.

4.9 *Retention and Removal of Professional Service Providers.* The Trustee shall have the power to employ attorneys, accountants, and custodians as it shall deem advisable and to make such payments thereof as the Trustee shall deem reasonable for the implementation of the purpose of the Trust Agreements. The Trustee shall have the absolute right to dismiss any such agents for any reason whatsoever; *provided* that the Trustee’s selection of an accounting firm shall be subject to the prior consent of Consolidation or the appropriate NQF Company, as the case may be, which consent shall not be unreasonably withheld.

4.10 *Delegation of Ministerial Powers.* The Trustee shall have the power to delegate to other persons such ministerial powers and duties as it may deem to be advisable.

4.11 *Discretion in Exercise of Powers.* The Trustee shall have the power to do any and all other acts which the Trustee shall deem proper to effectuate the powers specifically conferred upon it by the Trust Agreements and these Master Terms; *provided, however*, that this Section 4.11 shall not authorize the Trustee to do any act or participate in any transaction which would (a) contravene any provision of the Trust Agreements or these Master Terms; (b) violate the terms and conditions of, or cause any Trust held under the Trust Agreements not to satisfy Applicable Regulatory Requirements; or (c) disqualify any of the Tax-Qualified Trusts as “nuclear decommissioning reserve funds” under Section 468A.

**ARTICLE 5:  
[INTENTIONALLY DELETED]**



## EXHIBIT A-1

### DISBURSEMENT CERTIFICATE Tax-Qualified Decommissioning Trust

The undersigned, being a duly authorized officer of Exelon Generation Consolidation Company, LLC, a Nevada limited liability company (“Consolidation”), and, in such capacity, being duly authorized and empowered to execute and deliver this certificate, hereby certifies to the Trustee of the Exelon Generation Consolidation Company, LLC Tax Qualified Decommissioning Trust—[name of Plant(s)] (the “Trust(s)”), pursuant to Section 2.2(a)(i) of the Master Terms as amended and restated as of \_\_\_\_\_, 2003 (the “Master Terms”), between Consolidation and the Trustee, as follows:

(a) There is due and owing to each Payee (“Payees”) [all/a portion of] the invoiced cost to Consolidation for goods or services provided in connection with the decommissioning of the [name of Plant(s)] as evidenced by the Invoice Schedule (with supporting exhibits) attached as Exhibit 1 hereto;

(b) All such amounts due and owing to such Payees constitute  
Qualified Costs;

(c) All conditions precedent to the making of this disbursement set forth in any agreement between each such Payee and Consolidation have been fulfilled;

(d) No Payee is a “disqualified person” within the meaning of Section 4951 or Section 468A by reason of an affiliation with Consolidation or, if any are, then the payment constitutes compensation or payment or reimbursement of expenses which are reasonable and necessary to carry out the purpose of the Trust(s) and the payment is not excessive; and

(e) The payment of the amounts owing meets Applicable Regulatory Requirements, requirements of the Code, and all necessary consents and approvals for such payment have been obtained.

Accordingly, subject to the requirements of Section 2.2(b) of the Master Terms, you are directed to permit the disbursement of the amounts indicated on Exhibit 1 hereto from the Trust(s) in order to permit payment of such sum(s) to be made to the aforementioned Payees for such purpose. You are further directed to disburse such sum(s), once withdrawn, directly to such Payees, in the manner indicated on Exhibit 1 hereto.

Although you are under no obligation to make any further inquiry or investigation or to obtain any further documentation, it is understood that you may, in your discretion, elect to withhold any such disbursement to any Payee unless and until you receive written releases, in a form satisfactory to you, of any liens, security interests, or claims of such Payee against Consolidation or its property as you may, in your discretion, require.

Capitalized terms used herein without definition shall have the meanings given to such terms in the Trust Agreements and the Master Terms.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

EXELON GENERATION CONSOLIDATION  
COMPANY, LLC

By: \_\_\_\_\_  
Duly Authorized Officer

## EXHIBIT A-2

### DISBURSEMENT CERTIFICATE Non-Tax Qualified Decommissioning Trust

The undersigned, being a duly authorized officer of \_\_\_\_\_ LLC, a Nevada limited liability company ("LLC"), and, in such capacity, being duly authorized and empowered to execute and deliver this certificate, hereby certifies to the Trustee of the \_\_\_\_\_ LLC Non-Tax Qualified Decommissioning Trust—[name of Plant(s)] (the "*Trust(s)*"), pursuant to Section 2.2(a)(i) of the Master Terms as amended and restated as of \_\_\_\_\_, 2003 (the "*Master Terms*"), between LLC and the Trustee, as follows:

(a) There is due and owing to each Payee ("*Payees*") [all/a portion of] the invoiced cost to LLC for goods or services provided in connection with the decommissioning of the [name of Plant(s)] as evidenced by the Invoice Schedule (with supporting exhibits) attached as Exhibit 1 hereto;

(b) All such amounts due and owing to such Payees constitute  
Qualified Costs;

(c) All conditions precedent to the making of this disbursement set forth in any agreement between each such Payee and Consolidation have been fulfilled;

(d) No Payee is a "disqualified person" within the meaning of Section 4951 or Section 468A by reason of an affiliation with LLC or, if any are, then the payment constitutes compensation or payment or reimbursement of expenses which are reasonable and necessary to carry out the purpose of the Trust(s) and the payment is not excessive; and

(e) The payment of the amounts owing meets Applicable Regulatory Requirements, and all necessary consents and approvals for such payment have been obtained.

Accordingly, subject to the requirements of Section 2.2(b) of the Master Terms, you are directed to permit the disbursement of the amounts indicated on Exhibit 1 hereto from the Trust(s) in order to permit payment of such sum(s) to be made to the aforementioned Payees for such purpose. You are further directed to disburse such sum(s), once withdrawn, directly to such Payees, in the manner indicated on Exhibit 1 hereto.

Although you are under no obligation to make any further inquiry or investigation or to obtain any further documentation, it is understood that you may, in your discretion, elect to withhold any such disbursement to any Payee unless and until you receive written releases, in a form satisfactory to you, of any liens, security interests, or claims of such Payee against Consolidation or its property as you may, in your discretion, require.

Capitalized terms used herein without definition shall have the meanings given to such terms in the Trust Agreements and the Master Terms.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NQ, LLC

By: \_\_\_\_\_  
Duly Authorized Officer

**EXHIBIT B-1**

**WITHDRAWAL CERTIFICATE  
Tax-Qualified Decommissioning Trust**

The undersigned, being a duly authorized officer of Exelon Generation Consolidation Company, LLC, a Nevada limited liability company (“Consolidation”), and, in such capacity, being duly authorized and empowered to execute and deliver this certificate, hereby certifies to the Trustee of the Exelon Generation Consolidation Company, LLC Tax-Qualified Decommissioning Trust—[name of Plant(s)] (the “Trust(s)”), pursuant to Section 2.2(a)(ii) of the Master Terms, amended and restated as of \_\_\_\_\_, 2003 (the “Master Terms”), between Consolidation and the Trustee, as follows:

(a) Consolidation has paid, and is entitled to reimbursement for, amounts paid for goods or services provided in connection with the decommissioning of the [name of Plant(s)] as described in the schedule (with supporting exhibits) attached as Exhibit 1 hereto;

(b) All such amounts paid constitute Qualified Costs;

(c) No payee was a “disqualified person” within the meaning of Section 4951 or Section 468A by reason of an affiliation with Consolidation or, if any were, then the payment constituted compensation or payment or reimbursement of expenses which were reasonable and necessary to carry out the purpose of the Trust and the payment was not excessive; and

(d) The payment of the amounts met Applicable Regulatory Requirements, requirements of the Code, and all necessary consents and approvals for such payment had been obtained.

Accordingly, subject to the requirements of Section 2.2(b) of the Master Terms, you are directed to permit the disbursement of the amounts indicated on Exhibit 1 hereto from the Trust(s) in order to reimburse Consolidation for such payments. You are further directed to disburse such sum(s), once withdrawn, directly to “Exelon Generation Consolidation Company, LLC.”

Capitalized terms used herein without definition shall have the meanings given to such terms in the Trust Agreements and the Master Terms.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**EXELON GENERATION CONSOLIDATION  
COMPANY, LLC**

By: \_\_\_\_\_  
Duly Authorized Office

**EXHIBIT B-2**

**WITHDRAWAL CERTIFICATE  
Non-Tax Qualified Decommissioning Trust**

The undersigned, being a duly authorized officer of \_\_\_\_\_ LLC, a Nevada limited liability company ("LLC"), and, in such capacity, being duly authorized and empowered to execute and deliver this certificate, hereby certifies to the Trustee of the \_\_\_\_\_ LLC Non-Tax Qualified Decommissioning Trust—[name of Plant(s)] (the "*Trust(s)*"), pursuant to Section 2.2(a)(ii) of the Master Terms, amended and restated as of \_\_\_\_\_, 2003 (the "*Master Terms*"), between LLC and the Trustee, as follows:

(a) LLC has paid, and is entitled to reimbursement for, amounts paid for goods or services provided in connection with the decommissioning of the [name of Plant(s)] as described in the schedule (with supporting exhibits) attached as Exhibit 1 hereto;

(b) All such amounts paid constitute Non-Tax Qualified Costs;

(c) No payee was a "disqualified person" within the meaning of Section 4951 or Section 468A by reason of an affiliation with LLC or, if any were, then the payment constituted compensation or payment or reimbursement of expenses which were reasonable and necessary to carry out the purpose of the Trust and the payment was not excessive; and

(d) The payment of the amounts met Applicable Regulatory Requirements, and all necessary consents and approvals for such payment had been obtained.

Accordingly, subject to the requirements of Section 2.2(b) of the Master Terms, you are directed to permit the disbursement of the amounts indicated on Exhibit 1 hereto from the Trust(s) in order to reimburse LLC for such payments. You are further directed to disburse such sum(s), once withdrawn, directly to "\_\_\_\_\_ Company, LLC."

Capitalized terms used herein without definition shall have the meanings given to such terms in the Trust Agreements and the Master Terms.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ NQ, LLC

By: \_\_\_\_\_  
Duly Authorized Office

----- COMPARISON OF HEADERS  
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----- REVISION LIST -----

The bracketed numbers refer to the Page and Paragraph for the start of the paragraph in both the old and the new documents.

- [8:4 8:4] Changed "payments for ... costs from" to "payments from"
- [13:5 13:5] Changed "segregated." to "segregated, ... investment manager."
- [19:4 19:4] Changed "assigns; provided, ... funds; or" to "assigns; or"

----- NOTE CHANGES -----

- [1 3] Add Head "Header Discontinued"

Header Discontinued"

- [2 2] Changed "3.009900.0011" to "4.009900.0011"
- [3 3] Changed "3.009900.0011" to "4.009900.0011"
- [4 4] Changed "15" to "9"
- [4 4] Changed "3.009900.0011" to "4.009900.0011"
- [6 6] Changed "3.009900.0011" to "4.009900.0011"

**MASTER TERMS FOR  
TRUST AGREEMENTS**

Between

**EXELON GENERATION CONSOLIDATION COMPANY, LLC  
EXELON BRAIDWOOD 1 NQ, LLC  
EXELON BRAIDWOOD 2 NQ, LLC  
EXELON BYRON 1 NQ, LLC  
EXELON BYRON 2 NQ, LLC  
EXELON DRESDEN 1 NQ, LLC  
EXELON DRESDEN 2 NQ, LLC  
EXELON DRESDEN 3 NQ, LLC  
EXELON LASALLE 1 NQ, LLC  
EXELON LASALLE 2 NQ, LLC  
EXELON QUAD CITIES 1 NQ, LLC  
EXELON QUAD CITIES 2 NQ, LLC  
EXELON ZION 1 NQ, LLC  
EXELON ZION 2 NQ, LLC**

and

**THE NORTHERN TRUST COMPANY**

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## MASTER TERMS FOR TRUST AGREEMENTS

The following Master Terms for Trust Agreements (the “Master Terms”) shall apply for purposes of the Amended and Restated Tax-Qualified Nuclear Decommissioning Master Trust Agreement by and between Commonwealth Edison Company (for the limited purposes of confirming the assignment reflected in Section 3.11 of the Tax-Qualified Agreement hereof and its rights as stated in Section 1.04 of said Agreement and Sections 2.8 and 2.9 hereof), Exelon Generation Company, LLC (“ExGen”), Exelon Generation Consolidation Company, LLC (“Consolidation”) and the Northern Trust Company as Trustee (the “Trustee”), and for purposes of the Amended and Restated Non-Tax Qualified Nuclear Decommissioning Master Trust Agreement by and between Commonwealth Edison Company (for the limited purposes of confirming the assignment reflected in Section 3.11 of the Non-Tax Qualified Agreement and its rights as stated in Section 1.04 of said Agreement and Sections 2.8 and 2.9 hereof), ExGen, the limited liability companies identified on Schedule A of such agreement (the “NQF Companies”) and the Trustee.

Any terms capitalized but not defined herein shall have the same meaning as assigned to such terms in the Trust Agreements.

### ARTICLE 1: DEFINITIONS, NAME, AUTHORIZED ACTORS AND PURPOSE

1.1 *Definitions.* For purposes of the Master Terms, the following terms shall have the following meanings:

“*Agreements*,” and “*Trust Agreements*” shall mean and include the Amended and Restated Tax-Qualified Nuclear Decommissioning Master Trust Agreement and the Amended and Restated Non-Tax Qualified Nuclear Decommissioning Master Trust Agreement as they may from time to time be amended, modified, or supplemented.

“*Applicable Regulatory Requirements*” shall mean laws, rules, regulations, orders and license requirements applicable to the retention, investment and utilization of funds for the costs of the decommissioning of any Plant, including, without limitation, rules, regulations and orders issued by the NRC and any requirements set forth in the NRC-issued license to operate that Plant and any amendments thereto.

“*Code*” shall mean the Internal Revenue Code of 1986, as it may be amended from time to time, and the regulations promulgated thereunder. “*Section 468A*” shall mean that section of the Code, as it may be amended from time to time, and any successor provision thereto, and the regulations promulgated thereunder. “*Section 4951*” shall mean that section of the Code, as it may be amended from time to time, and any successor provision thereto, and the regulations promulgated thereunder.

“*ComEd*” shall mean Commonwealth Edison Company, an Illinois corporation, and its successors and assigns. Such term shall include, for purposes of Sections 2.8 hereof and Section 3.07 of the Trust Agreements (and Section 2.9 hereof, to the extent that Section addresses

amendments of Sections 2.8 hereof or Section 3.07 of the Trust Agreements), the entity that is then responsible for effecting any refunds to ratepayers as contemplated by the Order, dated December 20, 2000, and Amendatory Order dated February 21, 2001, entered by the Illinois Commerce Commission in Docket No. 00-0361, as such Orders may be amended, modified, replaced or superceded by any subsequent Illinois Commerce Commission or judicial order or any legislative enactment or provision.

**“Consolidation”** shall mean the Exelon Generation Consolidation Company, LLC.

**“Disbursement Certificate”** shall mean a document properly completed and executed by Consolidation or any of the NQF Companies substantially in the form of Exhibit A hereto.

**“Excess Contribution”** shall have the meaning set forth in Section 2.4 hereof.

**“Final Tax Liabilities”** shall mean any and all tax liabilities of a Tax-Qualified Trust determined to be owing but not paid out of the assets of a seller’s or transferor’s trust prior to the transfer of the assets of a seller’s or transferor’s trust to the Trust.

**“Final Tax Refunds”** shall mean any and all tax refunds of a Tax-Qualified Trust determined to be receivable but not collected by a seller’s or transferor’s trust prior to the transfer of the assets of a seller’s or transferor’s trust to the Trust.

**“Future Orders”** shall mean any orders of applicable regulatory bodies, including the NRC, and any Federal or state laws adopted, in connection with the retention, investment and utilization of funds for the costs of the decommissioning of any Plant.

**“Master Terms”** shall mean this Master Terms for Trust Agreements.

**“Non-Tax Qualified Trust”** shall mean each, and **“Non-Tax Qualified Trusts”** shall mean all, of the separate funds established for nuclear decommissioning, which are not tax qualified under Section 468A.

**“NQF Company”** shall mean any, and **“NQF Companies”** shall mean all of the the limited liability companies identified on Schedule A of the Amended and Restated Non-Tax Qualified Nuclear Decommissioning Master Trust Agreement.

**“Plant”** shall mean each, and **“Plants”** shall mean all, of the nuclear power plants listed on the separate Schedules attached to the Trust Agreements, as such Schedules may be supplemented from time to time by Consolidation and the NQF Companies by written notice to the Trustee. Each unit of a multi-unit nuclear power plant site shall be considered as a separate Plant for the purposes of this Agreement.

**“Qualified Costs”** shall mean the costs incurred in the decommissioning of a Plant (including, in the case of a multi-unit nuclear power plant site, any related common facilities), to the extent that such costs may be paid out of a Trust without contravening Applicable Regulatory Requirements. For a Tax-Qualified Trust, the applicable regulations will include the provisions of Section 468A.

**“Service”** shall mean the Internal Revenue Service.

**“Substantial Completion of Decommissioning”** shall mean the date at which the maximum acceptable radioactivity levels mandated by the NRC with respect to the decommissioned nuclear power plant are satisfied and the NRC license is terminated.

