

November 17, 2005

**U.S. Nuclear Regulatory Commission
Attention: Document Control Desk
Washington, D.C. 20555**

**Serial No. 05-431A
NL&OS/GDM R2
Docket No. 50-305
License No. DPR-43**

**DOMINION ENERGY KEWAUNEE, INC.
KEWAUNEE POWER STATION
AMENDED QUALIFIED DECOMMISSIONING TRUST AGREEMENT
NON-QUALIFIED DECOMMISSIONING TRUST AGREEMENT**

In a letter dated August 4, 2005 (Serial No. 05-431), Dominion Energy Kewaunee, Inc. (DEK) submitted executed Support, Indemnity, and Qualified Decommissioning Trust Agreements for Kewaunee Power Station (Kewaunee). These agreements were in support of the July 5, 2005 license transfer of the Facility Operating License for Kewaunee from Nuclear Management Company, LLC, Wisconsin Public Service Corporation, and Wisconsin Power and Light Company to DEK. In that letter we noted that DEK was in the process of amending the Qualified Decommissioning Trust Agreement to address a condition imposed by the Wisconsin Public Service Commission (WPSC) in their approval of the Kewaunee license transfer regarding the return of excess decommissioning funds. The Qualified Trust has been amended to address the WPSC condition and is included in Attachment 1. A blackline comparison is provided as Attachment 2, showing changes from the current executed Qualified Trust dated December 1, 2004. A summary of the amendments to the Qualified Trust is provided as Attachment 3.

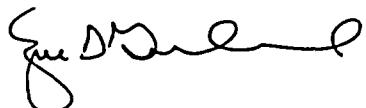
Therefore, consistent with Section 5.01(c) of the Qualified Decommissioning Trust Agreement, DEK is hereby providing 30 working days prior written notification to the Director, Office of Nuclear Reactor Regulation, before implementing the amended Trust Agreement.

DEK also stated in the August 4, 2005 letter that a Non-Qualified Decommissioning Trust Agreement for Kewaunee, with substantially the same terms as the agreement for the Qualified Trust, was being prepared to accommodate potential future contingencies. The Non-Qualified Decommissioning Trust Agreement for Kewaunee has been completed and is provided in Attachment 4. DEK is hereby providing 30 days prior written notification to the Director, Office of Nuclear Reactor Regulation, before executing the Non-Qualified Decommissioning Trust Agreement.

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If you have any questions or require additional information, please contact Mr. Gary D. Miller at (804) 273-2771.

Sincerely,



Eugene S. Grecheck
Vice President – Nuclear Support Services

Attachments

1. Amended Dominion Energy Keweenaw, Inc. Qualified Decommissioning Trust Agreement
2. Dominion Energy Keweenaw, Inc., Qualified Decommissioning Trust Agreement (Blackline Comparison with December 1, 2004 Agreement)
3. Summary of Amendments to Dominion Energy Keweenaw, Inc. Qualified Decommissioning Trust Agreement
4. Dominion Energy Keweenaw, Inc. Non-Qualified Decommissioning Trust Agreement

Commitments made in this letter:

1. Consistent with Section 5.01(c) of the Qualified Decommissioning Trust Agreement, DEK will provide the Director, Office of Nuclear Reactor Regulation with 30 working days prior written notification before implementing any material changes to the Trust Agreement.
2. Consistent with Section 5.01(b) of the Non-Qualified Decommissioning Trust Agreement, DEK will provide the Director, Office of Nuclear Reactor Regulation with 30 working days prior written notification before implementing any material changes to the Trust Agreement.

cc: Regional Administrator, Region III
U. S. Nuclear Regulatory Commission
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Mr. S. C. Burton
NRC Senior Resident Inspector
Kewaunee Power Station

ATTACHMENT 1

Amended Dominion Energy Kewaunee, Inc.
Qualified Decommissioning Trust Agreement

Kewaunee Power Station

**AMENDED AND RESTATED
DOMINION ENERGY KEWAUNEE, INC.,
QUALIFIED NUCLEAR DECOMMISSIONING
TRUST AGREEMENT**

**AMENDED AND RESTATED DOMINION ENERGY KEWAUNEE, INC.,
QUALIFIED NUCLEAR DECOMMISSIONING TRUST AGREEMENT**

This AMENDED AND RESTATED TRUST AGREEMENT ("Agreement") is made the _____ day of _____, _____, between DOMINION ENERGY KEWAUNEE, INC., a Wisconsin corporation, the Grantor, and MELLON BANK, N.A., a national banking association with trust powers, the Trustee, and it amends and restates the original Trust Agreement dated December 1, 2004.

WHEREAS, the Grantor owns a 100 percent interest in the Kewaunee Power Station, a nuclear generating station located in the Town of Carlton, Kewaunee County, Wisconsin.

WHEREAS, the Grantor wishes to establish pursuant to this Agreement and under the laws of the Commonwealth of Pennsylvania, a separate trust fund under this Agreement which qualifies as a Nuclear Decommissioning Reserve Fund under Section 468A of the Internal Revenue Code of 1986, as amended, or any corresponding section or sections of any future United States internal revenue statute and the regulations thereunder.

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

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

ARTICLE 1 GENERAL PROVISIONS

1.01 Name of Trust.

The separate trust may be referred to under the name DOMINION ENERGY KEWAUNEE, INC., QUALIFIED NUCLEAR DECOMMISSIONING TRUST (referred to herein as the "Trust" or the "Trust Fund"). The Trust Fund is the entire undistributed amount of all contributions and/or transferred assets placed with the Trustee, as adjusted for all income, expense, gain, or loss on such amount as may exist from time to time.

1.02 Grantor, Trustee.

The Grantor of this Trust is Dominion Energy Kewaunee, Inc., and its successors and assigns as provided in Section 5.03 of this Agreement. The Trustee under this Agreement is Mellon Bank, N.A., its successors and assigns, or any other person, company, bank, or trust company appointed as provided in Section 2.01 of this Agreement.

1.03 Trust Committee.

The Grantor may establish a Nuclear Decommissioning Trust Committee (the "Committee") composed of any three or more persons appointed by the Grantor's Board of Directors on whatever terms the Board desires. The Committee has the authority to exercise all of the

Grantor's powers under this Agreement, and for purposes of Sections 2.03(c) and (d) and Section 3.05(g), the Trustee will be protected in treating the directions and other actions of the Committee as the directions or actions of the Grantor. The Grantor must certify to the Trustee all appointments to or removals from the Committee, and the Trustee must recognize written instructions signed by any Committee member, or its designee, as a directive from the Committee.

ARTICLE 2 TRUSTEE APPOINTMENT, REMOVAL, LIABILITY

2.01 Appointment, Removal, Successors.

(a) The Grantor may appoint a successor Trustee by written notice to the person appointed and to the Trustee then serving. A Trustee may resign on thirty days' notice in writing to the Grantor. The Grantor may remove any Trustee by thirty days' written notice to the Trustee. Notwithstanding the foregoing, no removal or resignation shall take effect until a successor Trustee has been appointed and accepted appointment as Trustee. If a successor Trustee has not been appointed and accepted appointment within sixty (60) days of the Grantor's receipt of notice of resignation of the Trustee or the Trustee's receipt of notice of removal, such Trustee may petition a court of competent jurisdiction to appoint a successor Trustee to serve until such time, if ever, as a successor Trustee shall have been appointed by the Grantor and accepted such appointment. Each successor Trustee shall have the same powers and duties as the Trustee named herein.

(b) A successor Trustee may accept appointment and qualify as Trustee by executing, acknowledging, and delivering to the Grantor its acceptance in a form satisfactory to the Grantor. The successor Trustee, without further act, deed, or conveyance, is vested with all the estate, rights, powers, and discretion of the predecessor Trustee just as if originally named as a Trustee in this Agreement.

(c) When a successor Trustee accepts appointment, the predecessor Trustee (or representative, if the predecessor Trustee is unable or unavailable) will assign, transfer title, and pay over to the successor Trustee the funds and properties then constituting the Trust Fund. The predecessor Trustee (or representative) is authorized, however, to reserve a sum of money deemed advisable for payment of fees and expenses accrued to date or expected to be incurred in connection with the transfer and settlement of the Trust Fund (all subject to the limitation in Section 5.04 of this Agreement), and any balance of that reserve remaining after the payment of fees and expenses will be paid over to the successor Trustee.

(d) The Trustee may adopt or amend bylaws and regulations that the Trustee deems desirable for the conduct of Trustee affairs.

(e) The Trustee will keep a record of all Trustee proceedings and acts and all other data necessary for the proper administration of the Trust. The Trustee will notify the Grantor of any Trustee action taken, and when required by law, will notify any other interested party.

2.02 Establishment and Acceptance of Trust.

(a) All contributions to the Trust Fund must be made in cash.

(b) At the time it makes any contribution to the Trust Fund, the Grantor will specify in a writing then delivered to the Trustee the exact amount that is to be placed in the Trust Fund then existing. The Trustee shall not accept contributions from anyone other than the Grantor without the Grantor's written approval for each such contribution, which written approval must accompany the contribution. The Trustee has no right or duty to inquire into the amount of or the method used in determining any contribution to the Trust Fund. The Trustee is accountable only for funds actually received. The Trustee has no duty to compute or collect the amount to be paid to it by the Grantor.

(c) Assets other than cash may be transferred to the Trust Fund in connection with a acquisition or disposition of an interest in a nuclear power plant that meets (or is treated as meeting) the requirements of Treasury Regulations Section 1.468A-6(b).

(d) All contributions and/or transferred assets and income therefrom will be held in trust and administered according to the terms of this Agreement.

(e) No part of the Trust Fund may be used for or diverted to purposes other than the exclusive purposes allowed by this Agreement, as described in Sections 4.02, 5.04, 5.05 and 6.01 of this Agreement.

2.03 Limitation of Liability.

(a) To the extent permitted by law, the Trustee will serve without bond; the Trustee will secure and pay for required bonds. Except as otherwise provided in this Agreement, no Trustee is liable for any act or omission of any other Trustee or for any act or omission of any other person. At its own expense, the Grantor is entitled to employ its own counsel to defend or maintain, either in its own name or in the name of any Trustee, with said Trustee's approval, any suit or litigation arising under this Agreement involving the Trustee.

(b) The Trustee is not liable for the making, retention, or sale of any investment or reinvestment made as provided in this Agreement, but the Trustee is liable for any loss to or diminution of the Trust Fund due to the Trustee's gross negligence, willful misconduct, or lack of good faith in carrying out the terms of this Agreement.

(c) Subject to the provisions of Section 2.03(b), the Trustee is fully protected and indemnified when relying on a written communication from a properly designated officer or employee of the Grantor concerning an instruction or direction of the Grantor and in continuing to rely upon a communication until a subsequent communication is filed with the Trustee. Subject to the provisions of Section 2.03(b), the Trustee is fully protected and indemnified in acting on any instrument, certificate, or paper believed by the Trustee to be genuine and to be signed or presented by the proper person. Subject to the provisions of Section 2.03(b), the Trustee is under no duty to make any investigation or inquiry as to any statement contained in any written communication or document signed by the proper person, but may accept it as conclusive evidence of the truth and the accuracy of the statements contained therein.

(d) The Grantor will indemnify the Trust Fund and the Trustee against any liability

imposed as a result of a claim asserted by any person or entity if the Trustee has acted in good faith reliance on the terms of this Agreement or a written direction of the Grantor. The indemnification under this Section 2.03 shall survive the termination of the Agreement.

(e) 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 clearing facility, book-entry system, centralized custodial depository, or similar organization. The Trustee shall not be responsible or liable for any losses or damages suffered by the Trust 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. Settlements of transactions may be effected in trading and processing practices customary in the jurisdiction or market where the transaction occurs. The Grantor acknowledges 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, the Grantor shall have sole responsibility for nonreceipt of payment (or late payment) by the counterparty.

2.04 Discharge after Distributions or Termination.

After all distributions (including distributions to a successor Trustee) or any termination under this Agreement or applicable law, the Trustee is discharged from all obligations under this Agreement, and no person or entity has any further right or claim against the Trustee not otherwise provided by statute.

2.05 Legal Action.

In all legal actions regarding the Trust and this Agreement, the Trustee and the Grantor are the only necessary parties. A final judgment not appealed or appealable entered in an action or proceeding against the Grantor, the Trust, or the Trustee is binding and conclusive on the parties to this Agreement and all persons having or claiming to have any interest in the Trust Fund.

ARTICLE 3 INVESTMENT DUTIES, POWERS

3.01 Investment Policy and Limitations.

Certain limitations are placed on investing in and disposing of some securities by the Nuclear Regulatory Commission and in order to avoid disqualification of the Trust for tax purposes and to minimize potential problems with securities regulations. As provided by law and Section 5.04 of this Agreement, an investment must not result in a diversion or use of Trust assets that is not permitted under Internal Revenue Code Section 468A. The Trustee, the Grantor, any investment advisor and anyone else directing investments, when directing investments, shall adhere to the standard of care that a "prudent investor" would use in the same circumstances, such term having the same meaning as the standard set forth in 18 CFR 35.32(a)(3) of the FERC regulations, or any successor regulation. Subject to these limitations and prudent fiduciary practices, the Trustee's investment policy for assets within the Trustee's investment control will be to realize the greatest total return on the Trust Fund as may be possible.

In its annual report to the Grantor, the Trustee will advise the Grantor of the Trustee's investment policy or strategy. Formulation of the policy is the Trustee's responsibility as long as the Grantor has not exercised its right to direct the investments under Section 3.05. The Trustee must consider the stated purposes of the Trust and this Agreement, statutory and regulatory requirements, and other relevant information and standards before stipulating the stated investment policy. The Trustee may consult with the Grantor, counsel, and investment advisors for fact-finding purposes before so stipulating.

3.02 Investment of Trust Fund.

The assets of the Trust Fund may be commingled for investment purposes as the Grantor directs. The Trustee shall apportion any earnings or losses from an investment made with commingled assets to the Trust Fund and the other commingled fund or funds in the same proportion that the amount invested from the Trust Fund, or any other commingled fund, bears to the total commingled amount invested. Subject to the provisions of Section 3.05 of this Agreement, the Trustee will invest and reinvest the principal and income of the Trust Fund and keep those trust assets invested, without distinction between principal and income. If assets of two or more funds are commingled for investment purposes, the Grantor shall have the absolute authority to direct the Trustee at any time to liquidate the interests of the Trust Fund in a commingled investment, and the Trustee shall promptly comply with any such directive. The commingling arrangement undertaken as permitted in this Section 3.02 can be terminated at any time by the Trust Fund or any commingled fund. No fund in the commingling arrangement may substitute for itself in the arrangement any person that is not a member to the commingling arrangement.

Trust investments may include, but shall not be limited to the following:

- (a) Publicly traded domestic or foreign common and preferred stocks and options thereon, as well as warrants, rights and preferred stocks convertible into common stock, regardless of where or how traded.
- (b) Investment grade domestic corporate bonds and debentures and any such securities which are convertible into common stock, domestic or foreign.
- (c) Bonds or other obligations of the United States of America or non-U.S. sovereign debt with an equivalent rating of A or higher.
- (d) Investment grade obligations of the states and of municipalities or of any agencies thereof.
- (e) Investment grade notes of any nature, of foreign or domestic issuers.
- (f) Savings accounts, certificates of deposit and other types of time deposits, bearing a reasonable rate of interest based upon the duration, amount, type and geographical area, with any financial institution or quasi-financial institution or any department of the same, either domestic or foreign, under the supervision of the United States or any State, including any such financial institution owned, operated or maintained by the Trustee in its corporate or association capacity (including any department or division of the same) or a corporation or association affiliated with

the same but only to the extent consistent with Treasury regulation § 1.468A-5(b)(2).

(g) 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 its affiliate. Notwithstanding the provisions of this Agreement which place restrictions upon the actions of the Trustee, to the extent monies or other assets are utilized to acquire units of any collective trust, the terms of the collective trust indenture shall solely govern the investment duties, responsibilities and powers of the trustee of such collective trust and, to the extent required by law, such terms, responsibilities and powers shall be incorporated herein by reference and shall be part of this Agreement. For purposes of valuation, the value of the interest maintained by the Trust Fund in such collective trust shall be the fair market value of the collective fund units held, determined in accordance with generally recognized valuation procedures. The Grantor 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 from such collective fund 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. The Grantor acknowledges receipt of the notice entitled "Cross-Trading Information," a copy of which is attached to this Agreement as Exhibit A.

(h) 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 purposes otherwise consistent with the investment guidelines set forth herein.

(i) Subject to the limitations of Sections 3.01, 3.03 and 3.06, any other investments not described above as directed by the Grantor.

(j) The Trustee may lend the assets of the Trust Fund in accordance with the terms and conditions of a separate securities lending agreement, may settle transactions in futures and/or options contracts, short-selling programs, foreign exchange or foreign exchange contracts, swaps and other derivative investments with third parties.

3.03 Prohibited Investments.

The assets of the Trust Fund are prohibited from being invested in:

(a) securities or other obligations of Dominion Energy Kewaunee, Inc. or its affiliates, subsidiaries, successors or assigns;

(b) securities or other obligations of any other owner or operator of any nuclear power

reactor, or the affiliates, subsidiaries, successors or assigns of such owner or operator;

(c) a mutual fund in which at least 50 percent of the fund is invested in the securities of one or more companies that own or operate a foreign or domestic nuclear power plant, or are parents, subsidiaries or affiliates of such a company (herein, "nuclear sector mutual fund"); or

(d) direct interests in real estate.

Provided, however, that the foregoing (i) shall not prohibit the Trust Fund from being invested in securities tied to market indices or other non-nuclear sector collective, commingled, or mutual funds; (ii) shall not require the sale or transfer either in whole or in part, or other disposition of any such prohibited investment that was made before December 24, 2002; and (iii) shall not prohibit less than 10 percent of the Trust Fund assets being indirectly invested in securities of any entity owning or operating one or more nuclear power plants.

3.04 Additional Powers of Trustee.

The Trustee has the following powers and authority in the administration and investment of the Trust Fund, to be exercised subject to the other provisions of this Agreement and especially this Article 3:

(a) To purchase, subscribe for, and hold securities or other property authorized by Sections 3.01 and 3.02 as a proper investment for the Trust Fund, and to retain the same in trust.

(b) To sell for cash or credit, exchange, convey, transfer, or otherwise dispose of any securities or other property held in the Trust Fund, by private contract or at public auction. No person dealing with the Trustee is bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any sale or other disposition.

(c) To vote any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any incidental payments; to oppose, consent to, or otherwise participate in corporate reorganizations or other changes affecting corporate securities, and (unless prohibited by statute) to delegate discretionary powers, and to pay any related assessments or charges; and generally to exercise any ownership powers over stocks, bonds, securities, or other property held as part of the Trust Fund.

(d) To keep part of the Trust Fund in cash or cash balances invested in interest-bearing accounts if the Trustee deems that to be prudent under the circumstances.

(e) To accept and retain for as long as the Trustee deems advisable any securities or other property received or acquired by the Trustee, regardless of any lack of diversification.

(f) To make, execute, acknowledge, and deliver documents of transfer and conveyance and other instruments that may be necessary or appropriate to carry out the Trustee's powers.

(g) To settle, compromise, or submit to arbitration any claims, debts, or damages due or

owing to or from the Trust Fund, to commence or defend legal or administrative proceedings, and to represent the Trust in all legal or administrative proceedings.

(h) To employ suitable subcustodians, agents and counsel (who may be counsel of the Grantor) and to pay their reasonable expenses and compensation. The Trustee shall be entitled to rely on and may act upon advice of counsel on all matters, and shall be without liability for any action reasonably taken or omitted pursuant to such advice.

(i) On direction by the Grantor as to the agent and insurance company, to invest in insurance contracts if and as allowed under Internal Revenue Code Section 468A, payable to the Trustee or its assignees as beneficiary.

(j) 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, foreign exchange and 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.

(k) To enter into contracts with one or more persons, firms, associations, or corporations to obtain advice and counsel about investments.

(l) To enter into arrangements for the deposit of funds with banks or trust companies and in connection with the arrangements:

(1) To authorize the depositary to act as custodian of the cash, securities, or other property comprising the funds;

(2) To authorize the depositary to convert the funds in whole or in part into, or to invest and reinvest the same in, securities of any kind and nature permitted in this Agreement; and

(3) To provide for the payment to the depositary of reasonable compensation for its services.

(m) To cause any securities or other property held as part of the Trust Fund to be registered in its own name or in the name of one or more of its nominees, and to hold any investments in bearer form, but the books and records of the Trustee must at all times show that the investments are part of the Trust Fund and subject to the jurisdiction of the United States, and to hold the property in safekeeping facilities of the Trustee or of other Trustee banks or clearing corporations, in the United States or elsewhere.

(n) To participate in any mergers or consolidations, or any registrations of securities with state or federal authorities regarding any securities held.

(o) To do all acts, take all proceedings, and exercise all rights and privileges although not specifically mentioned here, as the Trustee deems necessary to administer the Trust Fund and to carry out the purposes of this Agreement.

3.05 Directing the Trustee.

(a) Subject to the limitations in Sections 3.01, 3.03 and 3.06, the Grantor may direct the investments of the Trust in investments of any kind, including but not limited to, private equity, indirect interests in real estate, and non-investment grade bonds. Directed investments under this Section 3.05 may not exceed the total of the Trust Fund.

(b) Subject to the limitation of paragraph (a), the Trustee at the written direction of the Grantor will segregate the value requested and will after that invest, reinvest, and otherwise deal with those amounts (herein "Segregated Amounts") as directed by the Grantor if it is consistent with the terms of this Agreement.

(c) If exercised, the Grantor's right to direct investment and reinvestment includes the right to select investment managers, brokers, salesmen, or agents to handle investments or execute investment orders. The Grantor may give an investment manager any of the Grantor's powers, pursuant to this Section 3.05 or otherwise, by so certifying in writing to the Trustee. The Trustee is not responsible for the selection, terms of appointment, compensation or conduct of any investment manager, broker, salesman, or agent selected by the Grantor, but the Trustee is responsible for its own actions in its dealing with such persons in accordance with the provisions of Section 2.03 of this Agreement. For purposes of Sections 2.03(c) and (d) and Section 3.05(g), the Trustee will be protected in treating the directions and other actions of an investment manager as the directions or actions of the Grantor.

(d) In the absence of directions under Section 3.05, the Trustee is free to proceed without the concurrence or affirmative expression of the Grantor to handle, manage, control, invest, and reinvest the Trust Fund assets that are not Segregated Amounts under the powers granted in this Agreement with the same force and effect as if this section were not a part of this Agreement.

(e) No person dealing with the Trustee is required to determine whether any sale or purchase by the Trustee has been authorized or directed by the Grantor, and each is fully protected in dealing with the Trustee in the same manner as if this section were not a part of this Agreement.

(f) Whenever the Trustee is directed to purchase or sell assets in the Trust Fund, the Trustee in its sole discretion is permitted at the expense of the Trust to obtain an appraisal of the value of the assets to be purchased or sold.

(g) Subject to the power of the Grantor as described in this section, the powers granted the Trustee under Sections 3.02 and 3.04 of this Agreement will be exercised in the discretion of the Trustee. Neither the Trustee nor any other person is under a duty to question the Grantor's direction, and the Trustee will comply as promptly as possible with such direction if it is consistent with the terms of this Agreement. The Trustee shall not be liable for the acts or omissions of any subcustodian appointed under Section 3.04(h) at the direction of the Grantor or an investment manager including, but not limited to, any broker-dealer or other entity designated by the Grantor or an investment manager to hold any property of the Trust Fund as collateral or otherwise pursuant to investment strategy.

3.06 Prohibition Against Self-Dealing.

Anything herein to the contrary notwithstanding, the Grantor and the Trustee will perform no act of self-dealing within the meaning of Internal Revenue Code Section 4951(d), except for those acts expressly permitted by Treasury Regulations Section 1.468A-5(b)(2).

