

A CMS Energy Company

Big Rock Point Nuclear Plant
10269 US-31 North
Charlevoix, MI 49720

Kurt M. Haas
General Manager

March 31, 2005

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

**DOCKETS 50-155 AND 72-043 - LICENSE DPR-6 - BIG ROCK POINT PLANT –
CERTIFICATION OF FINANCIAL ASSURANCE FOR DECOMMISSIONING
PURSUANT TO 10 CFR 50.75(f)(1)**

Pursuant to 10 CFR 50.75(f)(1) the attachment to this letter serves as an annual report to the NRC on the status of Big Rock Point Plant's financial assurance for decommissioning. This report addresses financial status as of December 31, 2004.

If you have any questions or comments on this report, please contact William J. Trubilowicz, Cost, Scheduling, and Purchasing Manager at 231-547-8341.


Kurt M. Haas
Site General Manager

cc: Administrator, Region III, USNRC
NRC Decommissioning Inspector, Big Rock Point
NRC NMSS Project Manager

ATTACHMENT

NMSS01

CONSUMERS ENERGY COMPANY

Big Rock Point Plant
Docket 50-155
License DPR-6

**CERTIFICATION OF FINANCIAL
ASSURANCE FOR DECOMMISSIONING**

March 2005

Consumers Energy Company (Consumers Energy or Company) submits this certification of financial assurance for decommissioning in compliance with 10 CFR 50.75(f)(1).

1. Consumers Energy owns a 100% undivided interest in the Big Rock Point Plant (Big Rock) and provides financial assurance for decommissioning through the use of an external sinking fund, that was funded by rates that were established by cost of service ratemaking regulation. On August 29, 1997, Consumers Energy voluntarily shut Big Rock down and began to decommission it pursuant to the Post Shutdown Decommissioning Activities Report that was submitted to the NRC.
2. The Michigan Public Service Commission (MPSC) regulates decommissioning funding for Big Rock.
3. The amount of decommissioning funds estimated to be required, based on a 2003 TLG site-specific decommissioning study, is \$439.4 million in year of expenditure dollars. The site-specific study includes all costs necessary to restore the Big Rock site to a greenfield condition. Consumers Energy is providing decommissioning assurance in the amount of \$333.9 million for NRC radiological decommissioning costs. The \$333.9 million of NRC radiological decommissioning costs was determined by subtracting \$73.6 million for spent fuel storage costs, \$30.3 million of greenfield costs and \$1.6 million of post September 11, 2001 (Post 9-11) incremental security costs from the site specific decommissioning cost estimate of \$439.4 million.
4. MCL 460.10d(4), effective December 20, 2002, provides for the separate recovery from ratepayers of enhanced security costs that are incurred before January 1, 2006 and are a result of federal or state regulatory security requirements issued after September 11, 2001. Consumers Energy has calculated that \$1.6 million of Post 9-11 incremental security costs are recoverable from ratepayers pursuant to MCL 460.10d(4). Consumers Energy has filed an application with the MPSC in Case No. U-14148 to collect separately this amount from its ratepayers.
5. Of the \$333.9 million of NRC radiological decommissioning costs, \$279.1 million has been withdrawn from the MPSC jurisdictional external sinking fund and \$7.7 million of Federal Energy Regulatory Commission jurisdictional expenditures have been made as of December 31, 2004, leaving a remaining cost of \$47.1 million. Financial assurance for the \$47.1 million of remaining NRC radiological decommissioning costs has been provided for through funds in the external sinking fund and assumed fund earnings. At the end of 2004, the balance in the Company's external sinking fund was \$51.4 million, based on State Street Bank and Trust, December 31, 2004 Annual Reports. The year-end balance reflects withdrawals of \$279.1 million to cover NRC radiological decommissioning expenditures incurred through December 31, 2004.
6. Based on the MPSC's March 22, 1999 Order in Case No. U-11662, Consumers Energy discontinued decommissioning funding effective December 31, 2000 and is relying solely on the fund earnings to cover the remaining amount of decommissioning expenditures.
7. On March 31, 2004, Consumers Energy filed with the MPSC its "2004 Report on the Adequacy of the Existing Provision for Nuclear Plant Decommissioning" for Big Rock. This report included the 2003 TLG site-specific decommissioning study and assumed a 2.8% decommissioning cost escalation rate for the remaining cost, an 8.5% before tax earnings rate for the equity portion of its

Qualified trust, and a 1.5% after tax earnings rate for the fixed income portion of its Qualified trust.

The Non-Qualified trust was depleted at the end of January 2001.

