

Exelon Nuclear  
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10 CFR 50.75

July 29, 2003

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

Braidwood Station, Units 1 and 2  
Facility Operating License Nos. NPF-72 and NPF-77  
NRC Docket Nos. STN 50-456 and STN 50-457

Byron Station, Units 1 and 2  
Facility Operating License Nos. NPF-37 and NPF-66  
NRC Docket Nos. STN 50-454 and STN 50-455

Dresden Nuclear Power Station, Units 1, 2 and 3  
Facility Operating License Nos. DPR-2, DPR-19 and DPR-25  
NRC Docket Nos. 50-10, 50-237 and 50-249

LaSalle County Station, Units 1 and 2  
Facility Operating License Nos. NPF-11 and NPF-18  
NRC Docket Nos. 50-373 and 50-374

Limerick Generating Station, Units 1 and 2  
Facility Operating License Nos. NPF-39 and NPF-85  
NRC Docket Nos. 50-352 and 50-353

Peach Bottom Atomic Power Station, Units 1, 2, and 3  
Facility Operating License Nos. DPR-12, DPR-44 and DPR-56  
NRC Docket Nos. 50-171, 50-277, and 50-278

Quad Cities Nuclear Power Station, Units 1 and 2  
Facility Operating License Nos. DPR-29 and DPR-30  
NRC Docket Nos. 50-254 and 50-265

Salem Generating Station, Units 1 and 2  
Facility Operating License Nos. DPR-70 and DPR-75  
NRC Docket Nos. 50-272 and 50-311

Zion Nuclear Power Station, Units 1 and 2  
Facility Operating License Nos. DPR-39 and DPR-48  
NRC Docket Nos. 50-295 and 50-304

A001

**Assignment of Decommissioning Trust Funds for  
Exelon Generation Company, LLC  
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- References:**
- 1) Letter from M. P. Gallagher (Exelon Generation Company, LLC) to U. S. Nuclear Regulatory Commission, dated January 23, 2003**
  - 2) Letter from M. P. Gallagher (Exelon Generation Company, LLC) to U. S. Nuclear Regulatory Commission, dated March 19, 2003**
  - 3) Letter from M. P. Gallagher (Exelon Generation 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 Exelon Generation Company, LLC**

In the referenced letters Exelon Generation Company, LLC provided information regarding proposed amendments to its trust agreement in order to implement an assignment of the Exelon Generation 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, Exelon Generation Company, LLC has revised the Draft Master Terms for Trust Agreement, the Nonqualified Nuclear Decommissioning Master Trust Agreement, and the Qualified Nuclear Decommissioning Master Trust Agreement for Mellon Bank, N. A., as contained in Attachment C to reflect NRC comments. Also revised to reflect NRC comments is the Draft Master Terms for Trust Agreement for the Northern Trust Company as contained in Attachment D. Black-lined versions of these documents are included in the identified attachments, 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 three (3) 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 – Revised Draft Amended and Restated Master Trust Agreements (With Recent Comments Incorporated) (Northern)**

**Attachment E – Revised Draft Operating Agreement Exelon NQF, LLC**

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Attachment F – Revised Draft Operating Agreement Exelon Generation 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  
Exelon Generation Company, LLC

Attachments

|     |   |         |
|-----|---|---------|
| cc: | NRC Director of Nuclear Material Safety and Safeguards                  | w/enc   |
|     | Regional Administrator – NRC Region I                                   | “       |
|     | Regional Administrator – NRC Region III                                 | “       |
|     | NRC Senior Resident Inspector – Braidwood Station                       | w/o enc |
|     | NRC Senior Resident Inspector – Byron Station                           | “       |
|     | NRC Senior Resident Inspector – Dresden Nuclear Power Station           | “       |
|     | NRC Senior Resident Inspector – LaSalle County Station                  | “       |
|     | NRC Senior Resident Inspector – Limerick Generating Station             | “       |
|     | NRC Senior Resident Inspector – Peach Bottom Atomic Power Station       | “       |
|     | NRC Senior Resident Inspector – Salem Generating Station                | “       |
|     | NRC Senior Resident Inspector – Quad Cities Nuclear Power Station       | “       |
|     | NRC Project Manager, NRR - Braidwood and Byron Stations                 | “       |
|     | NRC Project Manager, NRR - Dresden Nuclear Power Station, Unit 1        | “       |
|     | NRC Project Manager, NRR - Dresden Nuclear Power Station, Units 2 and 3 | “       |
|     | NRC Project Manager, NRR - LaSalle County Station                       | “       |
|     | NRC Project Manager, NRR - Limerick Generating Station                  | “       |
|     | NRC Project Manager, NRR - Peach Bottom Atomic Power Station            | “       |
|     | NRC Project Manager, NRR - Salem Generating Station                     | “       |
|     | NRC Project Manager, NRR - Quad Cities Nuclear Power Station            | “       |
|     | Office of Nuclear Facility Safety – IDNS                                | w/enc   |

**Attachment A**

**[Intentionally left blank]**

**Attachment B**

**Response to Three (3) NRC Questions**

**Question 1:**

Why does Peach Bottom Atomic Power Station, Unit 1 not have a Qualified Fund?

**Response:**

Section 468A of the Internal Revenue Code contains the rules for allowing contributions to Qualified Funds. As a prerequisite to making contributions to a Qualified Fund, the owner of a nuclear power plant must collect decommissioning costs from customers under cost of service ratemaking as authorized by a public utility commission. When the Qualified Funds were established for the units formerly owned by PECO Energy Company, there was no cost of service collection authorized by the Pennsylvania Public Utility Commission and therefore the company was not eligible to establish a Qualified Fund for Peach Bottom Atomic Power Station, Unit 1.

**Question 2:**

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?

**Exelon Response:**

Exelon Generation owns 20 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 elect to be taxed as a corporation for federal and state income tax purposes.

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 Exelon 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., Exelon Generation). All of the NQF LLCs would immediately be contributed by Exelon Generation to Exelon Generation 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.

**Question 3:**

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**

**REVISED 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 (With Recent Comments Incorporated)**
- 3. Revised Draft Amended and Restated Qualified Nuclear Decommissioning Master Trust Agreement (With Recent Comments Incorporated)**

- 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 -

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and revised document: C:\WINDOWS\TEMP\WDC99\_767494\_4

CompareRite found 4 change(s) in the text  
CompareRite found 2 change(s) in the notes

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

**MASTER TERMS FOR  
TRUST AGREEMENTS**

The following Master Terms for Trust Agreements (the "Master Terms") shall apply for purposes of the Amended and Restated Qualified Nuclear Decommissioning Master Trust Agreement by and between Exelon Generation Company, LLC ("ExGen"), Exelon Generation Consolidation Company, LLC ("Consolidation") and Mellon Bank, N.A. as Trustee (the "Trustee"), and for purposes of the Amended and Restated Nonqualified Nuclear Decommissioning Master Trust Agreement by and between ExGen, the limited liability companies identified on Schedule A of such agreement (the "NQF Companies") and the Trustee, collectively the "Trust Agreements".

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

**ARTICLE I**  
**[Intentionally Deleted]**

**ARTICLE II**  
**Payments by the Trustee**

**Section 2.01. Use of Assets.** The assets of each Fund shall be used exclusively (a) to satisfy, in whole or in part, any expenses or liabilities incurred with respect to the decommissioning of that Fund's Unit, including expenses incurred in connection with the preparation for decommissioning of that Unit, such as engineering and other planning expenses, and all expenses incurred after the actual decommissioning occurs, such as physical security and radiation monitoring expenses (the "Decommissioning Costs"), (b) to pay the administrative costs and other incidental expenses of each Fund, and (c) to invest in publicly-traded securities and investments (including common trust funds) as directed by the investment manager(s) pursuant to Section 3.02(a) or the Trustee pursuant to Section 3.02(b), except that all assets of the Qualified Funds must be invested in Permissible Assets as defined in the Special Terms. **With respect to the assets of the Funds, investments in the securities or obligations of Exelon Corporation or affiliates thereof, or their successors or assigns are prohibited.** Except for investments tied to market indexes or other non-nuclear sector mutual funds, ~~(1) the assets of the Funds shall not be invested in the securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns; and (2) investments in any entity owning one or more nuclear power plants are prohibited.~~ Use of the assets of the Qualified Funds shall be further limited by the provisions of the Special Terms. The

assets of the Funds shall be used, in the first instance, to pay the expenses related to the decommissioning of that Fund's Unit, as defined by the United States Nuclear Regulatory Commission ("NRC") in its regulations and issuances, and as provided in the NRC issued license to operate each Unit and any amendments thereto. Notice to the NRC of proposed disbursements or payments from each Fund will be provided in accordance with the notice provisions of Section 2.02(b). 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 and accounted for in such notice.

**Section 2.02. Certification for Decommissioning Costs.**

(a) If assets of a Fund are required to satisfy Decommissioning Costs of that Fund's Unit, Consolidation or the appropriate NQF Company, as the case may be, shall present a certificate substantially in the form attached hereto as Exhibit B-1 (in the case of Consolidation) or B-2 (in the case of the NQF Companies) to the Trustee signed by its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer. Any certificate requesting payment by the Trustee to a third party or to Consolidation or the appropriate NQF Company from a Fund for Decommissioning Costs shall include the following:

(1) a statement of the amount of the payment to be made from the Fund and whether the payment is to be made from the Nonqualified Fund, the Qualified Fund or in part from both Funds;

(2) a statement that the payment is requested to pay Decommissioning Costs which have been incurred, and if payment is to be made from the Qualified Fund, a statement that the Decommissioning Costs to be paid constitute Qualified Decommissioning Costs, as defined in the Special Terms;

(3) the nature of the Decommissioning Costs to be paid;

(4) the payee, which may be a third party, or may be Consolidation or the appropriate NQF Company in the case of reimbursement for payments previously made or expenses previously incurred by Consolidation or the appropriate NQF Company for Decommissioning Costs;

(5) a statement that the Decommissioning Costs for which payment is requested have not theretofore been paid out of the Funds; and

(6) a statement that any necessary authorizations of the Pennsylvania Public Utility Commission (the "PUC"), NRC and/or any other governmental agencies having jurisdiction with respect to the decommissioning have been obtained.



(b) Except for disbursements of payments for administrative costs and other incidental expenses, no disbursements ~~of payments for decommissioning costs~~ from the Funds shall be made by the Trustee:

(1) unless the Trustee has first provided thirty (30) days' prior written notice of such disbursement or payment to the NRC Director, Office of Nuclear Reactor Regulation; and

(2) if the Trustee receives written notice of an objection from the NRC Director, Office of Nuclear Reactor Regulation during such thirty (30) day notice period, or if the Trustee receives such notice at any later time that is nevertheless prior to disbursement.

(c) The Trustee shall retain at least one copy of such certificates (including attachments) and related documents received by it pursuant to this Article II.

(d) Consolidation and the NQF Companies shall have the right to enforce payments from the Funds upon compliance with the procedures set forth in this Section 2.02.

**Section 2.03. Administrative Costs.** The Trustee shall pay, as directed by the appropriate NQF Company, the administrative costs and other incidental expenses of each Nonqualified Fund, including all federal, state, and local taxes, if any, imposed directly on the Nonqualified Fund or the income therefrom, legal expenses, accounting expenses, actuarial expenses and trustee expenses, from the assets of the respective Nonqualified Fund and shall pay, as directed by Consolidation, the administrative costs and other incidental expenses of each Qualified Fund, as defined in the Special Terms, from the assets of the respective Qualified Fund.

**Section 2.04. Payments between the Funds.** The Trustee shall make payments (i) from a Unit's Qualified Fund to that Unit's Nonqualified Fund provided such payments are in cash and are in accordance with Section 4 of the Special Terms or (ii) from a Unit's Nonqualified Fund to that Unit's Qualified Fund provided such payments are in cash and are in accordance with the contribution limitations set forth in Section 2 of the Special Terms, as the case may be, upon presentation by Consolidation and the appropriate NQF Company of a certificate substantially in the form of Exhibit C hereto executed by Consolidation or the appropriate NQF Company instructing the Trustee to make any such payments. The Trustee shall be fully protected in relying upon such certificate.

**ARTICLE - III**  
**Concerning the Trustee**

**Section 3.01. Authority of Trustee.** The Trustee shall have the authority and discretion to manage and control the Funds to the extent provided in Trust Agreements and these Master Terms but does not guarantee the Funds in any manner against investment loss or depreciation in asset value or guarantee the adequacy of the Funds to satisfy the Decommissioning Costs. The Trustee shall not be liable for the making, retention or sale of any asset of a Qualified Fund which qualifies as a Permissible Asset, as defined in the Special Terms, nor shall the Trustee be responsible for any other loss to or diminution of the Funds, or for any other loss or damage which may result from the discharge of its duties hereunder except for any action not taken in good faith.

**Section 3.02. Investment of Funds.**

(a) Consolidation and the NQF Companies shall have the authority to appoint one or more investment managers who shall have the power to direct the Trustee in investing the assets of the Funds; provided, however, that the Trustee shall not follow any direction which would result in assets of the Qualified Funds being invested in assets other than Permissible Assets as defined in the Special Terms. Any such investment manager(s) or other person directing investments made in the Trusts shall adhere to the "Prudent Investor" standard as specified in 18 C.F.R. 35.32(a)(3) of the Federal Energy Regulatory Commission ("FERC") regulations (the "Prudent Investor Standard"). To the extent that Consolidation and the NQF Companies choose to exercise this authority, Consolidation and/or the appropriate NQF Company or Companies shall so notify the Trustee and instruct the Trustee in writing to separate into a separate account those assets the investment of which will be directed by each investment manager. Consolidation and the appropriate NQF Company or Companies shall designate in writing the person or persons who are to represent any such investment manager in dealings with the Trustee, provided however, that ExGen, 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 investment manager or the Trustee. Upon the separation of the assets in accordance with such 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 not be relieved of the responsibility of ensuring that assets of the Qualified Funds are invested solely in Permissible Assets, as defined in the Special Terms. The Trustee shall retain all other fiduciary duties with respect to assets the investment of which is directed by investment managers.

(b) Consolidation or the appropriate NQF Company or Companies shall notify the Trustee if the investment of assets of the Funds are not being directed by one or more investment managers under Section 3.02(a), and the Trustee shall hold, invest, and

reinvest such assets as it in its sole discretion deems advisable, subject to the restrictions set forth herein for investment of the assets of the Qualified Funds and adherence to the Prudent Investor Standard; provided however, that in the event an investment manager terminates, or is terminated, Consolidation or the appropriate NQF Company or Companies shall use their best efforts to appoint an investment manager for those assets as soon as reasonably possible.

(c) Regardless of the person directing investments, any assets of the Qualified Funds shall be invested solely in Permissible Assets as defined in, and required by, the Special Terms, and shall be accumulated, invested, and reinvested in like manner. Upon the written consent of Consolidation, the assets of a Qualified Fund relating to a Unit may be pooled with the assets of any other Qualified Fund relating to any other Unit; provided that the book and tax allocations of the pooling arrangement are made in compliance with Code section 704 (and the Treasury Regulations thereunder) and provided further that such pooling arrangement elects to be classified as a partnership for federal income tax purposes.

(d) Notwithstanding any other provision of these Master Terms, with respect to the pooling of investments authorized by subparagraph (c) no part of any Fund's (or any subsequent holder's) interest in such pool, nor any right pertaining to such interest (including any right to substitute another entity for the Fund or for any subsequent holder, as holder of investments pooled pursuant to subparagraph (c)) may be sold, assigned, transferred or otherwise alienated or disposed of by any holder of an interest in the pool unless the written consent to the transfer of every other holder of interests in such pool is obtained in advance of any such transfer.

(e) Notwithstanding the provisions of subparagraph (d) of this Section, a Fund's investment in a pooled arrangement may be withdrawn from the pool (but not from the Trust Agreements, except as otherwise permitted by this Agreement) at any time upon 7 days written notice to the Trustee signed by its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer, ~~requesting payment by the Fund~~. If the Fund withdraws its entire interest in a pool, the pooled arrangement shall terminate 30 days after notice of final withdrawal has been given by any withdrawing Fund unless a majority in interest of the remaining Funds give their written consent to continue the pool within such 30 day period. If the pooled arrangement terminates, each Fund's assets will be segregated into a separate account under the Trust Agreements, and no further commingling may occur for a period of at least one year after such termination.

(f) Subparagraphs (c), (d) and (e) apply to transfers of interests within, and withdrawals from, the pooling arrangement. Nothing within these sections shall be interpreted to permit or to limit transfer of interests in, or withdrawals from, a Fund, which transfers and withdrawals are governed by other provisions of these Master Terms.

In addition, the provisions of subparagraphs (c), (d) and (e) shall not limit the Trustee's authority to invest in permissible common or collective trust funds.

**Section 3.03. Prohibition Against Self Dealing.** Notwithstanding any other provision in this Agreement, the Trustee shall not engage in any act of self dealing as defined in section 468A(e)(5) of the Code and Treasury Regulations § 1.468A-5(b) or any corresponding future law or Treasury Regulation.

**Section 3.04. Compensation.** The Trustee shall be entitled to receive out of the Funds reasonable compensation for services rendered by it, as well as expenses necessarily incurred by it in the execution of the Trusts hereunder, provided such compensation and expenses qualify as administrative costs and other incidental expenses of a Qualified Fund, as defined in the Special Terms, with respect to any payment of compensation and expenses from that Qualified Fund. Consolidation and the NQF Companies acknowledge that, as part of the Trustee's compensation, the Trustee will earn interest on balances, including disbursement balances and balances arising from purchase and sale transactions. If the Trustee advances cash or securities for any purpose, including the purchase or sale of foreign exchange or of contracts for foreign exchange, or in the event that the Trustee shall incur or be assessed taxes, interest, charges, expenses, assessments, or other liabilities in connection with the performance of these Master Terms, except such as may arise from its own negligent action, negligent failure to act, or willful misconduct, any property at any time held for the Funds or the Trust Agreements shall be security therefor and the Trustee shall be entitled to collect from the Funds sufficient cash for reimbursement, and if such cash is insufficient, dispose of the assets of Consolidation and the NQF Companies held under the Trust Agreements to the extent necessary to obtain reimbursement. To the extent the Trustee advances funds to the Funds for disbursements or to effect the settlement of purchase transactions, the Trustee shall be entitled to collect from the Funds either (i) with respect to domestic assets, an amount equal to what would have been earned on the sums advanced (an amount approximating the "federal funds" interest rate) or (ii) with respect to nondomestic assets, the rate applicable to the appropriate foreign market.

**Section 3.05. Books of Account.** The Trustee shall keep separate true and correct books of account with respect to each Fund, which books of account shall at all reasonable times be open to inspection by Consolidation and each of the NQF Companies or its duly appointed representatives. The Trustee shall, upon written request of Consolidation or the appropriate NQF Company, permit government agencies, such as the PUC, NRC or the Internal Revenue Service, to inspect the books of account of each Fund. The Trustee shall furnish to Consolidation and each of the NQF Companies on or about the tenth business day of each month a statement for each Fund showing, with respect to the preceding calendar month, the balance of assets on hand at the beginning of such month, all receipts, investment transactions, and disbursements which took place during such month and the balance of assets on hand at the end of such month. The

Trustee agrees to provide on a timely basis any information deemed necessary by Consolidation or the NQF Companies to file the federal, state and local tax returns of Consolidation and the NQF Companies.

**Section 3.06. Reliance on Documents.** The Trustee, upon receipt of documents furnished to it by Consolidation and any of the NQF Companies pursuant to the provisions of these Master Terms, shall examine the same to determine whether they conform to the requirements thereof. The Trustee acting in good faith may conclusively rely, as to the truth of statements and the correctness of opinions expressed, on any certificate or other documents conforming to the requirements of these Master Terms. If the Trustee in the administration of the Funds, shall deem it necessary or desirable that a matter be provided or established prior to taking or suffering any action hereunder, such matter (unless evidence in respect thereof is otherwise specifically prescribed hereunder) may be deemed by the Trustee to be conclusively provided or established by a certificate signed by the President or any Vice President of Consolidation or any of the NQF Companies, as the case may be, and delivered to the Trustee. The Trustee shall have no duty to inquire into the validity, accuracy or relevancy of any statement contained in any certificate or document nor the authorization of any party making such certificate or delivering such document, and the Trustee may rely and shall be protected in acting or refraining from acting upon any such written certificate or document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee shall not, however, be relieved of any obligation (a) to refrain from self-dealing as provided in Section 3.03 hereof; (b) to ensure that all assets of the Qualified Funds are invested solely in Permissible Assets as defined in the Special Terms; or (c) to adhere to the Prudent Investor Standard if acting as manager.

**Section 3.07. Liability and Indemnification.** The Trustee shall not be liable for any action taken by it in good faith and without gross negligence, willful misconduct or recklessness and reasonably believed by it to be authorized or within the rights or powers conferred upon it by this Agreement and may consult with counsel of its own choice (including counsel for Consolidation and the NQF Companies) and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and without gross negligence and in accordance with the opinion of such counsel, provided, however, that the Trustee shall be liable for direct damages resulting from investing assets of the Qualified Funds in other than Permissible Assets or from self dealing as provided in Section 3.03 hereof. Provided indemnification does not result in self dealing under Section 3.03 hereof or in a deemed contribution to a Qualified Fund in excess of the limitation on contributions under Section 468A of the Code and the Treasury Regulations thereunder, ExGen (as to both the Qualified Funds and the Nonqualified Funds), Consolidation (as to the Qualified Funds) and the NQF Companies (as to the Nonqualified Funds) hereby agree to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without gross negligence, willful misconduct, recklessness or bad faith on the part of the Trustee, arising out of or in

connection with its entering into the Trust Agreements and carrying out its duties hereunder, including the costs and expenses of defending itself against any claim of liability, provided such loss, liability or expense does not result from investing assets of the Qualified Funds in other than Permissible Assets as defined in the Special Terms or from self dealing under Section 3.03 hereof, and provided further that no such costs or expenses shall be paid if the payment of such costs or expenses is prohibited by Section 468A of the Code or the Treasury Regulations thereunder.

The Trustee shall not be responsible or liable for any losses or damages suffered by a Fund arising as a result of the insolvency of any custodian, subtrustee or subcustodian, except to the extent the Trustee was negligent in its selection or continued retention of such entity. Under no circumstances shall the Trustee be liable for any indirect, consequential, or special damages with respect to its role as Trustee.

**Section 3.08. Resignation, Removal and Successor Trustees.** The Trustee may resign at any time upon sixty (60) days' written notification to Consolidation and the NQF Companies. Consolidation and the NQF Companies may remove the Trustee for any reason at any time upon thirty (30) days' written notification to the Trustee. If a successor Trustee shall not have been appointed within these specified time periods after the giving of written notice of such resignation or removal, the Trustee or Consolidation and the NQF Companies may apply to any court of competent jurisdiction to appoint a successor Trustee to act until such time, if any, as a successor shall have been appointed and shall have accepted its appointment as provided below. If the Trustee shall be adjudged bankrupt or insolvent, a vacancy shall thereupon be deemed to exist in the office of Trustee and a successor shall thereupon be appointed by Consolidation and the NQF Companies. Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to Consolidation and the NQF Companies an appropriate written instrument accepting such appointment hereunder, subject to all the terms and conditions hereof, and thereupon such successor Trustee shall become fully vested with all the rights, powers, trusts, duties and obligations of its predecessor in trust under the Trust Agreements, with like effect as if originally named as Trustee thereunder. The predecessor Trustee shall, upon written request for payment of all fees and expenses by Consolidation and the NQF Companies, deliver to the successor Trustee the corpus of the Funds and perform such other acts as may be required or be desirable to vest and confirm in said successor Trustee all right, title and interest in the corpus of the Funds to which it succeeds.

**Section 3.09. Merger of Trustee.** Any corporation or other legal entity into which the Trustee may be merged or with which it may be consolidated, or any corporation or other legal entity resulting from any merger or consolidation to which the Trustee shall be a party, or any corporation or other legal entity to which the corporate trust functions of the Trustee may be transferred, shall be the successor Trustee under the Trust Agreement and these Master Terms without the necessity of executing or filing any

additional acceptance of the Trust Agreement and these Master Terms or the performance of any further act on the part of any other parties hereto.

#### **ARTICLE IV** **Amendments**

Consolidation and the NQF Companies may amend these Master Terms and the Trust Agreements from time to time, provided such amendment does not cause the Qualified Funds to fail to qualify as nuclear decommissioning reserve funds under section 468A of the Code and the Treasury Regulations thereunder. These Master Terms and the Trust Agreements may not be amended so as to violate 468A of the Code or the Treasury Regulations thereunder. The Qualified Funds are established and shall be maintained for the sole purpose of qualifying as nuclear decommissioning reserve funds under section 468A of the Code and the Treasury Regulations thereunder. If the Qualified Funds would fail to so qualify because of any provision contained in Trust Agreements or these Master Terms, the Trust Agreements and these Master Terms shall be deemed to be amended as necessary to conform with the requirements of Code Section 468A and the regulations thereunder. If a proposed amendment shall affect the responsibility of the Trustee, such amendment shall not be considered valid and binding until such time as the amendment is executed by the Trustee. Notwithstanding any provision herein to the contrary, neither these Master Terms nor the Trust Agreements may be modified in any material respect without first providing thirty (30) days' prior written notice to the NRC Director, Office of Nuclear Reactor Regulation.

#### **ARTICLE V** **Powers of the Trustee and Investment Manager**

**Section 5.01. General Powers.** The Trustee shall have and exercise the following powers and authority in the administration of the Funds only on the direction of an Investment Manager where such powers and authority relate to a separate account established for an Investment Manager, and in its sole discretion where such powers and authority relate to investments made by the Trustee in accordance with Section 3.02(b):

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

(b) to sell, exchange, convey, transfer, lend, or otherwise dispose of any property held in the Funds 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;

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

(d) 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 Funds have outstanding at any time;

(e) to join in, dissent from or oppose the reorganization, recapitalization, consolidation, sale or merger of corporations or properties of which the Funds 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, without any duty to sell;

(f) 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 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 Funds for safekeeping or custodian purposes only;

(g) upon authorization of Consolidation or the appropriate NQF Company, to lend the assets of the Funds 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; provided, that, with respect to the lending of securities pursuant to this paragraph, the Trustee's powers shall subsume the role of custodian (the expressed intent hereunder being that the Trustee, in such case, be deemed a financial institution, within the meaning of section 101 (22) of the Bankruptcy Code); and provided, further, that any loans made from the Funds shall be made in conformity with such laws or regulations governing such lending activities



which may have been promulgated by any appropriate regulatory body at the time of such loan;

(h) to purchase, enter, sell, hold, and generally deal in any manner in and with contracts for the immediate or future delivery of financial instruments of any issuer or of any other property and in foreign exchange or foreign exchange contracts; to grant, purchase, sell, exercise, permit to expire, permit to be held in escrow, and otherwise to acquire, dispose of, hold and generally deal in any manner with and in all forms of options in any combination.

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 the appropriate NQF Company, as the case may be, shall have sole responsibility for nonreceipt of payment (or late payment) by the counterparty.

Notwithstanding anything in these Master Terms to the contrary, the Trustee shall not be responsible or liable for its failure to perform under the Trust Agreements or these Master Terms or for any losses to the Funds resulting from any event beyond the reasonable control of the Trustee, its agents or subcustodians, including but not limited to nationalization, strikes, expropriation, devaluation, seizure, or similar action by any governmental authority, de facto or de jure; or enactment, promulgation, imposition or enforcement by any such governmental authority of currency restrictions, exchange controls, levies or other charges affecting the Funds' property; or the breakdown, failure or malfunction of any utilities or telecommunications systems; or any order or regulation of any banking or securities industry including changes in market rules and market conditions affecting the execution or settlement of transactions; or acts of war, terrorism, insurrection or revolution; or acts of God; or any other similar event. This Section shall survive the termination of the Trust Agreements.

**Section 5.02. Specific Powers of the Trustee.** The Trustee shall have the following powers and authority, to be exercised in its sole discretion with respect to the Funds:

(a) to appoint agents, , custodians, subtrustees, depositories or counsel, domestic or foreign, as to part or all of the Funds and functions incident thereto where, in the sole discretion of the Trustee, such delegation is necessary in order to facilitate the operations of the Funds and such delegation is not inconsistent with the purposes of the Funds or in contravention of any applicable law. To the extent that the appointment of any such person or entity may be deemed to be the appointment of a fiduciary, the Trustee may exercise the powers granted hereby to appoint as such a fiduciary any person

or entity (other than ExGen or any other owner or operator of a power reactor or their subsidiaries, successors, or assigns or persons representing them). Upon such delegation, the Trustee may require such reports, bonds or written agreements as it deems necessary to properly monitor the actions of its delegate;

(b) to cause any investment, either in whole or in part, in the Funds to be registered in, or transferred into, the Trustee's name or the names of a nominee or nominees, including but not limited to that of the Trustee or an affiliate of the Trustee, a clearing corporation, or a depository, or in book-entry form, or to retain any such investment unregistered or in a form permitting transfer by delivery, provided that the books and records of the Trustee shall at all times show that such investments are a part of the Funds; and to cause any such investment, or the evidence thereof, to be held by the Trustee, in a depository, in a clearing corporation, in book-entry form, or by any other entity or in any other manner permitted by law; provided that the Trustee shall not be responsible for any losses resulting from the deposit or maintenance of securities or other property (in accordance with market practice, custom, or regulation) with any recognized foreign or domestic clearing facility, book-entry system, centralized custodial depository, or similar organization;

(c) to make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers;

(d) to defend against or participate in any legal actions involving the Funds or the Trustee in its capacity stated herein, in the manner and to the extent it deems advisable;

(e) to form corporations and to create trusts, to hold title to any security or other property, to enter into agreements creating partnerships or joint ventures for any purpose or purposes determined by the Trustee to be in the best interests of the Funds;

(f) to establish and maintain such separate accounts in accordance with the instructions of Consolidation or the appropriate NQF Company, as Consolidation or the appropriate NQF Company, as the case may be, deem necessary for the proper administration of the Funds, or as determined to be necessary by the Trustee;

(g) to hold uninvested cash in its commercial bank or that of an affiliate, as it shall deem reasonable or necessary;

(h) 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 or the appropriate NQF Company expressly understands and agrees 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. The Trustee is authorized to invest in a collective fund which invests in Mellon Financial Corporation stock in accordance with the terms and conditions of the Department of Labor Prohibited Transaction Exemption 95-56 (the "Exemption") granted to the Trustee and its affiliates and to use a cross-trading program in accordance with the Exemption. Trustee will notify Consolidation and the NQF Companies if the Exemption is modified or revoked. Consolidation or the appropriate NQF Company acknowledge receipt of the notice entitled "Cross-Trading Information", a copy of which is attached to this Agreement as Exhibit E;

(i) to invest in open-end and closed-end investment companies, including those for which the Trustee or an affiliate provides services for a fee, regardless of the purposes for which such fund or funds were created, and any partnership, limited or unlimited, joint venture and other forms of joint enterprise created for any lawful purpose; and

(j) to generally take all action, whether or not expressly authorized, which the Trustee may deem necessary or desirable for the protection of the Funds.

