

Gary R. Leidich  
President and Chief Nuclear Officer330-384-5770  
Fax: 330-384-5669December 8, 2005  
L-05-193  
Serial Number 3210  
PY-CEI/NRR-2922LU.S. Nuclear Regulatory Commission  
Attention: Document Control Desk  
Washington, D.C. 20555

Re: Beaver Valley Power Station, Unit Nos. 1 & 2, Docket Nos. 50-334 & 50-412  
Davis-Besse Nuclear Power Station, Unit No. 1, Docket No. 50-346  
Perry Nuclear Power Plant, Unit No. 1, Docket No. 50-440  
Order Approving the Transfer of Licenses and Conforming Amendments Related to the Beaver Valley Unit Nos. 1 & 2, the Davis-Besse Nuclear Power Station, Unit No. 1, and the Perry Nuclear Power Plant, Unit 1 (TAC NOS. MC7005, MC7006, MC7007, MC7223, MC7224, MC7225, and MC7226)

On May 18, 2005, the FirstEnergy Nuclear Operating Company ("FENOC") acting as agent for and on behalf of FirstEnergy Nuclear Generation Corp. ("FENGenCo") and Pennsylvania Power Company ("Penn Power"), submitted an application to the NRC requesting an Order consenting to the transfer of Penn Power's ownership interests in Beaver Valley Power Station, Units No. 1 and 2 ("BVPS 1 and 2") and Perry Nuclear Power Plant, Unit No. 1 ("Perry") to FENGenCo.

On June 1, 2005, FENOC acting as agent for and on behalf of FENGenCo, Ohio Edison Company ("Ohio Edison"), OES Nuclear, Inc. ("OES Nuclear"), The Cleveland Electric Illuminating Company ("Cleveland Electric"), and The Toledo Edison Company ("Toledo Edison"), submitted an application to the NRC requesting an Order consenting to the transfer of Ohio Edison's, OES Nuclear's, Cleveland Electric's, and Toledo Edison's ownership interests in BVPS 1 and 2, Perry, and Davis-Besse Nuclear Power Station, Unit No. 1 ("Davis-Besse") to FENGenCo.

The NRC approved the requests and issued an Order consenting to the transfers to FENGenCo on November 15, 2005. FENOC on behalf of the aforementioned companies and FENGenCo hereby notifies the NRC that the non-NRC regulatory approvals for the transfer have been received. Additionally, FENOC is providing notification that the closing date for the transfer is December 16, 2005.

This submittal provides the response to a Condition described within the November 15 Order. Condition 4 requires FENGenCo to provide documentary evidence that FENGenCo has the required nuclear liability insurance pursuant to 10CFR140. Attachment 1 provides documentation of the insurance.

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Additionally, this submittal provides, as Attachment 2, a copy of the executed Master Trust Agreement as requested by the NRC staff during a telephone conference held November 8, 2005 between the NRC and FENOC staffs which discussed the Agreement.

If you have questions or require additional information, please contact Mr. Gregory A. Dunn, Manager – Fleet Licensing, at (330) 315-7243.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 8, 2005.



Gregory H. Halnon

Attachments:

1. Documentary Evidence of Nuclear Liability Insurance
2. Nuclear Decommissioning Master Trust Agreement
3. Regulatory Commitments

cc: Director, NRR  
NRC Region 1 Administrator  
NRC Region 3 Administrator  
Beaver Valley NRC Project Manager  
Davis-Besse NRC Project Manager  
Perry NRC Project Manager  
Beaver Valley NRC Senior Resident Inspector  
Davis-Besse NRC Senior Resident Inspector  
Perry NRC Senior Resident Inspector  
D.A. Allard, Director BRP/DEP  
L.E. Ryan, BRP/DEP  
N. Dragani, Executive Director, Ohio Emergency Management Agency, State of Ohio  
(NRC Liaison)  
Utility Radiological Review Board

Attachment 1  
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## Documentary Evidence of Nuclear Liability Insurance

(American Nuclear Insurers and Nuclear Electric Insurance Limited Coverage)



John Hoffman  
Director, Underwriting

November 30, 2005

Mr. Ira Dinitz  
Indemnity Specialist  
U.S. Nuclear Regulatory Commission  
Mail Stop 12D3  
1 White Flint North  
Rockville, MD 20852

**Re: FirstEnergy Nuclear Generation Corp.**

Dear Ira,

This letter confirms that American Nuclear Insurers will write nuclear liability insurance for FirstEnergy Nuclear Generation Corp. as owner of the Beaver Valley, Davis-Besse and Perry nuclear plants. The insurance will coincide with the transfer of those plant assets from the current owners to FirstEnergy Nuclear Generation Corp. The nuclear liability insurance is purchased to satisfy the requirements for financial protection as set forth in Section 170b. of the Atomic Energy Act of 1954, as amended, and the requirements of 10 CFR Part 140.

Effective on the closing date of the asset transfer, the insurance policy and certificates for the Beaver Valley, Davis-Besse and Perry nuclear plants will be amended as follows.

- Under Facility Form Policy No. NF-0226, Facility Worker Form Certificate No. NW-0603, and Secondary Financial Protection Certificate No. N-0110, the Named Insureds will be changed to Ohio Edison Company, Toledo Edison Company, FirstEnergy Nuclear Generation Corp. and FirstEnergy Nuclear Operating Company. Under Secondary Financial Protection Certificate No. N-0058, the Named Insureds will be changed to FirstEnergy Nuclear Generation Corp. and FirstEnergy Nuclear Operating Company. FirstEnergy Nuclear Generation Corp. also will be added to each Bond for Payment of Retrospective Premiums.
- Under Facility Form Policy No. NF-0236, Facility Worker Form Certificate No. NW-0608, and Secondary Financial Protection Certificate No. N-0061, the Named Insureds will be changed to FirstEnergy Nuclear Generation Corp. and FirstEnergy Nuclear Operating Company. FirstEnergy Nuclear Generation Corp. and FirstEnergy Nuclear Operating Company also will be added to the Bond for Payment of Retrospective Premiums.


95 Glastonbury Boulevard, Glastonbury, CT 06033  
(860) 682-1332 (860) 659-0002 (Fax)  
JHoffman@amnucins.com

Mr. Ira Dinitz  
November 30, 2005  
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- Under Facility Form Policy No. NF-0291, Facility Worker Form Certificate No. NW-0644, and Secondary Financial Protection Certificate No. N-0102, the Named Insureds will be changed to Ohio Edison Company, FirstEnergy Nuclear Generation Corp. and FirstEnergy Nuclear Operating Company. FirstEnergy Nuclear Generation Corp. also will be added to the Bond for Payment of Retrospective Premiums.

This commitment to write nuclear liability insurance for FirstEnergy Nuclear Generation Corp. remains valid through March 31, 2006. If the asset transfer takes place after that date, we will review the circumstances before re-stating our willingness to provide insurance.

Regards,

  
John Hoffman  
Director, Underwriting

c: Thomas McDonnell, FirstEnergy  
Ian Maciulis, Marsh



NEIL

Nuclear Electric Insurance Limited

Suite 1100  
1201 N. Market Street  
Wilmington, DE 19801  
U.S.A.

