



Entergy Nuclear Generation Company  
Pilgrim Nuclear Power Station  
600 Rocky Hill Road  
Plymouth, MA 02360

J. F. Alexander  
Director  
Nuclear Assessment

10 CFR 50.75(f)(1)

March 20, 2000  
ENGCLtr. 2.00.023

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

Docket No. 50-293  
License No. DPR-35

**Subject: Pilgrim Decommissioning Funding Status Report**

In accordance with 10 CFR 50.75(f)(1), attached is the Entergy Nuclear Generation Company decommissioning funding assurance report for Pilgrim Nuclear Power Station.

Should you have any questions regarding the report, please contact Mr. Charles Minott of our Asset Management Group at (508) 830-7900.



J.F. Alexander

JDK/vc

Enclosures:

cc: Mr. Alan B. Wang, Project Manager  
Project Directorate I-3  
Office of Nuclear Reactor Regulation  
Mail Stop: OWFN 8F2  
U. S. Nuclear Regulatory Commission  
1 White Flint North  
11555 Rockville Pike  
Rockville, MD 20852

Mr. Robert S. Wood  
Division of Regulatory Improvement Programs  
Generic Issues, Environmental, Financial, and  
Rulemaking Branch  
U. S. Nuclear Regulatory Commission  
1 White Flint North  
11555 Rockville Pike  
Rockville, MD 20852

Senior Resident Inspector

ATTACHMENT 1-ENTERGY LETTER 2.00.023

- Entergy Nuclear Generation Company Pilgrim Nuclear Power Station  
NRC Decommissioning Funding Assurance Report  
(Data as of December 31, 1999) (5 pages)

ENTERGY NUCLEAR GENERATION COMPANY  
PILGRIM NUCLEAR POWER STATION  
NRC DECOMMISSIONING FUNDING ASSURANCE REPORT  
(DATA AS OF DECEMBER 31, 1999)

1. December 1999 decommissioning cost estimate per 10 CFR 50.75 (b) and (c) (See page 2):	\$337,890,140 <sup>1</sup>
2. Decommissioning cost estimate above escalated at 3%/year to midpoint of decommissioning cash flow(December 2016):	<b>\$558,480,918</b>
3. Decommissioning Trust Fund amount accumulated at December 31, 1999 for scope defined in item 1 above:	\$282,365,375 <sup>1</sup>
4. Fund balance above in item 3 with 5%/year growth to midpoint of decommissioning cash flow(December 2016):	<b>\$647,186,612</b>
5. Contracts:	None
6. Modifications to funding assurance methods since the last submitted report:	Funding is now prepaid
7. Material changes to trust agreements since last submitted report:	See Attachment 2

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<sup>1</sup> The NRC formulas and the calculated trust fund amounts herein exclude the cost of dismantling or demolishing non-radiological systems and structures as well as costs to manage and store spent fuel until transfer to DOE.

<p>1999  ENERGY NUCLEAR GENERATION COMPANY  CALCULATION OF MINIMUM FINANCIAL ASSURANCE AMOUNT  PILGRIM UNIT 1  BWR UNIT</p>
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The following is a calculation of the minimum amount required to demonstrate reasonable assurance of fund availability to decommission Pilgrim Unit 1, calculated under the NRC methodology set out at 10 CFR 50.75(c).

INDEX VALUES FOR DECEMBER 1999

LABOR (L)	= NORTHEAST	L = 1.72	FROM PAGE 3 OF ATTACHMENT 1
ENERGY (E)	= NATIONAL	E = 0.95	FROM PAGE 4 OF ATTACHMENT 1
WASTE BURIAL (B)	= S. CAROLINA	B = 6.97	FROM PAGE 5 OF ATTACHMENT 1

a) BWR ESCALATION FACTOR

$$\begin{aligned}
\text{ESCALATION FACTOR} &= 0.65(L) + 0.13(E) + 0.22(B) \\
&= 0.65(1.72) + 0.13(0.95) + 0.22(6.97) \\
&= 2.77
\end{aligned}$$

b) BASE AMOUNT FOR BWR BETWEEN 1200 MWt AND 3400 MWt

$$\begin{aligned}
\text{BASE AMOUNT} &= \$(104 + 0.009P) \text{ million} \\
&= \$(104 + 0.009(1,998)) \text{ million} \\
&= \$121,982,000
\end{aligned}$$

WHERE :

P = POWER LEVEL OF UNIT IN MEGAWATTS THERMAL (PILGRIM = 1,998 Mwt)

c) ESCALATED AMOUNT FOR UNIT

$$\begin{aligned}
\text{ESCALATED AMOUNT} &= \text{BASE AMOUNT X ESCALATION FACTOR} \\
&= \$121,982,000 \quad \text{X} \quad 2.77 \\
&= \mathbf{\$337,890,140}
\end{aligned}$$

LABOR ("L") ESCALATION FACTOR FOR DECEMBER 1999
--

<u>REGION</u>	<u>JANUARY 1986 (BASE)</u>	<u>DECEMBER 1999</u>	<u>L = DECEMBER 1999 / BASE</u>
NORTHEAST	130.5	224.4	1.72

VALUES USED IN THIS CHART WERE  
 OBTAINED FROM  
 THE U.S. DEPARTMENT OF LABOR, EMPLOYMENT COST INDEX  
 BUREAU OF LABOR STATISTICS (DECEMBER 1999)

NORTHEAST REGION:

JUNE 1981=            100.0 (BASE INDEX PRIOR JUNE 1989)  
 JUNE 1989=            155.5 (BASE INDEX AFTER JUNE 1989)  
 DECEMBER 1999=    144.3

CONVERSION OF DECEMBER 1999 INDEX TO OLD INDEX:

$$144.3 \times 155.5 / 100 = 224.4$$

<p>ENERGY ("E") ESCALATION FACTOR FOR DECEMBER 1999</p>
---

THE EQUATION FOR CALCULATING THE ENERGY ESCALATION FACTOR IS AS FOLLOWS:  
(PER NRC REGULATORY GUIDE 1.159 (TASK DG-1003) ,SECTION 1.2, AUGUST 1990)

$$\text{BWR: } E = [0.23P + 0.77F]$$

VALUES FOR P (electric power) and F (fuel oil) were obtained from the "Producer Price Indexes," published by the U.S. Department of Labor, Bureau of Labor Statistics. P and F are not divided into regional statistics

<u>REGION</u>	P for DECEMBER 1999 divided by <u>P for January 1986</u>	F for DECEMBER 1999 divided by <u>F for January 1986</u>	E
NATIONAL	128.8/114.2 = 1.13	73.5/82 = 0.90	<b>0.95</b>

BUREAU OF LABOR STATISTICS REFERENCE:

P= PPI 0543  
F= PPI 0573

BWR  
WASTE BURIAL ("B") ESCALATION FACTOR  
NUREG-1307 REVISION 8  
FOR DECEMBER 1999

<u>REGION</u>	<u>1999 COST / 1986 COST</u>
BARNWELL ,SO. CAROLINA	6.968

THE WASTE BURIAL ESCALATION FACTOR WAS OBTAINED FROM DATA IN TABLE 2.1 OF "REPORT ON WASTE BURIAL CHARGES," NUREG-1307, REVISION 8 (DECEMBER, 1998) WHICH IS THE MOST RECENT NRC REPORT.

ATTACHMENT 2-ENTERGY LETTER 2.00.023

- Second Amendment to Boston Edison Company Master Decommissioning Trust Agreement for Pilgrim Nuclear Power Station (7 pages)
- Third Amendment to Boston Edison Company Master Decommissioning Trust Agreement for Pilgrim Nuclear Power Station (6 pages)
- Provisional Decommissioning Trust Agreement for Pilgrim Nuclear Power Station (45 pages)

Note: The Boston Edison Company Master Decommissioning Trust Agreement for Pilgrim Nuclear Power Station and Amendment 1 thereto were submitted to the NRC in Boston Edison letter 2.99.028, dated 3/24/99.



**SECOND AMENDMENT TO  
BOSTON EDISON COMPANY MASTER DECOMMISSIONING  
TRUST AGREEMENT FOR PILGRIM NUCLEAR POWER STATION**

SECOND AMENDMENT TO BOSTON EDISON COMPANY MASTER DECOMMISSIONING TRUST AGREEMENT FOR PILGRIM NUCLEAR POWER STATION dated as of June 18, 1999 ("Amendment No. 2") by and between Boston Edison Company, a Massachusetts corporation ("BECo"), and Mellon Bank, N.A., as Trustee (the "Trustee"), a national banking association (BECo and the Trustee being referred to herein collectively as the "Parties").