ARTICLE 4 OTHER DUTIES OF TRUSTEE

4.01 Notice Regarding Disbursements or Payments.

Except for (i) payments of ordinary administrative costs (including taxes) and other incidental expenses of the Trust Fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the Trust Fund, which includes investment management fees; (ii) withdrawals being made under 10 CFR 50.82(a)(8); and (iii) amounts transferred to a non-qualified trust established for Kewaunee Power Station pursuant to an agreement with terms substantially similar to this Agreement, no disbursement or payment may be made from the trust until written notice of the intention to make a disbursement or payment has been given to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended disbursement or payment. The disbursement or payment from the trust may be made following the 30-working day notice period if no written notice of objection from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, is received by the Trustee or the Grantor within the notice period. The required notice may be made by the Trustee, or may be made on the Trustee's behalf, in which case evidence of such notice being made shall be provided to Trustee. No such notice is required for withdrawals being made pursuant to 10 CFR 50.82(a)(8)(ii), including withdrawals made during the operating life of the plant to be used for decommissioning planning. In addition, no such notice is required to be made to the NRC after decommissioning has begun and withdrawals are being made under 10 CFR 50.82(a)(8).

4.02 Use of Trust Funds.

Until decommissioning has been completed, the Trust Fund, including any disbursements or payments from the Trust Fund, must be used only as authorized by Section 468A of the Internal Revenue Code and the regulations thereunder, and by the regulations of the NRC including 10 CFR 50.75(h) & 50.80(a), such as:

- (a) to satisfy, in whole or part, the liability of Grantor for decommissioning costs of the nuclear power plant to which the Trust Fund relates;
- (b) to pay ordinary administrative costs (including taxes) and other incidental expenses of the Trust Fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the Trust Fund, which includes investment management fees;
- (c) to be transferred to a non-qualified trust established for Kewaunee Power Station pursuant to an agreement with terms substantially similar to this Agreement, or to another financial assurance method acceptable under 10 CFR 50.75(e) of the NRC's regulations, to the

extent permitted by the Internal Revenue Code; or

(d) to make investments, to the extent that the assets are not currently required for another purpose permitted under this section.

4.03 Payments from the Trust Fund.

Subject to the foregoing provisions of this Article 4, on the written direction of the Grantor, the Trustee will make payments and transfers from the Trust Fund to the persons or entities, in the manner, in the amounts, and for the purposes specified in the written directions. After payment, the amount paid is no longer a part of the Trust Fund. Each Grantor direction will include a representation by the Grantor that the payment is in accordance with the purposes of this Agreement. The Trustee is not responsible for the application of the payments or for the adequacy of the Trust Fund after payment to meet and discharge Trust liabilities.

4.04 Payment of Compensation, Expenses, and Taxes.

(a) The Trustee will be paid reasonable compensation as agreed upon from time to time in writing by the Grantor and the Trustee. In addition, the Trustee will be reimbursed from the Trust Fund or, at the option of the Grantor, by the Grantor for all ordinary and necessary expenses incurred in connection with the operation of the Trust, including federal income tax imposed on the modified gross income of the Trust, any state or local tax imposed on the income or assets of the Trust, legal expenses, accounting expenses, actuarial expenses, investment manager fees and trustee compensation and expenses. All taxes levied or assessed on or in respect of the Trust Fund, whether assessed to the Trust Fund or the Grantor, will be paid, at the option of the Grantor, by the Grantor, or from the Trust Fund and pro rated among the Trust Fund and other funds in proportion to their respective fair-market values at the preceding calendar year end in the case of property taxes and in proportion to their respective taxable incomes for the relevant taxable year in the case of income taxes. To the extent that any taxes are provoked by the investment in or receipt of an identifiable asset or transaction involving the Trust Fund or other particular fund, the taxes will be charged against the Trust Fund or other appropriate fund, giving appropriate effect to computations of income and deductions related to the asset or transaction, and allocating any exemption available to the Trust Fund in proportion to the tax liability provoked. Identifiable direct expenses will be treated in the same way as taxes.

(b) The Trustee will prepare and file tax returns for the Trust Fund as directed by the Grantor, provided that the Grantor shall indemnify the Trustee for any penalties, additions to tax, or other amounts for which it may be charged due to a position taken on such returns. The Trustee may assume that any taxes assessed on or with respect to the Trust Fund are lawfully assessed unless the Grantor advises the Trustee in writing that in the opinion of counsel for the Grantor the taxes are or may be unlawfully assessed. When so advised and requested in writing by the Grantor, the Trustee will contest the validity of the taxes in any manner deemed appropriate by the Grantor or its counsel) in which event the Trustee will execute all documents, instruments claims, and petitions necessary or advisable in the opinion of the Grantor or its counsel for the refund, abatement) reduction or elimination of taxes. Reasonable expenses incurred by the Trustee in connection with such a contest will be reimbursed as provided in

paragraph (a) of this section.

(c) No provision of this section will be effective to the extent that it would violate Internal Revenue Code Section 468A, especially in so far as it relates to Internal Revenue Code Section 4951.

4.05 Accounting.

(a) The Trustee will keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions for the Trust Fund. All accounts, books, tax returns, and records relating to the Trust are open to inspection and audit at all reasonable times by any person designated by the Grantor.

(b) Within sixty days after the end of each calendar year and within sixty days after the removal or resignation of a Trustee as provided in Section 2.01, the Trustee will file a written report of the investments, receipts, disbursements, and other transactions during the year or during the period from the close of the last year to the date of the Trustee's removal or resignation, including the current value of the Trust Fund. After ninety days from the date of filing that annual or other accounting, the Trustee is forever released and discharged from all liability and accountability to anyone with respect to the facts and transactions shown in the accounting, except for acts or transactions as to which the Grantor files written objections with the Trustee within the ninety-day period.

(c) Except as specifically provided by statute, no person other than the Grantor may require an accounting or bring an action against the Trustee about the Trust or the actions of the Trustee. The Trustee is not required to make reports to any courts or administrative agencies, except as specifically required by statute.

4.06 Segregation of Ratepayer Funds and Additional Contributions.

(a) On July 5, 2005, the Trust Fund consisted solely of funds and assets contributed to the Trust Fund from funds collected from ratepayers by Wisconsin Public Service Company and Wisconsin Power and Light Company, who were the Sellers of Kewaunee Power Station (formerly known as Kewaunee Nuclear Power Plant). These funds and assets shall constitute and be classified as the "Ratepayer Funds" and shall be accounted for as a sub-account "A." Trustee shall hold and account for all Ratepayer Funds in sub-account A, together with (i) additions for any earnings thereon or apportioned thereto; (ii) subtractions for any and all disbursements and payments (*e.g.*, for payment of taxes and fees) made pursuant to Section 4.02(b) of this Agreement or otherwise, to the extent such disbursements and payments are attributable to this sub-account A; and (iii) subtractions for all disbursements made pursuant to Section 4.02(a) of this Agreement to satisfy, in whole or part, the liability of Grantor for the decommissioning costs of Kewaunee Power Station. All payments made pursuant to Section 4.02(a) shall be made from sub-account A, unless the Trustee is otherwise directed in writing by the Grantor, or unless the balances in sub-account A shall have been exhausted.

(b) The Grantor, in its sole discretion, may make one or more additional contributions

to the Trust Fund (“Additional Contributions”), provided that each such contribution is permitted by applicable law, regulation, court order, rule, private letter ruling or other governmental approval, and that such contribution would not cause the disqualification of the Trust Fund for tax purposes. In the event any such contribution is made by Grantor, all such funds and assets shall constitute and be classified as the “Additional Contributions” and shall be accounted for as a sub-account “B.” Trustee shall hold and account for all Additional Contributions in sub-account B, together with (i) additions for any earnings thereon or apportioned thereto; (ii) subtractions for any and all disbursements and payments (*e.g.*, for payment of taxes and fees) made pursuant to Section 4.02(b) of this Agreement or otherwise, to the extent such disbursements and payments are attributable to this sub-account B; and (iii) subtractions for all disbursements made pursuant to Section 4.02(a) of this Agreement to satisfy, in whole or part, the liability of Grantor for the decommissioning costs of Kewaunee Power Station. Upon exhaustion of the funds available from sub-account A, all payments made pursuant to Section 4.02(a) shall be made from sub-account B.

4.07 Valuation.

(a) As of each calendar year end, the Trustee will determine the fair-market value of the Trust Fund, including separate line items for sub-accounts A and B, and report that value to the Grantor in writing. The valuation determined according to this section is binding on the Grantor, and all other persons interested in the Trust.

(b) Non-cash contributions are valued at fair-market value determined by the Trustee as of the actual date on which the Trustee accepts the property.

(c) In determining the net worth of the Trust Fund, the Trustee will deduct all allocable expenses.

ARTICLE 5 AMENDMENT AND TERMINATION OF THE TRUST

5.01 Amendment of the Trust.

The Grantor has the right at any time to amend this Agreement in whole or in part, but

(a) No amendment may be made that changes the Trustee’s duties or liabilities without the Trustee’s written consent, such consent being evidenced by Trustee’s agreement to such amendment;

(b) This Agreement may not be amended so as to violate Section 468A or the regulations thereunder; and

(c) This Agreement may not be amended in any material respect without written notification to the Director, Office of Nuclear Reactor Regulation (Director, NRR) having been given at least 30 working days before the proposed effective date of the amendment, such notice having provided the text of the proposed amendment and a statement of the reason for the proposed amendment, and without the notice period having expired with no notice of objection having been received from the Director, NRR.

An amendment may be made retroactively if such application is necessary to qualify the Trust Fund as a Nuclear Decommissioning Trust Fund under Section 468A of the Internal Revenue Code of 1986, as amended, or to bring the Trust or the Grantor into conformity with any other applicable statute or regulation.

5.02 Irrevocability of Trust Fund.

The Trust Fund is irrevocable. Except as otherwise provided by law, the Trust Fund terminates upon completion of its nuclear power plant decommissioning that it has been created to fund as certified to the Trustee by the Grantor, upon disqualification of the Trust Fund under Internal Revenue Code Section 468A, or upon the frustration or failure of the Trust Fund's purposes.

5.03 Merger, Consolidation, or Succession.

(a) A corporation with which the Grantor is merged or a corporation or other legal entity which acquires substantially all the assets of the Grantor, shall become the Grantor for purposes of this Agreement, and every reference in this Agreement to the Grantor will be treated as a reference to that surviving or purchasing corporation or other legal entity.

(b) If the Grantor is liquidated, merged, or consolidated with another company or other legal entity and the Grantor's successor chooses not to discharge the Grantor's duties under this Agreement, the Trust nevertheless will survive and the Trust Fund will continue in trust under the terms of this Agreement. In such a case, the Trustee may, but shall not be required to, petition a court of competent jurisdiction seeking the appointment of a party to succeed to the responsibilities of the Grantor. In seeking such an order, the Trustee shall be held harmless and indemnified by the Grantor or its successor. Any expenses incurred by the Trustee in seeking said court order shall be the responsibility of the Grantor or its successor until paid.

(c) The merger or consolidation of the Trust with, or a transfer of assets or liabilities from this Trust to another trust or fund is not permitted unless the Trustee has received an opinion of counsel satisfactory to the Trustee to the effect that the merger, consolidation, or transfer results in no diversion or use of assets that is not permitted by Internal Revenue Code Section 468A.

5.04 Impossibility of Diversion.

Assets of the Trust Fund may not be used for or diverted to purposes other than the purposes permitted by Internal Revenue Code Section 468A, whether by operation or natural termination of the Trust, by power of revocation or amendment, by happening of a contingency, by collateral arrangement, or by any other means. If permissible under the preceding sentence, contributions by the Grantor to the Trust found not to be deductible for federal income tax purposes shall be returned to the Grantor and transferred to a non-qualified trust established for Kewaunee Power Station pursuant to an agreement with terms substantially similar to this Agreement.

5.05 Return of Excess Funds after Final Decommissioning.

(a) Pursuant to the Final Decision of the Public Service Commission of Wisconsin, dated April 21, 2005 (Docket No. 05-EI-136) approving the sale of Kewaunee Power Station to

Grantor (the “PSCW Order”), Grantor is obligated to return any and all excess funds from the Ratepayer Funds, if any, after final completion of all decommissioning activities at Kewaunee Power Station pursuant to all applicable governmental requirements, including the commitments in the PSCW Order, (“Final Decommissioning”), and Grantor shall discharge this obligation pursuant to this Section 5.05 of the Agreement. A copy of the PSCW Order is appended hereto as Exhibit B.

(b) Upon completion of Final Decommissioning, the Grantor shall request, and the Trustee shall provide an accounting of the final balance remaining, if any, in sub-account A (“Final Balance”). If the sub-account A Final Balance is greater than zero, Grantor shall deduct and reserve from such Final Balance, the estimated amount of (1) any tax liability that is projected to be incurred and paid by Grantor or the Trust Fund in connection with the distribution of the excess Ratepayer Funds, and (2) any administrative costs and fees owed or accrued but not yet paid. After allowing for such deduction and reservation, the remaining balance shall be the net amount of “Excess Ratepayer Funds.” If the net amount of Excess Ratepayer Funds is greater than zero, Grantor shall direct the Trustee to disburse 59% of the net Excess Ratepayer Funds to Wisconsin Public Service Corporation, or its successors or assigns, with notice to the Public Service Commission of Wisconsin, and 41% of the net Excess Ratepayer Funds to Wisconsin Power and Light Company, or its successors or assigns, with notice to the Public Service Commission of Wisconsin.

(c) After the completion of Final Decommissioning and satisfaction of the actions contemplated by Section 5.05(b) above, and payment of all administrative costs (including taxes) and fees associated with sub-account B, any amounts remaining in sub-account B shall revert to Grantor free of trust and free and clear of the provisions of this Agreement.

(d) If any law, regulation, court order, rule, private letter ruling or other governmental action results in the termination of this Agreement or the Trust Fund prior to completion of Final Decommissioning, Grantor shall maintain any balances remaining in sub-account A in an external trust and make appropriate arrangements for fulfilling the obligation to return Excess Ratepayers Funds, if any, to Wisconsin Public Service Corporation and Wisconsin Power and Light Company, or their successors or assigns, for distribution to their customers, consistent with the terms of Sections 4.06 and 5.05 of this Agreement.

ARTICLE 6 MISCELLANEOUS PROVISIONS

6.01 Construction.

The Grantor’s intent and purpose in creating the trusts hereunder and executing this Agreement is to maintain Nuclear Decommissioning Reserve Funds pursuant to Internal Revenue Code Section 468A. All questions arising in the administration of the Trust and in the construction of this Agreement will be resolved accordingly. This Agreement will be construed, enforced, and administered in accordance with the laws of the Commonwealth of Pennsylvania, except to the extent that the laws of the United States of America take precedence, in which event, this Agreement will be construed in accordance with the laws of the United States of America. The headings and subheadings in this Agreement have been inserted for convenience only and are to

be ignored in construction of the provisions.

6.02 Rights under the Trust.

No person other than the Grantor has any vested rights under the Trust except to the extent that rights may accrue under other agreements made by the Trustee. Except as permitted by law, no assignment of any rights or benefits under the Trust is permitted or recognized, nor will any rights or benefits be subject to attachment or other legal or equitable process or subject to the jurisdiction of any bankruptcy court.

6.03 Frustrated Actions.

If it becomes impossible for the Grantor or the Trustee to perform an act, then that act will be performed which, in the discretion of the Trustee, most nearly carries out the intent and purpose of this Agreement.

6.04 Construction of Direction.

Whenever the Grantor or Trustee is directed to take an action upon the occurrence of an event, neither is under obligation to take that action until it has received proper and satisfactory written notice of the occurrence.

6.05 Authorizations and Communication.

A written authorization or communication from an officer of the Grantor or the Trustee that an event has occurred constitutes conclusive evidence of the occurrence, and the Grantor or Trustee is fully protected and discharged from all liability in accepting and relying upon that authorization or communication.

6.06 Genuine Notice.

The Grantor or the Trustee will not incur liability to any persons or party when acting on a notice, request, consent, letter, telegram, or other paper or document that it believes to be genuine, and to have been signed or sent by the proper person.

6.07 Loss or Damage.

Except as specifically provided by statute, neither the Grantor nor the Trustee is liable for loss or damage, except by reason of its own gross negligence or willful default. The Trustee shall not be liable for any act or omission of any other person in carrying out any responsibility imposed upon such person and under no circumstances shall the Trustee be liable for any indirect, consequential or special damages with respect to its role as Trustee.

6.08 Binding Nature.

This Agreement is binding upon the heirs, executors, administrators, successors, and assigns of all parties, present and future.

6.09 Settlement of Transactions and Collateral.

The Trustee may take all action necessary to pay for, and settle, authorized transactions, including disbursements or expenses, or the purchase or sale of foreign exchange, or of contracts for foreign exchange, and including exercising the power to borrow or raise monies from the Trustee in its corporate capacity or an affiliate. To secure expenses and advances made to settle or pay for authorized transactions, including payment for securities and disbursements, the Grantor grants to the Trustee a first priority security interest in the Trust Fund, all property therein, all income, substitutions and proceeds, whether now owned or hereafter acquired (the "Collateral"); provided that the Grantor does not grant the Trustee a security interest in any securities issued by an affiliate of the Trustee (as defined in Section 23A of the Federal Reserve Act). The parties intend that as the securities intermediary with respect to the Collateral, the Trustee's security interest shall automatically be perfected when it attaches. To the extent the Trustee advances funds to the Trust Fund for disbursements or to effect the settlement of purchase transactions, the Trustee shall be entitled to collect from the Trust Fund reasonable charges established under the Trustee's standard overdraft terms, conditions and procedures.

6.10 Force Majeure.

Notwithstanding anything in this Agreement to the contrary contained herein, the Trustee shall not be responsible or liable for its failure to perform under this Agreement or for any losses to the Trust Fund resulting from any event beyond the reasonable control of the Trustee, its agents or subcustodians. This Section shall survive the termination of this Agreement.

6.11 Representation and Warranty as to Authority.

The Grantor 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 Grantor or the Trustee to this Agreement.

IN WITNESS of this Amended and Restated Agreement, the Grantor and the Trustee have signed below on this _____ day of _____, _____.

DOMINION ENERGY KEWAUNEE, INC.

By: _____

MELLON BANK, N.A., TRUSTEE

By: _____

Title: _____

EXHIBIT A

CROSS-TRADING INFORMATION

As part of its cross-trading program, Mellon Bank, N.A. is to provide to each affected customer the following information:

I. The existence of the cross-trading program

Mellon Bank, N.A. has developed and intends to utilize, wherever practicable, a cross-trading program for indexed accounts and large accounts.

II. The “triggering events” creating cross-trade opportunities

Three “triggering events” may create opportunities for cross-trading transactions. They are generally the following (see Mellon Bank, N.A. for more information):

- 1) A change in the composition or weighting of the index by the independent 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 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 Mellon Bank, N.A.’s own plans (other than Mellon Bank, N.A.’s defined contribution plans under which participants may direct among various investment options, including Indexed Accounts) are excluded as a “triggering event”; or
- 3) A recorded declaration by Mellon Bank, N.A. 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 Mellon Bank, N.A. 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. Mellon Bank, N.A. 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 Mellon Bank, N.A. imposes a trivial share constraint to reduce excessive custody ticket charges to participating accounts.

V. Other procedures implemented by Mellon Bank, N.A. for its cross-trading practices

Mellon Bank, N.A. has developed certain internal operational procedures for cross-trading debt and equity securities. These procedures are available upon request.

EXHIBIT B

Final Decision of the Public Service Commission of Wisconsin

Docket No. 05-EI-136 (April 21, 2005)



Public Service Commission of Wisconsin

Daniel R. Ebert, Chairperson
Robert M. Garvin, Commissioner
Mark Meyer, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

April 21, 2005

To the Person Addressed:

Re: In the Matter of the Application for All Approvals
Necessary for the Transfer of Ownership and
Operational Control of the Kewaunee Nuclear Power
Plant From Wisconsin Public Service Corporation and
Wisconsin Power and Light Company to Dominion
Energy Kewaunee, Inc.

05-EI-136

We enclose copy of Final Decision issued in the above-entitled matter.

Sincerely,

Christy L. Zehner
Secretary to the Commission

gef

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ST LOUIS OH 63141-2000

DATE MAILED

APR 21 2005

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of the Application for All Approvals
Necessary for the Transfer of Ownership and
Operational Control of the Kewaunee Nuclear Power
Plant From Wisconsin Public Service Corporation and
Wisconsin Power and Light Company to Dominion
Energy Kewaunee, Inc.

05-EI-136

FINAL DECISION

This is the final decision following the request by Wisconsin Public Service Corporation (WPSC) and Wisconsin Power and Light Company (WP&L) to reopen this docket. The applicants' request to transfer ownership and operational control of the Kewaunee Nuclear Power Plant (KNPP) to Dominion Energy Kewaunee, Inc. (DEK), is APPROVED, subject to conditions.

Introduction

KNPP is a 543-megawatt, nuclear-powered, electric generating facility that WPSC and WP&L jointly own. The plant is located in the town of Carlton in Kewaunee County, Wisconsin. It commenced operation in 1974 and is licensed by the United States Nuclear Regulatory Commission (NRC) to operate through December 21, 2013. KNPP is operated by Nuclear Management Company, LLC (NMC), a non-utility affiliate of WPSC and WP&L.

On December 19, 2003, WPSC and WP&L filed an application for approval of a series of transactions by which they would transfer ownership and operational control of KNPP to DEK. They also proposed to enter into power purchase agreements (PPAs), to purchase the output of

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KNPP from DEK over the remaining term of KNPP's current federal nuclear license. DEK is a special purpose entity, incorporated in Wisconsin for the specific purpose of acquiring, owning, and operating KNPP. It is a wholly-owned subsidiary of Dominion Resources, Inc. (DRI), a registered public utility holding company that is incorporated under the laws of Virginia.¹

Hearings in this proceeding occurred on June 17, 18, and 21, 2004, in Madison, and on June 24, 2004, in Manitowoc. Following these hearings the Commission received extensive briefing from the parties, including a separate round of briefs regarding the Commission's authority to issue and enforce conditional orders. The Commission issued its initial decision, denying the applicants' original request to sell KNPP, on December 16, 2004. In that decision, the Commission gave three reasons for its denial. The first reason concerned the potential lack of state jurisdiction if KNPP or DEK were sold at some point to a third party. The Commission stated, "As proposed, the sale would appear to deprive the Commission of a meaningful role regarding the subsequent sale of KNPP to future owners." *Final Decision*, page 4 (December 16, 2004). The Commission's second reason for finding the proposal inconsistent with the public interest was that "it would deprive Wisconsin's ratepayers of decommissioning funds that are likely not to be needed for actual decommissioning." *Id.* at 16. Although the terms of the sale would have returned the applicants' nonqualified decommissioning funds to their ratepayers, they would have transferred all qualified funds to DEK and allowed DEK to keep any qualified funds that remained after decommissioning was complete. The Commission's third reason addressed the adequacy of the financial protections built into the PPAs and Asset Sale Agreement (ASA). The Commission held, "While the PPAs and ASA provide significant monetary protections, in view of the potential enormous cost that might result from extended,

¹ 15 U.S.C. § 79e(a)

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unanticipated outages, some added assurance appears warranted. The Commission concludes that it would be prudent to demand greater support from DEK's parent, DRI [Dominion Resources, Inc.].” *Id.* at 18.

The applicants and DEK responded with a “Motion for Reopening and Rehearing” on December 21, 2004, five days after issuance of the Commission’s initial decision. In the briefs that DEK filed in the fall of 2004, the company had proposed seven conditions of sale. DEK intended these seven “Proffered Conditions” to respond to key concerns that had been raised at the Commission’s hearings and in briefs. As part of the Motion for Reopening and Rehearing, DEK offered three additional Proffered Conditions, designed to address the reasons for denial of sale that the Commission had articulated in its December 16 decision. In its brief filed February 11, 2005, DEK supplemented this proposal with two more Proffered Conditions. In total, DEK is now offering and stating its willingness to accede to twelve Proffered Conditions.