8. Consumers Energy has not relied on any contract obligations pursuant to 10 CFR 50.75(e)(1)(v) to meet its NRC decommissioning funding assurance.
9. Since the last Certification of Financial Assurance for Decommissioning was filed with the NRC on March 30, 2004, Consumers Energy has not modified its method of providing financial assurance. However, the March 1, 1997 Trust Agreement between Consumers Energy Company and State Street Bank and Trust Company has been changed to reflect the new requirements of 10 CFR 50.75. Attached is a copy of the updated Trust Agreement.

To the best of my knowledge, information and belief, the foregoing statements are true and correct.



Glenn P. Barba
Vice President, Controller and
Chief Accounting Officer

Sworn and subscribed to this the 24th day of March, 2005

M. Kathleen Mannor
M. Kathleen Mannor, Notary Public,
Jackson County, Michigan
My Commission Expires: 05/05/2005



CONSUMERS ENERGY COMPANY
NUCLEAR POWER PLANT DECOMMISSIONING TRUSTS
AMENDED AND RESTATED

TRUST AGREEMENT

Between

CONSUMERS ENERGY COMPANY

And

STATE STREET BANK AND TRUST COMPANY

Dated as of January 1, 2004

CONSUMERS ENERGY COMPANY
NUCLEAR POWER PLANT DECOMMISSIONING TRUSTS

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In consideration of the mutual commitments contained herein, Consumers Energy Company and State Street Bank and Trust Company agree that the Trust Agreement between Consumers Energy Company, formerly Consumers Power Company, with an effective date of March 1, 1997 as amended by previous amendments, if any, is amended and restated as follows:

This is a TRUST AGREEMENT (the "Agreement") by and between Consumers Energy Company, a Michigan corporation having its principal place of business at One Energy Plaza, Jackson, Michigan, 49201 (the "Company"), and STATE STREET BANK AND TRUST COMPANY, a banking corporation having its principal office in Boston, Massachusetts (the "Trustee").

RECITALS

For the purpose of generating electricity for sale to its customers, the Company owns the Palisades Nuclear Power Plant ("Palisades") and the Big Rock Nuclear Power Plant ("Big Rock").

The Company is subject to the jurisdiction of the Michigan Public Service Commission ("MPSC") which has ordered the Company to include in rates certain amounts of monies ("MPSC Nuclear Decommissioning Provision") for collection by the Company from its customers to be placed into trusts in order to provide adequate funds to decommission Palisades and Big Rock.

The Company is also subject to regulation by the Federal Energy Regulatory Commission ("FERC"), an agency of the United States Government created and

existing pursuant to 42 U.S.C. sections 7134 and 7171. The FERC has also ordered the Company to include in rates certain amounts of monies ("FERC Nuclear Decommissioning Provision") for collection by the Company from its customers to be placed into trusts in order to provide adequate funds to decommission Palisades and Big Rock.

Section 468A of the Internal Revenue Code of 1986 permits a utility to make an election to currently deduct certain payments made to a Nuclear Decommissioning Reserve Fund during a taxable year. As used herein, the term "Code" refers to the Internal Revenue Code of 1986, as amended from time to time.

The Company, pursuant to Code Section 468A, has established qualified trusts with respect to Palisades and Big Rock to receive amounts which will be eligible for federal income tax deductions. In addition, the Company has established trusts which are not qualified pursuant to Section 468A with respect to Palisades and Big Rock to receive amounts collected under the MPSC orders, if any, in excess of the amounts for which federal income tax deductions are allowed under Code Section 468A. Finally, the Company has established nonqualified trusts with respect to Palisades and Big Rock to receive amounts collected under FERC orders, if any, in excess of the amounts for which federal income tax deductions are allowed under Code Section 468A.

The Company heretofore entered into a Trust Agreement with the predecessor Trustee effective January 1, 1987.

Trustee is willing to perform the duties of trustee hereunder with respect to the trusts.

NOW, THEREFORE, the Company and the Trustee hereby agree as follows:

ARTICLE 1. ESTABLISHMENT OF TRUSTS

Section 1.1 The Company hereby establishes with the Trustee trusts ("Trusts") consisting of (i) all sums of money and other property transferred to it from the predecessor trustee, (ii) such sums of money as shall, from time to time, be paid or delivered to the Trustee by the Company, and (iii) the earnings and profits thereon. All money and property, all investments and reinvestments made pursuant to the provisions of this Agreement, all proceeds thereof, and all earnings and profits thereon, less the payments which at the time of reference shall have been made by the Trustee, are referred to herein as the "Assets." The Assets shall be held by the Trustee, in Trust, and shall not be commingled with any other property of the Trustee (except to the extent expressly provided under this Agreement), and shall be dealt with in accordance with the provisions of this Agreement.