**WITNESSETH:**

WHEREAS, with respect to the decommissioning of Pilgrim Nuclear Power Station ("PNPS"), BECo has a beneficial interest in the Boston Edison Company Master Decommissioning Trust (the "Master Trust"), operating under a trust agreement dated as of January 1, 1995, between BECo and The Bank of New York, a New York corporation having trust powers ("BNY"), as trustee, as amended by the First Amendment dated December 12, 1996, a copy of which is attached hereto as Exhibit A (the "Master Trust Agreement");

WHEREAS, by letter dated as of June 15, 1999, BECo provided written notification to BNY of its election, effective as of the date hereof, to remove BNY as trustee under the Master Trust Agreement and appoint Mellon Bank, N.A. as successor trustee, all pursuant to the terms of Section 6.01 of the Master Trust Agreement;

WHEREAS, by letter dated as of June 15, 1999, BECo appointed the Trustee as the successor trustee under the Master Trust Agreement, effective as of the date hereof, and the Trustee duly acknowledged acceptance of such appointment, all pursuant to the terms of Section 6.01 of the Master Trust Agreement;

WHEREAS, BECo and the Trustee desire to amend the Master Trust Agreement to permit the investment of funds in the Master Trust in any investment permitted by applicable law, rule or regulation;

WHEREAS, Section 9.05 of the Master Trust Agreement provides that the Master Trust Agreement may be amended, modified or altered for any purpose requested by BECo so long as such amendment, modification or alteration does not affect the use of the assets of the Fund to pay the costs of Decommissioning (with the terms "Fund" and "Decommissioning" defined in the Master Trust Agreement);

WHEREAS, Section 9.05 of the Master Trust Agreement provides any amendment of the Master Trust Agreement must be in writing and signed by both BECo and the Trustee; and

WHEREAS, Section 9.05 of the Master Trust Agreement provides that the Trustee shall execute any amendment of the Master Trust Agreement required to be accepted by it but shall have no obligation to inquire or investigate whether such amendment is consistent with Section 9.05.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Master Trust Agreement is amended, as follows:
  - a. All references to "The Bank of New York" shall be deleted and replaced with the words "the Trustee".
  - b. Exhibit A to the Master Trust Agreement is amended to read in its entirety as follows:

Permitted investments for both the Qualified Fund and Nonqualified Fund shall be any investments permitted by applicable law, rule or regulation. Subject to clarification, if any, by the Nuclear Regulatory Commission, investments in the securities or other obligations of Entergy Nuclear Generation Company, a Delaware corporation, Entergy Corporation, a Delaware corporation, and each of their affiliates, subsidiaries, associates or their successors or assigns shall be prohibited. In addition, except for investments tied to market indexes or non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants is prohibited. Permitted investments include investments tied to market indexes, mutual funds or common trust funds which may hold securities issued by Entergy Corporation, its affiliates and subsidiaries.

- c. The following sentence shall be added to the end of Section 2.03:

"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."

- d. Section 6.06 is amended in its entirety to read as follows:

Master Trust Language:

6.06 Tax Returns and Other Reports. The Company, or the Trustee at the Company's direction, shall prepare and file all federal and state income or franchise tax returns, other reports (including estimated tax returns and information returns) as may be required from time to time with respect to the Qualified Fund, and the Trustee agrees to provide the Company in a timely manner with any information which is necessary to such filings which is not in the possession of the Company. The Trustee shall prepare and submit to the Company in a timely manner all information requested by the Company regarding the Funds required to be included in the Company's federal income tax returns. The Trustee may employ independent certified public accountants or other tax counsel to prepare or review such returns and reports and the reasonable cost thereof shall be an administrative cost. The Trustee agrees to sign any tax returns or other reports where required by law to do so or arising out of the Trustee's responsibilities hereunder, and with regard to the Qualified Fund to remit from the Master Trust appropriate payments or deposits of federal and state income or franchise taxes directly to the taxing agencies or authorized depositaries or to the Company, in the event that the Company has directly paid such taxes. Any interest or penalty charges assessed against the Master Trust pursuant to Chapters 67 or 68 of the Code, or pursuant to any similar state or local tax provisions, as a result of the Trustee's failure to comply with this Section 6.06 shall be an administrative expense unless caused by the Trustee's negligence or willful misconduct, in which case such interest or penalty charges shall be borne by the Trustee and not the Master Trust. The Trustee agrees to notify the Company in writing within 10 days of the commencement of the audit of the Qualified Fund's federal, state or local tax returns, and to participate with the Company on behalf of the Qualified Fund in such audits and related inquiries. The Trustee further agrees to provide the Company with any additional information in its possession regarding the Master Trust which may be requested by the Company to be furnished in an audit of the Company's federal tax returns.

- e. The following clause shall be added to the end of the first sentence of Section 8.01:

"; provided, however, investments may not include any securities settled or safekept outside of the United States."

f. References to the State of New York in Section 9.07(a) and Section 1.01(5) shall be changed to the Commonwealth of Pennsylvania.

g. The following paragraph shall be added as new Section 9.11:

"9.11 Limitation on Liability of Trustee.

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, levels 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 the 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."

h. The address for notice to the "Trustee" contained in Section 9.04 shall be deleted and replaced with:

Mellon Bank, N.A.  
500 Grant Street, Room 3346  
Pittsburgh, PA 15258  
Attention: Mr. Glen Metzger

2. This Amendment No. 2 shall bind and shall inure to the benefit of the respective Parties and their assigns, transferees and successors.

3. This Amendment No. 2 shall be construed and enforced in accordance with the laws (other than the conflict of law rules) of the Commonwealth of Pennsylvania.

4. This Amendment No. 2 may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

5. Each Party hereby represents and warrants to the other that it has full authority to enter into this Amendment No. 2 upon the terms and conditions hereof and that the individual executing this Amendment No. 2 on its behalf has the requisite authority to bind such Party.

[Amendment No. 2]

IN WITNESS WHEREOF, the Parties have executed this instrument under seal as of the date first above written.

BOSTON EDISON COMPANY

By: James J. Judge  
Name: James J. Judge  
Title: Senior Vice President  
and Treasurer

MELLON BANK, N.A., as Trustee

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

IN WITNESS WHEREOF, the Parties have executed this instrument under seal as of the date first above written.

BOSTON EDISON COMPANY

By: \_\_\_\_\_  
Name: James J. Judge  
Title: Senior Vice President  
and Treasurer

MELLON BANK, N.A., as Trustee

By: *Jerry McDermott*  
Name: GERARD T. McDERMOTT  
Title: VICE PRESIDENT

**THIRD AMENDMENT TO  
BOSTON EDISON COMPANY MASTER DECOMMISSIONING  
TRUST AGREEMENT FOR PILGRIM NUCLEAR POWER STATION**

**THIRD AMENDMENT TO BOSTON EDISON COMPANY MASTER DECOMMISSIONING TRUST AGREEMENT FOR PILGRIM NUCLEAR POWER STATION** dated as of July 13, 1999 ("Amendment No. 3") by and between Boston Edison Company, a Massachusetts corporation ("BECo"), and Mellon Bank, N.A., as Trustee ("Trustee"), a national banking association (BECo and the Trustee being referred to herein collectively as the "Parties").

**W I T N E S S E T H :**

WHEREAS, with respect to the decommissioning of Pilgrim Nuclear Power Station ("PNPS"), BECo has a beneficial interest in the Boston Edison Company Master Decommissioning Trust (the "Master Trust"), operating under a trust agreement dated as of January 1, 1995, between BECo and The Bank of New York, a New York corporation having trust powers ("BNY"), as trustee, as amended by the First Amendment thereto dated December 12, 1996 and the Second Amendment thereto dated June 18, 1999, a copy of which (with such amendments) is attached hereto as Exhibit A (the "Master Trust Agreement");

WHEREAS, BECo and Entergy Nuclear Generation Company, a Delaware corporation ("Entergy"), are parties to a Purchase and Sale Agreement dated November 18, 1998, as amended (the "Purchase and Sale Agreement");

WHEREAS, pursuant to the Purchase and Sale Agreement, BECo is transferring to Entergy all or substantially all of the assets and certain of the liabilities constituting PNPS, including all liabilities of BECo in respect of (i) the decommissioning of PNPS following permanent cessation of operations, (ii) the management, storage, transportation and disposal of spent nuclear fuel, and (iii) any other post-operative disposition of PNPS or any other of the assets being purchased by Entergy;

WHEREAS, pursuant to Section 2.1(h) and Section 6.1(g) of the Purchase and Sale Agreement, Entergy, as of the Closing Date, is to be substituted for BECo under the Master Trust Agreement and thereafter hold all of the right, title and interest of BECo in the Master Trust;

WHEREAS, Section 2.09 of the Master Trust Agreement provides that the interest of BECo in the Master Trust is not transferable;



WHEREAS, Section 9.05 of the Master Trust Agreement provides that the Master Trust Agreement may be amended, modified or altered for any purpose requested by BECo so long as such amendment, modification or alteration does not affect the use of the assets of the Fund to pay the costs of Decommissioning (with the terms "Fund" and "Decommissioning" defined in the Master Trust Agreement);

WHEREAS, Section 9.05 of the Master Trust Agreement provides any amendment of the Master Trust Agreement must be in writing and signed by both BECo and the Trustee; and

WHEREAS, Section 9.05 of the Master Trust Agreement provides that the Trustee shall execute any amendment of the Master Trust Agreement required to be accepted by it but shall have no obligation to inquire or investigate whether such amendment is consistent with Section 9.05.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Master Trust Agreement is amended, as follows:

- a. All references to "the Company" henceforth shall refer to Entergy, rather than to BECo, except as the context otherwise requires;
- b. The words "Boston Edison Company Master Decommissioning Trust" in Section 2.04 shall be deleted and replaced with the words "Entergy Nuclear Generation Company Master Decommissioning Trust";
- c. The following clause shall be added to the end of Section 2.09:  

"; and provided, further, that the interest of the Company in the Master Trust may be transferred to a purchaser of all or substantially all of the assets of the Unit that also assumes responsibility for Decommissioning."
- d. The address for notice to "the Company" contained in Section 9.04 shall be deleted and replaced with:

Entergy Nuclear Generation Company  
c/o RL&F Service Corp.  
One Rodney Square, 10th Floor  
Tenth & King Streets  
Wilmington, DE 19801

with a copy to:

Joseph Blount, Esq.  
Assistant Secretary  
c/o Entergy Nuclear Inc.  
P.O. Box 31995  
Jackson, MS 39286-1995

- e. The following sentence shall be added to the end of Section 9.05 as a new paragraph:

"Notwithstanding anything in this Section 9.05 to the contrary, no material amendment, modification or alteration to this Agreement shall become effective unless and until the Company shall have provided the Director, Office of Nuclear Reactor Regulation of the Nuclear Regulatory Commission at least 30 days prior written notice of such material amendment, modification or alteration."