**“Tax-Qualified Trust”** shall mean each, and **“Tax-Qualified Trusts”** shall mean all, of the separate funds established for nuclear decommissioning under Section 468A.

**“Trust”** shall mean each, and **“Trusts”** shall mean all, of the funds created under the Trust Agreements, as such Agreements may be supplemented from time to time by Consolidation and the NQF Companies by written notice to the Trustee.

**“Withdrawal Certificate”** shall mean a document properly completed and executed by Consolidation or any of the NQF Companies substantially in the form of Exhibit B hereto.

1.2 **Names of Trusts.** Each Non-Tax Qualified Trust created under the Amended and Restated Non-Tax Qualified Nuclear Decommissioning Master Trust Agreement shall be known as the “[Name of Plant] Non-Tax Qualified Trust.” Non-Tax Qualified Trusts, collectively, shall be known as the “Non-Tax Qualified Trust Funds.” Each Tax-Qualified Trust created under the Amended and Restated Tax-Qualified Nuclear Decommissioning Master Trust Agreement shall be known as the “[Name of Plant] Tax-Qualified Trust”, collectively, shall be known as the “Tax-Qualified Trust Funds.”

1.3 **Purpose of Trust Agreement.** The purpose of this Trust Agreement is to provide funds for the contemplated decommissioning of the Plants listed on the separate Schedules attached hereto, and to comply with Applicable Regulatory Requirements. Tax-Qualified Trusts shall constitute “nuclear decommissioning reserve funds” within the meaning of Section 468A, and the assets of the Tax-Qualified Trusts must be used as authorized by Section 468A.

## **ARTICLE 2: ESTABLISHMENT OF SEPARATE TRUSTS AND DISPOSITIVE PROVISIONS**

The Trustee shall manage, invest, reinvest and, after payment of the expenses described in Section 4.1 hereof, distribute each Trust as follows:

2.1 [This Section Intentionally Deleted]

2.2 **Payment of Nuclear Decommissioning Costs.**

(a) Subject to the restrictions contained in Section 2.2(d), the Trustee shall make payments of Qualified Costs in accordance with the following procedures:

(i) **Disbursements to Third Parties.** The Trustee shall make payments of Qualified Costs to any person (other than Consolidation or the NQF Companies) for goods provided or labor or other services rendered to

Consolidation or a NQF Company in connection with the decommissioning of a Plant as described in a Disbursement Certificate.

(ii) *Reimbursement.* The Trustee shall make payments to Consolidation or the appropriate NQF Company or Companies in reimbursement of Qualified Costs actually incurred and paid to any other person as described in a Withdrawal Certificate.

(b) The Trustee shall be under no duty to inquire into the correctness or accuracy of matters contained in a Disbursement Certificate or Withdrawal Certificate unless representatives of the Trustee then approving any withdrawal or disbursement based on such certificate have actual knowledge of the falsity of any statements made therein.

(c) ExGen (as to both the Tax-Qualified Trusts and the Non-Tax Qualified Trusts), Consolidation (as to the Tax-Qualified Trusts) and the NQF Companies (as to the Non-Tax Qualified Trusts) hereby agree to indemnify the Trustee and hold it harmless from any tax imposed pursuant to Section 4951 with respect to a disbursement or reimbursement made by the Trustee pursuant to this Section 2.2 in reliance on a Disbursement Certificate or a Withdrawal Certificate, *provided* representatives of the Trustee then approving such disbursement or reimbursement do not have actual knowledge of the falsity of any statements made in the related Disbursement Certificate or Withdrawal Certificate that would have prevented the imposition of such tax.

(d) Except for administrative costs and taxes as provided in Sections 2.5 and 4.1 hereof, no disbursements or payments from the Trusts shall be made by the Trustee:

(i) unless the Trustee has first provided thirty days' prior written notice of such disbursement or payment to the NRC Director, Office of Nuclear Reactor Regulation;

(ii) if, within thirty days of providing the notice referred to in clause (i) of this Section 2.2(d), the Trustee receives written notice of an objection from the NRC Director, Office of Nuclear Reactor Regulation or if the Trustee receives such notice at any later time that is nevertheless sufficiently timely so as to allow the Trustee to prevent the disbursement.

(iii) where the purpose of such proposed disbursement or payment either in whole or in part is for activities not within the NRC definition of decommissioning, that portion of the disbursement or payment shall be separately identified by Consolidation and/or the NQF Company and accounted for in such notice.

**2.3 Additions to Trusts.** From time to time prior to the termination of each Trust held hereunder, Consolidation and the NQF Companies may make, and the Trustee shall accept, additional contributions of funds to any separate Trust held hereunder to satisfy the purpose of

the Trust Agreements as set forth in Section 1.4 of these Master Terms. The making of a contribution by Consolidation or the NQF Companies shall constitute the certification of Consolidation or the NQF Companies, as the case may be, that all necessary consents and approvals to such contribution have been obtained, and that in the case of Tax-Qualified Trusts, the contribution meets the requirements of Section 468A.

#### 2.4 *Subsequent Adjustments.*

(a) *For a Tax-Qualified Trust:* The Trustee and Consolidation understand that the contributions (excluding any Final Tax Refunds) made by Consolidation and allocated to a Trust from time to time may subsequently be determined to exceed the amounts determined pursuant to Section 468A and paragraph (c)(2)(ii) of Treasury Regulation § 1.468A-5 thereunder (any such excess being hereinafter referred to as an "*Excess Contribution*"). Upon the written certification of Consolidation, setting forth the amount of the Excess Contribution, and upon receipt of the opinion of legal counsel described below, the Trustee shall distribute such amount to the Trustee of the appropriate Non-Tax Qualified Trust, or, if so requested in such written certification, transfer all or a portion of such amount to one or more other separate Trusts held under the Trust Agreements. Any income attributable to any such Excess Contribution shall be allocated to the Trust to which such Excess Contribution relates.

(b) *For a Non-Tax Qualified Trust:* The Trustee and the NQF Companies understand that all or a portion of the contributions made by the NQF Companies and allocated to a Trust from time to time may subsequently be determined to be amounts that may be contributed to the Tax-Qualified Trust pursuant to Section 468A (any such excess also being hereinafter referred to as an "*Excess Contribution*"). Upon the written certification of Consolidation and the appropriate NQF Company, setting forth the amount of the Excess Contribution, and upon receipt of the opinion of legal counsel described below, the Trustee shall transfer such amount to the Trustee of the Tax-Qualified Trust, *provided, however*, that such transfer shall be made prior to the expiration of 2-1/2 months after the close of the taxable year for which the contribution was made. Income attributable to any such Excess Contribution shall not be transferred.

(c) Distributions and transfers of any Excess Contribution shall not be made unless Consolidation and the appropriate NQF Company furnish the Trustee with an opinion of legal counsel to the effect that such distribution or transfer will not result in disqualification of the Trust under Section 468A or constitute a violation of Applicable Regulatory Requirements, and that all necessary consents and approvals to such distribution or transfer have been obtained.

#### 2.5 *Remittance and Payment of Taxes*

(a) *Payment of Taxes Owed on Tax-Qualified Trusts.* The Trustee shall pay out of each separate Trust any Federal and, if applicable, state and local taxes on the income of such Trust, including any Final Tax Liability, as and when due in accordance with the returns prepared pursuant to Section 3.5 hereof.

(b) *Remittance of Taxes for Non-Tax Qualified Trusts.* The Trustee shall remit to each of the NQF Companies, annually within 15 business days after a NQF Company requests therefor the amount from each Trust which said NQF Company certifies as the amount by which said NQF Company's Federal and, if applicable, state income taxes for the preceding fiscal year were increased by the net income of such Trust. The Trustee shall be under no duty to inquire into the correctness or accuracy of any such certificate.

(c) *Unrelated Business Taxable Income.* To the extent that assets of any Trust(s) are segregated in an investment management account pursuant to Section 3.8(a) hereof, the Investment Manager shall have the sole responsibility to make any determination as to whether any investment of such assets results in unrelated business taxable income and shall prepare any applicable tax returns, tax information returns and/or other reports pursuant to Section 3.5. The Trustee shall act at the direction of the Investment Manager consistent with the provisions of Section 2.5(a), 2.5(b) and 3.5 hereof.

2.6 [Intentionally Deleted]

2.7 *Time of Termination.* Each Trust under the Trust Agreements shall terminate in whole, to the extent provided in this Section 2.7, upon the earlier to occur of the following events:

(a) The Substantial Completion of Decommissioning of the Plant (including, in the case of a multi-unit nuclear power plant site, any related common facilities) for which such Trust was created and named, as evidenced to the Trustee by the written certification of Consolidation or the appropriate NQF Company.

(b) The distribution of all of the assets from the Trust.

The Trust Fund shall terminate when all of the separate Trusts have terminated.

2.8 *Distribution of Trust Upon Termination.* Upon the later of termination of the Tax-Qualified Trust or the Non-Tax Qualified Trust for the Plant, the Trustee shall distribute the entire remaining amount of the Trust for the Plant, including all accrued, accumulated, and undistributed net income, to ComEd. The interest of ComEd in any Trust is not subject to the claims of creditors of ComEd.

2.9 *Alterations and Amendments.* The Trustee and Consolidation and the NQF Companies understand and agree that amendments may be required to the Trust Agreements and/or these Master Terms from time to time to effectuate the purpose of the Trust Agreements and to comply with amendments to or changes in Applicable Regulatory Requirements, changes in tax laws (including Section 468A), regulations or rulings (whether published or private) of the Service (whether or not directly relating to Section 468A), and any other changes in the laws applicable to Consolidation and the NQF Companies, the Plants or the Trusts created in the Trust Agreements. Consolidation and the NQF Companies and the Trustee may amend the Trust

Agreements and/or these Master Terms to the extent necessary or desirable to effectuate such purpose or to comply with such changes; *provided, however*, that neither the Trust Agreement nor these Master Terms may be amended so as to violate Section 468A; *provided further* that Sections 2.8, and Section 2.9 of the Master Terms and Sections 1.04, 3.07 and 3.11 of the Trust Agreements may not be amended without the approval of ComEd; and *provided further* that neither the Trust Agreements and nor these Master Terms may be modified in any material respect without first providing thirty days' prior written notice to the NRC Director, Office of Nuclear Reactor Regulation and to ComEd, and absent notice of objection from the NRC Director, Office of Nuclear Reactor Regulation, prior to the effective date of any such amendment. Consolidation and the NQF Companies shall furnish the Trustee with an opinion of legal counsel that any such amendment does not violate Applicable Regulatory Requirements, and would not result in the disqualification of the Tax-Qualified Trusts as "nuclear decommissioning reserve funds" under Section 468A, and that all necessary approvals to such amendment have been obtained. Notwithstanding the foregoing, the Trustee may decline to adopt such amendment, if such amendment materially increases the expenses or responsibilities of the Trustee and no adequate provision has been made to compensate the Trustee for such increase, or if the Trustee would be unable with reasonable effort to comply with its duties as to be amended.

2.10 *No Authority to Conduct Business.* The purpose of the Trust Agreements is limited to the matters set forth in Section 1.4 above. Neither the Trust Agreement nor these Master Terms shall be construed to confer upon the Trustee any authority to conduct business.

### **ARTICLE 3: GENERAL PROVISIONS RELATING TO THE TRUSTEE**

The appointment of any successor Trustee, provisions governing resignation and compensation of the Trustee, and the general rules governing the relationships of the Trustee and Consolidation and the NQF Companies and any third parties are as follows:

3.1 *Designation and Qualification of Successor Trustees.* At any time during the term of the Trust Agreements, Consolidation and the appropriate NQF Company or Companies shall have the right, with respect to their respective Trust(s), to remove the Trustee acting under the Trust Agreements and appoint another qualified entity as a successor trustee upon 30 days' notice in writing to the Trustee, or upon such shorter notice as may be acceptable to the Trustee. Any Trustee shall have the right to resign at any time upon 30 days' notice in writing to Consolidation and/or the appropriate NQF Company or Companies for the affected Trust(s) and upon such resignation Consolidation and/or the appropriate NQF Company or Companies shall appoint another qualified entity as a successor Trustee for their respective Trust(s).

Any successor Trustee shall qualify by a duly acknowledged acceptance of the Trust Agreements, the Trusts created thereunder and these Master Terms, delivered to Consolidation and/or the appropriate NQF Company or Companies. Upon acceptance of such appointment by the successor Trustee, the Trustee shall transfer to such successor Trustee the Trust Fund. Any successor Trustee shall have all the rights, powers, duties and obligations herein granted to the original Trustee.

If for any reason Consolidation or the appropriate NQF Company or Companies are unable to or do not appoint a successor Trustee within 90 days after the resignation or removal of the Trustee for their respective Trust(s) as provided above, Consolidation, the appropriate NQF Company or Companies, or the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee.

**3.2 Compensation and Reimbursement.** The Trustee shall be entitled to compensation from each Trust held under the Trust Agreements at such rates as may be approved in writing from time to time by Consolidation or the NQF Companies as the case may be. Subject to the approval of Consolidation and the NQF Companies (which shall not be unreasonably withheld or delayed), the Trustee shall be entitled to be reimbursed from each Trust held hereunder for out-of-pocket expenses, including, but not limited to, expenses of agents, auditors and counsel, incurred in connection with the administration of such Trust.

**3.3 Transactions With Third Parties.** No person or organization dealing with the Trustee shall be required to inquire into or to investigate its authority for entering into any transaction or to see to the application of the proceeds of any such transaction.

**3.4 Financial Statements.** The Trustee shall furnish monthly financial statements (audited by the Trustee's internal audit staff) for each Trust to Consolidation and the appropriate NQF Company or Companies not later than the 15th business day of the following month. The financial statements shall show the financial condition of the Trust, including, without limitation, the market value of the assets, and the income and expenses of each Trust for the period since the preceding statement. Any such financial statement may be approved by Consolidation and the appropriate NQF Company or Companies with respect to their respective Trust(s) by written notice to the Trustee or by failure to object to such financial statement within six months of the date upon which such financial statement was delivered to Consolidation and the appropriate NQF Company or Companies. The approval of any such financial statement shall constitute a full and complete discharge of the Trustee as to all matters set forth in such financial statement; *provided, however*, that the foregoing shall not relieve or absolve the Trustee from any liability associated with a failure to perform its fiduciary responsibilities. Effective January 1, 2000, the financial statements shall be audited upon direction of Consolidation or the appropriate NQF Company or Companies with respect to their respective Trust(s) by independent certified public accountants employed by the Trustee, subject to the limitations contained in Section 4.9 hereof.

**3.5 Tax Returns, Tax Information Returns and Other Reports.** The Trustee shall prepare or cause to be prepared such income or other tax returns for the Tax-Qualified Trusts, and tax information returns and such reports as may be required from time to time for the Non-Tax Qualified Trusts, and shall provide copies thereof to Consolidation or the appropriate NQF Company or Companies in advance of their filing for review. The Trustee shall provide to Consolidation or the appropriate NQF Company or Companies, as the case may be, all statements, documents, lists, or other information reasonably requested by Consolidation or the appropriate NQF Company or Companies. The Trustee shall also sign all such income or other tax returns and information returns, and the Trustee shall file them or cause them to be filed with the appropriate government agencies. The Trustee shall cooperate with all requests made by

regulatory agencies and shall provide copies to Consolidation and/or the appropriate NQF Company or Companies in advance of all information submitted to regulatory agencies. At the request of Consolidation or the appropriate NQF Company or Companies, the Trustee shall testify with respect to the Trusts and the Trust Fund in proceedings before the NRC and other regulatory agencies.

**3.6 *Nominees; Depositories.*** If the Trustee employs an agent or depository, specifically for purposes of providing services related to any Trust held hereunder (other than a securities broker), the Trustee shall disclose to such agent or depository that it is employed on behalf of such Trust. Subject to Section 3.10(b) hereof, the Trustee shall be liable for acts or omissions of the Trustee (and those of its officers and employees) occasioned by the willful misconduct or negligence of such Trustee (and that of its officers and employees). The Trustee shall further be liable for the acts of its nominee, or of any agent or depository or any nominee of any agent or depository with which any security of any Trust is deposited by the Trustee, as the case may be, with respect to any security registered in the name of the Trustee's nominee or in the name of the nominee of any such agent or depository, or with respect to any security of such Trust deposited with any agent or depository, and shall be liable for its acts and the acts of any such agent or depository with respect to the holding of securities in bulk.

With respect to the Tax-Qualified Trusts, the Trustee, or the Investment Manager with respect to an "investment manager account" (as hereinafter defined) (and, in either case, not the Trusts), shall also be liable for any tax imposed pursuant to Section 4951, as such section is made applicable to the Trusts, the Trust Fund, or the Trustee, and any applicable successor provision.

**3.7 *Future Orders.*** Consolidation and the NQF Companies shall promptly advise the Trustee in writing of the existence of any Future Orders having the effect of imposing new or different responsibilities upon the Trustee under the Trust Agreements or the Master Terms.

