Ms. Lois D. Cashell, Secretary
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, D.C. 20426

Re: Offer of Settlement Regarding Turbine Mortality and
Angler Access at Ludington Pumped Storage Project (No. 2680)

Dear Ms. Cashell:

Pursuant to Rule 602 of the Federal Energy Regulatory
Commission's ("Commission") Rules of Practice and Procedure,
Consumers Power Company and The Detroit Edison Company hereby
submit for filing an original and 8 copies of the Ludington
Pumped Storage Project Settlement Agreement -- FERC Offer of
Settlement, together with a separate Explanatory Statement, a
List of Relevant Materials and a companion agreement which would
resolve related issues before other forums. This letter and
attachments constitute compliance with Rule 602(c)(1). A proof
of service is also enclosed.

A copy of this letter of transmittal, together with all
enclosures, is being served upon all those on the official
service list to this proceeding.

In accordance with Rule 602(f), comments on the Offer of
Settlement must be filed on or before March 20, 1995, which is 20
days after the date of filing of the Offer of Settlement with the
Commission. Reply comments must be filed on or before March 30,
1995, which is 30 days after the date of filing of the Offer of
Settlement. Pursuant to the aforesaid regulation, failure to
file comments shall be deemed a waiver of the right to file
comments on the Offer of Settlement.

Respectfully submitted

CONSUMERS POWER COMPANY AND
THE DETROIT EDISON COMPANY

By William M. Lange

cc: Those on Official Service List

A CMS ENERGY COMPANY
LUDINGTON PUMPED STORAGE PROJECT

SETTLEMENT AGREEMENT --

COURTS AND NON-FERC AGENCIES

February 27, 1995
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LUDINGTON PUMPED STORAGE PROJECT

SETTLEMENT AGREEMENT -- COURTS

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INTRODUCTION

This Ludington Pumped Storage Project Settlement Agreement -- Courts and non-FERC Agencies ("State Agreement") and a companion agreement entitled "Ludington Pumped Storage Project Settlement Agreement -- FERC Offer of Settlement" ("FERC Agreement") have been negotiated by and among parties involved in litigation before the Federal Energy Regulatory Commission ("FERC"), Michigan state court, and Michigan administrative contested case proceedings, concerning fish mortality resulting from the operation of the Ludington Pumped Storage Plant ("LPSP") (as well as site access and other issues). The parties to this State Agreement are Consumers Power Company; The Detroit Edison Company; Frank J. Kelley, Attorney General for the State of Michigan, Frank J. Kelley, ex rel., the State of Michigan ("AG"); Michigan Department of Natural Resources ("MDNR"); Roland Harmes, Director of the MDNR ("Director MDNR"); Grand Traverse Band of Ottawa and Chippewa Indians ("GTB"); Little River Band of Ottawa Indians ("LRB"); Little Traverse Bay Bands of Odawa Indians ("LTBB"); the Michigan United Conservation Clubs ("MUCC"); and the National Wildlife Federation ("NWF") and their respective successors and assigns. This State Agreement includes Appendices A through F which are incorporated herein by reference and made a part of this State Agreement.
The parties executed the FERC Agreement contemporaneously with this State Agreement. Both documents are necessary elements of the settlement of the proceedings listed above, and neither shall become effective unless and until both become effective.

The parties signing below, agree as follows:

I. OBJECTIVES OF SETTLEMENT

This State Agreement concerns the payment by Consumers Power Company and The Detroit Edison Company of past and future damages for injuries resulting from the operation of the Ludington Pumped Storage Plant ("LPSP"). This State Agreement provides for the payment of monies, the transfer of certain properties, and the development of certain fishing access projects as full compensation for damages to fishery resources associated with the LPSP. It is understood that GTB, LRB, LTBB, NWF and MUCC are to be added by consent to the State Court action for purposes of effectuating the State Agreement and the Settlement. The parties stipulate to the Department of the Interior's participation in this State Agreement to the extent provided herein. This participation shall include Trustee status on the Board of Trustees, full voting membership on the Scientific Advisory Team, and participation in the dispute resolution proceedings as provided in this State Agreement, with all the rights, privileges, and responsibilities inherent in such participation.
A. ABATEMENT OF FISH MORTALITY

The principal and foremost objective of this State Agreement and the FERC Agreement (collectively, the "Settlement") is the abatement of fish mortality resulting from the operation of the LPSP. The Settlement assures that currently identified measures to abate fish mortality continue to be properly implemented and maintained. The Settlement mandates a program to monitor, assess, optimize, and improve the fish mortality abatement potential of any technology or operational modification employed to mitigate mortality under appropriate oversight. The Settlement provides incentives to the parties to continue to identify new technologies or operational changes to further reduce mortality during all months of the year. The Settlement requires the evaluation of fish abatement technology, including advances in barrier technology and the evaluation of technologies for the real time monitoring of fish populations, by the Scientific Advisory Team described in Part V hereto. Changes in project operations and/or structures which result from the FERC Agreement will be subject to review and approval by the Federal Energy Regulatory Commission ("FERC"), or its successor agency, as appropriate.

B. INCREASED FISHING OPPORTUNITIES; RESOURCE PROTECTION, ENHANCEMENT

In lieu of cash payment for unavoidable fish mortality, the Settlement embodies a preference for the identification and implementation of measures that will enhance, propagate, protect
and replace the fisheries resources held in trust for the citizens of the State of Michigan including Indian tribes with reserved treaty rights in the Michigan waters of Lake Michigan. Any cash compensation for unavoidable fish mortality shall also be used to accomplish these objectives.

II. COMPENSATION FOR UNAVOIDABLE FUTURE FISH MORTALITY

A. FUTURE DAMAGE CALCULATION

Pursuant to settlement of the state court litigation the citizens of the State of Michigan, including the GTB, LRB and LTBB, will be fully compensated through this Agreement for fish mortality associated with operating the LPSP. The annual compensation for future fish mortality is based upon the assumptions and methodologies described in Appendix A adjusted by application of the Composite Inflation Adjustor described in Appendix B.

Compensation shall be computed for each calendar year by adding up the product of the power used to pump water into the LPSP with the applicable fish mortality damage per unit of pumping. On or before February 1, Consumers Power Company shall annually provide records of the power used in pumping by the LPSP in the previous calendar year and other relevant information to the Scientific Advisory Team for its use in calculating the compensation to be paid into the Great Lakes Fishery Trust. On or before March 1, the Scientific Advisory Team will provide Consumers Power Company and The Detroit Edison Company its calculation of compensation due for the previous calendar year.
Appendix A describes the base case for fish damages per unit of pumping at LPSP. Upon effectiveness of the Settlement, the fish mortality damages per unit of pumping set forth in Appendix A shall apply as of July 1, 1994, or such other date as the parties shall determine and thereafter until and unless the damages are modified by the Scientific Advisory Team to reflect,

1. Adjustment of fish values for changes in the Composite Inflation Adjustor described in Appendix B hereto;

2. Changes in the estimated effectiveness of fish mortality abatement measures due to either changes in such mortality abatement measures or to re-evaluations of estimated effectiveness of fish mortality abatement measures; failure to meet the net performance standards set out in Part II.A.1. of the FERC Agreement shall result in an increase in the amount of compensation for future fish mortality as ultimately determined by the Scientific Advisory Team;

3. Adjustment in the calculation procedures associated with implementation of Real Time Fish Population Monitoring as described in Section II.C of the FERC Agreement or with the lake/weather model discussed in Section II.D. of the FERC Agreement; should such population monitoring technology prove
feasible and be deployed upon receipt of all necessary governmental approvals, or should such a model prove efficacious, the Scientific Advisory Team shall develop criteria or protocols utilizing real time fish population data and/or the model to establish real time fish damage calculations to adjust compensation calculations accordingly; these calculations shall, upon approval of the parties, modify Appendix A;

4. Changes in estimated fish mortality damages resulting from changes in the fish community or fisheries of Lake Michigan; provided that any such changes must reflect consequent changes in both the estimates of fish mortalities at the LPSP and the unit value assigned to such fish; or

5. Any other significant changes in the base case assumptions underlying Appendix A, which the parties agree are appropriate for consideration by the Scientific Advisory Team.

The fish mortality damages per unit of pumping set forth in Appendix A or as modified by the Scientific Advisory Team are subject to Dispute Resolution as set forth in Section VI.A, except that the base case assumptions underlying Appendix A shall not be disputed until and unless substantive additional data are available to the Scientific Advisory Team.
The annual compensation for the sixty (60) months commencing July 1, 1994 or such other date as the parties shall determine will not exceed $2.5 million per year (total for both Consumers Power Company and The Detroit Edison Company), assuming the net performance standards in Section II.A.1 of the FERC Agreement are attained. If such standards for net performance are not met, then compensation in said five-year period may exceed such $2.5 million annually. The Scientific Advisory Team may also adjust compensation below $2.5 million annually in the first five-year period based upon the performance of the LPSP or other factors set forth in Appendix A, Section II.B and this Section II.A.

Compensation for unavoidable future fish mortality shall accrue from July 1, 1994 or such other date as the parties shall determine until the following December 31 (the first partial period) and annually on a calendar-year basis thereafter. The first payment to the Great Lakes Fishery Trust for all accrued amounts shall be made within 90 days of the Effective Date of this State Agreement (as described in Part VI) and on each April 1 thereafter.

B. ECONOMIC INCENTIVES FOR FURTHER REDUCTIONS IN MORTALITY

Upon effectiveness of this State Agreement, Consumers Power Company and The Detroit Edison Company will schedule pumping at the LPSP, using their normal plant scheduling procedures, but will adjust plant scheduling based upon fish mortality damage resulting
from the operation of the LPSP notwithstanding the application of the $2.5 million cap in the first sixty (60) months.

Application of the calculations described above is projected to produce fish mortality damages of approximately $3.4 million per year based on Consumers Power Company and The Detroit Edison Company projections of plant operations in 1995, absent an adjustment in plant operations to avoid fish damages and assuming the seasonal barrier net effectiveness is maintained. Adjustment in plant scheduling in light of the resulting compensation for fish mortalities is projected to reduce fish mortality damages to approximately $2.9 million per year based on projected plant operations in 1995. The projected compensation payment shall be further reduced by $400,000 (in 1995 dollars) reducing the projected compensation payment for fish mortalities to $2.5 million for the first full year. Unless adjusted downward by the Scientific Advisory Team, the compensation payment for fish mortalities shall remain at $2.5 million per year for the first sixty (60) months. This amount is the Fish Mortality Compensation Base.

In accordance with Section VI.D., Consumers Power Company and The Detroit Edison Company shall make filings with the Michigan Public Service Commission ("MPSC") to seek appropriate rate treatment of this sum as an expense of operating and maintaining the LPSP. In accordance with Section VI.D., the companies may seek recovery of this sum in general rate cases, temporary surcharge rate cases, or other appropriate filings. Consumers Power Company
and The Detroit Edison Company may seek treatment before the MPSC of any adjustments to the Fish Mortality Compensation Base as changes in the expense of operating and maintaining the LPSP.

If the actual compensation to be paid for fish mortalities, calculated as described above, exceeds the Fish Mortality Compensation Base, adjusted by the Composite Inflation Adjustor, then Consumers Power Company and The Detroit Edison Company will pay the excess and not attempt to recover the excess through any MPSC proceeding. If the actual compensation to be paid for fish mortalities is less than the Fish Mortality Compensation Base, Consumers Power Company and The Detroit Edison Company shall have the benefit of the difference and, subject to revision by the MPSC, not be required to reduce their rates accordingly.

III. COMPENSATION FOR PAST RESOURCE DAMAGES

This settlement of the state court litigation provides for the transfer of certain lands and the development of certain recreational access facilities. In lieu of substantial cash compensation, assets of long-term environmental value are utilized to compensate for past fishery losses caused by LPSP operations.

A. CONSUMERS POWER COMPANY LAND TRANSFER AND ANGLER PROJECTS

Upon the effectiveness of the Settlement, Consumers Power Company shall begin the process to transfer title of the lands listed in Exhibit 1 of Appendix C to the State of Michigan and Exhibit 2 of Appendix C to The Great Lakes Fishery Trust. On such
date, Consumers Power Company shall also begin the process to make the contribution to complete the angler projects described in Exhibit 5 of Appendix C. The angler projects are to be designed and constructed in accordance with the provisions of the Americans With Disabilities Act. The book value of all lands to be transferred by Consumers Power Company and the estimated capital cost of Appendix C Exhibit 5 angler projects is $9.4 million. The sum of the negotiated market value of all lands to be transferred and the assumed State of Michigan valuation of the Appendix C Exhibit 5 angler projects is $24.2 million. The parties agree to use their best efforts to complete the land transfer within one year after the effective date of the Settlement. Similarly, it is assumed that Appendix C Exhibit 5 project completion will involve a period of time to complete not exceeding three years. If, at the end of said three-year period, the Appendix C Exhibit 5 projects are not completed, the Scientific Advisory Team will determine what, if any, time extensions are appropriate.

Prior to the transfer of title of any of the Properties described in Appendix C, Consumers Power Company and DNR shall perform a joint Phase I environmental assessment in accordance with the procedures set forth in Appendix C, Exhibit 6.

If any environmental assessment indicates that there may have been a release or threat of release of a "hazardous substance" (as defined by MCL 299.603(p); MSA 13.32(3)(p)) on a parcel of Property, the following procedure shall be utilized by the intended
recipient of the property under Appendix C and Consumers Power Company:

1. The area within which the release or threat of release may have occurred may be excluded from the parcel of Property;

2. A parcel of Property of substantially similar estimated market value shall be selected from Appendix C, Exhibit 4 "Substitute Lands" and substituted for the original parcel; or

3. Implementation of a Type C cleanup (as defined in AACS, (1990) R299.5701, et seq.) as appropriate.

Consumers Power Company shall be responsible for all reasonable and necessary costs associated with the Property transfers in this section including the costs of survey costs, title insurance, deed preparation, environmental assessments, closing costs, and transfer tax.