2. The Parties acknowledge that, consistent with the amendments provided for herein and as set forth in Section 2.3(f) of the Purchase and Sale Agreement, Entergy is assuming all rights and responsibilities of BECo in respect of the Master Trust, including the obligation of due and punctual performance of all of the covenants and conditions of "the Company" in the Master Trust Agreement, as amended by this Amendment No. 3.

3. This Amendment No. 3 shall bind and shall inure to the benefit of the respective Parties and their assigns, transferees and successors.

4. This Amendment No. 3 shall be construed and enforced in accordance with the laws (other than the conflict of law rules) of the Commonwealth of Pennsylvania.

5. This Amendment No. 3 may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

6. Each Party hereby represents and warrants to the other that it has full authority to enter into this Amendment No. 3 upon the terms and conditions hereof and that the individual executing this Amendment No. 3 on its behalf has the requisite authority to bind such Party.

7. BECo represents and warrants to Entergy and the Trustee that as of the date hereof it has fully performed and complied with all covenants and conditions of "the Company" in the Master Trust Agreement through and including the date hereof.

IN WITNESS WHEREOF, the Parties have executed this instrument under seal as of the date first above written.

BOSTON EDISON COMPANY

By: James J. Judge  
Name: James J. Judge  
Title: Senior Vice President  
and Treasurer

MELLON BANK, N.A., as Trustee

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

Accepted and Agreed,

ENTERGY NUCLEAR GENERATION COMPANY

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

IN WITNESS WHEREOF, the Company and the Trustee have set their hands to this Agreement as of the day and year first above written.

BOSTON EDISON COMPANY

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

MELLON BANK, N.A., as Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: FIRST VICE PRESIDENT

Accepted and Agreed,

ENTERGY NUCLEAR GENERATION COMPANY

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

IN WITNESS WHEREOF, the Parties have executed this instrument under seal as of the date first above written.

BOSTON EDISON COMPANY

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

MELLON BANK, N.A., as Trustee

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

Accepted and Agreed,

ENTERGY NUCLEAR GENERATION COMPANY

By: Robert M. Bellamy  
Name: Robert M. Bellamy  
Title: Vice-President

EXECUTION COPY

PROVISIONAL DECOMMISSIONING TRUST AGREEMENT  
FOR  
PILGRIM NUCLEAR POWER STATION

Dated: July 12, 1999

MHODMA.Active;8005543;9

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PROVISIONAL DECOMMISSIONING TRUST AGREEMENT

AGREEMENT made as of this 12 day of July, 1999, between Boston Edison Company, a Massachusetts corporation ("BECo"), and Mellon Bank, N.A., as Trustee (the "Trustee"), a national banking association.

WHEREAS, Pilgrim Nuclear Power Station ("PNPS") is a nuclear fueled electric generating unit which will require Decommissioning at the end of its useful life; and

WHEREAS, pursuant to the requirements of the Nuclear Regulatory Commission ("NRC"), the owner of PNPS is required to create and maintain a source of funding to provide for the costs associated with the Decommissioning of the Unit; and

WHEREAS, BECo, as the current owner of PNPS, is party to a Purchase and Sale Agreement dated November 18, 1998, as amended, by and between BECo, as Seller, and Entergy Nuclear Generation Company, a Delaware corporation ("Entergy"), as Buyer (the "Purchase and Sale Agreement"), pursuant to which BECo is transferring to Entergy all or substantially all of the assets and certain of the liabilities constituting PNPS, including without limitation all liabilities of BECo in respect of (i) the decommissioning of PNPS following permanent cessation of operations, (ii) the management, storage, transportation and disposal of spent nuclear fuel, and (iii) any other post-operative disposition of PNPS or any other of the assets being purchased by Entergy; and

WHEREAS, BECo has a beneficial interest in the Boston Edison Company Master Decommissioning Trust (the "Master Trust"), operating under a trust agreement dated as of

MHODMA.Active;8005543;9

January 1, 1995 between BECo and The Bank of New York, a New York corporation having trust powers, as trustee (the "Master Trust Agreement"); and

WHEREAS, upon the closing of the transactions under the Purchase and Sale Agreement, Entergy is being substituted for BECo under such Master Trust; and

WHEREAS, in accordance with the Purchase and Sale Agreement, BECo desires to form a so-called "provisional trust" (the "Provisional Trust"), such Provisional Trust to hold certain funds for the Decommissioning of the Unit in addition to those in the Master Trust, such additional funds being subject to distribution to BECo other than in connection with Decommissioning of the Unit under certain circumstances as specifically provided herein; and

WHEREAS, pursuant to Code sections 671 and 677, the Provisional Trust is intended to constitute a grantor trust under Code sections 674-677, with the Company treated as the grantor, and as such, upon the Closing, the income, gains, deductions, losses and credits of the Provisional Trust shall be treated as income, gains, deductions, losses and credits of the Company; and

WHEREAS, Mellon Bank, N.A. is willing to serve as Trustee of the Provisional Trust on the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Trustee hereby agrees:

TO HAVE AND TO HOLD the assets of the Provisional Trust; and

TO INVEST AND REINVEST the same as provided herein;

IN TRUST NEVERTHELESS, for the uses and purposes and upon the terms and conditions, as hereinafter set forth; and

TO PAY OR DISTRIBUTE from the Provisional Trust as provided herein.

## ARTICLE I. DEFINITIONS

1.01 Definitions. As used in this Provisional Decommissioning Trust Agreement, the following terms shall have the following meanings:

- (1) "AAA" shall have the meaning set forth in Section 9.07 hereof.
- (2) "Agreement" shall mean this Provisional Decommissioning Trust Agreement as the same may be amended, modified, or supplemented from time to time.
- (3) "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).
- (4) "BECo" shall have the meaning set forth in the Preamble to this Agreement.
- (5) "BECo Authorized Representative" shall mean the persons designated as such pursuant to Section 2.05(b) hereof.
- (6) "BECo Distribution Amount" shall have the meaning set forth in Schedule I hereto.
- (7) "Business Day" shall mean a day that is not a Saturday or Sunday or a legal holiday in the Commonwealth of Pennsylvania.
- (8) "Claim" shall have the meaning set forth in Section 4.05(c) hereof.

(9) "Closing" shall mean 12:00 noon on the day of the Closing (as defined in the Purchase and Sale Agreement).

(10) "Closing Date" shall mean the day on which the Closing occurs.

(11) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(12) "Company" shall mean for that portion of the term of this Agreement which begins at the Closing, Entergy, except in any historical context referring to a pre-Closing occurrence, condition or requirement, in which case "Company" shall mean BECo. With respect to the period between the date of this Agreement and the Closing, "Company" shall mean BECo and any provision of this Agreement referring to "the Company and BECo" or "the Company or BECo" shall be interpreted to refer only to BECo.

(13) "Company Authorized Representative" shall mean the persons designated as such pursuant to Section 2.05(a) hereof.

(14) "Decommissioning" shall mean the removal of the Unit from service and disposal of its components in accordance with Applicable Law. This process shall include, but not be limited to, (a) pre-shutdown activities related to its removal and disposal including studies, planning, licensing, regulatory filings and non-DOE spent fuel storage, (b) work done to prepare and carry out DECON, ENTOMB OR SAFSTOR (as defined by the NRC) of the Unit and Site, whichever is applicable, (c) the removal of radioactively contaminated and radioactively uncontaminated portions of the Unit and disposing of the same at the end of the operating life of the Unit, (d) work done to the Site and the Unit's associated equipment and facilities and to other areas, whether or not such areas are contiguous to the Site and equipment and facilities, in order to decontaminate such Site and such areas, and (e) work done by or on

behalf of the Company (or for which the Company is charged) to a facility where any portion of the Unit and its associated equipment and facilities are to be disposed of in order to prepare and maintain such facility as a disposal site.

(15) "Decommissioning Costs" shall mean all costs and expenses relating or allocable to, or incurred in connection with, Decommissioning, including, but not limited to, the decontamination and/or removal of the equipment, structures and portions of the Unit and its Site provided, however, that if Applicable Law prohibits the foregoing or imposes requirements that are more costly to implement than their removal, the term "Decommissioning Costs" shall mean all costs and expenses relating or allocable to, or incurred in connection with, the requirements imposed by Applicable Law at the end of the Unit's operating life.

(16) "Effective Date" shall mean the date of this Agreement as shown on the first page hereof.

