



August 16, 2007  
L-2007-134

Director  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
Attention: Document Control Desk  
Washington, DC 20555

Subject: Point Beach Nuclear Plant, Units 1 and 2  
Docket Nos. 50-266, 50-301  
Notice of Change of Senior Management and  
Copy of Non-qualified Decommissioning Trust Agreement  
Relating to License Transfer for Point Beach Nuclear Plant, Units 1 and 2

Re: NRC Order Approving Transfer of Licenses and Conforming Amendments  
Relating to Point Beach Nuclear Plant, Units 1 and 2, dated July 31, 2007  
(the Order)

Point Beach Nuclear Plant, Units 1 and 2, Application for Order and  
Conforming License Amendments to Transfer Facility Operating  
Licenses, dated January 26, 2007 (the Application)

The purpose of this letter is to (1) provide the Nuclear Regulatory Commission with notice of a management change with respect to the Point Beach Nuclear Plant that will be effective after the closing of FPL Energy Point Beach, LLC's (FPLE-PB) acquisition of Point Beach and (2) supply the NRC with a copy of the Non-qualified Decommissioning Trust Agreement for Point Beach.

#### Management Change

In the above-referenced Application, the applicants stated that if FPLE-PB determines that any senior management changes will be made contemporaneously with the transfer of the Point Beach operating licenses, FPLE-PB would ensure that new individuals will meet all technical qualifications for the position, and will inform the NRC and provide a copy of their resume to the NRC.

Accordingly, FPLE-PB hereby notifies the NRC that, effective on the closing date, the Point Beach on-site nuclear organization will report operationally through Mark E. Warner to the FPLE-PB Chief Nuclear Officer. Mr. Warner, who has been appointed to the position of Vice President, Nuclear Operations (North Region), has sufficient qualifications for this position based on his experience in the nuclear industry. Mr. Warner is currently responsible for management oversight of operations at Seabrook Station and Duane Arnold Energy Center. Before assuming his current role, Mr. Warner was Vice President, Nuclear Operations Support, and previously served as Site Vice President at Seabrook Station.

Mr. Warner is a 20-year veteran in the electric power industry, serving in positions of increasing responsibility in operations, maintenance, work and change management,

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and engineering. Prior to joining FPL Group, he served as site vice president at the Point Beach, Kewaunee, and Three Mile Island nuclear plants. Warner holds a bachelor's degree in mechanical engineering from Villanova University, and is a graduate of the Advanced Management Program at Duke University's Fuqua School of Business. A copy of Mr. Warner's resume is enclosed herewith.

Non-Qualified Decommissioning Trust Agreement

The above-referenced Order requires FPLE Point Beach to establish an external decommissioning trust fund for Point Beach in a form acceptable to the NRC prior to closing. To reflect a potential change in the commercial terms of the Point Beach transaction, FPLE-PB has prepared a Non-qualified Decommissioning Trust Agreement. A copy of this trust agreement is enclosed. The Non-qualified Decommissioning Trust Agreement meets applicable NRC requirements at 10 CFR 50.75.

Should you have any questions regarding this matter, please contact Mitchell S. Ross, Associate General Counsel, at 561-691-7126.

Sincerely yours,



J.A. Stall  
Senior Vice President, Nuclear and  
Chief Nuclear Officer

Cc: Administrator, Region III, USNRC  
Project Manager, Point Beach Nuclear Plant, USNRC  
Resident Inspector, Point Beach Nuclear Plant, USNRC  
Director, Spent Fuel Project Office  
Susan Uttal, Office of General Counsel

Enclosures:

Resume of Mark E. Warner  
Non-qualified Decommissioning Trust Agreement

# Florida Power & Light Company

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## Biographical Information

### **Mark E. Warner** Vice President, Nuclear Operations

Mark Warner is vice president, nuclear operations (north region) of Florida Power & Light Company (FPL), Florida's largest electric utility.

Warner reports to the chief nuclear officer and is responsible for management oversight of operations at nuclear power sites in New Hampshire and Iowa, which includes ensuring the highest standards of nuclear safety, operating efficiencies and cost effectiveness. In addition, he will also assume management oversight responsibilities for the Point Beach Nuclear Plant following closing of the plant's sale to FPL Energy, currently scheduled to occur in early fall 2007.

Warner joined FPL Group, Inc., FPL's parent company, as site vice president for the Seabrook Station nuclear power plant in Seabrook, NH. He assumed his leadership role at Seabrook after another FPL Group subsidiary, FPL Energy, acquired an 88 percent interest in the 1,240-megawatt pressurized water reactor from a consortium of owners in late 2002.

Warner is a 20-year veteran in the electric power industry, serving in positions of increasing responsibility in operations, maintenance, work and change management, and engineering. Prior to joining FPL Group, he was site vice president of Nuclear Management Company's Point Beach and Kewaunee nuclear power plants in Wisconsin. Before that he served as vice president, Three Mile Island, for Exelon Corp.

Warner earned a bachelor's degree in mechanical engineering from Villanova University, where he graduated *cum laude* in 1986. He also attended the Advanced Management Program at Duke University's Fuqua School of Business. Prior to attending Villanova, he served in the U.S. Marine Corps.