B. THE DETROIT EDISON COMPANY PROJECTS AND LAND TRANSFER

Upon the effectiveness of the Settlement, The Detroit Edison Company shall begin the process to provide for the acquisition, development, operation and maintenance of the fishing access facilities as set forth in Appendix D. The net present value of the cost of such facilities to The Detroit Edison Company is approximately $10.458 million and the net present value of the cost for the State of Michigan to provide like facilities is approximately $24.7 million.
### C. CASH COMPENSATION

Consumers Power Company and The Detroit Edison Company shall, upon the effective date of the Settlement, transfer the total sum of $5 million to the Great Lakes Fishery Trust described in Section IV. Consumers Power Company and The Detroit Edison Company shall, upon the effective date of this State Agreement, transfer the additional sum of $213,657.08 to the Great Lakes Fishery Trust described in Section IV to reimburse the Great Lakes Fishery Trust for the value of the following lands which will be transferred to the GTB, LRB, and LTBB by Consumers Power Company:

**For the Grand Traverse Band of Ottawa and Chippewa Indians**

<table>
<thead>
<tr>
<th>Township</th>
<th>Section/Tract Number (acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benzie County, Village of Elberta T26N, R16W</td>
<td>Sec. 27, W-7: 6.64 acres</td>
</tr>
</tbody>
</table>

**For the Little Traverse Bay Bands of Odawa Indians**

<table>
<thead>
<tr>
<th>Township</th>
<th>Section/Tract Number (acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emmet County Center Township, T37N, R5W</td>
<td>Sec. 2, 477-D85-1: 80 acres</td>
</tr>
</tbody>
</table>

**For the Little River Band of Ottawa Indians**

<table>
<thead>
<tr>
<th>Township</th>
<th>Section/Tract Number (acres)</th>
</tr>
</thead>
</table>
| Manistee County Brown Township, T22N, R15W | Sec. 25, W-1: 10 acres  
Sec. 25, W-2: 22 acres  
Sec. 25, W-3: 2 acres  
Sec. 25, W-4: 10 acres  
Sec. 36, W-3: 5 acres  
Sec. 36, W-11: 10 acres  
Sec. 36, W-4: 40 acres |
Total: 99 acres

The cash liabilities herein will be severable and not joint among Consumers Power Company and The Detroit Edison Company.

D. RELEASE FROM LIABILITY FOR PAST FISHERY LOSSES

The payment of the monies, the transfer of the lands and the commitment for development of fishing access projects described in Section III are in full satisfaction for any and all liability associated with, or related to, any damage to fishery resources caused by the operation of the LPSP from its initial construction up to June 30, 1994. Upon effectiveness of the Settlement Consumers Power Company and The Detroit Edison Company shall be forever released, by the parties to the State Court actions in that action and the parties to the FERC proceeding in that proceeding (with the exception of the U.S. Department of the Interior) from any and all such liability.

IV. ESTABLISHMENT OF A TRUST FUND

As part of settlement of the state court litigation among the State of Michigan, The Detroit Edison Company and Consumers Power Company, the Great Lakes Fishery Trust ("Trust") shall be established in accordance with the terms and conditions set forth in the Declaration of Trust attached as Appendix E. The Trust will receive title to lands, proceeds resulting from the sale of designated lands, the cash payment specified in Section III.C. and annually adjusted payments for future unavoidable fish mortality specified in Section II.
A. PURPOSE OF TRUST

The purpose of the Trust shall be to mitigate for the use and enjoyment of Lake Michigan fishery resources foregone as a result of the operation of the LPSP and to benefit the Great Lakes fishery by providing funding for the enhancement, propagation, protection and replacement of Great Lakes fishery resources.

B. USES OF TRUST

Preferential treatment shall be given to projects which benefit the Lake Michigan fishery. Permissible uses of Trust funds are:

1. Research projects directed at increasing the benefits associated with Great Lakes fishery resources;
2. Rehabilitation of lake trout, lake sturgeon and other populations;
3. Protection and enhancement of fisheries habitat including Great Lakes wetlands as fisheries habitat;
4. Public education concerning the Great Lakes fisheries;
5. Acquisition of real property for the above purposes or to provide access to the Great Lakes fisheries; and
6. Any other purpose consistent with the above, duly approved by the Trustees.
C. ADMINISTRATION OF THE TRUST

The Trust shall be administered by a Board of Trustees comprised of six members designated as the following:

1. The Director of the MDNR or his/her designee, who shall serve as Chair of the Trust Board;

2. The Attorney General of the State of Michigan or his/her designee;

3. A representative of the Department of Interior on behalf of the Fish and Wildlife Service and, as Trustee for Indian tribes with reserved treaty rights in the Michigan waters of Lake Michigan, as designated by the Secretary of the Interior;

4. A representative of the GTB as designated by the Tribal Council of the Band;

5. A representative of the MUCC as designated by the Executive Director of MUCC; and

6. A representative of the NWF as designated by the President of the Federation.

In addition to the six (6) Trustees designated above, the Tribal Councils of the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians may each designate a representative who will serve as "Provisional Trustees" on the Board of Trustees. Provisional Trustees will not vote on matters before the Board of Trustees unless one of the six (6) Trustees
designated above gives a Provisional Trustee a proxy to vote on a particular matter.

Any Trustee may propose a project; although the parties assume that projects funded by the Trust generally will be considered and recommended by the Scientific Advisory Team prior to being proposed and considered by the Board of Trustees. The agreement of four (4) Trustees shall be sufficient to take any action or make any decision authorized or required in the administration or execution of this Trust, except that the agreement of five (5) Trustees shall be required to authorize any expenditure of trust funds for a project, activity or acquisition that occurs outside of the Lake Michigan basin or that does not primarily benefit the fishery resources of the Lake Michigan basin and the agreement of five (5) Trustees shall be required to authorize the acquisition or sale of real property. Provided, however, that the agreement of the Trustees shall not be required to authorize the sale of real property to which an option to purchase been given as described in Article V, Section D.4., of the Declaration of Trust.

V. ESTABLISHMENT OF SCIENTIFIC ADVISORY TEAM

A Scientific Advisory Team shall be established for the purpose of evaluating the data and information upon which this State Agreement is based and the scientific activities established or authorized by this State Agreement as set forth hereafter. It is the intent of the parties that the Scientific Advisory Team
shall replace and assume the duties of the Ludington Advisory Committee.

A. PURPOSES OF TEAM

The duties and responsibilities of the Scientific Advisory Team shall include, but are not necessarily limited to, the following. Additional duties and responsibilities related solely to the FERC Agreement are set out in the FERC Agreement.

1. Technical Oversight of Fish Mortality Abatement Measures - Determining unavoidable fish mortality and the Adjusted Base Year, including adjustments to compensation for fish mortality.

2. Recommendation, Implementation and Review of Great Lakes Fisheries Research Projects and Projects to Enhance and to Protect Great Lakes Fisheries

With respect to any project approved and funded by the Great Lakes Fishery Trust, and subject to the supervision and direction of the Trustees, the Scientific Advisory Team shall have the responsibility for:

a. Recommending and defining research projects;
b. Retaining contractors;
c. Selecting technology;
d. Implementing projects;
e. Defining protocols and procedures for oversight of projects, and
f. Any other responsibilities defined by the Trustees.

B. COMPOSITION OF SCIENTIFIC ADVISORY TEAM

The Scientific Advisory Team shall be co-chaired by the MDNR and a representative of the utilities. Membership of the Scientif-
ic Advisory Team shall be comprised of one (1) designee of each of the following organizations except for MDNR, which may designate two (2) members of the Team.

1. Designee of the Secretary of the Interior;
2. MUCC;
3. NWF;
4. Consumers Power Company;
5. The Detroit Edison Company;
6. MDNR;
7. Chippewa-Ottawa Treaty Fishery Management Authority or its successors or assigns ("COTFMA");
8. GTB;
9. LRB;
10. LTBB; and
11. One member chosen by mutual agreement of MDNR, MUCC, and NWF.

All decisions of the Scientific Advisory Team shall be by simple majority of those present and voting.

C. FUNDING OF TEAM

Consumers Power Company and The Detroit Edison Company shall provide reasonable and prudent operating expenses for the Scientific Advisory Team not to exceed $15,000 per year. Disputes regarding such funding will be handled through the dispute resolution process described in Section VI.A.
D. FERC REVIEW AND APPROVAL

For any Scientific Advisory Team recommendations or decisions which involve structural or operational modifications to the LPSP, including substantial modifications to the barrier net and monitoring programs, the parties recognize that FERC review and approval is necessary. Consumers Power Company and The Detroit Edison Company shall be under no obligation to comply with such Scientific Advisory Team recommendations or decisions until all necessary FERC approvals are obtained. In the case of any Scientific Advisory Team recommendations or decisions presented to FERC for review and approval, all parties represented on the Scientific Advisory Team will be required not to oppose the same. Scientific Advisory Team recommendations and decisions will be subject to the dispute resolutions outlined in Section VI.A.

E. NON-OPPOSITION TO RATE RECOVERY

All parties are obligated not to oppose rate recovery by Consumers Power Company and The Detroit Edison Company of Scientific Advisory Team funding (Section V.C.) and the reasonable and prudent costs caused by any change in LPSP operations and structures which results from a team recommendation or decision. It is understood that rate recovery may be sought by either company for Scientific Advisory Team funding in a special or single issue rate filing or in a general rate case.
VI. OTHER SETTLEMENT ISSUES

A. DISPUTE RESOLUTION PROCEDURES

All disputes arising under this State Agreement (including those of the Scientific Advisory Team) will be subject to dispute resolution procedures as described herein except that decisions of the Board of Trustees pursuant to their powers under the Declaration of Trust in Appendix E shall be final and shall not be subject to dispute resolution under the terms of this State Agreement. All disputes arising under the FERC Agreement will be subject to the dispute resolution procedures therein.

1. Informal Procedure

Any dispute that arises under this State Agreement shall, in the first instance, be the subject of informal negotiations among the parties. The parties shall engage in a period of negotiations not to exceed fourteen (14) days from the date of written notice by any party or parties that a dispute has arisen, unless extended by agreement. Such written notice shall be served upon all parties and upon the United States Department of Interior. If the parties are unable to resolve the dispute within fourteen (14) days of the close of negotiations, a majority of the parties shall provide to the disputing party or parties a written statement setting forth their proposed resolution of the dispute.

Within seven (7) days of receiving the proposed resolution of a majority of the parties, the disputing party or parties shall indicate to the majority parties, in writing, whether the disputing
party or parties reject the proposed resolution. In addition to the parties, a representative of the United States Department of Interior may participate in informal dispute resolution to the same extent as any party.

2. **Formal Procedure**

If a disputing party or parties reject the proposed resolution of any dispute, the parties may, at their discretion, refer the proposed resolution of the majority parties to the Ingham County Circuit Court within twenty-eight (28) days after receipt of the proposed resolution. If no referral is made within the twenty-eight (28) day period, the majority proposed resolution will become binding on all parties. The United States Department of Interior may move to intervene in the state court proceeding pursuant to MCR 2.209(A)(2) for the purpose of participating as a party in formal dispute resolution. In such event, the parties shall stipulate to such intervention.

3. **Procedure Governed by Michigan Court Rules**

The dispute resolution procedures under this section are to be governed by the Michigan Rules of Court.
B. FORCE MAJEURE

Any delay attributable to a Force Majeure shall not be deemed a violation of the Consumers Power Company’s and the Detroit Edison Company’s obligation under this State Agreement as set forth in this section.

The Consumers Power Company and the Detroit Edison Company shall perform the requirements of this State Agreement within the time limits established herein, unless performance is prevented or delayed by events which constitute a "Force Majeure." Force Majeure is defined, for the purpose of this State Agreement, as an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of and without the fault of the Consumers Power Company and the Detroit Edison Company, and which could not be avoided or overcome by due diligence. Force Majeure events include an inability to perform an obligation of this State Agreement to governmental action beyond the control of the Consumers Power Company and the Detroit Edison Company (e.g. inability to obtain necessary governmental permits or licenses, land-use restrictions, etc.), acts of God, or adverse weather conditions. "Adverse weather conditions" are defined as weather related phenomena that prevents the Companies or any persons acting for or on their behalf, from performing obligations under this Agreement and that could not have been overcome by due diligence. Force Majeure does not include unanticipated or increased costs, changed financial circumstances, commencement of a proceeding in bankruptcy,
contractual disputes, or failure to obtain a permit or license as a result of the Consumers Power Company's or the Detroit Edison Company's actions or omissions.

When a Force Majeure event occurs that the Companies believe causes a delay in performing an obligation under this Agreement, the Companies shall notify the MDNR telephonically of the circumstances within twenty-four (24) hours after it first becomes aware of those circumstances. Disputes regarding whether a Force Majeure event occurred shall be subject to the dispute resolution procedure set forth in Section VI.A.

C. EFFECTIVE DATE

Subject to Section II.A., this State Agreement will be effective on the first day of the first month following the date of the last Regulatory Approval described in Section VI.D. becoming final and no longer subject to judicial review, or as soon thereafter as the FERC Agreement becomes effective. This State Agreement will not become effective unless and until the FERC Agreement becomes effective.

D. REGULATORY APPROVALS

Before execution or within a reasonable period after execution Consumers Power Company and The Detroit Edison Company will be obligated to seek certain formal approvals from the Michigan Public Service Commission (MPSC) and FERC. Unless waived by Consumers Power Company or The Detroit Edison Company, all of the following approvals or agency actions are required from the agency noted for
the Settlement to become effective. It is understood that rate recovery may be sought by either company in a single issue rate filing or in a general rate case.

1. The MPSC approves each of the following:

For Consumers Power Company

a. The capitalization as a Regulatory Asset by Consumers Power Company (recoverable over 10 years) of the payments, the book value of lands, the reasonable and prudent estimated land transfer costs (including internal costs of the company) and the reasonable and prudent estimated capital costs of the projects described in Section III of this State Agreement and Section I of the FERC Agreement.

b. The appropriateness of recovery as an Operation and Maintenance Expense of the expenditures described in Sections II and V of this State Agreement and Sections II and III of the FERC Agreement.

For The Detroit Edison Company

a. At Detroit Edison’s option, the continuation of existing rate treatment, the capitalization (recoverable over 10 years) as a Regulatory Asset, or recovery by other rate treatment, for all, or at Detroit Edison’s option, desig-
nated portions of the payments, the book value of lands, the reasonable and prudent estimated land transfer costs and the cost of the acquisition and/or improvement of access or other facilities, as described in Section III of this State Agreement.

b. The recovery through rates of all, or designated portions of, the applicable O&M or other expense items as are requested by Detroit Edison, of the payments described in Sections II and V of this State Agreement and Sections II and III of the FERC Agreement.