Notwithstanding anything else in the Trust Agreements or these Master Terms to the contrary, including, without limitation, any specific or general power granted to the Trustee and to the investment managers, including the power to invest in real property, no portion of the Funds shall be invested in real estate (except for investments tied to market indexes or other non-nuclear sector common trust funds or mutual funds). For this purpose "real estate" includes, but is not limited to, real property, leaseholds or mineral interests.

**Section 5.03** The powers described in Section 5.02 may be exercised by the Trustee with or without instructions from Consolidation or the NQF Companies or a party authorized by Consolidation or the NQF Companies to act on its behalf, but where the Trustee acts on Authorized Instructions, the Trustee shall be fully protected as described in Section 3.07. All directions and instructions to the Trustee from an Authorized Party shall be in writing, by facsimile transmission, electronic transmission subject to the Trustee's practices, or any other method specifically agreed to in writing by Consolidation or the NQF Companies and the Trustee, provided the Trustee may, in its discretion, accept oral directions and instructions and may require confirmation in writing. Without limiting the generality of the foregoing, the Trustee shall not be liable for the acts or omissions of any person appointed under paragraph (a) of Section 5.02 pursuant to Authorized Instructions.

**Section 5.04** The assets of the Funds shall not be invested in the securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns as identified by Consolidation and the NQF Companies. Except for investments tied to market indexes or other non-nuclear sector mutual funds or common trust funds, the assets of the funds shall not be invested in the securities of any entity owning one or more nuclear power plants, as identified by a source agreed to by the Trustee and Consolidation and the NQF Companies.

## **ARTICLE VI** **Termination**

A Unit's Qualified Fund shall terminate upon the earlier of either (i) substantial completion of decommissioning of that Fund's Unit, as defined in the Special Terms, or (ii) disqualification of that Unit's Qualified Fund by the Internal Revenue Service as provided in Treasury Regulations § 1.468A5(c) or any corresponding future Treasury Regulation. A Nonqualified Fund shall terminate upon termination by the NRC of that Unit's license. If a Fund termination occurs before the NRC terminates the respective Unit's operating license, the Trustee will adhere to Section 5.02(b) of these Master Terms. Upon the termination of any Fund, the assets of the terminated Fund shall be distributed in accordance with any written directive of the PUC concerning termination of such fund. Absent a written directive of the PUC within thirty (30) days after the PUC is notified of the termination, all of the assets of the terminated Qualified Fund shall be distributed to Consolidation, and all of the assets of the terminated Nonqualified Fund shall be distributed to the NQF Company that is the owner of such Fund, except that if a Unit's Qualified Fund is terminated prior to the termination of a Unit's Nonqualified Fund, the assets of the terminated Qualified Fund shall be distributed to the Nonqualified Fund for the Unit that is held by the appropriate NQF Company. Consolidation or the appropriate NQF Company, as the case may be, shall provide the Trustee with notification that the Fund has been terminated and with either (i) the PUC written directive or (ii) a certificate signed by its Chairman of the Board, its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer, that there is no PUC written directive and that thirty (30) days have elapsed since notification to the PUC of termination prior to distribution of the assets of the terminated Fund.

## EXHIBIT "A"

### SPECIAL TERMS OF THE QUALIFIED NUCLEAR DECOMMISSIONING RESERVE FUNDS

The following Special Terms of the Qualified Funds (hereinafter referred to as the "Special Terms") will apply for purposes of these Master Terms. To the extent construed to be in conflict therewith, these Special Terms shall take precedence over the Master Terms. Capitalized terms shall have the same meaning as set forth in the Master Terms or the Trust Agreements:

**Section 1. Definitions.** The following terms as used in the Special Terms shall, unless the context clearly indicates otherwise, have the following respective meanings:

(a) "Administrative costs and other incidental expenses of the Qualified Funds" shall mean all ordinary and necessary expenses incurred in connection with the operation of the Qualified Funds, as provided in Treasury Regulations § 1.468A-5(a)(3)(ii)(A) or any corresponding future Treasury Regulation, including without limitation, federal, state and local income tax (including any Final Tax Liabilities), legal expenses, accounting expenses, actuarial expenses and trustee expenses.

(b) "Final Tax Liabilities" shall mean any and all tax liabilities determined to be owing but not paid out of the assets of any of the Seller's or Transferor's Qualified Fund related to each unit prior to the transfer of the assets of the Seller's or Transferor's Qualified Fund to the Qualified Fund.

(c) "Final Tax Refunds" shall mean any and all tax refunds determined to be receivable but not collected by the Seller's or Transferor's Qualified Fund prior to the transfer of the assets of the Seller's or Transferor's Qualified Fund to the Qualified Funds.

(d) "Permissible Assets" shall mean any investment permitted for a qualified nuclear decommissioning reserve fund under section 468A of the Code and the Treasury Regulations thereunder, subject to the restrictions provided in Section 5.04 of the Agreement.

(e) "PUC" shall mean the Pennsylvania Public Utility Commission.

(f) "Qualified Decommissioning Costs" shall mean all expenses otherwise deductible for federal income tax purposes without regard to section 280B of the Internal Revenue Code of 1986, as amended, or any corresponding section or sections of any future United States internal revenue statute (the "Code"), incurred (or to be incurred) in

connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a Unit when it has permanently ceased the production of electric energy, excluding any costs incurred for the disposal of spent nuclear fuel, as provided in Treasury Regulations § 1.468A-1(b)(5) or any corresponding future Treasury Regulation. Such term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to a Unit after the actual decommissioning occurs, such as physical security and radiation monitoring expenses.

(g) "Seller's or Transferor's Qualified Fund" shall mean the trust established and maintained for any respective unit that qualified as a nuclear decommissioning reserve fund under Code section 468A prior to the sale or transfer of such unit.

(h) "Substantial completion of decommissioning" shall mean the date that the maximum acceptable radioactivity levels mandated by the NRC with respect to a decommissioned nuclear power plant are satisfied by the Unit; provided, however, that if Consolidation requests a ruling from the Internal Revenue Service, the date designated by the Internal Revenue Service as the date on which substantial completion of decommissioning occurs shall govern; provided, further, that the date on which substantial completion of decommissioning occurs shall be in accordance with Treasury Regulations §1.468A-5(d)(2) or any corresponding future Treasury Regulation.

**Section 2. Contributions to a Qualified Fund.** The assets of the Qualified Funds shall be contributed by Consolidation (or by others approved by Consolidation in writing) from time to time in cash. The Trustee shall not accept any contributions for the Qualified Funds other than cash payments with respect to which Consolidation is allowed a deduction under section 468A(a) of the Code and Treasury Regulations §1.468A-2(a) or any corresponding future Treasury Regulations, except for any Final Tax Refunds. Consolidation hereby represents that all contributions (or deemed contributions), except for any Final Tax Refunds, by Consolidation to the Qualified Funds in accordance with the provisions of Section 1.03 of the Agreement shall be deductible under section 468A of the Code and Treasury Regulations §1.468A-2(a) or any corresponding future Treasury Regulation or shall be withdrawn pursuant to Section 4 hereof.

**Section 3. Limitation on Use of Assets.** The assets of the Qualified Funds shall be used exclusively as follows:

(a) To satisfy, in whole or in part, the liability for Qualified Decommissioning Costs through payments by the Trustee pursuant to Section 2.02 of the Master Terms; and

(b) To pay the administrative costs and other incidental expenses of the Qualified Funds; and

(c) To the extent the assets of the Qualified Funds are not currently required for (a) and (b) above, to invest directly in Permissible Assets.

**Section 4. Transfers by Consolidation.** If Consolidation's contribution (or deemed contribution) excluding any Final Tax Refunds to the Qualified Funds in any one year exceeds the amount deductible under section 468A of the Code and the Treasury Regulations thereunder, Consolidation may instruct the Trustee to transfer such excess contribution from a Unit's Qualified Fund to that Unit's Nonqualified Fund, as defined in the Trust Agreements and these Master Terms, pursuant to Section 2.04 of the Master Terms, provided any such transfer occurs on or before the date prescribed by law (including extensions) for filing the federal income tax return of the Qualified Funds for the taxable year to which the excess contribution relates for withdrawals pursuant to Treasury Regulations §§1.468A-5(c)(2) and 1.468A-2(f)(2) and occurs on or before the later of the date prescribed by law (including extensions) for filing the federal income tax return of the Qualified Funds for the taxable year to which the excess contribution relates or the date that is thirty (30) days after the date that Consolidation receives the ruling amount for such taxable year for withdrawals pursuant to Treasury Regulations § 1.468A-3(j)(3). If Consolidation determines that transfer pursuant to this Section 4 is appropriate, Consolidation shall present a certificate so stating to the Trustee signed by its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer, requesting such withdrawal and transfer. The certificate shall be substantially in the form attached as Exhibit C to the Master Terms for transfers to Nonqualified Funds as provided in Section 2.04 of the Master Terms and substantially in the form of Exhibit D to the Master Terms for withdrawals and transfers by Consolidation.

**Section 5. Taxable Year/Tax Returns.** The accounting and taxable year for the Qualified Funds 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 the Qualified Funds must change to the taxable year of Consolidation as provided in Treasury Regulations §1.468A-4(c)(1) or any corresponding future Treasury Regulation. Consolidation shall assist the Trustee in complying with any requirements under section 442 of the Code and Treasury Regulations §1.442-1. Consolidation shall prepare, or cause to be prepared, any tax returns required to be filed by the Qualified Funds, and the Trustee shall sign and file such returns on behalf of the Qualified Funds. The Trustee shall cooperate with Consolidation in the preparation of such returns.

**EXHIBIT "B-1"**

**CERTIFICATE FOR PAYMENT  
OF DECOMMISSIONING COSTS**

**[Name of Trustee],  
as Trustee  
[Address]**

This Certificate is submitted pursuant to Section 2.02 of the Master Terms for Trust Agreements. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and requested to disburse out of the [Unit name's] Funds to [payee] the amount of \$\_\_\_\_\_ from the Qualified Fund for the payment of the Decommissioning Costs which have been incurred with respect to the [Unit name]. Prior to making such disbursements, however, the Trustee shall provide thirty days prior written notice of such disbursement to the NRC and shall not make such disbursement if the Trustee receives written notice of any objections from the NRC Director, Office of Nuclear Reactor Regulations during such thirty day period, or if the Trustee receives such notice at any later time that is nevertheless prior to disbursement. With respect to such Decommissioning Costs, Consolidation hereby certifies as follows:

1. The amount to be disbursed pursuant to this Certificate shall be solely used for the purpose of paying the Decommissioning Costs the nature of which are described in Schedule A hereto.
2. None of the Decommissioning Costs described in Schedule A hereto have previously been made the basis of any certificate pursuant to Section 2.02 of the Master Terms.
3. The amount to be disbursed from the Qualified Fund pursuant to this Certificate shall be used solely for the purpose of paying Qualified Decommissioning Costs as defined in the Special Terms.
4. Any necessary authorizations of the PUC, NRC, or any corresponding governmental authority having jurisdiction over the decommissioning of the Unit have been obtained, other than the required 30 days prior written Notice.



**IN WITNESS WHEREOF**, the undersigned have executed this Certificate in the capacity shown below as of \_\_\_\_\_, \_\_\_\_\_.

**EXELON GENERATION CONSOLIDATION  
COMPANY, LLC**

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

Name:

Title:

**EXELON GENERATION CONSOLIDATION  
COMPANY, LLC**

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

Name:

Title:

**Acknowledged by:  
MELLON BANK, N.A.**

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

Name:

Title:

**EXHIBIT "B-2"**

**CERTIFICATE FOR PAYMENT  
OF DECOMMISSIONING COSTS**

**[Name of Trustee],  
as Trustee  
[Address]**

This Certificate is submitted pursuant to Section 2.02 of the Master Terms for Trust Agreements. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and requested to disburse out of the [Unit name's] Funds to [payee] the amount of \$\_\_\_\_\_ from the Nonqualified Fund for the payment of the Decommissioning Costs which have been incurred with respect to the [Unit name]. Prior to making such disbursements, however, the Trustee shall provide thirty days prior written notice of such disbursement to the NRC and shall not make such disbursement if the Trustee receives written notice of any objections from the NRC Director, Office of Nuclear Reactor Regulations during such thirty day period, or if the Trustee receives such notice at any later time that is nevertheless prior to disbursement. With respect to such Decommissioning Costs, Exelon \_\_\_\_\_ NQ LLC hereby certifies as follows:

1. The amount to be disbursed pursuant to this Certificate shall be solely used for the purpose of paying the Decommissioning Costs the nature of which are described in Schedule A hereto.
2. None of the Decommissioning Costs described in Schedule A hereto have previously been made the basis of any certificate pursuant to Section 2.02 of the Master Terms.
3. Any necessary authorizations of the PUC, NRC, or any corresponding governmental authority having jurisdiction over the decommissioning of the Unit have been obtained, other than the required 30 days prior written Notice.

**IN WITNESS WHEREOF**, the undersigned have executed this Certificate in the capacity shown below as of \_\_\_\_\_, \_\_\_\_\_.

**EXELON \_\_\_\_\_ NQ LLC**

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

**Name:**

**Title:**

**EXELON \_\_\_\_\_ NQ LLC**

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

**Name:**

**Title:**

**Acknowledged by:  
MELLON BANK, N.A.**

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

**Name:**

**Title:**

**EXHIBIT "C"**

**CERTIFICATE FOR TRANSFER BETWEEN THE QUALIFIED FUND  
AND THE NONQUALIFIED FUND**

**[Name of Trustee],  
as Trustee**

**[Address]**

This Certificate is submitted pursuant to Section 2.04 of the Master Terms for Trust Agreements (the "Master Terms"), dated \_\_\_\_\_. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and instructed as follows (complete one):

To pay \$\_\_\_\_\_ in cash from the [Unit name's] Nonqualified Fund to that Unit's Qualified Fund; or

To pay \$\_\_\_\_\_ in cash from the [Unit name's] Qualified Fund to that Unit's Nonqualified Fund.

With respect to such payment, Consolidation and \_\_\_\_\_ hereby certify as follows:

1. Any amount stated herein to be paid from the Nonqualified Fund to the Qualified Fund is in accordance with the contribution limitations applicable to the Qualified Fund set forth in Section 2 of the Special Terms and the limitations of Section 2.04 of the Master Terms.
2. Any amount stated herein to be paid from the Qualified Fund to the Nonqualified Fund is in accordance with Section 4 of the Special Terms. Consolidation and \_\_\_\_\_ have determined that such payment is appropriate under the standards of Section 4 of the Special Terms.

**IN WITNESS WHEREOF**, the undersigned have executed this Certificate in the capacity as shown below as of \_\_\_\_\_, \_\_\_\_\_ .

**EXELON GENERATION CONSOLIDATION  
COMPANY, LLC**

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

\_\_\_\_\_,

**LLC**

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

**Acknowledged by:  
MELLON BANK, N.A.**

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

**EXHIBIT "D"**

**CERTIFICATE FOR WITHDRAWAL  
OF EXCESS CONTRIBUTIONS  
FROM QUALIFIED FUND**

**[Name of Trustee],  
as Trustee**

**[Address]**

This Certificate is submitted pursuant to Section 4 of the Special Terms attached as Exhibit A to the Master Terms for Trust Agreements ("Master Terms"). All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and instructed to pay \$\_\_\_\_\_ in cash to Consolidation from the [Unit name's] Qualified Fund. With respect to such payment, Consolidation hereby certifies that withdrawal and transfer pursuant to Section 4 of the Special Terms is appropriate and that \$\_\_\_\_\_ constitutes an excess contribution pursuant to such Section.

**IN WITNESS WHEREOF**, the undersigned have executed this Certificate in the capacity as shown below as of \_\_\_\_\_, \_\_\_\_\_.

**EXELON GENERATION CONSOLIDATION  
COMPANY, LLC**

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

Name:

Title:

**Acknowledged by:  
MELLON BANK, N.A.**

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

Name:

Title:

## **EXHIBIT "E"**

### **CROSS-TRADING INFORMATION**

As part of the cross-trading program covered by the Exemption for the Trustee and its affiliates, the Trustee is to provide to each affected Trust the following information:

**I. The existence of the cross-trading program**

The Trustee has developed and intends to utilize, wherever practicable, a cross-trading program for Indexed Accounts and Large Accounts as those terms are defined in the Exemption.

**II. The "triggering events" creating cross-trade opportunities**

In accordance with the exemption three "triggering events" may create opportunities for cross-trading transactions. They are generally the following (see the Exemption for more information):

- A. A change in the composition or weighting of the index by the independent organization creating and maintaining the index;
- B. A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals on the account's opening date, where the Account is a bank collective fund, or on any relevant date for non-bank collective funds; provided, however, a change in an Indexed Account resulting from investments or withdrawals of assets of the Trustee's own plans (other than the Trustee's defined contribution plans under which participants may direct among various investment options, including Indexed Accounts) are excluded as a "triggering event"; or
- C. A recorded declaration by the Trustee that 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 0.5% of the Account's total value has occurred.

**III. The pricing mechanism utilized for securities purchased or sold**

Securities will be valued at the current market value for the securities on the date of the crossing transaction.

Equity securities - the current market value for the equity security will be the closing price on the day of trading as determined by an independent pricing service; unless the security was added to or deleted from an index after the close of trading, in which case the price will be the opening price for that security on the next business day after the announcement of the addition or deletion.

Debt securities - the current market value of the debt security will be the price determined by the Trustee as of the close of the day of trading according to the Securities and Exchange Commission's Rule 17a-7(b)(4) under the Investment Company Act of 1940.

Debt securities that are not reported securities or traded on an exchange will be valued based on an average of the highest current independent bids and the lowest current independent offers on the day of cross-trading. The Trustee will use reasonable inquiry to obtain such prices from at least three independent sources that are brokers or market makers. If there are fewer than three independent sources to price a certain debt security, the closing price quotations will be obtained from all available sources.

**IV. The allocation methods**

Direct cross-trade opportunities will be allocated among potential buyers or sellers of debt or equity securities on a pro rata basis. With respect to equity securities, please note the Trustee imposes a trivial share constraint to reduce excessive custody ticket charges to participating accounts.

**V. Other procedures implemented by the Trustee for its cross-trading practices**

The Trustee has developed certain internal operational procedures for cross-trading debt and equity securities. These procedures are available upon request.

----- COMPARISON OF HEADERS -----

-HEADER 1-

-HEADER 2-  
Header Discontinued

-HEADER 3-  
Header Discontinued

----- COMPARISON OF FOOTERS -----

-FOOTER 1-

4



-FOOTER 2-

3

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-FOOTER 3-

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E

----- 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.

- [1:10 1:10] Changed "Terms. Except" to "Terms. With ... prohibited. Except"
- [1:10 1:10] Changed "funds, (1) ... investments" to "funds, investments"
- [3:1 2:9] Changed "disbursements ... costs from" to "disbursements from"
- [5:3 5:3] Changed "Treasurer, ... the Fund." to "Treasurer."

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

- [2 2] Changed "3.009900.0011" to "4.009900.0011"
- [3 3] Changed "3.009900.0011" to "4.009900.0011"

**MASTER TERMS FOR  
TRUST AGREEMENTS**

The following Master Terms for Trust Agreements (the "Master Terms") shall apply for purposes of the Amended and Restated Qualified Nuclear Decommissioning Master Trust Agreement by and between Exelon Generation Company, LLC ("ExGen"), Exelon Generation Consolidation Company, LLC ("Consolidation") and Mellon Bank, N.A. as Trustee (the "Trustee"), and for purposes of the Amended and Restated Nonqualified Nuclear Decommissioning Master Trust Agreement by and between ExGen, the limited liability companies identified on Schedule A of such agreement (the "NQF Companies") and the Trustee, collectively the "Trust Agreements".

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

**ARTICLE I**  
**[Intentionally Deleted]**

**ARTICLE II**  
**Payments by the Trustee**

**Section 2.01. Use of Assets.** The assets of each Fund shall be used exclusively (a) to satisfy, in whole or in part, any expenses or liabilities incurred with respect to the decommissioning of that Fund's Unit, including expenses incurred in connection with the preparation for decommissioning of that Unit, such as engineering and other planning expenses, and all expenses incurred after the actual decommissioning occurs, such as physical security and radiation monitoring expenses (the "Decommissioning Costs"), (b) to pay the administrative costs and other incidental expenses of each Fund, and (c) to invest in publicly-traded securities and investments (including common trust funds) as directed by the investment manager(s) pursuant to Section 3.02(a) or the Trustee pursuant to Section 3.02(b), except that all assets of the Qualified Funds must be invested in Permissible Assets as defined in the Special Terms. With respect to the assets of the Funds, investments in the securities or obligations of Exelon Corporation or affiliates thereof, or their successors or assigns are prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited. Use of the assets of the Qualified Funds shall be further limited by the provisions of the Special Terms. The assets of the Funds shall be used, in the first instance, to pay the expenses related to the decommissioning of that Fund's Unit, as defined by the United States Nuclear Regulatory Commission ("NRC") in its regulations and issuances, and as provided in the NRC issued

license to operate each Unit and any amendments thereto. Notice to the NRC of proposed disbursements or payments from each Fund will be provided in accordance with the notice provisions of Section 2.02(b). 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 and accounted for in such notice.

**Section 2.02. Certification for Decommissioning Costs.**

(a) If assets of a Fund are required to satisfy Decommissioning Costs of that Fund's Unit, Consolidation or the appropriate NQF Company, as the case may be, shall present a certificate substantially in the form attached hereto as Exhibit B-1 (in the case of Consolidation) or B-2 (in the case of the NQF Companies) to the Trustee signed by its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer. Any certificate requesting payment by the Trustee to a third party or to Consolidation or the appropriate NQF Company from a Fund for Decommissioning Costs shall include the following:

(1) a statement of the amount of the payment to be made from the Fund and whether the payment is to be made from the Nonqualified Fund, the Qualified Fund or in part from both Funds;

(2) a statement that the payment is requested to pay Decommissioning Costs which have been incurred, and if payment is to be made from the Qualified Fund, a statement that the Decommissioning Costs to be paid constitute Qualified Decommissioning Costs, as defined in the Special Terms;

(3) the nature of the Decommissioning Costs to be paid;

(4) the payee, which may be a third party, or may be Consolidation or the appropriate NQF Company in the case of reimbursement for payments previously made or expenses previously incurred by Consolidation or the appropriate NQF Company for Decommissioning Costs;

(5) a statement that the Decommissioning Costs for which payment is requested have not theretofore been paid out of the Funds; and

(6) a statement that any necessary authorizations of the Pennsylvania Public Utility Commission (the "PUC"), NRC and/or any other governmental agencies having jurisdiction with respect to the decommissioning have been obtained.

(b) Except for disbursements of payments for administrative costs and other incidental expenses, no disbursements from the Funds shall be made by the Trustee:

(1) unless the Trustee has first provided thirty (30) days' prior written notice of such disbursement or payment to the NRC Director, Office of Nuclear Reactor Regulation; and

(2) if the Trustee receives written notice of an objection from the NRC Director, Office of Nuclear Reactor Regulation during such thirty (30) day notice period, or if the Trustee receives such notice at any later time that is nevertheless prior to disbursement.

(c) The Trustee shall retain at least one copy of such certificates (including attachments) and related documents received by it pursuant to this Article II.

(d) Consolidation and the NQF Companies shall have the right to enforce payments from the Funds upon compliance with the procedures set forth in this Section 2.02.

**Section 2.03. Administrative Costs.** The Trustee shall pay, as directed by the appropriate NQF Company, the administrative costs and other incidental expenses of each Nonqualified Fund, including all federal, state, and local taxes, if any, imposed directly on the Nonqualified Fund or the income therefrom, legal expenses, accounting expenses, actuarial expenses and trustee expenses, from the assets of the respective Nonqualified Fund and shall pay, as directed by Consolidation, the administrative costs and other incidental expenses of each Qualified Fund, as defined in the Special Terms, from the assets of the respective Qualified Fund.

**Section 2.04. Payments between the Funds.** The Trustee shall make payments (i) from a Unit's Qualified Fund to that Unit's Nonqualified Fund provided such payments are in cash and are in accordance with Section 4 of the Special Terms or (ii) from a Unit's Nonqualified Fund to that Unit's Qualified Fund provided such payments are in cash and are in accordance with the contribution limitations set forth in Section 2 of the Special Terms, as the case may be, upon presentation by Consolidation and the appropriate NQF Company of a certificate substantially in the form of Exhibit C hereto executed by Consolidation or the appropriate NQF Company instructing the Trustee to make any such payments. The Trustee shall be fully protected in relying upon such certificate.

### **ARTICLE - III** **Concerning the Trustee**

**Section 3.01. Authority of Trustee.** The Trustee shall have the authority and discretion to manage and control the Funds to the extent provided in Trust Agreements and these Master Terms but does not guarantee the Funds in any manner against

investment loss or depreciation in asset value or guarantee the adequacy of the Funds to satisfy the Decommissioning Costs. The Trustee shall not be liable for the making, retention or sale of any asset of a Qualified Fund which qualifies as a Permissible Asset, as defined in the Special Terms, nor shall the Trustee be responsible for any other loss to or diminution of the Funds, or for any other loss or damage which may result from the discharge of its duties hereunder except for any action not taken in good faith.

**Section 3.02. Investment of Funds.**

(a) Consolidation and the NQF Companies shall have the authority to appoint one or more investment managers who shall have the power to direct the Trustee in investing the assets of the Funds; provided, however, that the Trustee shall not follow any direction which would result in assets of the Qualified Funds being invested in assets other than Permissible Assets as defined in the Special Terms. Any such investment manager(s) or other person directing investments made in the Trusts shall adhere to the "Prudent Investor" standard as specified in 18 C.F.R. 35.32(a)(3) of the Federal Energy Regulatory Commission ("FERC") regulations (the "Prudent Investor Standard"). To the extent that Consolidation and the NQF Companies choose to exercise this authority, Consolidation and/or the appropriate NQF Company or Companies shall so notify the Trustee and instruct the Trustee in writing to separate into a separate account those assets the investment of which will be directed by each investment manager. Consolidation and the appropriate NQF Company or Companies shall designate in writing the person or persons who are to represent any such investment manager in dealings with the Trustee, provided however, that ExGen, 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 investment manager or the Trustee. Upon the separation of the assets in accordance with such 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 not be relieved of the responsibility of ensuring that assets of the Qualified Funds are invested solely in Permissible Assets, as defined in the Special Terms. The Trustee shall retain all other fiduciary duties with respect to assets the investment of which is directed by investment managers.

(b) Consolidation or the appropriate NQF Company or Companies shall notify the Trustee if the investment of assets of the Funds are not being directed by one or more investment managers under Section 3.02(a), and the Trustee shall hold, invest, and reinvest such assets as it in its sole discretion deems advisable, subject to the restrictions set forth herein for investment of the assets of the Qualified Funds and adherence to the Prudent Investor Standard; provided however, that in the event an investment manager terminates, or is terminated, Consolidation or the appropriate NQF Company or Companies shall use their best efforts to appoint an investment manager for those assets as soon as reasonably possible.

(c) Regardless of the person directing investments, any assets of the Qualified Funds shall be invested solely in Permissible Assets as defined in, and required by, the Special Terms, and shall be accumulated, invested, and reinvested in like manner. Upon the written consent of Consolidation, the assets of a Qualified Fund relating to a Unit may be pooled with the assets of any other Qualified Fund relating to any other Unit; provided that the book and tax allocations of the pooling arrangement are made in compliance with Code section 704 (and the Treasury Regulations thereunder) and provided further that such pooling arrangement elects to be classified as a partnership for federal income tax purposes.

(d) Notwithstanding any other provision of these Master Terms, with respect to the pooling of investments authorized by subparagraph (c) no part of any Fund's (or any subsequent holder's) interest in such pool, nor any right pertaining to such interest (including any right to substitute another entity for the Fund or for any subsequent holder, as holder of investments pooled pursuant to subparagraph (c)) may be sold, assigned, transferred or otherwise alienated or disposed of by any holder of an interest in the pool unless the written consent to the transfer of every other holder of interests in such pool is obtained in advance of any such transfer.

(e) Notwithstanding the provisions of subparagraph (d) of this Section, a Fund's investment in a pooled arrangement may be withdrawn from the pool (but not from the Trust Agreements, except as otherwise permitted by this Agreement) at any time upon 7 days written notice to the Trustee signed by its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer. If the Fund withdraws its entire interest in a pool, the pooled arrangement shall terminate 30 days after notice of final withdrawal has been given by any withdrawing Fund unless a majority in interest of the remaining Funds give their written consent to continue the pool within such 30 day period. If the pooled arrangement terminates, each Fund's assets will be segregated into a separate account under the Trust Agreements, and no further commingling may occur for a period of at least one year after such termination.

(f) Subparagraphs (c), (d) and (e) apply to transfers of interests within, and withdrawals from, the pooling arrangement. Nothing within these sections shall be interpreted to permit or to limit transfer of interests in, or withdrawals from, a Fund, which transfers and withdrawals are governed by other provisions of these Master Terms. In addition, the provisions of subparagraphs (c), (d) and (e) shall not limit the Trustee's authority to invest in permissible common or collective trust funds.

**Section 3.03. Prohibition Against Self Dealing.** Notwithstanding any other provision in this Agreement, the Trustee shall not engage in any act of self dealing as defined in section 468A(e)(5) of the Code and Treasury Regulations § 1.468A-5(b) or any corresponding future law or Treasury Regulation.