Section 1.2 The name of the Trusts shall be designated as follows: (i) Consumers Energy Big Rock Section 468A Trust, (ii) Consumers Energy Palisades Section 468A Trust, (iii) Consumers Energy Big Rock Non-Section 468A State Trust, (iv) Consumers Energy Palisades Non-Section 468A State Trust, (v) Consumers Energy Big Rock Non-Section 468A Federal Trust, (vi) Consumers Energy Palisades Non-Section 468A Federal Trust. The term "Section 468A Trust" refers to the Consumers Energy Big Rock Section 468A Trust and the Consumers Energy Palisades Section 468A Trust and the term "Non-Section 468A Trust" refers to the Consumers Energy Big Rock Non-Section 468A State Trust, Consumers Energy Palisades Non-Section 468A State Trust, Consumers Energy Company Big Rock Non-Section 468A Federal Trust, Consumers Energy Palisades Non-Section 468A Federal Trust. Each and all of such Trusts are referred to as a "Trust" or "Trusts."

Section 1.3 All contributions to a Trust by the Company shall be accompanied by written instructions of the Company, designating the contributions as contributions to the

Trust, the Trust or Trusts into which such contributions shall be placed, and the amount to be placed in each such Trust.

Section 1.4 The Trustee shall have no responsibility or authority in connection with the determination of the amounts to be transferred to it from time to time as contributions of the Company nor the Funds into which such amounts shall be placed, nor shall it have any authority or responsibility on behalf of any party to bring any action or proceeding to enforce the collection of any such amount.

Section 1.5 No duties or obligations shall be imposed upon the Trustee with respect to the Assets unless they have been specifically undertaken by the Trustee by the express terms of this Agreement or other written agreement to which the Trustee is a party, or are otherwise imposed upon the Trustee by applicable law.

ARTICLE 2. PURPOSE OF TRUSTS

Section 2.1 Each Trust is created and shall be operated exclusively for the following purposes:

- (a) To satisfy, in whole or in part, any liability of the Company for the decommissioning of a nuclear power plant. In the case of the Section 468A Trust, the Assets must be used as authorized by Section 468A of the Code and the regulations thereunder;
- (b) To pay administrative costs and other incidental expenses of the Trust. The term "administrative costs and other incidental expenses" means ordinary and necessary expenditures that are incurred in connection with the operation of the Trust, including

but not limited to taxes (other than tax imposed by Section 4951 of the Code), legal, accounting, actuarial, brokerage investment, and trustee fees and expenses; and,

(c) To the extent that a portion of the Assets is not currently needed for purposes described in Subsection 2.1(a) or (b), to make investments permitted herein.

Section 2.2 No part of the Assets may be used for, or diverted to, any purpose other than the following:

(a) The purposes described in Section 2.1;

(b) Transfer to another trust, established by the Company or by any governmental instrumentality having jurisdiction over the decommissioning of nuclear power plants if the purpose of such trust is to fund the Company's costs of nuclear power plant decommissioning; and

(c) Distribution to the Company, if it is determined that the Assets are in excess of what is reasonably required to satisfy the purposes described in Section 2.1, or if there has been an excess contribution, in the manner described in Section 2.4.

Section 2.3 (a) Each disbursement of each Trust, other than for administrative and other incidental expenses, shall be made only upon written instructions of the Company, signed by an officer, designating the payee (which may be the Company, if the amount is for reimbursement of decommissioning costs paid by the Company, or as provided in Section 2.4), the Trust or Trusts from which such disbursement is to be made, the amount which is to be disbursed from each such Trust, and the nuclear power plant subject to decommissioning for which the disbursement is to be made.

Upon receipt of such written instructions from the Company, the Trustee shall make

payments from the designated Trust or Trusts. The Trustee may rely absolutely upon such instructions and shall be under no duty to question or verify the accuracy of such instructions.

(b) Notwithstanding the foregoing, except for withdrawals being made pursuant to 10 CFR 50.82(a)(8) or for payments for administrative costs (including taxes) and other incidental expenses of the Trusts (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the Trusts, or transfers between Palisades Trusts in accordance with the provisions of this Agreement, no disbursements or payments from the Palisades Trusts shall be made unless (1) at least 30 working days prior to the disbursement or payment written notice of the intention to make such disbursement or payment has been made to the Director, Office of Nuclear Reactor Regulation or Director, Office of Nuclear Material Safety and Safeguards, as applicable and (2) if the Trustee has not received, within the notice period, written notice of an objection, from the NRC's Director of the Office of Nuclear Reactor Regulation or the Director of the Office of Nuclear Material Safety and Safeguards, as applicable. Except that, the foregoing shall not apply to withdrawals for non-radioactive decommissioning expenses that do not affect the amount of funds remaining for radiation decommissioning costs.