The Commission formally reopened this docket on January 21, 2005, in order to receive further briefs on five specific topics. These issues all dealt with the potential transfer of KNPP or DEK to a subsequent, third-party owner.² The Commission accepted initial briefs and reply

² The *Order to Reopen* instructed parties to address the following issues:

1. How would the Commission enforce a Proffered Condition, if DEK or KNPP is sold to a third party and the new owner fails to implement one of the proffered conditions?
2. At hearing and in its briefs, DEK interpreted the Asset Sale Agreement as obligating it to decommission KNPP to greenfield status. Section 11.6 of the Asset Sale Agreement declares that the Agreement is binding upon future successors and assignees. How would the Commission enforce this or other obligations under the Asset Sale Agreement, if a successor or assignee of DEK fails to perform?
3. If a new owner acquires a majority interest in KNPP or DEK but does not acquire “substantially all” of the assets, are the Proffered Conditions enforceable against the new owner?
4. If a new owner acquires KNPP or DEK through a transfer other than a “purchase,” are the Proffered Conditions enforceable against the new owner?
5. Is it necessary for and consistent with the public interest for the Commission to have the status of a third-party beneficiary to the transactional agreements?

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briefs from the applicants, DEK, and intervenors. The briefs were sufficiently complete and well-reasoned that no oral arguments or additional hearings were needed.

The Commission is satisfied that the twelve Proffered Conditions now meet the concerns expressed in its initial decision. In addition, as requested by other intervenors, the Commission has also considered whether these Proffered Conditions are sufficient to determine that a sale of KNPP is consistent with the public interest. The Commission finds that this sale now meets the standard of Wis. Stat. § 196.80(3), which declares, "If the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval in writing," and therefore VACATES its prior decision of December 16, 2004.

This order describes how the Commission reached its decision. It also addresses the remaining requests of the applicants, that the Commission:

a. Issue a declaratory ruling that authorizes the utilities to recover their costs through rates and that approves the utilities' proposals regarding the disposition of decommissioning funds and the repayment of costs that WPSC's nuclear affiliate will incur by withdrawing from the NMC.

b. Authorize the utilities' deferral of gains and losses associated with the sale of KNPP.

c. Determine that the sale will benefit consumers, is in the public interest, and does not violate state law, so KNPP can be considered an "eligible facility" and DEK can be designated an "exempt wholesale generator" under federal law.

d. Determine that DEK properly offers employment to the current employees of KNPP as required by state law.

The applicants seek these determinations pursuant to Wis. Stat. §§ 196.03, 196.52, 196.807, 196.81, and 227.41, and 15 U.S.C. § 79z-5a.

Findings of Fact

1. The consideration received by the applicants under the ASA for the sale of the KNPP is reasonable as compared to the value of the assets to be transferred.
2. It is reasonable and prudent for WPSC and WP&L to divest ownership of the KNPP pursuant to the ASA, and to enter into the PPAs.
3. Allowing the KNPP to become an “eligible facility” under 15 U.S.C. § 79z-5a(c) will benefit consumers, is in the public interest, and does not violate Wisconsin law.
4. It is reasonable and prudent for the applicants to transfer their qualified decommissioning funds to DEK and for DEK to assume all risks, obligations and duties with respect to the decommissioning of the KNPP in a manner that complies with all the Proffered Conditions and applicable standards.
5. It is reasonable to grant the applicants rate recovery for changes in their revenue requirements due to all expenses incurred in connection with the negotiation and execution of the ASA and PPAs, expenses incurred in obtaining approvals and closing the transaction, all costs incurred under the PPAs during their entire term, and all other costs incurred in relation to the transaction, to the extent that such expenses are determined upon appropriate audit and scrutiny to be reasonable and consistent with this order.
6. It is reasonable, prudent and in the public interest for applicants to:
 - a. Defer all gains, losses, and transaction costs as described herein.
 - b. Undertake their respective obligations under the PPAs.
 - c. Continue to depreciate all assets that will be transferred to DEK until the date of closing, notwithstanding Statement of Financial Accounting Standard (SFAS) 144.
 - d. Otherwise account for the transaction as proposed.

7. It is reasonable and prudent for the applicants to retain their respective nonqualified decommissioning funds, for such funds to be released from dedication to the future decommissioning of the KNPP upon closing of the transaction, and for the applicants to return these funds to their ratepayers on an amortized basis. It is reasonable for the Commission to determine the specific amortization and jurisdictional allocations in separate rate proceedings. It is also reasonable for the Commission to determine, in separate rate proceedings, the specific amortization and jurisdictional allocations of any amounts from DEK's qualified fund that DEK ultimately refunds.

8. It is reasonable and consistent with the public interest for WPSC to reimburse its affiliate WPS Nuclear, Inc. (WPSN), which is a member of NMC, for the diminution in NMC equity interest caused by selling KNPP and to hold WPSN harmless for the NMC exit fees.

9. The proposed transaction is a Type III action under Wis. Admin. Code § PSC 4.10(3). No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention. Neither an environmental assessment nor an environmental impact statement under Wis. Stat. § 1.11 is required for the Commission to grant the requested relief.

10. The sale is reasonable and consistent with the public interest when made subject to the Proffered Conditions.

Conclusions of Law

1. Both WPSC and WP&L are electric public utilities, as defined in Wis. Stat. § 196.01.

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2. The Commission has authority under Wis. Stat. §§ 196.39(1), 196.395, 196.40, 196.52, 196.80, 196.807, and 227.41 to issue this order.

3. Wis. Stat. § 196.81, regarding abandonment of service, does not apply to the proposed sale.

4. The Energy Priorities Law (Wis. Stat. §§ 1.12 and 196.025) does not apply to the proposed sale.

5. This sale, subject to the Proffered Conditions expressed in this order, will benefit consumers, is in the public interest, and does not violate state law.

6. DEK's voluntary agreement to comply with every Proffered Condition, as demonstrated in its testimony, briefs and the affidavit of its Vice President, constitutes a legal waiver of its right to challenge enforcement of the Proffered Conditions on both statutory and equitable grounds. The Proffered Conditions are essential to the Commission's determination that the proposed sale is consistent with the public interest.

Opinion

KNPP is a well-run, dependable component of Wisconsin's electric generating fleet. WPSC and WP&L, however, are now raising reasonable concerns about maintaining their interest in a nuclear plant, just as their former joint owner Madison Gas and Electric Company (MGE) did in 2000. The U.S. nuclear industry is consolidating, in part because the risks of ownership are especially difficult to manage for smaller utilities that own single units. NMC operates KNPP and seven other nuclear units in Wisconsin and neighboring states, but the fact that it does not own any of these plants to some extent limits NMC's economies of scale. Unless each of the five utility owners agrees about program initiatives, NMC cannot optimally manage

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and operate these units. The Nuclear Energy Institute reports that twelve nuclear power plants have been sold since July 1999, with another five sales (including the sale of KNPP) pending.

Although KNPP has a very good operating history, its operation and maintenance (O&M) expenses are frequently driven by significant unexpected events occurring at other nuclear plants throughout the industry. When problems arise at other nuclear plants in the country, such as the corrosion recently found in the Davis-Bessey reactor vessel head in Indiana, they can trigger industry-wide inspections by the NRC. In response, the NRC may alter its regulatory requirements and apply these new requirements to every plant. Part of the work performed during this year's fall outage at KNPP was the replacement of its reactor vessel head, because of NRC's findings of corrosion at plants elsewhere, at a cost of approximately \$24 million. The industry itself is also engaged in ongoing performance reviews that result in operational changes and improvements, and nuclear plant owners must react to developing concerns, such as WPSC's estimated \$9 million expenditure in 2004 for increased anti-terrorism security protection. Complying with these continually evolving industry standards and demands, even though they arise because of circumstances that do not relate directly to KNPP, may entail costly capital improvements and lengthy shutdown periods.

Overall, many of the costs of a nuclear plant are substantially more volatile than those of other types of generating units. The applicants now propose to sell KNPP in order to shift these O&M, capital, and purchased power risks away from their ratepayers.

Because KNPP's operating license expires in 2013, WPSC and WP&L will soon be facing the costs associated with relicensing. Their first responsibility would be to conduct relicensing studies, and the record indicates that these studies alone will take two years to

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complete and cost approximately \$20 million. As long as the two utilities retain ownership of KNPP their ratepayers would shoulder this cost, even if the studies demonstrate that relicensing is not practical. The applicants' witnesses testified that moving forward with relicensing could require as much as \$250 million in capital improvements to allow the plant to run for a complete 20-year license renewal period. While successful relicensing would be a real benefit to ratepayers because it would make a fully depreciated, baseload asset available for another 20 years, the large capital investment necessary to relicense KNPP would become a sunk cost and provide no value to ratepayers if the plant had to be shut down prematurely. Selling KNPP will transfer the duty of relicensing and the risks of early shutdown to DEK.

Another significant cost, unique to nuclear facilities, is decommissioning. This Commission has adopted a very conservative approach to decommissioning nuclear plants. As a result, KNPP's decommissioning trusts are now amply funded to meet the estimated cost of decommissioning, but these estimates could be incorrect if unforeseen problems shut the plant down prematurely or increase the actual cost of decommissioning.

Nuclear plants entail a unique aggregation of risks, unlike those of any other conventional generating units. The value to ratepayers of selling KNPP under the terms of this sale and the Proffered Conditions, in order to shed nuclear risks and substitute the more certain costs of PPAs, exceeds the value of a relicensed nuclear plant that the utilities would continue to own. Ratepayers must still shoulder some economic risk, regardless of whether the applicants sell or retain KNPP, but the Commission finds that selling the plant under these terms is the more effective means of controlling that risk. Approving this sale of KNPP, however, is in no way a precursor to retail deregulation of Wisconsin's electric utility industry. This decision should not

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be construed as precedent for any future request by a utility to sell its fossil-fueled plants or otherwise to reduce Commission authority over Wisconsin's electric utility system. The applicants themselves recognize this fact. They are not proposing that this transaction be considered any kind of step toward the sale of other generating plants to non-utility entities.³

DEK and DRI are assuming a number of obligations under the terms of the proposed ASA, the PPAs, and the Proffered Conditions. Performance of these obligations is essential to the Commission's determination that a sale of KNPP will be consistent with the public interest.

Original terms of the proposed transaction

The applicants decided to pursue this alternative after WPSC was approached with a proposal to purchase KNPP. Ultimately, the applicants received four complete and detailed offers over a period of almost two years, scrutinizing the terms of each offer as well as the parties that made them. During the applicants' review process, interested parties were required to respond to draft asset sale and power purchase term sheets that evolved as the process progressed. The applicants engaged in extended negotiations with two potential purchasers, including DRI, and ultimately reached an agreement with DRI's subsidiary, DEK. The key financial terms of the ASA that the applicants and DEK originally proposed to the Commission were:

1. \$220 Million Asset Sale Price. Subject to certain adjustments and prorations, DEK would pay \$220 million to the applicants for 100 percent ownership and control of KNPP. This price would approximate KNPP's current book value.

³ *Initial Brief of Wisconsin Public Service Corporation and Wisconsin Power & Light*, page 24 (July 26, 2004).

2. Transfer of Qualified Decommissioning Funds to DEK. Each utility has an external decommissioning fund, held in trust for the purpose of decommissioning KNPP, that meets the requirements of § 468A of the Internal Revenue Code. These external sinking funds are known as qualified decommissioning funds.⁴ Under the ASA, the applicants' qualified funds would transfer to DEK upon closing. The total projected pre-tax market value of the two qualified funds is approximately \$405 million. DEK would assume full decommissioning responsibilities, regardless of the sufficiency of the transferred qualified funds, but DEK would retain any excess remaining in the qualified funds after decommissioning. (DEK altered this element of the sale, pledging to return any excess ratepayer funds in the qualified trust, when it moved to reopen this docket.)⁵

3. Return of Nonqualified Decommissioning Funds to Ratepayers. Each utility also has an external decommissioning fund that does not meet the requirements of § 468A of the Internal Revenue Code, known as the nonqualified fund.⁶ Under the ASA, the current balance in each utility's nonqualified fund would be retained by WPSC and WP&L, not transferred to DEK. The utilities propose to return all of the nonqualified funds, approximately \$193 million, to their ratepayers.

⁴ Funds deposited in a qualified fund are tax deductible by the nuclear plant owner immediately, in the year of the contribution.

⁵ See Proffered Condition 9.

⁶ IRS regulations only allow a prorated amount to be deposited in a qualified decommissioning fund. If a nuclear plant is 35 percent depreciated at the time that a qualified fund is created, the deposits into a qualified fund may not exceed 65 percent of the total amount to be set aside for decommissioning. The Commission directed Wisconsin utilities to set up their external funds in 1985, 10 to 15 years after their nuclear plants began service, so they could only use qualified funds to cover a prorated portion of their total decommissioning expenses. As a result, the Commission also required that the owners of KNPP and Point Beach create nonqualified funds, where the remainder would be invested. Deposits into a nonqualified fund cannot be taken as tax deductions in the year of contribution, only in the year they are withdrawn and used.

4. Offers to KNPP Employees. The ASA requires DEK to offer employment to all WPSC employees who are working at KNPP at the time of sale, in accordance with WPSC's collective bargaining agreement covering its non-supervisory KNPP employees and all applicable federal, state and local laws. DEK has made these offers to WPSC employees, as well as to all NMC employees who are currently stationed at KNPP.

5. Capacity and Energy Prices under the PPAs. The PPAs would entitle the utilities to their respective percentage share of KNPP's projected capacity, energy, ancillary services and "attributes," such as excess emission allowances. Both utilities would pay a formulaic fixed monthly payment, designed to mimic the fixed capacity and O&M expenses each would bear under rate-based treatment. The utilities would also make variable monthly payments for delivered energy.

6. Performance Bonus and Damages. Under the PPAs, DEK would guarantee the plant's performance at levels similar to or slightly higher than KNPP's historical performance. Depending on KNPP availability and outage rates, as well as the costs of replacement energy and capacity, the applicants would either pay a monthly "performance bonus" to DEK or receive "performance damages" from DEK. WPSC and WP&L allege that these financial incentives would hold ratepayers harmless financially against the costs associated with KNPP's projected level of performance. As security to ensure that DEK complies with its obligations under the PPAs, DRI issued a \$31 million corporate Guaranty that the utilities can invoke on their own behalf. (DEK altered this element of the sale, increasing DRI's Guaranty, when it moved to reopen this docket.)⁷

⁷ See Proffered Condition 10.

The PPAs would also limit ratepayer risk exposure in the event of an extended shutdown. If any outage were to exceed 360 days, regardless of whether DEK provided replacement power during such an outage, the applicants could terminate their PPAs and stop making the fixed payments.

Proffered Conditions

DEK's original seven Proffered Conditions are as follows:

1. Require that DRI notify the Commission of any request made by the U.S. Securities and Exchange Commission ("SEC") to pay dividends from funds other than Dominion Energy Keweenaw's retained earnings;
2. Prohibit Dominion Energy Keweenaw from providing loans to any of its holding company affiliates, except through the DRI money pool that has been approved by the SEC;
3. Prohibit Dominion Energy Keweenaw from guaranteeing any debt of DRI or of its holding company affiliates;
4. Allow the Commission to approve any subsequent sale of the Keweenaw Nuclear Power Plant ("KNPP"), or of Dominion Energy Keweenaw, for the purpose of determining whether the new owner has sufficient financial resources to operate the plant. A decision by the NRC approving the license transfer would constitute a rebuttable presumption that the new owner is creditworthy;
5. Require that Dominion Energy Keweenaw use only an external trust fund as its form of decommissioning financial assurance;
6. Require that Dominion Energy Keweenaw continue to use the DECON assumption of immediate decommissioning when estimating the future cost of decommissioning KNPP, as well as the assumption that the site would be restored to greenfield status; and
7. Prohibit Dominion Energy Keweenaw from storing any nuclear waste at KNPP that was produced elsewhere.

DEK added three additional Proffered Conditions as Exhibit B of the "Motion for Reopening and Rehearing" that it submitted on December 21, 2004. These conditions are:

8. Dominion Energy Kewaunee will grant to Grantees and their successors and assigns a right of first refusal to purchase KNPP in the form to which this Exhibit B is appended (the "ROFR").

9. Upon final completion of all decommissioning activities at KNPP, Dominion Energy Kewaunee shall return to Grantees, their successors or assigns, for distribution to their customers, any and all excess ratepayer funds contained in Dominion Energy Kewaunee's Qualified Decommissioning Trust Fund for KNPP. Any excess funds shall be returned to Grantees in proportion to their ownership share on the day of the sale of KNPP to Dominion Energy Kewaunee.

10. Dominion Energy Kewaunee's parent company, Dominion Resources, Inc., will increase the total level of its guaranties attached to the Power Purchase Agreements from \$31 million to [amount filed confidentially].

(A copy of the ROFR is appended to this order as Attachment A.)

In its *Initial Brief in the Reopened Proceeding*, dated February 11, 2005, DEK completed its list of Proffered Conditions. It proposed the following:

11. Require any subsequent purchaser of KNPP or Dominion Energy Kewaunee (other than the transfer pursuant to a Permitted Transfer) to intervene as a party in any Public Service Commission of Wisconsin proceeding initiated pursuant to Proffered Condition No. 4 or paragraph 6 of the ROFR and affirmatively commit on the record of such proceeding to be bound by the same conditions set forth in this Exhibit B. The transferee of a Permitted Transfer under § 2(ii) of the ROFR will file with the PSCW a document affirmatively committing to be bound by the same conditions set forth in this Exhibit B.

12. Dominion Energy Kewaunee and all subsequent purchasers will decommission the KNPP site in accordance with § 7.17 of the Asset Sale Agreement (and associated definitions) dated November 7, 2003 by and between Dominion Energy Kewaunee and Grantees ("ASA") and subsequent purchasers shall contractually bind themselves to the Grantees to decommission the KNPP site in a manner consistent with § 7.17 (and associated definitions) of the ASA.

Public Interest Determination

Under Wis. Stat. § 196.80(1m)(e) and (3), KNPP cannot be sold unless the Commission determines that the proposed sale is "consistent with the public interest." In addition, DEK is seeking to own and operate KNPP as an exempt wholesale generator. Under federal law, the Federal Energy Regulatory Commission (FERC) must first find that KNPP is an "eligible

facility." Such a finding, pursuant to the federal Public Utility Holding Company Act, depends upon the Commission first determining "that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law."⁸

These are the broad public interest issues now before the Commission. Determining DEK's financial viability is the first step in the Commission's public interest analysis. Because KNPP is a nuclear facility that will remain sited in Wisconsin on the shores of Lake Michigan for its entire useful life, the Commission must also consider the matters of nuclear waste storage and successful decommissioning of this plant. The Commission must look forward 30 years or more to evaluate these concerns. To reach its decision, the Commission has analyzed specific and general costs and benefits of the proposed transaction. These matters are discussed below.

Third party ownership

In its original decision on December 16, 2004, the Commission stated that it "is examining the ability of DRI and its subsidiary to operate, maintain, and decommission KNPP safely and reliably. If DEK were to sell KNPP at some point in the future, or if DRI were to sell DEK outright, the ownership of this plant will transfer to a third party. Unless it can reserve some right to review a subsequent sale of KNPP, the Commission would have no ability to judge whether this successor is a suitable owner of KNPP." *Final Decision*, page 11. The five issues presented for briefing in these reopened proceedings all deal with the potential transfer of KNPP

⁸ DEK only qualifies as an exempt wholesale generator if the FERC finds it to be "engaged directly, or indirectly through one or more affiliates . . . and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale." An "eligible facility" must be "used for the generation of electric energy exclusively for sale at wholesale." "Sale of electric energy at wholesale," in turn, refers to the definition of that term in the Federal Power Act, or "a sale of electric energy to any person for resale." See 15 U.S.C. § 79z-5a and 16 U.S.C. § 824(d).

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or DEK to a subsequent, third-party owner. The parties' briefs explored whether the commitments being made by DEK would flow to any successor.

Proffered Conditions 4, 8, and 11 properly bind a third-party successor to all the terms of the proposed sale. Proffered Condition 8 incorporates the Right of First Refusal (ROFR), an instrument that will be recorded with the Kewaunee County Register of Deeds and run with the land. Under the terms of the ROFR, KNPP can only be sold via a "Bona Fide Offer," which is defined as the purchase of substantially all of the plant and its related assets or substantially all of DEK's common stock. Part of a Bona Fide Offer is a requirement that the purchaser render an undertaking to be bound by each Proffered Condition. If a Bona Fide Offer to purchase is made, WPSC and WP&L then have a 60-day option to invoke their right of first refusal. They must then file a request with the Commission for a declaratory ruling on the reasonableness and prudence of their decision to exercise or waive the right of first refusal.⁹

An essential element of the Bona Fide Offer is the requirement that the third-party purchaser agree to be bound by every Proffered Condition, including Condition 8. Under these terms, if a third party acquires KNPP and then decides to sell the plant, the ROFR applies again and the next successor in interest becomes obliged to enter into an undertaking that binds it to each Proffered Condition. Although the ROFR exempts mergers and purchases of DRI, the holding company, as well as transfers of KNPP to an affiliate of DEK, even under these "Permitted Transfers" the transferee must furnish the same undertaking. The ROFR remains in effect for the life of the plant's NRC licenses.¹⁰

⁹ ROFR, §§ 4 to 6.
¹⁰ ROFR, §§ 2 and 3.

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Proffered Conditions 4 and 11 impose a further requirement upon subsequent purchasers. When the Commission initiates a docket for the review of a proposed sale, Proffered Condition 4 specifies its ability to examine the financial resources of the prospective owner. Proffered Condition 11 requires that the purchaser must intervene as a party to this docket, or as a party to the declaratory ruling proceeding that the two utilities would commence, and must "affirmatively commit on the record of such proceeding to be bound by the same conditions set forth in this Exhibit B [the Proffered Conditions]." A transferee of a Permitted Transfer must file a document with the Commission making the same affirmative commitment.

Entering Commission proceedings and making the binding declaration that it will abide by the Proffered Conditions will equitably estop the prospective purchaser from challenging any action by the Commission to enforce performance. Furthermore, the Commission can issue a conditional order when it authorizes a sale or transfer of KNPP or DEK, demanding compliance with the Proffered Conditions. Wis. Stat. § 196.395 provides that, when the new owner acts upon the Commission's order and acquires the plant, it will waive all objections to such conditions.¹¹

These doctrines of estoppel and waiver also apply to DEK, if the Commission commences an action to enforce performance of any Proffered Condition. DEK agrees with this legal conclusion. In its *Reply to the Supplemental Briefs*, dated November 12, 2004, the company stated, "The Commission can be confident in its ability to adopt and enforce these Proffered Conditions because Dominion Energy Kewaunee has proffered, on the record, to abide

¹¹ Wis. Stat. § 196.395 provides, "The commission may issue conditional, temporary, emergency and supplemental orders. If an order is issued upon certain stated conditions, any party acting upon any part of the order shall be deemed to have accepted and waived all objections to any condition contained in the order."