(17) "Governmental Authority" shall mean any Federal, state, county, municipal, foreign, international, regional or other governmental authority, agency, board, body, instrumentality or court, including, without limitation, the NRC, the Massachusetts Department of Telecommunications and Energy and the Federal Energy Regulatory Commission.

(18) "Initial Contribution" shall have the meaning set forth in Section 3.01 hereof.

(19) "Master Trust" shall have the meaning set forth in the Preamble to this Agreement.

(20) "Nonqualified Fund" shall mean, with respect to the Master Trust, the Fund not constituting the Qualified Fund established under, and in accordance with, Section 2.02(b) or Section 2.05 of the Master Trust with respect to the Unit.

(21) "NRC" shall have the meaning set forth in the Preamble to this Agreement.

(22) "Notice of Claim" shall have the meaning set forth in Section 4.05(c) hereof.

(23) "Notice of BECo Distribution Amount Contention" shall have the meaning set forth in Section 4.05(c) hereof.

(24) "Notice of Tax Adjustment Certificate Contention" shall have the meaning set forth in Section 4.05(c) hereof.

(25) "Order" shall mean any order relating to Decommissioning issued by a Governmental Authority and applicable to the Unit.

(26) "PNPS" shall have the meaning set forth in the Preamble to this Agreement.

(27) "Post-Closing Favorable Tax Change" shall mean an amendment of or other change in Section 468A of the Code or the Treasury regulations promulgated thereunder or the Service's interpretations thereof occurring before December 31, 2002, which would allow (regardless of whether the Company avails itself of such amendment or other change) all or a portion of the funds in the Master Trust to accumulate more rapidly than possible under the federal tax laws in effect as of the Closing Date, even if such amendment or other change will not become effective until after December 31, 2002.

(28) "Provisional Trust" shall have the meaning set forth in the Preamble to this Agreement.

(29) "Purchase and Sale Agreement" shall have the meaning set forth in the Preamble to this Agreement.

(30) "Qualified Fund" shall mean, with respect to the Master Trust, the Fund established under, and in accordance with, Section 2.02(b) of the Master Trust Agreement for purposes of Section 468A of the Code which is designated as such in the records of the trustee of the Master Trust.

(31) "Regulation" shall mean any requirement having the force of law which is binding on the Company.

(32) "Resolved Claim" shall have the meaning set forth in Section 4.05(c) hereof.

(33) "Service" shall mean the Internal Revenue Service.

(34) "Site" shall mean the land of approximately 133 acres upon which the Unit is located on the Northerly side of Rocky Hill Road in Plymouth, Massachusetts.

(35) "Tax Adjustment" shall have the meaning set forth in Schedule I hereto.

(36) "Tax Adjustment Certificate" shall have the meaning set forth in Section 4.05(c) hereof.

(37) "Trustee" shall have the meaning ascribed thereto in the opening paragraph of this Agreement or any successor appointed pursuant to Section 6.01 hereof.

(38) "Unit" shall mean the Pilgrim Nuclear Power Station at the Site together with its main and other transformers, reactor buildings, turbine building and crane, waste processing buildings, administrative buildings, auxiliary buildings, low level waste radiation buildings, spent fuel storage facilities, intake and discharge canals and all other components and

equipment at the Site necessary for operation of the Unit and for its removal at the end of its operating/useful life.

## ARTICLE II. PROVISIONAL TRUST PURPOSE AND NAME

2.01 Provisional Trust Purpose. Subject only to the provisions of Article IV, the exclusive purpose of the Provisional Trust is to accumulate and hold funds for the contemplated Decommissioning of the Unit.

2.02 Establishment of Provisional Trust. By execution of this Agreement, the Company:

(a) establishes the Provisional Trust, which shall be effective on the Effective Date and which shall consist of the Initial Contribution delivered to the Trustee by BECo in accordance with Section 3.01, as well as investments, reinvestments and earnings on such Initial Contribution;

(b) appoints Mellon Bank, N.A. as Trustee of the Provisional Trust.

2.03 Acceptance of Appointment. Upon the terms and conditions herein set forth, Mellon Bank, N.A. accepts appointment as Trustee of the Provisional Trust. The Trustee declares that it will hold all estate, right, title and interest it may acquire hereunder exclusively for the purposes set forth in this Article II, subject only to the provisions of Article IV. The Trustee shall hold, manage, invest and administer the assets of this Provisional Trust, together with earnings and appreciation thereon, in accordance with this Agreement. 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.



2.04 Name of Provisional Trust. The Initial Contribution received by the Trustee, together with the proceeds, reinvestments and appreciation thereof shall constitute the "Provisional Decommissioning Trust for Pilgrim Nuclear Power Station."

2.05 Duties of Authorized Representatives.

(a) The Company has empowered the Company Authorized Representatives and their delegates to act for the Company in all respects hereunder. The Company Authorized Representatives may act as a group or may designate one or more Company Authorized Representative(s) or delegate(s) to perform the duties described in the foregoing sentence. The names and specimen signatures of the Company Authorized Representatives from the Effective Date through the Closing are as set forth on Exhibit B hereto. On the Closing Date, Entergy shall provide the Trustee with a written statement setting forth the names and specimen signatures of the Company Authorized Representatives from and after the Closing. The Company Authorized Representatives shall provide the Trustee with a written statement setting forth the names and specimen signatures of any delegate of the Company Authorized Representatives. Until otherwise notified in writing by the Company, the Trustee may rely upon any written notice, instruction, direction, certificate or other communication believed by it to be genuine and to be signed or certified by any one or more Company Authorized Representatives or their designated delegate(s), and the Trustee shall be under no duty to make any investigation or inquiry as to the truth or accuracy of any statement contained therein.

(b) On the Closing Date, BECo shall empower the BECo Authorized Representatives and their delegates to act for BECo in all respects hereunder. The BECo Authorized Representatives may act as a group or may designate one or more BECo Authorized Representative(s) or delegate(s) to perform the duties described in the foregoing sentence. On the Closing Date and from time to time thereafter, BECo shall provide the Trustee with a written statement setting forth the names and specimen signatures of the BECo Authorized Representatives. The BECo Authorized Representatives shall provide the Trustee with a written statement setting forth the names and specimen signatures of any delegate of the BECo Authorized Representatives. Until otherwise notified in writing by BECo, the Trustee may rely upon any written notice, instruction, direction, certificate or other communication believed by it to be genuine and to be signed or certified by any one or more BECo Authorized Representatives or their designated delegate(s), and the Trustee shall be under no duty to make any investigation or inquiry as to the truth or accuracy of any statement contained therein.

2.06 No Authority to Conduct Business. Subject to Article IV hereof, the purpose of the Provisional Trust is limited specifically to the matters set forth in Section 2.01 hereof, and there is no objective to carry on any business unrelated to the Provisional Trust purpose set forth in Section 2.01 hereof, or divide the gains therefrom.

2.07 No Transferability of Provisional Trust. Other than in connection with the transfer of the Company's beneficial interest (i) pursuant to the Purchase and Sale Agreement or, (ii) with the prior written consent of BECo, which consent shall not be unreasonably

withheld, to any other purchaser of all or substantially all of the assets of PNPS that also assumes responsibility for Decommissioning, the interest of the Company in the Provisional Trust is neither transferable, whether voluntarily or involuntarily, by the Company nor subject to the payment of the claims of creditors of either the Company or BECo.

### ARTICLE III. CONTRIBUTIONS

3.01 Contributions. At or prior to the Closing, BECo shall contribute \$70 million in cash to the Provisional Trust (the "Initial Contribution"), which funds shall be held as cash and not invested during the period prior to and including the Closing. No further contributions shall be made to, or accepted by the Trustee on behalf of, the Provisional Trust.

### ARTICLE IV. DISTRIBUTIONS

4.01 Generally. The Trustee shall not distribute any funds from the Provisional Trust except in accordance with this Article IV.

4.02 Payment of Administrative Expenses; Taxes. The Trustee shall make payments of all administrative expenses (including taxes imposed directly on the Provisional Trust), reasonable out-of-pocket expenses, and Trustee's fees as specified in the agreement referred to in Section 4.03 hereof in connection with the operation of the Provisional Trust pursuant to this Agreement. At the direction of a Company Authorized Representative, with five Business Days prior written notice to BECo, the Trustee shall distribute, within thirty Business Days of the end of each calendar quarter, to the Company an amount equal to the aggregate federal, state and local tax attributable to its interest in the Provisional Trust that would have been imposed on the Company for such quarter, determined as if the Company had filed separate federal, state and local income tax returns with taxes computed at the maximum marginal

corporate tax rate. Such distribution shall be reduced, but not below zero, for any excess distributions made hereunder with respect to prior quarters such that the total distributions under this Section 4.02 with respect to any calendar year equals the federal, state and local taxes that would be due if the Company filed separate federal, state and local income tax returns with taxes computed at the maximum marginal corporate tax rate. If the Provisional Trust is insufficient to permit the payment in full of amounts payable under this Section 4.02, the Trustee shall have no liability with respect to such insufficiency and no obligation to use its own funds to pay the same.

4.03 Fees. The Trustee shall receive as exclusive compensation for its services such amounts as may from time to time be agreed to by the Trustee and the Company with, for any such agreement occurring after the Closing Date, prompt written notice to BECo.