(c) Section 10 CFR 50.82(a)(8) contains certain restrictions on the timing and amount of withdrawals of decommissioning trust funds. After decommissioning has begun and withdrawals from the decommissioning fund are made under 10 CFR 50.82(a)(8), no further notification need be made to the NRC. It will be the Company's

responsibility to notify the NRC and provide supporting information to the Trustee when notification under this sub-section is required.

Section 2.4 If any part of any contribution to any Trust is subsequently determined by the Company to be in excess of the amount which should have been so contributed, the amount of such excess contribution shall be repaid to the Company from that Trust. If, after the decommissioning of Big Rock and Palisades has been completed, the Assets of the Section 468A Trusts and the Non-Section 468A State Trusts are determined by the MPSC or its successor to be in excess of the amount actually expended for decommissioning, the excess shall be returned to the Company to be refunded to the Company's customers in the manner determined by the MPSC and in the case of the Non-Section 468A Federal Trusts, the excess shall be returned to the Company to be refunded to the Company's customers in the manner determined by the FERC. Returns of any such amount shall be made by the Trustee upon written instruction of the Company, specifying the amount to be returned from each Trust, certifying that such amounts represent excess contributions, or amounts in excess of decommissioning costs, and signed by an officer of the Company. The Company shall provide any additional information reasonably requested by the Trustee, including a schedule of ruling amounts. The Trustee may rely absolutely upon such instructions and shall be under no duty to question or verify the accuracy of such instructions.

Section 2.5 Unless otherwise specified, the term "decommissioning" as used in this Agreement shall include all activities to remove a nuclear facility or site safely from service and reduce residual radioactivity to a level that permits release of property for unrestricted use and termination of all NRC licenses, other activities such as fuel related

activities, and non-radiological activities such as site restoration. The term decommissioning shall also include, but not be limited to, such other activities and costs, if any, as may be included in the Internal Revenue Service regulations and rulings implementing Section 468A of the Code.

ARTICLE 3. ADMINISTRATION OF TRUSTS AND
INVESTMENT MANAGERS.

Section 3.1 Except with respect to any Investment account of which it is acting as Investment Manager pursuant to Section 3.2 hereof, the Trustee shall be released and relieved of all investment duties, responsibilities and liabilities customarily or statutorily incident to a trustee with respect to the Trusts hereunder, and as to such Trusts, the Trustee shall act only as Custodian.

Notwithstanding the foregoing paragraph, the Trustee in its custodial capacity shall, to the extent any assets of the Trusts have not been invested by an Investment Manager or the Company as of the end of any business day, invest such uninvested assets of the Trusts overnight as the Company or such Investment Manager may direct in writing, subject to the limitations in Section 5.4 hereof.

Section 3.2 The Company, from time to time, may appoint one or more independent Investment Managers, which may include the Trustee, pursuant to a written investment management agreement describing the powers and duties of the Investment Manager, to direct the investment and reinvestment of any Trust or any portion hereunder (an "Investment Fund").

The Company shall be responsible for ascertaining that any Investment Manager is duly qualified to serve in that capacity.

The Company shall furnish the Trustee with written notice of the appointment of each Investment Manager hereunder, and of the termination of any such appointment. Such notice shall specify the assets which shall constitute the Investment Fund for such

Investment Manager. The Trustee shall be fully protected in relying upon the effectiveness of such appointment and the Investment Manager's continuing qualification to serve until it receives written notice from the Company to the contrary.

The Trustee shall conclusively presume that each Investment Manager, under its investment management agreement, is entitled to act, in directing the investment and reinvestment of the Investment Fund for which it is responsible, in its sole and independent discretion and without limitation, except for any limitations which from time to time the Company and the Trustee agree (in writing) shall modify the scope of such authority.

An Investment Manager shall certify, at the request of the Trustee, the value of any securities or other property held in any Investment Fund managed by such Investment Manager. The Trustee shall be entitled to rely conclusively upon such valuation for all purposes under this Trust Agreement.

Section 3.3 The Company may from time to time direct the Trustee in writing to segregate all or a portion of any Trust hereunder into one or more separate Investment Funds with respect to which the Company shall have the powers and duties granted to an Investment Manager under this Agreement, such accounts to be known as The Company Directed Accounts. In addition, during any time when there is no Investment Manager with respect to any portion of a Trust hereunder (such as before an investment management agreement takes effect or after it terminates), such portion shall be deemed to be the Company Directed Account. Whenever the Company is directing the investment and reinvestment of any property held hereunder, the Company shall have the powers and duties which the Investment Manager would have under this trust instrument if an

Investment Manager were then serving and the Trustee shall be protected under this instrument as if it had relied on the directions of an Investment Manager.