For Both Consumers Power Company and The Detroit Edison Company

a. The prudence of Consumers Power Company and The Detroit Edison Company in entering into the Settlement and recovering the $2.5 million base payment described in Section II.A. of this State Agreement. (The prudence of future payments in excess of $2.5 million called for by this State Agreement will be subject to review by MPSC when made and recovery sought; however, the effectiveness of the Settlement shall not be conditioned upon such incremental MPSC approval).
b. Any rate adjustments made by Consumers Power Company and The Detroit Edison Company reflecting the initial cost adjustments resulting from this State Agreement or the FERC Agreement (including those cost adjustments associated with removal of transferred lands from rate base).

2. The FERC approves the FERC Agreement as resolving all issues before it in the Ludington proceedings and makes appropriate and necessary license changes. Except for the special procedures described below, if FERC issues orders accepting such settlement provisions with modifications or conditions or asserts and exercises jurisdiction over the other provisions of the FERC Agreement, then the Settlement shall be considered modified to conform to the terms of those orders unless at least one party indicates to the other parties in writing within 30 days after the issuance of such orders its objection to the orders and its withdrawal from the Settlement. If any party so withdraws, the FERC Agreement, as well as this Agreement, shall cease to have any force or effect. In the event that the resolution in this State Agreement of the issue of future damages is not acceptable to the FERC, and the FERC asserts jurisdiction, then the State and such other parties as choose to participate may join in an appeal of that issue without voiding the FERC Agreement or this State Agreement.
3. The MDNR or agency having jurisdiction issues a NPDES permit for the maximum period allowed by law, in form and substance the same as Permit Number MI 0035912 issued on May 20, 1988 (except for the effective date), but without those portions of Parts I.A.4., I.A.5., and I.A.6. pertaining to release of turbine generating water that were challenged by Consumers Power Company in its Petition for Contested Case Hearing dated June 3, 1988, and the time for legal review of such permit expires without challenge by any party to this State Agreement or the FERC Agreement with respect to such permit or any of the conditions of such permit. Consumers Power Company reserves the right to object to any subsequent attempts to impose any previously challenged conditions and to any attempts by third parties to do so. The parties (other than the AG, State of Michigan or the MDNR) will agree not to propose for inclusion in any NPDES permit for the LPSP conditions substantially similar to Parts I.A.4., I.A.5. or I.A.6. in Permit Number MI0035912, except that this State Agreement and the FERC Agreement shall expire on the expiration date of the current LPSP FERC license.

E. NON-PRECEDENTIAL AND NON-PREJUDICIAL NATURE OF THE SETTLEMENT

Unless and until it becomes effective, this State Agreement shall have no prejudicial effect on any party beyond the obligations under this State Agreement for parties to support or not oppose various regulatory approval filings. Upon its effectiveness
this State Agreement shall not have precedential effect in other cases and shall not establish any legally binding principles regarding fish valuation, modification of project operation to protect fish, land valuations or the legal jurisdiction of any regulatory agency affected by this State Agreement, the type of proceedings chosen for regulatory approvals, the support or non-objections to regulatory approvals, or the ratemaking treatment approved or utilized for such cost recovery. To the extent that parties are bound by this State Agreement, so shall their successors and assigns be bound.

F. COVENANTS NOT TO SUE, RESERVATION OF RIGHTS AND COVERED MATTERS

1. Covenant Not To Sue By AG, MDNR, Director MDNR, GTE, LRB, LTBB, MUCC and MWF ("Plaintiffs")

In consideration of the payments that will be made by Consumers Power Company and Detroit Edison Company under the terms of the State Agreement, and except as specifically provided in this Section, Plaintiffs and the Great Lakes Fishery Trust covenant not to sue or take administrative action against Consumers Power Company or The Detroit Edison Company for "Covered Matters."

2. Definition Of "Covered Matters"

"Covered Matters" includes:

a. Any and all liability associated with, or related to, any damage to fishery resources caused by the operation of the LPSP from its initial construction up to June 30, 1994;
b. Future damages resulting from the pump/turbine induced mortality of fish at the LPSP up to June 30, 2019. (Except if Consumers Power Company or The Detroit Edison Company terminates this State Agreement pursuant to Section F.5.)

3. Reservation Of Rights - Plaintiffs

The covenant not to sue set forth in this Section does not pertain to any matters other than those expressly specified in "Covered Matters" in Section F.2. Plaintiffs reserve, and this Statement is without prejudice to, all rights against Consumers Power Company and The Detroit Edison Company with respect to all other matters, including, but not limited to, the following:

a. Liability for damages for injury to, destruction of, or loss of natural resources occurring after June 30, 1994 except for damages attributable to pump/turbine induced mortality of fish at the LPSP; and

b. Liability for damages for injury to, destruction of, or loss of natural resources occurring after June 30, 2019.

c. In the event that this State Agreement is terminated by Consumers Power Company and The Detroit Edison Company during the present term of the FERC license, pursuant to Section F.5. hereto, Plaintiffs reserve, and this State Agreement is without prejudice to, all rights and claims against Consumers Power Company and The Detroit Edison Company concerning liability for all fish mortality caused by the
operation of the Ludington Pumped Storage Plant subsequent to such termination. Any findings of the MPSC pertaining to fish valuation shall be irrelevant in such subsequent litigation.

4.  **Covenant Not To Sue By Consumers Power Company And The Detroit Edison Company**

The Consumers Power Company and The Detroit Edison Company hereby covenant not to sue and agree not to assert any claim or cause of action against the Plaintiffs for the Covered Matters set forth in Section F.2. including, but not limited to, any direct or indirect claim for reimbursement from the Great Lakes Fishery Trust except as follows:

   a.  Subject to subparagraph b below, it is understood and agreed by all Parties whether in their capacity as Parties, Grantor or Trustee of the Great Lakes Fishery Trust that the balance of the assets of the Trust corpus remaining at the time a claim is made by initiation of a lawsuit or other proceedings shall serve to protect the companies from loss arising out of a claim, asserted by a third-party against either or both utilities, for mortality caused by pump/turbine induced mortality of fish at the Ludington Pumped Storage Facility. Nothing herein will preclude the sale of real property by the Trust so long as such sale does not result in the diminution of the value of Trust assets. The Board of Trustees of the Great Lakes Fishery Trust may give a bond or letter of credit equal to the lesser of the amount of damages
claimed or the balance of the assets of the Trust corpus remaining at the time a claim is made.

b. If a person notifies Consumers Power Company or The Detroit Edison Company with respect to any matter which may give rise to a claim for indemnification against the Great Lakes Fishery Trust corpus, Consumers Power Company or The Detroit Edison Company shall notify the Board of Trustees within ten (10) business days after receiving such notice. Consumers Power Company and The Detroit Edison Company shall diligently defend against any such claims. Consumers Power Company and The Detroit Edison Company shall not consent to the entry of a judgment or enter into any settlement with respect to the matter without the written consent of a majority of the Board of Trustees of the Great Lakes Fishery Trust. The Board of Trustees of the Great Lakes Fishery Trust shall not consent to the entry of any judgment with respect to the matter, or enter into any settlement which does not include an enforceable provision whereby the plaintiff(s) or claimant(s) in the matter release the Consumers Power Company, The Detroit Edison Company and the Great Lakes Fishery Trust from all liability pertaining to such matter. Consumers Power Company and The Detroit Edison Company shall stipulate to the intervention of the Great Lakes Fishery Trust and all parties in any action which may give rise to a claim for indemnification against the Trust. It is understood and agreed by all
the Parties that the Great Lakes Fishery Trust has no duty to defend Consumers Power Company or The Detroit Edison Company in any such action nor shall the Great Lakes Fishery Trust have any obligation to pay any costs associated with the Consumers Power Company's or The Detroit Edison Company's defense of such claims including attorney's fees. Similarly, the Consumers Power Company and the Detroit Edison Company shall have no duty to defend or to pay any cost or damage associated with the defense of the Great Lakes Fishery Trust or any party in any action or proceeding brought against the Trust or any such party or in which they intervene in accordance with this paragraph 4b.

5. **Reservation Of Rights - Consumers Power Company And The Detroit Edison Company**

   a. Consumers Power Company and The Detroit Edison Company may terminate this State Agreement before the end of the current FERC-license period if, and only if the MPSC denies full rate recovery of compensation for future unavoidable fish mortality and all of the following conditions are met:

   (1) the basis for the MPSC denial of full rate recovery is not attributable to negligence or lack of proper diligence of Consumers Power Company or The Detroit Edison Company related to operation of the LPSP or prosecution of the rate request;

   (2) the Company for whom full rate recovery is denied has diligently presented the case for such rate
treatment and has requested support by the parties for rate filings as described in Section VI.H. of this State Agreement;

(3) the Scientific Advisory Team has had 60 days since the MPSC rate order to reassess the proper amount of compensation in light of the MPSC order and present its findings to Consumers Power Company and The Detroit Edison Company and the companies will have had an additional 60 days to accept or reject the Scientific Advisory Team reassessment (Section VI.A. notwithstanding, the dispute resolution procedures shall not apply to such decisions of the Scientific Advisory Team); and

(4) Consumers Power Company and The Detroit Edison Company are performing in a reasonable manner and are fulfilling all of their obligations to compensate for past damages as described in Section III and future damages described in Section II up to the expiration of full rate recovery.

b. Deregulation of rates for the Ludington Pumped Storage Plant shall not be grounds for termination of this State Agreement.

c. Consumers Power Company's and The Detroit Edison Company's rights to termination of this State Agreement shall be prospective only and shall not create any claims for reimbursement except as provided in Section F.4.b.
6. **State Agreement Limited To Period Of Present FERC License**

This State Agreement shall not affect the rights of any parties to take any position in any relicensing proceedings involving the LPSP. The parties agree that any compensation or consideration paid in settlement of the court litigation and the terms and conditions of the Settlement will only apply to the present term of the FERC license.

G. **WITHDRAWAL OF LAWSUITS, COMPLAINTS AND OTHER PENDING LEGAL ACTIONS, RESOLUTION OF FUTURE DAMAGE/MITIGATION ISSUES**

Within a reasonable period of time after the effective date of the Settlement, the parties shall make all necessary legal and other required filings for every pending legal or administrative matter they have initiated against each other concerning LPSP operations and damage to fishery resources. It is intended that each action be resolved as set forth in the Settlement.

A Consent Order shall be entered by the trial court, which incorporates this State Agreement. Such Consent Order shall provide that the parties agree to resolve this case by the submission of this State Agreement as a contract, incorporating the terms of this State Agreement with respect to past and future damages. Consistent with this State Agreement, no finding of liability shall be included in the Consent Order. A pro forma copy of said Consent Order is included in Appendix F hereto.
H. OBLIGATION TO SUPPORT REGULATORY FILINGS

MDNR, MUCC, GTB, LRB, LTBB and NWF will be obligated to state for the record their support of Consumers Power Company's and The Detroit Edison Company's efforts to obtain the regulatory approvals described in Section VI.D. hereinabove, upon the written request of Consumers Power Company or The Detroit Edison Company.

I. APPLICABLE LAW

This State Agreement shall be governed by and construed under the laws of the State of Michigan.

J. NOTICES

All Notices required to be provided hereunder shall be provided to the following:

FOR CONSUMERS POWER COMPANY:

Robert J. Nicholson
Consumers Power Company
Room M-1155B
212 West Michigan Avenue
Jackson, Michigan 49201

William M. Lange
Consumers Power Company
Fifth Floor
1016 16th Street, N.W.
Washington, D.C. 20036

FOR THE DETROIT EDISON COMPANY:

Frank E. Agosti
The Detroit Edison Company
Room 2427 WCB
2000 Second Avenue
Detroit, Michigan 48226

John H. Flynn
The Detroit Edison Company
Room 688 WCB
2000 Second Avenue
Detroit, Michigan 48226
FOR FRANK J. KELLEY, ATTORNEY GENERAL
FOR THE STATE OF MICHIGAN,
FRANK J. KELLEY, EX REL.
THE STATE OF MICHIGAN:

Frank J. Kelley
Attorney General
7th Floor, Law Building
Lansing, Michigan 48909

Assistant-In-Charge
Natural Resources Division
8th Floor, Stevens T. Mason Bldg.
Lansing, Michigan 48909

FOR ROLAND HARMES, DIRECTOR OF
MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND
FOR MICHIGAN DEPARTMENT OF NATURAL RESOURCES:

Roland Harmes, Director
Michigan Department of Natural Resources
P.O.Box 30028
Lansing, Michigan 48909

FOR NATIONAL WILDLIFE FEDERATION:

Jay D. Hair, President
National Wildlife Federation
1400 16th Street, N.W.
Washington, D.C. 20036-2266

Mark Van Putten, Director
Great Lakes Natural Resource Center
506 E. Liberty
Ann Arbor, Michigan 48104

FOR MICHIGAN UNITED CONSERVATION CLUBS:

Thomas L. Washington
Executive Director,
Michigan United Conservation Clubs
2101 Wood Street
Lansing, Michigan 48912

Ronald Wilson
8801 Kari Lane
Columbia, Missouri 65201

FOR GRAND TRAVERSE BAND OF OTTAWA AND
CHIPPEWA INDIANS:

Tribal Chairman
Grand Traverse Band of Ottawa and Chippewa Indians
2505 N. West-Bayshore Drive
Suttons Bay, Michigan 49682

William Rastetter
Tribal Attorney
Grand Traverse Band of Ottawa and Chippewa Indians
6700 French Road
Cedar, Michigan 49621
FOR LITTLE RIVER BAND OF OTTAWA INDIANS:

Tribal Chairman
Little River Band of
Ottawa Indians
409 Water Street
Manistee, Michigan 49660

William J. Brooks
Thompson & O'Neil, P.C.
309 E. Front Street
P.O. Box 429
Traverse City, Michigan 49685-0429

FOR LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS:

Tribal Chairman
Little Traverse Bay Bands
of Odawa Indians
1345 U.S. 31 North
Petoskey, Michigan 49770

James A. Bransky
Michigan Indian Legal
Services, Inc.
106 East State Street, Suite 102
Traverse City, Michigan 49686