David B. Ripsom  
Senior Vice President &  
General Counsel

302 573-2292 Direct  
302 888-3000 Tel  
302 888-3007 Fax  
610 453-8744 Cell  
dripsom@nnlneil.com

December 7, 2005

Mr. Ira Dinitz  
Indemnity Specialist  
U.S. Nuclear Regulatory Commission  
Mail Stop 12D3  
1 White Flint North  
Rockville, MD 20852

Re: FirstEnergy Nuclear Generation Corp.

Dear Mr. Dinitz:

This letter confirms that Nuclear Electric Insurance Limited will write nuclear property insurance for FirstEnergy Nuclear Generation Corp (FENGenCo) as the owner of the Beaver Valley, Davis-Besse and Perry nuclear plants. The insurance will be effective on the date of the transfer of those plant assets from the current owners to FENGenCo.

Effective on the closing date of the asset transfer, the following Primary Property and Decontamination Liability Policies, and Decontamination Liability, Decommissioning Liability and Excess Property Insurance Policies, for Beaver Valley, Davis-Besse and Perry nuclear plants will be amended to include FENGenCo as an Insured:

Beaver Valley - P05-071 and X05-014

Davis-Besse - P05-059 and X05-035

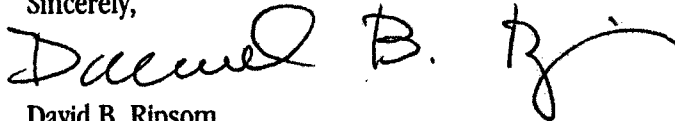
Perry - P05-067 and X05-065

The combined limits on the above policies will satisfy the NRC required minimum property insurance limit of \$1.06 billion in accordance with 10 CFR 50.54(w).

Mr. Ira Dinitz  
December 7, 2005  
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This commitment to write nuclear property insurance for FENGenCo remains valid through March 31, 2006. If the asset transfer takes place after that date, we will review the circumstances before re-stating our commitment.

Sincerely,

A handwritten signature in black ink, appearing to read "David B. Ripsom". The signature is fluid and cursive, with a long horizontal stroke at the end.

David B. Ripsom  
Senior Vice President and General Counsel

c: Thomas McDonnell, FirstEnergy

Attachment 2  
L-05-193  
Serial Number 3210  
PY-CEI/NRR-2922L

## Nuclear Decommissioning Master Trust Agreement



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**NUCLEAR DECOMMISSIONING  
MASTER TRUST AGREEMENT**

**dated as of December 1, 2005**

**by and between**

**FIRSTENERGY NUCLEAR GENERATION CORP.**

**and**

**MELLON BANK, N.A.,  
as TRUSTEE**

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**NUCLEAR DECOMMISSIONING  
MASTER TRUST AGREEMENT**

**THIS NUCLEAR DECOMMISSIONING MASTER TRUST AGREEMENT** (the "Agreement"), dated as of December 1, 2005 and effective upon the transfer of assets to the trusts created herein, between FirstEnergy Nuclear Generation Corp., a corporation duly organized and existing under the laws of the State of Ohio, having its principal office at 76 South Main Street, Akron, Ohio 49308 (the "Company"), and MELLON BANK, N.A., as Trustee, having its principal office at One Mellon Bank Center, Pittsburgh, Pennsylvania 15258 (the "Trustee");

**WITNESSETH:**

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

**WHEREAS**, the assets of the funds governed by the Master Decommissioning Trust Agreement between Pennsylvania Power Company ("Penn Power"), Ohio Edison Company ("Ohio Edison"), The Toledo Edison Company ("Toledo Edison"), and The Cleveland Electric Illuminating Company ("Cleveland Electric") and Mellon Bank, N.A., described in Schedule B ("Prior Agreement"), and established for the purpose of holding the decommissioning funds established by Penn Power, Ohio Edison, Toledo Edison, and Cleveland Electric for each Unit in which Penn Power, Ohio Edison, Toledo Edison, and Cleveland Electric owned an interest in whole or in part, have been transferred to the Company; and

**WHEREAS**, the Company desires to appoint Mellon Bank, N.A. as Trustee to maintain pursuant to this Agreement its funds which qualify 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 (the "Code"), and the regulations thereunder (the "Qualified Funds"), and its funds which do not so qualify (the "Nonqualified Funds"; collectively, the "Funds"), under the laws of the State of Ohio; and

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

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH**, that to provide for the maintenance of the Funds and making of payments therefrom and the performance of the covenants of the Company and the Trustee set forth herein, the Company does hereby sell,

assign, transfer, set over and pledge unto the Trustee, and to its successors in the trust and its assigns, all of the Company's right, title and interest in and to any and all cash and property herewith and hereafter contributed to the Funds, subject to the provisions of Article VI hereof and Section 4 of the Special Terms of the Qualified Nuclear Decommissioning Reserve Fund, attached hereto as Exhibit A ("the Special Terms").

**TO HAVE AND TO HOLD THE SAME IN TRUST** for the exclusive purpose of providing funds for the decommissioning of the Units in order to satisfy the liability in connection therewith, to pay the administrative costs and other incidental expenses of the Funds, and to make certain investments, all as hereinafter provided.

### **I. Definitions.**

**Section 1.01 Definitions.** As used in this Agreement, the following terms shall have the following meanings:

"Agreement" shall mean this Master Decommissioning Trust Agreement as the same may be amended, modified, or supplemented from time to time.

"Applicable Law" shall mean all applicable laws, statutes, treaties, rules, codes, ordinances, regulations, certificates, orders, interpretations, licenses and permits of any Governmental Authority and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other judicial or quasi-judicial tribunal of competent jurisdiction (including those pertaining to health, safety, the environment or otherwise).

"Applicable Tax Law" shall mean Section 468A of the Code (or comparable subsequent provision of the Code) and the regulations thereunder, and any other provision of the Code relating to the Federal taxation of the Funds or credits or deductions based on Contributions.

"Authorized Party" shall mean the persons designated as such pursuant to Section 6.03 hereof.

"BVPS 1" shall mean the nuclear generating unit located at the Beaver Valley Power Station and known as Unit No. 1, together with its associated facilities and equipment.

"BVPS 2" shall mean the nuclear generating unit located at the Beaver Valley Power Station and known as Unit No. 2, together with its associated facilities and equipment.

"Beaver Valley Power Station" or "BVPS" shall mean the electric generating station located on the south bank of the Ohio River in Beaver County, Pennsylvania, approximately 25 miles northwest of Pittsburgh.

"Business Day" shall mean a day that is not a Saturday or Sunday or a legal holiday in the State of Ohio.

"Code" shall mean the Internal Revenue Code of 1986, as the same may be amended from time to time.

"Company" shall have the meaning set forth in the opening paragraph of this Agreement.

"Contribution" shall mean any contribution, cash or otherwise, made to the Trustee for deposit in one or more of the Funds and in such subaccount thereunder as provided in this Agreement. No contribution which consists of real property shall be permitted.

"Davis-Besse" shall mean the nuclear generating unit located at the Davis-Besse Nuclear Power Station and known as Unit No. 1, together with its associated facilities and equipment.