4.04 Liquidation of Investments. At the direction of the Company, the Trustee shall sell or liquidate such investments of the Provisional Trust as may be specified, with the proceeds to be credited to the Provisional Trust.

4.05 Other Distributions. The Trustee shall distribute the assets of the Provisional Trust, after payment of or reserve for any remaining administrative expenses, unpaid out-of-pocket expenses, Trustee fees, taxes (whether imposed upon the Provisional Trust or upon the Company) or costs of termination, to BECo and/or to the Master Trust in the manner described in this Section 4.05.

(a) Distribution in the Event of Pre-Closing Date Termination. At any time prior to the Closing Date, BECo may, in its sole discretion, upon prior written notice by a Company Authorized Representative to the Trustee and to Entergy, terminate the

Provisional Trust, in which case all of the assets of the Provisional Trust shall be promptly distributed to BECo or its designee in accordance with the written instructions of a Company Authorized Representative.

(b) Distribution in the Event of a Post-Closing Favorable Tax Change. If there has been a Post-Closing Favorable Tax Change on or after the Closing Date, BECo shall have the right, pursuant to the provisions of Section 4.05(c) below, to a distribution (at the election of the Company, to be made in cash or in kind) of the BECo Distribution Amount minus the Tax Adjustment. The balance, if any, of the Provisional Trust shall be contributed to the Master Trust, all in accordance with the written instructions of the Company Authorized Representatives.

(c) Determination of Occurrence of a Post-Closing Favorable Tax Change. In the event BECo believes a Post-Closing Favorable Tax Change has occurred entitling it to a distribution of the assets of the Provisional Trust pursuant to Section 4.05(b) hereof (a "Claim"), BECo shall provide written notice (a "Notice of Claim") to the Trustee and to the Company at any time (but on only one occasion) after the Closing Date and on or prior to January 15, 2003, in the manner and at such address as provided in Section 9.04 below, setting forth in reasonable detail the basis of such Claim and the BECo Distribution Amount (assuming that the date of distribution will be the sixtieth Business Day following the effective date of the Notice of Claim). No later than the thirtieth Business Day after the effective date of the Notice of Claim, the Company shall deliver to BECo and the Trustee a Certificate setting forth in reasonable detail the Tax Adjustment (assuming that the date of distribution will be the sixtieth Business Day

following the effective date of the Notice of Claim) (the "Tax Adjustment Certificate"). Unless the Trustee and BECo receive a timely Notice of BECo Distribution Amount Contention from the Company, or the Trustee and the Company receive a timely Notice of Tax Adjustment Certificate Contention from BECo as provided below, the Trustee shall (i) distribute to BECo assets with a value equal to the BECo Distribution Amount set forth in the Notice of Claim less the Tax Adjustment set forth in the Tax Adjustment Certificate in accordance with written instructions of the BECo Authorized Representatives and (ii) contribute the balance of the assets of the Provisional Trust, if any, to the Master Trust in accordance with the written instructions of the Company Authorized Representatives; all on the sixtieth Business Day following the effective date of the Notice of Claim.

Upon receipt of a Notice of Claim, the Company, if it elects to dispute the Claim, shall give written notice (a "Notice of BECo Distribution Amount Contention") to the Trustee and to BECo of its dispute of the Claim no more than thirty Business Days following the effective date of BECo's Notice of Claim, in which case such Claim shall be a "Disputed Claim." Upon receipt of the Tax Adjustment Certificate, BECo, if it elects to dispute the Tax Adjustment Certificate, shall give written notice (a "Notice of Tax Adjustment Certificate Contention") to the Trustee and to the Company of its dispute of the Tax Adjustment Certificate no more than fifteen Business Days following the effective date of the Tax Adjustment Certificate, in which case the Claim to which the Tax Adjustment Certificate relates shall be a "Disputed Claim."

In the event of a Disputed Claim, BECo and the Company shall in good faith negotiate to settle the portion of the Disputed Claim to which the Notice of BECo Distribution Amount Contention and/or Notice of Tax Adjustment Certificate Contention relates. If no resolution is reached within ninety Business Days following the effective date of the Notice of Claim, the Claim(s) shall be treated as a Disputed Claim and either the Company or BECo may commence an arbitration proceeding pursuant to and consistent with the provisions of Section 9.07 hereof.

If a Disputed Claim is settled by the Company and BECo or is finally determined by the arbitration proceedings referenced in Section 9.07 below (a "Resolved Claim"), then the Trustee shall (i) distribute to BECo or its designee the amount provided in the settlement, arbitration award or judgment in accordance with the written instructions of the BECo Authorized Representatives, and (ii) contribute the balance of the assets of the Provisional Trust, if any, to the Master Trust in accordance with the written instructions of the Company Authorized Representatives; all within 60 days from the date of such settlement, arbitration award or judgment, as the case may be.

(d) Distributions in the Absence of a Post-Closing Favorable Tax Change. In the event that BECo fails to deliver a Notice of Claim to the Trustee and to the Company on or prior to January 15, 2003, 100% of the assets of the Provisional Trust shall be contributed to the Master Trust in accordance with the written instructions of the Company Authorized Representatives.

4.06 Governmental Authorities. Notwithstanding anything to the contrary in this Article IV, BECo (prior to the Closing) and Entergy (following the Closing) shall direct distributions from the Provisional Trust in a manner consistent with any terms and conditions imposed by any Governmental Authority with jurisdiction over the Unit or the Provisional Trust; provided, however, that the Company and BECo each agree not to (and to cause their representatives not to) promote or advocate before any Governmental Authority the imposition of any terms and conditions on distributions from the Provisional Trust inconsistent with the provisions of this Article IV.

#### ARTICLE V. TERMINATION

5.01 Termination of Provisional Trust. Prior to the Closing, the Provisional Trust shall terminate only as and when set forth in Section 4.05(a) above. From and after the Closing, the Provisional Trust shall terminate only as and when all the assets and property of the Provisional Trust have been distributed pursuant to Section 4.05(c) or (d) above, unless an earlier termination is agreed to in writing by the Company and BECo.

#### ARTICLE VI. TRUSTEES

6.01 Designation and Qualification of Successor Trustee(s). At any time during the term of the Provisional Trust, the Company shall have the right to remove the Trustee acting hereunder and appoint another qualified entity as a successor Trustee upon thirty (30) days' notice in writing to the Trustee, or upon such shorter notice as may be acceptable to the Trustee; provided, however, that unless otherwise agreed to by the Company and BECo in writing, the Trustee hereunder shall at all times be the same bank or trust company serving as trustee under the Master Trust Agreement. In the event that the bank or trust company serving



as Trustee or successor Trustee shall: (a) become insolvent or admit in writing its insolvency; (b) be unable or admit in writing its inability to pay its debts as such debts mature; (c) make a general assignment for the benefit of creditors; (d) have an involuntary petition in bankruptcy filed against it; (e) commence a case under or otherwise seek to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law, statute, or proceeding or (f) resign, the Company shall appoint a successor Trustee; provided, however, that unless otherwise agreed to by the Company and BECo in writing, the Trustee hereunder shall at all times be the same bank or trust company serving as trustee under the Master Trust Agreement. In the event of any such removal or resignation, the Trustee or successor Trustee shall have the right to have its accounts finalized as provided in Section 6.05 hereof. Any successor to the Company, as provided herein, shall have the same right to remove and to appoint any Trustee or successor Trustee.

Any successor Trustee shall be a bank or trust company incorporated and doing business within the United States of America and having a combined capital and surplus of at least \$250,000,000, if there be such an institution willing, able and legally qualified to perform the duties of Trustee hereunder upon reasonable or customary terms.

Any successor Trustee shall qualify by a duly acknowledged acceptance of the Provisional Trust, delivered to the Company, with a copy to BECo. Upon acceptance of such appointment by the successor Trustee, the Trustee shall assign, transfer and pay over to such Successor Trustee the assets then constituting the Provisional Trust. Any successor Trustee shall have all the rights, powers, duties and obligations herein granted to the original Trustee.

6.02 Exoneration from Bond. No bond or other security shall be exacted or required of any Trustee or successor Trustee appointed pursuant to this Agreement.

6.03 Resignation. The Trustee or any successor Trustee hereof may resign and be relieved as Trustee at any time without prior application to or approval by or order of any court by a duly acknowledged instrument, which shall be delivered to the Company and BECo by the Trustee no less than thirty (30) days prior to the effective date of the Trustee's resignation or upon such shorter notice as may be acceptable to the Company and to BECo. If for any reason the Company cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee and the cost of making such application shall be an administrative expense.

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

6.05 Accounts and Reports. The Trustee shall keep accurate and detailed accounts of all investments, receipts and disbursements and other transactions hereunder with respect to the Trust in accordance with specifications of the Company, and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times with reasonable notice by any person designated by the Company and by any person designated by BECo. Within 25 days following the close of each month, the Trustee shall provide a written report of the estimated market value of the Provisional Trust, prepared on an accrual basis to the Company and to BECo. Within 35 days following the close of each month, the Trustee shall file with the Company and BECo, a final written report setting forth all investments, receipts

and disbursements and other transactions effected by it during the month and containing an exact description of all cash and securities purchased, sold or distributed and the cost or net proceeds of sale, and showing all cash, and securities and other investments held at the end of such month and the cost and fair market value of each item thereof as carried on the books of the Trustee. Such accounts and reports shall be based on the accrual method of reporting net income and expenses.