Section 3.4 The Company intends by this article to allocate to Investment Managers all fiduciary responsibility with respect to investments in the separate account under the management of such Manager except to the extent the Trustee invests cash as hereinbefore provided. Unless the Trustee knowingly participates in or undertakes to conceal a breach of such other party's fiduciary duty, knowing it to be a breach, the Trustee shall incur no liability for any loss of any kind which may result (i) from following directions of an Investment Manager or the Company which are given in accordance with this Trust Agreement, or (ii) by reason of any act or omission of an Investment Manager or the Company or (iii) for any loss of any kind which may result with respect to any Investment Funds. On receipt of directions from an Investment Manager or the Company, the Trustee shall promptly make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out such directions.

Section 3.5 An Investment Manager shall, except as otherwise limited by agreement or by investment objectives provided by the Company, have powers and duties herein granted to or imposed upon the Trustee in Section 5. The Investment Manager shall make only such investments and reinvestments as are permitted by the laws of the Commonwealth of Massachusetts for the investment of trust funds, except that the MPSC and the relevant laws of the State of Michigan shall control the MPSC Nuclear Decommissioning Provision and the Investment Manager shall make no investments in securities issued by the Company, its successors or assigns or any of its affiliates. Further,

the Trustee shall not make any loans from the Trusts to the Company or to persons with whom the Company, to a significant extent, is associated or affiliated, or to persons who have the power, directly or indirectly, significantly to influence or direct the actions or policies of the Company.

ARTICLE 4. INDEMNIFICATION OF TRUSTEE

Section 4.1 The Trustee shall not be answerable or accountable under any circumstances, except for its own bad faith, negligence, recklessness, or willful misconduct, and shall be responsible for the performance of only such duties as are specifically set forth in this Agreement and no implied covenants or obligations shall be read into this Agreement against the Trustee. The Company, its successors, and assigns hereby agree to indemnify the Trustee and hold it harmless from and against any and all costs, expenses or liability (including reasonable attorney's fees) which may be incurred by the Trustee or asserted against the Trustee by reason of its acting as Trustee under this Agreement, except for such costs, expenses and liability arising from the Trustee's bad faith, negligence, recklessness, or willful misconduct.

ARTICLE 5. TRUSTEE'S DUTIES AND POWERS

Section 5.1 It shall be the duty of the Trustee (i) to hold the Assets as provided in this Agreement, (ii) to record all charges, credits and other transactions executed in accordance with written instructions furnished by the Company or an Investment Manager and (iii) to make payments and distributions from the funds for the purposes described in Section 2.2 in accordance with instructions furnished by the Company. The making of any such

payments or distributions shall not be interpreted to impose any responsibility on the Trustee with respect to the purpose for which such payment or distribution is made.

Section 5.2 The Trustee may from time to time consult with counsel, who may be counsel to the Company, and may rely, to the extent permitted by law, upon such advice of counsel.

Section 5.3 Without in any way limiting the powers and discretions conferred upon it by the other provisions of this Agreement or by applicable law, the Trustee shall have and exercise the following powers and authority (i) over Investment Funds where it has express Investment Management discretion as provided in Section 3.2, or (ii) upon direction of the Investment Manager of an Investment Fund, or (iii) upon direction of the Company for a Company Directed Account:

- (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 for cash or on credit, to grant options, convert, redeem, exchange for other securities or other property (including selling short securities or entering into contracts for exchange of interest rates or other returns based on a notional principal value), to enter into standby agreements for future investment, either with or without a standby fee, or otherwise to dispose of any securities or other property at any time held by it.
- ~~(c)~~ To settle, compromise or submit to arbitration any claims, debts, or damages, due or owing to or from the trust, to commence or defend suits or legal proceedings and to represent the trust in all suits or legal proceedings in any court of law or before any other body or tribunal.
- (d) To trade in financial options and futures, including index options and options on futures and to execute in connection therewith such account agreements and other agreements in such form and upon such terms as the Investment Manager or the Company shall direct.
- (e) To exercise all voting rights, tender or exchange rights, any conversion privileges, subscription rights and other rights and powers available in connection with any securities or other property at anytime held by it; to oppose or to consent to the reorganization, consolidation, merger, or readjustment of the finances of any corporation, company or association, or to the sale, mortgage, pledge or lease of the property of any corporation, company or association any of the securities which may at

any time be held by it and to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions, which may be deemed necessary or advisable by the Investment Manager or The Company in connection therewith, and to hold and retain any securities or other property which it may so acquire; and to deposit any property with any protective, reorganization or similar committee, and to pay and agree to pay part of the expenses and compensation of any such committee and any assessments levied with respect to property so deposited.

(f) To borrow money in such amounts and upon such terms and conditions as shall be deemed advisable or proper by the Company or Investment Manager to carry out the purposes of the trust and to pledge any securities or other property for the repayment of any such loan.