"Davis-Besse Nuclear Power Station" shall mean the electric generating station located on the shore of Lake Erie in Ottawa County, Ohio, approximately 21 miles east of Toledo.

"Decommissioning" shall mean the decommissioning and retiring of a nuclear generating unit from commercial service under Applicable Law and, to the extent a method of decommissioning is not prescribed by Applicable Law, by the method of decommissioning determined as provided in the operating agreement relating to such unit, and may include the removal (as a facility) of such unit safely from service, the dismantling, shipping, long-term storage and disposal of all radioactive parts and components of such unit and the reduction of residual radioactivity at the site of such unit, including reduction of residual radioactivity to a level that permits, and the removal of non-contaminated structures and components and such restoration as shall be necessary or desirable to permit, the release of the property for unrestricted use and termination of the NRC license relating to the unit. This process may include, but is not limited to (a) the removal of both radioactively contaminated and radioactively uncontaminated portions of the unit, and shipping, long-term storage and disposal of the same, in each case, in accordance with Applicable Law at the end of the useful life of such unit or if there shall be no Applicable Law at that time, in accordance with the operating agreement with respect to such unit (b) work done to the site of the unit and its associated equipment and facilities and to adjacent areas, whether or not such areas are contiguous to such site, in order to decontaminate such site and such areas and (c) work done by or on behalf of the Company (or for which the Company is charged) to the site where any portion of the unit and its associated equipment and facilities are to be stored or disposed of in order to prepare and maintain such site as a storage or disposal site.

"Decommissioning Costs" shall mean all costs and expenses relating or allocable to, or incurred in connection with Decommissioning, including but not limited to the removal of the equipment, structures and portions of a nuclear generating unit and its site containing radioactive contaminants or the decontamination of the same, plus, in the case of decontamination, the cost of removal, shipping and long-term storage or disposal of such equipment structures and portions; provided, however, that if Applicable Law prohibits the foregoing or imposes requirements that are more costly to implement than the removal, shipping, storage, disposal or decontamination referred to above in this definition, the term "Decommissioning Costs" shall mean all costs and expenses relating or allocable to, or incurred in connection with, the most costly requirements imposed by Applicable Law with respect to radioactive contaminants after a nuclear generating unit ceases operation.

"Funds" shall mean the Qualified Funds and the Nonqualified Funds, collectively.

"Investment Manager(s)" shall mean the person(s) appointed by the Company pursuant to Section 4.02 hereof.

"Nonqualified Funds" shall mean, collectively, the Funds not constituting Qualified Funds, established under, and in accordance with, Section 2.01 and Section 2.02 of the Agreement with respect to any of the Units. Each Nonqualified Fund shall have such subaccounts as are provided for herein or as the Company may otherwise specify.

"NRC" shall mean Nuclear Regulatory Commission.

"Order" shall mean any order relating to Decommissioning issued by a Governmental Authority and applicable to one or more of the Units.

"Perry" shall mean the nuclear generating unit located at the Perry Nuclear Power Plant and known as Unit No. 1, together with its associated facilities and equipment.

"Perry Nuclear Power Plant" shall mean the electric generating station located on the shore of Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland.

"Qualified Funds" shall mean, collectively, the accounts established under, and in accordance with, Section 2.01 and Section 2.02 of the Agreement for purposes of Section 468A of the Code which are designated as such in the records of the Trustee. Each Qualified Fund shall have such subaccounts as are specified herein or as the Company may otherwise specify. Contributions, if any, made with respect to each such Fund in any year shall not exceed either (i) the amount permitted to be made to such Fund with respect to the year in question in order for the Company to be allowed to take the deduction afforded by Section 468A of the Code, or (ii) any amount otherwise permitted by Section 468A of the Code. It shall be the Company's responsibility and not that of the Trustee to monitor the amount of such contributions.

“Service” shall mean the Internal Revenue Service.

“Trustee” shall have the meaning ascribed thereto in the opening paragraph of this Agreement or any successor appointed pursuant to Section 4.08 hereof.

“Units” shall mean BVPS 1, BVPS 2, Davis-Besse, and Perry, collectively.

## II. Purposes of the Funds; Contributions.

**Section 2.01 Establishment of the Funds.** The Trustee shall hold a separate Qualified Fund, as a separate trust created hereunder, and a separate Nonqualified Fund, as a separate trust created hereunder, for each Unit. The Funds shall be as identified in Schedule A.

The Funds shall be maintained separately at all times in the United States as the Nonqualified Funds and the Qualified Funds pursuant to this Agreement and in accordance with the laws of the State of Ohio. The Company intends that the Qualified Funds shall qualify as Nuclear Decommissioning Reserve Funds under Section 468A of the Code. The assets of the Qualified Funds may be used only in a manner authorized by Section 468A of the Code and the Treasury Regulations thereunder and this Agreement cannot be amended to violate Section 468A of the Code or the Treasury Regulations thereunder. The Trustee shall maintain such records as are necessary to reflect each Fund separately on its books from each other Fund and shall create and maintain such subaccounts within each Fund as the Company shall direct. In performing its duties under this Agreement, the Trustee shall exercise the same care and diligence that it would devote to its own property in like circumstances.

**Section 2.02 Purposes of the Funds.** The Funds are established for the exclusive purpose of providing funds for the decommissioning of the Units. The Nonqualified Fund for a Unit shall accumulate all contributions (whether from the Company or others) which do not satisfy the requirements for contributions to the Qualified Fund for that Unit, pursuant to Section 2 of the Special Terms. The Qualified Funds shall accumulate all contributions (whether from the Company or others) which satisfy the requirements of Section 2 of the Special Terms. The Qualified Funds shall also be governed by the provisions of the Special Terms, which provisions shall take precedence over any provisions of this Agreement construed to be in conflict therewith. The assets in the Qualified Funds shall be used as authorized by Section 468A of the Code and the Treasury Regulations thereunder. None of the assets of the Funds shall be subject to attachment, garnishment, execution or levy in any manner for the benefit of creditors of the Company or any other party.

**Section 2.03 Contributions to the Funds.** The assets of the Funds shall be transferred or contributed by the Company (or by others approved in writing by the Company) from time to time. Cash contributions for each Unit shall be allocated to its Qualified Fund unless the Company designates in writing at the time of payment to which of the Unit's two Funds the payment is allocated. The Company shall have sole discretion as to whether cash payments are



allocated to a Qualified Fund or a Nonqualified Fund. Contributions of property other than cash shall be allocated to the Nonqualified Fund, unless the Company directs the contribution of property to the Qualified Fund and such contribution is permitted by Section 468A of the Code.