Upon the expiration of 90 days from the date of filing such written reports with the Company and BECo, the Trustee shall be forever released and discharged from all liability or accountability to anyone with respect to all acts and transactions shown in such written reports, except such acts or transactions as to which the Company or BECo shall take exception by written notice to the Trustee within such 90 day period; provided, however, that nothing contained in this Section 6.05 shall be deemed to relieve the Trustee of any liability imposed pursuant to Section 6.07 hereof. In the event that any exception taken by the Company or BECo cannot be amicably adjusted, the Company or BECo, as the case may be, may, within one year of the date of such exception, file the written report in a court having jurisdiction and upon the audit thereof any and all such exceptions which may not have been amicably settled shall be heard and adjudicated. Any exception not so filed within one year shall be deemed waived and any liability of the Trustee with respect thereto shall be deemed released.

All records and accounts maintained by the Trustee with respect to the Provisional Trust shall be preserved for such period as the Company and BECo shall specify and in the absence of any instructions from the Company and BECo shall be preserved for a period of four (4) years. Upon the expiration of any such required retention period, the Trustee shall

have the right to destroy such records and accounts after first notifying the Company and BECo in writing of its intention and transferring to the Company (originals or copies, as appropriate) and BECo (copies only), any records and accounts requested by each of them, respectively.

6.06 Tax Returns and Other Reports. The Company, or the Trustee at the Company's direction, shall prepare and file any federal income tax returns as may be required from time to time with respect to the Provisional Trust, and the Trustee agrees to provide the Company and BECo in a timely manner with any information which is necessary to make such filings, if any, which information is not in the possession of the Company or BECo, as the case may be. The Trustee shall prepare and submit to the Company and BECo in a timely manner all information requested by either the Company or BECo regarding the amounts required to be included in the Company's and/or BECo's federal income tax return. The Trustee may employ independent certified public accountants or other tax counsel to prepare or review such returns and reports and the reasonable cost thereof shall be an administrative cost. The Trustee agrees to sign any tax returns or other reports where required by law to do so or arising out of the Trustee's responsibilities hereunder. Any interest or penalty charges assessed against the Provisional Trust pursuant to Chapters 67 or 68 of the Code as a result of the Trustee's failure to comply with this Section 6.06 shall be an administrative expense unless caused by the Trustee's negligence or willful misconduct, in which case such interest or penalty charges shall be borne by the Trustee and not the Provisional Trust. The Trustee agrees to notify the Company and BECo in writing within 10 days of the commencement of the audit of the Provisional Trust's federal tax returns, and to participate with the Company or BECo, as the

case may be, on behalf of the Provisional Trust in such audits and related inquiries. The Trustee further agrees to provide the Company and BECo with any additional information in its possession regarding the Provisional Trust which may be requested by the Company or BECo to be furnished in an audit of the Company's or BECo's federal tax returns. BECo's rights under this Section 6.06 shall only apply to periods prior to the Closing.

6.07 Liability. (a) The Trustee shall not be liable for any loss or injury resulting from its actions or its performance of its duties hereunder or for its investment decisions in the absence of its own willful misconduct or negligence. In no event shall the Trustee be liable (i) for acting in accordance with instructions from a Company Authorized Representative or a BECo Authorized Representative or pursuant to a legal opinion of counsel to the Trustee, to the Company or to BECo, or pursuant to a final arbitration award pursuant to Section 9.07 (ii) for special or consequential damages or (iii) for the acts or omissions of The Depository Trust Company, The Federal Reserve Bank, Participants Trust Company or any clearing agency or depository regulated by the Securities and Exchange Commission.

(b) BECo and Entergy shall indemnify the Trustee and hold it harmless against any and all claims, losses, liabilities, excise taxes, damages or reasonable expenses (including attorneys' fee and expenses) howsoever arising from or in connection with this Agreement or the performance of its duties hereunder, together with any income taxes imposed on the Trustee as a result of any indemnity paid by BECo or Entergy hereunder, provided, however, that nothing contained herein shall require that the Trustee be indemnified for any liability imposed pursuant to clause (a) of this Section 6.07. The indemnity obligation of BECo hereunder shall apply only to matters occurring prior to the Closing, and the indemnity

obligation of Entergy hereunder shall apply only to matters occurring at or after the Closing. Nothing contained herein shall limit or in any way impair the right of the trustee to indemnification under any other provision of this Agreement.

(c) The Company understands that when and if the Trustee delivers property against payment, it may deliver such property prior to receiving final payment and that, as a matter of bookkeeping convenience, the Trustee may credit the Provisional Trust with anticipated proceeds of sale prior to actual receipt of final payment. The risks of non-receipt of payment shall be the Company's and the Trustee shall have no liability therefor.

(d) All credits to the Provisional Trust of the proceeds of sales and redemptions of property and of anticipated income from property shall be conditional upon receipt by Trustee of final payment and may be reversed to the extent final payment is not received.

(e) The provisions of this Section 6.07 and the right of the Trustee to claim the benefit thereof shall survive any termination of this Agreement and any resignation or removal of the Trustee.

#### ARTICLE VII. TRUSTEE'S GENERAL POWERS

The Trustee shall have, with respect to the Provisional Trust, the following powers, all of which powers are fiduciary powers to be exercised in a fiduciary capacity and in the best interests of this Provisional Trust and the purposes hereof, namely:

7.01 Registration of Securities. To hold any stocks, bonds, securities, and/or other property in the name of a nominee, in a street name, or by other title-holding device, without indication of the Provisional Trust and generally to exercise the powers of an owner, including

without limitation the power to vote in accordance with instructions provided by the Company, with respect to any such property whether so held or held in its own name, as Trustee.

7.02 Retention and Removal of Professional and Employee Services. To employ attorneys, accountants, custodians, engineers, contractors, clerks and agents as may be reasonably necessary to carry out the purposes of the Provisional Trust. The reasonable cost of any such employment shall be an administrative cost payable from the Provisional Trust pursuant to Section 4.02.

7.03 Delegation of Ministerial Powers. To delegate to other persons such ministerial powers and duties as the Trustee may deem to be advisable.

7.04 Powers of Trustee to Continue Until Final Distribution. To exercise any of such powers after the date on which the principal and income of the Provisional Trust shall have become distributable and until such time as the entire principal of, and income from, the Provisional Trust shall have been actually distributed by the Trustee in accordance with Section 4.05 hereof.

7.05 Discretion in Exercise of Powers. To do any and all other acts which the Trustee shall deem proper to effectuate the powers specifically conferred upon it by this Agreement, provided, however, that the Trustee may not do any act or participate in any transaction which would:

- (a) Contravene any provision of this Agreement, including any requirement for notice to, or the approval of, any party; or
- (b) Violate the terms and conditions of any instructions provided in a written statement of the Company.

7.06 Deposit of Funds. To deposit funds in interest bearing account deposits maintained by or savings certificates issued by the Trustee in its separate corporate capacity, or in any other banking institution affiliated with the Trustee.

7.07 Loaning of Securities. To loan securities to brokers or dealers or other borrowers under such terms and conditions as the Company authorizes pursuant to a separate agreement.

7.08 Retention of Uninvested Cash. To hold uninvested cash awaiting investment and such additional cash balances as it shall deem reasonable or necessary, without incurring any liability for the payment of interest thereon.

#### ARTICLE VIII. INVESTMENTS

8.01 Trustee's General Investment Powers. The Trustee shall have the power to invest the assets of the Provisional Trust in accordance with the guidelines set forth on Exhibit A and in accordance with the written directions of the Company; provided, however, investments may not include any securities settled or safekept outside of the United States.

Nothing in this Agreement shall restrict the Trustee, in its individual capacity, from acting as an agent for, providing banking, investment advisory, investment management and other services to, and generally engaging in any kind of business with others (including without limiting the generality of the foregoing issuers of securities, of money market instruments or of other property purchased or on behalf of the Provisional Trust) to the same extent as if it was not the Trustee hereunder. Nothing in this Agreement shall in any way be deemed to restrict the right of the Trustee, in its individual capacity, to perform services for any other person or entity, and the performance of such services for others will not be deemed



to violate or give rise to any duty or obligation to the Company, BECo or the Provisional Trust not specifically undertaken by the Trustee hereunder. Nothing in this Agreement shall limit or restrict the Trustee, in its individual capacity, or any of its officers, affiliates or employees from buying, selling or trading in any securities for its or their own accounts. The Trustee, in its individual capacity, its officers, employees or affiliates, and its other clients may at any time have, acquire, increase, decrease or dispose of positions in investments which are at the same time being acquired or disposed of for the account of the Provisional Trust. The Trustee shall have no obligation to acquire for the Provisional Trust a position in any property which it acquires in its individual capacity, or which its officers, employees or affiliates may acquire for its or their own accounts or for the account of a client.

#### ARTICLE IX. MISCELLANEOUS

9.01 Headings. The section headings set forth in this Agreement and the Table of Contents are inserted for convenience of reference only and shall be disregarded in the construction or interpretation of any of the provisions of this Agreement.

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

9.03 Severability of Provisions. If any provision at this Agreement or its application to any person or entity or in any circumstances shall be invalid and unenforceable, the application of such provision to persons and in circumstances other than those as to which it is

invalid or unenforceable and the other provisions of this Agreement, shall not be affected by such invalidity or unenforceability.