FPL, which serves approximately 4.4 million customer accounts in Florida, is the principal subsidiary of FPL Group, Inc. FPL Group, with annual revenues in 2006 of \$15.7 billion, is nationally known as a high-quality, efficient, and customer-driven organization focused on energy-related products and services. With a growing presence in 26 states, it is widely recognized as one of the country's premier power companies. Additional information is available on the Internet at <http://www.FPL.com> and <http://www.FPLGroup.com>.

**FPL ENERGY POINT BEACH, LLC**  
**NON-QUALIFIED DECOMMISSIONING MASTER TRUST AGREEMENT**  
**FOR THE POINT BEACH NUCLEAR PLANT UNITS**

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ATTACHMENT A – Form of Certificate for Disbursements

ATTACHMENT B – Cross-Trading Information

ATTACHMENT C – Customer Identification Program Notice

## NON-QUALIFIED DECOMMISSIONING MASTER TRUST AGREEMENT

This Agreement ("Agreement" or "Non-Qualified Decommissioning Master Trust Agreement") is entered into as of the \_\_\_\_ day of August, 2007, by and among FPL Energy Point Beach, LLC, a limited liability company duly organized and existing under the laws of the State of Wisconsin and having its principal office at 700 Universe Blvd., Juno Beach, Florida (the "Company"), Mellon Bank, N.A., and Mellon Trust of Delaware, National Association, a wholly-owned subsidiary of Mellon Bank, N.A., as Trustee (the "Trustee").

### RECITALS OF THE COMPANY

WHEREAS, the Company, pursuant to the Asset Sale Agreement by and between Wisconsin Electric Power Company (the "Prior Owner"), the Company and FPL Group Capital, Inc. dated as of December 19, 2006 (the "ASA"), will acquire the Point Beach Nuclear Plant (the "Plant"), which consists of two operating nuclear power plant units ("Unit 1" and "Unit 2", respectively, and each a "Unit"); and

WHEREAS, the ASA provides that the Company shall establish a Post-Closing Decommissioning Trust pursuant to which assets of the Prior Owner's decommissioning funds will be transferred at Closing; and

WHEREAS, this Agreement shall constitute the Post-Closing Decommissioning Trust and shall receive the decommissioning funds transferred pursuant to the ASA; and

WHEREAS, the Company is subject to regulation by the Nuclear Regulatory Commission (the "NRC"), which is an agency of the United States government created and existing pursuant to 42 U.S.C. § 5841; and

WHEREAS, pursuant to section 468A of the Internal Revenue Code of 1986, as amended (the "Code"), as most recently amended by the Energy Policy Act of 2005, certain Federal income tax benefits may be available as the result of creating and contributing monies to qualified nuclear decommissioning reserve trusts associated with the Plant; and

WHEREAS, the Prior Owner and Northern Trust Company have entered into that certain Amended and Restated Decommissioning Trust Agreement for the Plant dated December

13, 2003 (the "Prior Agreement"), pursuant to which, among other things, the Prior Owner established trusts for the exclusive purpose of providing for the radiological decommissioning of the Plant, which trusts consist of a qualified nuclear decommissioning reserve fund (the "Prior Qualified Trust") under Code section 468A and a trust that does not so qualify (the "Prior Non-Qualified Trust") (collectively the "Prior Trusts");

WHEREAS, the Company will receive a transfer of funds from the Prior Nonqualified Trust contained in the Prior Agreement and wishes to transfer these funds to two separate trusts created under this Agreement, with each such trust being established for Unit 1 and Unit 2 respectively (the "Unit 1 Non-Qualified Decommissioning Trust" and the "Unit 2 Non-Qualified Decommissioning Trust");

WHEREAS, Mellon Trust of Delaware, National Association is a national banking association with trust powers;

WHEREAS, Mellon Trust of Delaware, National Association is willing to serve as trustee to the Trust and the Sub-Trusts created pursuant to this Agreement on the terms and conditions herein set forth; and

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereby agree as follows:

The Company hereby agrees to deliver to the Trustee and the Trustee hereby agrees to receive contributions of monies to the Trust beginning on the date first written above; and

TO HAVE AND TO HOLD such assets; and

TO INVEST AND REINVEST the assets of the Trust as provided herein; and

TO PAY OR DISTRIBUTE from the Trust as provided herein;

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

## I. DEFINITIONS

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

“Agreement” shall mean this Non-Qualified Decommissioning Master Trust Agreement as the same may from time to time be amended, modified, or supplemented.

“Authorized Representative” shall mean the President, any Vice President, the Treasurer, or any Assistant Treasurer of the Company’s indirect parent FPL Group, Inc.

“Certificate” shall mean a document properly completed and executed by an Authorized Representative and substantially in the form of Attachment A hereto.

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

“Company” shall mean FPL Energy Point Beach, LLC or its successor.

“Contribution” shall mean any contribution, cash or otherwise, made to the Trust (including the initial transfer from the Prior Non-Qualified Trust).

“Decommissioning Costs” shall mean the expenses incurred in decommissioning the Plant.