**Section 3.04. Compensation.** The Trustee shall be entitled to receive out of the Funds reasonable compensation for services rendered by it, as well as expenses necessarily incurred by it in the execution of the Trusts hereunder, provided such compensation and expenses qualify as administrative costs and other incidental expenses of a Qualified Fund, as defined in the Special Terms, with respect to any payment of compensation and expenses from that Qualified Fund. Consolidation and the NQF Companies acknowledge that, as part of the Trustee's compensation, the Trustee will earn interest on balances, including disbursement balances and balances arising from purchase and sale transactions. If the Trustee advances cash or securities for any purpose, including the purchase or sale of foreign exchange or of contracts for foreign exchange, or in the event that the Trustee shall incur or be assessed taxes, interest, charges, expenses, assessments, or other liabilities in connection with the performance of these Master Terms, except such as may arise from its own negligent action, negligent failure to act, or willful misconduct, any property at any time held for the Funds or the Trust Agreements shall be security therefor and the Trustee shall be entitled to collect from the Funds sufficient cash for reimbursement, and if such cash is insufficient, dispose of the assets of Consolidation and the NQF Companies held under the Trust Agreements to the extent necessary to obtain reimbursement. To the extent the Trustee advances funds to the Funds for disbursements or to effect the settlement of purchase transactions, the Trustee shall be entitled to collect from the Funds either (i) with respect to domestic assets, an amount equal to what would have been earned on the sums advanced (an amount approximating the "federal funds" interest rate) or (ii) with respect to nondomestic assets, the rate applicable to the appropriate foreign market.

**Section 3.05. Books of Account.** The Trustee shall keep separate true and correct books of account with respect to each Fund, which books of account shall at all reasonable times be open to inspection by Consolidation and each of the NQF Companies or its duly appointed representatives. The Trustee shall, upon written request of Consolidation or the appropriate NQF Company, permit government agencies, such as the PUC, NRC or the Internal Revenue Service, to inspect the books of account of each Fund. The Trustee shall furnish to Consolidation and each of the NQF Companies on or about the tenth business day of each month a statement for each Fund showing, with respect to the preceding calendar month, the balance of assets on hand at the beginning of such month, all receipts, investment transactions, and disbursements which took place during such month and the balance of assets on hand at the end of such month. The Trustee agrees to provide on a timely basis any information deemed necessary by Consolidation or the NQF Companies to file the federal, state and local tax returns of Consolidation and the NQF Companies.

**Section 3.06. Reliance on Documents.** The Trustee, upon receipt of documents furnished to it by Consolidation and any of the NQF Companies pursuant to the provisions of these Master Terms, shall examine the same to determine whether they



conform to the requirements thereof. The Trustee acting in good faith may conclusively rely, as to the truth of statements and the correctness of opinions expressed, on any certificate or other documents conforming to the requirements of these Master Terms. If the Trustee in the administration of the Funds, shall deem it necessary or desirable that a matter be provided or established prior to taking or suffering any action hereunder, such matter (unless evidence in respect thereof is otherwise specifically prescribed hereunder) may be deemed by the Trustee to be conclusively provided or established by a certificate signed by the President or any Vice President of Consolidation or any of the NQF Companies, as the case may be, and delivered to the Trustee. The Trustee shall have no duty to inquire into the validity, accuracy or relevancy of any statement contained in any certificate or document nor the authorization of any party making such certificate or delivering such document, and the Trustee may rely and shall be protected in acting or refraining from acting upon any such written certificate or document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee shall not, however, be relieved of any obligation (a) to refrain from self-dealing as provided in Section 3.03 hereof; (b) to ensure that all assets of the Qualified Funds are invested solely in Permissible Assets as defined in the Special Terms; or (c) to adhere to the Prudent Investor Standard if acting as manager.

**Section 3.07. Liability and Indemnification.** The Trustee shall not be liable for any action taken by it in good faith and without gross negligence, willful misconduct or recklessness and reasonably believed by it to be authorized or within the rights or powers conferred upon it by this Agreement and may consult with counsel of its own choice (including counsel for Consolidation and the NQF Companies) and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and without gross negligence and in accordance with the opinion of such counsel, provided, however, that the Trustee shall be liable for direct damages resulting from investing assets of the Qualified Funds in other than Permissible Assets or from self dealing as provided in Section 3.03 hereof. Provided indemnification does not result in self dealing under Section 3.03 hereof or in a deemed contribution to a Qualified Fund in excess of the limitation on contributions under Section 468A of the Code and the Treasury Regulations thereunder, ExGen (as to both the Qualified Funds and the Nonqualified Funds), Consolidation (as to the Qualified Funds) and the NQF Companies (as to the Nonqualified Funds) hereby agree to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without gross negligence, willful misconduct, recklessness or bad faith on the part of the Trustee, arising out of or in connection with its entering into the Trust Agreements and carrying out its duties hereunder, including the costs and expenses of defending itself against any claim of liability, provided such loss, liability or expense does not result from investing assets of the Qualified Funds in other than Permissible Assets as defined in the Special Terms or from self dealing under Section 3.03 hereof, and provided further that no such costs or expenses shall be paid if the payment of such costs or expenses is prohibited by Section 468A of the Code or the Treasury Regulations thereunder.

The Trustee shall not be responsible or liable for any losses or damages suffered by a Fund arising as a result of the insolvency of any custodian, subtrustee or subcustodian, except to the extent the Trustee was negligent in its selection or continued retention of such entity. Under no circumstances shall the Trustee be liable for any indirect, consequential, or special damages with respect to its role as Trustee.

**Section 3.08. Resignation, Removal and Successor Trustees.** The Trustee may resign at any time upon sixty (60) days' written notification to Consolidation and the NQF Companies. Consolidation and the NQF Companies may remove the Trustee for any reason at any time upon thirty (30) days' written notification to the Trustee. If a successor Trustee shall not have been appointed within these specified time periods after the giving of written notice of such resignation or removal, the Trustee or Consolidation and the NQF Companies may apply to any court of competent jurisdiction to appoint a successor Trustee to act until such time, if any, as a successor shall have been appointed and shall have accepted its appointment as provided below. If the Trustee shall be adjudged bankrupt or insolvent, a vacancy shall thereupon be deemed to exist in the office of Trustee and a successor shall thereupon be appointed by Consolidation and the NQF Companies. Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to Consolidation and the NQF Companies an appropriate written instrument accepting such appointment hereunder, subject to all the terms and conditions hereof, and thereupon such successor Trustee shall become fully vested with all the rights, powers, trusts, duties and obligations of its predecessor in trust under the Trust Agreements, with like effect as if originally named as Trustee thereunder. The predecessor Trustee shall, upon written request for payment of all fees and expenses by Consolidation and the NQF Companies, deliver to the successor Trustee the corpus of the Funds and perform such other acts as may be required or be desirable to vest and confirm in said successor Trustee all right, title and interest in the corpus of the Funds to which it succeeds.

**Section 3.09. Merger of Trustee.** Any corporation or other legal entity into which the Trustee may be merged or with which it may be consolidated, or any corporation or other legal entity resulting from any merger or consolidation to which the Trustee shall be a party, or any corporation or other legal entity to which the corporate trust functions of the Trustee may be transferred, shall be the successor Trustee under the Trust Agreement and these Master Terms without the necessity of executing or filing any additional acceptance of the Trust Agreement and these Master Terms or the performance of any further act on the part of any other parties hereto.

#### **ARTICLE IV** **Amendments**

Consolidation and the NQF Companies may amend these Master Terms and the Trust Agreements from time to time, provided such amendment does not cause the Qualified Funds to fail to qualify as nuclear decommissioning reserve funds under section 468A of the Code and the Treasury Regulations thereunder. These Master Terms and the Trust Agreements may not be amended so as to violate 468A of the Code or the Treasury Regulations thereunder. The Qualified Funds are established and shall be maintained for the sole purpose of qualifying as nuclear decommissioning reserve funds under section 468A of the Code and the Treasury Regulations thereunder. If the Qualified Funds would fail to so qualify because of any provision contained in Trust Agreements or these Master Terms, the Trust Agreements and these Master Terms shall be deemed to be amended as necessary to conform with the requirements of Code Section 468A and the regulations thereunder. If a proposed amendment shall affect the responsibility of the Trustee, such amendment shall not be considered valid and binding until such time as the amendment is executed by the Trustee. Notwithstanding any provision herein to the contrary, neither these Master Terms nor the Trust Agreements may be modified in any material respect without first providing thirty (30) days' prior written notice to the NRC Director, Office of Nuclear Reactor Regulation.

## **ARTICLE V**

### **Powers of the Trustee and Investment Manager**

**Section 5.01. General Powers.** The Trustee shall have and exercise the following powers and authority in the administration of the Funds only on the direction of an Investment Manager where such powers and authority relate to a separate account established for an Investment Manager, and in its sole discretion where such powers and authority relate to investments made by the Trustee in accordance with Section 3.02(b):

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

(b) to sell, exchange, convey, transfer, lend, or otherwise dispose of any property held in the Funds 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;

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

(d) 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 Funds have outstanding at any time;

(e) to join in, dissent from or oppose the reorganization, recapitalization, consolidation, sale or merger of corporations or properties of which the Funds 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, without any duty to sell;

(f) 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 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 Funds for safekeeping or custodian purposes only;

(g) upon authorization of Consolidation or the appropriate NQF Company, to lend the assets of the Funds 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; provided, that, with respect to the lending of securities pursuant to this paragraph, the Trustee's powers shall subsume the role of custodian (the expressed intent hereunder being that the Trustee, in such case, be deemed a financial institution, within the meaning of section 101 (22) of the Bankruptcy Code); and provided, further, that any loans made from the Funds shall be made in conformity with such laws or regulations governing such lending activities which may have been promulgated by any appropriate regulatory body at the time of such loan;

(h) to purchase, enter, sell, hold, and generally deal in any manner in and with contracts for the immediate or future delivery of financial instruments of any issuer or of any other property and in foreign exchange or foreign exchange contracts; to grant, purchase, sell, exercise, permit to expire, permit to be held in escrow, and otherwise to

acquire, dispose of, hold and generally deal in any manner with and in all forms of options in any combination.

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 the appropriate NQF Company, as the case may be, shall have sole responsibility for nonreceipt of payment (or late payment) by the counterparty.

Notwithstanding anything in these Master Terms to the contrary, the Trustee shall not be responsible or liable for its failure to perform under the Trust Agreements or these Master Terms or for any losses to the Funds resulting from any event beyond the reasonable control of the Trustee, its agents or subcustodians, including but not limited to nationalization, strikes, expropriation, devaluation, seizure, or similar action by any governmental authority, de facto or de jure; or enactment, promulgation, imposition or enforcement by any such governmental authority of currency restrictions, exchange controls, levies or other charges affecting the Funds' property; or the breakdown, failure or malfunction of any utilities or telecommunications systems; or any order or regulation of any banking or securities industry including changes in market rules and market conditions affecting the execution or settlement of transactions; or acts of war, terrorism, insurrection or revolution; or acts of God; or any other similar event. This Section shall survive the termination of the Trust Agreements.

**Section 5.02. Specific Powers of the Trustee.** The Trustee shall have the following powers and authority, to be exercised in its sole discretion with respect to the Funds:

(a) to appoint agents, , custodians, subtrustees, depositories or counsel, domestic or foreign, as to part or all of the Funds and functions incident thereto where, in the sole discretion of the Trustee, such delegation is necessary in order to facilitate the operations of the Funds and such delegation is not inconsistent with the purposes of the Funds or in contravention of any applicable law. To the extent that the appointment of any such person or entity may be deemed to be the appointment of a fiduciary, the Trustee may exercise the powers granted hereby to appoint as such a fiduciary any person or entity (other than ExGen or any other owner or operator of a power reactor or their subsidiaries, successors, or assigns or persons representing them). Upon such delegation, the Trustee may require such reports, bonds or written agreements as it deems necessary to properly monitor the actions of its delegate;

(b) to cause any investment, either in whole or in part, in the Funds to be registered in, or transferred into, the Trustee's name or the names of a nominee or

nominees, including but not limited to that of the Trustee or an affiliate of the Trustee, a clearing corporation, or a depository, or in book-entry form, or to retain any such investment unregistered or in a form permitting transfer by delivery, provided that the books and records of the Trustee shall at all times show that such investments are a part of the Funds; and to cause any such investment, or the evidence thereof, to be held by the Trustee, in a depository, in a clearing corporation, in book-entry form, or by any other entity or in any other manner permitted by law; provided that the Trustee shall not be responsible for any losses resulting from the deposit or maintenance of securities or other property (in accordance with market practice, custom, or regulation) with any recognized foreign or domestic clearing facility, book-entry system, centralized custodial depository, or similar organization;

(c) to make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers;

(d) to defend against or participate in any legal actions involving the Funds or the Trustee in its capacity stated herein, in the manner and to the extent it deems advisable;

(e) to form corporations and to create trusts, to hold title to any security or other property, to enter into agreements creating partnerships or joint ventures for any purpose or purposes determined by the Trustee to be in the best interests of the Funds;

(f) to establish and maintain such separate accounts in accordance with the instructions of Consolidation or the appropriate NQF Company, as Consolidation or the appropriate NQF Company, as the case may be, deem necessary for the proper administration of the Funds, or as determined to be necessary by the Trustee;

(g) to hold uninvested cash in its commercial bank or that of an affiliate, as it shall deem reasonable or necessary;

(h) 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 or the appropriate NQF Company expressly understands and agrees 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. The Trustee is authorized to invest in a collective fund which invests in Mellon Financial Corporation stock in accordance with the terms and conditions of the Department of Labor Prohibited Transaction Exemption 95-56 (the "Exemption") granted

to the Trustee and its affiliates and to use a cross-trading program in accordance with the Exemption. Trustee will notify Consolidation and the NQF Companies if the Exemption is modified or revoked. Consolidation or the appropriate NQF Company acknowledge receipt of the notice entitled "Cross-Trading Information", a copy of which is attached to this Agreement as Exhibit E;

(i) to invest in open-end and closed-end investment companies, including those for which the Trustee or an affiliate provides services for a fee, regardless of the purposes for which such fund or funds were created, and any partnership, limited or unlimited, joint venture and other forms of joint enterprise created for any lawful purpose; and

(j) to generally take all action, whether or not expressly authorized, which the Trustee may deem necessary or desirable for the protection of the Funds.

Notwithstanding anything else in the Trust Agreements or these Master Terms to the contrary, including, without limitation, any specific or general power granted to the Trustee and to the investment managers, including the power to invest in real property, no portion of the Funds shall be invested in real estate (except for investments tied to market indexes or other non-nuclear sector common trust funds or mutual funds). For this purpose "real estate" includes, but is not limited to, real property, leaseholds or mineral interests.

**Section 5.03** The powers described in Section 5.02 may be exercised by the Trustee with or without instructions from Consolidation or the NQF Companies or a party authorized by Consolidation or the NQF Companies to act on its behalf, but where the Trustee acts on Authorized Instructions, the Trustee shall be fully protected as described in Section 3.07. All directions and instructions to the Trustee from an Authorized Party shall be in writing, by facsimile transmission, electronic transmission subject to the Trustee's practices, or any other method specifically agreed to in writing by Consolidation or the NQF Companies and the Trustee, provided the Trustee may, in its discretion, accept oral directions and instructions and may require confirmation in writing. Without limiting the generality of the foregoing, the Trustee shall not be liable for the acts or omissions of any person appointed under paragraph (a) of Section 5.02 pursuant to Authorized Instructions.

**Section 5.04** The assets of the Funds shall not be invested in the securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns as identified by Consolidation and the NQF Companies. Except for investments tied to market indexes or other non-nuclear sector mutual funds or common trust funds, the assets of the funds shall not be invested in the securities of any entity owning one or more nuclear power plants, as identified by a source agreed to by the Trustee and Consolidation and the NQF Companies.

**ARTICLE VI**  
**Termination**

A Unit's Qualified Fund shall terminate upon the earlier of either (i) substantial completion of decommissioning of that Fund's Unit, as defined in the Special Terms, or (ii) disqualification of that Unit's Qualified Fund by the Internal Revenue Service as provided in Treasury Regulations § 1.468A5(c) or any corresponding future Treasury Regulation. A Nonqualified Fund shall terminate upon termination by the NRC of that Unit's license. If a Fund termination occurs before the NRC terminates the respective Unit's operating license, the Trustee will adhere to Section 5.02(b) of these Master Terms. Upon the termination of any Fund, the assets of the terminated Fund shall be distributed in accordance with any written directive of the PUC concerning termination of such fund. Absent a written directive of the PUC within thirty (30) days after the PUC is notified of the termination, all of the assets of the terminated Qualified Fund shall be distributed to Consolidation, and all of the assets of the terminated Nonqualified Fund shall be distributed to the NQF Company that is the owner of such Fund, except that if a Unit's Qualified Fund is terminated prior to the termination of a Unit's Nonqualified Fund, the assets of the terminated Qualified Fund shall be distributed to the Nonqualified Fund for the Unit that is held by the appropriate NQF Company. Consolidation or the appropriate NQF Company, as the case may be, shall provide the Trustee with notification that the Fund has been terminated and with either (i) the PUC written directive or (ii) a certificate signed by its Chairman of the Board, its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer, that there is no PUC written directive and that thirty (30) days have elapsed since notification to the PUC of termination prior to distribution of the assets of the terminated Fund.



## EXHIBIT "A"

### SPECIAL TERMS OF THE QUALIFIED NUCLEAR DECOMMISSIONING RESERVE FUNDS

The following Special Terms of the Qualified Funds (hereinafter referred to as the "Special Terms") will apply for purposes of these Master Terms. To the extent construed to be in conflict therewith, these Special Terms shall take precedence over the Master Terms. Capitalized terms shall have the same meaning as set forth in the Master Terms or the Trust Agreements:

**Section 1. Definitions.** The following terms as used in the Special Terms shall, unless the context clearly indicates otherwise, have the following respective meanings:

(a) "Administrative costs and other incidental expenses of the Qualified Funds" shall mean all ordinary and necessary expenses incurred in connection with the operation of the Qualified Funds, as provided in Treasury Regulations § 1.468A-5(a)(3)(ii)(A) or any corresponding future Treasury Regulation, including without limitation, federal, state and local income tax (including any Final Tax Liabilities), legal expenses, accounting expenses, actuarial expenses and trustee expenses.

(b) "Final Tax Liabilities" shall mean any and all tax liabilities determined to be owing but not paid out of the assets of any of the Seller's or Transferor's Qualified Fund related to each unit prior to the transfer of the assets of the Seller's or Transferor's Qualified Fund to the Qualified Fund.

(c) "Final Tax Refunds" shall mean any and all tax refunds determined to be receivable but not collected by the Seller's or Transferor's Qualified Fund prior to the transfer of the assets of the Seller's or Transferor's Qualified Fund to the Qualified Funds.

(d) "Permissible Assets" shall mean any investment permitted for a qualified nuclear decommissioning reserve fund under section 468A of the Code and the Treasury Regulations thereunder, subject to the restrictions provided in Section 5.04 of the Agreement.

(e) "PUC" shall mean the Pennsylvania Public Utility Commission.

(f) "Qualified Decommissioning Costs" shall mean all expenses otherwise deductible for federal income tax purposes without regard to section 280B of the Internal Revenue Code of 1986, as amended, or any corresponding section or sections of any future United States internal revenue statute (the "Code"), incurred (or to be incurred) in

connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a Unit when it has permanently ceased the production of electric energy, excluding any costs incurred for the disposal of spent nuclear fuel, as provided in Treasury Regulations § 1.468A-1(b)(5) or any corresponding future Treasury Regulation. Such term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to a Unit after the actual decommissioning occurs, such as physical security and radiation monitoring expenses.

(g) "Seller's or Transferor's Qualified Fund" shall mean the trust established and maintained for any respective unit that qualified as a nuclear decommissioning reserve fund under Code section 468A prior to the sale or transfer of such unit.

(h) "Substantial completion of decommissioning" shall mean the date that the maximum acceptable radioactivity levels mandated by the NRC with respect to a decommissioned nuclear power plant are satisfied by the Unit; provided, however, that if Consolidation requests a ruling from the Internal Revenue Service, the date designated by the Internal Revenue Service as the date on which substantial completion of decommissioning occurs shall govern; provided, further, that the date on which substantial completion of decommissioning occurs shall be in accordance with Treasury Regulations §1.468A-5(d)(2) or any corresponding future Treasury Regulation.

**Section 2. Contributions to a Qualified Fund.** The assets of the Qualified Funds shall be contributed by Consolidation (or by others approved by Consolidation in writing) from time to time in cash. The Trustee shall not accept any contributions for the Qualified Funds other than cash payments with respect to which Consolidation is allowed a deduction under section 468A(a) of the Code and Treasury Regulations §1.468A-2(a) or any corresponding future Treasury Regulations, except for any Final Tax Refunds. Consolidation hereby represents that all contributions (or deemed contributions), except for any Final Tax Refunds, by Consolidation to the Qualified Funds in accordance with the provisions of Section 1.03 of the Agreement shall be deductible under section 468A of the Code and Treasury Regulations §1.468A-2(a) or any corresponding future Treasury Regulation or shall be withdrawn pursuant to Section 4 hereof.

**Section 3. Limitation on Use of Assets.** The assets of the Qualified Funds shall be used exclusively as follows:

(a) To satisfy, in whole or in part, the liability for Qualified Decommissioning Costs through payments by the Trustee pursuant to Section 2.02 of the Master Terms; and

(b) To pay the administrative costs and other incidental expenses of the Qualified Funds; and

(c) To the extent the assets of the Qualified Funds are not currently required for (a) and (b) above, to invest directly in Permissible Assets.

**Section 4. Transfers by Consolidation.** If Consolidation's contribution (or deemed contribution) excluding any Final Tax Refunds to the Qualified Funds in any one year exceeds the amount deductible under section 468A of the Code and the Treasury Regulations thereunder, Consolidation may instruct the Trustee to transfer such excess contribution from a Unit's Qualified Fund to that Unit's Nonqualified Fund, as defined in the Trust Agreements and these Master Terms, pursuant to Section 2.04 of the Master Terms, provided any such transfer occurs on or before the date prescribed by law (including extensions) for filing the federal income tax return of the Qualified Funds for the taxable year to which the excess contribution relates for withdrawals pursuant to Treasury Regulations §§1.468A-5(c)(2) and 1.468A-2(f)(2) and occurs on or before the later of the date prescribed by law (including extensions) for filing the federal income tax return of the Qualified Funds for the taxable year to which the excess contribution relates or the date that is thirty (30) days after the date that Consolidation receives the ruling amount for such taxable year for withdrawals pursuant to Treasury Regulations § 1.468A-3(j)(3). If Consolidation determines that transfer pursuant to this Section 4 is appropriate, Consolidation shall present a certificate so stating to the Trustee signed by its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer, requesting such withdrawal and transfer. The certificate shall be substantially in the form attached as Exhibit C to the Master Terms for transfers to Nonqualified Funds as provided in Section 2.04 of the Master Terms and substantially in the form of Exhibit D to the Master Terms for withdrawals and transfers by Consolidation.

**Section 5. Taxable Year/Tax Returns.** The accounting and taxable year for the Qualified Funds 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 the Qualified Funds must change to the taxable year of Consolidation as provided in Treasury Regulations §1.468A-4(c)(1) or any corresponding future Treasury Regulation. Consolidation shall assist the Trustee in complying with any requirements under section 442 of the Code and Treasury Regulations §1.442-1. Consolidation shall prepare, or cause to be prepared, any tax returns required to be filed by the Qualified Funds, and the Trustee shall sign and file such returns on behalf of the Qualified Funds. The Trustee shall cooperate with Consolidation in the preparation of such returns.

**EXHIBIT "B-1"**

**CERTIFICATE FOR PAYMENT  
OF DECOMMISSIONING COSTS**

**[Name of Trustee],  
as Trustee  
[Address]**

This Certificate is submitted pursuant to Section 2.02 of the Master Terms for Trust Agreements. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and requested to disburse out of the [Unit name's] Funds to [payee] the amount of \$\_\_\_\_\_ from the Qualified Fund for the payment of the Decommissioning Costs which have been incurred with respect to the [Unit name]. Prior to making such disbursements, however, the Trustee shall provide thirty days prior written notice of such disbursement to the NRC and shall not make such disbursement if the Trustee receives written notice of any objections from the NRC Director, Office of Nuclear Reactor Regulations during such thirty day period, or if the Trustee receives such notice at any later time that is nevertheless prior to disbursement. With respect to such Decommissioning Costs, Consolidation hereby certifies as follows:

1. The amount to be disbursed pursuant to this Certificate shall be solely used for the purpose of paying the Decommissioning Costs the nature of which are described in Schedule A hereto.
2. None of the Decommissioning Costs described in Schedule A hereto have previously been made the basis of any certificate pursuant to Section 2.02 of the Master Terms.
3. The amount to be disbursed from the Qualified Fund pursuant to this Certificate shall be used solely for the purpose of paying Qualified Decommissioning Costs as defined in the Special Terms.
4. Any necessary authorizations of the PUC, NRC, or any corresponding governmental authority having jurisdiction over the decommissioning of the Unit have been obtained, other than the required 30 days prior written Notice.

IN WITNESS WHEREOF, the undersigned have executed this Certificate in the capacity shown below as of \_\_\_\_\_, \_\_\_\_\_.

**EXELON GENERATION CONSOLIDATION  
COMPANY, LLC**

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

Name:

Title:

**EXELON GENERATION CONSOLIDATION  
COMPANY, LLC**

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

Name:

Title:

**Acknowledged by:  
MELLON BANK, N.A.**

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

Name:

Title:

**EXHIBIT "B-2"**

**CERTIFICATE FOR PAYMENT  
OF DECOMMISSIONING COSTS**

**[Name of Trustee],  
as Trustee  
[Address]**

This Certificate is submitted pursuant to Section 2.02 of the Master Terms for Trust Agreements. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and requested to disburse out of the [Unit name's] Funds to [payee] the amount of \$\_\_\_\_\_ from the Nonqualified Fund for the payment of the Decommissioning Costs which have been incurred with respect to the [Unit name]. Prior to making such disbursements, however, the Trustee shall provide thirty days prior written notice of such disbursement to the NRC and shall not make such disbursement if the Trustee receives written notice of any objections from the NRC Director, Office of Nuclear Reactor Regulations during such thirty day period, or if the Trustee receives such notice at any later time that is nevertheless prior to disbursement. With respect to such Decommissioning Costs, Exelon \_\_\_\_\_ NQ LLC hereby certifies as follows:

1. The amount to be disbursed pursuant to this Certificate shall be solely used for the purpose of paying the Decommissioning Costs the nature of which are described in Schedule A hereto.
2. None of the Decommissioning Costs described in Schedule A hereto have previously been made the basis of any certificate pursuant to Section 2.02 of the Master Terms.
3. Any necessary authorizations of the PUC, NRC, or any corresponding governmental authority having jurisdiction over the decommissioning of the Unit have been obtained, other than the required 30 days prior written Notice.

IN WITNESS WHEREOF, the undersigned have executed this Certificate in the capacity shown below as of \_\_\_\_\_.

EXELON \_\_\_\_\_ NQ LLC

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

Name:

Title:

EXELON \_\_\_\_\_ NQ LLC

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

Name:

Title:

**Acknowledged by:  
MELLON BANK, N.A.**

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

Name:

Title:

**EXHIBIT "C"**

**CERTIFICATE FOR TRANSFER BETWEEN THE QUALIFIED FUND  
AND THE NONQUALIFIED FUND**

**[Name of Trustee],  
as Trustee**

**[Address]**

This Certificate is submitted pursuant to Section 2.04 of the Master Terms for Trust Agreements (the "Master Terms"), dated \_\_\_\_\_. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and instructed as follows (complete one):

To pay \$\_\_\_\_\_ in cash from the [Unit name's] Nonqualified Fund to that Unit's Qualified Fund; or

To pay \$\_\_\_\_\_ in cash from the [Unit name's] Qualified Fund to that Unit's Nonqualified Fund.

With respect to such payment, Consolidation and \_\_\_\_\_ hereby certify as follows:

1. Any amount stated herein to be paid from the Nonqualified Fund to the Qualified Fund is in accordance with the contribution limitations applicable to the Qualified Fund set forth in Section 2 of the Special Terms and the limitations of Section 2.04 of the Master Terms.
2. Any amount stated herein to be paid from the Qualified Fund to the Nonqualified Fund is in accordance with Section 4 of the Special Terms. Consolidation and \_\_\_\_\_ have determined that such payment is appropriate under the standards of Section 4 of the Special Terms.



**IN WITNESS WHEREOF**, the undersigned have executed this  
Certificate in the capacity as shown below as of \_\_\_\_\_, \_\_\_\_\_ .

**EXELON GENERATION CONSOLIDATION  
COMPANY, LLC**

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

\_\_\_\_\_  
**LLC**

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

**Acknowledged by:  
MELLON BANK, N.A.**

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

**EXHIBIT "D"**

**CERTIFICATE FOR WITHDRAWAL  
OF EXCESS CONTRIBUTIONS  
FROM QUALIFIED FUND**

**[Name of Trustee],  
as Trustee**

**[Address]**

This Certificate is submitted pursuant to Section 4 of the Special Terms attached as Exhibit A to the Master Terms for Trust Agreements ("Master Terms"). All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and instructed to pay \$\_\_\_\_\_ in cash to Consolidation from the [Unit name's] Qualified Fund. With respect to such payment, Consolidation hereby certifies that withdrawal and transfer pursuant to Section 4 of the Special Terms is appropriate and that \$\_\_\_\_\_ constitutes an excess contribution pursuant to such Section.

**IN WITNESS WHEREOF**, the undersigned have executed this Certificate in the capacity as shown below as of \_\_\_\_\_, \_\_\_\_\_.

**EXELON GENERATION CONSOLIDATION  
COMPANY, LLC**

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

**Acknowledged by:  
MELLON BANK, N.A.**

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

## EXHIBIT "E"

### CROSS-TRADING INFORMATION

As part of the cross-trading program covered by the Exemption for the Trustee and its affiliates, the Trustee is to provide to each affected Trust the following information:

**I. The existence of the cross-trading program**

The Trustee has developed and intends to utilize, wherever practicable, a cross-trading program for Indexed Accounts and Large Accounts as those terms are defined in the Exemption.

**II. The "triggering events" creating cross-trade opportunities**

In accordance with the exemption three "triggering events" may create opportunities for cross-trading transactions. They are generally the following (see the Exemption for more information):

- A. A change in the composition or weighting of the index by the independent organization creating and maintaining the index;
- B. A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals on the account's opening date, where the Account is a bank collective fund, or on any relevant date for non-bank collective funds; provided, however, a change in an Indexed Account resulting from investments or withdrawals of assets of the Trustee's own plans (other than the Trustee's defined contribution plans under which participants may direct among various investment options, including Indexed Accounts) are excluded as a "triggering event"; or
- C. A recorded declaration by the Trustee that 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 0.5% of the Account's total value has occurred.