**3.8 *Appointment of Investment Manager.***

(a) Consolidation and the NQF Companies shall have the right from time to time to appoint and remove one or more Investment Managers for their respective Trust(s) held under the applicable Trust Agreement and to direct the segregation of any part or all of any such Trust into one or more accounts to be known as "*investment manager accounts*" and if Consolidation or an NQF Company does so, it shall appoint an individual, partnership, association, or corporation as Investment Manager to manage the portion of any Trust so segregated, provided, however, that the licensee, its affiliates, and its subsidiaries and persons representing them shall not provide day-to-day management direction of investments or direction on individual investments to either the Trustee or an investment manager. Written notice of any such appointment and/or removal shall be given to the Trustee and the Investment Manager so appointed. The appointment, after the date hereof, shall be accomplished using an investment manager agreement signed by Consolidation or the appropriate NQF Company and the Investment Manager. The Trustee may assume that any investment manager account previously established and the prior appointment of any Investment Manager for that account continues in force until

receipt of written notice to the contrary from Consolidation or the appropriate NQF Company, as the case may be. As long as the Investment Manager is acting, the Investment Manager shall have full authority to direct the acquisition, retention and disposition of the assets from time to time comprising the investment manager account being managed by the Investment Manager, in accordance with Sections 2.5(c), 4.2, 4.3, 4.4 and 4.5 hereof. Upon the separation of the assets in accordance with Consolidation or the NQF Company instructions, the Trustee, as to those assets while so separated, shall be released and relieved of all investment duties, investment responsibilities and investment liabilities normally or statutorily incident to a trustee; *provided, however*, that the Trustee shall review the transactions in each investment manager account on a daily basis for the purpose of determining whether any assets acquired or any pending asset acquisitions (as to which the Trustee has been given information) are Prohibited Investments as provided in Section 4.3 hereof. In the event that the Trustee determines as a result of any such daily review that an investment is a Prohibited Investment as provided in Section 4.3, hereof, then it shall notify Consolidation or the appropriate NQF Company and the applicable Investment Manager within one business day of such determination by telephone, with confirmation in writing. The Trustee shall retain all other fiduciary duties with respect to assets the investment of which is directed by investment managers.

(b) ExGen (as to both the Tax-Qualified Trusts and the Non-Tax Qualified Trusts), Consolidation (as to the Tax-Qualified Trusts) and the NQF Companies (as to the Non-Tax Qualified Trusts) hereby agree to indemnify the Trustee and hold it harmless from any liability or expense incurred without gross negligence, willful misconduct, recklessness or bad faith on the part of the Trustee, in connection with or arising out of: (i) any action taken or omitted or any investment or disbursement of any part of the investment manager account made by the Trustee at the direction of the Investment Manager, or (ii) any action taken by the Trustee pursuant to notification of an order issued by an Investment Manager to purchase or sell securities directly to a broker or dealer under a power of attorney.

(c) To the extent that Consolidation or the appropriate NQF Company or Companies notify the Trustee with respect to their respective Trust(s) that any Trust assets are currently not allocated to an investment manager account, the Trustee shall have investment responsibility for such assets until further notice from Consolidation or the appropriate NQF Company or Companies, and shall hold, invest and reinvest such assets subject to any investment guidelines issued to it by Consolidation or the appropriate NQF Company or Companies, and subject further to the provisions of Sections 4.2 and 4.3 hereof.

**3.9 Use of Subordinated Trusts.** Consolidation and each of the NQF Companies shall have the right to direct the segregation of any part of the Trusts into one or more "*Subordinated Trusts.*" If Consolidation and/or the NQF Companies do so, they shall appoint a corporate trustee as Subordinated Trustee to manage the portion of any trust so segregated. Written notice of any such appointment and/or removal shall be given to the NRC, Trustee and Consolidation and/or the NQF Companies shall direct the Trustee to enter into such trust agreement with each

Subordinated Trustee as Consolidation and/or the NQF Companies determine is appropriate. A copy of the subordinated trust will be provided to the NRC by Consolidation and/or the NQF Companies prior to its creation.

The Subordinated Trust shall be under the control of the Subordinated Trustee. The Subordinated Trustee shall be responsible for complying with the provisions of Sections 2.2, 4.2, 4.3 and 4.4 hereof, and the Trustee shall have no responsibility therefore; *provided, however*, that if the Trustee has actual knowledge of an action taken by the Subordinated Trustee in violation of or noncompliance with any of the provisions of Sections 2.2, 4.2, 4.3 or 4.4 hereof, the Trustee shall have a duty to promptly inform Consolidation and/or the NQF Companies, as the case may be, of such violation or noncompliance.

Consolidation and the NQF Companies will indemnify the Trustee and hold it harmless from any liability or expense in connection with or arising out of the actions of the Subordinated Trustee with respect to the Subordinated Trust account.

### 3.10 *Certain Duties and Responsibilities of the Trustee.*

(a) In the absence of bad faith on its part, the Trustee may conclusively rely upon certificates or opinions furnished to the Trustee and conforming to the requirements of the Trust Agreements and the Master Terms; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall have no duty to examine the same to determine whether they conform to the requirements of the Trust Agreements and these Master Terms unless the representative of the Trustee involved with the certificate in question has actual knowledge of the falsity of any statement made therein.

(b) No provision of the Trust Agreements or these Master Terms shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that (i) this subsection shall not be construed to limit the effect of subsection (a) of this section; (ii) the Trustee shall not be liable for any error of judgment made in good faith by a responsible officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts or was otherwise negligent in making the judgment; and (iii) no provision of the Trust Agreements or these Master Terms shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

### 3.11 *Certain Rights of Trustee.* Except as otherwise provided in Section 3.10 hereof:

(a) Any request or direction of Consolidation or any of the NQF Companies mentioned herein shall be sufficiently evidenced by a written request or direction signed, prepared or furnished by an authorized representative of Consolidation or the appropriate NQF Company, or an oral or telephonic request or order confirmed within a reasonable

time by such a written request or direction, and any action of the board of directors of Consolidation and any of the NQF Companies may be sufficiently evidenced by a certificate of Consolidation or the appropriate NQF Company's secretary or assistant secretary;

(b) Whenever in the administration of any Trust created under the Trust Agreements the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon the certificate of an authorized representative of Consolidation or the NQF Companies;

(c) The Trustee may consult with legal counsel and the written advice of such counsel or any opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in reliance thereon; and

(d) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by the Trust Agreements at the request or direction of Consolidation or the NQF Companies pursuant to the Trust Agreements or these Master Terms, unless Consolidation or the NQF Companies, as the case may be, shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

#### **ARTICLE 4: TRUSTEE'S POWERS**

The Trustee shall have, with respect to each Trust held under the Trust Agreements, the following powers, all of which powers are fiduciary powers to be exercised in a fiduciary capacity and in the best interests of such Trust, and which are to be exercised as the Trustee, acting in such fiduciary capacity, in its discretion, shall determine, except that the Trustee shall not act in its discretion but only at the direction of an appointed Investment Manager in the exercise of those powers given in Sections 4.2, 4.3, 4.4 and 4.5 hereof with respect to the acquisition, retention, and disposition of the assets of an investment manager account, and, except as otherwise provided, which are intended in no way to limit the general powers of the office. The Subordinated Trustee shall have those powers set forth in an appropriate Subordinated Trust Agreement, which shall not be inconsistent with the material terms of the Trust Agreement or these Master Terms.

**4.1 *Payment of or Provision for Expenses of Administration.*** The Trustee shall have the power to incur, pay or make provision for any and all charges, taxes, and expenses upon or connected with each Trust held under the Trust Agreements in the discharge of its fiduciary obligations thereunder (and other incidental expenses of the Fund (including legal, accounting, actuarial and trustee expenses)), but to charge said amounts to such Trust only to the extent that such amounts are directed to be paid from such Trust by Consolidation or any of the NQF Companies pursuant to Section 2.4 or 3.2 hereof or, in the case of Tax-Qualified Trusts, as may

be incurred and paid from such Trust without causing the Trust to become disqualified under Section 468A.

**4.2 Investment of Trust Fund: Prudent Investor Standard.**

(a) Pending any other permissible use of any Trust held under the Trust Agreements, and subject to the limitations provided in Section 4.3 of these Master Terms, the Trustee shall have the power and authority to invest and reinvest all or any part of the assets of such Trust, including any undistributed income therefrom, in a manner consistent with the "prudent investor" standard as specified in 18 CFR § 35.32(a)(3) of the Federal Energy Regulatory Commission regulations and in such a way as to attempt to maximize the after-tax returns thereon.

(b) In the exercise of the power and authority set forth in Section 4.2(a) hereof, the Trustee has the following powers and authority:

(i) to purchase, receive or subscribe for any securities or other property and to retain in trust such securities or other property;

(ii) to sell, exchange, convey, transfer, lend, or otherwise dispose of any property held in the Trusts and to make any sale by private contract or public auction; and no person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale or other disposition;

(iii) to vote in person or by proxy any stocks, bonds or other securities held in the Trusts;

(iv) to exercise any rights appurtenant to any such stocks, bonds or other securities for the conversion thereof into other stocks, bonds or securities, or to exercise rights or options to subscribe for or purchase additional stocks, bonds or other securities, and to make any and all necessary payments with respect to any such conversion or exercise, as well as to write options with respect to such stocks and to enter into any transactions in other forms of options with respect to any options which the Trusts have outstanding at any time;

(v) to join in, dissent from or oppose the reorganization, recapitalization, consolidation, sale or merger of corporations or properties of which the Trusts may hold stocks, bonds or other securities or in which it may be interested, upon such terms and conditions as deemed wise, to pay any expenses, assessments or subscriptions in connection therewith, and to accept any securities or property, whether or not trustees would be authorized to invest in such securities or property, which may be issued upon any such reorganization, recapitalization, consolidation, sale or merger and thereafter to hold the same. To the extent that any securities that are accepted are attributable to an investment manager account, the provisions of Section 3.8(a) apply with respect to Trustee

review for Prohibited Investments under Section 4.3 and notification of Consolidation or the appropriate NFQ Company and the applicable Investment Manager.

(vi) to enter into any type of contract with any insurance company or companies, either for the purposes of investment or otherwise; provided that no insurance company dealing with the Trustee shall be considered to be a party to the Trust Agreements and these Master Terms and shall only be bound by and held accountable to the extent of its contract with the Trustee. Except as otherwise provided by any contract, the insurance company need only look to the Trustee with regard to any instructions issued and shall make disbursements or payments to any person, including the Trustee, as shall be directed by the Trustee. Where applicable, the Trustee shall be the sole owner of any and all insurance policies or contracts issued. Such contracts or policies, unless otherwise determined, shall be held as an asset of the Trusts for safekeeping or custodian purposes only;

(vi) to invest assets of the Trust in foreign and domestic futures contracts, options on futures contracts, options contracts, swaps, short sales and other derivative investments, and, in connection with such investments, to transfer assets of the Trust to brokers or other third parties as margin or collateral at the direction of the Investment Manager; *provided, however*, that the Investment Manager and Trustee shall have first entered into an appropriate account agreement with such broker or third party. Notwithstanding anything to the contrary contained in the Trust Agreements or these Master Terms, the Trustee shall have no custodial responsibility for any assets so transferred;

(vii) to invest in any collective, common or pooled trust fund operated or maintained exclusively for the commingling and collective investment of monies or other assets including any such fund operated or maintained by the Trustee or an affiliate. Consolidation and the NQF Companies expressly understand and agree that any such collective fund may provide for the lending of its securities by the collective fund trustee and that such collective fund's trustee will receive compensation for the lending of securities that is separate from any compensation of the Trustee hereunder, or any compensation of the collective fund trustee for the management of such collective fund; and

(viii) to make foreign investments, including investments to be maintained abroad; provided, however, that such authority is limited to those foreign jurisdictions in which the Trustee has selected a foreign custodian in accordance with Section 4.7 hereof.

(c) Consolidation and the NQF Companies recognize that settlements of transactions may be effected in trading and processing practices customary in the jurisdiction or market where the transaction occurs. Consolidation and the NQF Companies acknowledge that this may, in certain circumstances, require the delivery of

cash or securities (or other property) without the concurrent receipt of securities (or other property) or cash and, in such circumstances, Consolidation and/or the appropriate NQF Company shall have sole responsibility for non-receipt of payment (or late payment) by the counterparty.

(d) All investments must be sufficiently liquid to enable each Trust to fulfill the purpose of the Trust Agreements and to satisfy obligations as they become due as communicated in writing to the Trustee, and absent a written communication, the Trustee shall invest each separate Trust as though such Trust had no short or intermediate term cash requirements. Nothing in this Section 4.2 shall be construed as requiring the Trustee to make any investigation as to when any of the Plants may be decommissioned or when obligations relating to such decommissioning may be expected to become due.

**4.3 *Prohibited Investments.*** The Trustee shall assure that the assets of the Trusts are not invested or reinvested in the following Prohibited Investments:

(a) Any deposit with a banking institution unless such banking institution has not less than \$350 million in equity capital on a current market value basis; or

(b) Any securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns; or

(c) Any securities or other obligations of any entity owning or operating one or more nuclear power plants; *provided, however*, that the foregoing restriction shall not prevent investments tied to market indices or other non-nuclear sector collective, commingled, or mutual funds; or

(d) Any investment which would contravene any Future Orders in effect at the time such investment or reinvestment is made and previously furnished to the Trustee with reference to the Trusts; or

(e) Any investment not permitted under Section 468A of the Code.

**4.4 *Management of Trusts.***

(a) The Trustee shall have the power to sell, exchange or otherwise dispose of all or any part of any Trust held hereunder, without prior application to or approval by or order of any court, upon such terms and in such manner and at such prices as the Trustee shall determine; to modify, renew, or extend, bonds, notes, or other obligations or any installment of principal thereof or any interest due thereon and to waive any defaults in the performance of the terms and conditions thereof; and to execute and deliver any and all assignments, bonds, or other instruments in connection with these powers, at such times, in such manner and upon such terms and conditions as the Trustee may be deemed expedient. The Trustee's determinations of manner of sales, terms, prices and the exercise of other powers granted herein, if reasonably made, are not to be questioned.

(b) Notwithstanding anything contained in the Trust Agreements or these Master Terms to the contrary, the Trustee may not authorize or carry out any sale, exchange, or other transaction between any Trust and the Trustee or any affiliate of the Trustee, or any "disqualified person" within the meaning of Section 4951, of the kind described in Treasury Regulation 1.468A-5(b), except the payment of compensation and expenses pursuant to Section 3.2 hereof, or unless such transaction is not an act of "self-dealing" within the meaning of Section 4951 of the Code. The Trustee shall not cause any Trust to engage in any act of self-dealing with Consolidation or the NQF Companies or any affiliate of Consolidation or the NQF Companies. Consolidation and the NQF Companies agree to furnish the Trustee with the identity of persons who are "disqualified persons" within the meaning of Section 4951 by reason of their affiliation with Consolidation and/or the NQF Companies.

**4.5 Extension of Obligations and Negotiation of Claims.** Subject to the limitations contained in Sections 4.2, 4.3 and 4.4 hereof, the Trustee shall have the power to renew or extend the time of payment of any obligation, secured or unsecured, payable to or by any Trust, for as long a period or periods of time and on such terms as it shall determine; and, subject to the approval of Consolidation or the appropriate NQF Company or Companies (which shall not be unreasonably withheld or delayed), to adjust, settle, compromise, and arbitrate claims or demands in favor of or against any Trust, including claims for taxes, upon such terms as it deems advisable.

**4.6 Registration of Securities.** The Trustee shall have the power to hold any stocks, bonds, securities, and/or other property in the name of a nominee, in a street name, or by other title-holding device, without indication of trust.

**4.7 Foreign Custodians.**

(a) The Trustee shall have the power to appoint foreign custodians as agent of the Trustee to custody foreign securities holdings of the Trust or any investment manager account. Custody of foreign investments shall be maintained with foreign custodians selected by the Trustee. In the case of an investment manager account, the Investment Manager shall have sole responsibility for the decision to maintain the custody of foreign investments in its investment manager account abroad, which decision shall be subject to the limitation contained in the foregoing second sentence of this Section 4.7(a). The Trustee shall have no responsibility for losses to the Trust resulting from the acts or omissions of any foreign custodian appointed by the Trustee unless due to the foreign custodian's fraud, negligence or willful misconduct.

(b) The Trustee shall have the power to utilize any tax reclaim procedures with respect to taxes withheld to which the Trust may be entitled under applicable tax laws, treaties and regulations; provided that any exercise of such power by the Trustee shall be on a reasonable efforts basis.

**4.8 Securities Lending.** Pursuant to a written agreement between the Trustee and Consolidation or the appropriate NQF Company or Companies, Trustee shall have authority to

lend the assets of the Trusts and, specifically, to loan any securities to brokers, dealers or banks upon such terms, and secured in such manner, as may be determined by the Trustee, to permit the loaned securities to be transferred into the name of the borrower or others and to permit the borrower to exercise such rights of ownership over the loaned securities as may be required under the terms of any such loan, and to receive and invest collateral provided by the borrower; provided that with respect to the lending of securities pursuant to the securities lending authorization agreement between the parties, (a) both parties intend that, for purposes of the relevant provisions of the US Bankruptcy Code, at all relevant times the Trustee/securities lending agent shall be deemed to be and to be acting as a "financial institution" as defined in section 101(22) of the US Bankruptcy Code, and each loan entered into by the Trustee/securities lending agent with borrowers under authority of the securities lending authorization agreement (a "Loan") shall be deemed to be a "securities contract" as defined in section 741 of the US Bankruptcy Code; and (b) each Loan shall be made in conformity with all applicable laws governing such Loan and all applicable rules, regulations and exemptions from time to time promulgated and issued under the authority of those laws.