“Fair Market Value” for any security held by the Trust shall be determined as follows:

- (a) securities listed on the New York Stock Exchange, the American Stock Exchange or any other recognized U.S. exchange shall be valued at their last sale price on the exchange on which securities are principally traded on the valuation date (NYSE-Composite Transactions or AMEX-Composite Transactions prices to prevail on any security listed on either of these exchanges as well as on

another exchange); and where no sale is reported for that date, the last quoted sale price shall be used;

- (b) all other securities and assets shall be valued at their market values as fixed by the Trustee's staff regularly engaged in such activities;

provided, however, that at the request of the Trustee, an Investment Manager shall determine the value of any securities or other property held in an Investment Account managed by that Investment Manager and such determination shall be regarded as a direction binding upon the Trustee for purposes of the Fair Market Value of such securities.

"Investment Account" shall have the meaning set forth in Section 7.01 hereof.

"Investment Manager(s)" shall be designated from time to time by the Company and may be, to the extent permissible by applicable law: (i) an investment counselor(s) who is an employee(s) of the Company or its affiliated companies; or (ii) a fiduciary appointed in an Investment Manager Agreement(s).

"Investment Manager Agreement(s)" shall mean an agreement(s) between the Company and a fiduciary selected by the Company, which agreement(s) governs the management of the Investment Account(s).

"Non-Qualified Decommissioning Master Trust" shall mean the Trust established pursuant to this Agreement, and which shall consist of each of the Non-Qualified Trusts.

"Non-Qualified Trust" shall mean each of the trusts established for Decommissioning Costs with respect to the Company's interests in each of the Units of the Plant, each of which Trusts is not a Qualified Trust and which shall consist of Contributions designated by the Company for decommissioning each Unit of the Plant plus earnings on such Contributions (collectively, the Non-Qualified Trusts shall be referred to as the "Sub-Trusts").

“NRC” shall mean the Nuclear Regulatory Commission created and existing pursuant to 42 U.S.C. §5841.

“Order” shall mean any order relating to or including Decommissioning Costs of the Plant issued by the NRC.

“Plant” shall mean the Point Beach Nuclear Plant.

“Prior Trusts” shall mean the Prior Qualified Trust and the Prior Non-Qualified Trust established by the Prior Owner pursuant to the Prior Agreement.

"Service" shall mean the Internal Revenue Service.

"Sub-Trust" shall mean each of the Non-Qualified Trusts established hereunder.

“Successor Trustee” shall mean any entity appointed as a successor to the Trustee pursuant to Section 6.01 hereof.

“Trust” shall mean the Non-Qualified Decommissioning Master Trust established under this Agreement.

“Trustee” shall mean Mellon Trust of Delaware, National Association or any Successor Trustee.

## II. TRUST PURPOSES, NAME AND ADMINISTRATIVE MATTERS

2.01 Trust Purposes. The exclusive purposes of the Trust and the Sub-Trusts are to hold funds for the contemplated decommissioning of each of the Units of the Plant, to constitute a non-qualified nuclear decommissioning reserve trust for each of the Units of the Plant and to comply with any Order.

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

(a) establishes the Trust and the Sub-Trusts, which shall consist of Contributions designated by the Company, plus earnings on such Contributions less expenses and disbursements; and

(b) appoints the Trustee as Trustee of the Trust and the Sub-Trusts.

2.03 Acceptance of Appointment. Upon the terms and conditions herein set forth, Trustee accepts the appointment as the Trustee of the Trust and the Sub-Trusts. The Trustee shall receive any Contributions transferred to it by the Company and shall hold, manage, invest and administer such Contributions, plus earnings on such Contributions, in accordance with this Agreement.

2.04 Name of Trust. The Contributions received by the Trustee from the Company plus earnings on such Contributions shall constitute the FPL Energy Point Beach, LLC Non-Qualified Decommissioning Master Trust for the Point Beach Nuclear Plant Units, provided however, to the extent a short title or name is necessary to identify this Master Trust it shall also be known as FPL ENERGY PT BEACH LLC NQ FUND FOR PT BEACH NUCLEAR PLANT UNITS.

2.05 Segregation of Trust. The Sub-Trusts shall be segregated by the Trustee as follows:

(a) Point Beach Unit No. 1 Non-Qualified Trust; and

(b) Point Beach Unit No. 2 Non-Qualified Trust.

The Trustee shall maintain such records as are necessary to maintain each Sub-Trust separately from each other Sub-Trust. The Trustee shall maintain any subaccounts within the Sub-Trusts as agreed to from time to time by the Trustee and the Company.

2.06 Duties of Authorized Representatives. The Company has empowered the Authorized Representatives to act for the Company in all respects hereunder. The Authorized Representatives may act as a group or may designate one or more Authorized Representative(s) to perform the duties described in the foregoing sentence. The Company shall provide the Trustee with a written statement setting forth the names and specimen signatures of the Authorized Representatives. Until otherwise notified in writing by the Company, the Trustee may rely upon any written notice, instruction, direction, certificate or other communication reasonably believed by it to be genuine and to be signed or certified by any one or more

Authorized Representatives, 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.