**III. The pricing mechanism utilized for securities purchased or sold**

Securities will be valued at the current market value for the securities on the date of the crossing transaction.

Equity securities - the current market value for the equity security will be the closing price on the day of trading as determined by an independent pricing service; unless the security was added to or deleted from an index after the close of trading, in which case the price will be the opening price for that security on the next business day after the announcement of the addition or deletion.

Debt securities - the current market value of the debt security will be the price determined by the Trustee as of the close of the day of trading according to the Securities and Exchange Commission's Rule 17a-7(b)(4) under the Investment Company Act of 1940.

Debt securities that are not reported securities or traded on an exchange will be valued based on an average of the highest current independent bids and the lowest current independent offers on the day of cross-trading. The Trustee will use reasonable inquiry to obtain such prices from at least three independent sources that are brokers or market makers. If there are fewer than three independent sources to price a certain debt security, the closing price quotations will be obtained from all available sources.

IV. The allocation methods

Direct cross-trade opportunities will be allocated among potential buyers or sellers of debt or equity securities on a pro rata basis. With respect to equity securities, please note the Trustee imposes a trivial share constraint to reduce excessive custody ticket charges to participating accounts.

V. Other procedures implemented by the Trustee for its cross-trading practices

The Trustee has developed certain internal operational procedures for cross-trading debt and equity securities. These procedures are available upon request.

**2. Revised Draft Amended and Restated Nonqualified Nuclear  
Decommissioning Master Trust Agreement (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\_767264\_3  
and revised document: C:\WINDOWS\TEMP\WDC99\_767264\_4

CompareRite found 10 change(s) in the text  
CompareRite found 3 change(s) in the notes

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

**AMENDED AND RESTATED  
NONQUALIFIED  
NUCLEAR DECOMMISSIONING  
MASTER TRUST AGREEMENT**

**THIS AMENDED AND RESTATED NONQUALIFIED NUCLEAR DECOMMISSIONING MASTER TRUST AGREEMENT** (the "Agreement"), dated as of \_\_\_\_\_, 2003 by and between Exelon Generation Company, LLC, ("ExGen"), a limited liability company organized under the laws of the State of Delaware and having a principal office at 300 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 MELLON BANK, N.A., 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 NQF Companies 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**, PECO Energy Company ("PECO") entered into certain Trust Agreements with the Trustee described in Schedule B (the "Prior Agreements") which were established for the purpose of holding the decommissioning funds established by PECO for each Unit in which PECO owned an interest in whole or in part; and

**WHEREAS**, by Assignment dated January 10, 2001, PECO assigned its interests in the Units and its interests, rights, duties and obligations under the Prior Agreements to ExGen and ExGen agreed to accept such interests in the Units and such interests, rights, duties and obligations under the Prior Agreements; and

**WHEREAS**, by agreement dated as of January 10, 2001, ExGen and the Trustee entered into an amended and restated trust agreement (the "Amended and Restated Agreement") which amended the Prior Agreements and consolidated the separate trusts established by the Prior Agreements into a master trust; and

**WHEREAS**, the 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 "Qualified Funds") under section 468A of the Internal Revenue Code of 1986, as amended (the "Code") and nonqualified nuclear decommissioning trusts (the "Nonqualified Funds"), the Qualified Funds and the Nonqualified Funds may hereinafter be referred to collectively as the "Funds"; 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 Nonqualified Funds, 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 Qualified Funds, 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 Agreement so that it is restated into two separate agreements, one with respect to the Nonqualified Funds and one with respect to the Qualified Funds; and

**WHEREAS**, ExGen, the NQF Companies and the Trustee wish that this Agreement shall amend and restate the Amended and Restated Agreement with respect to the Nonqualified 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 and the NQF Companies wish that the Trustee continue to serve as trustee of the Nonqualified Funds.

**NOW, THEREFORE**, to provide for the maintenance of the Nonqualified Funds, the making of payments therefrom and the performance of covenants by the NQF Companies and the Trustee set forth herein, ExGen has previously sold, assigned, set over and pledged unto the Trustee, and to the Trustee's successors and its assigns, and the Trustee has acknowledged receipt of the funds representing the initial funding of and any additional contributions to the Nonqualified Funds.

**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 FUNDS**

**Section 1.01. Establishment of the Trusts Funds.** The Trustee shall hold a separate Nonqualified Fund for each Unit. The Nonqualified Funds for each Unit shall be as identified in Schedule A, with the NQF Company as identified in Schedule A as owner of each Nonqualified Fund. The Nonqualified Funds shall be maintained separately at all times in the United States pursuant to this Agreement. The Trustee shall maintain such records as are necessary to reflect each Nonqualified Fund separately on its books from each other Nonqualified Fund, and shall



create and maintain such subaccounts within each Nonqualified Fund as the relevant NQF Company shall direct. In performing its duties under this Agreement, the Trustee shall exercise the same care and diligence that it would devote to its own property in like circumstances.

**Section 1.02. Purposes of the Trusts Funds.** The Nonqualified Funds are established for the exclusive purpose of providing funds for the decommissioning of the Units. The Nonqualified Fund 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 Qualified Fund for that Unit, pursuant to Section 2 of the Special Terms contained in Exhibit A to the Master Terms. None of the assets of the Nonqualified Funds 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 Nonqualified Funds 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. Master Terms.** In addition to the terms set forth in this Agreement, the Nonqualified Funds shall also be governed by the provisions of the Master Terms. The terms of this Agreement, to the extent construed to be in conflict with the Master Terms, 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 pursuant to the terms of Article II of the Master Terms, the Trustee shall distribute all or a portion of the Nonqualified Fund of which such NQF Company is an owner to such NQF Company, Consolidation or a third party.

## **ARTICLE III** **TERMINATION**

**Section 3.01. Termination.** A NQF Company may terminate all or a portion of the Nonqualified Fund of which such NQF Company is an owner, upon written notice to the Trustee, in accordance with Article VI of the Master Terms.

**Section 3.02. Distribution of Trust Upon Termination.** Upon termination of all or a portion of a Nonqualified Fund, the Trustee shall assist in liquidating assets of such trust (if so directed by the relevant NQF Company), and distributing the then-existing assets of the Fund (either the liquidation proceeds or the Fund assets-in-kind, including accrued, accumulated and undistributed net income) less final Fund administration expenses (including accrued taxes paid

directly to a taxing authority) to such NQF Company, provided, however, that no such distribution shall be made unless the Trustee has received an opinion of legal counsel of such NQF Company stating that such distribution does not violate any Order, and that the requirements of Article VI of the Master Terms have been met.

**ARTICLE IV**  
**Miscellaneous**

**Section 4.01. Binding Agreement.** All covenants and agreements in this Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their successors and assigns.

**Section 4.02. Notices.** All notices and communications hereunder shall be in writing and shall be deemed to be duly given on the date mailed if sent by registered mail, return receipt requested, as follows:

MELLON BANK, N.A.  
[Insert Contact and Address]

NQF COMPANIES  
as set forth in Schedule A

or at such other address as the Trustee or NQF Companies may have furnished to the other party in writing by registered mail, return receipt requested.

**Section 4.03. Governing Law.** Each Nonqualified Fund has been established pursuant to this Agreement in accordance with the requirements for trusts under the laws of the Commonwealth of Pennsylvania and this Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

**Section 4.04. Counterparts.** This Agreement may be executed in several counterparts, and all such counterparts executed and delivered, each an original, shall constitute but one and the same instrument.

**Section 4.05. Contractual Income.** The Trustee shall credit the Nonqualified Funds with income and maturity proceeds on securities on the contractual payment date net of any taxes or upon actual receipt as agreed between the Trustee and the NQF Companies. To the extent the NQF Companies and the Trustee have agreed to credit income on the contractual payment date, the Trustee may reverse such accounting entries with back value to the contractual payment date if the Trustee reasonably believes that such amount will not be received by it.

**Section 4.06. Contractual Settlement.** The Trustee will attend to the settlement of securities transactions on the basis of either contractual settlement date accounting or actual settlement date accounting as agreed between the NQF Companies and the Trustee. To the extent the NQF Companies and the Trustee have agreed to settle certain securities transactions

on the basis of contractual settlement date accounting, the Trustee may reverse with back value to the contractual settlement date any entry relating to such contractual settlement where the related transaction remains unsettled according to established procedures.

**Section 4.07. Authority.** The NQF Companies and the Trustee hereby each represent and warrant to the other that it has full authority to enter into this Agreement upon the terms and conditions hereof and that the individual executing this Agreement on its behalf has the requisite authority to bind the NQF Companies and the Trustee to this Agreement.

**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 PEACH BOTTOM 1 NQ NQF, LLC**

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

**EXELON PEACH BOTTOM 2 NQ NQF, LLC**

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

**EXELON PEACH BOTTOM 3 NQ NQF, LLC**

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

**EXELON SALEM 1 NQ NQF, LLC**

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

**EXELON SALEM 2 NQ NQF, LLC**

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

**EXELON LIMERICK 1 NQ NQE, LLC**

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

Name:

Title:

**EXELON LIMERICK 2 NQ NQE, LLC**

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

Name:

Title:

**EXELON GENERATION COMPANY, LLC**

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

Name:

Title:

**MELLON BANK, N.A.**

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

Name:

Title:

## Schedule A

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

| <u>Unit</u>         | <u>Nonqualified Fund</u>                        | <u>NQF Company</u>            |
|---------------------|---|-------------------------------|
| Peach Bottom Unit 1 | Exelon Peach Bottom Unit 1<br>Nonqualified Fund | Exelon Peach Bottom 1 NQ, LLC |
| Peach Bottom Unit 2 | Exelon Peach Bottom Unit 2<br>Nonqualified Fund | Exelon Peach Bottom 2 NQ, LLC |
| Peach Bottom Unit 3 | Exelon Peach Bottom Unit 3<br>Nonqualified Fund | Exelon Peach Bottom 3 NQ, LLC |
| Salem Unit 1        | Exelon Salem Unit 1<br>Nonqualified Fund        | Exelon Salem 1 NQ, LLC        |
| Salem Unit 2        | Exelon Salem Unit 2<br>Nonqualified Fund        | Exelon Salem 2 NQ, LLC        |
| Limerick Unit 1     | Exelon Limerick Unit 1<br>Nonqualified Fund     | Exelon Limerick 1 NQ, LLC     |
| Limerick Unit 2     | Exelon Limerick Unit 2<br>Nonqualified Fund     | Exelon Limerick 2 NQ, LLC     |

The address of each of the NQF Companies is as follows: [Insert Nevada Address]

## Schedule B

The following is a list of the Prior Agreements:

1. Nuclear Decommissioning Trust Agreement -- Peach Bottom Unit 1, dated as of February 22, 1994, as amended.
2. Nuclear Decommissioning Trust Agreement -- Peach Bottom Unit 2, dated as of February 22, 1994, as amended and restated.
3. Nuclear Decommissioning Trust Agreement -- Peach Bottom Unit 3, dated as of February 22, 1994, as amended and restated.
4. Nuclear Decommissioning Trust Agreement -- Salem Unit 1, dated as of February 22, 1994, as amended.
5. Nuclear Decommissioning Trust Agreement -- Salem Unit 2, dated as of February 22, 1994, as amended.
6. Nuclear Decommissioning Trust Agreement -- Limerick Unit 1, dated as of February 22, 1994, as amended.
7. Nuclear Decommissioning Trust Agreement -- Limerick Unit 2, dated as of February 22, 1994, as amended.

### ----- COMPARISON OF HEADERS -----

-HEADER 1-

-HEADER 2-  
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-HEADER 3-  
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-HEADER 4-  
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-HEADER 5-  
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-HEADER 6-  
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----- COMPARISON OF FOOTERS -----

-FOOTER 1-

-FOOTER 2-

- 6 -

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-FOOTER 6-

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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.

[2:9 2:9] Changed "TRUSTS" to "FUNDS"  
[2:10 2:10] Changed "Trusts" to "Funds"  
[3:1 3:1] Changed "Trusts" to "Funds"  
[5:3 5:3] Changed "NQ" to "NQF"  
[5:7 5:7] Changed "NQ" to "NQF"  
[5:11 5:11] Changed "NQ" to "NQF"  
[5:15 5:15] Changed "NQ" to "NQF"  
[5:19 5:19] Changed "NQ" to "NQF"  
[7:1 7:1] Changed "NQ" to "NQF"  
[7:5 7:5] Changed "NQ" to "NQF"

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

[2 2] Changed "3.009900.0011" to "4.009900.0011"  
[3 3] Changed "3.009900.0011" to "4.009900.0011"  
[5 5] Changed "3.009900.0011" to "4.009900.0011"



**AMENDED AND RESTATED  
NONQUALIFIED  
NUCLEAR DECOMMISSIONING  
MASTER TRUST AGREEMENT**

**THIS AMENDED AND RESTATED NONQUALIFIED NUCLEAR DECOMMISSIONING MASTER TRUST AGREEMENT** (the "Agreement"), dated as of \_\_\_\_\_, 2003 by and between Exelon Generation Company, LLC, ("ExGen"), a limited liability company organized under the laws of the State of Delaware and having a principal office at 300 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 MELLON BANK, N.A., 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 NQF Companies 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**, PECO Energy Company ("PECO") entered into certain Trust Agreements with the Trustee described in Schedule B (the "Prior Agreements") which were established for the purpose of holding the decommissioning funds established by PECO for each Unit in which PECO owned an interest in whole or in part; and

**WHEREAS**, by Assignment dated January 10, 2001, PECO assigned its interests in the Units and its interests, rights, duties and obligations under the Prior Agreements to ExGen and ExGen agreed to accept such interests in the Units and such interests, rights, duties and obligations under the Prior Agreements; and

**WHEREAS**, by agreement dated as of January 10, 2001, ExGen and the Trustee entered into an amended and restated trust agreement (the "Amended and Restated Agreement") which amended the Prior Agreements and consolidated the separate trusts established by the Prior Agreements into a master trust; and

**WHEREAS**, the 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 "Qualified Funds") under section 468A of the Internal Revenue Code of 1986, as amended (the "Code") and nonqualified nuclear decommissioning trusts (the "Nonqualified Funds"), the Qualified Funds and the Nonqualified Funds may hereinafter be referred to collectively as the "Funds"; 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 Nonqualified Funds, 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 Qualified Funds, 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 Agreement so that it is restated into two separate agreements, one with respect to the Nonqualified Funds and one with respect to the Qualified Funds; and

**WHEREAS**, ExGen, the NQF Companies and the Trustee wish that this Agreement shall amend and restate the Amended and Restated Agreement with respect to the Nonqualified 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 and the NQF Companies wish that the Trustee continue to serve as trustee of the Nonqualified Funds.

**NOW, THEREFORE**, to provide for the maintenance of the Nonqualified Funds, the making of payments therefrom and the performance of covenants by the NQF Companies and the Trustee set forth herein, ExGen has previously sold, assigned, set over and pledged unto the Trustee, and to the Trustee's successors and its assigns, and the Trustee has acknowledged receipt of the funds representing the initial funding of and any additional contributions to the Nonqualified Funds.

**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 FUNDS**

**Section 1.01. Establishment of the Funds.** The Trustee shall hold a separate Nonqualified Fund for each Unit. The Nonqualified Funds for each Unit shall be as identified in Schedule A, with the NQF Company as identified in Schedule A as owner of each Nonqualified Fund. The Nonqualified Funds shall be maintained separately at all times in the United States pursuant to this Agreement. The Trustee shall maintain such records as are necessary to reflect each Nonqualified Fund separately on its books from each other Nonqualified Fund, and shall

create and maintain such subaccounts within each Nonqualified Fund as the relevant NQF Company shall direct. In performing its duties under this Agreement, the Trustee shall exercise the same care and diligence that it would devote to its own property in like circumstances.

**Section 1.02. Purposes of the Funds.** The Nonqualified Funds are established for the exclusive purpose of providing funds for the decommissioning of the Units. The Nonqualified Fund 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 Qualified Fund for that Unit, pursuant to Section 2 of the Special Terms contained in Exhibit A to the Master Terms. None of the assets of the Nonqualified Funds 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 Nonqualified Funds 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. Master Terms.** In addition to the terms set forth in this Agreement, the Nonqualified Funds shall also be governed by the provisions of the Master Terms. The terms of this Agreement, to the extent construed to be in conflict with the Master Terms, 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 pursuant to the terms of Article II of the Master Terms, the Trustee shall distribute all or a portion of the Nonqualified Fund of which such NQF Company is an owner to such NQF Company, Consolidation or a third party.

## **ARTICLE III** **TERMINATION**

**Section 3.01. Termination.** A NQF Company may terminate all or a portion of the Nonqualified Fund of which such NQF Company is an owner, upon written notice to the Trustee, in accordance with Article VI of the Master Terms.

**Section 3.02. Distribution of Trust Upon Termination.** Upon termination of all or a portion of a Nonqualified Fund, the Trustee shall assist in liquidating assets of such trust (if so directed by the relevant NQF Company), and distributing the then-existing assets of the Fund (either the liquidation proceeds or the Fund assets-in-kind, including accrued, accumulated and undistributed net income) less final Fund administration expenses (including accrued taxes paid

directly to a taxing authority) to such NQF Company, provided, however, that no such distribution shall be made unless the Trustee has received an opinion of legal counsel of such NQF Company stating that such distribution does not violate any Order, and that the requirements of Article VI of the Master Terms have been met.

#### **ARTICLE IV** **Miscellaneous**

**Section 4.01. Binding Agreement.** All covenants and agreements in this Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their successors and assigns.

**Section 4.02. Notices.** All notices and communications hereunder shall be in writing and shall be deemed to be duly given on the date mailed if sent by registered mail, return receipt requested, as follows:

MELLON BANK, N.A.  
[Insert Contact and Address]

NQF COMPANIES  
as set forth in Schedule A

or at such other address as the Trustee or NQF Companies may have furnished to the other party in writing by registered mail, return receipt requested.

**Section 4.03. Governing Law.** Each Nonqualified Fund has been established pursuant to this Agreement in accordance with the requirements for trusts under the laws of the Commonwealth of Pennsylvania and this Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

**Section 4.04. Counterparts.** This Agreement may be executed in several counterparts, and all such counterparts executed and delivered, each an original, shall constitute but one and the same instrument.

**Section 4.05. Contractual Income.** The Trustee shall credit the Nonqualified Funds with income and maturity proceeds on securities on the contractual payment date net of any taxes or upon actual receipt as agreed between the Trustee and the NQF Companies. To the extent the NQF Companies and the Trustee have agreed to credit income on the contractual payment date, the Trustee may reverse such accounting entries with back value to the contractual payment date if the Trustee reasonably believes that such amount will not be received by it.

**Section 4.06. Contractual Settlement.** The Trustee will attend to the settlement of securities transactions on the basis of either contractual settlement date accounting or actual settlement date accounting as agreed between the NQF Companies and the Trustee. To the extent the NQF Companies and the Trustee have agreed to settle certain securities transactions

on the basis of contractual settlement date accounting, the Trustee may reverse with back value to the contractual settlement date any entry relating to such contractual settlement where the related transaction remains unsettled according to established procedures.

**Section 4.07. Authority.** The NQF Companies and the Trustee hereby each represent and warrant to the other that it has full authority to enter into this Agreement upon the terms and conditions hereof and that the individual executing this Agreement on its behalf has the requisite authority to bind the NQF Companies and the Trustee to this Agreement.

**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 PEACH BOTTOM 1 NQF, LLC**

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

**EXELON PEACH BOTTOM 2 NQF, LLC**

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

**EXELON PEACH BOTTOM 3 NQF, LLC**

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

**EXELON SALEM 1 NQF, LLC**

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

**EXELON SALEM 2 NQF, LLC**

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

**EXELON LIMERICK 1 NQF, LLC**

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

Name:

Title:

**EXELON LIMERICK 2 NQF, LLC**

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

Name:

Title:

**EXELON GENERATION COMPANY, LLC**

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

Name:

Title:

**MELLON BANK, N.A.**

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

Name:

Title:

## Schedule A

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

| <u>Unit</u>         | <u>Nonqualified Fund</u>                        | <u>NQF Company</u>            |
|---------------------|---|-------------------------------|
| Peach Bottom Unit 1 | Exelon Peach Bottom Unit 1<br>Nonqualified Fund | Exelon Peach Bottom 1 NQ, LLC |
| Peach Bottom Unit 2 | Exelon Peach Bottom Unit 2<br>Nonqualified Fund | Exelon Peach Bottom 2 NQ, LLC |
| Peach Bottom Unit 3 | Exelon Peach Bottom Unit 3<br>Nonqualified Fund | Exelon Peach Bottom 3 NQ, LLC |
| Salem Unit 1        | Exelon Salem Unit 1<br>Nonqualified Fund        | Exelon Salem 1 NQ, LLC        |
| Salem Unit 2        | Exelon Salem Unit 2<br>Nonqualified Fund        | Exelon Salem 2 NQ, LLC        |
| Limerick Unit 1     | Exelon Limerick Unit 1<br>Nonqualified Fund     | Exelon Limerick 1 NQ, LLC     |
| Limerick Unit 2     | Exelon Limerick Unit 2<br>Nonqualified Fund     | Exelon Limerick 2 NQ, LLC     |

The address of each of the NQF Companies is as follows: [Insert Nevada Address]

## **Schedule B**

The following is a list of the Prior Agreements:

1. Nuclear Decommissioning Trust Agreement -- Peach Bottom Unit 1, dated as of February 22, 1994, as amended.
2. Nuclear Decommissioning Trust Agreement -- Peach Bottom Unit 2, dated as of February 22, 1994, as amended and restated.
3. Nuclear Decommissioning Trust Agreement -- Peach Bottom Unit 3, dated as of February 22, 1994, as amended and restated.
4. Nuclear Decommissioning Trust Agreement -- Salem Unit 1, dated as of February 22, 1994, as amended.
5. Nuclear Decommissioning Trust Agreement -- Salem Unit 2, dated as of February 22, 1994, as amended.
6. Nuclear Decommissioning Trust Agreement -- Limerick Unit 1, dated as of February 22, 1994, as amended.
7. Nuclear Decommissioning Trust Agreement -- Limerick Unit 2, dated as of February 22, 1994, as amended.



- 3. Revised Draft Amended and Restated Qualified Nuclear Decommissioning Master Trust Agreement (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\_767162\_2  
and revised document: C:\WINDOWS\TEMP\WDC99\_767162\_3

CompareRite found 2 change(s) in the text  
CompareRite found 3 change(s) in the notes

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

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

**THIS AMENDED AND RESTATED QUALIFIED NUCLEAR DECOMMISSIONING MASTER TRUST AGREEMENT** (the "Agreement"), dated as of \_\_\_\_\_, 2003 by and between Exelon Generation Company, LLC ("ExGen"), a limited liability company organized under the law of the State of Delaware and having a principal office at 200 Exelon Way, Kennett Square, Pennsylvania 19348, Exelon Generation Consolidation Company, LLC ("Consolidation"), a limited liability company duly organized and existing under the laws of the State of Nevada, having its principal office at \_\_\_\_\_, Nevada [zip], and MELLON BANK, N.A., 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 Consolidation 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**, PECO Energy Company ("PECO") entered into certain Trust Agreements with the Trustee, described in Schedule B ("the Prior Agreements") which were established for the purpose of holding the decommissioning funds established by PECO for each Unit in which PECO owned an interest in whole or in part; and

**WHEREAS**, by Assignment dated January 10, 2001 PECO assigned its interests in the Units and its interests, rights, duties and obligations under the Prior Agreements to ExGen and ExGen agreed to accept such interests, rights, duties and obligations under the Prior Agreements; and

**WHEREAS**, by agreement dated as of January 10, 2001, ExGen and the Trustee entered into an amended and restated trust agreement (the "Amended and Restated Agreement") which amended the Prior Agreements and consolidated the separate trusts established by the Prior Agreements into a master trust; and

**WHEREAS**, the 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 "Qualified Funds") under section 468A of the Internal Revenue Code of 1986, as amended (the "Code") and nonqualified nuclear decommissioning funds (the "Nonqualified Funds"), the Qualified

Funds and the Nonqualified Funds may hereinafter be referred to collectively as the "Funds"; and

**WHEREAS**, pursuant to certain assignments ExGen wishes to transfer to certain limited liability companies duly organized and existing under the laws of the State of Nevada (the "NQF Companies") its interests, rights, duties and obligations under the Amended and Restated Agreement in the Nonqualified Funds, 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 its interest, rights, duties and obligations under the Amended and Restated Agreement in the Qualified Funds, 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 Agreement so that it is restated into two separate agreements, one with respect to the Nonqualified funds and one with respect to the Qualified Funds; and

**WHEREAS**, ExGen, Consolidation and the Trustee wish that this Agreement shall amend and restate the Amended and Restated Agreement with respect to the Qualified Funds 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 and Consolidation wish that the Trustee continue to serve as Trustee of the Qualified Funds; and

**WHEREAS**, the execution and delivery of this Agreement have been duly authorized by ExGen, Consolidation and the Trustee and all things necessary to make this Agreement a valid and binding agreement by Consolidation and the Trustee have been done.

**NOW, THEREFORE**, to provide for the maintenance of the Qualified Funds and the making of payments therefrom and the performance of the covenants by Consolidation and the Trustee set forth herein, ExGen has previously sold, assigned, transferred, set over and pledged unto the Trustee, and to the Trustee's successors and assigns, and the Trustee has acknowledged receipt of the funds representing the initial funding of and any additional contributions to the Qualified Funds.

**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 shall hold a separate Qualified Fund for each Unit. The Qualified Funds for each Unit shall be as identified in Schedule A. The Qualified Funds shall be maintained separately at all times in the United States pursuant to this Agreement. Consolidation intends that the Qualified Funds shall qualify as nuclear decommissioning reserve funds under section 468A of the Code. The assets of the Qualified Funds may be used only in a manner authorized by section 468A of the Code and the Treasury Regulations thereunder and this Agreement cannot be amended to violate section 468A of the Code or the Treasury Regulations thereunder. The Trustee shall maintain such records as are necessary to reflect each Qualified Fund separately on its books from each other Qualified Fund and shall create and maintain such subaccounts within each Qualified Fund as Consolidation shall direct. In performing its duties under this agreement, the Trustee shall exercise the same care and diligence that it would devote to its own property in like circumstances.

**Section 1.02. Purposes of the Funds.** 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 Section 2 of the Special Terms contained in Exhibit A to 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 Qualified Funds shall be transferred or contributed by Consolidation (or by others approved in writing by Consolidation) from time to time. Cash contributions for each Unit shall be allocated to the Qualified Funds as Consolidation designates in writing at the time of payment.

**Section 1.04. Master Terms.** In addition to the terms set forth in this Agreement, the Qualified Funds shall also be governed by the provisions of the Master Terms. The terms of this Agreement, to the extent construed to be in conflict with the Master Terms, 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 pursuant to the terms of Article II of the Master Terms, the Trustee shall distribute all or a portion of the Qualified Trust to Consolidation, an NQF, Company or a third party.

**ARTICLE III  
TERMINATION**

**Section 3.01. Termination.** Consolidation may terminate all or a portion of the Qualified Funds, upon written notice to the Trustee, in accordance with Article VI of the Master Terms.

**Section 3.02. Distribution of Trust Upon Termination.** Upon termination of all or a portion of a Qualified Fund, the Trustee shall assist in liquidating assets of such trust, and distributing the then-existing assets of the Qualified Fund (either the liquidation proceeds or the Fund assets-in-kind, including accrued, accumulated and undistributed net income) less final Fund administration expenses (including accrued taxes paid directly to a taxing authority) to Consolidation, provided, however, that no such distribution shall be made unless the Trustee has received an opinion of legal counsel of Consolidation stating that such distribution does not violate any Order, and that the requirements of Article VI of the Master Terms have been met

**ARTICLE IV  
Miscellaneous**

**Section 4.01. Binding Agreement.** All covenants and agreements in this Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their successors and assigns.

**Section 4.02. Notices.** All notices and communications hereunder shall be in writing and shall be deemed to be duly given on the date mailed if sent by registered mail, return receipt requested, as follows:

MELLON BANK, N.A.  
[Insert Contact and Address]

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

or at such other address as the Trustee or Consolidation may have furnished to the other party in writing by registered mail, return receipt requested.

**Section 4.03. Governing Law.** Each Qualified Fund has been established pursuant to this Agreement in accordance with the requirements for trusts under the laws

of the Commonwealth of Pennsylvania and this Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

**Section 4.04. Counterparts.** This Agreement may be executed in several counterparts, and all such counterparts executed and delivered, each an original, shall constitute but one and the same instrument.

**Section 4.05. Contractual Income.** The Trustee shall credit the Qualified Funds with income and maturity proceeds on securities on the contractual payment date net of any taxes or upon actual receipt as agreed between the Trustee and Consolidation. To the extent Consolidation and the Trustee have agreed to credit income on the contractual payment date, the Trustee may reverse such accounting entries with back value to the contractual payment date if the Trustee reasonably believes that such amount will not be received by it.

**Section 4.06. Contractual Settlement.** The Trustee will attend to the settlement of securities transactions on the basis of either contractual settlement date accounting or actual settlement date accounting as agreed between Consolidation and the Trustee. To the extent Consolidation and the Trustee have agreed to settle certain securities transactions on the basis of contractual settlement date accounting, the Trustee may reverse with back value to the contractual settlement date any entry relating to such contractual settlement where the related transaction remains unsettled according to established procedures.

**Section 4.07. Authority.** Consolidation and the Trustee hereby each represent and warrant to the other that it has full authority to enter into this Agreement upon the terms and conditions hereof and that the individual executing this Agreement on its behalf has the requisite authority to bind Consolidation and the Trustee to this Agreement.

**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:

**MELLON BANK, N.A.**

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



## Schedule A

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

| <u>Units</u>        | <u>Funds</u>                              |
|---------------------|---|
| Peach Bottom Unit 2 | Exelon Peach Bottom Unit 2 Qualified Fund |
| Peach Bottom Unit 3 | Exelon Peach Bottom Unit 3 Qualified Fund |
| Salem Unit 1        | Exelon Salem Unit 1 Qualified Fund        |
| Salem Unit 2        | Exelon Salem Unit 2 Qualified Fund        |
| Limerick Unit 1     | Exelon Limerick Unit 1 Qualified Fund     |
| Limerick Unit 2     | Exelon Limerick Unit 2 Qualified Fund     |

## Schedule B

The following is a list of the Prior Agreements:

1. Nuclear Decommissioning Trust Agreement -- Peach Bottom Unit 1, dated as of February 22, 1994, as amended.
2. Nuclear Decommissioning Trust Agreement -- Peach Bottom Unit 2, dated as of February 22, 1994, as amended and restated.
3. Nuclear Decommissioning Trust Agreement -- Peach Bottom Unit 3, dated as of February 22, 1994, as amended and restated.
4. Nuclear Decommissioning Trust Agreement -- Salem Unit 1, dated as of February 22, 1994, as amended.
5. Nuclear Decommissioning Trust Agreement -- Salem Unit 2, dated as of February 22, 1994, as amended.
6. Nuclear Decommissioning Trust Agreement -- Limerick Unit 1, dated as of February 22, 1994, as amended.
7. Nuclear Decommissioning Trust Agreement -- Limerick Unit 2, dated as of February 22, 1994, as amended.