4.9 *Retention and Removal of Professional Service Providers.* The Trustee shall have the power to employ attorneys, accountants, and custodians as it shall deem advisable and to make such payments thereof as the Trustee shall deem reasonable for the implementation of the purpose of the Trust Agreements. The Trustee shall have the absolute right to dismiss any such agents for any reason whatsoever; *provided* that the Trustee's selection of an accounting firm shall be subject to the prior consent of Consolidation or the appropriate NQF Company, as the case may be, which consent shall not be unreasonably withheld.

4.10 *Delegation of Ministerial Powers.* The Trustee shall have the power to delegate to other persons such ministerial powers and duties as it may deem to be advisable.

4.11 *Discretion in Exercise of Powers.* The Trustee shall have the power to do any and all other acts which the Trustee shall deem proper to effectuate the powers specifically conferred upon it by the Trust Agreements and these Master Terms; *provided, however,* that this Section 4.11 shall not authorize the Trustee to do any act or participate in any transaction which would (a) contravene any provision of the Trust Agreements or these Master Terms; (b) violate the terms and conditions of, or cause any Trust held under the Trust Agreements not to satisfy Applicable Regulatory Requirements; or (c) disqualify any of the Tax-Qualified Trusts as "nuclear decommissioning reserve funds" under Section 468A.

**ARTICLE 5:  
[INTENTIONALLY DELETED]**

## EXHIBIT A-1

### DISBURSEMENT CERTIFICATE Tax-Qualified Decommissioning Trust

The undersigned, being a duly authorized officer of Exelon Generation Consolidation Company, LLC, a Nevada limited liability company (“**Consolidation**”), and, in such capacity, being duly authorized and empowered to execute and deliver this certificate, hereby certifies to the Trustee of the Exelon Generation Consolidation Company, LLC Tax Qualified Decommissioning Trust—[name of Plant(s)] (the “**Trust(s)**”), pursuant to Section 2.2(a)(i) of the Master Terms as amended and restated as of \_\_\_\_\_, 2003 (the “**Master Terms**”), between Consolidation and the Trustee, as follows:

(a) There is due and owing to each Payee (“**Payees**”) [all/a portion of] the invoiced cost to Consolidation for goods or services provided in connection with the decommissioning of the [name of Plant(s)] as evidenced by the Invoice Schedule (with supporting exhibits) attached as Exhibit 1 hereto;

(b) All such amounts due and owing to such Payees constitute  
Qualified Costs;

(c) All conditions precedent to the making of this disbursement set forth in any agreement between each such Payee and Consolidation have been fulfilled;

(d) No Payee is a “disqualified person” within the meaning of Section 4951 or Section 468A by reason of an affiliation with Consolidation or, if any are, then the payment constitutes compensation or payment or reimbursement of expenses which are reasonable and necessary to carry out the purpose of the Trust(s) and the payment is not excessive; and

(e) The payment of the amounts owing meets Applicable Regulatory Requirements, requirements of the Code, and all necessary consents and approvals for such payment have been obtained.

Accordingly, subject to the requirements of Section 2.2(b) of the Master Terms, you are directed to permit the disbursement of the amounts indicated on Exhibit 1 hereto from the Trust(s) in order to permit payment of such sum(s) to be made to the aforementioned Payees for such purpose. You are further directed to disburse such sum(s), once withdrawn, directly to such Payees, in the manner indicated on Exhibit 1 hereto.

Although you are under no obligation to make any further inquiry or investigation or to obtain any further documentation, it is understood that you may, in your discretion, elect to withhold any such disbursement to any Payee unless and until you receive written releases, in a form satisfactory to you, of any liens, security interests, or claims of such Payee against Consolidation or its property as you may, in your discretion, require.

Capitalized terms used herein without definition shall have the meanings given to such terms in the Trust Agreements and the Master Terms.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

EXELON GENERATION CONSOLIDATION  
COMPANY, LLC

By: \_\_\_\_\_  
Duly Authorized Officer

**EXHIBIT A-2**

**DISBURSEMENT CERTIFICATE  
Non-Tax Qualified Decommissioning Trust**

The undersigned, being a duly authorized officer of \_\_\_\_\_ LLC, a Nevada limited liability company ("LLC"), and, in such capacity, being duly authorized and empowered to execute and deliver this certificate, hereby certifies to the Trustee of the \_\_\_\_\_ LLC Non-Tax Qualified Decommissioning Trust—[name of Plant(s)] (the "*Trust(s)*"), pursuant to Section 2.2(a)(i) of the Master Terms as amended and restated as of \_\_\_\_\_, 2003 (the "*Master Terms*"), between LLC and the Trustee, as follows:

(a) There is due and owing to each Payee ("*Payees*") [all/a portion of] the invoiced cost to LLC for goods or services provided in connection with the decommissioning of the [name of Plant(s)] as evidenced by the Invoice Schedule (with supporting exhibits) attached as Exhibit 1 hereto;

(b) All such amounts due and owing to such Payees constitute  
Qualified Costs;

(c) All conditions precedent to the making of this disbursement set forth in any agreement between each such Payee and Consolidation have been fulfilled;

(d) No Payee is a "disqualified person" within the meaning of Section 4951 or Section 468A by reason of an affiliation with LLC or, if any are, then the payment constitutes compensation or payment or reimbursement of expenses which are reasonable and necessary to carry out the purpose of the Trust(s) and the payment is not excessive; and

(e) The payment of the amounts owing meets Applicable Regulatory Requirements, and all necessary consents and approvals for such payment have been obtained.

Accordingly, subject to the requirements of Section 2.2(b) of the Master Terms, you are directed to permit the disbursement of the amounts indicated on Exhibit 1 hereto from the Trust(s) in order to permit payment of such sum(s) to be made to the aforementioned Payees for such purpose. You are further directed to disburse such sum(s), once withdrawn, directly to such Payees, in the manner indicated on Exhibit 1 hereto.

Although you are under no obligation to make any further inquiry or investigation or to obtain any further documentation, it is understood that you may, in your discretion, elect to withhold any such disbursement to any Payee unless and until you receive written releases, in a form satisfactory to you, of any liens, security interests, or claims of such Payee against Consolidation or its property as you may, in your discretion, require.

Capitalized terms used herein without definition shall have the meanings given to such terms in the Trust Agreements and the Master Terms.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NQ, LLC

By: \_\_\_\_\_  
Duly Authorized Officer

**EXHIBIT B-1**

**WITHDRAWAL CERTIFICATE  
Tax-Qualified Decommissioning Trust**

The undersigned, being a duly authorized officer of Exelon Generation Consolidation Company, LLC, a Nevada limited liability company (“Consolidation”), and, in such capacity, being duly authorized and empowered to execute and deliver this certificate, hereby certifies to the Trustee of the Exelon Generation Consolidation Company, LLC Tax-Qualified Decommissioning Trust—[name of Plant(s)] (the “Trust(s)”), pursuant to Section 2.2(a)(ii) of the Master Terms, amended and restated as of \_\_\_\_\_, 2003 (the “Master Terms”), between Consolidation and the Trustee, as follows:

(a) Consolidation has paid, and is entitled to reimbursement for, amounts paid for goods or services provided in connection with the decommissioning of the [name of Plant(s)] as described in the schedule (with supporting exhibits) attached as Exhibit 1 hereto;

(b) All such amounts paid constitute Qualified Costs;

(c) No payee was a “disqualified person” within the meaning of Section 4951 or Section 468A by reason of an affiliation with Consolidation or, if any were, then the payment constituted compensation or payment or reimbursement of expenses which were reasonable and necessary to carry out the purpose of the Trust and the payment was not excessive; and

(d) The payment of the amounts met Applicable Regulatory Requirements, requirements of the Code, and all necessary consents and approvals for such payment had been obtained.

Accordingly, subject to the requirements of Section 2.2(b) of the Master Terms, you are directed to permit the disbursement of the amounts indicated on Exhibit 1 hereto from the Trust(s) in order to reimburse Consolidation for such payments. You are further directed to disburse such sum(s), once withdrawn, directly to “Exelon Generation Consolidation Company, LLC.”

Capitalized terms used herein without definition shall have the meanings given to such terms in the Trust Agreements and the Master Terms.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**EXELON GENERATION  
CONSOLIDATION COMPANY, LLC**

By: \_\_\_\_\_  
Duly Authorized Office

**EXHIBIT B-2**

**WITHDRAWAL CERTIFICATE  
Non-Tax Qualified Decommissioning Trust**

The undersigned, being a duly authorized officer of \_\_\_\_\_ LLC, a Nevada limited liability company ("LLC"), and, in such capacity, being duly authorized and empowered to execute and deliver this certificate, hereby certifies to the Trustee of the \_\_\_\_\_ LLC Non-Tax Qualified Decommissioning Trust—[name of Plant(s)] (the "*Trust(s)*"), pursuant to Section 2.2(a)(ii) of the Master Terms, amended and restated as of \_\_\_\_\_, 2003 (the "*Master Terms*"), between LLC and the Trustee, as follows:

(a) LLC has paid, and is entitled to reimbursement for, amounts paid for goods or services provided in connection with the decommissioning of the [name of Plant(s)] as described in the schedule (with supporting exhibits) attached as Exhibit 1 hereto;

(b) All such amounts paid constitute Non-Tax Qualified Costs;

(c) No payee was a "disqualified person" within the meaning of Section 4951 or Section 468A by reason of an affiliation with LLC or, if any were, then the payment constituted compensation or payment or reimbursement of expenses which were reasonable and necessary to carry out the purpose of the Trust and the payment was not excessive; and

(d) The payment of the amounts met Applicable Regulatory Requirements, and all necessary consents and approvals for such payment had been obtained.

Accordingly, subject to the requirements of Section 2.2(b) of the Master Terms, you are directed to permit the disbursement of the amounts indicated on Exhibit 1 hereto from the Trust(s) in order to reimburse LLC for such payments. You are further directed to disburse such sum(s), once withdrawn, directly to "\_\_\_\_\_ Company, LLC."

Capitalized terms used herein without definition shall have the meanings given to such terms in the Trust Agreements and the Master Terms.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NQ, LLC

By: \_\_\_\_\_  
Duly Authorized Office

**2. Revised Draft Amended and Restated Nonqualified Nuclear  
Decommissioning Master Trust Agreement (Mellon Bank, N. A.)**

**AMENDED AND RESTATED  
NON-TAX QUALIFIED  
NUCLEAR DECOMMISSIONING  
MASTER TRUST AGREEMENT**

**THIS AMENDED AND RESTATED NON-TAX QUALIFIED NUCLEAR DECOMMISSIONING MASTER TRUST AGREEMENT** (the "Agreement"), dated as of \_\_\_\_\_, 2003 by and between Commonwealth Edison Company ("ComEd"), an Illinois corporation (for the limited purpose of confirming the assignment reflected in Sections 1.04, 3.07 and 3.11 of this Agreement and its rights as stated in Sections 2.8 and 2.9 of the Master Terms), Exelon Generation Company, LLC ("ExGen"), a limited liability company organized under the laws of the State of Delaware and having a principal office at 200 Exelon Way, Kennett Square, Pennsylvania 19348, the limited liability companies duly organized and existing under the laws of the State of Nevada, identified on Schedule A attached hereto (collectively, the "NQF Companies"), and The Northern Trust Company, as Trustee, having its office at \_\_\_\_\_, Nevada [zip] (the "Trustee").

**WITNESSETH:**

**WHEREAS**, ExGen is the owner in whole or in part of each of the Units ("Unit" shall mean each, and "Units" shall mean all, of the nuclear power plants listed on the Schedule A attached to this Agreement as that Schedule may be supplemented from time to time by ExGen by written notice to the Trustee). Each unit of a multi-unit nuclear power plant site shall be considered as a separate Unit for the purposes of this Agreement; and

**WHEREAS**, the Amended and Restated Nuclear Decommissioning Master Trust Agreement dated June 28, 2002, and effective September 1, 2002 ("Amended and Restated Agreement") provides for trusts for the exclusive purpose of providing for the decommissioning of the Units, which trusts consisted of qualified nuclear decommissioning funds (the "Tax-Qualified Trusts") under Section 468A of the Internal Revenue Code of 1986, as amended (the "Code") and nonqualified nuclear decommissioning trusts (the "Non-Tax Qualified Trusts"); and

**WHEREAS**, the Non-Tax Qualified Trusts that are the subject of this Agreement were established by ComEd in accordance with the Illinois Statute; and

**WHEREAS**, pursuant to certain assignment agreements ExGen wishes to transfer to the NQF Companies its interests, rights, duties and obligations under the Amended and Restated Agreement in the Non-Tax Qualified Trusts, as set forth in Schedule A attached hereto, and the NQF Companies have agreed to accept such interests, rights, duties and obligations; and

**WHEREAS**, pursuant to certain assignment agreements ExGen wishes to transfer to ExGen Trust Consolidation Company, LLC ("Consolidation"), a limited liability company organized under the laws of the State of Nevada, its interests, rights, duties and obligations under the Amended and Restated Agreement in the Tax-Qualified Trusts, and Consolidation has agreed to accept such interests, rights, duties and obligations; and

**WHEREAS**, ExGen, the NQF Companies and Consolidation wish to amend the Amended and Restated Trust Agreement so that it is restated into two separate agreements, one with respect to the Non-Tax Qualified Trusts and one with respect to the Tax-Qualified Trusts; and

**WHEREAS**, ExGen, the NQF Companies and the Trustee wish that this Agreement shall amend and restate the Amended and Restated Trust Agreement pursuant to this Agreement with respect to the Non-Tax Qualified Trusts in such a way that nothing in this Agreement is intended to conflict with or override the applicable licenses or the applicable regulatory requirements of the NRC, the IRS and other regulators; and

**WHEREAS**, ExGen, Consolidation, the NQF Companies and the Trustee wish that this Agreement shall amend and restate the restrictions on the transferability imposed by the Amended and Restated Trust Agreement; and

**WHEREAS**, ExGen and the NQF Companies wish that the Trustee continue to serve as trustee of the Non-Tax Qualified Trusts.

**NOW, THEREFORE**, ComEd has previously delivered Schedules to this Agreement to the Trustee, and the Trustee has acknowledged receipt of the funds described thereon representing the initial funding of the Trusts with respect to the Plants described or referenced on such Schedules, and Trustee has acknowledged additional contributions by ExGen;

**TO HAVE AND TO HOLD THE SAME IN TRUST** for the exclusive use and purposes and upon the terms and conditions hereinafter set forth and as set forth in the Master Terms for Trust Agreements (the "Master Terms") appended hereto as Exhibit 1, and such additional funds as may from time to time be added thereto as provided herein, together with the proceeds and reinvestments thereof.

## **ARTICLE I**

### **PURPOSES OF THE TRUSTS**

**Section 1.01. Establishment of the Trusts.** The Trustee has established and shall hold a separate Non-Tax Qualified Trust for each Plant. Each time any of the NQF Companies make a contribution to the Non-Tax Qualified Trusts, it shall designate the amount of such contribution allocable to the Trust. The Trustee shall maintain separate records for each Non-Tax Qualified Trust, and shall credit thereto its pro rata share of all

income of the Trust Fund and charge thereto its pro rata share of all expenses (other than expenses attributable to a particular Plant which shall be expenses charged to the Non-Tax Qualified Trust named for such Plant) and any losses. Until otherwise instructed in writing by the NQF Companies, nothing in this Agreement or in the Master Terms shall be deemed to require the Trustee to segregate or invest separately assets of the Trusts, it being intended that the assets of the Trusts may be maintained and invested and reinvested as a common pool, but shall not be required to be so maintained or invested.

**Section 1.02. Purposes of the Trusts.** The Non-Tax Qualified Trusts are established for the exclusive purpose of providing funds for the decommissioning of the Units. The Non-Tax Qualified Trust for a Unit shall accumulate all contributions (whether from the relevant NQF Company or others) which do not satisfy the requirements for contributions to the Tax-Qualified Trust for that Unit, pursuant to the Master Terms. None of the assets of the Non-Tax Qualified Trusts shall be subject to attachment, garnishment, execution of levy in any manner for the benefit of creditors of a NQF Company or any other party.

**Section 1.03. Contributions to the Funds.** The assets of the Non-Tax Qualified Trusts shall be transferred or contributed by the NQF Companies (or others approved in writing by the NQF Companies) from time to time.

**Section 1.04. Transferability.** The NQF Companies may transfer any interest in a Non-Tax Qualified Trust; provided, *however*, that any such transfer shall be made subject to, and upon the agreement (which shall be in form and substance satisfactory to ComEd) of the successor to observe, the provisions of this Section 1.04, Sections 2.8 and 2.9 of the Master Terms (as it relates to approval of amendments of this Section 1.04, Sections 2.8 and 2.9 of the Master Terms, and Sections 3.07 and 3.11 of this Agreement), and Sections 3.07 and 3.11 of this Agreement. The interest of the NQF Companies in any Non-Tax Qualified Trust is not subject to the claims of the creditors of the NQF Companies; *provided, however*, that any creditor of the NQF Companies, as to which a Disbursement Certificate for a Non-Tax Qualified Trust has been properly completed and submitted to the Trustee, and not objected to by the NRC within the time period specified in Section 2.2(b) of the Master Terms, may assert a claim directly against such Trust in an amount not to exceed the lesser of the amount specified on such Disbursement Certificate or the amount of such Trust available to pay costs other than amounts then owing the Trustee under Section 3.2 of the Master Terms.