2.07 Alterations and Amendments. The Trustee and the Company understand and agree that modifications or amendments may be required to this Agreement from time to time to effectuate the purpose of the Trust and to comply with 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 or the Plant. The Trustee and the Company may alter or amend this Agreement to the extent necessary or advisable to effectuate such purposes or to comply with such Order or changes. The Trustee and the Company also may alter or amend this Agreement to encompass decommissioning collections with respect to other nuclear power plants owned now or in the future by the Company. Any alteration or amendment to this Agreement must be in writing and signed by the Company and the Trustee. The Trustee shall have no duty to inquire or make any investigation as to whether any proposed amendment, modification or alteration is consistent with this Section 2.07. All such amendments, modifications or alterations shall be approved by all required governmental agencies, including the NRC, if applicable, or shall be accompanied by an opinion of counsel provided by the Company that no such approval is required. The Trust may not be amended in any material respect without written notification 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 proposed effective date of the amendment or if written notice of objection is received from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, within the notice period.

2.08 No Authority to Conduct Business. The purposes of the Trust and the Sub-Trusts are 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 purposes of the Trust or the Sub-Trusts set forth in Section 2.01 hereof, or divide the gains therefrom.

2.09 [Intentionally Left Blank].

### III. CONTRIBUTIONS AND INCOME

3.01 Initial Contribution. Upon the establishment of the Trust and the Sub-Trusts on the date first written above, the Company shall cause to be delivered to the Trustee an initial Contribution which shall consist of all amounts previously held in the Prior Non-Qualified Trust.

3.02 Additional Contributions. From time to time after the initial Contribution to the Trust (and the Sub-Trusts) and prior to the termination of the Trust (and the Sub-Trusts), the Company may make, and the Trustee shall accept, additional Contributions to the Trust (and the Sub-Trusts) to satisfy the purposes of the Trust as set forth in Section 2.01.

3.03 [Intentionally left blank].

3.04 Subsequent Adjustments.

The Trustee and the Company further understand and agree that a transfer of assets between the Sub-Trusts may be necessary to effectuate the purposes of this Agreement.

### IV. DISTRIBUTIONS

4.01 Payment of Decommissioning Costs. Upon receipt of a Certificate, the Trustee shall make payments of Decommissioning Costs to any person (including the Company) for goods provided or labor or other services rendered in connection with the decommissioning of the Plant.

4.02 Payment of Expenses of Administration. Upon the direction of the Company, the Trustee shall make payments of all reasonable administrative costs (including taxes, reasonable out-of-pocket expenses and trustees' fees as specified in the fee schedule referred to in Section 4.05 hereof) in connection with the operation of the Trust (and the Sub-Trusts) pursuant to this Agreement. All such administrative costs and incidental expenses which relate to both of the Sub-Trusts shall be allocated among such Sub-Trusts in accordance with generally accepted accounting principles and any applicable Treasury Regulations or rulings. With respect to the calculation of the amounts distributable for taxes, it shall be based on the tax

liability associated with Sub-Trust income without regard to the actual tax payments made by the Company or its affiliates. The Trustee shall maintain such records as are necessary to reflect the proper allocation of costs and expenses in accordance with this Section 4.02.

4.03 [Intentionally Left Blank].

4.04 [Intentionally Left Blank].

4.05 Fees. The Trustee shall receive as exclusive compensation for its services pursuant to this Agreement those amounts (including reasonable out-of-pocket expenses) specified in the fee schedule as may from time to time be agreed upon in writing by the Trustee and the Company.

4.06 Liquidation of Investments. At the direction of the Company or any Investment Manager, the Trustee shall sell or liquidate such investments of the Trust (and the Sub-Trusts) as may be requested or required in order to make any payment or distribution, and shall, until disbursement, restore the proceeds to the Trust (and the Sub-Trusts).

4.07 NRC Notice. Notwithstanding anything herein to the contrary, except for withdrawals being made under 10 C.F.R. § 50.82(a)(8) or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the Trust and the Sub-Trusts (including legal, accounting, actuarial, and Trustee expenses) in connection with the operation of the Trust and the Sub-Trusts, no disbursements or payments from the Trust and the Sub-Trusts shall be made: (1) unless 30 working days' prior written notice of such disbursement or payment has been made to the NRC by the Company or its designee; or (2) if the Trustee or the Company receives written notice of an objection from the NRC's Director of the Office of Nuclear Reactor Regulation or the Director of the Office of Nuclear Material Safety and Safeguards, as applicable.

## V. TERMINATION

5.01 Termination of Trust. The Company may terminate all or a portion of the Trust or the Sub-Trusts upon written notice to the Trustee and the NRC.

5.02 Distribution of Trust Upon Termination. Upon termination of all or a portion of the Trust or a Sub-Trust, the Trustee shall assist the Investment Manager in liquidating assets of the Trust or the Sub-Trust (if so directed by the Company), and distributing the then-existing assets of the Trust or the Sub-Trust (either the liquidation proceeds or the Trust or Sub-Trust assets in-kind, including accrued, accumulated and undistributed net income) less final Trust administration expenses (including accrued taxes paid directly to a taxing authority) to the Company; provided, however, that no such distribution shall be made unless the Trustee has received from the Company an opinion of legal counsel stating that such distribution does not violate any Order.