----- COMPARISON OF HEADERS -----

-HEADER 1-

-HEADER 2-  
Header Discontinued

-HEADER 3-  
Header Discontinued

----- COMPARISON OF FOOTERS -----

-FOOTER 1-

-FOOTER 2-

- 64 -

WDC99 767162-~~2.009900.0011~~ 3.009900.0011

-FOOTER 3-

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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.

[3:9 3:9] Changed "Consolidation an NQF, Company" to "Consolidation, an NQF Company"

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

[2 2] Changed "6 " to "4 "

[2 2] Changed "2.009900.0011" to "3.009900.0011"

[3 3] Changed "2.009900.0011" to "3.009900.0011"

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

**THIS AMENDED AND RESTATED QUALIFIED NUCLEAR DECOMMISSIONING MASTER TRUST AGREEMENT** (the "Agreement"), dated as of \_\_\_\_\_, 2003 by and between Exelon Generation Company, LLC ("ExGen"), a limited liability company organized under the law of the State of Delaware and having a principal office at 200 Exelon Way, Kennett Square, Pennsylvania 19348, Exelon Generation Consolidation Company, LLC ("Consolidation"), a limited liability company duly organized and existing under the laws of the State of Nevada, having its principal office at \_\_\_\_\_, Nevada [zip], and MELLON BANK, N.A., 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 Consolidation 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**, PECO Energy Company ("PECO") entered into certain Trust Agreements with the Trustee, described in Schedule B ("the Prior Agreements") which were established for the purpose of holding the decommissioning funds established by PECO for each Unit in which PECO owned an interest in whole or in part; and

**WHEREAS**, by Assignment dated January 10, 2001 PECO assigned its interests in the Units and its interests, rights, duties and obligations under the Prior Agreements to ExGen and ExGen agreed to accept such interests, rights, duties and obligations under the Prior Agreements; and

**WHEREAS**, by agreement dated as of January 10, 2001, ExGen and the Trustee entered into an amended and restated trust agreement (the "Amended and Restated Agreement") which amended the Prior Agreements and consolidated the separate trusts established by the Prior Agreements into a master trust; and

**WHEREAS**, the 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 "Qualified Funds") under section 468A of the Internal Revenue Code of 1986, as amended (the "Code") and nonqualified nuclear decommissioning funds (the "Nonqualified Funds"), the Qualified Funds and the Nonqualified Funds may hereinafter be referred to collectively as the "Funds"; and

**WHEREAS**, pursuant to certain assignments ExGen wishes to transfer to certain limited liability companies duly organized and existing under the laws of the State of Nevada (the "NQF Companies") its interests, rights, duties and obligations under the Amended and Restated Agreement in the Nonqualified Funds, 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 its interest, rights, duties and obligations under the Amended and Restated Agreement in the Qualified Funds, 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 Agreement so that it is restated into two separate agreements, one with respect to the Nonqualified funds and one with respect to the Qualified Funds; and

**WHEREAS**, ExGen, Consolidation and the Trustee wish that this Agreement shall amend and restate the Amended and Restated Agreement with respect to the Qualified Funds 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 and Consolidation wish that the Trustee continue to serve as Trustee of the Qualified Funds; and

**WHEREAS**, the execution and delivery of this Agreement have been duly authorized by ExGen, Consolidation and the Trustee and all things necessary to make this Agreement a valid and binding agreement by Consolidation and the Trustee have been done.

**NOW, THEREFORE**, to provide for the maintenance of the Qualified Funds and the making of payments therefrom and the performance of the covenants by Consolidation and the Trustee set forth herein, ExGen has previously sold, assigned, transferred, set over and pledged unto the Trustee, and to the Trustee's successors and assigns, and the Trustee has acknowledged receipt of the funds representing the initial funding of and any additional contributions to the Qualified Funds.

**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 shall hold a separate Qualified Fund for each Unit. The Qualified Funds for each Unit shall be as identified in Schedule A. The Qualified Funds shall be maintained separately at all times in the United States pursuant to this Agreement. Consolidation intends that the Qualified Funds shall qualify as nuclear decommissioning reserve funds under section 468A of the Code. The assets of the Qualified Funds may be used only in a manner authorized by section 468A of the Code and the Treasury Regulations thereunder and this Agreement cannot be amended to violate section 468A of the Code or the Treasury Regulations thereunder. The Trustee shall maintain such records as are necessary to reflect each Qualified Fund separately on its books from each other Qualified Fund and shall create and maintain such subaccounts within each Qualified Fund as Consolidation shall direct. In performing its duties under this agreement, the Trustee shall exercise the same care and diligence that it would devote to its own property in like circumstances.

**Section 1.02. Purposes of the Funds.** 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 Section 2 of the Special Terms contained in Exhibit A to 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 Qualified Funds shall be transferred or contributed by Consolidation (or by others approved in writing by Consolidation) from time to time. Cash contributions for each Unit shall be allocated to the Qualified Funds as Consolidation designates in writing at the time of payment.

**Section 1.04. Master Terms.** In addition to the terms set forth in this Agreement, the Qualified Funds shall also be governed by the provisions of the Master Terms. The terms of this Agreement, to the extent construed to be in conflict with the Master Terms, 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 pursuant to the terms of Article II of the Master Terms, the Trustee

shall distribute all or a portion of the Qualified Trust to Consolidation, an NQF Company or a third party.

**ARTICLE III**  
**TERMINATION**

**Section 3.01. Termination.** Consolidation may terminate all or a portion of the Qualified Funds, upon written notice to the Trustee, in accordance with Article VI of the Master Terms.

**Section 3.02. Distribution of Trust Upon Termination.** Upon termination of all or a portion of a Qualified Fund, the Trustee shall assist in liquidating assets of such trust, and distributing the then-existing assets of the Qualified Fund (either the liquidation proceeds or the Fund assets-in-kind, including accrued, accumulated and undistributed net income) less final Fund administration expenses (including accrued taxes paid directly to a taxing authority) to Consolidation, provided, however, that no such distribution shall be made unless the Trustee has received an opinion of legal counsel of Consolidation stating that such distribution does not violate any Order, and that the requirements of Article VI of the Master Terms have been met

**ARTICLE IV**  
**Miscellaneous**

**Section 4.01. Binding Agreement.** All covenants and agreements in this Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their successors and assigns.

**Section 4.02. Notices.** All notices and communications hereunder shall be in writing and shall be deemed to be duly given on the date mailed if sent by registered mail, return receipt requested, as follows:

MELLON BANK, N.A.  
[Insert Contact and Address]

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

or at such other address as the Trustee or Consolidation may have furnished to the other party in writing by registered mail, return receipt requested.

**Section 4.03. Governing Law.** Each Qualified Fund has been established pursuant to this Agreement in accordance with the requirements for trusts under the laws of the Commonwealth of Pennsylvania and this Agreement shall be governed by and



construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

**Section 4.04. Counterparts.** This Agreement may be executed in several counterparts, and all such counterparts executed and delivered, each an original, shall constitute but one and the same instrument.

**Section 4.05. Contractual Income.** The Trustee shall credit the Qualified Funds with income and maturity proceeds on securities on the contractual payment date net of any taxes or upon actual receipt as agreed between the Trustee and Consolidation. To the extent Consolidation and the Trustee have agreed to credit income on the contractual payment date, the Trustee may reverse such accounting entries with back value to the contractual payment date if the Trustee reasonably believes that such amount will not be received by it.

**Section 4.06. Contractual Settlement.** The Trustee will attend to the settlement of securities transactions on the basis of either contractual settlement date accounting or actual settlement date accounting as agreed between Consolidation and the Trustee. To the extent Consolidation and the Trustee have agreed to settle certain securities transactions on the basis of contractual settlement date accounting, the Trustee may reverse with back value to the contractual settlement date any entry relating to such contractual settlement where the related transaction remains unsettled according to established procedures.

**Section 4.07. Authority.** Consolidation and the Trustee hereby each represent and warrant to the other that it has full authority to enter into this Agreement upon the terms and conditions hereof and that the individual executing this Agreement on its behalf has the requisite authority to bind Consolidation and the Trustee to this Agreement.

**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:

**MELLON BANK, N.A.**

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

## Schedule A

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

| <u>Units</u>        | <u>Funds</u>                              |
|---------------------|---|
| Peach Bottom Unit 2 | Exelon Peach Bottom Unit 2 Qualified Fund |
| Peach Bottom Unit 3 | Exelon Peach Bottom Unit 3 Qualified Fund |
| Salem Unit 1        | Exelon Salem Unit 1 Qualified Fund        |
| Salem Unit 2        | Exelon Salem Unit 2 Qualified Fund        |
| Limerick Unit 1     | Exelon Limerick Unit 1 Qualified Fund     |
| Limerick Unit 2     | Exelon Limerick Unit 2 Qualified Fund     |

## Schedule B

The following is a list of the Prior Agreements:

1. Nuclear Decommissioning Trust Agreement -- Peach Bottom Unit 1, dated as of February 22, 1994, as amended.
2. Nuclear Decommissioning Trust Agreement -- Peach Bottom Unit 2, dated as of February 22, 1994, as amended and restated.
3. Nuclear Decommissioning Trust Agreement -- Peach Bottom Unit 3, dated as of February 22, 1994, as amended and restated.
4. Nuclear Decommissioning Trust Agreement -- Salem Unit 1, dated as of February 22, 1994, as amended.
5. Nuclear Decommissioning Trust Agreement -- Salem Unit 2, dated as of February 22, 1994, as amended.
6. Nuclear Decommissioning Trust Agreement -- Limerick Unit 1, dated as of February 22, 1994, as amended.
7. Nuclear Decommissioning Trust Agreement -- Limerick Unit 2, dated as of February 22, 1994, as amended.

**ATTACHMENT D**

**REVISED DRAFT AMENDED AND RESTATED MASTER TRUST  
AGREEMENTS WITH THE NORTHERN TRUST COMPANY**

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

- 1. Revised Draft Master Terms for Trust Agreements (With Recent Comments Incorporated) (The Northern Trust Company)**

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and revised document: C:\WINDOWS\TEMP\WDC99\_767469\_4

CompareRite found 7 change(s) in the text

CompareRite found 3 change(s) in the notes

Deletions appear as Overstrike text

Additions appear as Bold-Underline text

## MASTER TERMS FOR TRUST AGREEMENTS

The following Master Terms for Trust Agreements (the “Master Terms”) shall apply for purposes of the Amended and Restated Qualified Nuclear Decommissioning Master Trust Agreement by and between AmerGen Energy Company, LLC (“AmerGen”), AmerGen Consolidation, LLC (“Consolidation”) and Mellon Bank, N.A. as Trustee (the “Trustee”), and for purposes of the Amended and Restated Nonqualified Nuclear Decommissioning Master Trust Agreement by and between AmerGen, the limited liability companies identified on Schedule A of such agreement (the “NQF Companies”) and the Trustee, collectively the “Trust Agreements”.

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

### ARTICLE I [Intentionally Deleted]

### ARTICLE II Payments by the Trustee

**Section 2.01. Use of Assets.** The assets of each Fund shall be used exclusively (a) to satisfy, in whole or in part, any expenses or liabilities incurred with respect to the decommissioning of that Fund’s Unit, including expenses incurred in connection with the preparation for decommissioning of that Unit, such as engineering and other planning expenses, and all expenses incurred after the actual decommissioning occurs, such as physical security and radiation monitoring expenses (the “Decommissioning Costs”), (b) to pay the administrative costs and other incidental expenses of each Fund, and (c) to invest in publicly-traded securities and investments (including common trust funds) as directed by the investment manager(s) pursuant to Section 3.02(a) or the Trustee pursuant to Section 3.02(b), except that all assets of the Qualified Funds must be invested in Permissible Assets as defined in the Special Terms. ~~Except for investments tied~~ **With respect to market indexes or other non-nuclear sector mutual funds, (1) the assets of the Funds shall not be invested, investments in the securities or other obligations of AmerGen Energy Company, LLC, PECO Energy Company, British Energy, Inc., GPU, Inc., or affiliates thereof, or their successors or assigns ; and (2) are prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds,** investments in any entity owning one or more nuclear power plants are prohibited. Use of the assets of the Qualified Funds shall be further limited by the provisions of the Special Terms. The assets of the Funds shall be used, in the first instance, to pay the expenses related to the decommissioning of that Fund’s Unit, as defined by the United States Nuclear Regulatory Commission (“NRC”) in its regulations and issuances, and as provided in the NRC issued license to operate each Unit and any amendments thereto. Notice to the NRC of proposed disbursements or payments from each Fund will be provided in accordance with the notice provisions of Section 2.02(b). 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 and accounted for in such notice.

**Section 2.02. Certification for Decommissioning Costs.**

(a) If assets of a Fund are required to satisfy Decommissioning Costs of that Fund's Unit, Consolidation or the appropriate NQF Company, as the case may be, shall present a certificate substantially in the form attached hereto as Exhibit B-1 (in the case of Consolidation) or B-2 (in the case of the NQF Companies) to the Trustee signed its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer, ~~requesting payment from its Fund.~~ Any certificate requesting payment by the Trustee to a third party or to Consolidation or the appropriate NQF Company from a Fund for Decommissioning Costs shall include the following:

(1) a statement of the amount of the payment to be made from the Fund and whether the payment is to be made from the Nonqualified Fund, the Qualified Fund or in part from both Funds;

(2) a statement that the payment is requested to pay Decommissioning Costs which have been incurred, and if payment is to be made from the Qualified Fund, a statement that the Decommissioning Costs to be paid constitute Qualified Decommissioning Costs, as defined in the Special Terms;

(3) the nature of the Decommissioning Costs to be paid;

(4) the payee, which may be a third party, or may be Consolidation or the appropriate NQF Company in the case of reimbursement for payments previously made or expenses previously incurred by Consolidation or the appropriate NQF Company for Decommissioning Costs;

(5) a statement that the Decommissioning Costs for which payment is requested have not theretofore been paid out of the Funds; and

(6) a statement that any necessary authorizations of the NRC and/or any other governmental agencies having jurisdiction with respect to the decommissioning have been obtained.

(b) Except for disbursements of payments for administrative costs and other incidental expenses, no disbursements ~~of payments for decommissioning costs~~ from the Funds shall be made by the Trustee:

(1) unless the Trustee has first provided thirty (30) days' prior written notice of such disbursement or payment to the NRC Director, Office of Nuclear Reactor Regulation; and

(2) if the Trustee receives written notice of an objection from the NRC Director, Office of Nuclear Reactor Regulation during such thirty (30) day notice period, or if the Trustee receives such notice at any later time that is nevertheless prior to disbursement.

(c) The Trustee shall retain at least one copy of such certificates (including attachments) and related documents received by it pursuant to this Article II.

(d) Consolidation and the NQF Companies shall have the right to enforce payments from the Funds upon compliance with the procedures set forth in this Section 2.02.

**Section 2.03. Administrative Costs.** The Trustee shall pay, as directed by the appropriate NQF Company, the administrative costs and other incidental expenses of each Nonqualified Fund, including all federal, state, and local taxes, if any, imposed directly on the Nonqualified Fund or the income therefrom, legal expenses, accounting expenses, actuarial expenses and trustee expenses, from the assets of the respective Nonqualified Fund and shall pay, as directed by Consolidation, the administrative costs and other incidental expenses of each Qualified Fund, as defined in the Special Terms, from the assets of the respective Qualified Fund.

**Section 2.04. Payments between the Funds.** The Trustee shall make payments (i) from a Unit's Qualified Fund to that Unit's Nonqualified Fund provided such payments are in cash and are in accordance with Section 4 of the Special Terms or (ii) from a Unit's Nonqualified Fund to that Unit's Qualified Fund provided such payments are in cash and are in accordance with the contribution limitations set forth in Section 2 of the Special Terms, as the case may be, upon presentation by Consolidation and the appropriate NQF Company of a certificate substantially in the form of Exhibit C hereto executed by Consolidation or the appropriate NQF Company instructing the Trustee to make any such payments. The Trustee shall be fully protected in relying upon such certificate.

### **ARTICLE III** **Concerning the Trustee**

**Section 3.01. Authority of Trustee.** The Trustee shall have the authority and discretion to manage and control the Funds to the extent provided in the Trust Agreements and these Master Terms but does not guarantee the Funds in any manner against investment loss or depreciation in asset value or guarantee the adequacy of the Funds to satisfy the Decommissioning Costs. The Trustee shall not be liable for the making, retention or sale of any asset of a Qualified Fund which qualifies as a Permissible Asset, as defined in the Special Terms, nor shall the Trustee be responsible for any other loss to or diminution of the Funds, or for any other loss or damage which may result from the discharge of its duties hereunder except for any action not taken in good faith.

**Section 3.02. Investment of Funds.** a) Consolidation and the NQF Companies shall have the authority to appoint one or more investment managers who shall have the power to direct the Trustee in investing the assets of the Funds; provided, however, that the Trustee shall not follow any direction which would result in assets of the Qualified Funds being invested in assets other than Permissible Assets as defined in the Special Terms. Any such investment manager(s) or other person directing investments made in the Trusts shall adhere to the "Prudent Investor" standard as specified in 18 C.F.R. 35.32(a)(3) of the Federal Energy Regulatory Commission ("FERC") regulations (the "Prudent Investor Standard"). To the extent that Consolidation and/or the NQF Companies choose to exercise this authority, Consolidation and/or

the appropriate NQF Company or Companies shall so notify the Trustee and instruct the Trustee in writing to separate into a separate account those assets the investment of which will be directed by each investment manager. Consolidation and the appropriate NQF Company or Companies shall designate in writing the person or persons who are to represent any such investment manager in dealings with the Trustee, provided however, that AmerGen, 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 investment manager or the Trustee. Upon the separation of the assets in accordance with such 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 not be relieved of the responsibility of ensuring that assets of the Qualified Funds are invested solely in Permissible Assets, as defined in the Special Terms. The Trustee shall retain all other fiduciary duties with respect to assets the investment of which is directed by investment managers.

(a) Consolidation or the appropriate NQF Company or Companies shall notify the Trustee if the investment of assets of the Funds are not being directed by one or more investment managers under Section 3.02(a), and the Trustee shall hold, invest, and reinvest such assets as it in its sole discretion deems advisable, subject to the restrictions set forth herein for investment of the assets of the Qualified Funds and adherence to the Prudent Investor Standard; provided however, that in the event an investment manager terminates, or is terminated, Consolidation or the appropriate NQF Company or Companies shall use their best efforts to appoint an investment manager for those assets as soon as reasonably possible.

(b) Regardless of the person directing investments, any assets of the Qualified Funds shall be invested solely in Permissible Assets as defined in, and required by, the Special Terms, and shall be accumulated, invested, and reinvested in like manner. Upon the written consent of Consolidation, the assets of a Qualified Fund relating to a Unit may be pooled with the assets of any other Qualified Fund relating to any other Unit; provided that the book and tax allocations of the pooling arrangement are made in compliance with Code section 704 (and the Treasury Regulations thereunder) and provided further that such pooling arrangement elects to be classified as a partnership for federal income tax purposes.

(c) Notwithstanding any other provision of these Master Terms, with respect to the pooling of investments authorized by subparagraph (c) no part of any Fund's (or any subsequent holder's) interest in such pool, nor any right pertaining to such interest (including any right to substitute another entity for the Fund or for any subsequent holder, as holder of investments pooled pursuant to subparagraph (c)) may be sold, assigned, transferred or otherwise alienated or disposed of by any holder of an interest in the pool unless the written consent to the transfer of every other holder of interests in such pool is obtained in advance of any such transfer.

(d) Notwithstanding the provisions of subparagraph (d) of this Section, a Fund's investment in a pooled arrangement may be withdrawn from the pool (but not from the Trust Agreements, except as otherwise permitted by this Agreement) at any time upon 7 days written notice to the Trustee signed by its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer. If the Fund withdraws its entire interest in a pool, the pooled arrangement shall terminate 30 days after notice of final withdrawal has been given by any withdrawing Fund

unless a majority in interest of the remaining Funds give their written consent to continue the pool within such 30 day period. If the pooled arrangement terminates, each Fund's assets will be segregated into a separate account under the Trust Agreements, and no further commingling may occur for a period of at least one year after such termination.

(e) Subparagraphs (c), (d) and (e) apply to transfers of interests within, and withdrawals from, the pooling arrangement. Nothing within these sections shall be interpreted to permit or to limit transfer of interests in, or withdrawals from, a Fund, which transfers and withdrawals are governed by other provisions of these Master Terms. In addition, the provisions of subparagraphs (c), (d) and (e) shall not limit the Trustee's authority to invest in permissible common or collective trust funds.

**Section 3.03. Prohibition Against Self Dealing.** Notwithstanding any other provision in this Agreement, the Trustee shall not engage in any act of self dealing as defined in section 468A(e)(5) of the Code and Treasury Regulations § 1.468A-5(b) or any corresponding future law or Treasury Regulation.

**Section 3.04. Compensation.** The Trustee shall be entitled to receive out of the Funds reasonable compensation for services rendered by it, as well as expenses necessarily incurred by it in the execution of the Trusts hereunder, provided such compensation and expenses qualify as administrative costs and other incidental expenses of a Qualified Fund, as defined in the Special Terms, with respect to any payment of compensation and expenses from that Qualified Fund. Consolidation and the NQF Companies acknowledge that, as part of the Trustee's compensation, the Trustee will earn interest on balances, including disbursement balances and balances arising from purchase and sale transactions. If the Trustee advances cash or securities for any purpose, including the purchase or sale of foreign exchange or of contracts for foreign exchange, or in the event that the Trustee shall incur or be assessed taxes, interest, charges, expenses, assessments, or other liabilities in connection with the performance of these Master Terms, except such as may arise from its own negligent action, negligent failure to act, or willful misconduct, any property at any time held for the Funds or the Trust Agreements shall be security therefor and the Trustee shall be entitled to collect from the Funds sufficient cash for reimbursement, and if such cash is insufficient, dispose of the assets of Consolidation and the NQF Companies held under the Trust Agreements to the extent necessary to obtain reimbursement. To the extent the Trustee advances funds to the Funds for disbursements or to effect the settlement of purchase transactions, the Trustee shall be entitled to collect from the Funds either (i) with respect to domestic assets, an amount equal to what would have been earned on the sums advanced (an amount approximating the "federal funds" interest rate) or (ii) with respect to nondomestic assets, the rate applicable to the appropriate foreign market.

**Section 3.05. Books of Account.** The Trustee shall keep separate true and correct books of account with respect to each Fund, which books of account shall at all reasonable times be open to inspection by Consolidation and each of the NQF Companies or its duly appointed representatives. The Trustee shall, upon written request of Consolidation or the appropriate NQF Company, permit government agencies, such as the NRC or the Internal Revenue Service, to inspect the books of account of each Fund. The Trustee shall furnish to Consolidation and each of the NQF Companies on or about the tenth business day of each month a statement for each Fund showing, with respect to the preceding calendar month, the balance of assets on hand at the

beginning of such month, all receipts, investment transactions, and disbursements which took place during such month and the balance of assets on hand at the end of such month. The Trustee agrees to provide on a timely basis any information deemed necessary by Consolidation or the NQF Companies to file the federal, state and local tax returns of Consolidation and the NQF Companies.

**Section 3.06. Reliance on Documents.** The Trustee, upon receipt of documents furnished to it by Consolidation and any of the NQF Companies pursuant to the provisions of these Master Terms, shall examine the same to determine whether they conform to the requirements thereof. The Trustee acting in good faith may conclusively rely, as to the truth of statements and the correctness of opinions expressed, on any certificate or other documents conforming to the requirements of these Master Terms. If the Trustee in the administration of the Funds, shall deem it necessary or desirable that a matter be provided or established prior to taking or suffering any action hereunder, such matter (unless evidence in respect thereof is otherwise specifically prescribed hereunder) may be deemed by the Trustee to be conclusively provided or established by a certificate signed by the President or any Vice President of Consolidation or any of the NQF Companies, as the case may be, and delivered to the Trustee. The Trustee shall have no duty to inquire into the validity, accuracy or relevancy of any statement contained in any certificate or document nor the authorization of any party making such certificate or delivering such document, and the Trustee may rely and shall be protected in acting or refraining from acting upon any such written certificate or document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee shall not, however, be relieved of any obligation (a) to refrain from self-dealing as provided in Section 3.03 hereof; (b) to ensure that all assets of the Qualified Funds are invested solely in Permissible Assets as defined in the Special Terms; or (c) to adhere to the Prudent Investor Standard if acting as manager.

**Section 3.07. Liability and Indemnification.** The Trustee shall not be liable for any action taken by it in good faith and without gross negligence, willful misconduct or recklessness and reasonably believed by it to be authorized or within the rights or powers conferred upon it by this Agreement and may consult with counsel of its own choice (including counsel for Consolidation and the NQF Companies) and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and without gross negligence and in accordance with the opinion of such counsel, provided, however, that the Trustee shall be liable for direct damages resulting from investing assets of the Qualified Funds in other than Permissible Assets or from self dealing as provided in Section 3.03 hereof Provided indemnification does not result in self dealing under Section 3.03 hereof or in a deemed contribution to a Qualified Fund in excess of the limitation on contributions under Section 468A of the Code and the Treasury Regulations thereunder, AmerGen (as to both the Qualified Funds and the Nonqualified Funds), Consolidation (as to the Qualified Funds) and the NQF Companies (as to the Nonqualified Funds) hereby agree to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without gross negligence, willful misconduct, recklessness or bad faith on the part of the Trustee, arising out of or in connection with its entering into the Trust Agreements and carrying out its duties hereunder, including the costs and expenses of defending itself against any claim of liability, provided such loss, liability or expense does not result from investing assets of the Qualified Funds in other than Permissible Assets as defined in the Special Terms or from self dealing under Section 3.03 hereof, and provided further

that no such costs or expenses shall be paid if the payment of such costs or expenses is prohibited by Section 468A of the Code or the Treasury Regulations thereunder.

The Trustee shall not be responsible or liable for any losses or damages suffered by a Fund arising as a result of the insolvency of any custodian, subtrustee or subcustodian, except to the extent the Trustee was negligent in its selection or continued retention of such entity. Under no circumstances shall the Trustee be liable for any indirect, consequential, or special damages with respect to its role as Trustee.

**Section 3.08. Resignation, Removal and Successor Trustees.** The Trustee may resign at any time upon sixty (60) days' written notification to Consolidation and the NQF Companies. Consolidation and the NQF Companies may remove the Trustee for any reason at any time upon thirty (30) days' written notification to the Trustee. If a successor Trustee shall not have been appointed within these specified time periods after the giving of written notice of such resignation or removal, the Trustee or Consolidation and the NQF Companies may apply to any court of competent jurisdiction to appoint a successor Trustee to act until such time, if any, as a successor shall have been appointed and shall have accepted its appointment as provided below. If the Trustee shall be adjudged bankrupt or insolvent, a vacancy shall thereupon be deemed to exist in the office of Trustee and a successor shall thereupon be appointed by Consolidation and the NQF Companies. Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to Consolidation and the NQF Companies an appropriate written instrument accepting such appointment hereunder, subject to all the terms and conditions hereof, and thereupon such successor Trustee shall become fully vested with all the rights, powers, trusts, duties and obligations of its predecessor in trust under the Trust Agreements, with like effect as if originally named as Trustee thereunder. The predecessor Trustee shall, upon written request for payment of all fees and expenses by Consolidation and the NQF Companies, deliver to the successor Trustee the corpus of the Funds and perform such other acts as may be required or be desirable to vest and confirm in said successor Trustee all right, title and interest in the corpus of the Funds to which it succeeds.

**Section 3.09. Merger of Trustee.** Any corporation or other legal entity into which the Trustee may be merged or with which it may be consolidated, or any corporation or other legal entity resulting from any merger or consolidation to which the Trustee shall be a party, or any corporation or other legal entity to which the corporate trust functions of the Trustee may be transferred, shall be the successor Trustee under the Trust Agreements and these Master Terms without the necessity of executing or filing any additional acceptance of the Trust Agreements of these Master Terms or the performance of any further act on the part of any other parties hereto.

#### **ARTICLE IV** **Amendments**

Consolidation and the NQF Companies may amend these Master Terms and the Trust Agreements from time to time, provided such amendment does not cause the Qualified Funds to fail to qualify as nuclear decommissioning reserve funds under section 468A of the Code and the Treasury Regulations thereunder. These Master Terms and the Trust Agreements may not be amended so as to violate 468A of the Code or the Treasury Regulations thereunder. The Qualified Funds are established and shall be maintained for the sole purpose of qualifying as

nuclear decommissioning reserve funds under Section 468A of the Code and the Treasury Regulations thereunder. If the Qualified Funds would fail to so qualify because of any provision contained in the Trust Agreements or these Master Terms, the Trust Agreements and these Master Terms shall be deemed to be amended as necessary to conform with the requirements of Section 468A and the Treasury Regulations thereunder. If a proposed amendment shall affect the responsibility of the Trustee, such amendment shall not be considered valid and binding until such time as the amendment is executed by the Trustee. Notwithstanding any provision herein to the contrary, neither these Master Terms nor the Trust Agreements may be modified in any material respect without the prior written consent of the NRC Director, Office of Nuclear Reactor Regulation.