### III. Payments by the Trustee.

**Section 3.01 Use of Assets.** The assets of each Fund shall be used exclusively (a) to satisfy, in whole or in part, any expenses or liabilities incurred with respect to the Decommissioning Costs of that Fund's Unit, including expenses incurred in connection with the preparation for decommissioning of that Unit, (b) to pay the administrative costs and other incidental expenses of each Fund, and (c) to invest in publicly-traded securities and investments (including common trust funds) as directed by the investment manager(s) pursuant to Section 4.02(a) or the Trustee pursuant to Section 4.02(b), except that all assets of the Qualified Funds must be invested in Permissible Assets as defined in the Special Terms. Except for investments tied to market indexes or other non-nuclear sector collective, commingled or mutual funds, the assets of the Funds shall not be invested in: (1) the securities or other obligations of FirstEnergy Corp. or FirstEnergy Nuclear Generation Corp., or affiliates thereof, or their successors or assigns; and (2) the securities or other obligations of any entity owning or operating one or more nuclear power plants. A non-nuclear sector collective, commingled or mutual fund is one in which less than 50 percent of the fund is invested in the securities of entities that own or operate a nuclear power plant or that are parent companies of subsidiaries that own or operate a nuclear power plant. Use of the assets of the Qualified Funds shall be further limited by the provisions of the Special Terms. The assets of the Funds shall be used, in the first instance, to pay the expenses related to the decommissioning of that Fund's Unit, as defined by the NRC in its regulations and issuances, and as provided in the NRC issued license to operate each Unit and any amendments thereto. Notwithstanding the foregoing, the assets of a Unit's Funds may be transferred to another trust that is subject to terms similar to the terms of this Agreement, where: (i) such transfer is made in connection with the sale, exchange, or other disposition of an interest in such Unit; (ii) the assets transferred are proportionate to the interest sold, exchanged or otherwise disposed; (iii) such transfer of assets from a Unit's Qualified Fund is consistent with the requirements of Treasury Regulations § 1.468A-6; and (iv) the disposition of the interest in such Unit has received the prior written consent of the NRC pursuant to 10 CFR 50.80 and Section 184 of the Atomic Energy Act of 1954, as amended.

### **Section 3.02 Certification for Decommissioning Costs.**

(a) If assets of a Fund are required to satisfy Decommissioning Costs of that Fund's Unit, the Company shall present a certificate substantially in the form attached hereto as Exhibit B to the Trustee signed by its Chairman of the Board, its President or one of its Vice Presidents and another officer of the Company, requesting payment from its Fund. Any certificate requesting payment by the Trustee to a third party or to the Company from a Fund for Decommissioning Costs shall include the following:

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

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

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

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

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

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

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

(c) The Company shall have the right to enforce payments from the Funds upon compliance with the procedures set forth in this Section 3.02.

**Section 3.03 Administrative Costs.** The Trustee shall pay, as directed by the Company, the administrative costs and other incidental expenses of each Nonqualified Fund, including all federal, state, and local taxes, if any, imposed directly on the Nonqualified Fund or the income therefrom, legal expenses, accounting expenses, actuarial expenses and trustee expenses, from the assets of the respective Nonqualified Fund and shall pay, as directed by the Company, the administrative costs and other incidental expenses of each Qualified Fund, as defined in the Special Terms, from the assets of the respective Qualified Fund.

**Section 3.04 Notice Regarding Disbursements or Payments.** Except for (i) payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, (ii) withdrawals being made under 10 CFR 50.82(a)(8), and (iii) adjustments for Excess Contributions pursuant to Section 3.05 hereof being transferred between a Unit's Qualified Fund and Non-qualified Fund, 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 Company within the notice period. The required notice may be made by the Trustee or on the Trustee's behalf. 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).

**Section 3.05 Payments between the Funds.** The Trustee shall make payments (i) from a Unit's Qualified Fund to that Unit's Nonqualified Fund provided such payments are in cash and are in accordance with Section 4 of the Special Terms or (ii) from a Unit's Nonqualified Fund to that Unit's Qualified Fund provided such payments are in accordance with the contribution limitations set forth in Section 2 of the Special Terms, as the case may be, upon presentation by the Company of a certificate substantially in the form of Exhibit C hereto executed by the Company instructing the Trustee to make any such payments. The Trustee shall be fully protected in relying upon such certificate.

#### **IV. Concerning the Trustee.**

**Section 4.01 Authority of Trustee.** The Trustee hereby accepts the Trust created under this Agreement. The Trustee shall have the authority and discretion to manage and control the Funds to the extent provided in this Agreement but does not guarantee the Funds in any manner against investment loss or depreciation in asset value or guarantee the adequacy of the Funds to satisfy the Decommissioning Costs. The Trustee shall not be liable for the making, retention or sale of any asset of a Qualified Fund which qualifies as a Permissible Asset, as defined in the Special Terms, nor shall the Trustee be responsible for any other loss to or diminution of the Funds, or for any other loss or damage which may result from the discharge of its duties hereunder except for any action not taken in good faith.

**Section 4.02 Investment of Funds.** (a) The Company shall have the authority to appoint one or more investment managers who shall have the power to direct the Trustee in investing the assets of the Funds; provided, however, that the Trustee shall not follow any direction which would result in assets of the Qualified Funds being invested in assets other than Permissible Assets as defined in the Special Terms. Any such investment manager(s) or other person directing investments made in the Trusts shall adhere to the "prudent investor" standard as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission ("FERC") regulations (the "Prudent Investor Standard"). To the extent that the Company chooses to exercise this authority, it shall so notify the Trustee and instruct the Trustee in writing to separate into a separate account those assets the investment of which will be directed by each investment

manager. The Company shall designate in writing the person or persons who are to represent any such investment manager in dealings with the Trustee. Upon the separation of the assets in accordance with the Company instructions, the Trustee, as to those assets while so separated, shall be released and relieved of all investment duties, investment responsibilities and investment liabilities normally or statutorily incident to a trustee; provided, however, that the Trustee shall not be relieved of the responsibility of ensuring that assets of the Qualified Funds are invested solely in Permissible Assets, as defined in the Special Terms. The Trustee shall retain all other fiduciary duties with respect to assets the investment of which is directed by investment managers.

(b) To the extent that the investment of assets of the Funds is not being directed by one or more investment managers under Section 4.02(a), the Trustee shall hold, invest, and reinvest the funds delivered to it hereunder as it in its sole discretion deems advisable, subject to: (i) the restrictions on the Use of Assets of the Funds set forth in Section 3.01 hereof; (ii) the limitations on the powers of the Trustee in Section VI hereof; and (iii) adherence to the Prudent Investor Standard.

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

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

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

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

**Section 4.03 Prohibition Against Self Dealing.** Notwithstanding any other provision in this Agreement, the Trustee shall not engage in any act of self dealing as defined in Section 468A(e)(5) of the Code and Treasury Regulations § 1.468A-5(b) or any corresponding future law or Treasury Regulation.

**Section 4.04 Compensation.** The Trustee shall be entitled to receive out of the Funds reasonable compensation for services rendered by it, as well as expenses necessarily incurred by it in the execution of the Trusts hereunder, provided such compensation and expenses qualify as administrative costs and other incidental expenses of a Qualified Fund, as defined in the Special Terms, with respect to any payment of compensation and expenses from that Qualified Fund. The Company acknowledges that, as part of the Trustee's compensation, the Trustee will earn interest on balances, including disbursement balances and balances arising from purchase and sale transactions. If the Trustee advances cash or securities for any purpose, including the purchase or sale of foreign exchange or of contracts for foreign exchange, or in the event that the Trustee shall incur or be assessed taxes, interest, charges, expenses, assessments, or other liabilities in connection with the performance of this Agreement, except such as may arise from its own negligent action, negligent failure to act, or willful misconduct, any property at any time held for the Funds or under this Agreement shall be security therefor and the Trustee shall be entitled to collect from the Funds sufficient cash for reimbursement, and if such cash is insufficient, dispose of the assets of the Company held under this Agreement to the extent necessary to obtain reimbursement. To the extent the Trustee advances funds to the Funds for disbursements or to effect the settlement of purchase transactions, the Trustee shall be entitled to collect from the Funds reasonable charges established under the Trustee's standard overdraft terms, conditions, and procedures.