## VI. TRUSTEES

6.01 Designation and Qualification of Successor Trustee(s). At any time during the term of the Trust, the Company shall have the right to remove the Trustee (at the Company's sole discretion) 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. In this event, the Company shall represent to the Trustee that the Successor Trustee is qualified to act as a trustee hereunder. In the event that the Trustee or any 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 as soon as practicable. In the event of any such removal or resignation, the Trustee or Successor Trustee shall have the right to have its accounts settled as provided in Section 6.05 hereof.

Any Successor Trustee shall qualify by a duly acknowledged acceptance of the Trust and the Sub-Trusts, delivered to the Company. 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 Trust and the Sub-Trusts. Any Successor Trustee shall have all the rights, powers, duties and obligations herein granted to the 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 by the Trustee no less than sixty (60) days prior to the effective date of the Trustee's resignation or upon such shorter notice as may be acceptable to the Company. 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.

6.04 Transactions With Third Parties. No person or organization dealing with the Trustee with respect to this Trust and the Sub-Trusts 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. For the Trust and each Sub-Trust, the Trustee shall keep accurate and detailed accounts of all investments, receipts and disbursements and other transactions hereunder as agreed to by the Company and the Trustee, and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by any person designated by the Company. The Trustee shall be entitled to reimbursement from the Trust and the Sub-Trusts (without duplication) for any extraordinary expenses reasonably incurred in complying with such inspection and audit. Within 3 days following the close of each month, the Trustee shall file with the Company, for the Trust and each Sub-Trust, a written report setting forth all investments, receipts and disbursements and other transactions effected by it during the month and identifying all Contributions, purchases, sales or distributions and the cost or net proceeds of sale, and showing all cash, securities and other investments held at the end of such month and the cost and Fair Market Value of each item thereof. In addition, the Trustee shall consolidate the monthly reports each year into a certified annual report which shall be provided to the Company within 60 days following the end of the calendar year. All such accounts and reports shall be based on the accrual method of reporting income and expenses and

shall identify all disbursements made to pay for expenses of administration of the Trust and the Sub-Trusts.

All certified annual reports and supporting records maintained by the Trustee with respect to the Trust and the Sub-Trusts shall be preserved for a period of seven years. Upon the expiration of this period, the Trustee shall have the right to destroy such reports after first notifying the Company in writing of its intention and transferring to the Company any reports requested by the Company.

6.06 Tax Returns and Other Reports. The Trustee shall prepare and submit to the Company in a timely manner all information requested by the Company regarding the Trust and the Sub-Trusts required to be included in Federal, state and local income tax returns or other reports (including estimated tax returns and information returns) required to be filed by the Company.

Subject to the limitations contained in Section 8.05 hereof, the Trustee may employ independent certified public accountants or other tax counsel to prepare or review such informational reports.

The Trustee agrees, as directed by the Company, 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 to remit from the Trust and the Sub-Trusts (without duplication) appropriate payments or deposits of Federal, state and local income or franchise taxes as they relate to the income of the Sub-Trusts either to the Company or directly to the taxing agencies or authorized depositaries in a timely manner.

The Trustee further agrees to provide the Company with any additional information in its possession regarding the Trust and the Sub-Trusts which may be reasonably requested by the Company to be furnished in an audit of Federal, state, or local tax returns of the Company.

6.07 Liability. The Trustee shall not be liable for any acts, omissions or defaults of any agent (other than its officers and employees) appointed or selected with reasonable care or for any acts taken or not taken at the direction of or upon instructions of the

Company or an Investment Manager. The Trustee shall be liable only for such Trustee's own acts or omissions (and those of its officers and employees) occasioned by the willfulness or negligence of such Trustee (or that of its officers and employees). The Trustee shall not be liable for the use or application of any monies held in the Trust when disbursed by the Trustee in accordance with this Agreement. The Trustee may rely upon the written opinion(s) of legal counsel to the Company with respect to any question(s) arising hereunder and shall not be liable for any action taken in good faith in accordance with the advice of such counsel. The Trustee shall not be responsible or liable for any losses or damages suffered by the Trust and the Sub-Trusts arising as the result of the insolvency of any subcustodian, except to the extent the Trustee was negligent in its selection or continued retention of such entity. Settlements of transactions may be effected in trading and processing practices customary in the jurisdiction or market where the transaction occurs. The 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. Under no circumstances shall the Trustee be liable for any consequential or special damages with respect to its role as Trustee.

The Company shall indemnify and hold harmless the Trustee from all claims, liabilities, losses, damages and expenses, including reasonable attorneys' fees and expenses, incurred by the Trustee in connection with this Agreement, except as a result of the Trustee's own acts or omissions (and those of its officers and employees) caused by the negligence or willful misconduct of the Trustee (or its officers or employees).

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

This Section 6.07 shall survive the termination of this Agreement.