## **ARTICLE V**

### **Powers of the Trustee and Investment Manager**

**Section 5.01. General Powers.** The Trustee shall have and exercise the following powers and authority in the administration of the Funds only on the direction of an Investment Manager where such powers and authority relate to a separate account established for an Investment Manager, and in its sole discretion where such powers and authority relate to investments made by the Trustee in accordance with Section 3.02(b):

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

(b) to sell, exchange, convey, transfer, lend, or otherwise dispose of any property held in the Funds 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;

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

(d) 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 Funds have outstanding at any time;

(e) to join in, dissent from or oppose the reorganization, recapitalization, consolidation, sale or merger of corporations or properties of which the Funds 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, without any duty to sell;

(f) 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 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 Funds for safekeeping or custodian purposes only;

(g) upon authorization of Consolidation or the appropriate NQF Company, to lend the assets of the Funds 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; provided, that, with respect to the lending of securities pursuant to this paragraph, the Trustee's powers shall subsume the role of custodian (the expressed intent hereunder being that the Trustee, in such case, be deemed a financial institution, within the meaning of section 101 (22) of the Bankruptcy Code); and provided, further, that any loans made from the Funds shall be made in conformity with such laws or regulations governing such lending activities which may have been promulgated by any appropriate regulatory body at the time of such loan;

(h) to purchase, enter, sell, hold, and generally deal in any manner in and with contracts for the immediate or future delivery of financial instruments of any issuer or of any other property and in foreign exchange or foreign exchange contracts; to grant, purchase, sell, exercise, permit to expire, permit to be held in escrow, and otherwise to acquire, dispose of, hold and generally deal in any manner with and in all forms of options in any combination.

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 or the appropriate NQF Company, as the case may be, shall have sole responsibility for nonreceipt of payment (or late payment) by the counterparty.

Notwithstanding anything in these Master Terms to the contrary, the Trustee shall not be responsible or liable for its failure to perform under the Trust Agreements or these Master Terms or for any losses to the Funds resulting from any event beyond the reasonable control of the Trustee, its agents or subcustodians, including but not limited to nationalization, strikes, expropriation, devaluation, seizure, or similar action by any governmental authority, de facto or de jure; or enactment, promulgation, imposition or enforcement by any such governmental authority of currency restrictions, exchange controls, levies or other charges affecting the Funds' property, or the breakdown, failure or malfunction of any utilities or telecommunications systems; or any order or regulation of any banking or securities industry including changes in market rules and market conditions affecting the execution or settlement of transactions; or acts of war, terrorism, insurrection or revolution; or acts of God; or any other similar event. This Section shall survive the termination of the Trust Agreements.



**Section 5.02. Specific Powers of the Trustee.** The Trustee shall have the following powers and authority, to be exercised in its sole discretion with respect to the Funds:

(a) to appoint agents, custodians, subtrustees, depositories or counsel, domestic or foreign, as to part or all of the Funds and functions incident thereto where, in the sole discretion of the Trustee, such delegation is necessary in order to facilitate the operations of the Funds and such delegation is not inconsistent with the purposes of the Funds or in contravention of any applicable law. To the extent that the appointment of any such person or entity may be deemed to be the appointment of a fiduciary, the Trustee may exercise the powers granted hereby to appoint as such a fiduciary any person or entity (other than AmerGen or any other owner or operator of a power reactor or their subsidiaries, successors, or assigns or persons representing them). Upon such delegation, the Trustee may require such reports, bonds or written agreements as it deems necessary to properly monitor the actions of its delegate;

(b) to cause any investment, either in whole or in part, in the Funds to be registered in, or transferred into, the Trustee's name or the names of a nominee or nominees, including but not limited to that of the Trustee or an affiliate of the Trustee, a clearing corporation, or a depository, or in book-entry form, or to retain any such investment unregistered or in a form permitting transfer by delivery, provided that the books and records of the Trustee shall at all times show that such investments are a part of the Funds; and to cause any such investment, or the evidence thereof, to be held by the Trustee, in a depository, in a clearing corporation, in book-entry form, or by any other entity or in any other manner permitted by law; provided that the Trustee shall not be responsible for any losses resulting from the deposit or maintenance of securities or other property (in accordance with market practice, custom, or regulation) with any recognized foreign or domestic clearing facility, book-entry system, centralized custodial depository, or similar organization;

(c) to make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers;

(d) to defend against or participate in any legal actions involving the Funds or the Trustee in its capacity stated herein, in the manner and to the extent it deems advisable;

(e) to form corporations and to create trusts, to hold title to any security or other property, to enter into agreements creating partnerships or joint ventures for any purpose or purposes determined by the Trustee to be in the best interests of the Funds;

(f) to establish and maintain such separate accounts in accordance with the instructions of Consolidation or the appropriate NQF Company, as Consolidation or the appropriate NQF Company, as the case may be, deem necessary for the proper administration of the Funds, or as determined to be necessary by the Trustee;

(g) to hold uninvested cash in its commercial bank or that of an affiliate, as it shall deem reasonable or necessary;

(h) 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 or the appropriate NQF Company expressly understands and agrees 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. The Trustee is authorized to invest in a collective fund which invests in Mellon Financial Corporation stock in accordance with the terms and conditions of the Department of Labor Prohibited Transaction Exemption 95-56 (the "Exemption") granted to the Trustee and its affiliates and to use a cross-trading program in accordance with the Exemption. Trustee will notify Consolidation and the NQF Companies if the Exemption is modified or revoked. Consolidation or the appropriate NQF Company acknowledge receipt of the notice entitled "Cross-Trading Information," a copy of which is attached to this Agreement as Exhibit E;

(i) to invest in open-end and closed-end investment companies, including those for which the Trustee or an affiliate provides services for a fee, regardless of the purposes for which such fund or funds were created, and any partnership, limited or unlimited, joint venture and other forms of joint enterprise created for any lawful purpose; and

(j) to generally take all action, whether or not expressly authorized, which the Trustee may deem necessary or desirable for the protection of the Funds.

Notwithstanding anything else in the Trust Agreements or these Master Terms to the contrary, including, without limitation, any specific or general power granted to the Trustee and to the investment managers, including the power to invest in real property, no portion of the Funds shall be invested in real estate (except for investments tied to market indexes or other non-nuclear sector common trust funds or mutual funds). For this purpose "real estate" includes, but is not limited to, real property, leaseholds or mineral interests.

**Section 5.03.** The powers described in Section 5.02 may be exercised by the Trustee with or without instructions from Consolidation or the NQF Companies or a party authorized by Consolidation or the NQF Companies to act on its behalf, but where the Trustee acts on Authorized Instructions, the Trustee shall be fully protected as described in Section 3.07. All directions and instructions to the Trustee from an Authorized Party shall be in writing, by facsimile transmission, electronic transmission subject to the Trustee's practices, or any other method specifically agreed to in writing by Consolidation or the NQF Companies and the Trustee, provided the Trustee may, in its discretion, accept oral directions and instructions and may require confirmation in writing. Without limiting the generality of the foregoing, the Trustee shall not be liable for the acts or omissions of any person appointed under paragraph (a) of Section 5.02 pursuant to Authorized Instructions.

**Section 5.04.** The assets of the Funds shall not be invested in the securities or other obligations of AmerGen Generation Company LLC, AmerGen Energy Company, LLC, or affiliates thereof, or their successors or assigns as identified by Consolidation and the NQF Companies. Except for investments tied to market indexes or other non-nuclear sector mutual funds or common trust funds, the assets of the funds shall not be invested in the securities of any

entity owning one or more nuclear power plants, as identified by a source agreed to by the Trustee and Consolidation and the NQF Companies.

## **ARTICLE VI** **Termination**

A Unit's Qualified Fund shall terminate upon the earlier of either (i) substantial completion of decommissioning of that Fund's Unit, as defined in the Special Terms, or (ii) disqualification of that Unit's Qualified Fund by the Internal Revenue Service as provided in Treasury Regulations § 1.468A5(c) or any corresponding future Treasury Regulation. A Nonqualified Fund shall terminate upon termination by the NRC of that Unit's license. If a Qualified Fund termination occurs before the NRC terminates the respective Unit's operating license, the Trustee will adhere to Section 5.02(b) of these Master Terms. Upon the termination of any Fund, all of the assets of the terminated Qualified Fund shall be distributed to Consolidation, and all of the assets of the terminated Nonqualified Fund shall be distributed to the NQF Company that is the owner of such Fund, except that if a Unit's Qualified Fund is terminated prior to the termination of a Unit's Nonqualified Fund, the assets of the terminated Qualified Fund shall be distributed to the Nonqualified Fund for the Unit that is held by the appropriate NQF Company.

## EXHIBIT "A"

### SPECIAL TERMS OF THE QUALIFIED NUCLEAR DECOMMISSIONING RESERVE FUNDS

The following Special Terms of the Qualified Funds (hereinafter referred to as the "Special Terms") will apply for purposes of these Master Terms. To the extent construed to be in conflict therewith, these Special Terms shall take precedence over the Master Terms. Capitalized terms shall have the same meaning as set forth in the Master Terms or the Trust Agreements:

**Section 1. Definitions.** The following terms as used in the Special Terms shall, unless the context clearly indicates otherwise, have the following respective meanings:

(a) "Administrative costs and other incidental expenses of the Qualified Funds" shall mean all ordinary and necessary expenses incurred in connection with the operation of the Qualified Funds, as provided in Treasury Regulations § 1.468A-5(a)(3)(ii)(A) or any corresponding future Treasury Regulation, including without limitation, federal, state and local income tax (including any Final Tax Liabilities), legal expenses, accounting expenses, actuarial expenses and trustee expenses.

(b) "Final Tax Liabilities" shall mean any and all tax liabilities determined to be owing but not paid out of the assets of any of the Seller's or Transferor's Qualified Fund related to each unit prior to the transfer of the assets of the Seller's or Transferor's Qualified Fund to the Qualified Fund.

(c) "Final Tax Refunds" shall mean any and all tax refunds determined to be receivable but not collected by the Seller's or Transferor's Qualified Fund prior to the transfer of the assets of the Seller's or Transferor's Qualified Fund to the Qualified Funds.

(d) "Permissible Assets" shall mean any investment permitted for a qualified nuclear decommissioning reserve fund under section 468A of the Code and the Treasury Regulations thereunder, subject to the restrictions provided in Section 5.04 of the Agreement.

(e) "Qualified Decommissioning Costs" shall mean all expenses otherwise deductible for federal income tax purposes without regard to section 280B of the Internal Revenue Code of 1986, as amended, or any corresponding section or sections of any future United States internal revenue statute (the "Code"), incurred (or to be incurred) in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a Unit when it has permanently ceased the production of electric energy, excluding any costs incurred for the disposal of spent nuclear fuel, as provided in Treasury Regulations § 1.468A-1(b)(5) or any corresponding future Treasury Regulation. Such term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to a Unit after the actual decommissioning occurs, such as physical security and radiation monitoring expenses.

(f) "Seller's or Transferor's Qualified Fund" shall mean the trust established and maintained for any respective unit that qualified as a nuclear decommissioning reserve fund under Code section 468A prior to the sale or transfer of such unit.

(g) "Substantial completion of decommissioning" shall mean the date that the maximum acceptable radioactivity levels mandated by the NRC with respect to a decommissioned nuclear power plant are satisfied by the Unit; provided, however, that if Consolidation requests a ruling from the Internal Revenue Service, the date designated by the Internal Revenue Service as the date on which substantial completion of decommissioning occurs shall govern; provided, further, that the date on which substantial completion of decommissioning occurs shall be in accordance with Treasury Regulations § 1.468A-5(d)(2) or any corresponding future Treasury Regulation.

**Section 2. Contributions to a Qualified Fund.** The assets of the Qualified Funds shall be contributed by Consolidation (or by others approved by Consolidation in writing) from time to time in cash. The Trustee shall not accept any contributions for the Qualified Funds other than cash payments with respect to which Consolidation is allowed a deduction under section 468A(a) of the Code and Treasury Regulations §1.468A-2(a) or any corresponding future Treasury Regulations, except for any Final Tax Refunds. Consolidation hereby represents that all contributions (or deemed contributions), except for any Final Tax Refunds, by Consolidation to the Qualified Funds in accordance with the provisions of Section 1.03 of the Agreement shall be deductible under section 468A of the Code and Treasury Regulations §1.468A-2(a) or any corresponding future Treasury Regulation or shall be withdrawn pursuant to Section 4 hereof.

**Section 3. Limitation on Use of Assets.** The assets of the Qualified Funds shall be used exclusively as follows:

(a) To satisfy, in whole or in part, the liability for Qualified Decommissioning Costs through payments by the Trustee pursuant to Section 2.02 of the Master Terms; and

(b) To pay the administrative costs and other incidental expenses of the Qualified Funds; and

(c) To the extent the assets of the Qualified Funds are not currently required for (a) and (b) above, to invest directly in Permissible Assets.

**Section 4. Transfers by Consolidation.** If Consolidation's contribution (or deemed contribution) excluding any Final Tax Refunds to the Qualified Funds in any one year exceeds the amount deductible under section 468A of the Code and the Treasury Regulations thereunder, Consolidation may instruct the Trustee to transfer such excess contribution from a Unit's Qualified Fund to that Unit's Nonqualified Fund, as defined in the Trust Agreements and these Master Terms, pursuant to Section 2.04 of the Master Terms, provided any such transfer occurs on or before the date prescribed by law (including extensions) for filing the federal income tax return of the Qualified Funds for the taxable year to which the excess contribution relates for withdrawals pursuant to Treasury Regulations §§1.468A-5(c)(2) and 1.468A-2(f)(2) and occurs on or before the later of the date prescribed by law (including extensions) for filing the federal income tax return of the Qualified Funds for the taxable year to which the excess contribution relates or the date that is thirty (30) days after the date that Consolidation receives the ruling

amount for such taxable year for withdrawals pursuant to Treasury Regulations § 1.468A-3(j)(3). If Consolidation determines that transfer pursuant to this Section 4 is appropriate, Consolidation shall present a certificate so stating to the Trustee signed by its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer, requesting such withdrawal and transfer. The certificate shall be substantially in the form attached as Exhibit C to the Master Terms for transfers to Nonqualified Funds as provided in Section 2.04 of the Master Terms and substantially in the form of Exhibit D to the Master Terms for withdrawals and transfers by Consolidation.

**Section 5. Taxable Year/Tax Returns.** The accounting and taxable year for the Qualified Funds 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 the Qualified Funds must change to the taxable year of Consolidation as provided in Treasury Regulations § 1.468A-4(c)(1) or any corresponding future Treasury Regulation. Consolidation shall assist the Trustee in complying with any requirements under section 442 of the Code and Treasury Regulations §1.442-1. Consolidation shall prepare, or cause to be prepared, any tax returns required to be filed by the Qualified Funds, and the Trustee shall sign and file such returns on behalf of the Qualified Funds. The Trustee shall cooperate with Consolidation in the preparation of such returns.

**EXHIBIT "B-1"**

**CERTIFICATE FOR PAYMENT  
OF DECOMMISSIONING COSTS**

**[Name of Trustee],  
as Trustee  
[Address]**

This Certificate is submitted pursuant to Section 2.02 of the Master Terms for Trust Agreements. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and requested to disburse out of the [Unit name's] Funds to [payee] the amount of \$\_\_\_\_\_ from the Qualified Fund for the payment of the Decommissioning Costs which have been incurred with respect to the [Unit name]. Prior to making such disbursements, however, the Trustee shall provide thirty days prior written notice of such disbursement to the NRC and shall not make such disbursement if the Trustee receives written notice of any objections from the NRC Director, Office of Nuclear Reactor Regulations during such thirty day period, or if the Trustee receives such notice at any later time that is nevertheless prior to disbursement. With respect to such Decommissioning Costs, Consolidation hereby certifies as follows:

1. The amount to be disbursed pursuant to this Certificate shall be solely used for the purpose of paying the Decommissioning Costs the nature of which are described in Schedule A hereto.

2. None of the Decommissioning Costs described in Schedule A hereto have previously been made the basis of any certificate pursuant to Section 2.02 of the Master Terms.

3. The amount to be disbursed from the Qualified Fund pursuant to this Certificate shall be used solely for the purpose of paying Qualified Decommissioning Costs as defined in the Special Terms.

4. Any necessary authorizations of the NRC or any corresponding governmental authority having jurisdiction over the decommissioning of the Unit have been obtained, other than the required 30 days prior written Notice.

IN WITNESS WHEREOF, the undersigned have executed this Certificate in the capacity shown below as of \_\_\_\_\_, \_\_\_\_\_.

**AMERGEN CONSOLIDATION, LLC**

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

**AMERGEN CONSOLIDATION, LLC**

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

**Acknowledged by:  
MELLON BANK, N.A.**

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



**EXHIBIT "B-2"**

**CERTIFICATE FOR PAYMENT  
OF DECOMMISSIONING COSTS**

**[Name of Trustee],  
as Trustee  
[Address]**

This Certificate is submitted pursuant to Section 2.02 of the Nuclear Decommissioning Master Terms Agreement dated \_\_\_\_\_. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and requested to disburse out of the [Unit name's] Funds to [payee] the amount of \$\_\_\_\_\_ from the Nonqualified Fund for the payment of the Decommissioning Costs which have been incurred with respect to the [Unit name]. Prior to making such disbursements, however, the Trustee shall provide thirty days prior written notice of such disbursement to the NRC and shall not make such disbursement if the Trustee receives written notice of any objections from the NRC Director, Office of Nuclear Reactor Regulations during such thirty day period, or if the Trustee receives such notice at any later time that is nevertheless prior to disbursement. With respect to such Decommissioning Costs, AmerGen \_\_\_\_\_ NQF, LLC hereby certifies as follows:

1. The amount to be disbursed pursuant to this Certificate shall be solely used for the purpose of paying the Decommissioning Costs the nature of which are described in Schedule A hereto.
2. None of the Decommissioning Costs described in Schedule A hereto have previously been made the basis of any certificate pursuant to Section 2.02 of the Master Terms.
3. Any necessary authorizations of the NRC or any corresponding governmental authority having jurisdiction over the decommissioning of the Unit have been obtained, other than the required 30 days prior written Notice.

IN WITNESS WHEREOF, the undersigned have executed this Certificate in the capacity shown below as of \_\_\_\_\_, \_\_\_\_\_.

**AMERGEN \_\_\_\_\_ NQF, LLC**

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

**AMERGEN \_\_\_\_\_ NQF, LLC**

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

**Acknowledged by:  
MELLON BANK, N.A.**

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

**EXHIBIT "C"**

**CERTIFICATE FOR TRANSFER BETWEEN THE QUALIFIED FUND  
AND THE NONQUALIFIED FUND**

**[Name of Trustee],  
as Trustee**

**[Address]**

This Certificate is submitted pursuant to Section 2.04 of the Master Terms for Trust Agreements. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and instructed as follows (complete one):

To pay \$ \_\_\_\_\_ in cash from the [Unit name's] Nonqualified Fund to that Unit's Qualified Fund; or

To pay \$ \_\_\_\_\_ in cash from the [Unit name's] Qualified Fund to that Unit's Nonqualified Fund.

With respect to such payment, Consolidation and AmerGen \_\_\_\_\_ NQF, LLC hereby certify as follows:

1. Any amount stated herein to be paid from the Nonqualified Fund to the Qualified Fund is in accordance with the contribution limitations applicable to the Qualified Fund set forth in Section 2 of the Special Terms and the limitations of Section 2.04 of the Master Terms.
2. Any amount stated herein to be paid from the Qualified Fund to the Nonqualified Fund is in accordance with Section 4 of the Special Terms. Consolidation and AmerGen \_\_\_\_\_ NQF, LLC has determined that such payment is appropriate under the standards of Section 4 of the Special Terms.

IN WITNESS WHEREOF, the undersigned have executed this Certificate in the capacity as shown below as of \_\_\_\_\_, \_\_\_\_\_.

**AMERGEN CONSOLIDATION, LLC**

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

**AMERGEN \_\_\_\_\_ NQF, LLC**

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

**Acknowledged by:  
MELLON BANK, N.A.**

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

**EXHIBIT "D"**

**CERTIFICATE FOR WITHDRAWAL  
OF EXCESS CONTRIBUTIONS  
FROM QUALIFIED FUND**

**[Name of Trustee],  
as Trustee**

**[Address]**

This Certificate is submitted pursuant to Section 4 of the Special Terms attached as Exhibit A to the Master Terms for Trust Agreements ("Master Terms"). All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and instructed to pay \$\_\_\_\_\_ in cash to Consolidation from the [Unit name's] Qualified Fund. With respect to such payment, Consolidation hereby certifies that withdrawal and transfer pursuant to Section 4 of the Special Terms is appropriate and that \$\_\_\_\_\_ constitutes an excess contribution pursuant to such Section.

**IN WITNESS WHEREOF**, the undersigned have executed this Certificate in the capacity as shown below as of \_\_\_\_\_, \_\_\_\_\_.

**AMERGEN CONSOLIDATION, LLC**

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

**Acknowledged by:  
MELLON BANK, N.A.**

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

## **EXHIBIT "E"**

### **CROSS-TRADING INFORMATION**

As part of the cross-trading program covered by the Exemption for the Trustee and its affiliates, the Trustee is to provide to each affected Trust the following information:

**I. The existence of the cross-trading program**

The Trustee has developed and intends to utilize, wherever practicable, a cross-trading program for Indexed Accounts and Large Accounts as those terms are defined in the Exemption.

**II. The "triggering events" creating cross-trade opportunities**

In accordance with the exemption three "triggering events" may create opportunities for cross-trading transactions. They are generally the following (see the Exemption for more information):

- A. A change in the composition or weighting of the index by the independent organization creating and maintaining the index;
- B. A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals on the account's opening date, where the Account is a bank collective fund, or on any relevant date for non-bank collective funds; provided, however, a change in an Indexed Account resulting from investments or withdrawals of assets of the Trustee's own plans (other than the Trustee's defined contribution plans under which participants may direct among various investment options, including Indexed Accounts) are excluded as a "triggering event"; or
- C. A recorded declaration by the Trustee that 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 0.5% of the Account's total value has occurred.

**III. The pricing mechanism utilized for securities purchased or sold**

Securities will be valued at the current market value for the securities on the date of the crossing transaction.

Equity securities - the current market value for the equity security will be the closing price on the day of trading as determined by an independent pricing service; unless the security was added to or deleted from an index after the close of trading, in which case the price will be the opening price for that security on the next business day after the announcement of the addition or deletion.

Debt securities - the current market value of the debt security will be the price determined by the Trustee as of the close of the day of trading according to the Securities and Exchange Commission's Rule 17a-7(b)(4) under the Investment Company Act of 1940.

Debt securities that are not reported securities or traded on an exchange will be valued based on an average of the highest current independent bids and the lowest current independent offers on the day of cross-trading. The Trustee will use reasonable inquiry to obtain such prices from at least three independent sources that are brokers or market makers. If there are fewer than three independent sources to price a certain debt security, the closing price quotations will be obtained from all available sources.

IV. The allocation methods

Direct cross-trade opportunities will be allocated among potential buyers or sellers of debt or equity securities on a pro rata, basis. With respect to equity securities, please note the Trustee imposes a trivial share constraint to reduce excessive custody ticket charges to participating accounts.

V. Other procedures implemented by the Trustee for its cross-trading practices

The Trustee has developed certain internal operational procedures for cross-trading debt and equity securities. These procedures are available upon request.

----- COMPARISON OF HEADERS -----

-HEADER 1-

-HEADER 2-  
Header Discontinued

-HEADER 3-  
Header Discontinued

----- COMPARISON OF FOOTERS -----

-FOOTER 1-

-FOOTER 2-  
WDC99 767469-3.009900.0011 4.009900.0011 2

-FOOTER 3-  
WDC99 767469-3.009900.0011 4.009900.0011  
E

-FOOTER 4-  
WDC99 767469-3.009900.0011-3 4.009900.0011 2

-FOOTER 5-  
WDC99 683386-1.047265.0205  
E



----- 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.

[1:9 1:9] Changed "Except for investments tied " to "With respect "  
[1:9 1:9] Changed "to market ... funds, (1) the" to "to the"  
[1:9 1:9] Changed "shall not be invested " to ", investments "  
[1:9 1:9] Changed "or other obligations" to "or obligations"  
[1:9 1:9] Changed "; and (2) " to "are prohibited. ... mutual funds, "  
[2:2 2:2] Changed "Treasurer, ... its Fund." to "Treasurer."  
[2:9 2:9] Changed "disbursements ... costs from" to "disbursements from"

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

[2 2] Changed "3.009900.0011 " to "4.009900.0011 "  
[3 3] Changed "3.009900.0011" to "4.009900.0011"  
[4 4] Changed "3.009900.0011 3" to "4.009900.0011 2"

**MASTER TERMS FOR  
TRUST AGREEMENTS**

The following Master Terms for Trust Agreements (the “Master Terms”) shall apply for purposes of the Amended and Restated Qualified Nuclear Decommissioning Master Trust Agreement by and between AmerGen Energy Company, LLC (“AmerGen”), AmerGen Consolidation, LLC (“Consolidation”) and Mellon Bank, N.A. as Trustee (the “Trustee”), and for purposes of the Amended and Restated Nonqualified Nuclear Decommissioning Master Trust Agreement by and between AmerGen, the limited liability companies identified on Schedule A of such agreement (the “NQF Companies”) and the Trustee, collectively the “Trust Agreements”.

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

**ARTICLE I**  
**[Intentionally Deleted]**

**ARTICLE II**  
**Payments by the Trustee**

**Section 2.01. Use of Assets.** The assets of each Fund shall be used exclusively (a) to satisfy, in whole or in part, any expenses or liabilities incurred with respect to the decommissioning of that Fund’s Unit, including expenses incurred in connection with the preparation for decommissioning of that Unit, such as engineering and other planning expenses, and all expenses incurred after the actual decommissioning occurs, such as physical security and radiation monitoring expenses (the “Decommissioning Costs”), (b) to pay the administrative costs and other incidental expenses of each Fund, and (c) to invest in publicly-traded securities and investments (including common trust funds) as directed by the investment manager(s) pursuant to Section 3.02(a) or the Trustee pursuant to Section 3.02(b), except that all assets of the Qualified Funds must be invested in Permissible Assets as defined in the Special Terms. With respect to the assets of the Funds, investments in the securities or obligations of AmerGen Energy Company, LLC, PECO Energy Company, British Energy, Inc., GPU, Inc., or affiliates thereof, or their successors or assigns are prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited. Use of the assets of the Qualified Funds shall be further limited by the provisions of the Special Terms. The assets of the Funds shall be used, in the first instance, to pay the expenses related to the decommissioning of that Fund’s Unit, as defined by the United States Nuclear Regulatory Commission (“NRC”) in its regulations and issuances, and as provided in the NRC issued license to operate each Unit and any amendments thereto. Notice to the NRC of proposed disbursements or payments from each Fund will be provided in accordance with the notice provisions of Section 2.02(b). 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 and accounted for in such notice.

**Section 2.02. Certification for Decommissioning Costs.**

(a) If assets of a Fund are required to satisfy Decommissioning Costs of that Fund's Unit, Consolidation or the appropriate NQF Company, as the case may be, shall present a certificate substantially in the form attached hereto as Exhibit B-1 (in the case of Consolidation) or B-2 (in the case of the NQF Companies) to the Trustee signed its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer. Any certificate requesting payment by the Trustee to a third party or to Consolidation or the appropriate NQF Company from a Fund for Decommissioning Costs shall include the following:

(1) a statement of the amount of the payment to be made from the Fund and whether the payment is to be made from the Nonqualified Fund, the Qualified Fund or in part from both Funds;

(2) a statement that the payment is requested to pay Decommissioning Costs which have been incurred, and if payment is to be made from the Qualified Fund, a statement that the Decommissioning Costs to be paid constitute Qualified Decommissioning Costs, as defined in the Special Terms;

(3) the nature of the Decommissioning Costs to be paid;

(4) the payee, which may be a third party, or may be Consolidation or the appropriate NQF Company in the case of reimbursement for payments previously made or expenses previously incurred by Consolidation or the appropriate NQF Company for Decommissioning Costs;

(5) a statement that the Decommissioning Costs for which payment is requested have not theretofore been paid out of the Funds; and

(6) a statement that any necessary authorizations of the NRC and/or any other governmental agencies having jurisdiction with respect to the decommissioning have been obtained.

(b) Except for disbursements of payments for administrative costs and other incidental expenses, no disbursements from the Funds shall be made by the Trustee:

(1) unless the Trustee has first provided thirty (30) days' prior written notice of such disbursement or payment to the NRC Director, Office of Nuclear Reactor Regulation; and

(2) if the Trustee receives written notice of an objection from the NRC Director, Office of Nuclear Reactor Regulation during such thirty (30) day notice period, or if the Trustee receives such notice at any later time that is nevertheless prior to disbursement.

(c) The Trustee shall retain at least one copy of such certificates (including attachments) and related documents received by it pursuant to this Article II.

(d) Consolidation and the NQF Companies shall have the right to enforce payments from the Funds upon compliance with the procedures set forth in this Section 2.02.

**Section 2.03. Administrative Costs.** The Trustee shall pay, as directed by the appropriate NQF Company, the administrative costs and other incidental expenses of each Nonqualified Fund, including all federal, state, and local taxes, if any, imposed directly on the Nonqualified Fund or the income therefrom, legal expenses, accounting expenses, actuarial expenses and trustee expenses, from the assets of the respective Nonqualified Fund and shall pay, as directed by Consolidation, the administrative costs and other incidental expenses of each Qualified Fund, as defined in the Special Terms, from the assets of the respective Qualified Fund.

**Section 2.04. Payments between the Funds.** The Trustee shall make payments (i) from a Unit's Qualified Fund to that Unit's Nonqualified Fund provided such payments are in cash and are in accordance with Section 4 of the Special Terms or (ii) from a Unit's Nonqualified Fund to that Unit's Qualified Fund provided such payments are in cash and are in accordance with the contribution limitations set forth in Section 2 of the Special Terms, as the case may be, upon presentation by Consolidation and the appropriate NQF Company of a certificate substantially in the form of Exhibit C hereto executed by Consolidation or the appropriate NQF Company instructing the Trustee to make any such payments. The Trustee shall be fully protected in relying upon such certificate.

### **ARTICLE III** **Concerning the Trustee**

**Section 3.01. Authority of Trustee.** The Trustee shall have the authority and discretion to manage and control the Funds to the extent provided in the Trust Agreements and these Master Terms but does not guarantee the Funds in any manner against investment loss or depreciation in asset value or guarantee the adequacy of the Funds to satisfy the Decommissioning Costs. The Trustee shall not be liable for the making, retention or sale of any asset of a Qualified Fund which qualifies as a Permissible Asset, as defined in the Special Terms, nor shall the Trustee be responsible for any other loss to or diminution of the Funds, or for any other loss or damage which may result from the discharge of its duties hereunder except for any action not taken in good faith.