**Section 4.05 Books of Account.** The Trustee shall keep separate true and correct books of account with respect to each Fund, which books of account shall at all reasonable times be open to inspection by the Company or its duly appointed representatives. The Trustee shall, upon written request of the Company, permit government agencies, such as the NRC or the Service, to inspect the books of account of each Fund. The Trustee shall furnish to the Company on or about the tenth business day of each month a statement for each Fund showing, with respect to the preceding calendar month, the balance of assets on hand at the beginning of such month, all receipts, investment transactions, and disbursements which took place during such month and the balance of assets on hand at the end of such month. The Trustee agrees to provide on a timely basis any information deemed necessary by the Company to file the Company's federal, state and local tax returns.

**Section 4.06 Reliance on Documents.** The Trustee, upon receipt of documents furnished to it by the Company pursuant to the provisions of this Agreement, shall examine the same to determine whether they conform to the requirements thereof. The Trustee acting in good faith may conclusively rely, as to the truth of statements and the correctness of opinions expressed, on any certificate or other documents conforming to the requirements of this Agreement. If the Trustee in the administration of the Funds, shall deem it necessary or desirable that a matter be provided or established prior to taking or suffering any action hereunder, such matter (unless evidence in respect thereof is otherwise specifically prescribed hereunder) may be deemed by the Trustee to be conclusively provided or established by a certificate signed by the Chairman of the Board, the President or any Vice President and another officer of the Company and delivered to the Trustee. The Trustee shall have no duty to inquire into the validity, accuracy or relevancy of any statement contained in any certificate or document nor the authorization of any party making such certificate or delivering such document, and the Trustee may rely and shall be protected in acting or refraining from acting upon any such written certificate or document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee shall not, however, be relieved of any obligation (a) to refrain from self-dealing as provided in Section 4.03 hereof; (b) to ensure that all assets of the Qualified Funds are invested solely in Permissible Assets as defined in the Special Terms; or (c) to adhere to the Prudent Investor Standard if acting as manager.

**Section 4.07 Liability and Indemnification.** The Trustee shall not be liable for any action taken by it in good faith and without gross negligence, willful misconduct or recklessness and reasonably believed by it to be authorized or within the rights or powers conferred upon it by this Agreement and may consult with counsel of its own choice (including counsel for the Company) and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and without gross negligence and in accordance with the opinion of such counsel, provided, however, that the Trustee shall be liable for direct damages resulting from investing assets of the Qualified Funds in other than Permissible Assets or from self dealing as provided in Section 4.03 hereof. Provided indemnification does not result in self dealing under Section 4.03 hereof or in a deemed contribution to a Qualified Fund in excess of the limitation on contributions under Section 468A of the Code and the Treasury Regulations thereunder, the Company hereby agrees to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without gross negligence, willful misconduct, recklessness or bad faith on the part of the Trustee, arising out of or in connection with its entering into this Agreement and carrying out its duties hereunder, including the costs and expenses of defending itself against any claim of liability, provided such loss, liability or expense does not result from investing assets of the Qualified Funds in other than Permissible Assets as defined in the Special Terms or from self dealing under Section 4.03 hereof, and provided further that no such costs or expenses shall be paid if the payment of such costs or expenses is prohibited by Section 468A of the Code or the Treasury Regulations thereunder.

The Trustee shall not be responsible or liable for any losses or damages suffered by a Fund arising as a result of the insolvency of any custodian, subtrustee or subcustodian, except to

the extent the Trustee was negligent in its selection or continued retention of such entity. Under no circumstances shall the Trustee be liable for any indirect, consequential, or special damages with respect to its role as Trustee.

**Section 4.08 Resignation, Removal and Successor Trustees.** The Trustee may resign at any time upon sixty (60) days' written notification to the Company. The Company may remove the Trustee for any reason at any time upon thirty (30) days' written notification to the Trustee. If a successor Trustee shall not have been appointed within these specified time periods after the giving of written notice of such resignation or removal, the Trustee or Company may apply to any court of competent jurisdiction to appoint a successor Trustee to act until such time, if any, as a successor shall have been appointed and shall have accepted its appointment as provided below. If the Trustee shall be adjudged bankrupt or insolvent, a vacancy shall thereupon be deemed to exist in the office of Trustee and a successor shall thereupon be appointed by the Company. Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company an appropriate written instrument accepting such appointment hereunder, subject to all the terms and conditions hereof, and thereupon such successor Trustee shall become fully vested with all the rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as Trustee hereunder. The predecessor Trustee shall, upon written request of the Company and payment of all fees and expenses, deliver to the successor Trustee the corpus of the Funds and perform such other acts as may be required or be desirable to vest and confirm in said successor Trustee all right, title and interest in the corpus of the Funds to which it succeeds.

**Section 4.09 Merger of Trustee.** Any corporation or other legal entity into which the Trustee may be merged or with which it may be consolidated, or any corporation or other legal entity resulting from any merger or consolidation to which the Trustee shall be a party, or any corporation or other legal entity to which the corporate trust functions of the Trustee may be transferred, shall be the successor Trustee under this Agreement without the necessity of executing or filing any additional acceptance of this Agreement or the performance of any further act on the part of any other parties hereto.

## V. Amendments.

The Company may revoke this Agreement at any time or may amend this Agreement from time to time, provided such amendment does not cause the Qualified Funds to fail to qualify as Nuclear Decommissioning Reserve Funds under Section 468A of the Code and the Treasury Regulations thereunder. The Agreement may not be amended so as to violate Section 468A of the Code or the Treasury Regulations thereunder. The Qualified Funds are established and shall be maintained for the sole purpose of qualifying as Nuclear Decommissioning Reserve Funds under Section 468A of the Code and the Treasury Regulations thereunder. If the Qualified Funds would fail to so qualify because of any provision contained in this Agreement, this Agreement shall be deemed to be amended as necessary to conform with the requirements of Section 468A and the Treasury Regulations thereunder. If a proposed amendment shall affect the responsibility of the Trustee, such amendment shall not be considered valid and binding until such time as the amendment is executed by the Trustee. Notwithstanding any provision herein to

the contrary, this Agreement cannot be modified in any material respect without having first given 30 working days written notice before the proposed effective date of the amendment to the NRC Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable. This Agreement may not be amended if the Trustee or the Company receives written notice of objection from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards within the notice period.