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by the terms of these Proffered Conditions. Through this agreement, Dominion Energy Kewaunee is waiving its right to challenge the Proffered Conditions." The company further declared, "Dominion Energy Kewaunee would also be precluded from challenging the Proffered Conditions on equitable grounds." It cited the doctrines of judicial admission, estoppel by record, and judicial estoppel as each preventing such challenges and stated, "This is the type of situation where these equitable theories will act to preclude a challenge to the Proffered Conditions." *Id.* at page 5 and page 6, fn. 9. DEK also stated that imposing its Proffered Conditions would be within the Commission's statutory authority, citing Wis. Stat. §§ 196.02(1), 196.491(2) and (5), and 196.80(3).¹²

In briefs filed during the initial proceedings, DEK further declared that none of the Proffered Conditions would be subject to federal preemption. Although DEK reserved judgment regarding whether prohibiting the storage of off-site nuclear waste at KNPP could be federally preempted (Proffered Condition 7), it stated categorically that preventing the storage of off-site waste at KNPP is "a reasonable, lawful, and targeted condition that addresses a legitimate State concern," whose adoption "should not present new preemption issues." *Reply Brief of Dominion Energy Kewaunee, Inc.*, pages 19-20 (August 9, 2004); *Supplemental Brief of Dominion Energy Kewaunee, Inc.*, page 9 (November 5, 2004); *Reply to the Supplemental Briefs*, page 18. The Commission also notes that this prohibition is already imposed upon KNPP through its NRC license.

¹² *Reply to the Supplemental Briefs*, page 11. DEK also maintains that none of the Proffered Conditions would be subject to federal preemption, "with the possible exception of [Proffered Condition 7, prohibiting storage of off-site nuclear waste at KNPP] that is already imposed upon KNPP through its NRC license." *Id.* at 18. Even on Proffered Condition 7, DEK has stated categorically that preventing the storage of off-site waste at KNPP is "a reasonable, lawful, and targeted condition that addresses a legitimate State concern," whose adoption "should not present new preemption issues." *Reply Brief of Dominion Energy Kewaunee, Inc.*, pages 19-20 (August 9, 2004); *Supplemental Brief of Dominion Energy Kewaunee, Inc.*, page 9 (November 5, 2004).

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In briefs filed during these reopened proceedings, DEK affirms all of these legal conclusions regarding the new Proffered Conditions. It again declares that the Commission has statutory authority to adopt and enforce every condition, that DEK is voluntarily waiving its right to contest Commission enforcement actions, and that none of the new Proffered Conditions would be federally preempted. *Reply Brief of Dominion Energy Kewaunee in the Reopened Proceeding*, pages 4-6 (February 21, 2005).

The Commission agrees with these legal conclusions. The twelve Proffered Conditions will subject any subsequent purchaser of KNPP or DEK to the same requirements as are imposed upon DEK, and will convey the same enforcement authority to the Commission. Furthermore, as an exempt wholesale generator, DEK or any subsequent owner will be subject to the Federal Power Act. Under 16 U.S.C. § 824(g), the Commission will then have the right to audit the books and records of the owner and its holding company parent. In addition, the applications, annual reports and other information that DEK or any subsequent owner files with the FERC, NRC, and SEC are publicly available to monitor the financial status and regulatory activities of the owner. The Commission finds this authority sufficient to ensure performance.

Nuclear waste storage

DEK has consistently stipulated that the KNPP site would store only nuclear waste generated by KNPP, not any off-site waste. One of the reasons the Commission initially rejected this sale, though, was because if KNPP were sold by DEK to a new owner, the terms of sale did

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not commit the subsequent owner to abide by this stipulation. The new Proffered Conditions now under review will impose that commitment upon any third party that acquires KNPP.¹³

Several intervenors object that the Commission can never cloak itself with sufficient enforcement authority after KNPP is sold. They cite the issue of nuclear waste storage as an example, maintaining that the risk of federal preemption will remain regardless of what conditions may be proffered. The Commission agrees, but notes that the same would be true even if WPSC and WP&L continued to own the plant. The prohibition on storing off-site nuclear waste in Proffered Condition 7, as extended to all owners of KNPP by the new Proffered Conditions, is actually a broader, more explicit bar than is currently in place for the utility owners of Wisconsin's nuclear plants. This prohibition properly substitutes for the Commission's rate and construction authority over utility owners.

Decommissioning

In its initial decision the Commission expressed its satisfaction with DEK's decommissioning commitments. The company stated that it will use an external trust fund as the only form of decommissioning financial assurance for KNPP (Proffered Condition 5). DEK affirmed that, when estimating the future cost of decommissioning KNPP, it will base these estimates upon the conservative assumptions that decommissioning will commence immediately and that the site will be restored to greenfield status (Proffered Condition 6). DEK also stated that when it actually performs decommissioning, the ASA requires that it must restore the site to

¹³ Commissioner Garvin concurs in the conclusion that the approval of the sale is in the public interest, notwithstanding the remote possibility that a subsequent owner, with appropriate federal approvals, may preempt state restrictions regarding storage of out-of-state waste. While it may be that the Commission could limit recovery of costs in rates, its authority to deal directly with this issue is limited.

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greenfield status.¹⁴ As the Commission stated in its initial decision, these stipulations do add value to the transaction.

At the time of its original order, though, the Commission remained concerned about whether it could enforce decommissioning conditions against a subsequent purchaser. The enforcement procedures described above respond to this problem, because they will impose the external trust fund and forecasting assumptions of Proffered Conditions 5 and 6 upon all future owners. In addition, Proffered Condition 12 resolves the Commission's concern about whether the ASA's provisions about greenfield decommissioning would bind a third party, because this condition requires that both DEK and all subsequent purchasers must complete greenfield decommissioning.¹⁵

The Commission does exercise additional control over decommissioning when the nuclear plant owner is a public utility. It requires site-specific studies of a plant's future decommissioning costs every four years, and the forms of investment for decommissioning trust funds are subject to the Commission's approval.¹⁶ DEK is willing to continue conducting site-specific studies of KNPP's future decommissioning costs, rather than using a generic cost estimate, but it prefers that these studies occur at five-year intervals, which the NRC allows.¹⁷

¹⁴ *Dominion Energy Keweenaw, Inc.'s Reply to the Supplemental Briefs*, page 16 (November 12, 2004); *Reply Brief of Dominion Energy Keweenaw in the Reopened Proceedings*, pages 8-9 (February 21, 2005).

¹⁵ Under ASA § 1.1(39), DEK is obligated to decommission KNPP "in a manner consistent with the Decommissioning Study, or as otherwise required by Laws." This obligation transfers to successive owners via Proffered Condition 12. Some intervenors, however, questioned whether this provision of the ASA really requires restoration to greenfield status. In their *Reply Brief on Reopening*, pages 6-7 (February 21, 2005), the applicants affirm that decommissioning can only be consistent with the Decommissioning Study of TLG Services, Inc. if the KNPP site is restored to greenfield status, because that Study presumes decommissioning to unrestricted use. They also state that the phrase "as otherwise required by Laws" will not permit the owner of KNPP to pursue some lesser degree of decommissioning unless "decommissioning to the greenfield standard, for whatever reason, has become unlawful." *Id.*

¹⁶ Docket 05-EI-14 Order, page 22 (July 5, 1994); Ferris, Tr. 1624-25 and Mougin, Tr. 1293-1308.

¹⁷ NRC Regulatory Guide 1.159, Rev. 1 (October 2003), § 1.4.3.

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The Commission agrees that this interval is reasonable. The NRC has also recently added special restrictions concerning how non-utility licensees can invest their external trust funds. Under 10 C.F.R. § 50.75(h)(1)(i), the trustee may not invest these funds in "securities or other obligations of the licensee or any other owner or operator of any nuclear power reactor or their affiliates," or in mutual funds that consist primarily of the securities of nuclear plant owners. The Commission agrees that these federal requirements will provide sufficient control over the investment of DEK's external sinking fund.

Currently, the owners of KNPP must receive the Commission's approval before they use decommissioning trust funds for any reason.¹⁸ DEK argues that the Commission should not impose this restriction upon draws from DEK's trust fund, because the NRC already restricts its use by prohibiting withdrawals except to cover ordinary administrative expenses of the fund and "legitimate decommissioning activities." Under the NRC's regulations, expenditures from these funds must not reduce the trust below the amount needed to place a reactor in safe storage, and maintain it in that status, in case unforeseen conditions arise. In addition, the NRC prohibits withdrawals from inhibiting the availability of the funds that will ultimately be needed to restore the site and requires 30 days of advance notice before a disbursement can occur. 10 C.F.R. §§ 50.75(h)(1)(iv) and 50.82(a)(8). The Commission is willing to relinquish its approval authority over the use of KNPP's decommissioning funds and rely upon federal controls, because of the overall benefits of the sale and the other safeguards built into the Proffered Conditions.

¹⁸ Docket 05-EI-14 Order, page 15 (December 5, 1985).

Return of unused qualified decommissioning funds

As described in the Commission's initial decision, the ASA provides that the applicants' nonqualified decommissioning funds will be retained by the applicants and returned to their ratepayers. The total projected pre-tax market value of these funds is approximately \$193 million and this guaranteed return to ratepayers is a real benefit of the sale. Not only does it recognize that ratepayers own these trust funds, but it also avoids the risk that the actual cost of decommissioning will be so high that it consumes some or all of the nonqualified funds. However, the ASA would have transferred to DEK the applicants' qualified decommissioning funds for DEK's use when it assumes full decommissioning responsibilities. The total projected pre-tax market value of the applicants' two qualified funds is approximately \$405 million. Under the original terms of sale, if DEK were to complete decommissioning without using all of these qualified funds, it would have retained the excess. The Commission's finding that ratepayers should also have the right to any unused amounts in the qualified funds was one reason why it decided that the proposed sale was not consistent with the public interest.

DEK now agrees to make such a commitment. Proffered Condition 9 states that DEK will return to the applicants all excess ratepayer funds contained in its qualified trust fund, after decommissioning has been finally completed. These funds will then be distributed to ratepayers. The Commission finds that Proffered Condition 9 properly responds to its prior decision, resolving its concern about Wisconsin ratepayers' right to unused decommissioning funds. The intervenors contend that tracking DEK's decommissioning trust fund for 30 years to determine what portion of it constitutes "ratepayer funds" and how much should be returned after decommissioning will be very difficult. Even if this proves to be the case, Proffered Condition 9

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still removes any perverse incentive to cut corners when decommissioning, just so the owner can keep unused funds. This alone is a valuable benefit to the state.

Parental guarantees and support

In its initial decision the Commission examined the financial viability of DEK as an important element of its public interest determination. DEK's parent, DRI, had offered a \$31 million Guaranty under the terms of the PPAs as support for its subsidiary, but the Commission determined that this financial support was not sufficient. DEK responded with Proffered Condition 10, which increases this parental Guaranty to an amount sufficient to cover DEK's maximum potential liability to the applicants in any given year. (The company requested confidential treatment of this dollar amount.) The record describes other funding sources available to DEK, to supplement its PPA revenues: access to the DRI money pool; the retention of planned dividends to the parent; additional investments by DRI; and DRI's \$60 million Support Agreement. These financial options are voluntary arrangements with DRI, but the Guaranty is a binding obligation that either WPSC or WP&L can invoke. The Commission finds that the larger Guaranty now being offered is satisfactory to protect the applicants under the PPAs, so Wisconsin's electric reliability will not be harmed by the sale.

General public interest concerns

In the course of these reopened proceedings, the intervenors have asked the Commission to examine this sale from a broader perspective. They question whether the Proffered Conditions will be sufficient to safeguard the public interest, regardless of whether they are enforceable or extend to third parties. In particular, the intervenors point to the fact that the PPAs last only

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through 2013 and from then on the energy and capacity of KNPP are not pledged to Wisconsin ratepayers.

The intervenors correctly state that, if KNPP is relicensed after 2013 and remains a reliable, low cost unit, its financial benefits will no longer be guaranteed to Wisconsin ratepayers. DEK may then choose to sell KNPP's power on the open market to the highest bidder, which may be a purchaser in another state. KNPP would still be a nuclear plant located in Wisconsin, but would not be a source of electric power for Wisconsin. The applicants and DEK have negotiated an Exclusivity Agreement, however, granting the applicants sole rights through 2011 to negotiate future PPAs for the purchase of KNPP's energy, capacity and attributes. This agreement gives DEK an incentive to sign further PPAs with the applicants for the period 2014 and beyond, not with other purchasers outside Wisconsin, because DEK will have an interest in securing firm power contracts for the output of KNPP before committing its resources to relicensing. Furthermore, even if the Commission rejected this sale, ratepayers would still not be guaranteed that KNPP is an economical source of future generation, because the future may hold that this plant is no longer reliable or cost-effective. If the applicants continue as owners, but KNPP must be shut down prematurely, the plant would become a sunk cost to ratepayers.

It is impossible to predict with certainty whether or how long KNPP will be a cost-effective unit. Included in the record, though, are extensive analyses of the financial effects of selling KNPP through 2033. The base case analyses used by the applicants, intervenors and Commission staff all produced positive benefits for ratepayers ranging from approximately \$25 million to \$130 million, even without considering the return of decommissioning funds.

Determining whether selling KNPP would benefit ratepayers and the state of Wisconsin requires the Commission to weigh all the risks and rewards associated with the sale. Offsetting the intervenors' concerns about possible limitations on enforcing conditions and KNPP's availability after 2013 are the benefits of sale, which are described below.

The transaction results in cost and rate certainty.

The PPAs will benefit ratepayers through 2013 by reducing their exposure to volatile nuclear generation costs. The applicants will be able to provide a high level of price predictability, while shielding ratepayers from the potentially significant economic consequences of both the open-ended, supply-side risks they would face if the KNPP sale were not coupled with the PPAs and the open-ended, nuclear-specific capital expenditure and O&M risks of continued utility ownership.

The transaction results in significant financial benefits for ratepayers.

Since the net proceeds from the sale will approximate KNPP's current book value, the transaction properly considers the reasonable value of the plant's property and assets as required under Wis. Stat. § 196.80(3). Ratepayers will also recapture \$193 million of the applicants' nonqualified funds. This return of decommissioning money is an immediate financial benefit to consumers. Returning the nonqualified funds to the ratepayers who are purchasing KNPP generation will also promote intergenerational equity by avoiding the possibility of a long delay before any refunds are made. Furthermore, under Proffered Condition 9 ratepayers are also entitled to all excess, unused ratepayer funds remaining in DEK's qualified fund after decommissioning is completed.

Significant risks shift from Wisconsin ratepayers to DEK.

The “all-in” PPA price shields ratepayers from the significant cost volatility risk associated with continued ownership of a nuclear plant, particularly the potential for large capital expenditures late in the current license term. Failing to make such expenditures could lead to an early shutdown; on the other hand, if the applicants were to incur such expenses but for some reason the plant were not relicensed, accelerated depreciation could be needed for full rate recovery. Locking in the price formula for the remaining license term also reduces the risk to applicants of unpredictable cost increases resulting from equipment failure, changed industry standards or new regulatory requirements. The PPAs will allocate these risks, currently borne by the applicants’ ratepayers, to DEK.

DEK takes the risks of decommissioning.

DEK will be assuming all decommissioning liabilities, although only the applicants’ qualified funds will be transferred to DEK under the ASA, and DEK will return all excess ratepayer funds contained in its qualified fund, following decommissioning. The risk that the cost of decommissioning may exceed amounts in the external trust fund will fall upon DEK.

The PPAs will result in increased assurance of KNPP performance and availability through 2013.

The reliability of KNPP should remain high under DEK’s ownership, since its parent is an experienced operator with a large fleet of nuclear plants and a good operational and safety record. Under the PPAs, DEK not only guarantees performance at levels equal to KNPP’s projected performance but has financial incentives to achieve even better performance. These

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financial incentives will not increase the overall cost of KNPP output because they approximate the value to the applicants of the increased output.

DEK bears the risk of performance below the standards set in the PPAs, in the form of penalties tied to the market cost of replacement power and lost revenues. If DEK fails to provide the energy guaranteed by the PPAs, the utilities can use net billing to offset their replacement power costs against the monthly payments they would otherwise make to DEK. In addition, the utilities could call upon DRI's enhanced Guaranty or begin the process of terminating the PPAs entirely. These levels of protection, which are not available if the applicants retain ownership, help ensure that WPSC and WP&L will not face an energy supply shortage due to early loss of KNPP's capacity. Given DRI's longer-term investment horizon and its desire to remain in the nuclear-fueled wholesale generation market as a key long-term strategic initiative, DEK is more likely than the applicants to invest in the plant. This, in addition to the significant penalties for DEK's nonperformance, make it much less likely that KNPP will be subject to early retirement.

The transaction protects ratepayers if KNPP is forced to shut down.

The ability of the applicants to offset their capacity payments or terminate the PPAs entirely, in the event of an outage that lasts for more than a year, is a very significant ratepayer benefit. If KNPP remained in rate base and experienced such an extended outage, ratepayers would continue to pay a return of and on KNPP capital investment through the end of the license term, in addition to replacement energy costs. Under the PPAs, the applicants are liable for only one year of fixed costs. DEK is then at risk for the remaining investment, because the applicants can choose to continue the PPAs or terminate them.

Granting ownership to DEK adds another competitor to Wisconsin's wholesale electric market.

At this time, DRI is not a participant in Wisconsin's wholesale electric market. By expanding the level of competition in the state, DRI's entry will benefit this market.

Return of Nonqualified Decommissioning Funds to MGE Ratepayers

MGE entered this docket to challenge two provisions of the sale. Under the ASA, WPSC and WP&L would return the nonqualified decommissioning trust funds to their own ratepayers; MGE requests that its ratepayers receive a proportional share of these funds. Proffered Condition 9 also grants WPSC and WP&L a right to excess ratepayer funds in DEK's qualified fund. MGE also argues that it has a proportional right to any amounts refunded after DEK completes its decommissioning.

Over 20 years ago, the Commission initiated docket 05-EI-14, *Accounting Treatment to be Afforded Costs Associated with Decommissioning Nuclear Facilities and the Costs of Future Spent Fuel Disposal*. In 1985, the Commission established that decommissioning funds must be deposited in external trust funds, separate from utility accounts. The Commission required that these funds be controlled by an independent fiduciary trustee who can only use the fund balance to accomplish the actual decommissioning of the plant and who must first receive the Commission's approval to begin using the funds. The applicants' fiduciary trustees manage both the qualified and nonqualified decommissioning funds.

The combined value of WPSC's and WP&L's qualified funds is approximately \$405 million, while their nonqualified funds currently total \$193 million.¹⁹ The money in these trust

¹⁹ Pre-tax, amounts forecasted as of June 30, 2004.

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funds is now forecast to exceed future decommissioning costs. The latest study of TLG Services, Inc., estimates that decommissioning KNPP will cost \$530.1 million, and the NRC's formula minimum is only \$317 million.²⁰ The \$405 million in qualified funds alone is already larger than the NRC minimum, and the Commission staff's economist testified that the growth in the qualified funds will likely be sufficient even to cover TLG Services' estimated cost of decommissioning by the year 2013. For this reason, WPSC and WP&L were able to negotiate an ASA that allows them to keep the nonqualified funds and return them to ratepayers.

WPSC's decommissioning funds include the amounts it acquired from MGE. MGE sold its share (17.8 percent) of KNPP to WPSC in 2000. The terms of sale were embodied in a Settlement and Ownership Transfer Agreement (SOTA), which the Commission approved in dockets 3270-EA-100 and 6690-EB-103 (May 18, 2000). As part of the sale, MGE transferred both its qualified and nonqualified decommissioning funds to WPSC. The parties do not dispute that, had MGE retained its share of KNPP, overall its ratepayers would have contributed \$33.1 million to MGE's nonqualified fund.²¹ They also agree that MGE contributed 34.6 percent of the amount in WPSC's qualified fund; MGE's share is currently valued at \$83.7 million. MGE argues that this money should be returned to its own ratepayers, not to WPSC ratepayers.

Nuclear decommissioning funds are not utility assets, but are moneys held in trust on behalf of utility ratepayers for the purpose of paying decommissioning funds. Because MGE did not own its decommissioning funds, the utility needed the Commission's approval to transfer these funds to WPSC when it sold both its share of KNPP and all the accompanying

²⁰ TLG Services, Inc., assumes that decommissioning will restore the KNPP site to greenfield status when it calculates decommissioning costs. NRC's formula minimum assumes only the removal of radioactive structures, not including nuclear fuel. 10 C.F.R. § 50.75(c).

²¹ Pre-tax, as of February 29, 2004.

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decommissioning liabilities. As part of the consideration for assuming decommissioning liabilities, WPSC received MGE's rights to decommissioning funds. The SOTA gives WPSC full rights to all of MGE's decommissioning funds, both qualified and nonqualified. The agreement also granted WPSC the right to assign or transfer the interests it acquired in MGE's nonqualified fund. The SOTA reserves no rights to MGE regarding ownership of any excess decommissioning funds.²²

MGE has not presented a basis in contract law to override the express terms in the SOTA. The Commission's subsequent approval of the SOTA, which thereby approved MGE's full transfer of its decommissioning funds to WPSC, extinguished MGE's interest in recovering any unused funds. Likewise, the Commission's approval of this transfer without reservation, with regard to the future use of these funds, supports WPSC's right to these funds for its ratepayers.

The Commission has also consistently relied upon principles of equity when making decisions about decommissioning funds. WPSC contends that requiring it to return some of the decommissioning funds to MGE after the sale would be inequitable, because when MGE transferred its interest in KNPP to WPSC, it also transferred all its decommissioning risk to WPSC. WPSC maintains that its decision to sell KNPP is just one method of controlling this risk, no different than choosing to retain ownership and investing in external sinking funds or purchasing insurance. Both utilities agree that WPSC's ratepayers would be entitled to any unused decommissioning funds if WPSC were to retain ownership; WPSC's decision to choose another risk management method should not alter this outcome.

Since WPSC assumed all the risk of decommissioning on MGE's behalf, granting WPSC's ratepayers the benefit of its nonqualified funds and of any returned nonqualified funds

²² SOTA, sections 17 and 25.

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is the most equitable outcome. Absent a compelling equitable concern and in order to avoid regulatory uncertainty, the Commission will not reopen its prior decision to examine an issue only now being raised by MGE. Therefore, the Commission rejects MGE's attempt to rewrite the SOTA and resurrect a right to decommissioning funds that were transferred with KNPP to WPSC in 2000. The Commission declines MGE's invitation to reopen its prior decision approving the transfer.

(Chairperson Bridge, who rendered a decision in the Commission's oral deliberations, decided this matter in favor of MGE.)

Employment Offer to KNPP Employees

State law prohibits the sale of an electric generating plant unless the Commission has verified that the buyer will offer employment to the nonsupervisory personnel "who are employed with the energy unit immediately prior to the transfer and who are necessary for the operation and maintenance of the energy unit." Wis. Stat. § 196.807(2)(a) and (4). The ASA requires compliance with this statute as a condition of sale. The International Union of Operating Engineers Local 310, which represents approximately 150 employees at KNPP, also affirmed DEK's willingness to recognize Local 310 as the sole representative of unionized plant employees and to abide by the current labor agreement between the union and WPSC.

A representative of the International Brotherhood of Electrical Workers Local 2150 raised concerns about whether the statutory protections would be applied to employees at the plant who are not covered by a collective bargaining agreement, but DEK introduced testimony that over 99 percent of KNPP employees have accepted job offers from DEK. The Commission finds that DEK has complied with Wis. Stat. § 196.807.

Rate Recovery of All Transaction-Related Costs

The applicants seek to recover their costs related to the sale of KNPP in future retail rate cases. These transaction-related costs are the changes in the applicants' revenue requirements due to all expenses incurred in connection with the negotiation and execution of the ASA and PPAs, all expenses incurred in obtaining approvals and closing the transaction, all costs incurred under the PPAs during their entire term, and all other costs incurred in relation to the transaction. Their recovery would be subject to a Commission finding that such expenses, upon appropriate audit and scrutiny, are reasonable and consistent with the Commission's approval of the transaction.²³ In addition, they are asking the Commission to find that deferring all gains and losses resulting from the transaction would be reasonable, prudent, and in the public interest, including regulatory tax effects and the costs incurred by the applicants in order to arrive at the transaction.