## VII. INVESTMENTS

7.01 Appointment of Investment Manager(s). The Company may appoint one or more Investment Managers (including one or more employee(s) of the Company or its affiliated companies), to the extent permissible by applicable law or regulations, to direct the investment of all or part of the Trust and the Sub-Trusts. The Company also shall have the right to remove any such Investment Manager(s). Whenever such appointment is made, the Company shall provide written notice of such appointment to the Trustee, shall specify the portion of the Trust and the Sub-Trusts with respect to which an Investment Manager has been designated, and shall instruct the Trustee to segregate into a separate investment account ("Investment Account") those assets with respect to which that specific Investment Manager has been designated. Except as otherwise provided in Section 8.02 hereof, to the extent that the Company appoints an Investment Manager to direct the investment of an Investment Account, the Trustee shall be released and relieved of all investment duties, responsibilities and liabilities customarily or statutorily incident to a trustee with respect to the Investment Account, and as to such Investment Account, the Trustee shall act as custodian. Any Investment Manager which is not an employee of the Company or its affiliated companies shall certify in writing to the Trustee that it is qualified to act in the capacity provided under an Investment Manager Agreement, shall accept its appointment as Investment Manager, shall certify the identity of the person or persons authorized to give instructions or directions to the Trustee on its behalf, including specimen signatures, and shall undertake to perform the duties imposed on it under an Investment Manager Agreement. The Trustee may rely upon all such certifications unless otherwise notified in writing by the Company or an Investment Manager, as the case may be.

7.02 Direction by Investment Manager(s). An Investment Manager shall have authority to manage and to direct the acquisition and disposition of the assets of the Trust and the Sub-Trusts, or a portion thereof, as the case may be, and the Trustee shall exercise the powers set forth in Section 8.02 hereof only in the manner directed by the Company in writing, and shall not be under any obligation to invest or otherwise manage any assets in the Investment Account. The Trustee recognizes the authority of an Investment Manager to manage, invest and reinvest the assets of an Investment Account as provided in this Article VII, and the Trustee agrees to cooperate with any Investment Manager as deemed necessary to accomplish these tasks. An

Investment Manager shall have the power and authority, exercisable in its sole discretion at any time, and from time to time, to issue and place orders for the purchase or sale of portfolio securities directly with qualified brokers or dealers. The Trustee, upon proper notification from an Investment Manager, shall settle the transaction in accordance with the appropriate trading authorizations. Written notification of the issuance of each such authorization shall be given promptly to the Trustee by an Investment Manager, or in the case where such Investment Manager is an employee(s) of the Company, by an Authorized Representative, and such Investment Manager shall cause the settlement of such transaction to be confirmed in writing to the Trustee and the Company by the broker or dealer. An Investment Manager may cause brokers and dealers to confirm trades to the Trustee through the "Institutional Delivery System" or equivalent system and the Trustee shall be entitled to rely upon such confirmations to settle purchases or sales of securities, provided that such confirmations are consistent with written trading instructions from an Investment Manager, or in the case where such Investment Manager is an employee(s) of the Company, by an Authorized Representative. Such notification, when consistent with written trading instructions from an Investment Manager or Authorized Representative, shall be proper authority for the Trustee to pay for portfolio securities purchased and to deliver portfolio securities sold in accordance with the customary and established procedures for such securities transactions. All directions to the Trustee by an Investment Manager shall be in writing and shall be signed by an Authorized Representative of the Company or by a person who has been certified by such Investment Manager pursuant to Section 7.01 hereof as authorized to give instructions or directions to the Trustee.

Should an Investment Manager at any time elect to place security transactions directly with a broker or dealer, the Trustee shall not recognize such transaction unless and until it has received instructions or confirmation of such fact from an Investment Manager. Should an Investment Manager direct the Trustee to utilize the services of any person with regard to the assets under its management or control, such instructions shall be in writing and shall specifically set forth the actions to be taken by the Trustee as to such services. In the event that an Investment Manager places security transactions directly or directs the utilization of a service, such Investment Manager shall be solely responsible for the acts of such persons. The sole duty of the Trustee as to such transactions shall be incident to its duties as custodian.

The authority of an Investment Manager and the terms and conditions of the appointment and retention of an Investment Manager(s) shall be the responsibility solely of the Company, and the Trustee shall not be deemed to be a party or to have any obligations under any agreement with an Investment Manager. Any duty of supervision or review of the acts, omissions or overall performance of the Investment Manager(s), shall be the exclusive responsibility of the Company, and the Trustee shall have no duty to review any securities or other assets purchased by an Investment Manager, or to make suggestions to an Investment Manager or to the Company with respect to the exercise or nonexercise of any power by an Investment Manager.

7.03 Investment Restrictions. The Person directing investment of the Trust and the Sub-Trusts:

(a) Is prohibited from investing in securities or other obligations of the licensee or any other owner or operator of any nuclear power reactor or their affiliates, subsidiaries, successors or assigns, or in a mutual fund in which at least 50 percent of the fund is invested in the securities of a licensee or parent company whose subsidiary is an owner or operator of a foreign or domestic nuclear power plant. However, the funds may be invested in securities tied to market indices or other non-nuclear sector collective, commingled, or mutual funds, provided that this subsection shall not operate in such a way as to require the sale or transfer either in whole or in part, or other disposition of any such prohibited investment that was made before December 24, 2002, and provided further that no more than 10 percent of trust assets may be indirectly invested in securities of any entity owning or operating one or more nuclear power plants.

(b) Is obligated at all times to adhere to a standard of care that a prudent investor would use in the same circumstances. The term "prudent investor" shall have the same meaning as set forth in the Federal Energy Regulatory Commission's "Regulations Governing Nuclear Plant Decommissioning Trust Funds" at 18 CFR 35.32(a)(3), or any successor regulation.