**Section 1.05. Master Terms.** In addition to the terms set forth in this Agreement, the Non-Tax Qualified Trusts shall also be governed by the provisions of the Master Terms. It is intended that the provisions of the Master Terms be complementary to the terms of this Agreement, provided, however, that to the extent that the terms of this Agreement are construed by a court of competent jurisdiction or applicable governmental agency to be in conflict with the Master Terms, the terms of this Agreement shall take

precedence over the Master Terms. Any terms capitalized and not defined herein shall have the meaning set forth in the Master Terms.

## **ARTICLE II** **DISTRIBUTIONS**

**Section 2.01. Distributions.** Upon receipt of written instructions from a NQF Company, and in accordance with Article 2 of the Master Terms, the Trustee shall distribute all or a portion of the Non-Tax Qualified Trust of which such NQF Company is an owner to such NQF Company, Consolidation or third party.

## **ARTICLE III** **Miscellaneous**

**Section 3.01. Headings.** The Section headings set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in the construction or interpretation of any of the provisions of this Agreement.

**Section 3.02. Particular Words.** Any word contained in the text of this Agreement shall be read as the singular or plural as may be applicable in the particular context. Unless otherwise specifically stated, the word "person" shall be taken to mean and include an individual, partnership, association, trust, company, or corporation.

**Section 3.03. Severability of Provisions.** If any provision of this Agreement or of the Master Terms or its application to any person or entity in any circumstances shall be invalid and unenforceable, the application of such provision to persons and in circumstances other than those as to which it is invalid or unenforceable, and the other provisions of this Agreement and the Master Terms, shall not be affected by such invalidity or unenforceability.

**Section 3.04. Form and Content of Communications.** The names of persons authorized to act on behalf of the NQF Companies shall be certified to the Trustee by the NQF Companies. Until notified in writing to the contrary, the Trustee shall have the right to assume that there has been no change in the identity or authority of any person previously certified to it hereunder.

**Section 3.05. Delivery of Notices Under Agreement.** Any notice required by this Agreement to be given to the NQF Companies or the Trustee shall be deemed to have been properly given when delivered in person or when mailed postage prepaid, by registered or certified mail. Notices to the NQF Companies shall be addressed to:

NQF Companies  
As set forth in Schedule A

Notices to the Trustee shall be addressed to:

[Insert Contact Name and Address]

**Section 3.06. Successors and Assigns.** Subject to the provisions of Sections 1.04 of this Agreement and 3.1 of the Master Terms, this Agreement shall be binding upon and inure to the benefit of the NQF Companies, the Trustee, and their respective successors and assigns.

**Section 3.07. Third Parties.** Except as expressly provided in this Section 3.07, Sections 1.04 and 3.11 of this Agreement, and Sections 2.8, and 2.9 of the Master Terms with respect to ComEd, nothing expressed or implied in this Agreement or in the Master Terms is intended, or shall be construed, to confer upon or give any person or entity other than the NQF Companies and the Trustee any rights or remedies under or by reason of this Agreement. ComEd shall have the right to enforce the provisions of Sections 1.04 and 3.11 of this Agreement, this Section 3.07, and Sections 2.8 and 2.9 of the Master Terms insofar as such Sections grant it rights under this Agreement.

**Section 3.08. Counterparts of Agreement.** This Agreement has been executed in counterparts, each of which shall be deemed to be an executed original.

**Section 3.09. Governing Jurisdiction.** The Trusts created hereunder are Illinois trusts. All questions pertaining to the validity, construction, and administration of the Non-Tax Qualified Trusts shall be determined in accordance with the laws of the State of Illinois.

**Section 3.10. Trust Fiscal Year.** The accounting and taxable year for the Trusts shall be the taxable year of the NQF Companies for federal income tax purposes. If the taxable year of the NQF Companies shall change, the NQF Companies shall notify the Trustee of such change and the accounting and taxable year of all Trusts must change to the taxable year of the NQF Companies.

**Section 3.11. Confirmation of Transfer.** ComEd has previously confirmed its assignment of its rights and obligation under the Amended and Restated Agreement to ExGen. By its execution of this Agreement, ComEd hereby confirms the assignment of its rights and obligations under this Agreement to the NQF Companies other than (i) its rights under Section 1.04 hereof to approve any successor of a Non-Tax Qualified Trust, (ii) its right to receive any funds pursuant to the provisions of Section 2.9 of the Master Terms, (iii) its right to approve any amendment to Section 1.04 and 3.07 hereof and

Sections 2.8 and 2.9 of the Master Terms and this Section 3.11 under Section 2.9 of the Master Terms, and (iv) its rights under Section 3.07 of this Agreement to enforce its rights under Sections 2.8 and 2.9 of the Master Terms and 1.04 and 3.07 of this Agreement and this Section 3.11. ComEd hereby acknowledges its notice of the amendments in this Amended and Restated Non-Tax Qualified Nuclear Decommissioning Master Trust Agreement and hereby waives its rights under Section 2.9 of the Master Terms to any other prior written notices.

**IN WITNESS WHEREOF**, the parties hereto, each intending to be legally bound hereby, have hereunto set their hands and seals as of the day and year first above written.

**EXELON BRAIDWOOD 1 NQ, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXELON BRAIDWOOD 2 NQ, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXELON BYRON 1 NQ, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXELON BYRON 2 NQ, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXELON DRESDEN 1 NQ, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXELON DRESDEN 2 NQ, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXELON DRESDEN 3 NQ, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXELON LASALLE 1 NQ, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXELON LASALLE 2 NQ, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXELON QUAD CITIES 1 NQ, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXELON QUAD CITIES 2 NQ, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXELON ZION 1 NQ, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXELON ZION 2 NQ, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXELON GENERATION COMPANY, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**COMMONWEALTH EDISON COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

**THE NORTHERN TRUST COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

## Schedule A

The following is a list of nuclear power plants owned in whole or part by ExGen and the trust funds covered by the Master Terms:

<u>Unit</u>	<u>Trust Fund</u>	<u>Owner</u>
Braidwood Unit 1	Exelon Braidwood Unit 1 Non-Tax Qualified Trust	Exelon Braidwood 1 NQ, LLC
Braidwood Unit 2	Exelon Braidwood Unit 2 Non-Tax Qualified Trust	Exelon Braidwood 2 NQ, LLC
Byron Unit 1	Exelon Byron Unit 1 Non-Tax Qualified Trust	Exelon Byron 1 NQ, LLC
Byron Unit 2	Exelon Byron Unit 2 Non-Tax Qualified Trust	Exelon Byron 2 NQ, LLC
Dresden Unit 1	Exelon Dresden Unit 1 Non-Tax Qualified Trust	Exelon Dresden 1 NQ, LLC
Dresden Unit 2	Exelon Dresden Unit 2 Non-Tax Qualified Trust	Exelon Dresden 2 NQ, LLC
Dresden Unit 3	Exelon Dresden Unit 3 Non-Tax Qualified Trust	Exelon Dresden 3 NQ, LLC
LaSalle Unit 1	Exelon LaSalle Unit 1 Non-Tax Qualified Trust	Exelon LaSalle 1 NQ, LLC
LaSalle Unit 2	Exelon LaSalle Unit 2 Non-Tax Qualified Trust	Exelon LaSalle 2 NQ, LLC
Quad Cities Unit 1	Exelon Quad Cities Unit 1 Non-Tax Qualified Trust	Exelon Quad Cities 1 NQ, LLC
Quad Cities Unit 2	Exelon Quad Cities Unit 2 Non-Tax Qualified Trust	Exelon Quad Cities 2 NQ, LLC
Zion Unit 1	Exelon Zion Unit 1 Non-Tax Qualified Trust	Exelon Zion 1 NQ, LLC
Zion Unit 2	Exelon Zion Unit 2 Non-Tax Qualified Trust	Exelon Zion 2 NQ, LLC

The address of each of the Non-Tax Qualified Trust LLCs is as follows: **[Insert Nevada Address]**

**3. Revised Draft Amended and Restated Qualified Nuclear  
Decommissioning Master Trust Agreement (Mellon Bank, N. A.)**

**AMENDED AND RESTATED  
TAX-QUALIFIED  
NUCLEAR DECOMMISSIONING  
MASTER TRUST AGREEMENT**

**THIS AMENDED AND RESTATED TAX-QUALIFIED NUCLEAR DECOMMISSIONING MASTER TRUST AGREEMENT** (the "Agreement"), dated as of \_\_\_\_\_, 2003 by and between Commonwealth Edison Company ("ComEd"), an Illinois corporation (for the limited purpose of confirming the assignment reflected in Sections 1.04, 3.07 and 3.11 of this Agreement and its rights as stated in Sections 2.8 and 2.9 of the Master Terms), Exelon Generation Company, LLC ("ExGen"), a limited liability company organized under the laws of the State of Delaware and having a principal office at 200 Exelon Way, Kennett Square, Pennsylvania 19348, Exelon Generation Consolidation Company, LLC ("Consolidation"), and The Northern Trust Company, as Trustee, having its office at \_\_\_\_\_, Nevada [zip] (the "Trustee").

**WITNESSETH:**

**WHEREAS**, ExGen is the owner in whole or in part of each of the Units ("Unit" shall mean each, and "Units" shall mean all, of the nuclear power plants listed on the Schedule A attached to this Agreement as that Schedule may be supplemented from time to time by the ExGen by written notice to the Trustee). Each unit of a multi-unit nuclear power plant site shall be considered as a separate Unit for the purposes of this Agreement; and

**WHEREAS**, the Amended and Restated Nuclear Decommissioning Master Trust Agreement dated June 28, 2002 and effective September 1, 2002 ("Amended and Restated Agreement") provides for trusts for the exclusive purpose of providing for the decommissioning of the Units, which trusts consisted of qualified nuclear decommissioning funds (the "Tax-Qualified Trusts") under Section 468A of the Internal Revenue Code of 1986, as amended (the "Code") and nonqualified nuclear decommissioning trusts (the "Non-Tax Qualified Trusts"); and

**WHEREAS**, the Tax-Qualified Trusts that are the subject of this Agreement were established by ComEd (as hereinafter defined) in accordance with Section 8-508.1 of the Illinois Public Utilities Act (220 ILCS 5/8-508.1) (the "Illinois Statute"), and this Agreement and such Tax-Qualified Trusts are intended by the Company to be maintained and to be and remain qualified under Section 468A (as hereinafter defined);

**WHEREAS**, pursuant to certain assignment agreements ExGen wishes to transfer to the NQF Companies its interests, rights, duties and obligations under the Amended and Restated Agreement in the Non-Tax Qualified Trusts, as set forth in Schedule A attached

hereto, and the NQF Companies have agreed to accept such interests, rights, duties and obligations; and

**WHEREAS**, pursuant to certain assignment agreements ExGen wishes to transfer to Consolidation, a limited liability company organized under the laws of the State of Nevada, its interests, rights, duties and obligations under the Amended and Restated Agreement in the Tax-Qualified Trusts, and Consolidation has agreed to accept such interests, rights, duties and obligations; and

**WHEREAS**, ExGen, the NQF Companies and Consolidation wish to amend the Amended and Restated Trust Agreement so that it is restated into two separate agreements, one with respect to the Non-Tax Qualified Trusts and one with respect to the Tax-Qualified Trusts; and

**WHEREAS**, ExGen, Consolidation and the Trustee wish that this Agreement shall amend and restate the Amended and Restated Trust Agreement pursuant to this Agreement with respect to the Tax-Qualified Trusts in such a way that nothing in this Agreement is intended to conflict with or override the applicable licenses or the applicable regulatory requirements of the NRC, the IRS and other regulators; and

**WHEREAS**, ExGen, Consolidation, the NQF Companies and the Trustee wish that this Agreement shall amend and restate the restrictions on the transferability imposed by the Amended and Restated Trust Agreement; and

**WHEREAS**, ExGen and Consolidation wish that the Trustee continue to serve as trustee of the Tax-Qualified Trusts.

**NOW, THEREFORE**, ComEd has previously delivered Schedules to this Agreement to the Trustee, and the Trustee has acknowledged receipt of the funds described thereon representing the initial funding of the Trusts with respect to the Plants described or referenced on such Schedules, and Trustee has acknowledged additional contributions by ExGen;

**TO HAVE AND TO HOLD THE SAME IN TRUST** for the exclusive use and purposes and upon the terms and conditions hereinafter set forth and as set forth in the Master Terms for Trust Agreements (the "Master Terms") appended hereto as Exhibit 1, and such additional funds as may from time to time be added thereto as provided herein, together with the proceeds and reinvestments thereof.

## **ARTICLE 1**

### **PURPOSES OF THE TRUSTS**

**Section 1.01. Establishment of the Trusts.** The Trustee has established and shall hold a separate Tax-Qualified Trust for each Plant. Each time Consolidation makes a

contribution to the Tax-Qualified Trusts, it shall designate the amount of such contribution allocable to the Trust. The Trustee shall maintain separate records for each Tax-Qualified Trust, and shall credit thereto its pro rata share of all income of the Trust Fund and charge thereto its pro rata share of all expenses (other than expenses attributable to a particular Plant which shall be expenses charged to the Tax-Qualified Trust named for such Plant) and any losses. Until otherwise instructed in writing by Consolidation, nothing in this Agreement or in the Master Terms shall be deemed to require the Trustee to segregate or invest separately assets of the Trusts, it being intended that the assets of the Trusts may be maintained and invested and reinvested as a common pool, but shall not be required to be so maintained or invested.

No part of the interest of a Tax-Qualified Trust in the common pool, nor any right pertaining to such interest (including any right to substitute another entity for that Tax-Qualified Trust as a participant in the common pool), may be sold, assigned, transferred or otherwise alienated or disposed of by the Tax-Qualified Trust to any other party. Any Tax-Qualified Trust may withdraw any part or all of its commingled investments in the common pool at any time upon written notice to the Trustee from Consolidation. Upon the withdrawal of the entire interest of any Tax-Qualified Trust from the common pool, the common pool will terminate. At that time, each Tax-Qualified Trust's assets will be segregated in a separate account and no further commingling will occur. Notwithstanding the foregoing, the majority in interest of the remaining Tax-Qualified Trusts, acting through their respective Trustee within 60 days after the date of withdrawal of a Tax-Qualified Trust, may agree by written agreement of their respective Trustees to continue pooling their assets in the common pool.

**Section 1.02. Purposes of the Trusts.** The Qualified Funds are established for the exclusive purpose of providing funds for the decommissioning of the Units. The Qualified Funds shall accumulate all contributions (whether from Consolidation or others) which satisfy the requirements of Sections 2.3 and 2.4 of the Master Terms. The assets in the Qualified Funds shall be used as authorized by Section 468A of the Code and regulations thereunder. None of the assets of the Qualified Funds shall be subject to attachment, garnishment, execution or levy in any manner for the benefit of creditors of Consolidation or any other party.

**Section 1.03. Contributions to the Funds.** The assets of the Tax-Qualified Trusts shall be transferred or contributed by Consolidation (or others approved in writing by Consolidation) from time to time.

**Section 1.04. Transferability.** Consolidation may transfer any interest in a Tax-Qualified Trust; provided, *however*, that any such transfer shall be made subject to, and upon the agreement (which shall be in form and substance satisfactory to ComEd) of the successor to observe, the provisions of this Section 1.04, Sections 2.8 and 2.9 of the Master Terms (as it relates to approval of amendments of this Section 1.04, Sections 2.8 and 2.9 of the Master Terms, and Sections 3.07 and 3.11 of this Agreement), and Sections

3.07 and 3.11 of this Agreement. The interest of Consolidation in any Tax-Qualified Trust is not subject to the claims of the creditors of Consolidation; *provided, however*, that any creditor of Consolidation, as to which a Disbursement Certificate for a Tax-Qualified Trust has been properly completed and submitted to the Trustee, and not objected to by the NRC within the time period specified in Section 2.2(b) of the Master Terms, may assert a claim directly against such Trust in an amount not to exceed the lesser of the amount specified on such Disbursement Certificate or the amount of such Trust available to pay costs other than amounts then owing the Trustee under Section 3.2 of the Master Terms.

**Section 1.05. Master Terms.** In addition to the terms set forth in this Agreement, the Tax-Qualified Trusts shall also be governed by the provisions of the Master Terms. It is intended that the provisions of the Master Terms be complementary to the terms of this Agreement, provided, however, that to the extent that the terms of this Agreement are construed by a court of competent jurisdiction or applicable governmental agency to be in conflict with the Master Terms, the terms of this Agreement shall take precedence over the Master Terms. Any terms capitalized and not defined herein shall have the meaning set forth in the Master Terms.

## **ARTICLE II** **DISTRIBUTIONS**

**Section 2.01. Distributions.** Upon receipt of written instructions from Consolidation, and in accordance with Article 2 of the Master Terms, the Trustee shall distribute all or a portion of the Tax-Qualified Trust to Consolidation, an NQF Company or third party.

## **ARTICLE III** **Miscellaneous**

**Section 3.01. Headings.** The Section headings set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in the construction or interpretation of any of the provisions of this Agreement.