9.04 Delivery of Notices Under Agreement. Any notice, direction or instruction required by this Agreement to be given to the Company, BECo or the Trustee shall be deemed to have been properly given when sent by overnight mail and by facsimile, to the person to be notified as set forth below:

If to BECo:

Boston Edison Company  
800 Boylston Street, 36th Floor  
Boston, MA 02199  
Attention: Douglas S. Horan, Esq., Senior Vice President and General Counsel  
Fax Number: (617) 424- 3421

If to the Company, then to Entergy (below) or to BECo (above), as the case may be.

If to Entergy:

Entergy Nuclear Generation Company  
c/o RL&F Service Corp.  
One Rodney Square, 10th Floor  
Tenth & King Streets  
Wilmington, DE 19801

With a copy to:

Joseph L. Blount, Esq.  
Assistant Secretary  
Entergy Nuclear, Inc.

Mailing Address  
P.O. Box 31995  
Jackson, MS 39286-1995

Street Address (Use for Overnight Mail)  
1340 Echelon Parkway  
Jackson, MS 39213

Fax Number: (601) 368-5694

If to the Trustee:

Mellon Bank, N.A.  
500 Grant Street, Room 3346  
Pittsburgh, PA 15258  
Attention: Glen Metzger  
Fax Number: 412-234-6112

Any of the Company, BECo, Entergy or the Trustee may change their address above by delivering notice thereof in writing to the other parties. The effective date of any notice given hereunder shall be the date of mailing.

9.05 Alterations and Amendments. The Trustee and the Company understand and agree that modifications or amendments may be required to this Agreement, and to the exhibits and schedules hereto, from time to time to effectuate the purpose of the Provisional Trust and comply with Applicable Law, any Order, any changes in tax laws, regulations or rulings (whether published or private) of the Service and any similar state taxing authority, and any other changes in the laws applicable to the Company and the Unit. This Agreement, and the exhibits hereto, may be altered or amended to the extent necessary or advisable to effectuate such purposes or to comply with such Applicable Law, Order or changes, and to effectuate the distribution provisions of Article IV.

Otherwise, this Agreement, and the exhibits and schedules hereto, may be amended, modified, or altered for any reasonable purpose requested by the Company; in the case of any amendment, modification, or alteration following the Closing Date, so long as such amendment, modification, or alteration does not affect the use of the assets of the Provisional Trust to pay the costs of Decommissioning.

Any alteration or amendment to, or modification of, this Agreement or an exhibit or a schedule hereto must be in writing and signed by the Company and the Trustee, and, if effective after the Closing Date, is subject to the prior written approval of BECo, which approval shall not be unreasonably withheld. The Trustee shall execute any such alteration, modification or amendment required to be executed by it and shall accept and be governed by any amended, modified or altered schedule delivered to it but shall have no duty to inquire or make any investigation as to whether any amendment, modification or alteration is consistent with this Section 9.05, except as to the receipt of prior written approval of BECo as set forth in the first sentence of this paragraph.

Notwithstanding anything in this Section 9.05 to the contrary, no material amendment, modification or alteration to this Agreement shall become effective unless and until the Company shall have provided the Director, Office of Nuclear Reactor Regulation of the Nuclear Regulatory Commission at least 30 days prior written notice of such material amendment, modification or alteration, with a copy to BECo.

9.06 Successors and Assigns. Subject to the provisions of Sections 2.09 and 6.01, this Agreement shall be binding upon and inure to the benefit of the Company, the Trustee and BECo and their respective successors, assigns, personal representatives, executors and heirs.

9.07 Disputes. Each dispute, difference, controversy or claim between the Company and BECo arising in connection with or related or incidental to this Agreement or the Provisional Trust after the Closing Date, including without limitation a Disputed Claim, shall be settled either by mutual agreement of the Company and BECo (evidenced by appropriate instructions in writing to the Trustee, signed by the Company and BECo), or otherwise by

arbitration under the Commercial Arbitration Rules of the American Arbitration Association (the "AAA") by an arbitral tribunal composed of three arbitrators, each of whom shall be an attorney or accountant experienced in tax matters, appointed by agreement of the Company and BECo in accordance with said Rules. In the event the Company and BECo fail to agree upon a panel of arbitrators from the first list of potential arbitrators proposed by the AAA, the AAA will submit a second list in accordance with said Rules. In the event the Company and BECo shall have failed to complete a full, agreed upon panel of arbitrators from said second list, any remaining arbitrators to be selected shall be appointed by the AAA in accordance with said Rules. If, at the time of the arbitration, the Company and BECo agree in writing to submit the dispute to a single arbitrator, said single arbitrator shall be appointed by agreement of the Company and BECo in accordance with the foregoing procedure, or, failing such agreement, by the AAA in accordance with said Rules. The foregoing arbitration proceedings may be commenced by the Company or BECo by notice to the other and the Trustee. The venue for any such arbitration shall be Boston, Massachusetts or any other venue mutually agreed to by the Company and BECo. Except as provided below, all costs of such proceeding shall be borne as specified in the award or order. The arbitrators may award interest as they deem just and equitable covering the period from the sixtieth Business Day following the effective date of the Notice of Claim through the date of the actual distribution to BECo from the Provisional Trust. This agreement to arbitrate (and any proceedings relating to such arbitration or any arbitral award resulting therefrom) shall be governed by Chapter 251 of the Massachusetts General Laws. However, the Company, BECo and the Trustee each hereby agree as follows:

- a) the arbitral award shall be final and binding on the Company, BECo and the Trustee and shall not be contested, challenged or appealed by any of them;
- b) in further specification of the forgoing subparagraph,
  - (i) neither the Company, nor BECo, nor or the Trustee shall seek to vacate the award on any ground, all rights to seek to vacate the award on any ground being hereby waived; and
  - (ii) any application to modify the arbitral award must be brought solely before the arbitration panel (which, following the award, shall retain jurisdiction solely for such purpose), and shall be limited to the grounds for modification listed in Section 13(a)(1)-(3) of Chapter 251 of the Massachusetts General Laws, all rights to seek to modify the award on any other ground being hereby waived; and
- c) any application to court relating to this agreement to arbitrate, or to any proceedings relating to such arbitration, or to any arbitral award resulting therefrom, shall be brought solely in the Massachusetts Superior Court in Suffolk County, Massachusetts, it being further agreed
  - (i) that the Company, BECo and the Trustee hereby waive any lack of personal jurisdiction in any such proceeding,
  - (ii) that any application to court (or request for relief therein) shall be limited to compelling arbitration, confirming the arbitral award, or enforcing any judgment entered thereon,

- (iii) that all rights of appeal from any order or judgment entered by the court in any such proceeding are hereby waived, and
- (iv) that if the Company or BECo commences an action, seek relief or pursues an appeal in contravention of the foregoing, such party shall bear the reasonable costs and expenses of the other party (including attorneys' fees) incurred in connection with both the original arbitration proceeding and any such action, request for relief, or appeal.

9.08 Governing Law.

(a) This Agreement, the Provisional Trust and all questions pertaining to their validity, construction, and administration shall be interpreted, construed and determined in accordance with the internal substantive laws (and not the choice of law rules) of the Commonwealth of Pennsylvania.

9.09 Accounting Year. The Provisional Trust shall operate on an accounting year which coincides with the calendar year, January 1 through December 31.

9.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

9.11 Decommissioning Liability. Nothing in this Agreement or in any amendment is intended to impose any responsibility on the Trustee for overseeing or paying the cost of the Decommissioning of the Unit other than, in the case of the Trustee, the disbursement of funds in accordance with Article IV hereof.

9.12 Limitation on Trustee Liability. 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 Provisional Trust resulting from any event beyond the reasonable control of the Trustee, its agents or subcustodians, including but not limited to nationalization, strikes, expropriation, devaluation, seize, 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, levels or other charges affecting the Provisional Trust's 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 the 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.

9.13 Entire Agreement. This Agreement and the Purchase and Sale Agreement constitute the entire agreement among BECo, Entergy and the Trustee and supersedes any prior understandings, agreements or representations by or between the parties, written or oral, to the extent related in any manner to the subject matter hereof. All conflicts or inconsistencies between the terms hereof and the terms of the Purchase and Sale Agreement shall be resolved in favor of this Agreement.

9.14 Authorization. Each of the Company, BECo and the Trustee hereby represents and warrants to the other parties that it has full authority to enter into this Agreement upon the



terms and conditions hereof and that the individual executing this Agreement has the requisite authority to bind that party.

IN WITNESS WHEREOF, the Company and the Trustee have set their hands to this Agreement as of the day and year first above written.

BOSTON EDISON COMPANY

By: James J. Judge  
Name: James J. Judge  
Title: Senior Vice President  
and Treasurer

MELLON BANK, N.A., as Trustee

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

Accepted and Agreed,

ENTERGY NUCLEAR GENERATION COMPANY

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

IN WITNESS WHEREOF, the Parties have executed this instrument under seal as of the date first above written.

BOSTON EDISON COMPANY

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

MELLON BANK, N.A., as Trustee

By: \_\_\_\_\_  
Name: H. JOHN GREG  
Title: FIRST VICE PRESIDENT

Accepted and Agreed,

ENTERGY NUCLEAR GENERATION COMPANY

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

IN WITNESS WHEREOF, the Company and the Trustee have set their hands to this Agreement as of the day and year first above written.