7.04 Investment Direction. The Company, its affiliates, and its subsidiaries are prohibited from being engaged as investment manager for the Trust and the Sub-Trusts or from giving day-to-day management direction of the Trust's (and the Sub-Trusts') investments or

direction on individual investments by the Trust (and the Sub-Trusts), except in the case of passive fund management of trust funds where management is limited to investments tracking market indices.

## VIII. TRUSTEE'S GENERAL POWERS

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

8.01 Extension of Obligations and Negotiation of Claims. To renew or extend the time of payment of any obligation, secured or unsecured, payable to or by the Trust and the Sub-Trusts, for as long a period or periods of time and on such terms as the Company shall determine, and to adjust, settle, compromise, and arbitrate claims or demands in favor of or against the Trust and the Sub-Trusts, including claims for taxes imposed upon the income of the Trust and the Sub-Trusts, upon such terms as the Company shall determine.

8.02 Investment of Assets of Trust and Sub-Trusts. To the extent that the assets of the Trust and the Sub-Trusts have not been invested by an Investment Manager on any given day, to invest such uninvested assets as the Company may direct in writing.

No portion of the Trust and the Sub-Trusts shall be invested in any direct interest in real property, leaseholds or mineral interests.

The Trustee (i) may settle transactions in futures and/or options contracts, short-selling programs, swaps and other derivatives investments with third parties and for foreign exchange or foreign exchange contracts, (ii) may engage in securities lending transactions on behalf of the Sub-Trusts, in accordance with terms agreed to by the Company, and (iii) may 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 its affiliates, as permitted by applicable law or regulations.

Notwithstanding the provisions of this Agreement which place restrictions upon the actions of the Trustee or an Investment Manager, to the extent monies or other assets are utilized

to acquire units of any collective trust, the terms of the collective trust indenture shall solely govern the investment duties, responsibilities and powers of the trustee of such collective trust and, to the extent required by law, such terms, responsibilities and powers shall be incorporated herein by reference and shall be part of this Agreement. For purposes of valuation, the value of the interest maintained by the Trust and the Sub-Trusts in such collective trust shall be the fair market value of the collective fund units held, determined in accordance with generally recognized valuation procedures. The 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 from such collective fund for the lending of securities that is separate from any compensation of the Trustee hereunder, or any compensation of the collective fund trustee for the management of such collective fund.

The Trustee is authorized to invest in a collective fund which invests in Mellon Financial Corporation stock in accordance with the terms and conditions of the Department of Labor Prohibited Transaction Exemption 95-56 (the "Exemption") granted to the Trustee and its affiliates and to use a cross-trading program in accordance with the Exemption. The Company acknowledges receipt of the notice entitled "Cross-Trading Information," a copy of which is attached to this Agreement as Attachment B.

8.03 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 trust; provided however, the Trustee shall not be liable for any losses resulting from the deposit or maintenance of securities or other property (in accordance with market practice, custom, or regulation) with any recognized foreign clearing facility, book-entry system, centralized custodial depository, or similar organization.

8.04 Borrowing. To borrow money in such amounts and upon such terms as the Company may authorize in writing as necessary to carry out the purposes of the Trust and the Sub-Trusts, and to pledge any securities or other property for the repayment of any such loan as the Company may direct.

8.05 Retention of Professional and Employee Services. To employ attorneys, accountants, custodians, engineers, contractors, clerks, and agents, as reasonably necessary to carry out the purposes of the Trust and the Sub-Trusts.

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

8.07 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 Trust and the Sub-Trusts shall have become distributable and until such time as the entire principal of, and income from, the Trust and the Sub-Trusts shall have been actually distributed by the Trustee. It is intended that distribution of the Trust and the Sub-Trusts will occur as soon as possible upon termination of the Trust and the Sub-Trusts, subject, however, to the limitations contained in Article V hereof.

8.08 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 the Trustee knew or should have known would contravene any provision of this Agreement.

8.09 Settlement of Authorized Transactions. The Trustee may take all action necessary to pay for, and settle, authorized transactions, including exercising the power to borrow or raise monies on an arm's length basis from the Trustee in its corporate capacity or an affiliate. To secure expenses and advances made to settle or pay for authorized transactions, including payment for securities and disbursements, the Company grants to the Trustee a first priority security interest in the account, all property therein, all income, substitutions and proceeds, whether now owned or hereafter acquired (the "Collateral"); provided that the Company does not grant the Trustee a security interest in any securities issued by an affiliate of the Trustee (as defined in Section 23A of the Federal Reserve Act). The parties intend that as the securities intermediary with respect to the Collateral, the Trustee's security interest shall automatically be perfected when it attaches. The Trustee shall be entitled to collect from the Trust and the Sub-Trusts (without duplication) sufficient cash for reimbursement and, if such

cash is insufficient, dispose of the assets of the Trust and the Sub-Trusts to the extent necessary to obtain reimbursement. To the extent the Trustee advances funds to the Trust and the Sub-Trusts for disbursements or to effect the settlement of purchase transactions, the Trustee shall be entitled to collect from the Trust and the Sub-Trusts (without duplication) reasonable charges established under the Trustee's standard overdraft terms, conditions and procedures.