U.S. DEPARTMENT OF INTERIOR

Charles Wooley
Field Supervisor
U.S. Fish & Wildlife Service
302 Manly Miles Building
1405 S. Harrison
East Lansing, Michigan 48823

Kerry O'Hara
Office of the Solicitor
U.S. Department of the Interior
Mail Stop 6456
1849 C Street, N.W.
Washington, D.C. 20240

Designees hereunder may be changed upon thirty-days written notice.
JOHN ENGLER, GOVERNOR OF THE STATE OF MICHIGAN

Dated: 3/2/95

FRANK J. KELLEY, ATTORNEY GENERAL FOR THE STATE OF MICHIGAN,

FRANK J. KELLEY, EX REL. THE STATE OF MICHIGAN

Dated: __________

CONSUMERS POWER COMPANY

Dated: __________

THE DETROIT EDISON COMPANY

Dated: __________

MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND

ROLAND HARMES, DIRECTOR OF MICHIGAN DEPARTMENT

OF NATURAL RESOURCES

Dated: __________

NATIONAL WILDLIFE FEDERATION

Dated: __________

MICHIGAN UNITED CONSERVATION CLUBS

Dated: __________
JOHN ENGLER, GOVERNOR OF THE STATE OF MICHIGAN

Dated: __________

FRANK J. KELLEY, ATTORNEY GENERAL FOR THE STATE OF MICHIGAN,

FRANK J. KELLEY, EX REL. THE STATE OF MICHIGAN

Dated: 7/24/1935

CONSUMERS POWER COMPANY

Dated: __________

THE DETROIT EDISON COMPANY

Dated: __________

MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND
ROLAND HARMES, DIRECTOR OF MICHIGAN DEPARTMENT
OF NATURAL RESOURCES

Dated: __________

NATIONAL WILDLIFE FEDERATION

Dated: __________

MICHIGAN UNITED CONSERVATION CLUBS

Dated: __________
JOHN ENGLER, GOVERNOR OF THE STATE OF MICHIGAN

Dated: ___

FRANK J. KELLEY, ATTORNEY GENERAL FOR THE STATE OF MICHIGAN,
FRANK J. KELLEY, EX REL. THE STATE OF MICHIGAN

Dated: ___

CONSUMERS POWER COMPANY

Dated: 2/23/1995
R J Nicholson, Vice President, Fossil & Hydro Operations

THE DETROIT EDISON COMPANY

Dated: ___

MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND
ROLAND HARMES, DIRECTOR OF MICHIGAN DEPARTMENT
OF NATURAL RESOURCES

Dated: ___

NATIONAL WILDLIFE FEDERATION

Dated: ___

MICHIGAN UNITED CONSERVATION CLUBS

Dated: ___
JOHN ENGLER, GOVERNOR OF THE STATE OF MICHIGAN

Dated: __________

FRANK J. KELLEY, ATTORNEY GENERAL FOR THE STATE OF MICHIGAN,
FRANK J. KELLEY, EX REL. THE STATE OF MICHIGAN

Dated: __________

CONSUMERS POWER COMPANY

Dated: __________

THE DETROIT EDISON COMPANY

Dated: 2-24-95

Senior Vice President

MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND
ROLAND HARMES, DIRECTOR OF MICHIGAN DEPARTMENT
OF NATURAL RESOURCES

Dated: __________

NATIONAL WILDLIFE FEDERATION

Dated: __________

MICHIGAN UNITED CONSERVATION CLUBS

Dated: __________
JOHN ENGLER, GOVERNOR OF THE STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL FOR THE STATE OF MICHIGAN,
FRANK J. KELLEY, EX REL. THE STATE OF MICHIGAN

CONSUMERS POWER COMPANY

THE DETROIT EDISON COMPANY

MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND
ROLAND HARMES, DIRECTOR OF MICHIGAN DEPARTMENT
OF NATURAL RESOURCES

ROLAND HARMES

NATIONAL WILDLIFE FEDERATION

MICHIGAN UNITED CONSERVATION CLUBS
JOHN ENGLER, GOVERNOR OF THE STATE OF MICHIGAN  

Dated: __________  

FRANK J. KELLEY, ATTORNEY GENERAL FOR THE STATE OF MICHIGAN, 
FRANK J. KELLEY, EX REL. THE STATE OF MICHIGAN  

Dated: __________  

CONSUMERS POWER COMPANY  

Dated: __________  

THE DETROIT EDISON COMPANY  

Dated: __________  

MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND 
ROLAND HARMES, DIRECTOR OF MICHIGAN DEPARTMENT 
OF NATURAL RESOURCES  

Dated: __________  

NATIONAL WILDLIFE FEDERATION  

Dated: 2/23/95  

MICHIGAN UNITED CONSERVATION CLUBS  

Dated: __________
JOHN ENGLER, GOVERNOR OF THE STATE OF MICHIGAN

Dated: __________

FRANK J. KELLEY, ATTORNEY GENERAL FOR THE STATE OF MICHIGAN,
FRANK J. KELLEY, EX REL. THE STATE OF MICHIGAN

Dated: __________

CONSUMERS POWER COMPANY

Dated: __________

THE DETROIT EDISON COMPANY

Dated: __________

MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND
ROLAND HARMES, DIRECTOR OF MICHIGAN DEPARTMENT
OF NATURAL RESOURCES

Dated: __________

NATIONAL WILDLIFE FEDERATION

Dated: __________

MICHIGAN UNITED CONSERVATION CLUBS

Dated: 2-25-95
GRAND TRAVERSE BAND OF OTTAWA AND
CHIPPEWA INDIANS

[Signature]

Dated: February 27, 1995

LITTLE RIVER BAND OF OTTAWA INDIANS

Dated: 

LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS

Dated: 

GRAND TRAVERSE BAND OF OTTAWA AND
CHIPPEWA INDIANS

Dated: ____________

LITTLE RIVER BAND OF OTTAWA INDIANS

Dated: 2/24/75

LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS

Dated: 2/24/75
APPENDICES

LPSP Settlement Agreement -- Courts and Non-FERC Agencies

Appendix A - Fish Damage Calculations
Appendix B - Composite Inflation Adjustor
Appendix C - Consumers Power Company Land Transfer and Angler Projects
Appendix D - The Detroit Edison Company Projects and Land Transfer
Appendix E - Declaration of Trust
Appendix F - Pro Forma Consent Decree
APPENDIX A

Fish Damage Calculations

This appendix summarizes the base case for fish damages per unit of pumping at the Ludington Pumped Storage Plant (LPSP) adopted by the parties for purposes of settlement. The parties recognize that each of the estimates herein as well as ultimate fish damages per unit of pumping are subject to change based upon convincing scientific evidence as interpreted by the Scientific Advisory team in accordance with Section II of the State Agreement to which this is an appendix.

For purposes of this base case, the parties have agreed to use the fish mortality estimates for 1979-1980 provided by Liston, et al., under contract to Consumers Power Company, modified by the assumption that larval fish mortalities are 5% of entrainment, the fish mortality damage estimates claimed by the State of Michigan in its filings concerning the LPSP, and the barrier net effectiveness estimates for 1992 prepared by Barnes and Williams Environmental Consulting Company under contract to Consumers Power Company.

The base case assumes that fish mortalities at the LPSP are proportional to the volume of water pumped into the plant, which is proportional to the power used in pumping. It is also assumed that plant operations will be scheduled in light of the fish mortalities and damages which will result from plant operations and that payment for fish mortalities will be based on actual pumping activity in future plant operations. Thus a principal objective of
the analysis presented in this appendix is to represent the damage estimates adopted for purposes of settlement as fish damage per megawatt hour (MWH) used in pumping Lake Michigan water into the LPSP. 

In determining the damages to be paid for purposes of settlement, the base case accounts for the effectiveness of the fish barrier nets currently in use at the LPSP. These nets are assumed to be largely ineffective on fish which are less than five (5) inches long and hence are too slender to be blocked by the net mesh. The effectiveness of the net for fish greater than five inches long is greatest for those species, generally considered game fish or commercial fish, which grow much larger than five inches while effectiveness of the net is somewhat lower for those species, generally considered as forage species for game fish, which are only modestly larger than five inches as adults. Thus, for purposes of this analysis, the base case classifies fish killed by the LPSP, as "game fish", "large forage", and "larvae/small forage." These conceptual classes of fish correspond to the categories presented in the reports of Liston, et al., based respectively on their sampling with a "sieve net" and Kodiak trawl located above the plant penstocks during sampling, Kodiak trawls fished between the LPSP jetties during pumping and ichthyoplankton nets fished between the plant jetties. 

Fish mortality varies with fish abundance in the LPSP area. Fish abundance varies seasonally according to the habits and life
cycles of the various fish species as well as over shorter periods in response to weather effects on Lake Michigan. Currently available data will only support seasonal distribution of fish mortalities with monthly resolution.

Thus, this appendix presents monthly estimates of game fish, large forage, and larvae/small forage mortality damages per unit of power used in pumping. It further adjusts these estimates based on current estimates of effectiveness of the fish barrier nets used at the LPSF.

**Aggregate Fish Mortalities**

Based on the reports of Liston, et al., the base case assumes annual fish mortalities of 67,376 adult game fish; 560,585 kilograms of large forage fish; and 909,825 kilograms (1,479,825 kilograms before adjustment to 5% larval mortality rate on passage through the plant) of small forage fish and equivalent adults for mortalities of larval fish.

**Aggregate Fish Mortality Damages**

The base case assumes damages based on the Liston mortality estimates and the State’s methodology(1) as follows:

(1) It is the State’s position that, using the Liston mortality estimates and applying appropriate values based upon mortality of specific species and life stages, the value of the fish loss is estimated at approximately $5.9 million per year in 1988 dollars. Modification of the larval mortality estimate for purposes of this settlement reduces this amount to just over $5.0 million. This is composed of $145,083 replacement costs for lake sturgeon based on the assumption that replacement costs are less than the existence values for this threatened species, $5,307 in lost profits for commercial harvest of lake whitefish, round whitefish, and blobaters; $127,713 in stocking costs for the small game
### Fish Category

<table>
<thead>
<tr>
<th>Category</th>
<th>Damages in 1988 $</th>
<th>Damages in 1994 $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Game Fish</td>
<td></td>
<td></td>
</tr>
<tr>
<td>● Sturgeon</td>
<td>$2,485,931</td>
<td>$2,900,000</td>
</tr>
<tr>
<td>● Commercial fishing</td>
<td>$145,083</td>
<td>$169,249</td>
</tr>
<tr>
<td>● Recreational value of game fish killed</td>
<td>$5,307</td>
<td>$6,191</td>
</tr>
<tr>
<td>● Large Forage Fish</td>
<td></td>
<td></td>
</tr>
<tr>
<td>● Recreational fishing value of game fish supported by large forage fish killed</td>
<td>$2,335,540</td>
<td>$2,724,560</td>
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<tr>
<td>● Stocking costs for juvenile game fish killed</td>
<td>$966,084</td>
<td>$1,127,000</td>
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<tr>
<td>● Stocking costs for game fish supported by large forage fish</td>
<td>$895,374</td>
<td>$1,044,512</td>
</tr>
<tr>
<td>● Larval/Small forage fish</td>
<td></td>
<td></td>
</tr>
<tr>
<td>● Recreational fishing value of game fish supported by larval/small forage fish</td>
<td>$1,567,850</td>
<td>$1,829,000</td>
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<tr>
<td>● Stocking costs for game fish supported by larval/small forage fish killed</td>
<td>$1,612,265</td>
<td>$1,880,812</td>
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<tr>
<td>TOTAL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>● Stocking costs for game fish killed</td>
<td>$5,019,866</td>
<td>$5,856,000</td>
</tr>
</tbody>
</table>

### Seasonal Fish Loss Distribution

Based on the fish mortality estimates of Liston, et al., the base case approximates the seasonal distribution of fish mortalities as follows, where the percentages are proportions of the annual totals (column totals):

- Fish killed at the LPSP: $4,843,179 in recreational fishing value for large game fish killed at the LPSP and for the large game fish which could have been produced through use of the forage fish killed at the LPSP; less additional stocking costs of $101,418 which the State would have incurred in utilizing the forage fish killed by the plant. Although the State estimated the combined recreational fishing value of game fish killed and game fish which would be supported by the forage killed, approximately 40% of the recreational fishing value estimated by the State is attributable to the direct mortalities of large game fish. The State’s valuation methodology has not been accepted by the licensees.
<table>
<thead>
<tr>
<th>Month</th>
<th>Game Fish</th>
<th>Large Forage</th>
<th>Larval/Small Forage</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>5.6%</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td>February</td>
<td>2.1%</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td>March</td>
<td>3.4%</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td>April</td>
<td>2.0%</td>
<td>0.5%</td>
<td>0.5%</td>
</tr>
<tr>
<td>May</td>
<td>6.5%</td>
<td>0.5%</td>
<td>0.8%</td>
</tr>
<tr>
<td>June</td>
<td>1.4%</td>
<td>24.9%</td>
<td>24.7%</td>
</tr>
<tr>
<td>July</td>
<td>12.0%</td>
<td>57.0%</td>
<td>55.9%</td>
</tr>
<tr>
<td>August</td>
<td>9.5%</td>
<td>17.0%</td>
<td>17.8%</td>
</tr>
<tr>
<td>September</td>
<td>26.8%</td>
<td>0.0%</td>
<td>0.3%</td>
</tr>
<tr>
<td>October</td>
<td>21.4%</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td>November</td>
<td>7.2%</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td>December</td>
<td>2.2%</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

**Seasonal Pumping in Study Period**

The base case assumes the following use of power for pumping at LPSP during the period of the Liston, et al., studies from which mortality estimates were taken:

<table>
<thead>
<tr>
<th>Month</th>
<th>Pumping (MWH) April 79 - March 80</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>256,496</td>
</tr>
<tr>
<td>February</td>
<td>194,335</td>
</tr>
<tr>
<td>March</td>
<td>271,895</td>
</tr>
<tr>
<td>April</td>
<td>207,892</td>
</tr>
<tr>
<td>May</td>
<td>276,554</td>
</tr>
<tr>
<td>June</td>
<td>303,603</td>
</tr>
<tr>
<td>July</td>
<td>330,853</td>
</tr>
<tr>
<td>August</td>
<td>313,404</td>
</tr>
<tr>
<td>September</td>
<td>282,365</td>
</tr>
<tr>
<td>October</td>
<td>279,749</td>
</tr>
<tr>
<td>November</td>
<td>183,531</td>
</tr>
<tr>
<td>December</td>
<td>233,216</td>
</tr>
</tbody>
</table>