## VI. Powers of the Trustee and Investment Manager.

**Section 6.01 General Powers.** The Trustee shall have and exercise the following powers and authority in the administration of the Funds only on the direction of an Investment Manager where such powers and authority relate to a separate account established for an Investment Manager, and in its sole discretion where such powers and authority relate to investments made by the Trustee in accordance with Section 4.02(b):

- (a) to purchase, receive or subscribe for any securities or other property and to retain in trust such securities or other property;
- (b) to sell, exchange, convey, transfer, lend, or otherwise dispose of any property held in the Funds and to make any sale by private contract or public auction; and no person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale or other disposition;
- (c) to vote in person or by proxy any stocks, bonds or other securities held in the Funds;
- (d) to exercise any rights appurtenant to any such stocks, bonds or other securities for the conversion thereof into other stocks, bonds or securities, or to exercise rights or options to subscribe for or purchase additional stocks, bonds or other securities, and to make any and all necessary payments with respect to any such conversion or exercise, as well as to write options with respect to such stocks and to enter into any transactions in other forms of options with respect to any options which the Funds have outstanding at any time;
- (e) to join in, dissent from or oppose the reorganization, recapitalization, consolidation, sale or merger of corporations or properties of which the Funds may hold stocks, bonds or other securities or in which it may be interested, upon such terms and conditions as deemed wise, to pay any expenses, assessments or subscriptions in connection therewith, and to accept any securities or property, whether or not trustees would be authorized to invest in such securities or property, which may be issued upon any such reorganization, recapitalization, consolidation, sale or merger and thereafter to hold the same, without any duty to sell;
- (f) to enter into any type of contract with any insurance company or companies, either for the purposes of investment or otherwise; provided that no insurance company dealing



with the Trustee shall be considered to be a party to this Agreement and shall only be bound by and held accountable to the extent of its contract with the Trustee. Except as otherwise provided by any contract, the insurance company need only look to the Trustee with regard to any instructions issued and shall make disbursements or payments to any person, including the Trustee, as shall be directed by the Trustee. Where applicable, the Trustee shall be the sole owner of any and all insurance policies or contracts issued. Such contracts or policies, unless otherwise determined, shall be held as an asset of the Funds for safekeeping or custodian purposes only;

(g) upon authorization of the Company to lend the assets of the Funds and, specifically, to loan any securities to brokers, dealers or banks upon such terms, and secured in such manner, as may be determined by the Trustee, to permit the loaned securities to be transferred into the name of the borrower or others and to permit the borrower to exercise such rights of ownership over the loaned securities as may be required under the terms of any such loan; provided, that, with respect to the lending of securities pursuant to this paragraph, the Trustee's powers shall subsume the role of custodian (the expressed intent hereunder being that the Trustee, in such case, be deemed a financial institution, within the meaning of Section 101(22) of the Bankruptcy Code); and provided, further, that any loans made from the Funds shall be made in conformity with such laws or regulations governing such lending activities which may have been promulgated by any appropriate regulatory body at the time of such loan;

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

Settlements of transactions may be effected in trading and processing practices customary in the jurisdiction or market where the transaction occurs. The Company 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 Company shall have sole responsibility for nonreceipt of payment (or late payment) by the counterparty.

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

insurrection or revolution; or acts of God; or any other similar event. This Section shall survive the termination of this Agreement.

**Section 6.02 Specific Powers of the Trustee.** The Trustee shall have the following powers and authority, to be exercised in its sole discretion with respect to the Funds:

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

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

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

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

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

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

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

(h) to invest in any collective, common or pooled trust fund operated or maintained exclusively for the commingling and collective investment of monies or other assets including any such fund operated or maintained by the Trustee or an affiliate. The Company expressly understands and agrees that any such collective fund may provide for the lending of its securities by the collective fund trustee and that such collective fund's trustee will receive compensation for the lending of securities that is separate from any compensation of the Trustee hereunder, or any compensation of the collective fund trustee for the management of such collective fund. The Trustee is authorized to invest in a collective fund which invests in Mellon Financial Corporation stock in accordance with the terms and conditions of the Department of Labor Prohibited Transaction Exemption 95-56 (the "Exemption") granted to the Trustee and its affiliates and to use a cross-trading program in accordance with the Exemption. The Company acknowledges receipt of the notice entitled "Cross-Trading Information," a copy of which is attached to this Agreement as Exhibit E;

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

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

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

**Section 6.03 Authorized Party.** The powers described in Section 6.02 may be exercised by the Trustee with or without instructions from the Company or a party authorized by the Company to act on its behalf, but where the Trustee acts on Authorized Instructions, the Trustee shall be fully protected as described in Section 4.07. All directions and instructions to the Trustee from an Authorized Party shall be in writing, by facsimile transmission, electronic transmission subject to the Trustee's practices, or any other method specifically agreed to in writing by the Company and the Trustee, provided the Trustee may, in its discretion, accept oral directions and instructions and may require confirmation in writing. Without limiting the generality of the foregoing, the Trustee shall not be liable for the acts or omissions of any person appointed under paragraph (a) of Section 6.02 pursuant to Authorized Instructions.

**Section 6.04 Prohibition Against Nuclear Sector Investments.** Except for investments tied to market indexes or other non-nuclear sector collective, commingled or mutual

funds, the assets of the Funds shall not be invested in: (1) the securities or other obligations of FirstEnergy Corp. or FirstEnergy Nuclear Generation Corp., or affiliates thereof, or their successors or assigns, as identified by CUSIP by the Company; and (2) the securities or other obligations of any entity owning or operating one or more nuclear power plants. A non-nuclear sector collective, commingled or mutual fund is one in which less than 50 percent of the fund is invested in the securities of entities that own or operate a nuclear power plant or that are parent companies of subsidiaries that own or operate a nuclear power plant.

## VII. Termination.

A Unit's Qualified Fund shall terminate upon the later of (A) the earlier of either (i) substantial completion of decommissioning of that Fund's Unit, as defined in the Special Terms, or (ii) disqualification of that Unit's Qualified Fund by the Service as provided in Treasury Regulations § 1.468A5(c) or any corresponding future Treasury Regulation or (B) termination by the NRC of that Unit's operating license. A Nonqualified Fund shall terminate upon termination by the NRC of that Unit's license. If a Fund termination occurs before the NRC terminates the respective Unit's operating license, the Trustee will adhere to Section 6.02(b) of this Agreement. Upon the termination of any Fund, the assets of the terminated Fund shall be distributed to the Company.

## VIII. Miscellaneous.

**Section 8.01 Binding Agreement.** All covenants and agreements in this Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their successors and assigns.

**Section 8.02 Notices.** All notices and communications hereunder shall be in writing and shall be deemed to be duly given on the date mailed if sent by registered mail, return receipt requested, as follows:

MELLON BANK, N.A.  
Trust and Investment Department  
Attn: Trust Administration  
Room 151-1320  
One Mellon Bank Center  
Pittsburgh, PA 15258

FIRSTENERGY NUCLEAR GENERATION CORP.  
Attn: Mr. Donald C. Perrine  
Title: Director, Investment Management  
76 South Main Street  
Akron, OH 49308

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

**Section 8.03 Governing Law.** Each Unit's Funds have been established pursuant to this Agreement in accordance with the requirements for trusts under the laws of the State of Ohio and this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Ohio.

**Section 8.04 Counterparts.** This Agreement may be executed in several counterparts, and all such counterparts executed and delivered, each an original, shall constitute but one and the same instrument.