## 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 of 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 required by this Agreement to be given to the Company or the Trustee shall be deemed to have been properly given when mailed, postage prepaid, to the person to be notified as set forth below:

If to the Company by regular mail:

FPL ENERGY POINT BEACH, LLC  
700 Universe Boulevard  
P.O. Box 14000  
Juno Beach, Florida 33408-0420  
Attention: Trust Fund Investments (FTF/JB)

If to the Company by express mail:

FPL ENERGY POINT BEACH, LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
Attention: Trust Fund Investments (FTF/JB)

If to the Trustee:

Mellon Trust of Delaware, National Association  
4005 Kennett Pike  
Greenville, DE 19807  
Attention: \_\_\_\_\_

The Company or the Trustee may change the above address by delivering notice thereof in writing to the other party.

9.05 Successors and Assigns. Subject to the provisions of Sections 2.09, 5.01 and 6.01, this Agreement shall be binding upon and inure to the benefit of the Company, the Trustee and their respective successors and assigns.

9.06 Governing Jurisdiction. All questions pertaining to the validity, construction, and administration of this Agreement shall be determined in accordance with the laws of the State of Delaware, without regard to conflict of law provisions, to the extent not superseded by Federal law. The Company expressly reserves the right to unilaterally amend this Section 9.06.

9.07 Accounting Year. The Trust and the Sub-Trusts shall operate on an accounting year which coincides with the calendar year, January 1 through December 31.

9.08 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.

9.09 Guarantee. Mellon Bank, N.A. hereby guarantees the prompt payment and performance by the Trustee of all of the liabilities and obligations of Trustee contained in this Agreement.

9.10 Representations. Each party represents and warrants 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 or the Trustee to this Agreement. The Company has received and read the “Customer Identification Program Notice,” a copy of which is attached to this Agreement as Attachment C.

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

FPL ENERGY POINT BEACH, LLC

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

Attest: \_\_\_\_\_

MELLON TRUST OF DELAWARE, NATIONAL  
ASSOCIATION

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

Attest: \_\_\_\_\_

Agreed to:

Mellon Bank, N.A.

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

Attest: \_\_\_\_\_  
Title

202039v3

**ATTACHMENT A**

**FORM OF CERTIFICATE FOR DISBURSEMENTS**

**CERTIFICATE NO.**

The undersigned Authorized Representative of FPL Energy Point Beach, LLC ("the Company"), being duly authorized and empowered to execute and deliver this Certificate, hereby certifies to the Trustee of the FPL Energy Point Beach, LLC Non-Qualified Decommissioning Master Trust for the Point Beach Nuclear Plant (the "Trust"), established on [insert date] (the "Agreement"), between the Company and Mellon Trust of Delaware, National Association as follows:

- (1) Exhibit 1, attached hereto, sets forth the amounts either invoiced to, incurred by, or to be incurred by the Company or the Trust that are/will be due and owing to each payee listed ("Payees") for:
  - (a) goods or services provided or to be provided in connection with decommissioning the Plant;
  - (b) administrative costs of the Trust (excluding administrative costs arising from the Company's furnishing of goods, services, or facilities to the Trust and excluding compensation which is excessive or unnecessary to carry out the purposes of the Trust) as evidenced by the invoice(s), contracts, or agreements attached hereto;
- (2) all such amounts constitute Decommissioning Costs or administrative expenses as described in Sections 4.01 and 4.02 of the Agreement; and
- (3) all conditions precedent to the making of this withdrawal and disbursement set forth in any agreement between such Payees and the Company, if applicable, have been fulfilled or will be fulfilled by the payment date specified in Exhibit 1.

Accordingly, direction is hereby given that the Trustee provide for the withdrawal of \$\_\_\_\_\_ from the Trust in order to permit payment of such sum to the Payees. You are further directed to disburse such sum, once withdrawn, directly to such Payees in the following manner: [DESCRIBE: CHECK, WIRE TRANSFER, ETC.] on or before the date specified in Exhibit 1.

WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

FPL ENERGY POINT BEACH, LLC

By: \_\_\_\_\_  
Authorized Representative

**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 the 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-trading 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 change in the composition or weighting of the index by the independent organization creating and maintaining the index;

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 a non-bank collective fund; provided, however, that 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) is excluded as a “triggering event”; or

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 cross-trading transaction.

Equity securities - the current market value of 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 make 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 from which to price a certain debt security, the closing price quotations will be obtained from all available sources.

IV. The allocation methods

Direct cross-trading opportunities will be allocated among potential buyers or sellers of debt or equity securities on a pro rata basis. With respect to equity securities, 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 from the Trustee upon request.



**CUSTOMER IDENTIFICATION PROGRAM NOTICE**

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW  
ACCOUNT**

To help the government fight the funding of terrorism and money laundering activities, all financial institutions are required by law to obtain, verify and record information that identifies each individual or entity that opens an account.

What this means for you: When you open an account, we will ask you for your name, address, taxpayer or other government identification number and other information, such as date of birth for individuals, that will allow us to identify you. We may also ask to see identification documents such as a driver's license, passport or documents showing existence of the entity.

*Rev. 09/03*