**Fish Damages per Pumping MWH without Barrier Net**

Based on the annual fish damages in 1994 dollars shown above, the seasonal distribution of fish mortalities shown above, and the pumping data presented above, the base case estimates fish damages...
per megawatt hour used in pumping at LPSP as follows in the absence of the barrier net or other fish protection measures:

<table>
<thead>
<tr>
<th>Month</th>
<th>Game Fish Damage/MWH</th>
<th>Large Forage Damage/MWH</th>
<th>Larval/Small Forage Damage/MWH</th>
<th>Total Damage/MWH</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>$0.628</td>
<td>$0.000</td>
<td>$0.000</td>
<td>$0.628</td>
</tr>
<tr>
<td>February</td>
<td>$0.316</td>
<td>$0.000</td>
<td>$0.048</td>
<td>$0.364</td>
</tr>
<tr>
<td>March</td>
<td>$0.361</td>
<td>$0.000</td>
<td>$0.051</td>
<td>$0.412</td>
</tr>
<tr>
<td>April</td>
<td>$0.284</td>
<td>$0.029</td>
<td>$0.051</td>
<td>$0.362</td>
</tr>
<tr>
<td>May</td>
<td>$0.685</td>
<td>$0.022</td>
<td>$0.051</td>
<td>$0.758</td>
</tr>
<tr>
<td>June</td>
<td>$0.131</td>
<td>$0.926</td>
<td>$1.486</td>
<td>$2.513</td>
</tr>
<tr>
<td>July</td>
<td>$1.051</td>
<td>$1.941</td>
<td>$3.092</td>
<td>$6.084</td>
</tr>
<tr>
<td>August</td>
<td>$0.876</td>
<td>$0.612</td>
<td>$1.039</td>
<td>$2.526</td>
</tr>
<tr>
<td>September</td>
<td>$2.754</td>
<td>$0.000</td>
<td>$0.017</td>
<td>$2.771</td>
</tr>
<tr>
<td>October</td>
<td>$2.217</td>
<td>$0.000</td>
<td>$0.000</td>
<td>$2.217</td>
</tr>
<tr>
<td>November</td>
<td>$1.131</td>
<td>$0.000</td>
<td>$0.000</td>
<td>$1.131</td>
</tr>
<tr>
<td>December</td>
<td>$0.272</td>
<td>$0.000</td>
<td>$0.000</td>
<td>$0.272</td>
</tr>
</tbody>
</table>

**Fish Damages per Pumping MWH with the Barrier Net**

Estimates of barrier net effectiveness estimated by Barnes and Williams for 1992 average approximately 85 percent for those fish classified as game fish and approximately 80 percent for those classified as large forage fish. Based on the fish damages per megawatt hour of pumping without the barrier net in operation estimated above and these estimates of net effectiveness, the base case calculates fish damages per megawatt hour used in pumping at LPSP as follows if the net were in operation in each month, twelve months a year:
<table>
<thead>
<tr>
<th>Month</th>
<th>Game Fish Damage/MWH</th>
<th>Large Forage Damage/MWH</th>
<th>Larval/Small Forage Damage/MWH</th>
<th>Total Damage/MWH</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>$0.094</td>
<td>$0.000</td>
<td>$0.000</td>
<td>$0.094</td>
</tr>
<tr>
<td>February</td>
<td>$0.047</td>
<td>$0.000</td>
<td>$0.000</td>
<td>$0.047</td>
</tr>
<tr>
<td>March</td>
<td>$0.054</td>
<td>$0.000</td>
<td>$0.000</td>
<td>$0.054</td>
</tr>
<tr>
<td>April</td>
<td>$0.043</td>
<td>$0.006</td>
<td>$0.048</td>
<td>$0.158</td>
</tr>
<tr>
<td>May</td>
<td>$0.103</td>
<td>$0.004</td>
<td>$0.051</td>
<td>$1.691</td>
</tr>
<tr>
<td>June</td>
<td>$0.020</td>
<td>$0.185</td>
<td>$1.486</td>
<td>$3.638</td>
</tr>
<tr>
<td>July</td>
<td>$0.158</td>
<td>$0.388</td>
<td>$3.092</td>
<td>$1.293</td>
</tr>
<tr>
<td>August</td>
<td>$0.131</td>
<td>$0.122</td>
<td>$1.039</td>
<td>$0.430</td>
</tr>
<tr>
<td>September</td>
<td>$0.413</td>
<td>$0.000</td>
<td>$0.017</td>
<td>$0.333</td>
</tr>
<tr>
<td>October</td>
<td>$0.333</td>
<td>$0.000</td>
<td>$0.000</td>
<td>$0.170</td>
</tr>
<tr>
<td>November</td>
<td>$0.170</td>
<td>$0.000</td>
<td>$0.000</td>
<td>$0.041</td>
</tr>
<tr>
<td>December</td>
<td>$0.041</td>
<td>$0.000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The total fish damage per megawatt hour given in the right-hand columns of the tables above are the basis for calculating damage payments as specified in this State Agreement, with the table above applied when the barrier nets are operational and the preceding table applied when the barrier nets are not installed and operational.

**Base Fish Damages Projection for 1996-2000 in 1994 Levelized Dollars**

The fish damage per megawatt hour calculated above has been applied by Consumers Power Company using their scheduling (dispatch) model for the LPSP, with resulting plant operations and fish damage payments as displayed in the following table, where "Unadjusted" refers to plant schedules projected without consideration of fish damage payments and "Adjusted" refers to plant schedules projected in light of consequent fish damage payments:
<table>
<thead>
<tr>
<th>Month</th>
<th>Pumping GWH (Unadjusted)</th>
<th>Fish Damages (Unadjusted)</th>
<th>Pumping GWH (Adjusted)</th>
<th>Fish Damages (Adjusted)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>229</td>
<td>$143,874</td>
<td>200</td>
<td>$118,000</td>
</tr>
<tr>
<td>February</td>
<td>236</td>
<td>$74,485</td>
<td>228</td>
<td>$68,000</td>
</tr>
<tr>
<td>March</td>
<td>304</td>
<td>$109,820</td>
<td>301</td>
<td>$103,000</td>
</tr>
<tr>
<td>April</td>
<td>272</td>
<td>$62,387</td>
<td>269</td>
<td>$58,000</td>
</tr>
<tr>
<td>May</td>
<td>214</td>
<td>$33,875</td>
<td>210</td>
<td>$31,000</td>
</tr>
<tr>
<td>June</td>
<td>284</td>
<td>$480,279</td>
<td>250</td>
<td>$400,000</td>
</tr>
<tr>
<td>July</td>
<td>330</td>
<td>$1,200,416</td>
<td>291</td>
<td>$1,003,000</td>
</tr>
<tr>
<td>August</td>
<td>318</td>
<td>$411,143</td>
<td>308</td>
<td>$337,000</td>
</tr>
<tr>
<td>September</td>
<td>268</td>
<td>$115,354</td>
<td>263</td>
<td>$108,000</td>
</tr>
<tr>
<td>October</td>
<td>300</td>
<td>$382,426</td>
<td>289</td>
<td>$350,000</td>
</tr>
<tr>
<td>November</td>
<td>272</td>
<td>$307,659</td>
<td>251</td>
<td>$268,000</td>
</tr>
<tr>
<td>December</td>
<td>198</td>
<td>$53,937</td>
<td>186</td>
<td>$48,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>3,225</td>
<td>$3,375,655</td>
<td>3,046</td>
<td>$2,932,000</td>
</tr>
</tbody>
</table>

The total fish damages using the adjusted plant schedule shown above is the Base Fish Damages Projection for 1995 referred to in this State Agreement.
APPENDIX B

Composite Inflation Adjustor

Unless otherwise agreed upon by the parties, fish values shall be adjusted annually to reflect inflation, as measured with twenty-five percent (25%) weight by the ratio of Consumers Power Company's average electric rates under MPSC jurisdiction in the year preceding adjustment to the comparable rates in 1994; with twenty-five percent (25%) weight by the ratio of The Detroit Edison Company's average electric rates under MPSC jurisdiction in the year preceding adjustment to the comparable rates in 1994; and with fifty percent (50%) weight on the cumulative implicit GNP deflator from 1994 through the year preceding adjustment.
APPENDIX C

Exhibits 1-6
SEE ACCOMPANYING DOCUMENT

Exhibit 2-A
SEE FOLLOWING PAGE
Appendix C, Exhibit 2-A

Lands Subject to Option to Purchase
By Little River Band of Ottawa Indians

Manistee County

<table>
<thead>
<tr>
<th>Township</th>
<th>Section/Tract Number (acres)</th>
<th>Negotiated Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dickson Township, T22N, R13W</td>
<td>Section 30, W-1: 60 acres) Total: $162,750</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Section 30, W-2: 180 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total: 240 acres</td>
<td></td>
</tr>
<tr>
<td>Dickson Township, T22N, R14W</td>
<td>Section 33, W-1: 30 acres) Total: $280,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Section 33, W-2: 20 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 33, 253.2-D1-1: 80 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 33, 254-D1-1: 40 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 33, 256-D1-1: 10 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 34, 257-D1-1: 40 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 34, 528-D1-1: 80 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 35, W-1: 160 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 35, 259-D1-1: 40 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 35, 260-D1-1: 80 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 35, 261-D1-1: 60 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 36, 262-D1-2: 60 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total: 700 acres</td>
<td></td>
</tr>
<tr>
<td>Brown Township,</td>
<td>Sec. 20, 149-D307-1: 17 acres)</td>
<td>Total: $286,214</td>
</tr>
<tr>
<td></td>
<td>Sec. 20, 149-D307-2: 7 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 20, W-1: 128 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 20, W-2: 13 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 22, W-7: 20 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 23, W-4: 7 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 26, W-1: 20 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 26, W-3: 40 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 28, W-5: 50 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 29, W-10: 20 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 30, W-5: 40 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 30, W-6: 38 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sec. 30, 147-D307-6: 2 acres)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total: 402 acres</td>
<td></td>
</tr>
</tbody>
</table>
SECTION A CONSTRUCTION OF PUBLIC ACCESS ON EDISON PROPERTY

GENERAL OVERVIEW

Detroit Edison Company will complete or arrange to have completed the following construction on land it owns at its Power Plant Properties. All projects to be completed subject to environmental or permitting problems. Company assumes risks of cost overruns, but shall not be required to engage in any additional activities even if those listed are completed at a cost below estimate. The Detroit Edison Company shall make its best efforts to obtain such necessary environmental approvals and permits. "Best efforts" shall include, but not be limited to, the submission of timely and administratively complete applications and the submission of any additional information requested by the permitting authority.

A predetermined amount has been allocated to each project. Unused funds from projects which cannot, because of environmental or permitting problems be completed, shall be allocated to remaining projects, as agreed by both parties.

Total allocated costs include NPV of O&M, insurance, project construction and other related costs.

Detroit Edison will complete or arrange to have completed the construction activities listed in APPENDIX D and for those projects on Edison's property only will be responsible for their operation and maintenance for the life of the agreement.
All construction to meet current Americans With Disabilities Act Specifications.

I. HARBOR BEACH POWER PLANT

OVERVIEW

This power plant is currently used only during peak use periods. It is located within the breakwater facility of Harbor Beach. The intensive use around the plant and shallow water conditions do not lend itself to boating or shore fishing. The deep warm water discharge area of the plant is a popular fishing location and needs access.

A former Coast Guard Station is located to the South of the plant. Additional shore fishing is needed within this harbor facility. There are two locations which anglers currently fish. The first location is near the warm water discharge area and the second by the plant’s access road. Both locations should be developed.

PROJECT DESCRIPTION

HARBOR BEACH POWER PLANT
Area #1: Discharge Canal

- Provide access to approximately 250 lineal feet of canal bank fishing along West Bank.
- Develop Three (3) fishing nodes along the 250 lineal feet of bank.
- Develop asphalt walkway between each fishing node.
- Provide Two (2) Vault Toilets at old U.S. Coast Guard garage.*
- Upgrade U.S. Coast Guard roadway.*
- Provide car parking at U.S. Coast Guard roadway and turnaround.*
- Develop cross-over between U.S. Coast Guard garage area and the DECO property.*

* Requires negotiation with and approval from U.S. Coast Guard.

Area #2: Harbor Peninsula
- Provide access to approximately 900 lineal feet of shoreline.
- Develop One (1) fishing node at the point.
- Develop asphalt walkway.
- Provide adjacent car parking with handicap spaces.

ALLOCATED COST $ 770,487

II. MARYSVILLE POWER PLANT

OVERVIEW
This is an active power plant located on the St. Clair River in the City of Marysville, four miles South of Port Huron. A company park is located next to the facility that provides shore access to "employees only." An off shore oil unloading terminal for Great Lake Shipping and connecting ice boom are located at the river's edge.

PROJECT DESCRIPTION
MARYSVILLE POWER PLANT
Edison Park
- Provide access to approximately 300 lineal feet of shoreline by extension of existing bulkhead.
- Develop asphalt walkways and ramps.
- Provide car parking adjacent to Gratiot Avenue.
- Develop toilet facilities at the parking area.
- Allow the use of existing picnic shelter.
- Provide direct access off Gratiot Avenue.
ALLOCATED COST

$ 871,578

III. MONROE POWER PLANT

OVERVIEW

The Monroe Power Plant is an active generating facility located on Lake Erie, two miles south of the Sterling State Park Boating Access Site and one mile north of the Bolles Harbor Access Site. The Sterling facility provides access for 300 car/trailer units while Bolles Harbor provides access for 290. This is an area of high boating activity with each facility filling to capacity during the peak of the fishing season.

The Power Plant sits on a large piece of property and fronts on three water bodies; the River Raisin to the north, Lake Erie to the east and Plum Creek Bay to the south.

The plant’s water intake and the shipping channel is located on the River. This intensive use does not lend itself to boating or shore fishing access. Water depths and coal storage along Lake Erie also limits access potential.