**Section 3.02. Particular Words.** Any word contained in the text of this Agreement shall be read as the singular or plural as may be applicable in the particular context. Unless otherwise specifically stated, the word "person" shall be taken to mean and include an individual, partnership, association, trust, company, or corporation.

**Section 3.03. Severability of Provisions.** If any provision of this Agreement or of the Master Terms or its application to any person or entity in any circumstances shall be invalid and unenforceable, the application of such provision to persons and in

circumstances other than those as to which it is invalid or unenforceable, and the other provisions of this Agreement and the Master Terms, shall not be affected by such invalidity or unenforceability.

**Section 3.04. Form and Content of Communications.** The names of persons authorized to act on behalf of Consolidation shall be certified to the Trustee by Consolidation. Until notified in writing to the contrary, the Trustee shall have the right to assume that there has been no change in the identity or authority of any person previously certified to it hereunder.

**Section 3.05. Delivery of Notices Under Agreement.** Any notice required by this Agreement to be given to Consolidation or the Trustee shall be deemed to have been properly given when delivered in person or when mailed postage prepaid, by registered or certified mail. Notices to Consolidation shall be addressed to:

EXELON GENERATION CONSOLIDATION COMPANY, LLC  
[Insert Contact and Address]

Notices to the Trustee shall be addressed to:

[Insert Contact and Address]

**Section 3.06. Successors and Assigns.** Subject to the provisions of Sections 1.04 of this Agreement and 3.1 of the Master Terms, this Agreement shall be binding upon and inure to the benefit of Consolidation, the Trustee, and their respective successors and assigns.

**Section 3.07. Third Parties.** Except as expressly provided in this Section 3.07 and Sections 1.04 and 3.11 of this Agreement and Sections 2.8 and 2.9 of the Master Terms with respect to ComEd, nothing expressed or implied in this Agreement or in the Master Terms is intended, or shall be construed, to confer upon or give any person or entity other than Consolidation and the Trustee any rights or remedies under or by reason of this Agreement. ComEd shall have the right to enforce the provisions of Sections 1.04 and 3.11 of this Agreement and this Section 3.07 and Sections 2.8 and 2.9 of the Master Terms insofar as such Sections grant it rights under this Agreement.

**Section 3.08. Counterparts of Agreement.** This Agreement has been executed in counterparts, each of which shall be deemed to be an executed original.

**Section 3.09. Governing Jurisdiction.** The Trusts created hereunder are Illinois trusts. All questions pertaining to the validity, construction, and administration of the

Tax-Qualified Trusts shall be determined in accordance with the laws of the State of Illinois.

**Section 3.10. Trust Fiscal Year.** The accounting and taxable year for the Trusts shall be the taxable year of Consolidation for federal income tax purposes. If the taxable year of Consolidation shall change, Consolidation shall notify the Trustee of such change and the accounting and taxable year of all Trusts must change to the taxable year of Consolidation.

**Section 3.11. Confirmation of Transfer.** ComEd has previously confirmed its assignment of its rights and obligation under the Amended and Restated Agreement to ExGen. By its execution of this Agreement, ComEd hereby confirms the assignment of ExGen's rights and obligations under this Agreement to Consolidation other than (i) its rights under Section 1.04 hereof to approve any successor of a Tax-Qualified Trust, (ii) its right to receive any funds pursuant to the provisions of Section 2.9 of the Master Terms, (iii) its right to approve any amendment to Section 1.04 and 3.07 hereof and Section 2.8 and 2.9 of the Master Terms and this Section 3.11 under Section 2.9 of the Master Terms, and (iv) its rights under Section 3.07 of this Agreement to enforce its rights under Sections 2.8 and 2.9 of the Master Terms, and 3.07 of this Agreement and this Section 3.11. ComEd hereby acknowledges its notice of the amendments in this Amended and Restated Tax-Qualified Nuclear Decommissioning Master Trust Agreement and hereby waives its rights under Section 2.9 of the Master Terms to any other prior written notices.

**IN WITNESS WHEREOF**, the parties hereto, each intending to be legally bound hereby, have hereunto set their hands and seals as of the day and year first above written.

**EXELON GENERATION CONSOLIDATION  
COMPANY, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXELON GENERATION COMPANY, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**COMMONWEALTH EDISON COMPANY**

By: \_\_\_\_\_

Name:

Title:

**THE NORTHERN TRUST COMPANY**

By: \_\_\_\_\_

Name:

Title:

## Schedule A

The following is a list of nuclear power plants owned in whole or part by ExGen and trust funds covered by the Master Terms:

<u>Unit</u>	<u>Trust Fund</u>
Braidwood Unit 1	Exelon Braidwood Unit 1 Tax-Qualified Trust
Braidwood Unit 2	Exelon Braidwood Unit 2 Tax-Qualified Trust
Byron Unit 1	Exelon Byron Unit 1 Tax-Qualified Trust
Byron Unit 2	Exelon Byron Unit 2 Tax-Qualified Trust
Dresden Unit 1	Exelon Dresden Unit 1 Tax-Qualified Trust
Dresden Unit 2	Exelon Dresden Unit 2 Tax-Qualified Trust
Dresden Unit 3	Exelon Dresden Unit 3 Tax-Qualified Trust
LaSalle Unit 1	Exelon LaSalle Unit 1 Tax-Qualified Trust
LaSalle Unit 2	Exelon LaSalle Unit 2 Tax-Qualified Trust
Quad Cities Unit 1	Exelon Quad Cities Unit 1 Tax-Qualified Trust
Quad Cities Unit 2	Exelon Quad Cities Unit 2 Tax-Qualified Trust
Zion Unit 1	Exelon Zion Unit 1 Tax-Qualified Trust
Zion Unit 2	Exelon Zion Unit 2 Tax-Qualified Trust

**Attachment D**  
**[Intentionally Left Blank]**

**Attachment E**

**Revised Draft Operating Agreement AmerGen NQF, LLC**

**OPERATING AGREEMENT**

**OF**

**AMERGEN [NAME] NQF, LLC**

**A Single Member, Nevada Limited Liability Company**

**OPERATING AGREEMENT  
OF  
AMERGEN [NAME] NQF, LLC**

**A Single Member, Nevada Limited Liability Company**

THIS OPERATING AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 2003, is executed and agreed to, for good and valuable consideration, by and between AmerGen [NAME] NQF, LLC, a Nevada limited liability company, and the sole Member (as such term is defined below).

**Article 1  
Definitions**

**1.1 Definitions.** As used in this Agreement, the following terms have the following meanings:

"Act" means Chapter 86 of the Nevada Revised Statutes and any successor statute, as amended from time to time.

"Affiliate" means with respect to any person, a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the person in question. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through membership of voting securities or interests, by contract, or otherwise.

"Agreement" has the meaning given that term in the introductory paragraph.

"Articles" has the meaning given that term in Section 2.1.

"Bankrupt Member" means a Member (a) that (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for the Member a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in a proceeding of the type described in subclauses (i) through (iv) of this clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member's or of all or any substantial part of the Member's properties; or (b) against which, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and one hundred-twenty (120) days have expired without dismissal thereof or with respect to which, without the Member's consent or acquiescence, a trustee, receiver, or liquidator of the Member or all of or any substantial part of the Member's properties has been appointed and ninety (90) days have expired without the appointment's having been vacated or stayed, or ninety (90) days have

expired after the date of expiration of a stay, if the appointment has not previously been vacated.

"Capital Contribution" means with respect to the Member the amount of money actually contributed to the Company and the initial Book Value of any property (other than money) contributed to the Company with respect to the interest in the Company held by the Member.

"Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

"Company" means AmerGen [Name] NQF, LLC, a Nevada limited liability company.

"Date of Dissolution" means the date on which the Company is dissolved pursuant to Section 9.1.

"Dispose," "Disposing," or "Disposition" means a sale, assignment, transfer, pledge, mortgage, exchange or other disposition.

"Initial Capital Contribution" means the Capital Contribution of the Member made pursuant to Section 4.1.

"Member" means the person executing this Agreement as of the date of this Agreement as the member or the person hereafter admitted to the Company as the member as provided in this Agreement, but does not include any person who has ceased to be a member in the Company.

"Non Qualified Funds" means those nuclear decommissioning trust funds that do not meet the requirements of Internal Revenue Code section 468A.

"Non Qualified Trust Agreements" means those trust agreements listed on Exhibit "B".

"NRC" means the United States Nuclear Regulatory Commission or its successor.

"NRC Director, Nuclear Reactor Regulation" means the office within the NRC with such title or any successor office(s) created by the NRC.

"Officers" has the meaning given that term in Section 6.4.

"Person" means an individual, corporation, partnership, limited partnership, limited liability company, or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Proceeding" has the meaning given that term in Section 7.1.

"Unit" means the fractional interest in the Company's profits, losses and capital as set forth opposite each Member's name on Exhibit A. Each Member's interest shall be determined

by the proportion that such Member's Units bears to the total number of Units owned by all Members.

Other terms defined herein have the meanings so given them.

**1.2 Construction.** Whenever the context requires as to the construction of words used herein, the singular shall include the plural, and vice versa, and the masculine gender shall include the feminine and neuter genders, and vice versa. Unless the context clearly indicates otherwise, all references to Articles and Sections refer to articles and sections of this Agreement, and all references to Exhibits are to exhibits attached hereto, each of which is made a part hereof for all purposes.

## **Article 2 Organization**

**2.1 Formation.** The Company has been organized as a Nevada limited liability company by the filing of Articles of Organization (the "Articles") under and pursuant to the Act.

**2.2 Name.** The name of the Company is as follows: AmerGen [NAME] NQF, LLC.

**2.3 Registered Office, Resident Agent, Principal Office and Other Offices.** As required by the Act, the Company's registered office in the State of Nevada is 6100 Neil Road, Suite 500, Reno, Nevada, 89511 and the registered agent named at such address is The Corporation Trust Company of Nevada or such other person or persons as the Member may designate from time to time in the manner provided by law. The Member shall maintain a principal office at 2325 B Renaissance Drive, Suite 19, Las Vegas, Nevada or at any other place or places as the Member may designate from time to time.

**2.4 Mergers and Exchanges.** The Company may be a party to (a) a merger, (b) a domestication (c) a conversion or (d) an exchange or acquisition, of the types described in Chapter 92A of the Nevada Revised Statutes, subject in each event to the approval of the Member and the prior written consent of the NRC Director, Office of Nuclear Reactor Regulation.

**2.5 Purpose.** The Company is organized solely for the purpose of holding an interest in, managing, and distributing the Non Qualified Funds in accordance with the terms and provisions of the Non Qualified Trust Agreements and all applicable federal, state, and local statutes and regulations governing nuclear decommissioning trust funds. In furtherance of this purpose, the Member has assigned its rights, title and interest in the Non Qualified Funds directly to the Company. Also, in furtherance of this purpose, and in accordance with the Non Qualified Trust Agreement, the appropriate party(ies) shall be granted immediate access to the funds in accordance with and upon satisfaction of the conditions in the Non Qualified Trust Agreement; and the Company shall make no material changes to the Non Qualified Trust Agreement without prior written consent of the NRC Director, Nuclear Reactor Regulation. The Company shall have the power to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of such purpose, and for the

protection and benefit of its business.

### **Article 3** **Membership; Dispositions of Interests**

**3.1 Initial Member.** The initial Member of the Company is the person executing this Agreement as a Member. The initial Member is admitted to the Company as a Member effective contemporaneously with the execution by such Person of this Agreement.

**3.2 Representations and Warranties.** The Member hereby represents and warrants to the Company that (a) such Member has duly executed and delivered this Agreement; (b) that Member's authorization, execution, delivery, and performance of this Agreement do not conflict with any other agreement or arrangement to which that Member is a party or by which such Member is bound; and (c) that this Agreement is the legal, valid and binding agreement of such Member and is enforceable against such Member in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general equitable principles (whether or not such enforceability is considered in a proceeding at law or in equity).

**3.3 Additional Members and Assignment of Membership Interest.** The Member may assign its full membership interest to AmerGen Consolidation, LLC. No additional persons may be admitted as Members without the written consent of the Member, provided, however, that no additional Persons may be admitted as Members unless the Company receives prior written consent from the NRC Director, Nuclear Reactor Regulation.

**3.4 Information.** In addition to the other rights specifically set forth in this Agreement, the Member is entitled to all information related to the Company.

**3.5 Liability to Third Parties.** The Member shall not be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a court.

**3.6 Withdrawal.** The Member does not have the right or power to withdraw from the Company as a Member.

### **Article 4** **Capital Contributions**

**4.1 Initial Capital Contribution of Member.** The Member hereby makes the Capital Contribution specified on Exhibit A hereto, and upon the execution of this Agreement such entity shall be deemed admitted as the Member of the Company and receive the number of Units of the Company specified on Exhibit A.

**4.2 Additional Capital Contributions.** The Member is not required to make any additional Capital Contributions to the Company.

**4.3 Advances by Member.** Subject to the limitations herein and to other agreements of the Company, the Company is authorized to borrow from the Member and interest shall accrue on any such loan at an annual rate agreed to by the Company and the Member.

## **Article 5 Distributions and Allocations**

**5.1 Distribution of Available Cash.** At such times as may be determined by the Member, provided that funds held under any Non Qualified Trust shall be used for only the decommissioning purposes as provided in the Non Qualified Trust Agreements, available funds not required for the operation of the Company may be distributed to the Member.

**5.2 Return of and Interest on Capital Contributions.** The Member is not entitled to the return of its Capital Contributions prior to dissolution of the Company or to be paid interest in respect of its Capital Contribution made by it to the Company except as provided in this Agreement.

**5.3 Payments.** The amount of any distribution or payment to a Member or a former Member or its legal representatives whether pursuant to Article 5 or Article 9 may be made in cash or in kind or partially in cash and partially in kind in the reasonable discretion of the Member or liquidator under Article 9, less reasonable reserves established in the reasonable discretion of the Member or liquidator under Article 9 for known or unknown liabilities of the Company. All distributions of assets in kind shall be made at fair market value as determined by Member and shall be distributed to the Member in the same manner as set forth in Section 5.1 hereof.

**5.4 Allocations of Income, Losses, Deductions and Credits.** Income, losses, deductions and credits of the Company shall be allocated to the Member.

## **Article 6 Rights and Duties of the Member**

### **6.1 Management by the Member.**

**6.1.1** Except for situations in which the consent of the NRC Director, Nuclear Reactor Regulation is required by this Agreement or by nonwaivable provisions of applicable law, the powers of the Company shall be solely exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Member. The Member may make all decisions and take all actions for the Company not otherwise provided for in this Agreement. Except as specifically limited in this Agreement, it is intended that the Member shall have the authority, right, power, duty, and obligation to make the decisions and take the actions necessary in connection with planning, developing, operating, and maintaining the business of the Company, to effectuate the purposes of the Company and to designate the

Officers to manage the day-to-day affairs of the Company.

No person or governmental body dealing with the Company shall be required to inquire into, or to obtain any other documentation as to, the authority of the Member to take any such action permitted under this Section.

**6.2 Other Business.** The Member shall devote such time, effort, and attention as may be reasonably necessary, advisable, or appropriate to manage and direct the operations, business and affairs of the Company; provided, however, the Member shall not be required to manage the Company as its sole and exclusive function and it may have other business interests and may engage in other activities, whether or not similar to or competitive with the activities of the Company so long as such activity does not negatively impact the Company. The Company shall have no right, by virtue of this Agreement or the relationship created hereby, in such investments or to such other business, venture or other activity or in the income or profits derived from them. The Member shall incur no liability to the Company as a result of engaging in any other business or venture, except where such activity negatively impacts the Company.

**6.3 Meetings of the Member.**

**6.3.1** Meetings of the Member may be held at such place or places as shall be determined from time to time as called by the Member; provided however that all meetings of the Member must be wholly conducted in person within the States of Nevada, Illinois and/or Delaware and any meeting held or action taken not in full compliance of this proviso shall be void and of absolutely no force or effect.

**6.3.2** Any action permitted or required by the Act, the Articles or this Agreement to be taken at a meeting of the Member may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by the Member, provided however that any such written consent must be executed within the States of Nevada, Illinois and/or Delaware by the Member, and any written consent executed not in full compliance of this proviso shall be void and of absolutely no force or effect. A facsimile, telegram, telex, cablegram or similar transmission by the Member, or a photographic, photostatic, or similar reproduction of a writing signed by the Member, shall be regarded as signed by the Member for purposes of this Section provided that the original consent was signed within the States of Nevada, Illinois and/or Delaware.

**6.3.3** The Member shall cause a written record of all meetings and written consents of the Member to be produced and maintained.

**6.4 Officers.** The Member shall designate one or more persons to be Officers of the Company as set forth in Section 6.4.1 and may enter into employment agreements with such persons on behalf of the Company. No Officer need be a resident of the State of Nevada. Any Officers so designated shall have such authority and perform such duties as are generally set forth in Section 6.4.1 and specifically delegated to them, from time to time by the Member, subject to and in compliance with any employment contracts validly existing between Company

and any Officer. Unless the Member decides otherwise, if the title is one commonly used for officers of a business corporation formed under Chapter 78 of the Nevada Revised Statutes, the assignment of such title shall constitute the delegation to such Officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to such Officer by the Member pursuant to this Section. Each Officer shall hold office until his or her successor shall be duly designated and shall qualify or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided. The same person may not serve as every Officer of the Company. Reasonable salaries or other compensation, if any, of the Officers and agents of the Company shall be fixed from time to time by the Member.