(g) To invest all or a portion of the Assets in contracts issued by insurance companies, including contracts under which the insurance company holds Assets in a separate account or commingled separate account managed by the insurance company. The Trustee shall be entitled to rely upon any written directions of the Company or the Investment Manager under this Section 5.3, and the Trustee shall not be responsible for the terms of any insurance contract that it is directed to purchase and hold or for the selection of the issuer thereof or for performing any functions under such contract (other than the execution of any documents incidental thereto on the instructions of the Company or the Investment Manager).

(h) To manage, administer, operate, lease for any number of years, develop, improve, repair, alter, demolish, mortgage, pledge, grant options with respect to, or otherwise deal with any real property or interest therein at any time held by it, and to hold any such real property in its own name or in the name of a nominee, with or without the addition of words indicating that such property is held in a fiduciary capacity, all upon such terms and conditions as may be deemed advisable by the Investment Manager or the Company.

(i) To renew, extend or participate in the renewal or extension of any mortgage, upon such terms as may be deemed advisable by the Investment Manager or The Company, and to agree to a reduction in the rate of interest on any mortgage or of any guarantee pertaining thereto in any manner and to any extent that may be deemed advisable by the Investment Manager or The Company for the protection of the Assets or the preservation of the value of the investment; to waive any default, whether in the performance of any covenant or condition of any mortgage or in the performance of any guarantee, or to enforce any such default in such manner and to such extent as may be deemed advisable by the Investment Manager or The Company; to exercise and enforce any and all rights of foreclosure, to bid on property on foreclosure, to take a deed in lieu of foreclosure with or without paying consideration therefor, and in connection therewith to release the obligation on the bond secured by such mortgage, and to

exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies with respect to any such mortgage or guarantee.

(j) To hold part or all of the Assets uninvested.

(k) To employ suitable agents and counsel and to pay their reasonable and proper expenses and compensation.

(l) To purchase and sell foreign exchange and contracts for foreign exchange, including transactions entered into with State Street Bank and Trust Company, its agents or subcustodians.

(m) To form corporations and to create trusts to hold title to any securities or other property, all upon such terms and conditions as may be deemed advisable by the Investment Manager or The Company.

(n) To register any securities held by it hereunder in its own name or in the name of a nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity and to hold any securities in bearer form and to deposit any securities or other property in a depository or clearing corporation.

(o) 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.

(p) To invest at State Street Bank and Trust Company (i) in any type of interest bearing investments (including, but not limited to savings accounts, money market accounts, certificates of deposit and repurchase agreements) and (ii) in noninterest bearing accounts (including but not limited to checking accounts).

(q) To invest in open-end and closed-end investment companies, regardless of the purposes for which such fund or funds were created, including those managed, serviced or advised by the Trustee, an affiliate of the Trustee, and any partnership, limited or unlimited, joint venture and other forms of joint enterprise created for any lawful purpose.

(r) To lend securities of the Trusts only pursuant to a separate written authorization agreement with the Company.

Except as otherwise provided in this Trust Agreement, the Investment Manager of an Investment Fund or the Company in the case of a Company Directed Account shall have the power and authority, to be exercised in its sole discretion at any time and from time to

time, to issue orders for the purchase or sale of securities directly to a broker. Written notification of the issuance of each such order shall be given promptly to the Trustee by the Investment Manager or the Company and the confirmation of each such order shall be confirmed to the Trustee by the broker. Unless otherwise directed by the Company or Investment Manager, such notification shall be authority for the Trustee to pay for securities purchased or to deliver securities sold as the case may be. Upon the direction of the Investment Manager or the Company, the Trustee will execute and deliver appropriate trading authorizations, but no such authorization shall be deemed to increase the liability or responsibility of the Trustee under this Trust Agreement.

The Trustee shall transmit promptly to the Company or the Investment Manager, as the case may be, all notices of conversion, redemption, tender, exchange, subscription, class action, claim in insolvency proceedings or other rights or powers relating to any of the securities in the Trusts, which notices are received by the Trustee from its agents or custodians, from issuers of the securities in question and from the party (or its agents) extending such rights. The Trustee shall have no obligation to determine the existence of any conversion, redemption, tender, exchange, subscription, class action, claim in insolvency proceedings or other right or power relating to any of the securities in the Trusts of which notice was given prior to the purchase of such securities by the Trusts, and shall have no obligation to exercise any such right or power unless the Trustee is informed of the existence of the right or power.

The Trustee shall not be liable for any untimely exercise or assertion of such rights or powers described in the paragraph immediately above in connection with securities or other property of the Trusts at any time held by it unless (i) it or its agents or custodians are

in actual possession of such securities or property and (ii) it receives directions to exercise any such rights or powers from the Company or the Investment Manager, as the case may be, and both (i) and (ii) occur at least three business days prior to the date on which such rights or powers are to be exercised.