It is reasonable to allow rate recovery of all expenses incurred in connection with the negotiation and execution of the ASA and PPAs, expenses incurred in obtaining approvals and closing the transaction, and all other costs incurred in relation to the transaction, provided that such costs are reasonable and not of the type normally excluded for ratemaking purposes. This includes the costs of WPSC reimbursing WPSN for the diminution in its NMC equity interest and to hold WPSN harmless for the NMC exit fees. These are legitimate costs of consummating the sale of KNPP. Since the gain from the sale of KNPP and other related assets will be returned to the ratepayers, it is reasonable to offset this gain by the cost of completing the transaction.

²³ The Commission also finds it reasonable and consistent with the public interest, pursuant to Wis. Stat. § 196.52(3)(a) and Wis. Admin. Code § PSC 100.02, to include with the above expenses the costs to reimburse WPSN, for the diminution in value of its equity interest in NMC, and for exit fees incurred due to early termination of the Nuclear Power Plant Operating Services Agreement between WPSC and NMC.

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The Commission will review all costs incurred under the PPAs during their entire term in each future rate proceeding of WPSC and WP&L, just the same as any other PPA.

Regarding the request to defer all gains and losses resulting from the transaction, including regulatory tax effects and the costs incurred by the applicants in order to arrive at the transaction, the applicants' transactional costs include, but are not limited to, employee pension and post-retirement transition costs, legal and actuarial costs incurred to complete the transaction, legal, actuarial, accounting, contractual, and system costs necessary to transition operations to DEK, equity AFUDC gross-up, tax expenses, and transition and termination costs related to the relationship with NMC.

The sale of a nuclear power plant or any other power plant is an infrequently recurring event. In addition, the only way to return the net gain to ratepayers is to defer it and amortize it in future rate proceedings. For these reasons, such a deferral of gains and losses is consistent with the Commission's deferred account policy as set forth in the Commission's *Staff Accounting Policy Team Statement of Position 94-1* (February 23, 1995), and it is, therefore, reasonable and in the public interest to approve the requested deferral.

In order to ease the accounting and administrative burdens of the applicants with respect to the transaction, they requested permission to continue depreciating all assets that will be transferred to DEK until the date of closing, notwithstanding the accounting requirements established by SFAS 144.²⁴ Such depreciation is justified because KNPP will remain used and

²⁴ SFAS 144 requires a change in accounting classification of assets being "held for sale" when certain criteria are satisfied. Under SFAS 144, the applicants would no longer be entitled to take depreciation on KNPP. The applicants argue that the last of these criteria, where the sale of an asset is probable and expected to qualify for recognition as a completed sale within one year, could be considered satisfied as early as when the Commission issues an order in this docket approving the transaction.

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useful in the applicants' utility businesses until closing and because the recovery of such depreciation is authorized in the applicants' current rates.

Finally, the applicants seek approval to account for the transaction as proposed. Based on current accounting rules, nothing has come to the Commission's attention that would indicate that the proposed accounting is unreasonable and not in accordance with generally accepted accounting principles (GAAP). The Commission will review the accounting for the PPAs, for consistency with the then-applicable GAAP and proper ratemaking treatment, in each utility's future rate cases.

The applicants are granted a declaratory ruling approving full rate recovery in future rate proceedings of all transaction-related costs and the deferral of all gains and losses resulting from the transaction, including regulatory tax effects and the costs incurred by the applicants in order to arrive at the transaction. This authorization of recovery, however, depends upon future Commission audits showing that the costs are reasonable and not of the type normally excluded for ratemaking purposes.

Summary

Owning a nuclear plant involves unique risks, in addition to those associated with conventional generating facilities, and managing these risks becomes even more difficult when a utility owns only a single unit. The costs of operation, maintenance, capital improvements and decommissioning are all significantly more volatile than for fossil-fueled or renewable facilities. Given these facts, WPSC and WP&L prudently decided to consider offers to purchase KNPP. They affirm, however, that this sale does not presage any further attempt to sell conventional facilities or otherwise deregulate the electric industry in Wisconsin.

After examining the provisions of the ASA, PPAs, and Proffered Conditions, the Commission finds this sale to be in the public interest. The net proceeds of sale approximate the book value of KNPP, thereby eliminating any risk of stranded investment if KNPP were required to shut down early. The transfer of ownership shifts all obligations and financial risk of design, operating, relicensing and decommissioning to DEK, and the Commission finds DEK capable of both assuming these financial risks and reliably operating the plant. It is part of a family of companies that safely and reliably operate a fleet of nuclear plants in the United States. The terms of the PPAs, as well as their performance protections, offer a direct benefit to ratepayers over the remaining life of KNPP's license. Taken together, the ASA and the PPAs will materially reduce the cost volatility and operating risks associated with continued KNPP ownership.

DEK maintains that, under most circumstances, it will seek to relicense KNPP. The sale of KNPP means that WPSC and WP&L ratepayers may lose the value of a relicensed plant, if DEK refuses to sign new PPAs with the two utilities or if it demands a substantially higher price for KNPP's capacity and energy. However, the Exclusivity Agreement that grants the utilities a sole right to negotiate for future PPAs through 2011 is a means of mitigating that lost value.

DEK has proposed and declared its willingness to abide by twelve Proffered Conditions. Both utilities have also stipulated to these conditions. The Commission stated in its initial decision that Wisconsin deserves a "local voice" in the key areas of nuclear waste storage, decommissioning, and the reliability of Wisconsin's electric system, and the Proffered Conditions restore that voice. They recognize ongoing Commission authority over the plant owner's financial viability, decommissioning funds, ratepayers' entitlement to these funds, and

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actual decommissioning to greenfield status. They protect Wisconsin against the possibility that KNPP could be used as a storage site for nuclear wastes produced elsewhere. They apply these requirements not just to DEK but to all future owners, and they guarantee additional financial support from DRI. These Proffered Conditions, combined with the other benefits to ratepayers associated with the sale of KNPP, are essential to the Commission's conclusion that this sale is consistent with the public interest. The Commission therefore reserves the right to reopen this order if any of the Proffered Conditions is modified or declared void, by further regulatory activity in other state or federal jurisdictions or by judicial review.

Order

1. The proposed sale of KNPP to DEK, according to the terms of the ASA, the PPAs, and the Proffered Conditions, is consistent with the public interest and is approved.
2. The terms of the ASA, the PPAs, and the Proffered Conditions are binding upon DEK.
3. The applicants may defer to their next rate proceeding the changes in their revenue requirements that are due to all expenses incurred in connection with the negotiation and execution of the sale of KNPP, all expenses incurred in obtaining approvals and closing the transaction, and all other costs incurred in relation to the transaction.
4. MGE is not entitled to a share of the decommissioning funds that WPSC would otherwise return to its ratepayers, as described above.
5. Within 30 days of the consummation of the sale of KNPP to DEK, WPSC and WP&L shall file the following information with the Commission:

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- a. Copies of all accounting journal entries recording the sale of KNPP on the books of account of each utility.
 - b. The calculation of the gain on the sale of KNPP including the final sales price and net book value of the assets sold at the time of consummation of the sale.
 - c. A breakdown of all transaction costs related to the sale of KNPP.
 - d. The final balances in the non-qualified decommissioning funds to be retained by the utilities and returned to the utility ratepayers.
6. The Final Decision of December 16, 2004, is VACATED, and this order shall take effect one day after the date of mailing.
7. The Commission retains jurisdiction.

Dated at Madison, Wisconsin, April 21, 2005

By the Commission:

Christy L. Zchner
Christy L. Zchner
Secretary to the Commission

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Attachment (Right of First Refusal and Proffered Conditions)

See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98

RIGHT OF FIRST REFUSAL

THIS DOCUMENT IS A RIGHT OF FIRST REFUSAL AND IS NOT A CONVEYANCE SUBJECT TO RETURN AND FEE UNDER WIS. STATS. § 77.21(1).

Return to: John D. Wilson, Esq.
Michael, Best & Friedrich
P.O. Box 1806
Madison, WI 53701-1806

Parcel Number

RIGHT OF FIRST REFUSAL

THIS RIGHT OF FIRST REFUSAL, is granted this _____ day of _____, 200____, by DOMINION ENERGY KEWAUNEE, INC. ("Grantor") to WISCONSIN PUBLIC SERVICE CORPORATION ("WPS") and WISCONSIN POWER AND LIGHT COMPANY ("WPL") (collectively "Grantees").

RECITALS:

WHEREAS Grantor has purchased the Kewaunee Nuclear Power Plant (the "Facility") from Grantees pursuant to an order dated _____ from the Public Service Commission of Wisconsin ("PSCW") in Docket 05-EI-136 (the "Order"); and

WHEREAS Grantor agreed to a condition in the Order to grant a Right of First Refusal to the Grantees in the event Grantor receives a bona fide offer to purchase the Facility or Grantor from a third party purchaser; and

WHEREAS the Facility is located on real property in the Town of Carlton, County of

Kewaunee, State of Wisconsin, more particularly described on Exhibit A attached hereto and made a part hereof; and

WHEREAS Grantor desires to grant to Grantees a right of first refusal (the "Right of First Refusal") on any transfer of ownership of the Facility or Grantor, pursuant to the terms hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant of Right of First Refusal. Except as provided in Section 2, Grantor grants to Grantees a Right of First Refusal on any transfer of ownership of the Facility or Grantor to any person or entity during the Option Period (as defined in Section 3) ("Transfer"). Except for Permitted Transfers, if DRI or any of its respective subsidiaries include the Facility or Grantor in a proposed sale of other assets and/or entities, the sale shall be structured in a manner that will allow a carve out of the Facility or Grantor from the sale so as to allow Grantees the option of exercising their Right of First Refusal.

2. Permitted Transfers. The Right of First Refusal shall not apply (i) to any transaction involving a substantial portion of the stock or assets of, or a merger involving, Dominion Resources, Inc. ("DRI") or (ii) to a Transfer to an affiliate of Grantor that is directly or indirectly owned and controlled by DRI, provided that notwithstanding anything contained herein to the contrary, any transferee of a Permitted Transfer must petition the PSCW to reopen any final order in PSCW Docket 05-EI-136 for the purpose of obtaining an amended order finding that the transferee has agreed to be bound by all of the conditions proffered by Grantor in PSCW Docket 05-EI-136 as set forth on Exhibit B attached hereto. (collectively, "Permitted Transfers").

3. Option Period. The Option Period shall commence as of Closing and continue up to the termination date of the NRC licenses for the Facility, as they may be extended.

4. Bona Fide Offer. No Transfer other than a Permitted Transfer may occur during the Option Period except pursuant to a Bona Fide Offer (as described herein), and no such Transfer may occur unless and until Grantor gives Grantees the right to exercise the Right of First Refusal based on such Bona Fide Offer from a third party. Grantor must notify Grantees in writing if DRI, Grantor or another subsidiary of DRI intends to make a Transfer (other than a Permitted Transfer) pursuant to a Bona Fide Offer. The written notice must include all of the material definitive agreements pursuant to which the Transfer would occur. A Bona Fide Offer must contain in addition to such terms and conditions of the sale to a third party the elements below:

(a) A Bona Fide Offer must be for the purchase of substantially all of the Facility and the related assets or substantially all of the common stock of Grantor.

(b) A Bona Fide Offer is void unless the purchaser intervenes as a party in the PSCW declaratory ruling proceeding required by Section 6 and as a party in that proceeding (i) affirmatively commits to be bound by all of the conditions proffered by Grantor in PSCW Docket

Docket 05-EI-136 as set forth on Exhibit B attached hereto, and; (ii) affirmatively states that it has no objection to PSCW enforcement of the conditions proffered by Grantor in PSCW Docket 05-EI-136 as set forth on Exhibit B attached hereto.

5. Exercise by Sellers. The Right of First Refusal shall be offered to WPS and WPL in respective proportions of 59% and 41% current ownership and the Grantees shall have the option to purchase the Facility pursuant to the Bona Fide Offer. If one Grantee determines not to exercise the option, then the other has the right to buy that interest in addition to its own interest. However, the Right of First Refusal will not be effective unless there is an exercise for substantially all of the Facility and related assets or substantially all of the common stock of Grantor prior to the expiration of the Option Exercise Period set forth in Section 6.

6. Option Exercise Period. Each Grantee shall have a sixty-day period after receipt of the written notification and documents pursuant to Section 4 in order to determine whether to exercise its Right of First Refusal. On or before the end of this period, each Grantee shall file with the Public Service Commission of Wisconsin ("PSCW") a request for a declaratory ruling on the reasonableness and prudence of exercising or waiving Grantees' rights under the Right of First Refusal, and shall give written notice thereof to Grantor. If Grantees have filed a request for authority to acquire the Facility and the PSCW has issued an order that has become final granting the authority on conditions acceptable to each Grantee in its reasonable discretion, the Grantees shall exercise the option within 5 days of receiving the authority. In all events, the Option Exercise Period shall expire on the 180th day following the Grantees' receipt of written notice from Grantor of a Bona Fide Offer.

7. Closing of Option. Once the Right of First Refusal is exercised, the closing for the Transfer shall occur within sixty (60) days, subject to extension for regulatory approvals.

8. Recording. This agreement will be recorded in the title to the Facility in the Kewaunee County Register of Deeds office and run with the land.

9. Regulatory Approvals. Any Transfer, including to WPS and WPL, shall be subject to all applicable governmental approvals.

10. Successors and Assigns. This Right of First Refusal shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns.

[signature page follows]

IN WITNESS WHEREOF, Grantees and Grantor have executed this Right of First Refusal as of the date first above written.

DOMINION ENERGY KEWAUNEE, INC.
("Grantor")

By: _____
Its: _____

WISCONSIN PUBLIC SERVICE CORPORATION
("Grantee")

By: _____
Its: _____

WISCONSIN POWER AND LIGHT COMPANY
("Grantee")

By: _____
Its: _____

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

Personally came before me this ____ day of _____, _____, _____, known to me to be the _____ of Dominion Energy Kewaunee, Inc., who executed the above instrument and acknowledged the same.

Name:
Notary Public, State of _____
My Commission:

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

Personally came before me this ___ day of _____, ____, _____, known to
me to be the _____ of Wisconsin Public Service Corporation, who executed the above
instrument and acknowledged the same.

Name:
Notary Public, State of _____
My Commission:

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

Personally came before me this ___ day of _____, ____, _____, known to
me to be the _____ of Wisconsin Power and Light Company, who executed the above
instrument and acknowledged the same.

Name:
Notary Public, State of _____
My Commission:

THIS DOCUMENT WAS DRAFTED BY,
AND SHOULD BE RETURNED TO:

John D. Wilson, Esq.
Michael Best & Friedrich LLP
P.O. Box 1806
Madison, WI 53701-1806

EXHIBIT A

Legal Description

EXHIBIT B
PROFFERED CONDITIONS

1. Require that DRI notify the Commission of any request made of the U.S. Securities and Exchange Commission ("SEC") to pay dividends from funds other than Dominion Energy Kewaunee's retained earnings;
2. Prohibit Dominion Energy Kewaunee from providing loans to any of its holding company affiliates, except through the DRI money pool that has been approved by the SEC;
3. Prohibit Dominion Energy Kewaunee from guaranteeing any debt of DRI or of its holding company affiliates;
4. Allow the Commission to approve any subsequent sale of the Kewaunee Nuclear Power Plant ("KNPP"), or of Dominion Energy Kewaunee, for the purpose of determining whether the new owner has sufficient financial resources to operate the plant. A decision by the NRC approving the license transfer would constitute a rebuttable presumption that the new owner is creditworthy;
5. Require that Dominion Energy Kewaunee use only an external trust fund as its form of decommissioning financial assurance;
6. Require that Dominion Energy Kewaunee continue to use the DECON assumption of immediate decommissioning when estimating the future cost of decommissioning KNPP, as well as the assumption that the site would be restored to greenfield status; and
7. Prohibit Dominion Energy Kewaunee from storing any nuclear waste at KNPP that was produced elsewhere.
8. Dominion Energy Kewaunee will grant to Grantees and their successors and assigns a right of first refusal to purchase KNPP in the form to which this Exhibit B is appended (the "ROFR").
9. Upon final completion of all decommissioning activities at KNPP, Dominion Energy Kewaunee shall return to Grantees, their successors or assigns, for distribution to their customers, any and all excess ratepayer funds contained in Dominion Energy Kewaunee's Qualified Decommissioning Trust Fund for KNPP. Any excess funds shall be returned to Grantees in proportion to their ownership share on the day of the sale of KNPP to Dominion Energy Kewaunee.
10. Dominion Energy Kewaunee's parent company, Dominion Resources, Inc., will increase the total level of its guarantees attached to the Power Purchase Agreements from \$31 million to [REDACTED].
11. Require any subsequent purchaser of KNPP or Dominion Energy Kewaunee (other than the transfer pursuant to a Permitted Transfer) to intervene as a party in any Public Service Commission of Wisconsin proceeding initiated pursuant to Proffered Condition No. 4 or paragraph

paragraph 6 of the ROFR and affirmatively commit on the record of such proceeding to be bound by the same conditions set forth in this Exhibit B. The transferee of a Permitted Transfer under § 2(ii)of the ROFR will file with the PSCW a document affirmatively committing to be bound by the same conditions set forth in this Exhibit B.

12. Dominion Energy Kewaunee and all subsequent purchasers will decommission the KNPP site in accordance with § 7.17 of the Asset Sale Agreement (and associated definitions) dated November 7, 2003 by and between Dominion Energy Kewaunee and Grantees ("ASA") and subsequent purchasers shall contractually bind themselves to the Grantees to decommission the KNPP site in a manner consistent with § 7.17 (and associated definitions) of the ASA.

ATTACHMENT 2

Dominion Energy Kewaunee, Inc.
Qualified Decommissioning Trust Agreement
(Blackline Comparison with December 1, 2004 Agreement)

Kewaunee Power Station

AMENDED AND RESTATED
DOMINION ENERGY KEWAUNEE, INC.,
QUALIFIED NUCLEAR DECOMMISSIONING
TRUST AGREEMENT

AMENDED AND RESTATED DOMINION ENERGY KEWAUNEE, INC.,
QUALIFIED NUCLEAR DECOMMISSIONING TRUST AGREEMENT

This AMENDED AND RESTATED TRUST AGREEMENT (“Agreement”) is made the _____ day of _____, _____, between DOMINION ENERGY KEWAUNEE, INC., a Wisconsin corporation, the Grantor, and MELLON BANK, N.A., a national banking association with trust powers, the Trustee[-], and it amends and restates the original Trust Agreement dated December 1, 2004.

WHEREAS, the Grantor owns a 100 percent interest in the Kewaunee Power Station, a nuclear generating station located in the Town of Carlton, Kewaunee County, Wisconsin.

WHEREAS, the Grantor wishes to establish pursuant to this Agreement and under the laws of the Commonwealth of Pennsylvania, a separate trust fund under this [agreement]Agreement which qualifies as a Nuclear Decommissioning Reserve Fund under Section 468A of the Internal Revenue Code of 1986, as amended, or any corresponding section or sections of any future United States internal revenue statute and the regulations thereunder.

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

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

ARTICLE 1 GENERAL PROVISIONS

1.01 Name of Trust.

The separate trust may be referred to under the name DOMINION ENERGY KEWAUNEE, INC., QUALIFIED NUCLEAR DECOMMISSIONING TRUST (referred to herein as the “Trust” or [“]the “Trust Fund[-]”). The Trust Fund is the entire undistributed amount of all contributions and/or transferred assets placed with the Trustee, as adjusted for all income, expense, gain, or loss on such amount as may exist from time to time.

1.02 Grantor, Trustee.

The Grantor of this Trust is Dominion Energy Kewaunee, Inc., and its successors and assigns as provided in Section 5.03 of this Agreement. The Trustee under this Agreement is Mellon Bank, N.A., its successors and assigns, or any other person, company, bank, or trust company appointed as provided in Section 2.01 of this Agreement.

1.03 Trust Committee.

The Grantor may establish a Nuclear Decommissioning Trust Committee (the “Committee”) composed of any three or more persons appointed by the Grantor’s Board of Directors on whatever terms the Board desires. The Committee has the authority to exercise all of the

Grantor's powers under this Agreement, and for purposes of Sections 2.03(c) and (d) and Section [3.04-]3.05(g), the Trustee will be protected in treating the directions and other actions of the Committee as the directions or actions of the Grantor. The Grantor must certify to the Trustee all appointments to or removals from the Committee, and the Trustee must recognize written instructions signed by any Committee member, or its designee, as a directive from the Committee.

ARTICLE 2 TRUSTEE APPOINTMENT, REMOVAL, LIABILITY

2.01 Appointment, Removal, Successors.

(a) The Grantor may appoint a successor Trustee by written notice to the person appointed and to the Trustee then serving. A Trustee may resign on thirty days' notice in writing to the Grantor. The Grantor may remove any Trustee by thirty days' written notice to the Trustee. Notwithstanding the foregoing, no removal or resignation shall take effect until a successor Trustee has been appointed and accepted appointment as Trustee. If a successor Trustee has not been appointed and accepted appointment within sixty (60) days of the Grantor's receipt of notice of resignation of the Trustee or the Trustee's receipt of notice of removal, such Trustee may petition a court of competent jurisdiction to appoint a successor Trustee to serve until such time, if ever, as a successor Trustee shall have been appointed by the Grantor and accepted such appointment. Each successor Trustee shall have the same powers and duties as the Trustee named herein.

(b) A successor Trustee may accept appointment and qualify as Trustee by executing, acknowledging, and delivering to the Grantor its acceptance in a form satisfactory to the Grantor. The successor Trustee, without further act, deed, or conveyance, is vested with all the estate, rights, powers, and discretion of the predecessor Trustee just as if originally named as a Trustee in this Agreement.

(c) When a successor Trustee accepts appointment, the predecessor Trustee (or representative, if the predecessor Trustee is unable or unavailable) will assign, transfer title, and pay over to the successor Trustee the funds and properties then constituting the Trust Fund. The predecessor Trustee (or representative) is authorized, however, to reserve a sum of money deemed advisable for payment of fees and expenses accrued to date or expected to be incurred in connection with the transfer and settlement of the Trust Fund (all subject to the limitation in Section 5.04 of this Agreement), and any balance of that reserve remaining after the payment of fees and expenses will be paid over to the successor Trustee.

(d) The Trustee may adopt or amend bylaws and regulations that the Trustee deems desirable for the conduct of Trustee affairs.

(e) The Trustee will keep a record of all Trustee proceedings and acts and all other data necessary for the proper administration of the Trust. The Trustee will notify the Grantor of any Trustee action taken, and when required by law, will notify any other interested party.

2.02 Establishment and Acceptance of Trust.

(a) All contributions to the Trust Fund must be made in cash.

(b) At the time it makes any contribution to the Trust Fund, the Grantor will specify in a writing then delivered to the Trustee the exact amount that is to be placed in the Trust Fund then existing. The Trustee shall not accept contributions from anyone other than the Grantor without the Grantor's written approval for each such contribution, which written approval must accompany the contribution. The Trustee has no right or duty to inquire into the amount of or the method used in determining any contribution to the Trust Fund. The Trustee is accountable only for funds actually received. The Trustee has no duty to compute or collect the amount to be paid to it by the Grantor.

(c) Assets other than cash may be transferred to the Trust Fund in connection with a acquisition or disposition of an interest in a nuclear power plant that meets (or is treated as meeting) the requirements of Treasury Regulations Section 1.468A-6(b).

(d) All contributions and/or transferred assets and income therefrom will be held in trust and administered according to the terms of this Agreement.

(e) No part of the Trust Fund may be used for or diverted to purposes other than the exclusive purposes allowed by this Agreement, as described in Sections 4.02, [5.04]5.04, 5.05 and 6.01 of this Agreement.