BOSTON EDISON COMPANY

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

MELLON BANK, N.A., as Trustee

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

Accepted and Agreed,

ENTERGY NUCLEAR GENERATION COMPANY

By: *Robert M. Bellamy*  
Name: Robert M. Bellamy  
Title: Vice-President

## EXHIBIT A

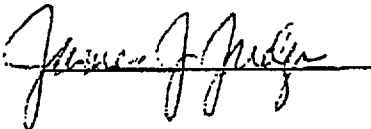
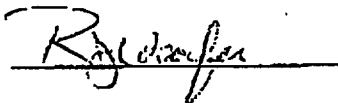
### INVESTMENT GUIDELINES

Permitted investments for the Provisional Trust shall be any investments permitted by Applicable Law, rule or regulation. Subject to clarification, if any, by the Nuclear Regulatory Commission, investments in the securities or other obligations of Entergy Nuclear Generation Company, a Delaware corporation, Entergy Corporation, a Delaware corporation, and each of their affiliates, subsidiaries, associates or their successors or assigns shall be prohibited. In addition, except for investments tied to market indexes or non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants is prohibited. Permitted investments include investments tied to market indexes, mutual funds or common trust funds which may hold securities issued by Entergy Corporation, its affiliates and subsidiaries.

After the Closing, the Trustee shall at all times invest the funds of the Provisional Trust pro rata in the same investments in which the funds of the Master Trust are invested from time to time.

EXHIBIT B

**COMPANY AUTHORIZED REPRESENTATIVES**

<u>Name</u>	<u>Title</u>	<u>Signature</u>
James J. Judge	Senior Vice-President and Treasurer	
Robert J. Weafer	Vice-President of Finance, Controller and Chief Accounting Officer	

Schedule I

Pursuant to Section 4.05 in the event of a Post-Closing Favorable Tax Change, BECo shall be entitled to a distribution of assets of the Provisional Trust in an amount equal to the BECo Distribution Amount less the Tax Adjustment. No interest or earnings shall be payable on the BECo Distribution Amount except to the extent expressly permitted under Section 9.07 with respect to the period after the sixtieth day following the effective date of the Notice of Claim.

The BECo Distribution amount is intended to be the difference between (i) the amount actually funded in the Master Trust and Provisional Trust at Closing increased by the assumed after tax earnings thereon to the effective date of the Post-Closing Favorable Tax Change assuming no portion of the fund is Qualified, assuming the effective federal and state tax rate is 39.2%, using the Pre-Tax Growth Rate and using all other Fixed Assumptions as set forth below) ("Initial Funding Amount") and (ii) the amount that needs to be funded in the Master Trust and Provisional Trust on the effective date of the Post-Closing Favorable Tax Change to allow those funds to reach the Target Decommissioning Amount on December 31, 2012 reflecting the changes to the Variable Assumptions (but not the Fixed Assumptions) resulting from the Post-Closing Favorable Tax Change ("Revised Funding Amount") (with such amount computed regardless of whether the Company in fact avails itself of such Post-Closing Favorable Tax Change). The Target Decommissioning Trust Fund Amount has been agreed to by the parties in a confidential memorandum dated July 12, 1999 ("Confidential Memorandum"). In no event shall the BECo Distribution Amount be greater than the Maximum BECo Distribution Amount determined as follows:

<u>Effective Date of Post Closing Favorable Tax Change</u>	<u>Maximum BECo Distribution Amount (in millions)</u>
Closing Date	\$70.0
12/31/99	68.8
12/31/00	66.3
12/31/01	63.5
12/31/02	60.3
12/31/03	56.7
12/31/04	52.6
12/31/05	48.1
12/31/06	43.0
12/31/07	37.5
12/31/08	31.3
12/31/09	24.5
12/31/10	17.1
12/31/11	8.9
12/31/12	0

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(in the event the effective date of the Post Closing Favorable Tax Change does not occur as of the Closing Date or December 31, the amount shall be interpolated on a straight line basis).

In determining the Initial Funding Amount, the following fixed assumptions ("Fixed Assumptions") were made and shall not be subject to change in determining the Revised Funding Amount and the BECo Distribution amount:

- Portion of Master Trust Fund which is Qualified under Section 468A of the Code is never greater than 80%. The term "Qualified" is intended to refer to that portion of the Master Trust Fund which is subject to the favorable tax rate provided in Code Section 468A(e)(2)(B)(ii) in effect on the date of Closing.
- Master Trust and Provisional Trust funds grow to December 31, 2012.
- Nonqualified funds are taxed at federal and state effective tax rate of 39.2%.
- Nonqualified and Qualified funds will grow at the pre-tax rates specified in the Confidential Memorandum (the "Pre-Tax Growth Rate").
- All Code provisions except Section 468A as in effect on the Closing Date will remain in effect through 2012.

In determining the Initial Funding Amount the following assumptions were made but are variable assumptions ("Variable Assumptions") for purposes of determining the revised Funding Amount and the BECo Distribution Amount:

- Section 468A of the Code as in effect on the Closing Date will remain in effect through 2012.
- Qualified funds are subject to an effective federal and state tax rate of 20%.
- No portion of the Master Trust or Provisional Trust is a Qualified fund.

The matrix ("Matrix") contained in the Confidential Memorandum, which sets forth the determination of the Revised Funding Amount assuming a Post-Closing Favorable Tax Change occurring after the Closing and before December 31, 2002, increases the portion of the Master Trust subject to Qualified tax treatment from 0% up to 80%. For purposes of the Matrix, all other Fixed and Variable Assumptions are unchanged.

The difference between the Initial Funding Amount and the Revised Funding Amount determined using the Matrix would equal the BECo Distribution Amount. If the BECo Distribution Amount as calculated using the Matrix is greater than the Maximum BECo



Distribution Amount, the BECo Distribution Amount shall be reduced to equal the Maximum BECo Distribution Amount. In the event other Variable Assumptions change or in the event the Post-Closing Favorable Tax Change is phased in on different effective dates, the Matrix will serve as the basis for determining the BECo Distribution Amount with appropriate adjustments.

The Revised Funding Amount can also be calculated using the following formula:  
where:

$$\frac{A}{[1 + i(1 - R)]^t} = RFA$$

- "RFA" equals the Revised Funding Amount
- "A" equals the Target Decommissioning Trust Fund Amount
- "i" equals the appropriate Pre-Tax Growth Rate
- "t" equals the number of years (and portions thereof) between the effective date of the Post-Closing Favorable Tax Change and December 31, 2012
- "R" equals the effective federal and state tax rate determined as follows:

$$R = [X \cdot QR] + [.392 \cdot (1 - X)]$$

where:

- "X" is the portion (stated as a decimal) of the Master Trust which is Qualified but in no event greater than .8; and
- "QR" is the federal tax rate applicable to the Qualified fund under Code Section 468A(e)(2)(B) or successor provision thereof and applicable after tax state rate.

In determining the amount of the Provisional Trust to be distributed to BECo under Section 4.05, the Tax Adjustment shall be deducted from the BECo Distribution Amount after the BECo Distribution Amount has been reduced, if necessary, to the Maximum BECo Distribution Amount. The Tax Adjustment is the amount reflecting the effect in present value dollars as of the effective date of the Post-Closing Favorable Tax Change of the tax costs or the loss or deferral of tax benefits reasonably expected to be incurred by the Company (or an Affiliate with which it files consolidated federal tax returns) as a condition to, or a consequence of, the Post-Closing Favorable Tax Change (regardless of whether the Company avails itself of such Post-Closing Favorable Tax Change), other than tax costs or the loss or deferral of tax benefits incurred or arising out of provisions of the Code in existence on November 18, 1998. Whether a tax cost or the loss or deferral of a tax benefit is a condition to, or a consequence of, the Post-Closing Favorable Tax Change shall be determined by taking into account not only the change in the Code, Treasury regulations and/or the Service's

interpretations thereof constituting such Post-Closing Favorable Tax Change, but also the legislative history of the Post-Closing Favorable Tax Change. In determining net present value, the discount rate used shall be LIBOR (as in effect from time to time) plus 1%. In the event of an in-kind distribution to BECo of the BECo Distribution Amount, the Tax Adjustment shall be reduced by an amount sufficient to reimburse BECo for any directly related expenses or taxes incurred as a result of receiving an in-kind distribution that exceeds the amount of directly related expenses or taxes that would have been incurred by BECo as a result of a cash distribution. It is agreed by the Parties that if Section 468A were amended as of November 18, 1998, to permit the Company to contribute all or a portion of the Master Trust to a Qualified Fund (i.e. a Favorable Tax Change), with no other change to existing law, the Tax Adjustment would be zero (assuming a cash distribution).

The full amount to be distributed to BECo pursuant to Section 4.05 shall be the BECo Distribution Amount (reduced, if necessary, to the Maximum BECo Distribution Amount) plus interest allowed pursuant to Section 9.07, if any, less the Tax Adjustment. If after the Disputed Claim is resolved, the Tax Adjustment is equal to or greater than the BECo Distribution Amount, no distribution shall be made to BECo and the Trustee shall contribute the assets of the Provisional Trust to the Master Trust (subject to reserves and payments) as provided in Section 4.05(c).