If the Trustee is directed by the Company or an Investment Manager to purchase securities issued by any foreign government or agency thereof, or by any corporation or other entity domiciled outside of the United States, it shall be the responsibility of the Company or Investment Manager, as the case may be, to advise the Trustee in writing with respect to any laws or regulations of any foreign countries or any United States territory or possession which shall apply in any manner whatsoever to such securities, including, without limitation, receipt by the Trustee of dividends, interest or other distributions on such securities.

Section 5.4 Notwithstanding the appointment of an Investment Manager, the Trustee shall have the following powers and authority, to be exercised in its sole discretion, with respect to the Trusts:

- (a) To employ suitable agents, custodians and counsel and to pay their reasonable expenses and compensation.
- (b) To register any securities held by it hereunder in its own name or in the name of a nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity and to hold any securities in bearer form and to deposit any securities or other property in a depository or clearing corporation,
- (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) Generally to do all ministerial acts, whether or not expressly authorized, which the Trustee may deem necessary or desirable in carrying out its duties under this Trust Agreement.

Notwithstanding anything in this Trust Agreement to the contrary, the Trustee shall not be required by the Company or any Investment Manager to engage in any action, nor make any investment which constitutes a prohibited transaction or which is otherwise contrary to law or to the terms of this Trust Agreement.

Section 5.5 The Trustee shall not manage any Section 468A Trust in a manner which would constitute self-dealing, as defined in Section 4951 of the Code.

ARTICLE 6. SECURITIES OR OTHER PROPERTY

Section 6.1 The words "securities or other property", used in this Trust Agreement, shall be deemed to refer to any property, real or personal, or part interest therein, wherever situated, including, without limitation, governmental, corporate or personal obligations, trust and participation certificates, partnership interests, annuity or investment contracts issued by an insurance company, leaseholds, fee titles, mortgages and other interests in realty, preferred and common stocks, certificates of deposit, financial options and futures or any other form of option, evidences of indebtedness or ownership in foreign corporations or other enterprises or indebtedness of foreign governments, and any other evidences of indebtedness or ownership.

ARTICLE 7. TAXES AND EXPENSES

Section 7.1 All taxes of any kind that may be assessed or levied against or in respect of each Trust, including income taxes borne by the Company, if any, associated with income and transactions of each Trust, and all brokerage commissions incurred by each Trust shall be paid from the Assets of such Trust. The Trustee shall cause appropriate federal and state tax returns with respect to each Section 468A Trust to be prepared and filed and shall pay any taxes shown to be due out of each Section 468A Trust. The Company shall cause to be prepared and filed such other federal and state tax returns as may be required with respect to income earned by or the assets of the Trusts hereunder. On direction of the Company, Trustee may pay such taxes out of the Non-Section 468A Trusts or reimburse the Company for payment thereof. All other reasonable expenses of administration, such as (but not limited to) the expenses incurred by the Trustee in connection with the administration of the Trusts, including fees and expenses of agents or attorneys employed by the Trustee (whether or not arising out of a judicial or administrative proceeding and whether or not incurred while it is acting as Trustee), such compensation to the Trustee as may be agreed upon from time to time between the Trustee and the Company, and all other proper charges and disbursements of the Trustee, shall be withdrawn and paid from the Assets.

ARTICLE 8. ACCOUNTINGS BY TRUSTEE

Section 8.1 The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions hereunder, with respect to each Trust, and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by any person designated by the Company.

Section 8.2 Within 90 days following the close of each calendar quarter, and within 90 days after the removal or resignation of the Trustee as provided in Section 8.1, the Trustee shall file with the Company a written account setting forth all investments, receipts, disbursements and other transactions, with respect to the Trust, effected by it during such quarter or during the period from the close of the last calendar quarter to the date of such removal or resignation. Upon the expiration of three years from the date of filing such quarterly or other account, the Trustee shall be forever released and discharged from all liability and accountability to the Company with respect to the propriety of its acts and transactions shown in such account, except with respect to any such acts or transactions as to which the Company shall within such three-year period file with the Trustee written objections.

Section 8.3 In order to protect the Trusts against waste, no one other than the Company may require the Trustee to account or may institute an action or proceeding against the Trustee or any Trust. However, nothing herein shall in any way limit the Trustee's right to bring any action or proceeding to settle its account or for such other relief as it may deem appropriate.