2.03 Limitation of Liability.

(a) To the extent permitted by law, the Trustee will serve without bond; the Trustee will secure and pay for required bonds. Except as otherwise provided in this Agreement, no Trustee is liable for any act or omission of any other Trustee or for any act or omission of any other person. At its own expense, the Grantor is entitled to employ its own counsel to defend or maintain, either in its own name or in the name of any Trustee, with said Trustee's approval, any suit or litigation arising under this Agreement involving the Trustee.

(b) The Trustee is not liable for the making, retention, or sale of any investment or reinvestment made as provided in this Agreement, but the Trustee is liable for any loss to or diminution of the Trust Fund due to the Trustee's gross negligence, willful misconduct, or lack of good faith in carrying out the terms of this Agreement.

(c) Subject to the provisions of Section 2.03(b), the Trustee is fully protected and indemnified when relying on a written communication from a properly designated officer or employee of the Grantor concerning an instruction or direction of the Grantor and in continuing to rely upon a communication until a subsequent communication is filed with the Trustee. Subject to the provisions of Section 2.03(b), the Trustee is fully protected and indemnified in acting on any instrument, certificate, or paper believed by the Trustee to be genuine and to be signed or presented by the proper person. Subject to the provisions of Section 2.03(b), the Trustee is under no duty to make any investigation or inquiry as to any statement contained in any written communication or document signed by the proper person, but may accept it as conclusive evidence of the truth and the accuracy of the statements contained therein.

(d) The Grantor will indemnify the Trust Fund and the Trustee against any liability

imposed as a result of a claim asserted by any person or entity if the Trustee has acted in good faith reliance on the terms of this Agreement or a written direction of the Grantor. The indemnification under this Section 2.03 shall survive the termination of the Agreement.

(e) 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 clearing facility, book-entry system, centralized custodial depository, or similar organization. The Trustee shall not be responsible or liable for any losses or damages suffered by the Trust 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. Settlements of transactions may be effected in trading and processing practices customary in the jurisdiction or market where the transaction occurs. The Grantor acknowledges 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, the Grantor shall have sole responsibility for nonreceipt of payment (or late payment) by the counterparty.

2.04 Discharge after Distributions or Termination.

After all distributions (including distributions to a successor Trustee) or any termination under this Agreement or applicable law, the Trustee is discharged from all obligations under this Agreement, and no person or entity has any further right or claim against the Trustee not otherwise provided by statute.

2.05 Legal Action.

In all legal actions regarding the Trust and this Agreement, the Trustee and the Grantor are the only necessary parties. A final judgment not appealed or appealable entered in an action or proceeding against the Grantor, the Trust, or the Trustee is binding and conclusive on the parties to this Agreement and all persons having or claiming to have any interest in the Trust Fund.

ARTICLE 3 INVESTMENT DUTIES, POWERS

3.01 Investment Policy and Limitations.

Certain limitations are placed on investing in and disposing of some securities by the Nuclear Regulatory Commission and in order to avoid disqualification of the Trust for tax purposes and to minimize potential problems with securities regulations. As provided by law and Section 5.04 of this Agreement, an investment must not result in a diversion or use of Trust assets that is not permitted under Internal Revenue Code Section 468A. The Trustee, the Grantor, any investment advisor and anyone else directing investments, when directing investments, shall adhere to the standard of care that a "prudent investor" would use in the same circumstances, such term having the same meaning as the standard set forth in 18 [C.F.R.]CFR 35.32(a)(3) of the FERC regulations, or any successor regulation. Subject to these limitations and prudent fiduciary practices, the Trustee's investment policy for assets within the Trustee's investment control will be to realize the greatest total return on the Trust Fund as may be possible.

In its annual report to the Grantor, the Trustee will advise the Grantor of the Trustee's investment policy or strategy. Formulation of the policy is the Trustee's responsibility as long as the Grantor has not exercised its right to direct the investments under Section [3.04.]3.05. The Trustee must consider the stated purposes of the Trust and this Agreement, statutory and regulatory requirements, and other relevant information and standards before stipulating the stated investment policy. The Trustee may consult with the Grantor, counsel, and investment advisors for fact-finding purposes before so stipulating.

3.02 Investment of Trust Fund.

The assets of the Trust Fund may be commingled for investment purposes as the Grantor directs. The Trustee shall apportion any earnings or losses from an investment made with commingled assets to the Trust Fund and the other commingled fund or funds in the same proportion that the amount invested from the Trust Fund, or any other commingled fund, bears to the total commingled amount invested. Subject to the provisions of Section [3.04]3.05 of this Agreement, the Trustee will invest and reinvest the principal and income of the Trust Fund and keep those trust assets invested, without distinction between principal and income. If assets of two or more funds are commingled for investment purposes, the Grantor shall have the absolute authority to direct the Trustee at any time to liquidate the interests of the Trust Fund in a commingled investment, and the [trustee]Trustee shall promptly comply with any such directive. The commingling arrangement undertaken as permitted in this Section 3.02 can be terminated at any time by the Trust Fund or any commingled fund. No fund in the commingling arrangement may substitute for itself in the arrangement any person that is not a member to the commingling arrangement.

Trust investments may include, but shall not be limited to the following:

- (a) Publicly traded domestic or foreign common and preferred stocks and options thereon, as well as warrants, rights and preferred stocks convertible into common stock, regardless of where or how traded.
- (b) Investment grade domestic corporate bonds and debentures and any such securities which are convertible into common stock, domestic or foreign.
- (c) Bonds or other obligations of the United States of America or non-U.S. sovereign debt with an equivalent rating of A or higher.
- (d) Investment grade obligations of the states and of municipalities or of any agencies thereof.
- (e) Investment grade notes of any nature, of foreign or domestic issuers.
- (f) Savings accounts, certificates of deposit and other types of time deposits, bearing a reasonable rate of interest based upon the duration, amount, type and geographical area, with any financial institution or quasi-financial institution or any department of the same, either domestic or foreign, under the supervision of the United States or any State, including any such financial institution owned, operated or maintained by the Trustee in its corporate or association

capacity (including any department or division of the same) or a corporation or association affiliated with the same but only to the extent consistent with Treasury regulation § 1.468A-5(b)(2).

(g) 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 its affiliate. Notwithstanding the provisions of this Agreement which place restrictions upon the actions of the Trustee, to the extent monies or other assets are utilized to acquire units of any collective trust, the terms of the collective trust indenture shall solely govern the investment duties, responsibilities and powers of the trustee of such collective trust and, to the extent required by law, such terms, responsibilities and powers shall be incorporated herein by reference and shall be part of this Agreement. For purposes of valuation, the value of the interest maintained by the Trust Fund in such collective trust shall be the fair market value of the collective fund units held, determined in accordance with generally recognized valuation procedures. The Grantor 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 from such collective fund 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. The Grantor acknowledges receipt of the notice entitled "Cross-Trading Information," a copy of which is attached to this Agreement as Exhibit A.

(h) Open-end and closed-end investment companies[~~, regardless of the purposes for which such fund or funds were created,~~] (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 purposes otherwise consistent with the investment guidelines set forth herein.

(i) Subject to the limitations of Sections 3.01, 3.03 and 3.06, any other investments not described above as directed by the Grantor.

(j) The Trustee may lend the assets of the Trust Fund in accordance with the terms and conditions of a separate securities lending agreement, may settle transactions in futures and/or options contracts, short-selling programs, foreign exchange or foreign exchange contracts, swaps and other derivative investments with third parties.

3.03 Prohibited Investments.

The assets of the [~~trust~~]Trust Fund are prohibited from being invested in:

(a) securities or other obligations of Dominion Energy Kewaunee, Inc. or its affiliates, subsidiaries, successors or assigns;

- (b) securities or other obligations of any other owner or operator of any nuclear power reactor, or the affiliates, subsidiaries, successors or assigns of such owner or operator;
- (c) a mutual fund in which at least 50 percent of the fund is invested in the securities of [a licensee or parent company whose subsidiary is an owner or operator of] one or more companies that own or operate a foreign or domestic nuclear power plant[;], or are parents, subsidiaries or affiliates of such a company (herein, "nuclear sector mutual fund"); or
- (d) direct interests in real estate.

Provided, however, that the foregoing (i) shall not prohibit the [fund]**Trust Fund** from being invested in securities tied to market indices or other non-nuclear sector collective, commingled, or mutual funds; (ii) shall not require the sale or transfer either in whole or in part, or other disposition of any such prohibited investment that was made before December 24, 2002; and (iii) shall not prohibit less than 10 percent of the [trust]**Trust Fund** assets being indirectly invested in securities of any entity owning or operating one or more nuclear power plants.

3.04 Additional Powers of Trustee.

The Trustee has the following powers and authority in the administration and investment of the Trust Fund, to be exercised subject to the other provisions of this Agreement and especially this Article 3:

- (a) To purchase, subscribe for, and hold securities or other property authorized by Sections 3.01 and 3.02 as a proper investment for the Trust Fund, and to retain the same in trust.
- (b) To sell for cash or credit, exchange, convey, transfer, or otherwise dispose of any securities or other property held in the Trust Fund, by private contract or at public auction. No person dealing with the Trustee is bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any sale or other disposition.
- (c) To vote any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any incidental payments; to oppose, consent to, or otherwise participate in corporate reorganizations or other changes affecting corporate securities, and (unless prohibited by statute) to delegate discretionary powers, and to pay any related assessments or charges; and generally to exercise any ownership powers over stocks, bonds, securities, or other property held as part of the Trust Fund.
- (d) To keep part of the Trust Fund in cash or cash balances invested in interest-bearing accounts if the Trustee deems that to be prudent under the circumstances.
- (e) To accept and retain for as long as the Trustee deems advisable any securities or other property received or acquired by the Trustee, regardless of any lack of diversification.
- (f) To make, execute, acknowledge, and deliver documents of transfer and conveyance and other instruments that may be necessary or appropriate to carry out the Trustee's powers.

(g) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Trust Fund, to commence or defend legal or administrative proceedings, and to represent the Trust in all legal or administrative proceedings.

(h) To employ suitable subcustodians, agents and counsel (who may be counsel of the Grantor) and to pay their reasonable expenses and compensation. The Trustee shall be entitled to rely on and may act upon advice of counsel on all matters, and shall be without liability for any action reasonably taken or omitted pursuant to such advice.

(i) On direction by the Grantor as to the agent and insurance company, to invest in insurance contracts if and as allowed under Internal Revenue Code Section 468A, payable to the Trustee or its assignees as beneficiary.

(j) 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, foreign exchange and 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.

(k) To enter into contracts with one or more persons, firms, associations, or corporations to obtain advice and counsel about investments.

(l) To enter into arrangements for the deposit of funds with banks or trust companies and in connection with the arrangements:

(1) To authorize the depositary to act as custodian of the cash, securities, or other property comprising the funds;

(2) To authorize the depositary to convert the funds in whole or in part into, or to invest and reinvest the same in, securities of any kind and nature permitted in this Agreement; and

(3) To provide for the payment to the depositary of reasonable compensation for its services.

(m) To cause any securities or other property held as part of the Trust Fund to be registered in its own name or in the name of one or more of its nominees, and to hold any investments in bearer form, but the books and records of the Trustee must at all times show that the investments are part of the Trust Fund and subject to the jurisdiction of the United States, and to hold the property in safekeeping facilities of the Trustee or of other Trustee banks or clearing corporations, in the United States or elsewhere.

(n) To participate in any mergers or consolidations, or any registrations of securities with state or federal authorities regarding any securities held.

(o) To do all acts, take all proceedings, and exercise all rights and privileges although not specifically mentioned here, as the Trustee deems necessary to administer the Trust Fund and to

carry out the purposes of this Agreement.

3.05 Directing the Trustee.

(a) Subject to the limitations in Sections 3.01, 3.03 and 3.06, the Grantor may direct the investments of the Trust in investments of any kind, including but not limited to, private equity, indirect interests in real estate, and non-investment grade bonds. Directed investments under this Section 3.05 may not exceed the total of the Trust Fund.

(b) Subject to the limitation of paragraph (a), the Trustee at the written direction of the Grantor will segregate the value requested and will after that invest, reinvest, and otherwise deal with ~~[that-]those amounts (herein “Segregated [Amount]Amounts”)~~ as directed by the Grantor if it is consistent with the terms of this Agreement.

(c) If exercised, the Grantor's right to direct investment and reinvestment includes the right to select investment managers, brokers, salesmen, or agents to handle investments or execute investment orders. The Grantor may give an investment manager any of the Grantor's powers, pursuant to this Section 3.05 or otherwise, by so certifying in writing to the Trustee. The Trustee is not responsible for the selection, terms of appointment, compensation or conduct of any investment manager, broker, salesman, or agent selected by the Grantor, but the Trustee is responsible for its own actions in its dealing with such persons in accordance with the provisions of Section 2.03 of this Agreement. For purposes of Sections 2.03(c) and (d) and Section 3.05(g), the Trustee will be protected in treating the directions and other actions of ~~[the]~~an investment manager as the directions or actions of the Grantor.

(d) In the absence of directions under Section 3.05, the Trustee is free to proceed without the concurrence or affirmative expression of the ~~[grantor]~~Grantor to handle, manage, control, invest, and reinvest the Trust Fund assets that are not Segregated Amounts under the powers granted in this Agreement with the same force and effect as if this section were not a part of this Agreement.

(e) No person dealing with the Trustee is required to determine whether any sale or purchase by the Trustee has been authorized or directed by the Grantor, and each is fully protected in dealing with the Trustee in the same manner as if this section were not a part of this Agreement.

(f) Whenever the Trustee is directed to purchase or sell assets in the Trust Fund, the Trustee in its sole discretion is permitted at the expense of the Trust to obtain an appraisal of the value of the assets to be purchased or sold.

(g) Subject to the power of the Grantor as described in this section, the powers granted the Trustee under Sections 3.02 and 3.04 of this Agreement will be exercised in the discretion of the Trustee. Neither the Trustee nor any other person is under a duty to question the Grantor's direction, and the Trustee will comply as promptly as possible with such direction if it is consistent with the terms of this Agreement. The Trustee shall not be liable for the acts or omissions of any subcustodian appointed under Section ~~[3.03-]3.04(h)~~ at the direction of the

Grantor or an investment manager including, but not limited to, any broker-dealer or other entity designated by the Grantor or an investment manager to hold any property of the Trust Fund as collateral or otherwise pursuant to investment strategy.

3.06 Prohibition Against Self-Dealing.

Anything herein to the contrary notwithstanding, the Grantor and the Trustee will perform no act of self-dealing within the meaning of Internal Revenue Code Section 4951(d), except for those acts expressly permitted by Treasury Regulations Section 1.468A-5(b)(2).

ARTICLE 4 OTHER DUTIES OF TRUSTEE

4.01 Notice Regarding Disbursements or Payments.

Except for (i) payments of ordinary administrative costs (including taxes) and other incidental expenses of the [fund]Trust Fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the [fund]Trust Fund, which includes investment management fees[;]; (ii) withdrawals being made under 10 CFR 50.82(a)(8)[;]; and (iii) amounts transferred to a non-qualified trust established for Kewaunee Power Station pursuant to an agreement with terms substantially similar to this [agreement]Agreement, no disbursement or payment may be made from the trust until written notice of the intention to make a disbursement or payment has been given to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended disbursement or payment. The disbursement or payment from the trust may be made following the 30-working day notice period if no written notice of objection from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, is received by the Trustee or the Grantor within the notice period. The required notice may be made by the Trustee, or may be made on the Trustee's behalf, in which case evidence of such notice being made shall be provided to Trustee. No such notice is required for withdrawals being made pursuant to 10 CFR 50.82(a)(8)(ii), including withdrawals made during the operating life of the plant to be used for decommissioning planning. In addition, no such notice is required to be made to the NRC after decommissioning has begun and withdrawals are being made under 10 CFR 50.82(a)(8).

4.02 Use of Trust Funds.

Until decommissioning has been completed, the Trust [funds]Fund, including any disbursements or payments from the Trust Fund, must be used only as authorized by Section 468A of the Internal Revenue Code and the regulations thereunder, and by the regulations of the NRC including 10 CFR 50.75(h) & 50.80(a), such as:

(a) to satisfy, in whole or part, the liability of Grantor for decommissioning costs of the nuclear power plant to which the Trust Fund relates;

(b) to pay ordinary administrative costs (including taxes) and other incidental expenses of the [fund]Trust Fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the Trust Fund, which includes investment management fees;

(c) to be transferred to a non-qualified trust established for Kewaunee Power Station pursuant to an agreement with terms substantially similar to this [agreement]Agreement, or to another financial assurance method acceptable under 10 CFR 50.75(e) of the NRC's regulations, to the extent permitted by the Internal Revenue Code; or

(d) to make investments, to the extent that the assets are not currently required for another purpose permitted under this section.

4.03 Payments [From The]from the Trust Fund.

Subject to the foregoing provisions of this Article 4, on the written direction of the Grantor, the Trustee will make payments and transfers from the Trust Fund to the persons or entities, in the manner, in the amounts, and for the purposes specified in the written directions. After payment, the amount paid is no longer a part of the Trust Fund. Each Grantor direction will include a representation by the Grantor that the payment is in accordance with the purposes of this Agreement. The Trustee is not responsible for the application of the payments or for the adequacy of the Trust Fund after payment to meet and discharge Trust liabilities.

4.04 Payment [Of]of Compensation, Expenses, [And]and Taxes.

(a) The Trustee will be paid reasonable compensation as agreed upon from time to time in writing by the Grantor and the Trustee. In addition, the Trustee will be reimbursed from the Trust Fund or, at the option of the Grantor, by the Grantor for all ordinary and necessary expenses incurred in connection with the operation of the Trust, including federal income tax imposed on the modified gross income of the Trust, any state or local tax imposed on the income or assets of the Trust, legal expenses, accounting expenses, actuarial expenses, investment manager fees and trustee compensation and expenses. All taxes levied or assessed on or in respect of the Trust Fund, whether assessed to the Trust Fund or the Grantor, will be paid, at the option of the Grantor, by the Grantor, or from the Trust Fund and pro rated among the Trust Fund and other funds in proportion to their respective fair-market values at the preceding calendar year end in the case of property taxes and in proportion to their respective taxable incomes for the relevant taxable year in the case of income taxes. To the extent that any taxes are provoked by the investment in or receipt of an identifiable asset or transaction involving the Trust Fund or other particular fund, the taxes will be charged against the Trust Fund or other appropriate fund, giving appropriate effect to computations of income and deductions related to the asset or transaction, and allocating any exemption available [among]to the Trust Fund in proportion to the tax liability provoked. Identifiable direct expenses will be treated in the same way as taxes.

(b) The Trustee will prepare and file tax returns for the Trust Fund as directed by the Grantor, provided that the Grantor shall indemnify the Trustee for any penalties, additions to tax, or other amounts for which it may be charged due to a position taken on such returns. The Trustee may assume that any taxes assessed on or with respect to the Trust Fund are lawfully assessed unless the Grantor advises the Trustee in writing that in the opinion of counsel for the Grantor the taxes are or may be unlawfully assessed. When so advised and requested in writing by the Grantor, the Trustee will contest the validity or the taxes in any manner deemed appropriate by the Grantor or its counsel) in which event the Trustee will execute all documents,

instruments claims, and petitions necessary or advisable in the opinion of the Grantor or its counsel for the refund, abatement) reduction or elimination of taxes. Reasonable expenses incurred by the Trustee in connection with such a contest will be reimbursed as provided in paragraph (a) of this section.

(c) No provision of this section will be effective to the extent that it would violate Internal Revenue Code Section 468A, especially in so far as it relates to Internal Revenue Code Section 4951.

4.05 Accounting.

(a) The Trustee will keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions for the Trust Fund. All accounts, books, tax returns, and records relating to the Trust are open to inspection and audit at all reasonable times by any person designated by the Grantor.

(b) Within sixty days after the end of each calendar year and within sixty days after the removal or resignation of a Trustee as provided in Section 2.01, the Trustee will file a written report of the investments, receipts, disbursements, and other transactions during the year or during the period from the close of the last year to the date of the Trustee's removal or resignation, including the current value of the Trust Fund. After ninety days from the date of filing that annual or other accounting[], the Trustee is forever released and discharged from all liability and accountability to anyone with respect to the facts and transactions shown in the accounting, except for acts or transactions as to which the Grantor files written objections with the Trustee within the ninety-day period.

(c) Except as specifically provided by statute, no person other than the Grantor may require an accounting or bring an action against the Trustee about the Trust or the actions [or] of the Trustee. The Trustee is not required to make reports to any courts or administrative agencies[], except as [Specifically]specifically required by statute.

4.06 Segregation of Ratepayer Funds and Additional Contributions.

(a) On July 5, 2005, the Trust Fund consisted solely of funds and assets contributed to the Trust Fund from funds collected from ratepayers by Wisconsin Public Service Company and Wisconsin Power and Light Company, who were the Sellers of Kewaunee Power Station (formerly known as Kewaunee Nuclear Power Plant). These funds and assets shall constitute and be classified as the "Ratepayer Funds" and shall be accounted for as a sub-account "A." Trustee shall hold and account for all Ratepayer Funds in sub-account A, together with (i) additions for any earnings thereon or apportioned thereto; (ii) subtractions for any and all disbursements and payments (e.g., for payment of taxes and fees) made pursuant to Section 4.02(b) of this Agreement or otherwise, to the extent such disbursements and payments are attributable to this sub-account A; and (iii) subtractions for all disbursements made pursuant to Section 4.02(a) of this Agreement to satisfy, in whole or part, the liability of Grantor for the decommissioning costs of Kewaunee Power Station. All payments made pursuant to

Section 4.02(a) shall be made from sub-account A, unless the Trustee is otherwise directed in writing by the Grantor, or unless the balances in sub-account A shall have been exhausted.

(b) The Grantor, in its sole discretion, may make one or more additional contributions to the Trust Fund (“Additional Contributions”), provided that each such contribution is permitted by applicable law, regulation, court order, rule, private letter ruling or other governmental approval, and that such contribution would not cause the disqualification of the Trust Fund for tax purposes. In the event any such contribution is made by Grantor, all such funds and assets shall constitute and be classified as the “Additional Contributions” and shall be accounted for as a sub-account “B.” Trustee shall hold and account for all Additional Contributions in sub-account B, together with (i) additions for any earnings thereon or apportioned thereto; (ii) subtractions for any and all disbursements and payments (e.g., for payment of taxes and fees) made pursuant to Section 4.02(b) of this Agreement or otherwise, to the extent such disbursements and payments are attributable to this sub-account B; and (iii) subtractions for all disbursements made pursuant to Section 4.02(a) of this Agreement to satisfy, in whole or part, the liability of Grantor for the decommissioning costs of Keweenaw Power Station. Upon exhaustion of the funds available from sub-account A, all payments made pursuant to Section 4.02(a) shall be made from sub-account B.

4.07 Valuation.

(a) As of each calendar year end, the Trustee will determine the fair-market value of the Trust Fund, including separate line items for sub-accounts A and B, and report that value to the Grantor in writing. The valuation determined according to this section is binding on the Grantor, and all other persons interested in the Trust.

(b) Non-cash contributions are valued at fair-market value determined by the Trustee as of the actual date on which the Trustee accepts the property.

(c) In determining the net worth of the Trust Fund, the Trustee will deduct all allocable expenses.

ARTICLE 5 AMENDMENT AND TERMINATION OF THE TRUST

5.01 Amendment of the Trust.

The Grantor has the right at any time to amend this Agreement in whole or in part, but

(a) No amendment may be made that changes the Trustee’s duties or liabilities without the Trustee’s written consent, such consent being evidenced by Trustee’s agreement to such amendment;

(b) This [agreement]Agreement may not be amended so as to violate Section 468A or the regulations thereunder; and

(c) This [agreement]Agreement may not be amended in any material respect without written notification to the Director, Office of Nuclear Reactor Regulation (Director, NRR) having been given at least 30 working days before the proposed effective date of the amendment, such notice having provided the text of the proposed amendment and a statement of the reason for the proposed amendment, and without the notice period having expired with no notice of objection having been received from the Director, NRR.