Any Officer may resign as such at any time subject to the terms and conditions of any employment agreement that such Officer may have entered into with the Company. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Member. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any Officer may be removed as such, at the will of the Member, either with or without cause; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the person so removed. Designation of an Officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company may be filled by the Member.

**6.4.1 President.**--The president shall have general supervision over the business and operations of the Company, subject however, to the control of the Member. The president shall sign, execute, and acknowledge, in the name of the Company, deeds, leases, contracts or other instruments, authorized by the Member, except in cases where the signing and execution thereof shall be expressly delegated by this Section 6.4 to some other Officer or agent of the Company; and, in general, shall perform all duties incident to the office of president and such other duties as from time to time may be assigned by the Member.

**Vice Presidents.**--The vice presidents shall perform the duties of the president in the absence of the president and such other duties as may from time to time be assigned to them by the Member or the president.

**Secretary.**--The secretary or an assistant secretary shall attend all meetings of the Member and shall record all the votes of the Member and the minutes of the meetings of the Member and written consents in a book or books to be kept for that purpose; shall see that notices are given and records and reports properly kept and filed by the Company as required by law; shall be the custodian of the seal of the Company and see that it is affixed to all documents to be executed on behalf of the Company under its seal; and, in general, shall perform all duties incident to the office of secretary, and such other duties as may from time to time be assigned by the Member or the president.

**Treasurer.**--The treasurer or an assistant treasurer shall have or provide for the custody of the funds of the Company other than funds held under the Non Qualified Trust Agreements and the Qualified Trust Agreements; shall collect and receive or provide for

the collection and receipt of moneys earned by or in any manner due to or received by the Company; shall deposit all funds in his or her custody as treasurer in such banks or other places of deposit as the Member may from time to time designate; shall, whenever so required by the Member, render an account showing all transactions as treasurer, and the financial condition of the Company; and, in general, shall discharge such other duties as may from time to time be assigned by the Member or the president.

**Article 7**  
**Indemnification by the Company**

**7.1 Indemnification.** The Member and any Officer, employee or agent of the Company may, in the Member's absolute discretion, be indemnified by the Company to the fullest extent permitted by the Act, as the same exist or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment) and as may be otherwise permitted by applicable law.

**7.2 Insurance.** The Company may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as an, Officer, employee or agent of the Company or is or was serving at the request of the Company as a director, Officer, partners, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under this Article 7.

**Article 8**  
**Financial Accounting and Reports**

**8.1 Tax Matters.** The Member shall cause to be prepared and filed all necessary federal and state income tax returns for the Company, make any tax elections available to the Company, and select the fiscal year of the Company

**8.2 Quarterly Reports.** After the close of each fiscal quarter, the Member shall have summary financial information of the Company and its trust funds prepared in accordance with the accounting method used for reporting for federal income tax purposes consistently applied from its books without audit and subject to year-end adjustments.

**8.3 Annual Report; Financial Statements.** After the close of each fiscal year, the Member shall have financial statements (footnotes not required) of the Company and its trust funds prepared in accordance with the accounting method used for reporting for federal income tax purposes consistently applied, including an income statement for the year then ended and a balance sheet as of the end of such year.

**Article 9**  
**Dissolution, Liquidation and Termination**

**9.1 Dissolution.** The Company shall dissolve and its affairs shall be wound up on the first to occur of the following:

**9.1.1** the written consent of the Member;

**9.1.2** the Member shall die, dissolve, be declared legally insane, retire, resign, become a Bankrupt Member or there shall occur any other event that terminates the continued membership in the Company of the Member; or

**9.1.3** The Non Qualified Trust Agreements shall be terminated in accordance with their terms.

Provided, however, the Company shall not dissolve its affairs without the prior written consent of the NRC Director, Office of Nuclear Reactor Regulation.

**9.2** Liquidation and Termination. On dissolution of the Company, the Company shall be wound up and liquidated by the Member or by a liquidator(s) selected by the Member who shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Member. The steps to be accomplished by the liquidator are as follows:

**9.2.1** as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper independent accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

**9.2.2** the liquidator shall apply the assets of the Company remaining after payment of the costs and expenses of winding up in the following priority:

**9.2.2.1** to the creditors of the Company, other than the Member, all amounts due them from the Company in the order of priority established by law;

**9.2.2.2** to the Member, all amounts due the Member in repayment of any loans to the Company; and

**9.2.2.3** the remainder to the Member.

**9.3** Articles of Dissolution. On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Member (or such other person or persons as the Act may require or permit) shall file an Articles of Dissolution with the Secretary of State of Nevada, cancel any other filings made on behalf the Company, and take such other actions as may be necessary to terminate the Company.

## Article 10 General Provisions

**10.1 Offset.** Whenever the Company is to pay any sum to the Member, any amounts the Member owes the Company may be deducted from that sum before payment.

**10.2 Notices.** Except as expressly set forth to the contrary in this Agreement, all notices, requests or consents provided for or permitted to be given under this Agreement must be in writing and must be given either by depositing that writing in the United States mail, addressed to the recipient, postage paid, and registered or certified with return receipt requested or by delivering that writing to the recipient in person, by courier or by facsimile transmission; and a notice, request or consent given under this Agreement is effective on receipt by the person to receive it. All notice, requests and consents to be sent to the Member must be sent to or made at the addresses given for the Member as the Member may specify by notice to the Company. Any notice, request, or consent to the Company must be given to the Member. Whenever any notice is required to be given by law, the Articles or this Agreement, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**10.3 Entire Agreement; Supersedure.** This Agreement constitutes the entire agreement of the Member relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

**10.4 Effect of Waiver or Consent.** A waiver or consent, express or implied, to or of any breach of default by any person in the performance by that person of his, her or its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that person of the same or any other obligations of that person with respect to the Company. Failure on the part of a person to complain of any act of any person or to declare any person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that person of his, her or its rights with respect to that default until the applicable statute-of-limitations period has run.

**10.5 Amendment or Modification.** This Agreement may be amended only upon approval of the Member. Provided, however, that no material amendment to this Agreement may be made without the prior written consent of the NRC Director, Office of Nuclear Reactor Regulation. The Member may make only ministerial changes in this Agreement for the purpose of correcting errors and inconsistencies and to comply with federal, state and local rules, regulations and laws.

**10.6 Binding Effect.** Subject to the restrictions on Disposition set forth in this Agreement, this Agreement is binding on and inures to the benefit of the Member and its respective heirs, legal representatives, successors, and assigns.

**10.7 Governing Law; Severability.** THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Agreement and (a) any provision of the Articles, or (b) any mandatory

provision of the Act, or the applicable provision of the Articles, then the Act shall control. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

**10.8 Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

**10.9 Expenses and Reimbursements.** The Company shall bear (or reimburse the Member for its payment of) all costs and expenses of every kind and description incurred in connection with the organization, operation, liquidation and dissolution of the Company including, but not limited to, travel expenses; fees of consultants, accountants, and attorneys; expenses of the preparation of financial statements, any audit, and tax returns, interest on indebtedness and expenses for financing commitments; and fees and expenses incurred in any litigation by or against the Company.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

COMPANY:  
AMERGEN [NAME] NQF, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

MEMBER:  
AMERGEN ENERGY COMPANY, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

<b>Member Name</b>	<b>Initial Capital Contribution</b>	<b>Number of Units</b>
	\$3,000	100

**EXHIBIT B**

**NON-QUALIFIED TRUST AGREEMENTS**

**AmerGen Three Mile Island Unit One Nonqualified Fund**

**AmerGen Clinton Nuclear Power Plant Nonqualified Fund**

**AmerGen Oyster Creek Nuclear Generating Station Nonqualified Fund**

**Attachment F**

**Revised Draft Operating Agreement AmerGen Consolidation, LLC**

**OPERATING AGREEMENT**

**OF**

**AMERGEN CONSOLIDATION, LLC**

**A Single Member, Nevada Limited Liability Company**

**OPERATING AGREEMENT  
OF  
AMERGEN CONSOLIDATION, LLC**

**A Single Member, Nevada Limited Liability Company**

THIS OPERATING AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 2003, is executed and agreed to, for good and valuable consideration, by and between AmerGen Consolidation, LLC, a Nevada limited liability company, and the Member (as such term is defined below).

**Article 1  
Definitions**

**1.1 Definitions.** As used in this Agreement, the following terms have the following meanings:

"Act" means Chapter 86 of the Nevada Revised Statutes and any successor statute, as amended from time to time.

"Affiliate" means with respect to any Person, a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Person in question. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through membership of voting securities or interests, by contract, or otherwise.

"Agreement" has the meaning given that term in the introductory paragraph.

"Articles" has the meaning given that term in Section 2.1.

"Bankrupt Member" means a Member (a) that (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for the Member a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in a proceeding of the type described in subclauses (i) through (iv) of this clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member's or of all or any substantial part of the Member's properties; or (b) against which, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and one hundred-twenty (120) days have expired without dismissal thereof or with respect to which, without the Member's consent or acquiescence, a trustee, receiver, or liquidator of the Member or all of or any substantial part of the Member's properties has been appointed and ninety (90) days have expired without the appointment's having been vacated or stayed, or ninety (90) days have

expired after the date of expiration of a stay, if the appointment has not previously been vacated.

"Capital Contribution" means with respect to the Member the amount of money actually contributed to the Company and the initial Book Value of any property (other than money) contributed to the Company with respect to the interest in the Company held by the Member.

"Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

"Company" means AmerGen Consolidation, LLC, a Nevada limited liability company.

"Date of Dissolution" means the date on which the Company is dissolved pursuant to Section 10.1.

"Dispose," "Disposing," or "Disposition" means a sale, assignment, transfer, pledge, mortgage, exchange or other disposition.

"Initial Capital Contribution" means the Capital Contribution of the Member made pursuant to Section 4.1.

"Manager" means any person named in the Articles as an initial manager of the Company and any person hereafter appointed as a manager of the Company as provided in this Agreement, but does not include any person who has ceased to be a manager of the Company.

"Member" means the Person executing this Agreement as of the date of this Agreement as the member or the Person hereafter admitted to the Company as the member as provided in this Agreement, but does not include any Person who has ceased to be a member in the Company.

"Non Qualified Funds" means those nuclear decommissioning trust funds that do not meet the requirements of Internal Revenue Code section 468A.

"Non Qualified Trust Agreements" means those trust agreements listed on Exhibit "B".

"NRC" means the United States Nuclear Regulatory Commission or its successor.

"NRC Director, Nuclear Reactor Regulation" means the office within the NRC with such title or any successor office(s) created by the NRC.

"Officers" has the meaning given that term in Section 6.8.

"Person" means an individual, corporation, partnership, limited partnership, limited liability company, or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Proceeding" has the meaning given that term in Section 8.1.

“Qualified Funds” means the nuclear decommissioning trust funds meeting the requirements of Internal Revenue Code section 468A.

“Qualified Trust Agreements” means those trust agreements listed on Exhibit “C”.

“Unit” means the fractional interest in the Company’s profits, losses and capital as set forth opposite each Member’s name on Exhibit A. Each Member’s interest shall be determined by the proportion that such Member’s Units bears to the total number of Units owned by all Members.

Other terms defined herein have the meanings so given them.

**1.2 Construction.** Whenever the context requires as to the construction of words used herein, the singular shall include the plural, and vice versa, and the masculine gender shall include the feminine and neuter genders, and vice versa. Unless the context clearly indicates otherwise, all references to Articles and Sections refer to articles and sections of this Agreement, and all references to Exhibits are to exhibits attached hereto, each of which is made a part hereof for all purposes.

## **Article 2 Organization**

**2.1 Formation.** The Company has been organized as a Nevada limited liability company by the filing of Articles of Organization (the “Articles”) under and pursuant to the Act.

**2.2 Name.** The name of the Company is as follows: AmerGen Consolidation, LLC.

**2.3 Registered Office, Resident Agent, Principal Office and Other Offices.** As required by the Act, the Company’s registered office in the State of Nevada is 6100 Neil Road, Suite 900, Reno, Nevada, 89511 and the registered agent named at such address is The Corporation Trust Company of Nevada or such other Person or Persons as the Managers may designate from time to time in the manner provided by law. The Managers shall maintain a principal office at 2325 B Renaissance Drive, Suite 19, Las Vegas, Nevada or at any other place or places as the Managers may designate from time to time.

**2.4 Mergers and Exchanges.** The Company may be a party to (a) a merger, (b) a domestication (c) a conversion or (d) an exchange or acquisition, of the types described in Chapter 92A of the Nevada Revised Statutes, subject in each event to the approval of the Member and the prior written consent of the NRC Director, Office of Nuclear Reactor Regulation.

**2.5 Purpose.** The Company is organized solely for the purpose of holding an interest in, managing, and distributing the Qualified and Non Qualified Funds in accordance with the terms and provisions of the Qualified and Non Qualified Trust Agreements and all applicable

federal, state, and local statutes and regulations governing nuclear decommissioning trust funds. In furtherance of this purpose, the Member has assigned its rights, title and interest in the Qualified and Non Qualified Funds either directly or indirectly to the Company. Also, in furtherance of this purpose, and in accordance with the Qualified and Non Qualified Trust Agreements, the appropriate party(ies) shall be granted immediate access to the funds in accordance with and upon satisfaction of the conditions in the Qualified and Non Qualified Trust Agreements; and the Company shall make no material changes to the Qualified and/or Non Qualified Trust Agreements without prior written consent of the NRC Director, Nuclear Reactor Regulation. The Company shall have the power to own other entities and do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of such purpose, and for the protection and benefit of its business.

### **Article 3 Membership; Dispositions of Interests**

**3.1 Initial Member.** The initial Member of the Company is the Person executing this Agreement as a Member. The initial Member is admitted to the Company as a Member effective contemporaneously with the execution by such Person of this Agreement.

**3.2 Representations and Warranties.** The Member hereby represents and warrants to the Company that (a) such Member has duly executed and delivered this Agreement; (b) that Member's authorization, execution, delivery, and performance of this Agreement do not conflict with any other agreement or arrangement to which that Member is a party or by which such Member is bound; and (c) that this Agreement is the legal, valid and binding agreement of such Member and is enforceable against such Member in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general equitable principles (whether or not such enforceability is considered in a proceeding at law or in equity).

**3.3 Additional Members.** No additional Persons may be admitted as Members without the written consent of the Member and the NRC Director, Nuclear Reactor Regulation.

**3.4 Information.** In addition to the other rights specifically set forth in this Agreement, the Member is entitled to all information related to the Company.

**3.5 Liability to Third Parties.** The Member shall not be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a court.

**3.6 Withdrawal.** The Member does not have the right or power to withdraw from the Company as a Member.

**3.7 Lack of Authority.** The Member has no authority or power to act for or on behalf of the Company, to do any act that would be binding on the Company, or to incur any

expenditures on behalf of the Company.

#### **Article 4 Capital Contributions**

**4.1 Initial Capital Contribution of Member.** The Member hereby makes the Capital Contribution specified on Exhibit A hereto, and upon the execution of this Agreement such entity shall be deemed admitted as the Member of the Company and receive the number of Units of the Company specified on Exhibit A.

**4.2 Additional Capital Contributions.** The Member is not required to make any additional Capital Contributions to the Company.

**4.3 Advances by Member.** Subject to the limitations herein and to other agreements of the Company, the Company is authorized to borrow from the Member on such terms as the Managers and the Member deem appropriate.

#### **Article 5 Distributions and Allocations**

**5.1 Distribution of Available Cash.** At such times as may be determined by the Managers, in their reasonable discretion, and approved by the Member, provided that funds held under any Qualified and Non Qualified Trust shall be used for only the decommissioning purposes as provided in the Qualified and Non Qualified Trust Agreements, available funds not required for the operation of the Company may be distributed to the Member.

**5.2 Return of and Interest on Capital Contributions.** The Member is not entitled to the return of its Capital Contributions prior to dissolution of the Company or to be paid interest in respect of its Capital Contribution made by it to the Company except as provided in this Agreement.

**5.3 Payments.** The amount of any distribution or payment to a Member or a former Member or its legal representatives whether pursuant to Article 5 or Article 10 may be made in cash or in kind or partially in cash and partially in kind in the reasonable discretion of the Managers or liquidator under Article 10 and approved by the Member, less reasonable reserves established in the reasonable discretion of the Managers or liquidator under Article 10 and approved by the Member for known or unknown liabilities of the Company. All distributions of assets in kind shall be made at fair market value as determined by the Managers and approved by the Member and shall be distributed to the Member in the same manner as set forth in Section 5.1 hereof.

**5.4 Allocations of Income, Losses, Deductions and Credits.** Income, losses, deductions and credits of the Company shall be allocated to the Member.

## **Article 6 Managers**

### **6.1 Management by Managers.**

**6.1.1** Except for situations in which the approval of the Member or the prior written consent of the NRC Director, Nuclear Reactor Regulation is required by this Agreement or by nonwaivable provisions of applicable law, and subject to the provisions of Section 6.1.2, the powers of the Company shall be solely exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, a majority of the total number of Managers (provided that so long as there are only two Managers, then all decisions must be unanimous). The Managers may make all decisions and take all actions for the Company not otherwise provided for in this Agreement. Except as specifically limited in this Agreement, it is intended that the Managers shall have the authority, right, power, duty, and obligation to make the decisions and take the actions necessary in connection with planning, developing, operating, and maintaining the business of the Company, to effectuate the purposes of the Company and to designate the Officers to manage the day-to-day affairs of the Company.