**Section 8.05 Contractual Income.** The Trustee shall credit the Funds with income and maturity proceeds on securities on the contractual payment date net of any taxes or upon actual receipt as agreed between the Trustee and the Company. To the extent the Company and the Trustee have agreed to credit income on the contractual payment date, the Trustee may reverse such accounting entries with back value to the contractual payment date if the Trustee reasonably believes that such amount will not be received by it.

**Section 8.06 Contractual Settlement.** The Trustee will attend to the settlement of securities transactions on the basis of either contractual settlement date accounting or actual

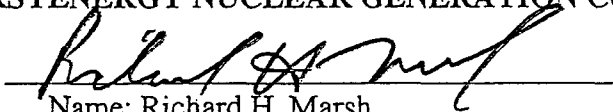
settlement date accounting as agreed between the Company and the Trustee. To the extent the Company and the Trustee have agreed to settle certain securities transactions on the basis of contractual settlement date accounting, the Trustee may reverse with back value to the contractual settlement date any entry relating to such contractual settlement where the related transaction remains unsettled according to established procedures.

**Section 8.07 Representations & Warranties.** The Company 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 Company and the Trustee to this Agreement.

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

**FIRSTENERGY NUCLEAR GENERATION CORP.**

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

  
Name: Richard H. Marsh

Title: Sr. Vice President and Chief Financial Officer

**MELLON BANK, N.A.**

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

  
Name: PATRICIA A. CAKANAC

Title: ASSISTANT VICE PRESIDENT

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

The following Special Terms of the Qualified Nuclear Decommissioning Reserve Funds (hereinafter referred to as the "Special Terms") will apply for purposes of the Nuclear Decommissioning Master Trust Agreement (the "Agreement"), dated as of December 1, 2005 between FIRSTENERGY NUCLEAR GENERATION CORP. (the "Company") and MELLON BANK, N.A. (the "Trustee").

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

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

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

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

(d) "Permissible Assets" shall mean any investment permitted for a qualified nuclear decommissioning reserve fund under Section 468A of the Internal Revenue Code of 1986, as amended, or any corresponding section or sections of any future United States internal revenue statute (the "Code") and the Treasury Regulations thereunder, subject to the restrictions provided in Section 6.04 of the Agreement.

(e) "Qualified Decommissioning Costs" shall mean all expenses otherwise deductible for federal income tax purposes without regard to Section 280B of the Code, incurred (or to be incurred) in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a Unit when it has permanently ceased the production of electric energy, excluding any costs incurred for the disposal of spent nuclear fuel, as provided in Treasury Regulations § 1.468A-1(b)(5) or any corresponding future Treasury

Regulation. Such term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to a Unit after the actual decommissioning occurs, such as physical security and radiation monitoring expenses.

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

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

**Section 2 Contributions to a Qualified Fund.** The assets of the Qualified Funds shall be contributed by the Company (or by others approved by the Company in writing) from time to time in cash or as otherwise permitted by Section 468A of the Code. The Trustee shall not accept any contributions for the Qualified Funds other than cash payments with respect to which the Company is allowed a deduction under Section 468A(a) of the Code and Treasury Regulations § 1.468A-2(a) or any corresponding future Treasury Regulations, except for any Final Tax Refunds; provided, however, that the Trustee may accept transfers of property permitted pursuant to Section 468A(f) of the Code ("Permitted Property Transfers"). The Company hereby represents that all contributions (or deemed contributions), except for any Final Tax Refunds or Permitted Property Transfers, by the Company to the Qualified Funds in accordance with the provisions of Section 2.03 of the Agreement shall be deductible under Section 468A of the Code and Treasury Regulations § 1.468A-2(a) or any corresponding future Treasury Regulation or shall be withdrawn pursuant to Section 4 hereof.

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

(a) To satisfy, in whole or in part, the liability of the Company for Qualified Decommissioning Costs through payments by the Trustee pursuant to Article III of the Agreement; and

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

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



Notwithstanding the foregoing, the assets of a Unit's Funds may be transferred to another trust that is subject to terms similar to the terms of this Agreement, where: (i) such transfer is made in connection with the sale, exchange, or other disposition of an interest in such Unit; (ii) the assets transferred are proportionate to the interest sold, exchanged or otherwise disposed; (iii) such transfer of assets from a Unit's Qualified Fund is consistent with the requirements of Treasury Regulations § 1.468A-6; and (iv) the disposition of the interest in such Unit has received the prior written consent of the NRC pursuant to 10 CFR 50.80 and Section 184 of the Atomic Energy Act of 1954, as amended.

**Section 4 Transfers by the Company.** If the Company's contribution (or deemed contribution) excluding any Final Tax Refunds to the Qualified Funds in any one year exceeds the amount deductible under Section 468A of the Code and the Treasury Regulations thereunder, the Company may instruct the Trustee to transfer such excess contribution from a Unit's Qualified Fund to that Unit's Nonqualified Fund, as defined in the Agreement, pursuant to Section 3.05 of the Agreement, provided any such transfer occurs on or before the date prescribed by law (including extensions) for filing the federal income tax return of the Qualified Funds for the taxable year to which the excess contribution relates for withdrawals pursuant to Treasury Regulations §§ 1.468A-5(c)(2) and 1.468A-2(f)(2) and occurs on or before the later of the date prescribed by law (including extensions) for filing the federal income tax return of the Qualified Funds for the taxable year to which the excess contribution relates or the date that is thirty (30) days after the date that the Company receives the ruling amount for such taxable year for withdrawals pursuant to Treasury Regulations § 1.468A-3(j)(3). If the Company determines that transfer pursuant to this Section 4 is appropriate, the Company shall present a certificate so stating to the Trustee signed by its Chairman of the Board, its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer, requesting such withdrawal and transfer. The certificate shall be substantially in the form attached as Exhibit C to the Agreement for transfers to Nonqualified Funds as provided in Section 3.05 of the Agreement and substantially in the form of Exhibit D to the Agreement for withdrawals and transfers by the Company.

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

**CERTIFICATE FOR PAYMENT  
OF DECOMMISSIONING COSTS**

MELLON BANK, N.A.;  
as Trustee

Trust and Investment Department  
Attn: Trust Administration  
Room 151-3346  
One Mellon Bank Center  
Pittsburgh, PA 15258

This Certificate is submitted pursuant to Section 3.02 of the Nuclear Decommissioning Master Trust Agreement (the "Agreement"), dated \_\_\_\_\_, between Mellon Bank, N.A. (the "Trustee") and FirstEnergy Nuclear Generation Corp. (the "Company"). All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement. In your capacity as Trustee, you are hereby authorized and requested to disburse out of the [Unit name's] Funds to [payee] the amount of \$\_\_\_\_\_ from the Qualified Fund and the amount of \$\_\_\_\_\_ from the Nonqualified Fund for the payment of the Decommissioning Costs which have been incurred with respect to the [Unit name]. Prior to making such disbursements, however, if required pursuant to Section 3.04 of the Agreement, the Trustee shall provide thirty days prior written notice of such disbursement to the NRC and shall not make such disbursement if the Trustee receives written notice of any objections from the NRC Director, Office of Nuclear Reactor Regulations during such thirty day period, or if the Trustee receives such notice at any later time that is nevertheless prior to disbursement. With respect to such Decommissioning Costs, the Company hereby certifies as follows:

1. The amount to be disbursed pursuant to this Certificate shall be solely used for the purpose of paying the Decommissioning Costs described in Schedule A hereto.
2. None of the Decommissioning Costs described in Schedule A hereto have previously been made the basis of any certificate pursuant to Section 3.02 of the Agreement.
3. The amount to be disbursed from the Qualified Fund pursuant to this Certificate shall be used solely for the purpose of paying Qualified Decommissioning Costs as defined in the Special Terms.