An amendment may be made retroactively if such application is necessary to qualify the Trust Fund as a Nuclear Decommissioning Trust Fund under Section 468A of the Internal Revenue Code of 1986, as amended, or to bring the Trust or the Grantor into conformity with[-or] any other applicable statute or regulation.

5.02 Irrevocability of Trust Fund.

The Trust Fund is irrevocable. Except as otherwise provided by law, the Trust Fund terminates upon completion of its nuclear power plant decommissioning that it has been created to fund as certified to the Trustee by the Grantor, upon disqualification of the Trust Fund under Internal Revenue Code Section 468A, or upon the frustration or failure of the Trust Fund's purposes.

5.03 Merger, Consolidation, or Succession.

(a) A corporation with which the Grantor is merged or a corporation or other legal entity which acquires substantially all the assets of the Grantor, shall become the Grantor for purposes of this Agreement, and every reference in this Agreement to the Grantor will be treated as a reference to that surviving or purchasing corporation or other legal entity.

(b) If the Grantor is liquidated, merged, or consolidated with another company or other legal entity and the Grantor's successor chooses not to discharge the Grantor's duties under this Agreement, the Trust nevertheless will survive and the Trust Fund will continue in trust under the terms of this Agreement. In such a case, the Trustee may, but shall not be required to, petition a court of competent jurisdiction seeking the appointment of a party to succeed to the responsibilities of the Grantor. In seeking such an order, the Trustee shall be held harmless and indemnified by the Grantor or its successor. Any expenses incurred by the Trustee in seeking said court order shall be the responsibility of the Grantor or its successor until paid.

(c) The merger or consolidation of the Trust with, or a transfer of assets or liabilities from this Trust to another trust or fund is not permitted unless the Trustee has received an opinion of counsel satisfactory to the Trustee to the effect that the merger, consolidation, or transfer results in no diversion or use of assets that is not permitted by Internal Revenue Code Section 468A.

5.04 Impossibility of Diversion.

Assets of the Trust Fund may not be used for or diverted to purposes other than the purposes permitted by Internal Revenue Code Section 468A, whether by operation or natural termination of the Trust, by power of revocation or amendment, by happening of a contingency, by collateral arrangement, or by any other means. If permissible under the preceding sentence, contributions by the Grantor to the Trust found not to be deductible for federal income tax purposes shall be

returned to the Grantor and transferred to a non-qualified trust established for Kewaunee Power Station pursuant to an agreement with terms substantially similar to this [agreement]Agreement.

5.05 Return of Excess Funds after Final Decommissioning.

(a) Pursuant to the Final Decision of the Public Service Commission of Wisconsin, dated April 21, 2005 (Docket No. 05-EI-136) approving the sale of Kewaunee Power Station to Grantor (the "PSCW Order"), Grantor is obligated to return any and all excess funds from the Ratepayer Funds, if any, after final completion of all decommissioning activities at Kewaunee Power Station pursuant to all applicable governmental requirements, including the commitments in the PSCW Order, ("Final Decommissioning"), and Grantor shall discharge this obligation pursuant to this Section 5.05 of the Agreement. A copy of the PSCW Order is appended hereto as Exhibit B.

(b) Upon completion of Final Decommissioning, the Grantor shall request, and the Trustee shall provide an accounting of the final balance remaining, if any, in sub-account A ("Final Balance"). If the sub-account A Final Balance is greater than zero, Grantor shall deduct and reserve from such Final Balance, the estimated amount of (1) any tax liability that is projected to be incurred and paid by Grantor or the Trust Fund in connection with the distribution of the excess Ratepayer Funds, and (2) any administrative costs and fees owed or accrued but not yet paid. After allowing for such deduction and reservation, the remaining balance shall be the net amount of "Excess Ratepayer Funds." If the net amount of Excess Ratepayer Funds is greater than zero, Grantor shall direct the Trustee to disburse 59% of the net Excess Ratepayer Funds to Wisconsin Public Service Corporation, or its successors or assigns, with notice to the Public Service Commission of Wisconsin, and 41% of the net Excess Ratepayer Funds to Wisconsin Power and Light Company, or its successors or assigns, with notice to the Public Service Commission of Wisconsin.

(c) After the completion of Final Decommissioning and satisfaction of the actions contemplated by Section 5.05(b) above, and payment of all administrative costs (including taxes) and fees associated with sub-account B, any amounts remaining in sub-account B shall revert to Grantor free of trust and free and clear of the provisions of this Agreement.

(d) If any law, regulation, court order, rule, private letter ruling or other governmental action results in the termination of this Agreement or the Trust Fund prior to completion of Final Decommissioning, Grantor shall maintain any balances remaining in sub-account A in an external trust and make appropriate arrangements for fulfilling the obligation to return Excess Ratepayers Funds, if any, to Wisconsin Public Service Corporation and Wisconsin Power and Light Company, or their successors or assigns, for distribution to their customers, consistent with the terms of Sections 4.06 and 5.05 of this Agreement.

ARTICLE 6 MISCELLANEOUS PROVISIONS

6.01 Construction.

The Grantor's intent and purpose in creating the trusts hereunder and executing this Agreement is to maintain Nuclear Decommissioning Reserve Funds pursuant to Internal Revenue Code Section 468A. All questions arising in the administration of the Trust and in the construction of this Agreement will be resolved accordingly. This Agreement will be construed, enforced, and administered in accordance with the laws of the Commonwealth of Pennsylvania, except to the extent that the laws of the United States of America take precedence, in which event, this Agreement will be construed in accordance with the laws of the United States of America. The headings and subheadings in this Agreement have been inserted for convenience only and are to be ignored in construction of the provisions.

6.02 Rights under the Trust.

No person other than the Grantor has any vested rights under the Trust except to the extent that rights may accrue under other agreements made by the Trustee. Except as permitted by law, no assignment of any rights or benefits under the Trust is permitted or recognized, nor will any rights or benefits be subject to attachment or other legal or equitable process or subject to the jurisdiction of any bankruptcy court.

6.03 Frustrated Actions.

If it becomes impossible for the Grantor or the Trustee to perform an act, then that act will be performed which, in the discretion of the Trustee, most nearly carries out the intent and purpose of this Agreement.

6.04 Construction of Direction.

Whenever the Grantor or Trustee is directed to take an action upon the occurrence of an event, neither is under obligation to take that action until it has received proper and satisfactory written notice of the occurrence.

6.05 Authorizations and Communication.

A written authorization or communication from an officer of the Grantor or the Trustee that an event has occurred constitutes conclusive evidence of the occurrence, and the Grantor or Trustee is fully protected and discharged from all liability in accepting and relying upon that authorization or communication.

6.06 Genuine Notice.

The Grantor or the Trustee will not incur liability to any persons or party when acting on a notice, request[], consent, letter, telegram, or other paper or document that it believes to be genuine, and to have been signed or sent by the proper person.

6.07 Loss or Damage.

Except as specifically provided by statute, neither the Grantor [or]nor the Trustee is liable for loss or damage, except by reason of its own gross negligence or willful default. The Trustee shall not be liable for any act or omission of any other person in carrying out any responsibility imposed upon such person and under no circumstances shall the Trustee be liable for any indirect, consequential or special damages with respect to its role as Trustee.

6.08 Binding Nature.

This Agreement is binding upon the heirs, executors, administrators, successors, and assigns of all parties, present and future.

6.09 Settlement of Transactions and Collateral.

The Trustee may take all action necessary to pay for, and settle, authorized transactions, including disbursements or expenses, or the purchase or sale of foreign exchange, or of contracts for foreign exchange, and including exercising the power to borrow or raise monies from the Trustee in its corporate capacity or an affiliate. To secure expenses and advances made to settle or pay for authorized transactions, including payment for securities and disbursements, the Grantor grants to the Trustee a first priority security interest in the Trust Fund, all [Property]property therein, all income, substitutions and proceeds, whether now owned or hereafter acquired (the "Collateral"); provided that the Grantor does not grant the Trustee a security interest in any securities issued by an affiliate of the Trustee (as defined in Section 23A of the Federal Reserve Act). The parties intend that as the securities intermediary with respect to the Collateral, the Trustee's security interest shall automatically be perfected when it attaches. To the extent the Trustee advances funds to the Trust Fund for disbursements or to effect the settlement of purchase transactions, the Trustee shall be entitled to collect from the Trust Fund reasonable charges established under the Trustee's standard overdraft terms, conditions and procedures.

6.10 Force Majeure.

Notwithstanding anything in this Agreement to the contrary contained herein, the Trustee shall not be responsible or liable for its failure to perform under this Agreement or for any losses to the Trust Fund resulting from any event beyond the reasonable control of the Trustee, its agents or subcustodians. This Section shall survive the termination of this Agreement.

6.11 Representation and Warranty as to Authority.

The Grantor 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 Grantor or the Trustee to this Agreement.

IN WITNESS of this Amended and Restated Agreement, the [grantor]Grantor and the Trustee have signed below on this _____ day of _____, ____.

DOMINION ENERGY KEWAUNEE, INC.

By: _____

MELLON BANK, N.A., TRUSTEE

By: _____

Title: _____

EXHIBIT A

CROSS-TRADING INFORMATION

As part of its cross-trading program, Mellon Bank, N.A. is to provide to each affected customer the following information:

I. The existence of the cross-trading program

Mellon Bank, N.A. has developed and intends to utilize, wherever practicable, a cross[-]
]-trading program for indexed accounts and large accounts.

II. The “triggering events” creating cross-trade opportunities

Three “triggering events” may create opportunities for cross-trading transactions. They are generally the following (see Mellon Bank, N.A. for more information):

- 1) A change in the composition or weighting of the index by the independent 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 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 Mellon Bank, N.A.'s own plans (other than Mellon Bank, N.A.'s defined contribution plans under which participants may direct among various investment options, including Indexed Accounts) are excluded as a “triggering event”; or
- 3) A recorded declaration by Mellon Bank, N.A. 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 Mellon Bank, N.A. 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. Mellon Bank, N.A. 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 [prorata]pro rata basis. With respect to equity securities, please note Mellon Bank, N.A. imposes a trivial share constraint to reduce excessive custody ticket charges to participating accounts.

V. Other procedures implemented by Mellon Bank, N.A. for its cross-trading practices

Mellon Bank, N.A. has developed certain internal operational procedures for cross[-]-trading debt and equity securities. These procedures are available upon request.

EXHIBIT B

Final Decision of the Public Service Commission of Wisconsin

Docket No. 05-EI-136 (April 21, 2005)

ATTACHMENT 3

Summary of Amendments to
Dominion Energy Kewaunee, Inc.
Qualified Decommissioning Trust Agreement

Kewaunee Power Station

Summary of Amendments to Qualified Decommissioning Trust Agreement

<i>Reference</i>	<i>Change</i>	<i>Reason</i>
Title Page	Add "Amended and Restated" to Title	To effect amendment inserting new Section 5.05, "Return of Excess ratepayer and Grantor Funds"
Title	Add "Amended and Restated" to Title	same as above
Opening Paragraph	Insert new Name/Title and statement regarding amendment and restatement of December 1, 2004 agreement.	same as above
Second WHEREAS clause	"laws of Pennsylvania" to "laws of the Commonwealth of Pennsylvania"	To be consistent with usage in Section 6.01
Second WHEREAS clause	"agreement" to "Agreement"	"Agreement" is now a defined term
Section 1.01	"or "the Trust Fund."" to "(referred to herein as the "Trust" or the "Trust Fund")."	To define the term Trust used in the Agreement and use a parenthetical consistent with other definitions
Section 1.03	"3.04 (g)" to "3.05(g)"	typo
Section 2.01(a)	"no removal or resignation shall take until" to "no removal or resignation shall take effect until"	typo
Section 2.02(e)	Add reference to Section 5.05.	Amendment inserts new Section 5.05, "Return of Excess ratepayer and Grantor Funds"
Section 3.01	"C.F.R." to "CFR"	To be consistent with usage of "CFR" in Sections 4.01 and 4.02
Section 3.01	"Section 3.04" to "Section 3.05"	typo

Reference	Change	Reason
Section 3.02	"Section 3.04" to "Section 3.05" and "trustee" to "Trustee"	typos
Section 3.02(f)	"including any Trustee" to "including any such financial institution owned, operated or maintained by the Trustee"	clarification
Section 3.02(h)	Move "regardless of the purposes for which such fund or funds were created" within sentence.	clarification
Sections 3.02(j), 3.03, 3.03(d)	"Fund" and "trust" to "Trust Fund"	for consistency in usage of terms
Section 3.03(c)	Revise language referencing prohibition against investment in nuclear sector mutual funds.	This section was revised to better reflect what we believe to be the intent of the NRC rule and to ensure that the intended prohibition is adequately described.
Section 3.05(b)	"with that Segregated Amount" to "with those amounts (herein "Segregated Amounts")."	clarification
Section 3.05(c)	"the investment manager" to "an investment manager"	clarification
Section 3.05(d)	"grantor" to "Grantor" and "Trust" to "Trust Fund"	typo, clarification
Section 3.05(g)	"Section 3.03" to "Section 3.04(h)"	clarification

Reference	Change	Reason
Sections 4.01, 4.02, 4.02(b) and 4.02(c)	"fund" and "funds" to "Trust Fund," and "agreement" to "Agreement"	clarification, use of defined term
Sections 4.03 and 4.04 (headings)	Use lower case for articles.	for consistency with other headings
Section 4.04(a)	"among the Trust Fund" to "to the Trust Fund"	clarification
Section 4.05(b)	insert commas, and change ")" to ","	typos
Section 4.05(c)	"actions or the Trustee" to "actions of the Trustee," change ")" to "," and "Specifically" to "specifically"	typos
Section 4.06	New Section 4.06 added to provide for segregation of ratepayer funds from any additional contributions through the use of sub-accounts.	Accounting provisions added in order to facilitate the provisions of new Section 5.05 for the return of excess funds to ratepayers after final decommissioning is complete.
Section 4.07	Valuation section revised to provide for valuation of sub-accounts.	same as above
Sections 5.01(b), 5.01(c), and (ending paragraph)	"agreement" to "Agreement, and "with or any" to "with any"	use of defined term, typo
Section 5.03(b)	"Grantor'" to "Grantor's"	typo
Section 5.04	"agreement" to "Agreement"	use of defined term

Reference	Change	Reason
Section 5.05	New section to provide for return of excess ratepayer funds and preserve Grantor funds for DEK.	This conforms the trust agreement to be consistent with the terms of the PSCW Order approving the sale of Kewaunee, but providing that excess ratepayer funds be returned to ratepayers.
Section 6.06	Change ")" to ","	typo
Section 6.07	"or" to "nor"	typo
Section 6.09	Insert authority of Trustee to pay for and settle "disbursements or expenses, or the purchase or sale of foreign exchange, or of contracts for foreign exchange," and "Property" to "property"	This clarifies the Trustee's authority when settling NDT investments. Correction to reflect that "property" is not a defined term.
Closing	"grantor" to "Grantor"	typo
Exhibit A, Section IV	"prorata" to "pro rata"	typo
Exhibit B	Exhibit added.	PSCW Order added to provide context for the provisions of Section 5.05.

ATTACHMENT 4

Dominion Energy Kewaunee, Inc.
Non-Qualified Decommissioning Trust Agreement

Kewaunee Power Station

DOMINION ENERGY KEWAUNEE, INC.,
NON-QUALIFIED NUCLEAR DECOMMISSIONING
TRUST AGREEMENT

**DOMINION ENERGY KEWAUNEE, INC.,
NON-QUALIFIED NUCLEAR DECOMMISSIONING
TRUST AGREEMENT**

This TRUST AGREEMENT ("Agreement") is made the ____ day of _____, 2005, between DOMINION ENERGY KEWAUNEE, INC., a Wisconsin corporation, the Grantor, and MELLON BANK, N.A., a national banking association with trust powers, the Trustee.

WHEREAS, the Grantor owns a 100 percent interest in the Kewaunee Power Station, a nuclear generating station located in the Town of Carlton, Kewaunee County, Wisconsin.

WHEREAS, the Grantor wishes to establish pursuant to this Agreement and under the laws of the Commonwealth of Pennsylvania, a separate trust fund which does not qualify as a Nuclear Decommissioning Trust Fund under Section 468A of the Internal Revenue Code of 1986, as amended.

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

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

ARTICLE 1 GENERAL PROVISIONS

1.01 Name of Trust.

The separate trust may be referred to under the name DOMINION ENERGY KEWAUNEE, INC., NON-QUALIFIED NUCLEAR DECOMMISSIONING TRUST (referred to herein as the "Trust" or the "Trust Fund"). The Trust Fund is the entire undistributed amount of all contributions and/or transferred assets placed with the Trustee, as adjusted for all income, expense, gain, or loss on such amount as may exist from time to time.

1.02 Grantor, Trustee.

The Grantor of this Trust is Dominion Energy Kewaunee, Inc., and its successors and assigns as provided in Section 5.03 of this Agreement. The Trustee under this Agreement is Mellon Bank, N.A., its successors and assigns, or any other person, company, bank, or trust company appointed as provided in Section 2.01 of this Agreement.

1.03 Trust Committee.

The Grantor may establish a Nuclear Decommissioning Trust Committee (the "Committee") composed of any three or more persons appointed by the Grantor's Board of Directors on whatever terms the Board desires. The Committee has the authority to exercise all of the Grantor's powers under this Agreement, and for purposes of Sections 2.03(c) and (d) and Section 3.05(g), the Trustee will be protected in treating the directions and other actions of the Committee as the directions or actions of the Grantor. The Grantor must certify to the Trustee all appointments to or removals from the Committee, and the Trustee must recognize written instructions signed by any Committee member, or its designee, as a directive from the Committee.

ARTICLE 2 TRUSTEE APPOINTMENT, REMOVAL, LIABILITY

2.01 Appointment, Removal, Successors.

(a) The Grantor may appoint a successor Trustee by written notice to the person appointed and to the Trustee then serving. A Trustee may resign on thirty days' notice in writing to the Grantor. The Grantor may remove any Trustee by thirty days' written notice to the Trustee. Notwithstanding the foregoing, no removal or resignation shall take effect until a successor Trustee has been appointed and accepted appointment as Trustee. If a successor Trustee has not been appointed and accepted appointment within sixty (60) days of the Grantor's receipt of notice of resignation of the Trustee or the Trustee's receipt of notice of removal, such Trustee may petition a court of competent jurisdiction to appoint a successor Trustee to serve until such time, if ever, as a successor Trustee shall have been appointed by the Grantor and accepted such appointment. Each successor Trustee shall have the same powers and duties as the Trustee named herein.

(b) A successor Trustee may accept appointment and qualify as Trustee by executing, acknowledging, and delivering to the Grantor its acceptance in a form satisfactory to the Grantor. The successor Trustee, without further act, deed, or conveyance, is vested with all the estate, rights, powers, and discretion of the predecessor Trustee just as if originally named as a Trustee in this Agreement.

(c) When a successor Trustee accepts appointment, the predecessor Trustee (or representative, if the predecessor Trustee is unable or unavailable) will assign, transfer title, and pay over to the successor Trustee the funds and properties then constituting the Trust Fund. The predecessor Trustee (or representative) is authorized, however, to reserve a sum of money deemed advisable for payment of fees and expenses accrued to date or expected to be incurred in connection with the transfer and settlement of the Trust Fund (all subject to the limitation in Section 5.04 of this Agreement), and any balance of that reserve remaining after the payment of fees and expenses will be paid over to the successor Trustee.

(d) The Trustee may adopt or amend bylaws and regulations that the Trustee deems desirable for the conduct of Trustee affairs.

(e) The Trustee will keep a record of all Trustee proceedings and acts and all other data necessary for the proper administration of the Trust. The Trustee will notify the Grantor of any Trustee action taken, and when required by law, will notify any other interested party.

2.02 Establishment and Acceptance of Trust.

(a) Unless the Grantor otherwise advises the Trustee, the Grantor will make all contributions in cash or other intangible personal property.

(b) At the time it makes any contribution to the Trust Fund, the Grantor will specify in a writing then delivered to the Trustee the exact amount that is to be placed in the Trust Fund then existing. The Trustee shall not accept contributions from anyone other than the Grantor without the Grantor's written approval for each such contribution, which written approval must accompany the contribution. The Trustee has no right or duty to inquire into the amount of or the method used in determining any contribution to the Trust Fund. The Trustee is accountable only for funds actually received. The Trustee has no duty to compute or collect the amount to be paid to it by the Grantor.

(c) All contributions and/or transferred assets and income therefrom will be held in trust and administered according to the terms of this Agreement.

(d) No part of the Trust Fund may be used for or diverted to purposes other than the exclusive purposes allowed by this Agreement, as described in Sections 4.02, 5.04 and 6.01 of this Agreement.

2.03 Limitation of Liability.

(a) To the extent permitted by law, the Trustee will serve without bond; the Trustee will secure and pay for required bonds. Except as otherwise provided in this Agreement, no Trustee is liable for any act or omission of any other Trustee or for any act or omission of any other person. At its own expense, the Grantor is entitled to employ its own counsel to defend or maintain, either in its own name or in the name of any Trustee, with said Trustee's approval, any suit or litigation arising under this Agreement involving the Trustee.

(b) The Trustee is not liable for the making, retention, or sale of any investment or reinvestment made as provided in this Agreement, but the Trustee is liable for any loss to or diminution of the Trust Fund due to the Trustee's gross negligence, willful misconduct, or lack of good faith in carrying out the terms of this Agreement.

(c) Subject to the provisions of Section 2.03(b), the Trustee is fully protected and indemnified when relying on a written communication from a properly designated officer or employee of the Grantor concerning an instruction or direction of the Grantor and in continuing to rely upon a communication until a subsequent communication is filed with the Trustee. Subject to the provisions of Section 2.03(b), the Trustee is fully protected and indemnified in acting on any instrument, certificate, or paper believed by the Trustee to be genuine and to be signed or presented by the proper person. Subject to the provisions of Section 2.03(b), the Trustee is under no duty to make any investigation or inquiry as to any statement contained in

any written communication or document signed by the proper person, but may accept it as conclusive evidence of the truth and the accuracy of the statements contained therein.

(d) The Grantor will indemnify the Trust Fund and the Trustee against any liability imposed as a result of a claim asserted by any person or entity if the Trustee has acted in good faith reliance on the terms of this Agreement or a written direction of the Grantor. The indemnification under this Section 2.03 shall survive the termination of the Agreement.

(e) 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 clearing facility, book-entry system, centralized custodial depository, or similar organization. The Trustee shall not be responsible or liable for any losses or damages suffered by the Trust 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. Settlements of transactions may be effected in trading and processing practices customary in the jurisdiction or market where the transaction occurs. The Grantor acknowledges 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, the Grantor shall have sole responsibility for nonreceipt of payment (or late payment) by the counterparty.

2.04 Discharge after Distributions or Termination.

After all distributions (including distributions to a successor Trustee) or any termination under this Agreement or applicable law, the Trustee is discharged from all obligations under this Agreement, and no person or entity has any further right or claim against the Trustee not otherwise provided by statute.

2.05 Legal Action.

In all legal actions regarding the Trust and this Agreement, the Trustee and the Grantor are the only necessary parties. A final judgment not appealed or appealable entered in an action or proceeding against the Grantor, the Trust, or the Trustee is binding and conclusive on the parties to this Agreement and all persons having or claiming to have any interest in the Trust Fund.

ARTICLE 3 INVESTMENT DUTIES, POWERS

3.01 Investment Policy and Limitations.

Certain limitations are placed on investing in and disposing of some securities by the Nuclear Regulatory Commission and to minimize potential problems with securities regulations. The Trustee, the Grantor, any investment advisor and anyone else directing investments, when directing investments, shall adhere to the standard of care that a "prudent investor" would use in the same circumstances, such term having the same meaning as the standard set forth in 18 CFR 35.32(a)(3) of the FERC regulations, or any successor regulation. Subject to these limitations and prudent fiduciary practices, the Trustee's investment policy for assets within the Trustee's investment control will be to realize the greatest total return on the Trust Fund as may be possible.