No Person or governmental body dealing with the Company shall be required to inquire into, or to obtain any other documentation as to, the authority of the Managers to take any such action permitted under this Section.

**6.1.2** Notwithstanding the provisions of Section 6.1.1, the Managers may not cause the Company to do any of the following without the written approval of the Member.

**6.1.2.1** Commence or settle any material litigation or arbitration;

**6.1.2.2** Adopt or change any accounting principle which will have a material effect on the Company's operating income;

**6.1.2.3** Any act in contravention of this Agreement;

**6.1.2.4** Any act which would make it impossible to carry on the ordinary business of the Company;

**6.1.2.5** Possess property of the Company or assign the Company's rights in specific property for other than Company purposes;

**6.1.2.6** Cause the Company to take any action enumerated in Section 2.4;  
and

**6.1.2.7** Any act in contravention of the terms of the Qualified and Non Qualified Trust Agreements.

**6.1.3** The Managers shall inform the Member of any written communication between the NRC and Trustee of the Qualified or Non Qualified Trust Agreements.

**6.2** Covenants of the Managers. The Managers shall devote such time, effort, and attention as may be reasonably necessary, advisable, or appropriate to manage and direct the operations, business and affairs of the Company; provided, however, subject to any duty to the Company or covenant not to compete a Manager may be subject to or where such activity will negatively impact the Company, that nothing contained herein shall preclude the Managers from acting, consistent with the foregoing, as a director, officer, or employee of any corporation, a manager, officer or employee of any limited liability company, a trustee of any trust, a member of any other limited liability company, a partner of any other partnership, or an administrative official of any business entity, from receiving compensation for services with respect to, or participating in profits derived from, the activities and properties of any such corporation, limited liability company, trust, partnership, or business entity, or from investing in any securities for his or her own account.

**6.3** Other Activities of the Managers. This Agreement shall not preclude or limit, in any respect, the right of the Managers to engage or invest, directly or indirectly, in any business, venture, or other activity of any nature or description, subject to Section 6.2 and any covenant not to compete the Manager may be subject to, and the Managers shall have no obligation to offer any such business, venture or other activity to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement or the relationship created hereby, in such investments or to such other business, venture or other activity. The Managers shall have the right to take for their own account (individually or in any other capacity) or to recommend to others any investment opportunity subject to any applicable covenant not to compete with the Company.

**6.4** Identity of Managers. The initial Managers are named in the initial Articles. The Member shall have the right to remove any Manager at its will, with or without cause, immediately upon notice to the Manager and shall have the right to appoint any person as a Manager. At each annual meeting the Member shall elect one or more Managers to hold office until the next succeeding annual meeting. Unless removed in accordance with this Agreement, each Manager shall hold office for the term for which such person is elected and until such person's successor shall be elected and qualified. Any vacancy in the number of managers occurring for any reason shall be filled by the Member. A Manager elected to fill a vacancy shall be elected for the unexpired term of the predecessor in office.

**6.5** Meetings of Managers.

**6.5.1** Unless otherwise required by law or provided in the Articles or this Agreement (including without limitation Section 6.1.2), a majority of the total number of Managers of the Company shall constitute a quorum for the transaction of business of the Managers, and the act of a majority of the total number of Managers shall be the act of the Manager. A Manager who is present at a meeting of the Managers at which action on any Company matter is taken shall be presumed to have assented to the action unless his or her dissent shall be entered in the minutes of the meeting or unless he or she shall file

his or her written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof or shall deliver such dissent to the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Manager who voted in favor of such action.

**6.5.2** Meetings of the Managers may be held at such place or places as shall be determined from time to time by resolution of the Managers; provided however that all meetings of the Managers must be wholly conducted in person within the States of Nevada, Illinois and/or Delaware and any meeting held or action taken not in full compliance of this proviso shall be void and of absolutely no force or effect. At all meetings of the Managers, business shall be transacted in such order as shall from time to time be determined by resolution of the Managers. Attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**6.5.3** Special meetings of the Managers may be called by any Manager on at least twenty-four (24) hours' notice to each other Manager. Such notice need not state the purpose or purposes of, nor the business to be transacted at, such meeting, except as may otherwise be required by law or provided for by the Articles or this Agreement.

**6.5.4** The Managers shall cause a written record of all meetings and written consents of the Managers to be produced and maintained.

**6.6** Action by Written Consent or Telephone Conference. Any action permitted or required by the Act, the Articles or this Agreement to be taken at a meeting of the Managers may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a majority of the total number of Managers, provided however that any such written consent must be executed within the States of Nevada, Illinois and/or Delaware by a majority of the total number of Managers, and any written consent executed not in full compliance of this proviso shall be void and of absolutely no force or effect.. Such consent shall have the same force and effect as a majority vote of the total number of Members at a meeting held in the State of Nevada and may be stated as such in any document or instrument filed with the Secretary of State of Nevada, and the execution of such consent shall constitute attendance or presence in person at a meeting of the Managers. Subject to the requirements of the Act, the Articles or this Agreement for notice of meetings, unless otherwise restricted by the Articles or this Agreement, Managers may participate in and hold a meeting by means of a conference telephone or similar communications equipment from locations in the States of Nevada, Illinois, and/or Delaware by means of which all persons participating in the meeting can hear each other, and participation in such meeting shall constitute attendance and presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**6.7** Compensation. The Company shall not pay any compensation to the Managers for their services as Managers. The Managers shall be entitled to be reimbursed for reasonable

out-of-pocket costs and expenses incurred in the course of their service hereunder.

**6.8 Officers.** The Managers shall designate one or more persons to be Officers of the Company as set forth in Section 6.8.1 and may enter into employment agreements with such persons on behalf of the Company. No Officer need be a resident of the State of Nevada or a Manager. Any Officers so designated shall have such authority and perform such duties as are generally set forth in Section 6.8.1 and specifically delegated to them, from time to time, by the Managers, subject to and in compliance with any employment contracts validly existing between Company and any Officer. Unless the Managers decide otherwise, if the title is one commonly used for officers of a business corporation formed under Chapter 78 of the Nevada Revised Statutes, the assignment of such title shall constitute the delegation to such Officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to such Officer by the Managers pursuant to this Section. Each Officer shall hold office until his or her successor shall be duly designated and shall qualify or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided. The same person may not serve as every Officer of the Company. Reasonable salaries or other compensation, if any, of the Officers and agents of the Company shall be fixed from time to time by the Managers.

Any officer may resign as such at any time subject to the terms and conditions of any employment agreement that such officer may have entered into with the Company. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Managers. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any officer may be removed as such, at the will of the Managers or the Manager who made the appointment, either with or without cause; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the person so removed. Designation of an officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company may be filled by the Managers.

**6.8.1 President.** The president shall have general supervision over the business and operations of the Company, subject however, to the control of the Managers. The president shall sign, execute and acknowledge, in the name of the Company, deeds, leases, contracts or other instruments, authorized by the Managers, except in cases where the signing and execution thereof shall be expressly delegated by this Section 6.8 to some other Officer or agent of the Company; and, in general, shall perform all duties incident to the office of president and such other duties as from time to time may be assigned by the Managers.

**Vice Presidents.** The vice presidents shall perform the duties of the president in the absence of the president and such other duties as may from time to time be assigned to them by the Managers or the president

**Secretary.** The secretary or an assistant secretary shall attend all meetings of the Managers and shall record all the votes of the Managers and the minutes of the Manager meetings and written consents in a book or books to be kept for that purpose; shall see

that notices are given and records and reports properly kept and filed by the Company as required by law; shall be the custodian of the seal of the Company and see that it is affixed to all documents to be executed on behalf of the company under its seal; and, in general, shall perform all duties incident to the office of the secretary, and such other duties as may from time to time be assigned by the Managers or the president.

**Treasurer.** The treasurer or an assistant treasurer shall have or provide for the custody of the funds of the Company other than funds held under the Non Qualified Trust Agreements and the Qualified Trust Agreements; shall collect and receive or provide for the collection and receipt of moneys earned by or in any manner due to or received by the Company; shall deposit all funds in his or her custody as treasurer in such banks or other places of deposit as the Managers may from time to time designate; shall, whenever so required by the Managers, render an account showing all transactions as treasurer, and the financial condition of the Company; and, in general, shall discharge such other duties as may from time to time be assigned by the Managers or the president.

## **Article 7 Actions of the Member**

Any actions required or permitted to be taken by the Member shall be taken, without prior notice, and without a vote, by a consent in writing, setting forth the action so taken, signed within the States of Nevada, Illinois or Delaware by an authorized representative of the Member and any written consent signed by such authorized representative not in full compliance with this proviso shall be void and of absolutely no force or effect. Every written consent shall bear the date of signature of the Member and must be delivered to the Company's registered office, its principal place of business, or the Managers. Delivery shall be by hand, facsimile or certified or registered mail, return receipt requested. Delivery to the Company's principal place of business shall be addressed to the Managers. A facsimile, telegram, telex, cablegram or similar transmission by the Member, or a photographic, photostatic, or similar reproduction of a writing signed by the Member, shall be regarded as signed by the Member for purposes of this Section provided that the original consent was signed within the States of Nevada, Illinois or Delaware.

## **Article 8 Indemnification by the Company**

**8.1 Indemnification.** The Member, Managers, and any officer, employee or agent of the Company may, in the Member's absolute discretion, be indemnified by the Company to the fullest extent permitted by the Act, as the same exist or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment) and as may be otherwise permitted by applicable law.

**8.2 Appearance as a Witness.** Notwithstanding any other provision of this Article 8, the Company may pay or reimburse expenses incurred by a Manager or an officer in connection with his or her appearance as a witness or other participation in a Proceeding at a time when he

or she is not a named defendant or respondent in the Proceeding.

**8.3 Insurance.** The Company may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Manager, officer, employee or agent of the Company or is or was serving at the request of the Company as a manager, director, officer, partners, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under this Article 8.

## **Article 9 Financial Accounting and Reports**

**9.1 Tax Returns.** The Managers shall cause to be prepared and filed all necessary federal and state income tax returns for the Company. The Member shall furnish to the Managers all pertinent information in its possession relating to Company operations that is necessary to enable the Company's tax returns to be prepared and filed.

**9.2 Tax Elections.** The Company shall make any election the Managers may deem appropriate and in the best interests of the Company and the Member.

**9.3 Tax Matters Partner.** If applicable, the Member shall be the "Tax Matters Partner" of the Company pursuant to Code Section 6231(a)(7). In the event of an income tax audit of the Company or any judicial or administrative proceeding in connection with the income tax returns of the Company, the Tax Matters Partner shall be authorized to act for and, to the extent provided by the Code, its decision shall be binding upon the Company and the Member.

**9.4 Valuation.** The valuation of the assets of the Company for the purpose of valuing distributions in kind made pursuant to this Agreement and for any other purpose shall be the fair market value as determined by the Managers in good faith, and such determination will be binding on the Member.

**9.5 Supervision; Inspection of Books.** Proper and complete books of account of the business of the Company shall be kept under the supervision of the Managers at the principal place of business of the Company. Such books shall be open to inspection by the Member, or its accredited representatives, at any reasonable time during normal business hours.

**9.6 Quarterly Reports.** The Managers shall transmit to the Member after the close of each fiscal quarter in accordance with the practice of the Member, summary financial information of the Company and its trust funds prepared in accordance with the accounting method used for reporting for federal income tax purposes consistently applied from its books without audit and subject to year-end adjustments.

**9.7 Annual Report; Financial Statements.** The Managers shall transmit to the Member after the close of each fiscal year, in accordance with the practice of the Member,

financial statements of the Company and its trust funds prepared in accordance with the accounting method used for reporting for federal income tax purposes consistently applied, including an income statement for the year then ended and a balance sheet as of the end of such year. The Member, upon reasonable notice to the Managers, may require that such financial statements include footnotes or be audited with footnotes.

**9.8 Withholding.** Notwithstanding any provision in this Agreement to the contrary, the Managers may withhold from any distribution or amount due to a Member any amounts required to be withheld pursuant to any applicable federal, state, or local tax requirements, with such withheld amount treated as if it was distributed to such Member. The determination of the Managers as to the necessity of such withholding shall be binding upon the Member.

## **Article 10 Dissolution, Liquidation and Termination**

**10.1 Dissolution.** The Company shall dissolve and its affairs shall be wound up on the first to occur of the following:

**10.1.1** the written consent of the Member;

**10.1.2** the Member shall die, dissolve, be declared legally insane, retire, resign, become a Bankrupt Member or there shall occur any other event that terminates the continued membership in the Company of the Member; or

**10.1.3** the Qualified and Non Qualified Trust Agreements shall be terminated in accordance with their terms.

Provided, however, the Company shall not dissolve its affairs without the prior written consent of the NRC Director, Office of Nuclear Reactor Regulation.

**10.2 Liquidation and Termination.** On dissolution of the Company, the Managers may act as liquidators or appoint one or more Managers as the liquidator(s). The liquidator(s) shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Managers. The steps to be accomplished by the liquidator are as follows:

**10.2.1** as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper independent accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

**10.2.2** the liquidator shall apply the assets of the Company remaining after payment of the costs and expenses of winding up in the following priority:

**10.2.2.1** to the creditors of the Company, other than the Member, all amounts due them from the Company in the order of priority established by law;

**10.2.2.2** to the Member, all amounts due the Member in repayment of any loans to the Company; and

**10.2.2.3** the remainder to the Member.

**10.3** Articles of Dissolution. On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Managers (or such other person or persons as the Act may require or permit) shall file an Articles of Dissolution with the Secretary of State of Nevada, cancel any other filings made on behalf the Company, and take such other actions as may be necessary to terminate the Company.

## **Article 11 General Provisions**

**11.1** Offset. Whenever the Company is to pay any sum to the Member, any amounts the Member owes the Company may be deducted from that sum before payment.

**11.2** Notices. Except as expressly set forth to the contrary in this Agreement, all notices, requests or consents provided for or permitted to be given under this Agreement must be in writing and must be given either by depositing that writing in the United States mail, addressed to the recipient, postage paid, and registered or certified with return receipt requested or by delivering that writing to the recipient in person, by courier or by facsimile transmission; and a notice, request or consent given under this Agreement is effective on receipt by the person to receive it. All notice, requests and consents to be sent to the Member must be sent to or made at the addresses given for the Member as the Member may specify by notice to the Company. Any notice, request, or consent to the Company must be given to the Member. Whenever any notice is required to be given by law, the Articles or this Agreement, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**11.3** Entire Agreement; Supersedure. This Agreement constitutes the entire agreement of the Member relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

**11.4** Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach of default by any person in the performance by that person of his, her or its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that person of the same or any other obligations of that person with respect to the Company. Failure on the part of a person to complain of any act of any person or to declare any person in default with respect to the Company, irrespective of how long that

failure continues, does not constitute a waiver by that person of his, her or its rights with respect to that default until the applicable statute-of-limitations period has run.

**11.5 Amendment or Modification.** This Agreement may be amended only upon approval of the Managers and the Member. Provided, however, that no material amendment to this Agreement may be made without the prior written consent of the NRC Director, Office of Nuclear Reactor Regulation. The Managers, acting alone, may make only ministerial changes in this Agreement for the purpose of correcting errors and inconsistencies and to comply with federal, state and local rules, regulations and laws, provided that the liability of the Member for Company debts shall not be increased by such amendment nor shall the right of the Member to Company allocations or distributions be adversely affected thereby.

**11.6 Binding Effect.** Subject to the restrictions on Disposition set forth in this Agreement, this Agreement is binding on and inure to the benefit of the Member and its respective heirs, legal representatives, successors, and assigns.

**11.7 Governing Law; Severability.** THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Agreement and (a) any provision of the Articles, or (b) any mandatory provision of the Act, or the applicable provision of the Articles, then the Act shall control. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

**11.8 Further Assurances.** In connection with this Agreement and the transactions contemplated hereby, each member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

**11.9 Waiver of Certain Rights.** The Member irrevocably waives any right he, she or it may have to maintain any action for dissolution of the Company or for partition of the property of the Company.

**11.10 Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

**11.11 Expenses and Reimbursements.** The Company shall bear (or reimburse the Managers or the Member for his, her or its payment of) all costs and expenses of every kind and description incurred in connection with the organization, operation, liquidation and dissolution of the Company including, but not limited to, travel expenses; fees of consultants, accountants, and attorneys; expenses of the preparation financial statements, any audit, and tax returns, acquisition



**EXHIBIT A**

<b>Member Name</b>	<b>Initial Capital Contribution</b>	<b>Number of Units</b>
	\$3,000	100

**EXHIBIT B**

**NON-QUALIFIED TRUST AGREEMENTS**

**AmerGen Three Mile Island Unit One Nonqualified Fund**

**AmerGen Clinton Nuclear Power Plant Nonqualified Fund**

**AmerGen Oyster Creek Nuclear Generating Station Nonqualified Fund**

**EXHIBIT C**

**QUALIFIED TRUST AGREEMENTS**

**AmerGen Clinton Nuclear Power Plant Qualified Fund**

**AmerGen Oyster Creek Generating Station Qualified Fund**

**AmerGen Three Mile Island Unit One Qualified Fund**