The plant’s warm water discharge into Plumb Creek and property to the south of the plant could provide anglers year-round shore fishing access.

PROJECT DESCRIPTION

MONROE POWER PLANT
Area #1: Discharge Canal

- Provide access to approximately 2,000 lineal feet of bank fishing along West Bank.

- Develop Ten (10) fishing nodes along the 2,000 lineal feet of shoreline.
- Provide Six (6) parking areas with handicap spaces.
- Develop asphalt walkway between each fishing node.
- Provide Vault Toilets at Two (2) fishing nodes.
- Provide direct access from Front Street.

**Area #2: Plum Creek (South Shore)**

- Provide access to approximately 1,000 lineal feet of bank fishing.
- Develop Five (5) fishing nodes.
- Develop a 72 foot wide Boat Launch Ramp.
- Provide adjacent parking for car/trailer combination.
- Provide adjacent parking for cars including handicap spaces.
- Provide Vault Toilets at Boat Launch Ramp and at centrally located node.
- Develop asphalt walkway between each fishing node.
- Provide direct access from Dunbar Road.

**ALLOCATED COST**

$3,373,454

**IV. DELRAY POWER PLANT**

**OVERVIEW**

The Delray facility has not been in operation for years and a number of structures have been salvaged or removed.

The site is 1,300' long with 710' frontage on the Detroit River. A concrete walled intake channel 100' wide by 600' long is located on the north property line, the remaining shoreline has a concrete and steel cap. The boiler room building, and a 100' x 400' office building on Jefferson Avenue along with a number of smaller buildings remain on site.
Historic Fort Wayne (federal ownership) borders the Delray site to the north. River Rouge's Belanger Park is located one mile south and Detroit's Riverside Park is located one mile north. Riverside provides shore fishing and boat access for 128 and Belanger 200.

The entire shoreline at the Delray facility has been protected by a steel sheet wall. This shoreline should be made accessible to the public for bank fishing and the discharge canal can be modified to include a new boating access site with parking. Make modifications for accessible fishing and development of a parking lot suitable to handle 50 cars and 50 car/boat trailer combinations.

PROJECT DESCRIPTION

DELRAY POWER PLANT
Detroit, Michigan

- Provide access to approximately 450 linear feet of shoreline along existing Detroit River bulkhead.

- Develop a 54 foot wide Boat Launch Ramp in the Discharge Canal.

- Provide adjacent parking for car/trailer combination.

- Provide adjacent parking for cars including handicap spaces.

- Develop asphalt walkway along Detroit River bulkhead (approximately 450 feet).

- Provide Vault Toilets at Boat Launch Ramp.

- Provide direct access and entry road from Jefferson Avenue.

ALLOCATED COST

$1,384,481

TOTAL ALLOCATED COST FOR SECTION A

$6,400,000

SECTION B CONSTRUCTION OF PUBLIC ACCESS ON NON-EDISON PROPERTY
GENERAL OVERVIEW.

Except as noted below, The Detroit Edison Company will complete or arrange to have completed, on non-Edison owned property, the construction described below. All projects to be completed subject to environmental or permitting problems, and shall conform to current Americans With Disabilities Act Specifications. Detroit Edison shall not be responsible for operational maintenance, insurance, etc. after completion of construction.

I. ELIZABETH PARK (WAYNE COUNTY GRANT)

OVERVIEW

Detroit Edison's Trenton Channel Power Plant is located south of Wayne County's Elizabeth Park. Intensive use on the power plant shoreline prohibits boating or shore fishing on plant property.

This proposal will provide a fund amount of $157,500 to the County to be used as a match for state or federal recreational grant programs. This fund will provide for additional recreational fishing access on the Detroit River. It will fund development of all or part of this project.

Elizabeth Park has an updated boat launch, parking for 215 car/trailers, a 52 slip transient marina that opened in the Summer of 1993, and an unconstructed area for bank fishing on both the Detroit River and Slocum Creek.

Wayne County's Marine Safety Patrol office is located there along with moorage of a number of their boats. In the Winter, a
patrol boat is moored in the warm water discharge of the Detroit Edison Trenton Channel Power Plant.

**PROPOSED USE OF FUNDS**

**ELIZABETH PARK**  
City of Trenton, Wayne County

- Build up to 1,000 feet of fishing boardwalk with parking for up to 100 cars along the Detroit River on park property.

**ALLOCATED COST (Funding)**  
$157,500

**Note:**  
Company shall pay this amount either (1) as a match for state or federal recreational grant program to provide for additional recreational access at this site, or (2) to fund development of all or part of this project, up to a maximum of $157,500.

**II. BELANGER PARK (CITY OF RIVER ROUGE)**

**OVERVIEW**

The River Rouge Power Plant is active and located on the confluence of the Detroit and Rouge Rivers. Zug Island is located across the Rouge and the plant neighbors Belanger Park to the south.

The River Rouge Power Plant does not lend itself to public access due to intensive plant operations on the river. Neighboring Belanger Park should be upgraded for public fishing and boating, for direct access to the Detroit River.

Belanger Park is operated by the City of River Rouge. This park is in need of major upgrading and site repairs. Belanger Park currently provides limited boating and shore fishing access to the Detroit River.
Detroit Edison assumes the risk of cost overruns for the project, but shall not be required to engage in additional activities if those listed here are completed at a cost below the allocated cost.

PROJECT DESCRIPTION

BELANGER PARK
River Rouge, Michigan
- Improve accessibility to approximately 580 lineal feet of shoreline along the existing Detroit River bulkhead.
- Develop a 54 foot wide Boat Launch Ramp and improve canal.
- Improve car/trailer combination parking area.
- Improve car parking and add handicap spaces.
- Develop asphalt walkways between bulkhead and parking.
- Renovate/Demolish Three (3) existing buildings.

ALLOCATED COST

TOTAL AlLOCATED COST FOR SECTION B

SECTION C DETROIT EDISON’S ACQUISITION PROJECTS

GENERAL OVERVIEW

A number of power plant properties offered little potential for additional Great Lake public boating or fishing opportunities. An alternative to this type of development would include the acquisition and donation to the DNR new properties capable of accommodating additional Great Lake public access.

I. HARRISON TOWNSHIP LAND PURCHASE

PROJECT DESCRIPTION
II. FAIRHAVEN ACQUISITION

OVERVIEW

Acquire additional property for an additional 150 car/trailer parking lot near the DNR’s Fairhaven Great Lake Boating Access Site located in Macomb County. This property would be acquired and donated to the DNR.

PROJECT DESCRIPTION

* Acquire property near the Fairhaven BAS in Macomb County.

Maximum purchase price

$ 500,000

TOTAL ALLOCATED COST SECTION C

$2,414,000

NOTES TO SECTIONS A, B, AND C

1) Amounts allocated to Fairhaven and Harrison purchase will be pooled (total $2,414,000) to buy both properties.

2) Total subject to risks noted, but the Company shall not be required to engage in any additional construction or acquisition activities if those listed are completed at a cost below allocated costs.

3) Detroit Edison will complete the above construction, acquisition, and funding activities. Detroit Edison shall not be responsible for the operation or maintenance of the activities on non-Edison land.
4) Tentative schedule of priorities as follows:

The project priorities have been jointly agreed to by the DNR, Detroit Edison and Syndeco Realty Corporation. They are as follows:

**First Priority Level (1994-1995)**

- Fairhaven, Macomb County, MI
  Harrison Township (Non-Edison)

**Second Priority Level (1995-1996)**

- Harbor Beach Power Plant (Edison)
- Belanger Park, River Rouge, MI (Non-Edison)
- Elizabeth Park, Trenton, MI (Non-Edison)

**Third Priority Level (1996-1997)**

- Delray Power Plant, Detroit, MI (Edison)
- Monroe Power Plant, Monroe, MI (Edison)
- Marysville Power Plant (Edison)

5) All construction to meet current Americans With Disabilities Act Specifications.
SECTION D EXCESS LAND TRANSFER

Ludington Plant

<table>
<thead>
<tr>
<th>Section</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section A</td>
<td>$6,400,000</td>
</tr>
<tr>
<td>Section B</td>
<td>$907,500</td>
</tr>
<tr>
<td>Section C</td>
<td>$2,414,000</td>
</tr>
<tr>
<td>Section D</td>
<td>$736,000</td>
</tr>
</tbody>
</table>

**TOTAL** $10,457,500
APPENDIX E

THE GREAT LAKES FISHERY TRUST

DECLARATION OF TRUST

I. ESTABLISHMENT OF A TRUST

In order to compensate the citizens of the State of Michigan, including Indian tribes with reserved treaty rights in the Michigan waters of Lake Michigan, for the use and enjoyment of fishery resources foregone as a result of the operation of the Ludington Pumped Storage Plant (the "LPSP"), Consumers Power Company (the "Grantor") has agreed, as an element of the Ludington Pumped Storage Project Settlement Agreement -- Courts and Non-FERC Agencies dated February 27, 1995, (the "State Agreement") to hereby establish a trust exempt from Federal Income Tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (the "Code") to be known as "The Great Lakes Fishery Trust" (the "Trust") for the purposes and on the terms and conditions hereafter set forth. It is specifically understood that after this Trust is established, the Grantor will have no further responsibilities for or duties to the Trust insofar as Trust operations or activities are concerned.

II. PURPOSE OF THE TRUST

The purpose of this Trust shall be to mitigate for the use and enjoyment of Lake Michigan fishery resources foregone as a result of the operation of the LPSP and to benefit the Great Lakes
fishery by providing funding for the enhancement, propagation, protection and replacement of the Great Lakes fishery resources. Preferential treatment shall be given to projects which benefit the Lake Michigan fishery. Permissible uses of Trust funds are:

1. Research projects directed at increasing the benefits associated with Great Lakes fishery resources;
2. Rehabilitation of lake trout, lake sturgeon and other populations;
3. Protection and enhancement of fisheries habitat including Great Lakes wetlands as fisheries habitat;
4. Public education concerning the Great Lakes fisheries;
5. Acquisition of real property for the above purposes or to provide access to the Great Lakes fisheries; and
6. Any other purposes consistent with the above, duly approved by the Trustees.

III. FUNDING OF THE TRUST

A. In accordance with Section III of the State Agreement the Trust will receive cash or cash equivalent in the amount of FIVE MILLION DOLLARS ($5,000,000).

B. The Trust may also receive cash in the amount of $700,000 from the Grantor in lieu of the Grantor’s obligation under Section III of the State Agreement to fund recreational access enhancement projects at Pentwater and White Lake. Such funds, if received by the Trust, shall be held separately by the Trust, segregated in all accountings, and shall be dedicated to the
exclusive purpose of funding such recreational access enhancement projects at Pentwater and White Lake. The Trust may also receive from time to time cash or other compensation for future unavoidable damages to fishery resources caused by operation of the LPSP.

C. The Trust shall also from time to time receive cash or other compensation from the sale of certain lands described in the State Agreement.

D. The Trust may also receive from time to time cash or other compensation from gifts, donations or transfers from other sources.

E. Aside from the funding described in parts A, B, and C hereto and the land transfers described in the State Agreement and the Grantor shall have no further obligations to fund the Trust. Moreover, the Grantor retains no residual rights or obligations with respect to Trust property except as expressly provided in the State Agreement or land transfer documents.

IV. TRUSTEES

A. DESIGNATION OF THE BOARD OF TRUSTEES

The Trust shall be administered by six (6) Trustees, selected as follows:

1. The Director of the Michigan Department of Natural Resources, or his/her designee, who shall serve as Chair of the Trust Board with the duties and powers specified in subsection IV.D., below;

2. The Attorney General of the State of Michigan or his/her designee;
3. A representative of the U.S. Department of the Interior on behalf of the Fish and Wildlife Service and, as Trustee for Indian tribes with reserved treaty rights in the Michigan waters of Lake Michigan, as designated by the Secretary of the Interior;

4. A representative of the Grand Traverse Band of the Ottawa and Chippewa Indians as designated by the Tribal Council of the Band;

5. A representative of the Michigan United Conservation Clubs as designated by the Executive Director of the Clubs; and,

6. A representative of the National Wildlife Federation as designated by the President of the Federation.

In addition to the six (6) Trustees designated above, the Tribal Councils of the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians may each designate a representative who will serve as "Provisional Trustees" on the Board of Trustees. A Provisional Trustee may not vote on any matter before the Board of Trustees unless one of the six (6) Trustees designated above gives such Provisional Trustee its proxy to vote on that particular matter. Provisional Trustees voting pursuant to a proxy shall be subject to the same fiduciary obligations as the six (6) Trustees designated above. Except as specifically limited in this Section A, references to "Trustees" in this Declaration of Trust include both "Trustees" and "Provisional Trustees."

B. APPOINTMENT/REMOVAL OF THE TRUSTEES

Each Trustee shall be designated by the authorized organization and person by the delivery of a written notice of designation
to the Chair of the Board of Trustees at the offices of the Executive Division of the Michigan Department of Natural Resources. Each Trustee shall serve at the pleasure of the organization or person authorized to designate him or her and may, therefore, be removed and replaced by the designating organization or person by the delivery of a written notice thereof to the Chair of the Board of Trustees at the official offices of the Michigan Department of Natural Resources. The Grantor shall have no rights with respect to the designation of Trustees.

C. CHAIRPERSON

The Director of the Michigan Department of Natural Resources, or his/her designee, shall serve as the Chair of the Board of Trustees. The Chair shall provide for the scheduling of quarterly meetings of the Board of Trustees and shall send each Trustee written notice of the time and location of each meeting at least 30 days in advance. The Chair shall preside at all meetings of the Board of Trustees.

D. DECISION-MAKING BY TRUST BOARD

The Board of Trustees shall meet quarterly at a time and location specified by the Chair. The agreement of four (4) Trustees shall be sufficient to take any action or make any decision authorized or required in the administration or execution of this Trust; except that the agreement of five (5) Trustees shall be required to authorize any expenditure of Trust funds for a project, activity or acquisition that occurs outside of the Lake
Michigan basin or that does not primarily benefit the fishery
resources of the Lake Michigan basin and the agreement of five (5)
Trustees shall be required to authorize the acquisition or sale of
real property; provided, however, that the agreement of the
Trustees shall not be required to authorize the sale of real
property to which an option to purchase been given as described in
Article V, Section D.4., of this Declaration of Trust. The Chair
shall have the unilateral power to defer a vote on any project,
activity or acquisition for no more than three quarterly meetings
of the Board of Trustees subsequent to the meeting at which the
project or activity is first presented to the Board of Trustees by
any Trustee.