In its annual report to the Grantor, the Trustee will advise the Grantor of the Trustee's investment policy or strategy. Formulation of the policy is the Trustee's responsibility as long as the Grantor has not exercised its right to direct the investments under Section 3.05. The Trustee must consider the stated purposes of the Trust and this Agreement, statutory and regulatory requirements, and other relevant information and standards before stipulating the stated investment policy. The Trustee may consult with the Grantor, counsel, and investment advisors for fact-finding purposes before so stipulating.

3.02 Investment of Trust Fund.

The assets of the Trust Fund may be commingled for investment purposes as the Grantor directs. The Trustee shall apportion any earnings or losses from an investment made with commingled assets to the Trust Fund and the other commingled fund or funds in the same proportion that the amount invested from the Trust Fund, or any other commingled fund, bears to the total commingled amount invested. Subject to the provisions of Section 3.05 of this Agreement, the Trustee will invest and reinvest the principal and income of the Trust Fund and keep those trust assets invested, without distinction between principal and income. If assets of two or more funds are commingled for investment purposes, the Grantor shall have the absolute authority to direct the Trustee at any time to liquidate the interests of the Trust Fund in a commingled investment, and the Trustee shall promptly comply with any such directive. The commingling arrangement undertaken as permitted in this Section 3.02 can be terminated at any time by the Trust Fund or any commingled fund. No fund in the commingling arrangement may substitute for itself in the arrangement any person that is not a member to the commingling arrangement.

Trust investments may include, but shall not be limited to the following:

- (a) Publicly traded domestic or foreign common and preferred stocks and options thereon, as well as warrants, rights and preferred stocks convertible into common stock, regardless of where or how traded.
- (b) Investment grade domestic corporate bonds and debentures and any such securities which are convertible into common stock, domestic or foreign.
- (c) Bonds or other obligations of the United States of America or non-U.S. sovereign debt with an equivalent rating of A or higher.
- (d) Investment grade obligations of the states and of municipalities or of any agencies thereof.
- (e) Investment grade notes of any nature, of foreign or domestic issuers.
- (f) Savings accounts, certificates of deposit and other types of time deposits, bearing a reasonable rate of interest based upon the duration, amount, type and geographical area, with any financial institution or quasi-financial institution or any department of the same, either domestic or foreign, under the supervision of the United States or any State, including any such financial institution owned, operated or maintained by the Trustee in its corporate or association capacity (including any department or division of the same) or a corporation or association affiliated with the same.

(g) 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 its affiliate. Notwithstanding the provisions of this Agreement which place restrictions upon the actions of the Trustee, to the extent monies or other assets are utilized to acquire units of any collective trust, the terms of the collective trust indenture shall solely govern the investment duties, responsibilities and powers of the trustee of such collective trust and, to the extent required by law, such terms, responsibilities and powers shall be incorporated herein by reference and shall be part of this Agreement. For purposes of valuation, the value of the interest maintained by the Trust Fund in such collective trust shall be the fair market value of the collective fund units held, determined in accordance with generally recognized valuation procedures. The Grantor 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 from such collective fund 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. The Grantor acknowledges receipt of the notice entitled "Cross-Trading Information," a copy of which is attached to this Agreement as Exhibit A.

(h) 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 purposes otherwise consistent with the investment guidelines set forth herein.

(i) Subject to the limitations of Sections 3.01 and 3.03, any other investments not described above as directed by the Grantor.

(j) The Trustee may lend the assets of the Trust Fund in accordance with the terms and conditions of a separate securities lending agreement, may settle transactions in futures and/or options contracts, short-selling programs, foreign exchange or foreign exchange contracts, swaps and other derivative investments with third parties.

3.03 Prohibited Investments.

The assets of the Trust Fund are prohibited from being invested in:

(a) securities or other obligations of Dominion Energy Keweenaw, Inc. or its affiliates, subsidiaries, successors or assigns;

(b) securities or other obligations of any other owner or operator of any nuclear power reactor, or the affiliates, subsidiaries, successors or assigns of such owner or operator;

(c) a mutual fund in which at least 50 percent of the fund is invested in the securities of one or more companies that own or operate a foreign or domestic nuclear power plant, or are parents, subsidiaries or affiliates of such a company (herein, "nuclear sector mutual fund"); or

(d) direct interests in real estate.

Provided, however, that the foregoing (i) shall not prohibit the Trust Fund from being invested in securities tied to market indices or other non-nuclear sector collective, commingled, or mutual funds; (ii) shall not require the sale or transfer either in whole or in part, or other disposition of any such prohibited investment that was made before December 24, 2002; and (iii) shall not prohibit less than 10 percent of the Trust Fund assets being indirectly invested in securities of any entity owning or operating one or more nuclear power plants.

3.04 Additional Powers of Trustee.

The Trustee has the following powers and authority in the administration and investment of the Trust Fund, to be exercised subject to the other provisions of this Agreement and especially this Article 3:

(a) To purchase, subscribe for, and hold securities or other property authorized by Sections 3.01 and 3.02 as a proper investment for the Trust Fund, and to retain the same in trust.

(b) To sell for cash or credit, exchange, convey, transfer, or otherwise dispose of any securities or other property held in the Trust Fund, by private contract or at public auction. No person dealing with the Trustee is bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any sale or other disposition.

(c) To vote any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any incidental payments; to oppose, consent to, or otherwise participate in corporate reorganizations or other changes affecting corporate securities, and (unless prohibited by statute) to delegate discretionary powers, and to pay any related assessments or charges; and generally to exercise any ownership powers over stocks, bonds, securities, or other property held as part of the Trust Fund.

(d) To keep part of the Trust Fund in cash or cash balances invested in interest-bearing accounts if the Trustee deems that to be prudent under the circumstances.

(e) To accept and retain for as long as the Trustee deems advisable any securities or other property received or acquired by the Trustee, regardless of any lack of diversification.

(f) To make, execute, acknowledge, and deliver documents of transfer and conveyance and other instruments that may be necessary or appropriate to carry out the Trustee's powers.

(g) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Trust Fund, to commence or defend legal or administrative proceedings, and to represent the Trust in all legal or administrative proceedings.

(h) To employ suitable subcustodians, agents and counsel (who may be counsel of the Grantor) and to pay their reasonable expenses and compensation. The Trustee shall be entitled to rely on and may act upon advice of counsel on all matters, and shall be without liability for any action reasonably taken or omitted pursuant to such advice.

(i) On direction by the Grantor as to the agent and insurance company, to invest in insurance contracts payable to the Trustee or its assignees as beneficiary.

(j) 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, foreign exchange and 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.

(k) To enter into contracts with one or more persons, firms, associations, or corporations to obtain advice and counsel about investments.

(l) To enter into arrangements for the deposit of funds with banks or trust companies and in connection with the arrangements:

- (1) To authorize the depositary to act as custodian of the cash, securities, or other property comprising the funds;
- (2) To authorize the depositary to convert the funds in whole or in part into, or to invest and reinvest the same in, securities of any kind and nature permitted in this Agreement; and
- (3) To provide for the payment to the depositary of reasonable compensation for its services.

(m) To cause any securities or other property held as part of the Trust Fund to be registered in its own name or in the name of one or more of its nominees, and to hold any investments in bearer form, but the books and records of the Trustee must at all times show that the investments are part of the Trust Fund and subject to the jurisdiction of the United States, and to hold the property in safekeeping facilities of the Trustee or of other Trustee banks or clearing corporations, in the United States or elsewhere.

(n) To participate in any mergers or consolidations, or any registrations of securities with state or federal authorities regarding any securities held.

(o) To do all acts, take all proceedings, and exercise all rights and privileges although not specifically mentioned here, as the Trustee deems necessary to administer the Trust Fund and to carry out the purposes of this Agreement.

3.05 Directing the Trustee.

(a) Subject to the limitations in Sections 3.01 and 3.03, the Grantor may direct the investments of the Trust in investments of any kind, including but not limited to, private equity, indirect interests in real estate, and non-investment grade bonds. Directed investments under this Section 3.05 may not exceed the total of the Trust Fund.

(b) Subject to the limitation of paragraph (a), the Trustee at the written direction of the Grantor will segregate the value requested and will after that invest, reinvest, and otherwise deal with those amounts (herein "Segregated Amounts") as directed by the Grantor if it is consistent with the terms of this Agreement.

(c) If exercised, the Grantor's right to direct investment and reinvestment includes the right to select investment managers, brokers, salesmen, or agents to handle investments or execute investment orders. The Grantor may give an investment manager any of the Grantor's powers, pursuant to this Section 3.05 or otherwise, by so certifying in writing to the Trustee. The Trustee is not responsible for the selection, terms of appointment, compensation or conduct of any investment manager, broker, salesman, or agent selected by the Grantor, but the Trustee is responsible for its own actions in its dealing with such persons in accordance with the provisions of Section 2.03 of this Agreement. For purposes of Sections 2.03(c) and (d) and Section 3.05(g), the Trustee will be protected in treating the directions and other actions of an investment manager as the directions or actions of the Grantor.

(d) In the absence of directions under Section 3.05, the Trustee is free to proceed without the concurrence or affirmative expression of the Grantor to handle, manage, control, invest, and reinvest the Trust Fund assets that are not Segregated Amounts under the powers granted in this Agreement with the same force and effect as if this section were not a part of this Agreement.

(e) No person dealing with the Trustee is required to determine whether any sale or purchase by the Trustee has been authorized or directed by the Grantor, and each is fully protected in dealing with the Trustee in the same manner as if this section were not a part of this Agreement.

(f) Whenever the Trustee is directed to purchase or sell assets in the Trust Fund, the Trustee in its sole discretion is permitted at the expense of the Trust to obtain an appraisal of the value of the assets to be purchased or sold.

(g) Subject to the power of the Grantor as described in this section, the powers granted the Trustee under Sections 3.02 and 3.04 of this Agreement will be exercised in the discretion of the Trustee. Neither the Trustee nor any other person is under a duty to question the Grantor's direction, and the Trustee will comply as promptly as possible with such direction if it is consistent with the terms of this Agreement. The Trustee shall not be liable for the acts or omissions of any subcustodian appointed under Section 3.04(h) at the direction of the Grantor or an investment manager including, but not limited to, any broker-dealer or other entity designated by the Grantor or an investment manager to hold any property of the Trust Fund as collateral or otherwise pursuant to investment strategy.

ARTICLE 4 OTHER DUTIES OF TRUSTEE

4.01 Notice Regarding Disbursements or Payments.

Except for (i) payments of ordinary administrative costs (including taxes) and other incidental expenses of the Trust Fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the Trust Fund, which includes investment management fees; (ii) withdrawals being made under 10 CFR 50.82(a)(8); and (iii) amounts transferred to a qualified trust established for Kewaunee Power Station pursuant to an agreement with terms substantially similar to this Agreement, no disbursement or payment may be made from the trust until written notice of the intention to make a disbursement or payment has been given to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended disbursement or payment. The disbursement or payment from the trust may be made following the 30-working day notice period if no written notice of objection from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, is received by the Trustee or the Grantor within the notice period. The required notice may be made by the Trustee, or may be made on the Trustee's behalf, in which case evidence of such notice being made shall be provided to Trustee. No such notice is required for withdrawals being made pursuant to 10 CFR 50.82(a)(8)(ii), including withdrawals made during the operating life of the plant to be used for decommissioning planning. In addition, no such notice is required to be made to the NRC after decommissioning has begun and withdrawals are being made under 10 CFR 50.82(a)(8).

4.02 Use of Trust Funds.

Until decommissioning has been completed, the Trust Fund, including any disbursements or payments from the Trust Fund, must be used only as authorized by the regulations of the NRC including 10 CFR 50.75(h) & 50.80(a), such as:

- (a) to satisfy, in whole or part, the liability of Grantor for decommissioning costs of the nuclear power plant to which the Trust Fund relates;
- (b) to pay ordinary administrative costs (including taxes) and other incidental expenses of the Trust Fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the Trust Fund, which includes investment management fees;
- (c) to be transferred to a qualified trust established for Kewaunee Power Station pursuant to an agreement with terms substantially similar to this Agreement, to the extent permitted by the Internal Revenue Code, or to another financial assurance method acceptable under 10 CFR 50.75(e) of the NRC's regulations; or
- (d) to make investments, to the extent that the assets are not currently required for another purpose permitted under this section.

4.03 Payments from the Trust Fund.

Subject to the foregoing provisions of this Article 4, on the written direction of the Grantor, the Trustee will make payments and transfers from the Trust Fund to the persons or entities, in the

manner, in the amounts, and for the purposes specified in the written directions. After payment, the amount paid is no longer a part of the Trust Fund. Each Grantor direction will include a representation by the Grantor that the payment is in accordance with the purposes of this Agreement. The Trustee is not responsible for the application of the payments or for the adequacy of the Trust Fund after payment to meet and discharge Trust liabilities.

4.04 Payment of Compensation, Expenses, and Taxes.

(a) The Trustee will be paid reasonable compensation as agreed upon from time to time in writing by the Grantor and the Trustee. In addition, the Trustee will be reimbursed from the Trust Fund or, at the option of the Grantor, by the Grantor for all ordinary and necessary expenses incurred in connection with the operation of the Trust, including federal income tax imposed on the modified gross income of the Trust, any state or local tax imposed on the income or assets of the Trust, legal expenses, accounting expenses, actuarial expenses, investment manager fees and trustee compensation and expenses. All taxes levied or assessed on or in respect of the Trust Fund, whether assessed to the Trust Fund or the Grantor, will be paid, at the option of the Grantor, by the Grantor, or from the Trust Fund and pro rated among the Trust Fund and other funds in proportion to their respective fair-market values at the preceding calendar year end in the case of property taxes and in proportion to their respective taxable incomes for the relevant taxable year in the case of income taxes. To the extent that any taxes are provoked by the investment in or receipt of an identifiable asset or transaction involving the Trust Fund or other particular fund, the taxes will be charged against the Trust Fund or other appropriate fund, giving appropriate effect to computations of income and deductions related to the asset or transaction, and allocating any exemption available to the Trust Fund in proportion to the tax liability provoked. Identifiable direct expenses will be treated in the same way as taxes.

(b) The Trust Fund is a "grantor trust" under Subpart E of Part I of subchapter J of the Internal Revenue Code of 1986, as amended. The Trustee will prepare and timely deliver to the Grantor such information as shall be necessary for the Grantor to file timely tax returns reporting all items of income, deduction, gains or loss in respect of the Trust Fund.

4.05 Accounting.

(a) The Trustee will keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions for the Trust Fund. All accounts, books, tax returns, and records relating to the Trust are open to inspection and audit at all reasonable times by any person designated by the Grantor.

(b) Within sixty days after the end of each calendar year and within sixty days after the removal or resignation of a Trustee as provided in Section 2.01, the Trustee will file a written report of the investments, receipts, disbursements, and other transactions during the year or during the period from the close of the last year to the date of the Trustee's removal or resignation, including the current value of the Trust Fund. After ninety days from the date of filing that annual or other accounting, the Trustee is forever released and discharged from all liability and accountability to anyone with respect to the facts and transactions shown in the accounting, except for acts or transactions as to which the Grantor files written objections with the Trustee within the ninety-day period.

(c) Except as specifically provided by statute, no person other than the Grantor may require an accounting or bring an action against the Trustee about the Trust or the actions of the Trustee. The Trustee is not required to make reports to any courts or administrative agencies, except as specifically required by statute.

4.06 Valuation.

(a) As of each calendar year end, the Trustee will determine the fair-market value of the Trust Fund and report that value to the Grantor in writing. The valuation determined according to this section is binding on the Grantor, and all other persons interested in the Trust.

(b) Non-cash contributions are valued at fair-market value determined by the Trustee as of the actual date on which the Trustee accepts the property.

(c) In determining the net worth of the Trust Fund, the Trustee will deduct all allocable expenses.

ARTICLE 5 AMENDMENT AND TERMINATION OF THE TRUST

5.01 Amendment of the Trust.

The Grantor has the right at any time to amend this Agreement in whole or in part, but

(a) No amendment may be made that changes the Trustee's duties or liabilities without the Trustee's written consent, such consent being evidenced by Trustee's agreement to such amendment; and

(b) This Agreement may not be amended in any material respect without written notification to the Director, Office of Nuclear Reactor Regulation (Director, NRR) having been given at least 30 working days before the proposed effective date of the amendment, such notice having provided the text of the proposed amendment and a statement of the reason for the proposed amendment, and without the notice period having expired with no notice of objection having been received from the Director, NRR.

An amendment may be made retroactively if such application is necessary to bring the Trust or the Grantor into conformity with any applicable statute or regulation.

5.02 Termination of Trust Fund.

Except as otherwise provided by law, the Trust Fund terminates upon completion of all nuclear power plant decommissioning that it has been created to fund, as certified to the Trustee by the Grantor, or upon the frustration or failure of the trust's purposes. Upon termination of the Trust Fund, any of the Trust Fund that remains shall revert to the Grantor free of trust.

5.03 Merger, Consolidation, or Succession.

(a) A corporation with which the Grantor is merged or a corporation or other legal entity which acquires substantially all the assets of the Grantor, shall become the Grantor for purposes of this Agreement, and every reference in this Agreement to the Grantor will be treated as a reference to that surviving or purchasing corporation or other legal entity.

(b) If the Grantor is liquidated, merged, or consolidated with another company or other legal entity and the Grantor's successor chooses not to discharge the Grantor's duties under this Agreement, the Trust nevertheless will survive and the Trust Fund will continue in trust under the terms of this Agreement. In such a case, the Trustee may, but shall not be required to, petition a court of competent jurisdiction seeking the appointment of a party to succeed to the responsibilities of the Grantor. In seeking such an order, the Trustee shall be held harmless and indemnified by the Grantor or its successor. Any expenses incurred by the Trustee in seeking said court order shall be the responsibility of the Grantor or its successor until paid.

(c) The merger or consolidation of the Trust with, or a transfer of assets or liabilities from this Trust to another trust or fund is not permitted unless the Trustee has received an opinion of counsel satisfactory to the Trustee to the effect that the merger, consolidation, or transfer results in no diversion or use of assets that is not permitted by the Agreement.

5.04 Impossibility of Diversion.

Until the Trust Fund terminates, assets of the Trust Fund may not be used for or diverted to purposes other than the purposes permitted by this Agreement.

ARTICLE 6 MISCELLANEOUS PROVISIONS

6.01 Construction.

The Grantor's intent and purpose in creating this Trust and executing this Agreement is to maintain a Nuclear Decommissioning Trust Fund to provide for the costs of decommissioning the Grantor's nuclear power plants. All questions arising in the administration of the Trust and in the construction of this Agreement will be resolved accordingly. This Agreement will be construed, enforced, and administered in accordance with the laws of the Commonwealth of Pennsylvania, except to the extent that the laws of the United States of America take precedence, in which event, this Agreement will be construed in accordance with the laws of the United States of America. The headings and subheadings in this Agreement have been inserted for convenience only and are to be ignored in construction of the provisions.

6.02 Rights under the Trust.

No person other than the Grantor has any vested rights under the Trust except to the extent that rights may accrue under other agreements made by the Trustee. Except as permitted by law, no assignment of any rights or benefits under the Trust is permitted or recognized, nor will any rights or benefits be subject to attachment or other legal or equitable process or subject to the jurisdiction of any bankruptcy court.

6.03 Frustrated Actions.

If it becomes impossible for the Grantor or the Trustee to perform an act, then that act will be performed which, in the discretion of the Trustee, most nearly carries out the intent and purpose of this Agreement.

6.04 Construction of Direction.

Whenever the Grantor or Trustee is directed to take an action upon the occurrence of an event, neither is under obligation to take that action until it has received proper and satisfactory written notice of the occurrence.

6.05 Authorizations and Communication.

A written authorization or communication from an officer of the Grantor or the Trustee that an event has occurred constitutes conclusive evidence of the occurrence, and the Grantor or Trustee is fully protected and discharged from all liability in accepting and relying upon that authorization or communication.

6.06 Genuine Notice.

The Grantor or the Trustee will not incur liability to any persons or party when acting on a notice, request, consent, letter, telegram, or other paper or document that it believes to be genuine, and to have been signed or sent by the proper person.

6.07 Loss or Damage.

Except as specifically provided by statute, neither the Grantor nor the Trustee is liable for loss or damage, except by reason of its own gross negligence or willful default. The Trustee shall not be liable for any act or omission of any other person in carrying out any responsibility imposed upon such person and under no circumstances shall the Trustee be liable for any indirect, consequential or special damages with respect to its role as Trustee.

6.08 Binding Nature.

This Agreement is binding upon the heirs, executors, administrators, successors, and assigns of all parties, present and future.

6.09 Settlement of Transactions and Collateral.

The Trustee may take all action necessary to pay for, and settle, authorized transactions, including disbursements or expenses, or the purchase or sale of foreign exchange, or of contracts for foreign exchange, and including exercising the power to borrow or raise monies from the Trustee in its corporate capacity or an affiliate. To secure expenses and advances made to settle or pay for authorized transactions, including payment for securities and disbursements, the Grantor grants to the Trustee a first priority security interest in the Trust Fund, all property therein, all income, substitutions and proceeds, whether now owned or hereafter acquired (the "Collateral"); provided that the Grantor does not grant the Trustee a security interest in any securities issued by an affiliate of the Trustee (as defined in Section 23A of the Federal Reserve Act). The parties intend that as the securities intermediary with respect to the Collateral, the Trustee's security interest shall automatically be perfected when it attaches. To the extent the Trustee advances funds to the Trust Fund for disbursements or to effect the settlement of purchase transactions, the Trustee shall be entitled to collect from the Trust Fund reasonable charges established under the Trustee's standard overdraft terms, conditions and procedures.

6.10 Force Majeure.

Notwithstanding anything in this Agreement to the contrary contained herein, the Trustee shall not be responsible or liable for its failure to perform under this Agreement or for any losses to the Trust Fund resulting from any event beyond the reasonable control of the Trustee, its agents or subcustodians. This Section shall survive the termination of this Agreement.

6.11 Representation and Warranty as to Authority.

The Grantor 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 Grantor or the Trustee to this Agreement.

IN WITNESS of this Amended and Restated Agreement, the Grantor and the Trustee have signed below on this _____ day of _____, 2005.

DOMINION ENERGY KEWAUNEE, INC.

By: _____

MELLON BANK, N.A.

By: _____

Title: _____

EXHIBIT A
CROSS-TRADING INFORMATION

As part of its cross-trading program, Mellon Bank, N.A. is to provide to each affected customer the following information:

I. The existence of the cross-trading program

Mellon Bank, N.A. has developed and intends to utilize, wherever practicable, a cross-trading program for indexed accounts and large accounts.

II. The “triggering events” creating cross-trade opportunities

Three “triggering events” may create opportunities for cross-trading transactions. They are generally the following (see Mellon Bank, N.A. for more information):

- 1) A change in the composition or weighting of the index by the independent 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 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 Mellon Bank, N.A.’s own plans (other than Mellon Bank, N.A.’s defined contribution plans under which participants may direct among various investment options, including Indexed Accounts) are excluded as a “triggering event”; or
- 3) A recorded declaration by Mellon Bank, N.A. 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 Mellon Bank, N.A. 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. Mellon Bank, N.A. 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 Mellon Bank, N.A. imposes a trivial share constraint to reduce excessive custody ticket charges to participating accounts.

V. Other procedures implemented by Mellon Bank, N.A. for its cross-trading practices

Mellon Bank, N.A. has developed certain internal operational procedures for cross-trading debt and equity securities. These procedures are available upon request.