**Section 3.02. Investment of Funds.** (a) Consolidation and the NQF Companies shall have the authority to appoint one or more investment managers who shall have the power to direct the Trustee in investing the assets of the Funds; provided, however, that the Trustee shall not follow any direction which would result in assets of the Qualified Funds being invested in assets other than Permissible Assets as defined in the Special Terms. Any such investment manager(s) or other person directing investments made in the Trusts shall adhere to the "Prudent Investor" standard as specified in 18 C.F.R. 35.32(a)(3) of the Federal Energy Regulatory Commission ("FERC") regulations (the "Prudent Investor Standard"). To the extent that Consolidation and/or the NQF Companies choose to exercise this authority, Consolidation and/or the appropriate NQF Company or Companies shall so notify the Trustee and instruct the Trustee in writing to separate into a separate account those assets the investment of which will be directed by each investment manager. Consolidation and the appropriate NQF Company or

Companies shall designate in writing the person or persons who are to represent any such investment manager in dealings with the Trustee, provided however, that AmerGen, 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 investment manager or the Trustee. Upon the separation of the assets in accordance with such 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 not be relieved of the responsibility of ensuring that assets of the Qualified Funds are invested solely in Permissible Assets, as defined in the Special Terms. The Trustee shall retain all other fiduciary duties with respect to assets the investment of which is directed by investment managers.

(b) Consolidation or the appropriate NQF Company or Companies shall notify the Trustee if the investment of assets of the Funds are not being directed by one or more investment managers under Section 3.02(a), and the Trustee shall hold, invest, and reinvest such assets as it in its sole discretion deems advisable, subject to the restrictions set forth herein for investment of the assets of the Qualified Funds and adherence to the Prudent Investor Standard; provided however, that in the event an investment manager terminates, or is terminated, Consolidation or the appropriate NQF Company or Companies shall use their best efforts to appoint an investment manager for those assets as soon as reasonably possible.

(c) Regardless of the person directing investments, any assets of the Qualified Funds shall be invested solely in Permissible Assets as defined in, and required by, the Special Terms, and shall be accumulated, invested, and reinvested in like manner. Upon the written consent of Consolidation, the assets of a Qualified Fund relating to a Unit may be pooled with the assets of any other Qualified Fund relating to any other Unit; provided that the book and tax allocations of the pooling arrangement are made in compliance with Code section 704 (and the Treasury Regulations thereunder) and provided further that such pooling arrangement elects to be classified as a partnership for federal income tax purposes.

(d) Notwithstanding any other provision of these Master Terms, with respect to the pooling of investments authorized by subparagraph (c) no part of any Fund's (or any subsequent holder's) interest in such pool, nor any right pertaining to such interest (including any right to substitute another entity for the Fund or for any subsequent holder, as holder of investments pooled pursuant to subparagraph (c)) may be sold, assigned, transferred or otherwise alienated or disposed of by any holder of an interest in the pool unless the written consent to the transfer of every other holder of interests in such pool is obtained in advance of any such transfer.

(e) Notwithstanding the provisions of subparagraph (d) of this Section, a Fund's investment in a pooled arrangement may be withdrawn from the pool (but not from the Trust Agreements, except as otherwise permitted by this Agreement) at any time upon 7 days written notice to the Trustee signed by its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer. If the Fund withdraws its entire interest in a pool, the pooled arrangement shall terminate 30 days after notice of final withdrawal has been given by any withdrawing Fund unless a majority in interest of the remaining Funds give their written consent to continue the pool within such 30 day period. If the pooled arrangement terminates, each Fund's assets will be

segregated into a separate account under the Trust Agreements, and no further commingling may occur for a period of at least one year after such termination.

(f) Subparagraphs (c), (d) and (e) apply to transfers of interests within, and withdrawals from, the pooling arrangement. Nothing within these sections shall be interpreted to permit or to limit transfer of interests in, or withdrawals from, a Fund, which transfers and withdrawals are governed by other provisions of these Master Terms. In addition, the provisions of subparagraphs (c), (d) and (e) shall not limit the Trustee's authority to invest in permissible common or collective trust funds.

**Section 3.03. Prohibition Against Self Dealing.** Notwithstanding any other provision in this Agreement, the Trustee shall not engage in any act of self dealing as defined in section 468A(e)(5) of the Code and Treasury Regulations § 1.468A-5(b) or any corresponding future law or Treasury Regulation.

**Section 3.04. Compensation.** The Trustee shall be entitled to receive out of the Funds reasonable compensation for services rendered by it, as well as expenses necessarily incurred by it in the execution of the Trusts hereunder, provided such compensation and expenses qualify as administrative costs and other incidental expenses of a Qualified Fund, as defined in the Special Terms, with respect to any payment of compensation and expenses from that Qualified Fund. Consolidation and the NQF Companies acknowledge that, as part of the Trustee's compensation, the Trustee will earn interest on balances, including disbursement balances and balances arising from purchase and sale transactions. If the Trustee advances cash or securities for any purpose, including the purchase or sale of foreign exchange or of contracts for foreign exchange, or in the event that the Trustee shall incur or be assessed taxes, interest, charges, expenses, assessments, or other liabilities in connection with the performance of these Master Terms, except such as may arise from its own negligent action, negligent failure to act, or willful misconduct, any property at any time held for the Funds or the Trust Agreements shall be security therefor and the Trustee shall be entitled to collect from the Funds sufficient cash for reimbursement, and if such cash is insufficient, dispose of the assets of Consolidation and the NQF Companies held under the Trust Agreements to the extent necessary to obtain reimbursement. To the extent the Trustee advances funds to the Funds for disbursements or to effect the settlement of purchase transactions, the Trustee shall be entitled to collect from the Funds either (i) with respect to domestic assets, an amount equal to what would have been earned on the sums advanced (an amount approximating the "federal funds" interest rate) or (ii) with respect to nondomestic assets, the rate applicable to the appropriate foreign market.

**Section 3.05. Books of Account.** The Trustee shall keep separate true and correct books of account with respect to each Fund, which books of account shall at all reasonable times be open to inspection by Consolidation and each of the NQF Companies or its duly appointed representatives. The Trustee shall, upon written request of Consolidation or the appropriate NQF Company, permit government agencies, such as the NRC or the Internal Revenue Service, to inspect the books of account of each Fund. The Trustee shall furnish to Consolidation and each of the NQF Companies on or about the tenth business day of each month a statement for each Fund showing, with respect to the preceding calendar month, the balance of assets on hand at the beginning of such month, all receipts, investment transactions, and disbursements which took place during such month and the balance of assets on hand at the end of such month. The

Trustee agrees to provide on a timely basis any information deemed necessary by Consolidation or the NQF Companies to file the federal, state and local tax returns of Consolidation and the NQF Companies.

**Section 3.06. Reliance on Documents.** The Trustee, upon receipt of documents furnished to it by Consolidation and any of the NQF Companies pursuant to the provisions of these Master Terms, shall examine the same to determine whether they conform to the requirements thereof. The Trustee acting in good faith may conclusively rely, as to the truth of statements and the correctness of opinions expressed, on any certificate or other documents conforming to the requirements of these Master Terms. If the Trustee in the administration of the Funds, shall deem it necessary or desirable that a matter be provided or established prior to taking or suffering any action hereunder, such matter (unless evidence in respect thereof is otherwise specifically prescribed hereunder) may be deemed by the Trustee to be conclusively provided or established by a certificate signed by the President or any Vice President of Consolidation or any of the NQF Companies, as the case may be, and delivered to the Trustee. The Trustee shall have no duty to inquire into the validity, accuracy or relevancy of any statement contained in any certificate or document nor the authorization of any party making such certificate or delivering such document, and the Trustee may rely and shall be protected in acting or refraining from acting upon any such written certificate or document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee shall not, however, be relieved of any obligation (a) to refrain from self-dealing as provided in Section 3.03 hereof; (b) to ensure that all assets of the Qualified Funds are invested solely in Permissible Assets as defined in the Special Terms; or (c) to adhere to the Prudent Investor Standard if acting as manager.

**Section 3.07. Liability and Indemnification.** The Trustee shall not be liable for any action taken by it in good faith and without gross negligence, willful misconduct or recklessness and reasonably believed by it to be authorized or within the rights or powers conferred upon it by this Agreement and may consult with counsel of its own choice (including counsel for Consolidation and the NQF Companies) and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and without gross negligence and in accordance with the opinion of such counsel, provided, however, that the Trustee shall be liable for direct damages resulting from investing assets of the Qualified Funds in other than Permissible Assets or from self dealing as provided in Section 3.03 hereof Provided indemnification does not result in self dealing under Section 3.03 hereof or in a deemed contribution to a Qualified Fund in excess of the limitation on contributions under Section 468A of the Code and the Treasury Regulations thereunder, AmerGen (as to both the Qualified Funds and the Nonqualified Funds), Consolidation (as to the Qualified Funds) and the NQF Companies (as to the Nonqualified Funds) hereby agree to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without gross negligence, willful misconduct, recklessness or bad faith on the part of the Trustee, arising out of or in connection with its entering into the Trust Agreements and carrying out its duties hereunder, including the costs and expenses of defending itself against any claim of liability, provided such loss, liability or expense does not result from investing assets of the Qualified Funds in other than Permissible Assets as defined in the Special Terms or from self dealing under Section 3.03 hereof, and provided further that no such costs or expenses shall be paid if the payment of such costs or expenses is prohibited by Section 468A of the Code or the Treasury Regulations thereunder.

The Trustee shall not be responsible or liable for any losses or damages suffered by a Fund arising as a result of the insolvency of any custodian, subtrustee or subcustodian, except to the extent the Trustee was negligent in its selection or continued retention of such entity. Under no circumstances shall the Trustee be liable for any indirect, consequential, or special damages with respect to its role as Trustee.

**Section 3.08. Resignation, Removal and Successor Trustees.** The Trustee may resign at any time upon sixty (60) days' written notification to Consolidation and the NQF Companies. Consolidation and the NQF Companies may remove the Trustee for any reason at any time upon thirty (30) days' written notification to the Trustee. If a successor Trustee shall not have been appointed within these specified time periods after the giving of written notice of such resignation or removal, the Trustee or Consolidation and the NQF Companies may apply to any court of competent jurisdiction to appoint a successor Trustee to act until such time, if any, as a successor shall have been appointed and shall have accepted its appointment as provided below. If the Trustee shall be adjudged bankrupt or insolvent, a vacancy shall thereupon be deemed to exist in the office of Trustee and a successor shall thereupon be appointed by Consolidation and the NQF Companies. Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to Consolidation and the NQF Companies an appropriate written instrument accepting such appointment hereunder, subject to all the terms and conditions hereof, and thereupon such successor Trustee shall become fully vested with all the rights, powers, trusts, duties and obligations of its predecessor in trust under the Trust Agreements, with like effect as if originally named as Trustee thereunder. The predecessor Trustee shall, upon written request for payment of all fees and expenses by Consolidation and the NQF Companies, deliver to the successor Trustee the corpus of the Funds and perform such other acts as may be required or be desirable to vest and confirm in said successor Trustee all right, title and interest in the corpus of the Funds to which it succeeds.

**Section 3.09. Merger of Trustee.** Any corporation or other legal entity into which the Trustee may be merged or with which it may be consolidated, or any corporation or other legal entity resulting from any merger or consolidation to which the Trustee shall be a party, or any corporation or other legal entity to which the corporate trust functions of the Trustee may be transferred, shall be the successor Trustee under the Trust Agreements and these Master Terms without the necessity of executing or filing any additional acceptance of the Trust Agreements of these Master Terms or the performance of any further act on the part of any other parties hereto.

#### **ARTICLE IV** **Amendments**

Consolidation and the NQF Companies may amend these Master Terms and the Trust Agreements from time to time, provided such amendment does not cause the Qualified Funds to fail to qualify as nuclear decommissioning reserve funds under section 468A of the Code and the Treasury Regulations thereunder. These Master Terms and the Trust Agreements may not be amended so as to violate 468A of the Code or the Treasury Regulations thereunder. The Qualified Funds are established and shall be maintained for the sole purpose of qualifying as nuclear decommissioning reserve funds under Section 468A of the Code and the Treasury Regulations thereunder. If the Qualified Funds would fail to so qualify because of any provision contained in the Trust Agreements or these Master Terms, the Trust Agreements and these



Master Terms shall be deemed to be amended as necessary to conform with the requirements of Section 468A and the Treasury Regulations thereunder. If a proposed amendment shall affect the responsibility of the Trustee, such amendment shall not be considered valid and binding until such time as the amendment is executed by the Trustee. Notwithstanding any provision herein to the contrary, neither these Master Terms nor the Trust Agreements may be modified in any material respect without the prior written consent of the NRC Director, Office of Nuclear Reactor Regulation.

**ARTICLE V**  
**Powers of the Trustee and Investment Manager**

**Section 5.01. General Powers.** The Trustee shall have and exercise the following powers and authority in the administration of the Funds only on the direction of an Investment Manager where such powers and authority relate to a separate account established for an Investment Manager, and in its sole discretion where such powers and authority relate to investments made by the Trustee in accordance with Section 3.02(b):

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

(b) to sell, exchange, convey, transfer, lend, or otherwise dispose of any property held in the Funds 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;

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

(d) 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 Funds have outstanding at any time;

(e) to join in, dissent from or oppose the reorganization, recapitalization, consolidation, sale or merger of corporations or properties of which the Funds 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, without any duty to sell;

(f) 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 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 Funds for safekeeping or custodian purposes only;

(g) upon authorization of Consolidation or the appropriate NQF Company, to lend the assets of the Funds 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; provided, that, with respect to the lending of securities pursuant to this paragraph, the Trustee's powers shall subsume the role of custodian (the expressed intent hereunder being that the Trustee, in such case, be deemed a financial institution, within the meaning of section 101 (22) of the Bankruptcy Code); and provided, further, that any loans made from the Funds shall be made in conformity with such laws or regulations governing such lending activities which may have been promulgated by any appropriate regulatory body at the time of such loan;

(h) to purchase, enter, sell, hold, and generally deal in any manner in and with contracts for the immediate or future delivery of financial instruments of any issuer or of any other property and in foreign exchange or foreign exchange contracts; to grant, purchase, sell, exercise, permit to expire, permit to be held in escrow, and otherwise to acquire, dispose of, hold and generally deal in any manner with and in all forms of options in any combination.

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 or the appropriate NQF Company, as the case may be, shall have sole responsibility for nonreceipt of payment (or late payment) by the counterparty.

Notwithstanding anything in these Master Terms to the contrary, the Trustee shall not be responsible or liable for its failure to perform under the Trust Agreements or these Master Terms or for any losses to the Funds resulting from any event beyond the reasonable control of the Trustee, its agents or subcustodians, including but not limited to nationalization, strikes, expropriation, devaluation, seizure, or similar action by any governmental authority, de facto or de jure; or enactment, promulgation, imposition or enforcement by any such governmental authority of currency restrictions, exchange controls, levies or other charges affecting the Funds' property, or the breakdown, failure or malfunction of any utilities or telecommunications systems; or any order or regulation of any banking or securities industry including changes in market rules and market conditions affecting the execution or settlement of transactions; or acts of war, terrorism, insurrection or revolution; or acts of God; or any other similar event. This Section shall survive the termination of the Trust Agreements.

**Section 5.02. Specific Powers of the Trustee.** The Trustee shall have the following powers and authority, to be exercised in its sole discretion with respect to the Funds:

(a) to appoint agents, custodians, subtrustees, depositories or counsel, domestic or foreign, as to part or all of the Funds and functions incident thereto where, in the sole discretion of the Trustee, such delegation is necessary in order to facilitate the operations of the Funds and such delegation is not inconsistent with the purposes of the Funds or in contravention of any applicable law. To the extent that the appointment of any such person or entity may be deemed to be the appointment of a fiduciary, the Trustee may exercise the powers granted hereby to appoint as such a fiduciary any person or entity (other than AmerGen or any other owner or operator of a power reactor or their subsidiaries, successors, or assigns or persons representing them). Upon such delegation, the Trustee may require such reports, bonds or written agreements as it deems necessary to properly monitor the actions of its delegate;

(b) to cause any investment, either in whole or in part, in the Funds to be registered in, or transferred into, the Trustee's name or the names of a nominee or nominees, including but not limited to that of the Trustee or an affiliate of the Trustee, a clearing corporation, or a depository, or in book-entry form, or to retain any such investment unregistered or in a form permitting transfer by delivery, provided that the books and records of the Trustee shall at all times show that such investments are a part of the Funds; and to cause any such investment, or the evidence thereof, to be held by the Trustee, in a depository, in a clearing corporation, in book-entry form, or by any other entity or in any other manner permitted by law; provided that the Trustee shall not be responsible for any losses resulting from the deposit or maintenance of securities or other property (in accordance with market practice, custom, or regulation) with any recognized foreign or domestic clearing facility, book-entry system, centralized custodial depository, or similar organization;

(c) to make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers;

(d) to defend against or participate in any legal actions involving the Funds or the Trustee in its capacity stated herein, in the manner and to the extent it deems advisable;

(e) to form corporations and to create trusts, to hold title to any security or other property, to enter into agreements creating partnerships or joint ventures for any purpose or purposes determined by the Trustee to be in the best interests of the Funds;

(f) to establish and maintain such separate accounts in accordance with the instructions of Consolidation or the appropriate NQF Company, as Consolidation or the appropriate NQF Company, as the case may be, deem necessary for the proper administration of the Funds, or as determined to be necessary by the Trustee;

(g) to hold uninvested cash in its commercial bank or that of an affiliate, as it shall deem reasonable or necessary;

(h) 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 or the appropriate NQF Company expressly understands and agrees 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. The Trustee is authorized to invest in a collective fund which invests in Mellon Financial Corporation stock in accordance with the terms and conditions of the Department of Labor Prohibited Transaction Exemption 95-56 (the "Exemption") granted to the Trustee and its affiliates and to use a cross-trading program in accordance with the Exemption. Trustee will notify Consolidation and the NQF Companies if the Exemption is modified or revoked. Consolidation or the appropriate NQF Company acknowledge receipt of the notice entitled "Cross-Trading Information," a copy of which is attached to this Agreement as Exhibit E;

(i) to invest in open-end and closed-end investment companies, including those for which the Trustee or an affiliate provides services for a fee, regardless of the purposes for which such fund or funds were created, and any partnership, limited or unlimited, joint venture and other forms of joint enterprise created for any lawful purpose; and

(j) to generally take all action, whether or not expressly authorized, which the Trustee may deem necessary or desirable for the protection of the Funds.

Notwithstanding anything else in the Trust Agreements or these Master Terms to the contrary, including, without limitation, any specific or general power granted to the Trustee and to the investment managers, including the power to invest in real property, no portion of the Funds shall be invested in real estate (except for investments tied to market indexes or other non-nuclear sector common trust funds or mutual funds). For this purpose "real estate" includes, but is not limited to, real property, leaseholds or mineral interests.

**Section 5.03.** The powers described in Section 5.02 may be exercised by the Trustee with or without instructions from Consolidation or the NQF Companies or a party authorized by Consolidation or the NQF Companies to act on its behalf, but where the Trustee acts on Authorized Instructions, the Trustee shall be fully protected as described in Section 3.07. All directions and instructions to the Trustee from an Authorized Party shall be in writing, by facsimile transmission, electronic transmission subject to the Trustee's practices, or any other method specifically agreed to in writing by Consolidation or the NQF Companies and the Trustee, provided the Trustee may, in its discretion, accept oral directions and instructions and may require confirmation in writing. Without limiting the generality of the foregoing, the Trustee shall not be liable for the acts or omissions of any person appointed under paragraph (a) of Section 5.02 pursuant to Authorized Instructions.

**Section 5.04.** The assets of the Funds shall not be invested in the securities or other obligations of AmerGen Generation Company LLC, AmerGen Energy Company, LLC, or affiliates thereof, or their successors or assigns as identified by Consolidation and the NQF Companies. Except for investments tied to market indexes or other non-nuclear sector mutual funds or common trust funds, the assets of the funds shall not be invested in the securities of any entity owning one or more nuclear power plants, as identified by a source agreed to by the Trustee and Consolidation and the NQF Companies.

**ARTICLE VI**  
**Termination**

A Unit's Qualified Fund shall terminate upon the earlier of either (i) substantial completion of decommissioning of that Fund's Unit, as defined in the Special Terms, or (ii) disqualification of that Unit's Qualified Fund by the Internal Revenue Service as provided in Treasury Regulations § 1.468A5(c) or any corresponding future Treasury Regulation. A Nonqualified Fund shall terminate upon termination by the NRC of that Unit's license. If a Qualified Fund termination occurs before the NRC terminates the respective Unit's operating license, the Trustee will adhere to Section 5.02(b) of these Master Terms. Upon the termination of any Fund, all of the assets of the terminated Qualified Fund shall be distributed to Consolidation, and all of the assets of the terminated Nonqualified Fund shall be distributed to the NQF Company that is the owner of such Fund, except that if a Unit's Qualified Fund is terminated prior to the termination of a Unit's Nonqualified Fund, the assets of the terminated Qualified Fund shall be distributed to the Nonqualified Fund for the Unit that is held by the appropriate NQF Company.

## EXHIBIT "A"

### SPECIAL TERMS OF THE QUALIFIED NUCLEAR DECOMMISSIONING RESERVE FUNDS

The following Special Terms of the Qualified Funds (hereinafter referred to as the "Special Terms") will apply for purposes of these Master Terms. To the extent construed to be in conflict therewith, these Special Terms shall take precedence over the Master Terms. Capitalized terms shall have the same meaning as set forth in the Master Terms or the Trust Agreements:

**Section 1. Definitions.** The following terms as used in the Special Terms shall, unless the context clearly indicates otherwise, have the following respective meanings:

(a) "Administrative costs and other incidental expenses of the Qualified Funds" shall mean all ordinary and necessary expenses incurred in connection with the operation of the Qualified Funds, as provided in Treasury Regulations § 1.468A-5(a)(3)(ii)(A) or any corresponding future Treasury Regulation, including without limitation, federal, state and local income tax (including any Final Tax Liabilities), legal expenses, accounting expenses, actuarial expenses and trustee expenses.

(b) "Final Tax Liabilities" shall mean any and all tax liabilities determined to be owing but not paid out of the assets of any of the Seller's or Transferor's Qualified Fund related to each unit prior to the transfer of the assets of the Seller's or Transferor's Qualified Fund to the Qualified Fund.

(c) "Final Tax Refunds" shall mean any and all tax refunds determined to be receivable but not collected by the Seller's or Transferor's Qualified Fund prior to the transfer of the assets of the Seller's or Transferor's Qualified Fund to the Qualified Funds.

(d) "Permissible Assets" shall mean any investment permitted for a qualified nuclear decommissioning reserve fund under section 468A of the Code and the Treasury Regulations thereunder, subject to the restrictions provided in Section 5.04 of the Agreement.

(e) "Qualified Decommissioning Costs" shall mean all expenses otherwise deductible for federal income tax purposes without regard to section 280B of the Internal Revenue Code of 1986, as amended, or any corresponding section or sections of any future United States internal revenue statute (the "Code"), incurred (or to be incurred) in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a Unit when it has permanently ceased the production of electric energy, excluding any costs incurred for the disposal of spent nuclear fuel, as provided in Treasury Regulations § 1.468A-1(b)(5) or any corresponding future Treasury Regulation. Such term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to a Unit after the actual decommissioning occurs, such as physical security and radiation monitoring expenses.

(f) "Seller's or Transferor's Qualified Fund" shall mean the trust established and maintained for any respective unit that qualified as a nuclear decommissioning reserve fund under Code section 468A prior to the sale or transfer of such unit.

(g) "Substantial completion of decommissioning" shall mean the date that the maximum acceptable radioactivity levels mandated by the NRC with respect to a decommissioned nuclear power plant are satisfied by the Unit; provided, however, that if Consolidation requests a ruling from the Internal Revenue Service, the date designated by the Internal Revenue Service as the date on which substantial completion of decommissioning occurs shall govern; provided, further, that the date on which substantial completion of decommissioning occurs shall be in accordance with Treasury Regulations § 1.468A-5(d)(2) or any corresponding future Treasury Regulation.

**Section 2. Contributions to a Qualified Fund.** The assets of the Qualified Funds shall be contributed by Consolidation (or by others approved by Consolidation in writing) from time to time in cash. The Trustee shall not accept any contributions for the Qualified Funds other than cash payments with respect to which Consolidation is allowed a deduction under section 468A(a) of the Code and Treasury Regulations §1.468A-2(a) or any corresponding future Treasury Regulations, except for any Final Tax Refunds. Consolidation hereby represents that all contributions (or deemed contributions), except for any Final Tax Refunds, by Consolidation to the Qualified Funds in accordance with the provisions of Section 1.03 of the Agreement shall be deductible under section 468A of the Code and Treasury Regulations §1.468A-2(a) or any corresponding future Treasury Regulation or shall be withdrawn pursuant to Section 4 hereof.

**Section 3. Limitation on Use of Assets.** The assets of the Qualified Funds shall be used exclusively as follows:

- (a) To satisfy, in whole or in part, the liability for Qualified Decommissioning Costs through payments by the Trustee pursuant to Section 2.02 of the Master Terms; and
- (b) To pay the administrative costs and other incidental expenses of the Qualified Funds; and
- (c) To the extent the assets of the Qualified Funds are not currently required for (a) and (b) above, to invest directly in Permissible Assets.

**Section 4. Transfers by Consolidation.** If Consolidation's contribution (or deemed contribution) excluding any Final Tax Refunds to the Qualified Funds in any one year exceeds the amount deductible under section 468A of the Code and the Treasury Regulations thereunder, Consolidation may instruct the Trustee to transfer such excess contribution from a Unit's Qualified Fund to that Unit's Nonqualified Fund, as defined in the Trust Agreements and these Master Terms, pursuant to Section 2.04 of the Master Terms, provided any such transfer occurs on or before the date prescribed by law (including extensions) for filing the federal income tax return of the Qualified Funds for the taxable year to which the excess contribution relates for withdrawals pursuant to Treasury Regulations §§1.468A-5(c)(2) and 1.468A-2(f)(2) and occurs on or before the later of the date prescribed by law (including extensions) for filing the federal income tax return of the Qualified Funds for the taxable year to which the excess contribution relates or the date that is thirty (30) days after the date that Consolidation receives the ruling

amount for such taxable year for withdrawals pursuant to Treasury Regulations § 1.468A-3(j)(3). If Consolidation determines that transfer pursuant to this Section 4 is appropriate, Consolidation shall present a certificate so stating to the Trustee signed by its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer, requesting such withdrawal and transfer. The certificate shall be substantially in the form attached as Exhibit C to the Master Terms for transfers to Nonqualified Funds as provided in Section 2.04 of the Master Terms and substantially in the form of Exhibit D to the Master Terms for withdrawals and transfers by Consolidation.

**Section 5. Taxable Year/Tax Returns.** The accounting and taxable year for the Qualified Funds 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 the Qualified Funds must change to the taxable year of Consolidation as provided in Treasury Regulations § 1.468A-4(c)(1) or any corresponding future Treasury Regulation. Consolidation shall assist the Trustee in complying with any requirements under section 442 of the Code and Treasury Regulations §1.442-1. Consolidation shall prepare, or cause to be prepared, any tax returns required to be filed by the Qualified Funds, and the Trustee shall sign and file such returns on behalf of the Qualified Funds. The Trustee shall cooperate with Consolidation in the preparation of such returns.



**EXHIBIT "B-1"**

**CERTIFICATE FOR PAYMENT  
OF DECOMMISSIONING COSTS**

**[Name of Trustee],  
as Trustee  
[Address]**

This Certificate is submitted pursuant to Section 2.02 of the Master Terms for Trust Agreements. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and requested to disburse out of the [Unit name's] Funds to [payee] the amount of \$\_\_\_\_\_ from the Qualified Fund for the payment of the Decommissioning Costs which have been incurred with respect to the [Unit name]. Prior to making such disbursements, however, the Trustee shall provide thirty days prior written notice of such disbursement to the NRC and shall not make such disbursement if the Trustee receives written notice of any objections from the NRC Director, Office of Nuclear Reactor Regulations during such thirty day period, or if the Trustee receives such notice at any later time that is nevertheless prior to disbursement. With respect to such Decommissioning Costs, Consolidation hereby certifies as follows:

1. The amount to be disbursed pursuant to this Certificate shall be solely used for the purpose of paying the Decommissioning Costs the nature of which are described in Schedule A hereto.
2. None of the Decommissioning Costs described in Schedule A hereto have previously been made the basis of any certificate pursuant to Section 2.02 of the Master Terms.
3. The amount to be disbursed from the Qualified Fund pursuant to this Certificate shall be used solely for the purpose of paying Qualified Decommissioning Costs as defined in the Special Terms.
4. Any necessary authorizations of the NRC or any corresponding governmental authority having jurisdiction over the decommissioning of the Unit have been obtained, other than the required 30 days prior written Notice.

IN WITNESS WHEREOF, the undersigned have executed this Certificate in the capacity shown below as of \_\_\_\_\_, \_\_\_\_\_.

**AMERGEN CONSOLIDATION, LLC**

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

**AMERGEN CONSOLIDATION, LLC**

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

**Acknowledged by:  
MELLON BANK, N.A.**

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

**EXHIBIT "B-2"**

**CERTIFICATE FOR PAYMENT  
OF DECOMMISSIONING COSTS**

**[Name of Trustee],  
as Trustee  
[Address]**

This Certificate is submitted pursuant to Section 2.02 of the Nuclear Decommissioning Master Terms Agreement dated \_\_\_\_\_. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and requested to disburse out of the [Unit name's] Funds to [payee] the amount of \$\_\_\_\_\_ from the Nonqualified Fund for the payment of the Decommissioning Costs which have been incurred with respect to the [Unit name]. Prior to making such disbursements, however, the Trustee shall provide thirty days prior written notice of such disbursement to the NRC and shall not make such disbursement if the Trustee receives written notice of any objections from the NRC Director, Office of Nuclear Reactor Regulations during such thirty day period, or if the Trustee receives such notice at any later time that is nevertheless prior to disbursement. With respect to such Decommissioning Costs, AmerGen \_\_\_\_\_ NQF, LLC hereby certifies as follows:

1. The amount to be disbursed pursuant to this Certificate shall be solely used for the purpose of paying the Decommissioning Costs the nature of which are described in Schedule A hereto.

2. None of the Decommissioning Costs described in Schedule A hereto have previously been made the basis of any certificate pursuant to Section 2.02 of the Master Terms.

3. Any necessary authorizations of the NRC or any corresponding governmental authority having jurisdiction over the decommissioning of the Unit have been obtained, other than the required 30 days prior written Notice.