V. POWERS AND DUTIES OF THE TRUSTEES

A. AUTHORIZATION FOR EXPENDITURES

Any trustee may propose a project, activity or acquisition
for funding from the Trust, provided that the proposal meets the
criteria set forth in Section II herein; although the parties
assume that projects funded by the Trust generally will be
considered and recommended by the Scientific Advisory Team prior to
being proposed and considered by the Board of Trustees. There
shall be no limitation on the amount of Trust principal or income
from investment that may be spent on proposals duly authorized by
the Trustees.
B. INVESTMENT

Monies paid into the Trust pursuant to the Settlement, as well as income from investment, shall be invested in high quality corporate, government, or government agency bonds, including commercial or financial company paper, which is rated in one of the two highest ratings by a nationally recognized rating agency; and time deposits or repurchase agreements with any bank or trust company organized under the laws of any state of the United States, or national banking association, provided that such time deposits or repurchase agreements do not exceed at any one time in the aggregate 10% of the total of the capital and surplus of such bank or trust company or national banking association, and such bank or trust company or national banking association has a combined capital and surplus of at least $15,000,000.

C. PURCHASE OF LAND

The Trustees may, if authorized, by agreement of at least five (5) Trustees, use all or part of the monies held by the Trust to purchase in fee simple land or perpetual interests in land or perpetual interests in or to water if such a purchase would in the Trustees' opinion advance the purposes of the Trust. The Trustees may accept other property whether real, personal or mixed, by way of gift, bequest, or devise from any person, firm, trust, or corporation, to be held, administered and disposed of in accordance with and pursuant to the provisions of this Declaration of Trust, or the terms of the State Agreement, but no gift, bequest or devise
of additional property shall be accepted if it is conditioned or
limited in such manner as shall in the opinion of the Trustees
jeopardize the Federal income tax exemption of this Trust pursuant
to section 501(c)(3) of the Code or its status as other than a
private foundation under section 509(a)(3) of the Code. (Any
reference to any section of the Code under this Trust shall be
deemed to include a reference to any corresponding provision of any
subsequent Federal tax law).

D. TRANSFER OF TRUST PROPERTY.

1. Notwithstanding any other provision of this
Declaration of Trust, the Trustees may authorize the sale, lease or
exchange of Trust property at a price below market value if the
proposed sale, lease or exchange promotes the purposes of the
Trust.

2. Prior to authorizing the sale, lease or exchange
of any of the Properties described in Exhibit 2 of Appendix C, the
Trustees shall give notice of the proposed transfer to the MDNR,
State Historic Preservation Officer, U.S. Forest Service, the
Bureau of Indian Affairs and representatives of any local Indian
Tribe or Tribes to afford such entities the opportunity to perform
a cultural resource assessment of any such Property.

If the cultural resource assessment indicates that cultural
or archaeological resources, the excavation or removal of which
would require a permit under any state or federal law providing
protection to cultural resources, the Trustees shall consider the
recommendations of federal, state or tribal officials and adopt those measures which are reasonably necessary to protect the cultural resources identified, including the reservation of a conservation easement or historical preservation easement in the deed or other instrument conveying an interest in such property.

As used in this section, the term "cultural resources" includes, but is not limited to, "aboriginal antiquities" protected under the Aboriginal Records and Antiquities Act, MCLA 299.51 and "archaeological resources" defined in the Archaeological Resources Protection Act, 16 USC §470aa, et seq.

3. Prior to authorizing the sale, lease or exchange of any trust property described in Exhibit 2 of Appendix C, the Trustees shall, in consultation with the Scientific Advisory Team, determine if any such properties have fishery values associated with the Lake Michigan fishery or other significant ecological values relating to the protection and enhancement of the fishery resources of the Great Lakes. If the Scientific Advisory Team determines that any of the trust properties have fishery values associated with the Lake Michigan fishery or other significant values related to the fishery resources of the Great Lakes, the Trustees shall adopt those measures necessary to protect the fishery or other fishery-related values identified, including the reservation of a conservation easement in the deed, other instrument conveying an interest in such properties, or other legal measures necessary to protect these values.
4. The Little River Band of Ottawa shall have an exclusive Option to Purchase the Trust properties described in Exhibit 2-A of Appendix C, which are located in Dickson and Brown Townships in Manistee County for a period of three (3) years following the execution of this Declaration of Trust. The purchase price for such lands shall be no more than 90% of the negotiated value for such lands as described in Exhibit 2-A of Appendix C. The properties subject to this "Option to Purchase" may be purchased by or for the Tribe or in the name of the Tribe's nominee for the benefit of the Tribe. Insofar as consistent with applicable law, the requirements described in paragraph 2 of this section shall not apply to those lands upon which the Tribes exercise their option to purchase.

Subsequent to the transfer of title of the Properties described in Exhibit 2-A of Appendix C, the Trustees shall execute a Memorandum of Option Agreement evidencing this "Option to Purchase," which shall be filed with the Register of Deeds for Manistee County.

5. Notwithstanding the Option to Purchase set forth in paragraph 4, the Trust may sell the lands described in Exhibit 2-A to the United States Forest Service within the three (3) years following the execution of this Declaration of Trust, provided, however the Little River Band of Ottawa shall have a right of first refusal for thirty (30) days after notice from the United States Forest Service of its intent to purchase said lands.
E. CHARITABLE CORPORATION

The Grantor authorizes and empowers the Trustees to form and organize a nonprofit corporation limited to the uses and purposes provided for in this Declaration of Trust. Such corporation may be organized under the laws of the State of Michigan or under the laws of the United States. Such corporation, when organized, shall have power to administer and control the affairs and property and to carry out the uses, objectives and purposes of this Trust. Upon the creation and organization of such corporation, the Trustees are authorized and empowered to convey, transfer and deliver to such corporation all the property and assets to which this Trust may be or become entitled. The charter, bylaws, and other provisions for the organization and management of such corporation and its affairs and property shall conform, to the greatest extent possible, with the provisions of this Trust and the composition of the board of directors and the decision-making by the board of directors shall conform to Section IV.A. The board of directors and officers of such corporation shall be indemnified by the corporation to the fullest extent of the law. The Grantors retain no residual rights or obligations with respect to trust property except as expressly provided in the State Agreement or land transfer documents.

F. DURATION

This Trust shall continue in perpetuity.
G. GENERAL

In extension and not in limitation of the common law and statutory powers of trustees and other powers granted in this Declaration of Trust, the Trustees shall have the following discretionary powers:

1. To invest and reinvest additional principal and income therefrom as provided in Article V.B.

2. To, if authorized by agreement of at least five (5) Trustees, purchase, sell, lease, or exchange any personal, mixed, or real property, at public auction or by private contract, for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relating to the Trust property, as they consider advisable, whether or not such leases or contracts may extend beyond the duration of the Trust; provided, however, that any sale proceeds or income of any kind becomes part of the Trust corpus.

3. To employ fiduciary, investment, management, custodian, accounting, and other appropriate professionals and the services these professionals provide and to pay, utilizing monies or income from investment of the Trust, the rea-
sonable compensation and expenses of such professionals and for the services they provide.

4. To execute and deliver deeds, assignments, transfers, mortgages, pledges, leases, covenants, contracts, promissory notes, releases, and other instruments, sealed or unsealed, incident to any transaction in which they engage.

5. To vote, to give proxies, to participate in the reorganization, merger or consolidation of any concern, or in the sale, lease, disposition of its assets; to join with other security holders in acting through a committee, depositary, voting trustees, or otherwise, and in this connection to delegate authority to such committee, depositary, or trustees and to deposit securities with them or transfer securities to them; to pay assessments levied on securities or to exercise subscription rights in respect of securities.

6. To employ a bank or trust company as custodian of any funds or securities and to delegate to it such powers as they deem appropriate; to hold Trust property without indication of fiduciary capacity but only in the name of a registered
nominee, provided the Trust property is at all times identified as such on the books of the trust; to keep any or all of the trust property or funds in any place or places in the United States of America.

VI. AMENDMENT

This Declaration of Trust may be amended at any time or times by written instrument or instruments signed and sealed by the Trustees, and acknowledged by all of the Trustees, to administer this Trust in any manner or for any purpose not contrary to the provisions of Section 501(c)(3) of the Code; provided, however, that the purposes of the Trust set forth in Section II, the composition of the Board of Trustees set forth in Section IV, and the decision making by the Board of Trustees set forth in Section IV.D. shall not be substantially altered. An amendment of the provisions of this paragraph (or any amendment to it) shall be valid only if and to the extent that such amendment further restricts the Trustees’ amending power. All instruments amending this Declaration of Trust shall be noted upon or kept attached to the executed original of this Declaration of Trust held by the Trustees.
VII. MISCELLANEOUS

A. No Trustee or Grantor of this Trust shall be required to furnish any bond or surety. No Trustee shall be responsible or liable for the acts or omissions of any other of the Trustees or of a custodian, agent, depositary or counsel selected with reasonable care.

B. Any person may rely on a copy, certified by a notary public, of the executed original of this Declaration of Trust held by the Trustees, and of any of the notations on it and writings attached to it, as fully as he might rely on the original documents themselves. Any such person may rely fully on any statement of fact certified by anyone who appears from such original documents or from such certified copy to be a Trustee under this Declaration of Trust. No one dealing with the Trustees need inquire concerning the validity of anything the Trustees purport to do. No one dealing with the Trustees need see to the application of anything paid or transferred to or upon the order of the Trustees.

C. The Board of Trustees shall comply with all laws applicable to the Trust. The Board of Trustees shall keep all records of the Trust on a calendar-year basis and shall cause to be performed an independent annual accounting within thirty (30) days following the close of each calendar year. The accounting shall show in reasonable detail the following; (1) the total funds deposited into the Trust including any monies derived from the sale of lands; (2) accrued earnings on the funds deposited into the
Trust; (3) the amount of monies that have been paid out of the Trust; and, (4) the remaining balance in the Trust. The independent accounting shall be sent to all Trustees and all parties to the State Agreement.

D. The Trustees may be reimbursed from the Trust for their reasonable expenses, but shall not receive any other compensation.

VIII. PROHIBITIONS

A. Notwithstanding any other provision of this Declaration of Trust, the Trust shall not carry on any activity not permitted to be carried on (a) by a trust exempt from Federal income tax under section 501(c)(3) of the Code, and (b) by a trust, contributions to which, are deductible under section 170(c)(2) of the Code.

B. Monies or other property of the Trust, including income from investments, may not be used as a substitute for traditional sources of funding for the enhancement, propagation, protection and replacement of Great Lakes fishery resources, but shall supplement such traditional sources and shall be used for the furtherance and accomplishment of the purposes for which the Trust is formed.

C. No Trustee shall propose or participate in any Trustee business or exercise any discretionary powers under subsection V.F. that will financially benefit, directly or indirectly, the Trustee as an individual. This prohibition shall not be construed as prohibiting a Trustee from proposing or participating in any Trust
business or exercise any discretionary powers under subsection V.F. that may indirectly advance the interests of the organization he or she represents.

IX. DISSOLUTION

In the event of the dissolution or final liquidation of the Trust, none of the property of the Trust nor any proceeds thereof shall be distributed to or divided among any of the Trustees or officers of the Trust or inure to the benefit of any person or individual, including the Grantor. After all liabilities and obligations of the Trust have been paid, satisfied and discharged, or adequate provisions made therefore, all remaining property and assets of the Trust shall be distributed as authorized by at least five (5) Trustees to an organization(s) to be expended consistent with the purposes of this Trust. Dissolution shall be required if the Trust fails to qualify for tax exempt status under section 501(c)(3) of the Code.

X. SUBSTITUTION OF SUPPORTED ORGANIZATION

In the event the Michigan United Conservation Clubs or the National Wildlife Federation shall dissolve or become an organization not described in sections 170(b)(1)(A) and 509(a)(1) or (2) of the Code, the Trustees hereof may designate a substitute organization(s) for purposes of designating substitute Trustees. Any such designated substitute supported organization shall meet
all the requirements of this Declaration of Trust and, in addition, shall qualify under section 509(a)(1) or (2) of the Code.

XI. CONSTRUCTION OF TRUST

As this Declaration of Trust is made in connection with and as an Appendix to the State Agreement dated February 27, 1995, any party (other than the Grantor) to that State Agreement may seek resolution of any dispute concerning this Declaration of Trust, by negotiation, or if appropriate, any party (other than the Grantor) may petition the Court for resolution of any questions arising out of or concerning this Declaration of Trust, including without limitation, the construction or administration of the Trust, its termination, the distribution of its income and assets, or the determination of the person or organization authorized to designate a Trustee or whether someone has been designated a Trustee. After execution, the Grantor will have no responsibilities, rights or obligations concerning construction of the Trust. This Trust shall be governed by the laws of the State of Michigan and the provisions of the Code.

Consumers Power Company, Grantor

By ______________________

>Title}
APENDIX F

PRO FORMA CONSENT DECREES

IN THE SUPREME COURT
ON APPEAL FROM THE COURT OF APPEALS
Weaver, PJ., and McDonald and Neff, JJ.

FRANK J. KELLEY, Attorney General for the
State of Michigan, FRANK J. KELLEY, ex rel.
MICHIGAN NATURAL RESOURCES COMMISSION,
MICHIGAN DEPARTMENT OF NATURAL RESOURCES,
and ROLAND HARMES, DIRECTOR OF THE
MICHIGAN DEPARTMENT OF NATURAL RESOURCES,

Plaintiffs-Appellees,

v

CONSUMERS POWER COMPANY and THE DETROIT
EDISON COMPANY, both Michigan corporations,

Defendants-Appellants.

FRANK J. KELLEY, Attorney General for the
State of Michigan; FRANK J. KELLEY, ex rel.
MICHIGAN NATURAL RESOURCES COMMISSION,
MICHIGAN DEPARTMENT OF NATURAL RESOURCES,
and DIRECTOR OF THE MICHIGAN DEPARTMENT OF
NATURAL RESOURCES,

Plaintiffs-Appellants,

v

CONSUMERS POWER COMPANY and THE DETROIT
EDISON COMPANY, both Michigan corporations,

Defendants-Appellees.