4. Any necessary authorizations of the NRC or any corresponding governmental authority having jurisdiction over the decommissioning of the Unit have been obtained, except that prior written notice to the NRC [is] [is not] required pursuant to Section 3.04 of the Agreement.

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

**FIRSTENERGY NUCLEAR GENERATION CORP.**

By: \_\_\_\_\_  
Name:  
Title: [President] [Vice President]

**FIRSTENERGY NUCLEAR GENERATION CORP.**

By: \_\_\_\_\_  
Name:  
Title: [Company Officer]

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

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

CERTIFICATE FOR TRANSFER BETWEEN THE QUALIFIED FUND  
AND THE NONQUALIFIED FUND

MELLON BANK, N.A.,  
as Trustee

Trust and Investment Department  
Attn: Trust Administration  
Room 151-3346  
One Mellon Bank Center  
Pittsburgh, PA 15258

This Certificate is submitted pursuant to Section 3.05 of the Nuclear Decommissioning Master Trust Agreement (the "Agreement"), dated \_\_\_\_\_, between Mellon Bank, N.A. (the "Trustee") and FirstEnergy Nuclear Generation Corp. (the "Company"). All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement. In your capacity as Trustee, you are hereby authorized and instructed as follows (complete one):

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

To transfer the property designated on the attached Schedule from the [Unit name's] Nonqualified Fund to that Unit's Qualified Fund, in order effectuate a Permitted Property Transfer as provided for in Section 2 of the Special Terms.

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

With respect to such payment, the Company hereby certifies as follows:

1. Any amount stated herein to be paid from the Nonqualified Fund to the Qualified Fund is in accordance with the contribution limitations applicable to the Qualified Fund set forth in Section 2 of the Special Terms and the limitations of Section 3.05 of the Agreement.

2. Any amount stated herein to be paid from the Qualified Fund to the Nonqualified Fund is in accordance with Section 4 of the Special Terms. The Company has determined that such payment is appropriate under the standards of Section 4 of the Special Terms.

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

**FIRSTENERGY NUCLEAR GENERATION CORP.**

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

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

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

CERTIFICATE FOR WITHDRAWAL  
OF EXCESS CONTRIBUTIONS  
FROM QUALIFIED FUND

MELLON BANK, N.A.,  
as Trustee

Trust and Investment Department  
Attn: Trust Administration  
Room 151-3346  
One Mellon Bank Center  
Pittsburgh, PA 15258

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

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

FIRSTENERGY NUCLEAR GENERATION CORP.

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

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

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

## CROSS-TRADING INFORMATION

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

I. The existence of the cross-trading program

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

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

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

- A. A change in the composition or weighting of the index by the independent organization creating and maintaining the index;
- B. A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals on the account's opening date, where the Account is a bank collective fund, or on any relevant date for non-bank collective funds; provided, however, a change in an Indexed Account resulting from investments or withdrawals of assets of the Trustee's own plans (other than the Trustee's defined contribution plans under which participants may direct among various investment options, including Indexed Accounts) are excluded as a "triggering event"; or
- C. A recorded declaration by the Trustee that an accumulation of cash in an Indexed Account attributable to interest or dividends on, and/or tender offers for, portfolio securities equal to not more than 0.5% of the Account's total value has occurred.

III. The pricing mechanism utilized for securities purchased or sold

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

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



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

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

IV. The allocation methods

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

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

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

SCHEDULE A

UNITS AND FUNDS

The following is a list of nuclear power plants owned in whole or part by FirstEnergy Nuclear Generation Corp.:

Beaver Valley Power Station, Unit No. 1

Beaver Valley Power Station, Unit No. 2

Perry Nuclear Power Plant, Unit No. 1

Davis-Besse Nuclear Power Station, Unit No. 1

The Funds for these units are identified as follows:

FE BVPS 1 Qualified Fund

FE BVPS 2 Qualified Fund

FE Perry Qualified Fund

FE Davis-Besse Qualified Fund

FE BVPS 1 Nonqualified Fund

FE BVPS 2 Nonqualified Fund

FE Perry Nonqualified Fund

FE Davis-Besse Nonqualified Fund

## SCHEDULE B

### PRIOR AGREEMENTS

1. Pennsylvania Power Company Master Decommissioning Trust Agreement For Beaver Valley Power Station and Perry Nuclear Power Plant, dated as of April 21, 1995; as amended by Amendment # 1, dated December 2, 1999, as amended by Amendment # 2, dated December 9, 2003, as amended by Amendment # 3, dated as of December 1, 2005.
2. Ohio Edison Company Master Decommissioning Trust For Perry Nuclear Power Plant Unit One, Perry Nuclear Power Plant Unit Two, Beaver Valley Power Station Unit One and Beaver Valley Power Station Unit Two, dated as of July 1, 1993, as amended by Amendment # 1, dated September 26, 1996; as amended by Amendment # 2, dated December 9, 2003, as amended by Amendment # 3, dated as of December 1, 2005.
3. First Amended and Restated Master Decommissioning Trust Agreement dated as of December 16, 1996, between The Toledo Edison Company (Davis-Besse and Perry) and Mellon Bank, N.A. as Trustee, as amended by Amendment # 1, dated December 9, 2003, as amended by Amendment # 2, dated as of December 1, 2005.
4. First Amended and Restated Master Decommissioning Trust Agreement dated as of December 16, 1996, between The Cleveland Electric Illuminating Company (Davis-Besse, Perry, and Beaver Valley) and Mellon Bank, N.A. as Trustee, as amended by Amendment # 1, dated December 2, 1999, as amended by Amendment # 2, dated December 9, 2003, as amended by Amendment # 3, dated as of December 1, 2005.
5. Decommissioning Trust Agreement between The Toledo Edison Company and Ameritrust Company National Association for Beaver Valley Power Station, Unit No. 2, dated as of September 30, 1988, as amended by Amendment #1 dated as of May 31, 1989, Amendment #2 dated December 20, 1999, and by Amendment #3, dated December 9, 2003, as amended by Amendment #4, dated as of December 1, 2005.

### Regulatory Commitments

The following list identifies those actions committed to by the FirstEnergy Nuclear Operating Company (FENOC) for the Beaver Valley Power Station, Unit Nos. 1 & 2, Perry Nuclear Power Plant, Unit No. 1, and Davis-Besse Nuclear Power Station, Unit 1 in this document. Any other actions discussed in the submittal represent intended or planned actions by FENOC. They are described only as information and are not regulatory commitments. Please notify Mr. Gregory A. Dunn, Manager – Fleet Licensing at (330) 315-7243 of any questions regarding this document or associated regulatory commitments.

**A. Commitment**

**B. Due Date**

No additional commitments have been generated by this submittal.

N/A