IN WITNESS WHEREOF, the undersigned have executed this Certificate in the capacity shown below as of \_\_\_\_\_, \_\_\_\_\_.

AMERGEN \_\_\_\_\_ NQF, LLC

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

Name:

Title:

AMERGEN \_\_\_\_\_ NQF, LLC

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

Name:

Title:

**Acknowledged by:**  
**MELLON BANK, N.A.**

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

Name:

Title:

**EXHIBIT "C"**

**CERTIFICATE FOR TRANSFER BETWEEN THE QUALIFIED FUND  
AND THE NONQUALIFIED FUND**

**[Name of Trustee],  
as Trustee**

**[Address]**

This Certificate is submitted pursuant to Section 2.04 of the Master Terms for Trust Agreements. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and instructed as follows (complete one):

To pay \$\_\_\_\_\_ in cash from the [Unit name's] Nonqualified Fund to that Unit's Qualified Fund; or

To pay \$\_\_\_\_\_ in cash from the [Unit name's] Qualified Fund to that Unit's Nonqualified Fund.

With respect to such payment, Consolidation and AmerGen \_\_\_\_\_ NQF, LLC hereby certify as follows:

1. Any amount stated herein to be paid from the Nonqualified Fund to the Qualified Fund is in accordance with the contribution limitations applicable to the Qualified Fund set forth in Section 2 of the Special Terms and the limitations of Section 2.04 of the Master Terms.
2. Any amount stated herein to be paid from the Qualified Fund to the Nonqualified Fund is in accordance with Section 4 of the Special Terms. Consolidation and AmerGen \_\_\_\_\_ NQF, LLC has determined that such payment is appropriate under the standards of Section 4 of the Special Terms.

IN WITNESS WHEREOF, the undersigned have executed this Certificate in the capacity as shown below as of \_\_\_\_\_, \_\_\_\_\_.

**AMERGEN CONSOLIDATION, LLC**

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

**AMERGEN \_\_\_\_\_ NQF, LLC**

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

**Acknowledged by:  
MELLON BANK, N.A.**

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

**EXHIBIT "D"**

**CERTIFICATE FOR WITHDRAWAL  
OF EXCESS CONTRIBUTIONS  
FROM QUALIFIED FUND**

[Name of Trustee],  
as Trustee

[Address]

This Certificate is submitted pursuant to Section 4 of the Special Terms attached as Exhibit A to the Master Terms for Trust Agreements ("Master Terms"). All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Master Terms. In your capacity as Trustee, you are hereby authorized and instructed to pay \$\_\_\_\_\_ in cash to Consolidation from the [Unit name's] Qualified Fund. With respect to such payment, Consolidation hereby certifies that withdrawal and transfer pursuant to Section 4 of the Special Terms is appropriate and that \$\_\_\_\_\_ constitutes an excess contribution pursuant to such Section.

**IN WITNESS WHEREOF**, the undersigned have executed this Certificate in the capacity as shown below as of \_\_\_\_\_, \_\_\_\_\_.

**AMERGEN CONSOLIDATION, LLC**

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

**Acknowledged by:  
MELLON BANK, N.A.**

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

## **EXHIBIT "E"**

### **CROSS-TRADING INFORMATION**

As part of the cross-trading program covered by the Exemption for the Trustee and its affiliates, the Trustee is to provide to each affected Trust the following information:

#### **I. The existence of the cross-trading program**

The Trustee has developed and intends to utilize, wherever practicable, a cross-trading program for Indexed Accounts and Large Accounts as those terms are defined in the Exemption.

#### **II. The "triggering events" creating cross-trade opportunities**

In accordance with the exemption three "triggering events" may create opportunities for cross-trading transactions. They are generally the following (see the Exemption for more information):

- A. A change in the composition or weighting of the index by the independent organization creating and maintaining the index;
- B. A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals on the account's opening date, where the Account is a bank collective fund, or on any relevant date for non-bank collective funds; provided, however, a change in an Indexed Account resulting from investments or withdrawals of assets of the Trustee's own plans (other than the Trustee's defined contribution plans under which participants may direct among various investment options, including Indexed Accounts) are excluded as a "triggering event"; or
- C. A recorded declaration by the Trustee that 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 0.5% of the Account's total value has occurred.

#### **III. The pricing mechanism utilized for securities purchased or sold**

Securities will be valued at the current market value for the securities on the date of the crossing transaction.

Equity securities - the current market value for the equity security will be the closing price on the day of trading as determined by an independent pricing service; unless the security was added to or deleted from an index after the close of trading, in which case the price will be the opening price for that security on the next business day after the announcement of the addition or deletion.



Debt securities - the current market value of the debt security will be the price determined by the Trustee as of the close of the day of trading according to the Securities and Exchange Commission's Rule 17a-7(b)(4) under the Investment Company Act of 1940.

Debt securities that are not reported securities or traded on an exchange will be valued based on an average of the highest current independent bids and the lowest current independent offers on the day of cross-trading. The Trustee will use reasonable inquiry to obtain such prices from at least three independent sources that are brokers or market makers. If there are fewer than three independent sources to price a certain debt security, the closing price quotations will be obtained from all available sources.

IV. The allocation methods

Direct cross-trade opportunities will be allocated among potential buyers or sellers of debt or equity securities on a pro rata, basis. With respect to equity securities, please note the Trustee imposes a trivial share constraint to reduce excessive custody ticket charges to participating accounts.

V. Other procedures implemented by the Trustee for its cross-trading practices

The Trustee has developed certain internal operational procedures for cross-trading debt and equity securities. These procedures are available upon request.

- 2. Revised Draft Amended and Restated Non-Tax Qualified Nuclear Decommissioning Master Trust Agreement (The Northern Trust Company)**

**AMENDED AND RESTATED  
NONQUALIFIED  
NUCLEAR DECOMMISSIONING  
MASTER TRUST AGREEMENT**

**THIS AMENDED AND RESTATED NONQUALIFIED NUCLEAR DECOMMISSIONING MASTER TRUST AGREEMENT** (the "Agreement"), dated as of \_\_\_\_\_, 2003 by and between AmerGen Energy Company, LLC ("AmerGen"), a limited liability company organized under the law of the State of Delaware and having a principal office at 300 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 MELLON BANK, N.A., as Trustee, having its office at \_\_\_\_\_, Nevada [zip] (the "Trustee").

**WITNESSETH:**

**WHEREAS**, AmerGen 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 NQF Companies 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**, AmerGen entered into certain Trust Agreements with the Trustee described in Schedule B (the "Prior Agreements") which were established for the purpose of holding the decommissioning funds established by AmerGen for each Unit in which AmerGen owned an interest in whole or in part; and

**WHEREAS**, by agreement effective as of October 16, 2001, AmerGen and the Trustee entered into an amended and restated trust agreement (the "Amended and Restated Agreement") which amended the Prior Agreements and consolidated the separate trusts established by the Prior Agreements into a master trust; and

**WHEREAS**, the 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 "Qualified Funds") under section 468A of the Internal Revenue Code of 1986, as amended (the "Code") and nonqualified nuclear decommissioning trusts (the "Nonqualified Funds"), the Qualified Funds and the Nonqualified Funds may hereinafter be referred to collectively as the "Funds"; and

**WHEREAS**, pursuant to certain assignment agreements AmerGen wishes to transfer to the NQF Companies its interests, rights, duties and obligations under the

Amended and Restated Agreement in the Nonqualified Funds, 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 AmerGen wishes to transfer to AmerGen Consolidation, 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 Qualified Funds, and Consolidation has agreed to accept such interests, rights, duties and obligations; and

**WHEREAS**, AmerGen, the NQF Companies and Consolidation wish to amend the Amended and Restated Agreement so that it is restated into two separate agreements, one with respect to the Nonqualified Funds and one with respect to the Qualified Funds; and

**WHEREAS**, AmerGen, the NQF Companies and the Trustee wish that this Agreement shall amend and restate the Amended and Restated Agreement with respect to the Nonqualified 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**, AmerGen and the NQF Companies wish that the Trustee continue to serve as trustee of the Nonqualified Funds.

**NOW, THEREFORE**, to provide for the maintenance of the Nonqualified Funds, the making of payments therefrom and the performance of covenants by the NQF Companies and the Trustee set forth herein, AmerGen has previously sold, assigned, set over and pledged unto the Trustee, and to the Trustee's successors and its assigns, and the Trustee has acknowledged receipt of the funds representing the initial funding of and any additional contributions to the Nonqualified Funds.

**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 FUNDS**

**Section 1.01. Establishment of the Funds.** The Trustee shall hold a separate Nonqualified Fund for each Unit. The Nonqualified Funds for each Unit shall be as identified in Schedule A, with the NQF Company as identified in Schedule A as owner of

each Nonqualified Fund. The Nonqualified Funds shall be maintained separately at all times in the United States pursuant to this Agreement. The Trustee shall maintain such records as are necessary to reflect each Nonqualified Fund separately on its books from each other Nonqualified Fund, and shall create and maintain such subaccounts within each Nonqualified Fund as the relevant NQF Company shall direct. In performing its duties under this Agreement, the Trustee shall exercise the same care and diligence that it would devote to its own property in like circumstances.

**Section 1.02. Purposes of the Funds.** The Nonqualified Funds are established for the exclusive purpose of providing funds for the decommissioning of the Units. The Nonqualified Fund 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 Qualified Fund for that Unit, pursuant to Section 2 of the Special Terms contained in Exhibit A to the Master Terms. None of the assets of the Nonqualified Funds 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 Nonqualified Funds 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. Master Terms.** In addition to the terms set forth in this Agreement, the Nonqualified Funds shall also be governed by the provisions of the Master Terms. The terms of this Agreement, to the extent construed to be in conflict with the Master Terms, 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 pursuant to the terms of Article II of the Master Terms, the Trustee shall distribute all or a portion of the Nonqualified Fund of which such NQF Company is an owner to such NQF Company, Consolidation or a third party.

## **ARTICLE III** **TERMINATION**

**Section 3.01. Termination.** A NQF Company may terminate all or a portion of the Nonqualified Fund of which such NQF Company is an owner, upon written notice to the Trustee, in accordance with Article VI of the Master Terms.

**Section 3.02. Distribution of Trust Upon Termination.** Upon termination of all or a portion of a Nonqualified Fund, the Trustee shall assist in liquidating assets of such trust (if so directed by the relevant NQF Company), and distributing the then-existing assets of the Fund (either the liquidation proceeds or the Fund assets-in-kind, including accrued, accumulated and undistributed net income) less final Fund administration expenses (including accrued taxes paid directly to a taxing authority) to such NQF Company, provided, however, that no such distribution shall be made unless the Trustee has received an opinion of legal counsel of such NQF Company stating that such distribution does not violate any Order, and that the requirements of Article VI of the Master Terms have been met.

**ARTICLE IV**  
**Miscellaneous**

**Section 4.01. Binding Agreement.** All covenants and agreements in this Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their successors and assigns.

**Section 4.02. Notices.** All notices and communications hereunder shall be in writing and shall be deemed to be duly given on the date mailed if sent by registered mail, return receipt requested, as follows:

MELLON BANK, N.A.  
[Contact and Address to be Inserted.]

NQF COMPANIES  
as set forth in Schedule A

or at such other address as the Trustee or NQF Companies may have furnished to the other party in writing by registered mail, return receipt requested.

**Section 4.03. Governing Law.** Each Nonqualified Fund has been established pursuant to this Agreement in accordance with the requirements for trusts under the laws of the Commonwealth of Pennsylvania and this Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

**Section 4.04. Counterparts.** This Agreement may be executed in several counterparts, and all such counterparts executed and delivered, each an original, shall constitute but one and the same instrument.

**Section 4.05. Contractual Income.** The Trustee shall credit the Nonqualified Funds with income and maturity proceeds on securities on the contractual payment date

net of any taxes or upon actual receipt as agreed between the Trustee and the NQF Companies. To the extent the NQF Companies and the Trustee have agreed to credit income on the contractual payment date, the Trustee may reverse such accounting entries with back value to the contractual payment date if the Trustee reasonably believes that such amount will not be received by it.

**Section 4.06. Contractual Settlement.** The Trustee will attend to the settlement of securities transactions on the basis of either contractual settlement date accounting or actual settlement date accounting as agreed between the NQF Companies and the Trustee. To the extent the NQF Companies and the Trustee have agreed to settle certain securities transactions on the basis of contractual settlement date accounting, the Trustee may reverse with back value to the contractual settlement date any entry relating to such contractual settlement where the related transaction remains unsettled according to established procedures.

**Section 4.07. Authority.** The NQF Companies and the Trustee hereby each represent and warrant to the other that it has full authority to enter into this Agreement upon the terms and conditions hereof and that the individual executing this Agreement on its behalf has the requisite authority to bind the NQF Companies and the Trustee to this Agreement.

**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.

**AMERGEN CLINTON NQF, LLC**

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

**AMERGEN OYSTER CREEK NQF, LLC**

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

**AMERGEN TMI NQF, LLC**

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

**AMERGEN ENERGY COMPANY, LLC**

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

Name:

Title:

**MELLON BANK, N.A.**

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

Name:

Title:



## Schedule A

The following is a list /of nuclear power plants owned in whole or part by AmerGen, trust funds and their owners covered by the Master Terms:

| <u>Unit</u>                             | <u>Nonqualified Fund</u>  | <u>NQF Company</u>            |
|---|---|-------------------------------|
| Clinton Nuclear Power Plant             | AmerGen Clinton Nuclear Power Plant Nonqualified Fund             | AmerGen Clinton NQF, LLC      |
| Oyster Creek Nuclear Generating Station | AmerGen Oyster Creek Nuclear Generating Station Nonqualified Fund | AmerGen Oyster Creek NQF, LLC |
| Three Mile Island Unit One              | AmerGen Three Mile Island Unit One Nonqualified Fund              | AmerGen TMI NQF, LLC          |

The address of each of the NQF Companies is as follows: 2325-B Renaissance Dr., Suite 19, Las Vegas, Nevada 89119.

## **Schedule B**

The following is a list of the Prior Agreements:

1. **Nuclear Decommissioning Master Trust Agreement – Clinton Nuclear Power Plant, dated as of December 13, 1999..**
2. **Nuclear Decommissioning Master Trust Agreement – Oyster Creek Nuclear Generating Station, dated as of July 25, 2000.**
3. **Nuclear Decommissioning Master Trust Agreement – Three Mile Island Unit One, dated as of December 13, 1999.**

- 3. Revised Draft Amended and Restated Tax-Qualified Nuclear Decommissioning Master Trust Agreement (The Northern Trust Company)**

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

**THIS AMENDED AND RESTATED QUALIFIED NUCLEAR DECOMMISSIONING MASTER TRUST AGREEMENT** (the "Agreement"), dated as of \_\_\_\_\_, 2003 by and between AmerGen Energy Company, LLC ("AmerGen"), a limited liability company organized under the law of the State of Delaware and having a principal office at 300 Exelon Way, Kennett Square, Pennsylvania 19348, AmerGen Consolidation, LLC ("Consolidation"), a limited liability company duly organized and existing under the laws of the State of Nevada, having its principal office at 2325-B Renaissance Dr., Suite 19, Las Vegas, Nevada 89119, Nevada [zip], and MELLON BANK, N.A., as Trustee, having its office at \_\_\_\_\_, Nevada [zip] (the "Trustee");

**WITNESSETH:**

**WHEREAS**, AmerGen 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 Consolidation 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**, AmerGen entered into certain Trust Agreements with the Trustee, described in Schedule B ("the Prior Agreements") which were established for the purpose of holding the decommissioning funds established by AmerGen for each Unit in which AmerGen owned an interest in whole or in part; and

**WHEREAS**, by agreement effective as of October 16, 2001, AmerGen and the Trustee entered into an amended and restated trust agreement (the "Amended and Restated Agreement") which amended the Prior Agreements and consolidated the separate trusts established by the Prior Agreements into a master trust; and

**WHEREAS**, the 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 "Qualified Funds") under section 468A of the Internal Revenue Code of 1986, as amended (the "Code") and nonqualified nuclear decommissioning funds (the "Nonqualified Funds"), the Qualified Funds and the Nonqualified Funds may hereinafter be referred to collectively as the "Funds"; and

**WHEREAS**, pursuant to certain assignments AmerGen wishes to transfer to certain limited liability companies duly organized and existing under the laws of the State of Nevada (the "NQF Companies") its interests, rights, duties and obligations under the

Amended and Restated Agreement in the Nonqualified Funds, 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 AmerGen wishes to transfer to Consolidation its interests, rights, duties and obligations under the Amended and Restated Agreement in the Qualified Funds, and Consolidation has agreed to accept such interests, rights, duties and obligations; and

**WHEREAS**, AmerGen, the NQF Companies and Consolidation wish to amend the Amended and Restated Agreement so that it is restated into two separate agreements, one with respect to the Nonqualified funds and one with respect to the Qualified Funds; and

**WHEREAS**, AmerGen, Consolidation and the Trustee wish that this Agreement shall amend and restate the Amended and Restated Agreement with respect to the Qualified Funds in such a way that nothing in this Agreement is intended to conflict with or override the applicable license or the applicable regulatory requirements of the NRC, the IRS and other regulators; and

**WHEREAS**, AmerGen and Consolidation wish that the Trustee continue to serve as Trustee of the Qualified Funds; and

**WHEREAS**, the execution and delivery of this Agreement have been duly authorized by AmerGen, Consolidation and the Trustee and all things necessary to make this Agreement a valid and binding agreement by Consolidation and the Trustee have been done.

**NOW, THEREFORE**, to provide for the maintenance of the Qualified Funds and the making of payments therefrom and the performance of the covenants by Consolidation and the Trustee set forth herein, AmerGen has previously sold, assigned, transferred, set over and pledged unto the Trustee, and to the Trustee's successors and assigns, and the Trustee has acknowledged receipt of the funds representing the initial funding of and any additional contributions to the Qualified Funds.

**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 FUNDS**

**Section 1.01. Establishment of the Funds.** The Trustee shall hold a separate Qualified Fund for each Unit. The Qualified Funds for each Unit shall be as identified in Schedule A. The Qualified Funds shall be maintained separately at all times in the United States pursuant to this Agreement. Consolidation intends that the Qualified Funds shall qualify as nuclear decommissioning reserve funds under section 468A of the Code. The assets of the Qualified Funds may be used only in a manner authorized by section 468A of the Code and the Treasury Regulations thereunder and this Agreement cannot be amended to violate section 468A of the Code or the Treasury Regulations thereunder. The Trustee shall maintain such records as are necessary to reflect each Qualified Fund separately on its books from each other Qualified Fund and shall create and maintain such subaccounts within each Qualified Fund as Consolidation shall direct. In performing its duties under this agreement, the Trustee shall exercise the same care and diligence that it would devote to its own property in like circumstances.

**Section 1.02. Purposes of the Funds.** 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 Section 2 of the Special Terms contained in Exhibit A to 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 Qualified Funds shall be transferred or contributed by Consolidation (or by others approved in writing by Consolidation) from time to time. Cash contributions for each Unit shall be allocated to the Qualified Funds as Consolidation designates in writing at the time of payment.

**Section 1.04. Master Terms.** In addition to the terms set forth in this Agreement, the Qualified Funds shall also be governed by the provisions of the Master Terms. The terms of this Agreement, to the extent construed to be in conflict with the Master Terms, 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 pursuant to the terms of Article II of the Master Terms, the Trustee

shall distribute all or a portion of the Qualified Trust to Consolidation, an NQF Company or third party.

### **ARTICLE III** **TERMINATION**

**Section 3.01. Termination.** Consolidation may terminate all or a portion of the Qualified Funds, upon written notice to the Trustee, in accordance with Article VI of the Master Terms.

**Section 3.02. Distribution of Trust Upon Termination.** Upon termination of all or a portion of a Qualified Fund, the Trustee shall assist in liquidating assets of such trust, and distributing the then-existing assets of the Qualified Fund (either the liquidation proceeds or the Fund assets-in-kind, including accrued, accumulated and undistributed net income) less final Fund administration expenses (including accrued taxes paid directly to a taxing authority) to Consolidation, provided, however, that no such distribution shall be made unless the Trustee has received an opinion of legal counsel of Consolidation stating that such distribution does not violate any Order, and that the requirements of Article VI of the Master Terms have been met.

### **ARTICLE IV** **Miscellaneous**

**Section 4.01. Binding Agreement.** All covenants and agreements in this Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their successors and assigns.

**Section 4.02. Notices.** All notices and communications hereunder shall be in writing and shall be deemed to be duly given on the date mailed if sent by registered mail, return receipt requested, as follows:

MELLON BANK, N.A.  
[Insert Contact and Address]

AMERGEN CONSOLIDATION, LLC  
[Insert Contact and Address]

or at such other address as the Trustee or Consolidation may have furnished to the other party in writing by registered mail, return receipt requested.

**Section 4.03. Governing Law.** Each Qualified Fund has been established pursuant to this Agreement in accordance with the requirements for trusts under the laws of the Commonwealth of Pennsylvania and this Agreement shall be governed by and

construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania .

**Section 4.04. Counterparts.** This Agreement may be executed in several counterparts, and all such counterparts executed and delivered, each an original, shall constitute but one and the same instrument.

**Section 4.05. Contractual Income.** The Trustee shall credit the Qualified Funds with income and maturity proceeds on securities on the contractual payment date net of any taxes or upon actual receipt as agreed between the Trustee and Consolidation. To the extent Consolidation and the Trustee have agreed to credit income on the contractual payment date, the Trustee may reverse such accounting entries with back value to the contractual payment date if the Trustee reasonably believes that such amount will not be received by it.

**Section 4.06. Contractual Settlement.** The Trustee will attend to the settlement of securities transactions on the basis of either contractual settlement date accounting or actual settlement date accounting as agreed between Consolidation and the Trustee. To the extent Consolidation and the Trustee have agreed to settle certain securities transactions on the basis of contractual settlement date accounting, the Trustee may reverse with back value to the contractual settlement date any entry relating to such contractual settlement where the related transaction remains unsettled according to established procedures.

**Section 4.07. Authority.** Consolidation and the Trustee hereby each represent and warrant to the other that it has full authority to enter into this Agreement upon the terms and conditions hereof and that the individual executing this Agreement on its behalf has the requisite authority to bind Consolidation and the Trustee to this Agreement.



**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.

**AMERGEN CONSOLIDATION, LLC**

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

Name:

Title:

**AMERGEN ENERGY COMPANY, LLC**

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

Name:

Title:

**MELLON BANK, N.A.**

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

Name:

Title:

## Schedule A

The following is a list of nuclear power plants owned in whole or part by AmerGen and the Qualified Funds covered by the Master Terms:

| <u>Units</u>                            | <u>Funds</u>   |
|---|--|
| Clinton Nuclear Power Plant             | Clinton Nuclear Power Plant Qualified Fund             |
| Oyster Creek Nuclear Generating Station | Oyster Creek Nuclear Generating Station Qualified Fund |
| Three Mile Island Unit One              | Three Mile Island Unit One Qualified Fund              |

## **Schedule B**

The following is a list of the Prior Agreements:

1. Nuclear Decommissioning Master Trust Agreement – Clinton Nuclear Power Plant, dated as of December 13, 1999..
2. Nuclear Decommissioning Master Trust Agreement – Oyster Creek Nuclear Generating Station, dated as of July 25, 2000.
3. Nuclear Decommissioning Master Trust Agreement – Three Mile Island Unit One, dated as of December 13, 1999.

**ATTACHMENT E**

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

**OPERATING AGREEMENT**

**OF**

**EXELON [NAME] NQF, LLC**

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

**OPERATING AGREEMENT  
OF  
EXELON [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 Exelon [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 Exelon [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: Exelon [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 \_\_\_\_\_, Nevada, and the registered agent named at such address is \_\_\_\_\_ 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 giving of thirty (30) days prior written notice to 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 giving thirty (30) days prior written notice to 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 Exelon 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 gives thirty (30) days prior written notice to 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 written notice to 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 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. 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 giving thirty (30) days prior written notice to 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 giving thirty (30) days prior written notice to 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:**  
**EXELON CONSOLIDATION, LLC**

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

**MEMBER:**  
**EXELON GENERATION 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**

Exelon Non-Tax Qualified Decommissioning Trust – Braidwood Station, Unit 1  
Exelon Non-Tax Qualified Decommissioning Trust – Braidwood Station, Unit 2  
Exelon Non-Tax Qualified Decommissioning Trust – Byron Station, Unit 1  
Exelon Non-Tax Qualified Decommissioning Trust – Byron Station, Unit 2  
Exelon Non-Tax Qualified Decommissioning Trust – Dresden Nuclear Power Station, Unit 1  
Exelon Non-Tax Qualified Decommissioning Trust – Dresden Nuclear Power Station, Unit 2  
Exelon Non-Tax Qualified Decommissioning Trust – Dresden Nuclear Power Station, Unit 3  
Exelon Non-Tax Qualified Decommissioning Trust – LaSalle County Station, Unit 1  
Exelon Non-Tax Qualified Decommissioning Trust – LaSalle County Station, Unit 2  
Exelon Limerick Unit 1 Non-Qualified Fund  
Exelon Limerick Unit 2 Non-Qualified Fund  
Exelon Peach Bottom Unit 1 Non-Qualified Fund  
Exelon Peach Bottom Unit 2 Non-Qualified Fund  
Exelon Peach Bottom Unit 3 Non-Qualified Fund  
Exelon Non-Tax Qualified Decommissioning Trust – Quad Cities Nuclear Power Station,  
Unit 1  
Exelon Non-Tax Qualified Decommissioning Trust – Quad Cities Nuclear Power Station,  
Unit 2  
Exelon Salem Unit 1 Non-Qualified Fund  
Exelon Salem Unit 2 Non-Qualified Fund  
Exelon Non-Tax Qualified Decommissioning Trust – Zion Nuclear Power Station, Unit 1  
Exelon Non-Tax Qualified Decommissioning Trust – Zion Nuclear Power Station, Unit 2

**Attachment F**

**Revised Draft Operating Agreement Exelon Generation Consolidation, LLC**

**OPERATING AGREEMENT**

**OF**

**EXELON GENERATION CONSOLIDATION, LLC**

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

**OPERATING AGREEMENT  
OF  
EXELON GENERATION 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 Exelon Generation 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 Exelon Generation 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: Exelon Generation 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 \_\_\_\_\_, \_\_\_\_\_, Nevada, \_\_\_\_\_ and the registered agent named at such address is \_\_\_\_\_ 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 giving of thirty (30) days prior written notice to the NRC Director, Office of Nuclear Reactor Regulation.

**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 giving thirty (30) days prior written notice to 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 giving of thirty (30) days prior written notice to 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 and/or the giving of thirty (30) days prior written notice to 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;

or

**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 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 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 giving thirty (30) days prior written notice to 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 giving thirty (30) days prior written notice to 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.



, Manager

By \_\_\_\_\_  
          , Manager

**MEMBER:  
EXELON GENERATION 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 AGREEMENT**

**Exelon Non-Tax Qualified Decommissioning Trust – Braidwood Station, Unit 1**  
**Exelon Non-Tax Qualified Decommissioning Trust – Braidwood Station, Unit 2**  
**Exelon Non-Tax Qualified Decommissioning Trust – Byron Station, Unit 1**  
**Exelon Non-Tax Qualified Decommissioning Trust – Byron Station, Unit 2**  
**Exelon Non-Tax Qualified Decommissioning Trust – Dresden Nuclear Power Station, Unit 1**  
**Exelon Non-Tax Qualified Decommissioning Trust – Dresden Nuclear Power Station, Unit 2**  
**Exelon Non-Tax Qualified Decommissioning Trust – Dresden Nuclear Power Station, Unit 3**  
**Exelon Non-Tax Qualified Decommissioning Trust – LaSalle County Station, Unit 1**  
**Exelon Non-Tax Qualified Decommissioning Trust – LaSalle County Station, Unit 2**  
**Exelon Limerick Unit 1 Non-Qualified Fund**  
**Exelon Limerick Unit 2 Non-Qualified Fund**  
**Exelon Peach Bottom Unit 1 Non-Qualified Fund**  
**Exelon Peach Bottom Unit 2 Non-Qualified Fund**  
**Exelon Peach Bottom Unit 3 Non-Qualified Fund**  
**Exelon Non-Tax Qualified Decommissioning Trust – Quad Cities Nuclear Power Station, Unit 1**  
**Exelon Non-Tax Qualified Decommissioning Trust – Quad Cities Nuclear Power Station, Unit 2**  
**Exelon Salem Unit 1 Non-Qualified Fund**  
**Exelon Salem Unit 2 Non-Qualified Fund**  
**Exelon Non-Tax Qualified Decommissioning Trust – Zion Nuclear Power Station, Unit 1**  
**Exelon Non-Tax Qualified Decommissioning Trust – Zion Nuclear Power Station, Unit 2**



## **EXHIBIT C**

### **QUALIFIED TRUST AGREEMENTS**

**Exelon Tax-Qualified Decommissioning Trust – Braidwood Station, Unit 1**  
**Exelon Tax-Qualified Decommissioning Trust – Braidwood Station, Unit 2**  
**Exelon Tax-Qualified Decommissioning Trust – Byron Station, Unit 1**  
**Exelon Tax-Qualified Decommissioning Trust – Byron Station, Unit 2**  
**Exelon Tax-Qualified Decommissioning Trust – Dresden Nuclear Power Station, Unit 1**  
**Exelon Tax-Qualified Decommissioning Trust – Dresden Nuclear Power Station, Unit 2**  
**Exelon Tax-Qualified Decommissioning Trust – Dresden Nuclear Power Station, Unit 3**  
**Exelon Tax-Qualified Decommissioning Trust – LaSalle County Station, Unit 1**  
**Exelon Tax-Qualified Decommissioning Trust – LaSalle County Station, Unit 2**  
**Exelon Limerick Unit 1 Qualified Fund**  
**Exelon Limerick Unit 2 Qualified Fund**  
**Exelon Peach Bottom Unit 2 Qualified**  
**Exelon Peach Bottom Unit 3 Qualified**  
**Exelon Tax-Qualified Decommissioning Trust – Quad Cities Nuclear Power Station, Unit 1**  
**Exelon Tax-Qualified Decommissioning Trust – Quad Cities Nuclear Power Station, Unit 2**  
**Exelon Salem Unit 1 Qualified Fund**  
**Exelon Salem Unit 2 Qualified Fund**  
**Exelon Tax-Qualified Decommissioning Trust – Zion Nuclear Power Station, Unit 1**  
**Exelon Tax-Qualified Decommissioning Trust – Zion Nuclear Power Station, Unit 2**