ARTICLE 9. REMOVAL OR RESIGNATION OF TRUSTEE

Section 9.1 The Trustee may be removed by the Company at any time upon 60 days' notice in writing to the Trustee. The Trustee may resign at any time upon 60 days' notice in writing to the Company. Upon such removal or resignation of the Trustee, the Company shall appoint and designate a successor trustee who shall be a qualified financial institution and who shall have the same powers and duties as those conferred upon the Trustee hereunder, and upon acceptance of such appointment by the successor trustee, the Trustee shall assign, transfer and pay over to such successor trustee all the Assets of the Trusts. The Trustee is authorized to reserve from such payment to a successor trustee such amounts as it may reasonably deem necessary to provide for any and all expenses and payments properly chargeable against the Trusts, or for which the Trusts may be liable, or to which the retiring Trustee may be entitled by way of fees and expenses in the settlement of its account. If the assets so withheld are insufficient for such purposes, the retiring Trustee shall be entitled to reimbursement from the Successor Trustee, or any balance of such reserve remaining after the payment of such fees and expenses shall be paid over to the successor trustee.

Section 9.2 If, for any reason, the Company cannot or does not act in the event of the resignation or removal of the Trustee, as provided in Section 9.1, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. Any expenses so incurred shall be treated as an expense of administration.

ARTICLE 10. RELIANCE ON COMMUNICATIONS

Section 10.1 Any action of the Company pursuant to any of the provisions of this Agreement shall be evidenced by a written notice or direction to such effect over the signature of any officer or other representative of the Company who shall have been certified to the Trustee by the Secretary or an Assistant Secretary of the Company as having such authority, and the Trustee shall be fully protected in acting in accordance with such notices or directions.

Section 10.2 The Trustee shall not be bound by any notice, directions, requisitions, or request unless and until it shall have been received in writing at its main office in North Quincy, Massachusetts. The Trustee shall be further protected in relying upon a certification from any Investment Manager appointed by the Company as to the person or persons authorized to give instructions or directions on behalf of such Investment Manager and may continue to rely upon such certification until a subsequent certification is filed with Trustee. All certifications, orders, requests and instructions of the Company or an Investment Manager to the Trustee shall be in writing and the Trustee shall act and may rely upon certifications, orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event terminating the authority of any person authorized to act on its behalf hereunder has occurred.

ARTICLE 11. AMENDMENT OF AGREEMENT

Section 11.1 The Company reserves the right at any time and from time to time to amend, in whole or in part, any or all of the provisions of this Agreement by notice thereof in writing delivered to the Trustee. No amendment which affects the rights, duties or responsibilities of the Trustee may be made without its consent, and no amendment shall authorize or permit any part of the corpus or income of any Trust to be used for or diverted to purposes other than those described in Section 2.2, and in the case of the Section 468A Trust no amendment shall be made so as to violate Section 468A of the Code and the regulations thereunder.

ARTICLE 12. TERMINATION OF TRUSTS

Section 12.1 The Company may terminate any Trust at any time by a written notice to the Trustee. Upon such termination, the Trustee, pursuant to instructions furnished by the Company, shall dispose of the remaining Assets of such Trust by the transfers and payments described in Section 2.2.

Section 12.2 In no event shall any Trust extend for a term longer than the earlier of (i) the date which shall be the 21st anniversary of the death of the last survivor of all the children and grandchildren of the officers of the Company as of the original establishment of these trusts on January 1, 1987, a list of such children and grandchildren is attached as Exhibit A hereto, or (ii) the final payment of all costs of the Company relating to the decommissioning of Big Rock and Palisades. If any Trust is still in existence on such anniversary date referred to in clause (i) above, the Trustee shall dispose of the Assets in the manner directed by the Company.

ARTICLE 13. MISCELLANEOUS PROVISIONS AND EFFECTIVE DATE

Section 13.1 Upon the termination of any Trusts, or upon the removal or resignation of the Trustee as provided in Section 9.1, the Trustee shall continue to have and may exercise all the title, powers, discretions, rights and duties conferred or imposed upon it by law or by this Agreement until the final distribution of the Assets of such Trust.

Section 13.2 This Agreement shall be administered, construed and enforced according to the laws of the Commonwealth of Massachusetts, except that the MPSC and the relevant laws of the State of Michigan shall control the MPSC Nuclear Decommissioning Provision. The Company shall provide the Trustee with copies of any statutes, regulations or rulings of the State of Michigan or the MPSC which affect administration of the Trust. The Trustee shall provide the Company with copies of any statutes, regulations or rulings of the Commonwealth of Massachusetts which affect the Company's duties and obligations under this Trust Agreement.

Section 13.3 The fiscal year of each Trust shall be the calendar year.

Section 13.4 The provisions of this Agreement shall take effect as of the date hereof.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized and their respective seals to be hereunto affixed and attested as of the day and year first above written.

CONSUMERS ENERGY COMPANY

By

Attest:

Thomas H. Simonsen

STATE STREET BANK AND TRUST COMPANY, Trustee

By

Attest:

J. H. Peterson