/ / /

MOTION FOR ENTRY OF ORDER ON REMAND TO CIRCUIT
COURT TO ENTER CONDITIONAL CONSENT ORDER AND
FOR CONTINUING JURISDICTION
Appellants and Appellees in the above-captioned cases together hereby move this Honorable Court pursuant to MCR 7.313, to enter an order remanding these cases to the trial court for the entry of a conditional Consent Order establishing and implementing the terms and conditions of the settlement of the parties and to continue jurisdiction.

In support of this Motion the parties state and stipulate as follows:

1. These cases arise from the efforts of the Michigan Department of Natural Resources ("MDNR") and the Michigan Natural Resources Commission (collectively "the State") to advance certain claims for damages and for declaratory relief against Consumers Power Company and The Detroit Edison Company. The State's claims concern fish mortality associated with the operation of the Ludington Pumped Storage Plant ("LPSP") located on the shore of Lake Michigan in Ludington.

2. The underlying actions were commenced in the Ingham County Circuit Courts on September 3, 1986. On that same date, the Plaintiffs in the action below also filed a Complaint before the Federal Energy Regulatory Commission ("FERC") which sought certain operational and/or structural modifications of the LPSP.

2
3. By order dated November 8, 1994, this Court granted the parties' motion to hold these appeals in abeyance pending finalization of a settlement and directed the clerk to remove this case from the December 1994 session calendar.

4. A settlement agreement has now been reached by the parties which resolves all matters in the Michigan courts, all matters before FERC (in a separate "FERC Agreement"), and will also resolve an administrative contested-case proceeding pending before the Natural Resources Commission.

5. In settlement of all matters that are the subject of these appeals, the parties have executed a document entitled "Ludington Pumped Storage Agreement -- Courts and Non-FERC Agencies," (hereinafter referred to as the "State Agreement"). The State Agreement provides, _inter alia_ for the following:

   a) The establishment of the Great Lakes Fisheries Trust which will provide funding for projects directed at enhancing, propagating, protecting and replacing Great Lakes fishery resources;

   b) The establishment of the Scientific Advisory Team for the purpose of implementing, evaluating and overseeing the
scientific activities established or authorized by the State Agreement;

c) The transfer of 15,638 acres of lands having identified fisheries value to the State of Michigan;

d) The transfer of 10,836 acres of lands to the Great Lakes Fisheries Trust;

e) The transfer of 186 acres of lands to Indian tribes;

f) The acquisition and/or development of eight (8) recreational access projects in Southeastern Michigan;

g) The enhancement of recreational access facilities at Pentwater and White Lake on Lake Michigan;

h) The cash payment to the Great Lakes Fisheries Trust of $5,000,000 in partial payment of past damages; and

i) The payment of approximately $2.5 million per year to the Great Lakes Fisheries Trust, in future damages for unavoidable fish mortality.
6. In order to implement the State Agreement, resolve all claims, provide for orderly administration of the settlement, and to facilitate future consensual dispute resolution, the parties shall upon remand, move the trial court pursuant to MCR 2.206(A)(1) to add as parties plaintiff, the Michigan United Conservation Clubs, the National Wildlife Federation, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians.

7. The State Agreement is expressly contingent upon obtaining all regulatory approvals of all elements of the overall settlement including the separate FERC Agreement providing for the abatement of fish mortality resulting from the operation of the LPSP. The necessary approvals to effectuate the State Agreement (unless waived by the Defendants below) are:

a) FERC approval of the FERC Agreement;

b) Entry of the State Agreement by the Ingham Circuit Court upon remand;

c) Approval of related rate matters by the Michigan Public Service Commission; and
d) Modification of a National Pollution Discharge Elimination System permit by Department of Natural Resources.

8. Because of the contingent nature of the State Agreement, the parties agree it is necessary and, as part of this motion, request that the Michigan Supreme Court retain its jurisdiction over this case during the pendency of the remand proceedings so that in the event the requisite approvals are not obtained and the State Agreement is not effectuated, the appeals may be reactivated and this case placed on the next available session calendar. The parties will use their best efforts to promptly obtain all the requisite approvals. The parties will provide the court with reports on the progress in obtaining the requisite approvals on a quarterly basis.

9. Upon the State Agreement becoming effective the parties will move this Court to enter an Order of Dismissal of these appeals.
WHEREFORE, the parties respectfully request this Honorable Court to issue an Order remanding these matters to the Ingham Circuit Court for entry of the conditional Consent Order, and to retain jurisdiction until such time as the Consent Order is effectuated.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Thomas L. Casey (P24215)
Solicitor General

A. Michael Leffler (P24254)
Assistant-in-Charge

Stanley F. Pruss (P33718)
Assistant Attorney General
Natural Resources Division
- KNAPP’S OFFICE CENTRE -
300 S. Washington, Suite 530
Lansing, MI 48913
Telephone: (517) 335-1488
Attorneys for Plaintiffs

Consumers Power Company and
The Detroit Edison Company
by Honigman, Miller, Schwartz & Cohn
Robert A. Fineman (P13425)
2290 First National Building
Detroit, MI 48226
(313) 256-7722
Attorneys for Defendants

Date:_________________________
STATE OF MICHIGAN
CIRCUIT COURT OF THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

FRANK J. KELLY, Attorney General
for the State of Michigan;
FRANK J. KELLEY, ex rel. MICHIGAN
NATURAL RESOURCES COMMISSION;
MICHIGAN DEPARTMENT OF NATURAL
RESOURCES; and ROLAND HARMES,
Director of the Michigan Department
of Natural Resources; the NATIONAL
WILDLIFE FEDERATION; the MICHIGAN
UNITED CONSERVATION CLUBS; the GRAND
TRAVERSE BAND OF OTTAWA AND CHIPPEWA
INDIANS; the LITTLE RIVER BAND OF
OTTAWA INDIANS; and the LITTLE
TRAVERSE BAY BANDS OF ODWA INDIANS,

Plaintiffs,

v

CONSUMERS POWER COMPANY and
THE DETROIT EDISON COMPANY,
both Michigan corporations,

Defendants.

No. 86-57075-CE
(Joined with No.
87-60020-CE)
Hon. Carolyn Stell

CONSENT ORDER
CONSENT JUDGMENT

At a session of the Court held on __________
before the Hon. Carolyn Stell;

The Ludington Pumped Storage Project Court and Non-FERC
Agencies Settlement Agreement (the "State Agreement" attached and
incorporated herein) and a companion agreement entitled the
"Ludington Pumped Storage Project Settlement Agreement -- FERC
Offer of Settlement" (the "FERC Agreement") have been negotiated by
and among parties involved in this litigation and in proceedings
before the Federal Energy Regulatory Commission ("FERC") and the former Michigan Water Resources Commission, to resolve all issues concerning the fish mortality resulting from the operation of the Ludington Pumped Storage Plant ("LPSP") (as well as site access and other issues).

The Plaintiffs in this action are Frank J. Kelley, Attorney General of the State of Michigan; Frank J. Kelley, ex rel, Michigan Natural Resources Commission; the Michigan Department of Natural Resources ("MDNR"); Roland Harmes, Director of the Michigan Department of Natural Resources; the National Wildlife Federation; the Michigan United Conservation Clubs; the Grand Traverse Band of Ottawa and Chippewa Indians; the Little River Band of Ottawa Indians; and the Little Traverse Bay Bands of Odawa Indians. The Defendants are Consumers Power Company and The Detroit Edison Company.

The attached State Agreement concerns the payment by Consumers Power Company and The Detroit Edison Company of past and future damages for injuries resulting from the operation of the Ludington Pumped Storage Plant ("LPSP"). This State Agreement provides for the payment of monies, the transfer of certain properties, and the development of certain fishing access projects as full compensation for damages to fishery resources associated with the LPSP from its initial construction through June 30, 1994 and damages caused by
pump/turbine induced mortalities of fish at LPSP from July 1, 1994 through July 30, 2019.

The Parties agree, and the Court by entering this Consent Order and Consent judgment finds, that the terms and conditions of the State Agreement are fair, reasonable, and consistent with the public interest. All Exhibits to the State Agreement are incorporated herein and are an enforceable part of this Consent Order and Consent Judgment.

NOW THEREFORE, before the taking of any testimony, and without this Consent Order and Consent Judgment constituting an admission of any of the allegations in the First Amended Complaint or as evidence of the same, and upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED and DECREED:

1. The terms and provisions of the Ludington Pumped Storage Project -- Court and Non-FERC Agencies Agreement ("the State Agreement") are hereby incorporated by reference and made a part of this Consent Order and Consent Judgment as though set forth at length herein. Incorporation of such provisions reflects the agreement of the parties to bind themselves and their successors and assigns, to the resolution of this case by the incorporation of the State Agreement into this Consent Order and Consent Judgment.
2. The Consumers Power Company and The Detroit Edison Company shall be severally liable for the monetary payments, the transfer of properties and the development of their respective fishing access projects as provided in the attached State Agreement.

3. This Consent Order and Consent Judgment shall have no precedential effect in other cases, including cases by or among the parties hereto and shall not establish any legally binding principles.

4. Unless waived in writing by Consumers Power Company or The Detroit Edison Company, as appropriate, this Consent Order and the Consent Judgment is contingent upon Consumers Power Company and The Detroit Edison Company obtaining all of the regulatory approvals set forth in the State Agreement and the FERC Agreement. In the event that the numerated approvals are not either received or waived by the appropriate parties, this Consent Order and Consent Judgment shall be determined null and void and the joinder of the National Wildlife Federation; the Michigan United Conservation Clubs; the Grand Traverse Band of Ottawa and Chippewa Indians; the Little River Band of Ottawa Indians; and the Little Traverse Bay Bands of Odawa Indians to this matter shall also be null and void. The original parties shall join in a motion to
reinstate Case No. 97863 and 98019 before the Michigan Supreme Court.

5. This Consent Order shall be effective as a Consent Judgment on the first day of the first month following the date of the last regulatory approval, or waiver thereof, described in the State and FERC Agreements, becoming final and no longer subject to judicial review. The parties will subsequently file a notice with the Court indicating the final effective date.

Hon. Carolyn Stell
Ingham County Circuit Court Judge

Date:__________
UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

Consumers Power Company and
The Detroit Edison Company

Project No. 2680-
(Ludington)

EXPLANATORY STATEMENT

Consumers Power Company and The Detroit Edison Company
("Licensees"), pursuant to Rule 602 of the Federal Energy Regulatory
Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R.
§ 385.602, hereby submit this Explanatory Statement concerning the
"Ludington Pumped Storage Project Settlement Agreement -- FERC Offer of
Settlement" ("FERC Agreement") filed concurrently herewith in the
above-captioned proceeding.

I

BACKGROUND OF PROCEEDING

On July 30, 1969, the Federal Power Commission issued a hydro
license for the unconstructed Ludington Pumped Storage Project ("LPSP").
Article 37 of the license required the Licensees to perform studies and
file reports on "the effects of the project and its operation on the
fishery resources of the project areas, including an evaluation of the
need to provide public fishing access to the jetties" and to "make such
modifications in project facilities and operations as may be required
under Article 16 herein."

In August of 1986, Licensees filed a mitigation plan pursuant to
Articles 16 and 37. The Commission required further study reports and
plans to be filed. 40 FERC ¶ 62,151 (1987). On September 30, 1988, the
Commission required the installation of temporary fish barrier nets to
reduce turbine entrainment and mortality. 44 FERC ¶ 62,324. Such nets
have been installed annually, approximately mid-April to mid-October,
since 1989. A final resolution of the fish mortality situation has not
been made by the Commission. In addition, litigation related to the fish mortality situation has been going on before other agencies and before Michigan courts.

Discussions have been held among parties to the various proceedings in an attempt to settle all of the proceedings, both before FERC and elsewhere. On October 20, 1994, a settlement conference was held among the various parties and FERC Staff. Additional meetings among the various parties followed, and the FERC Settlement and a companion settlement agreement were executed. The companion agreement, entitled Ludington Pumped Storage Project Settlement Agreement -- Courts and Non-FERC Agencies ("State Agreement") resolves related issues pending before other forums.

II

SCORE OF ISSUES RESOLVED BY THE OFFER OF SETTLEMENT

The FERC Agreement would resolve all matters before the Commission relating to fish mortality or angler access resulting from the operation of the LPSP during the present term of the license for Project No. 2680. The State Agreement would resolve all of those matters before all other agencies and courts for the same period of time. Licensees believe the Agreements are unopposed.

III

PRINCIPAL PROVISIONS OF THE OFFER OF SETTLEMENT

The principal provisions of the FERC Agreement being submitted as an Offer of Settlement are:

(1) Section I of the FERC Agreement presents the overall objectives of the FERC Agreement -- abatement of fish mortality at the LPSP and increased angler access on Lake Michigan. Appendix A presents the
details of related angler access projects. The jetties that are a
part of the LPSP extend into Lake Michigan. Since public access to
the jetties would pose significant safety problems, Appendix A
provides for enhanced angler access at other locations on the shore
of Lake Michigan. Two of the enhanced access sites (Ludington North
Pier and Ludington South Pier) are north of the LPSP. The other site
(Port Sheldon) is south of the LPSP.

(2) Section II presents several means to reduce future fish mortality at
the LPSP. Those measures include the continued annual installation
of the seasonal barrier net system that has been in use since 1989.
Ongoing maintenance, performance and reporting standards are
established for the net. Other measures are: the continued review
of future abatement technologies, investigation of real time fish
population monitoring and the possible development of a lake/weather
model to predict changes in local fish population. The real time
monitoring and lake/weather model could give the Licensees additional
information that would allow them to more accurately reflect current
fish losses in their decisions regarding dispatch of the LPSP.

(3) Section III establishes and describes the operations of a Scientific
Advisory Team ("Team") relevant to the FERC Agreement. The duties of
the Team would include those that it would take over from the
Ludington Advisory Committee which reviews matters relating to the
current barrier net. The Team would generally review and oversee the
implementation of the measures discussed in Section II. Section III
also addresses funding for and FERC involvement with the Team's
activities.

(4) Section IV and Appendix B deal with various procedural matters such
as the effective date of the FERC Agreement, the resolution of
disputes, and regulatory approvals required before the FERC Agreement
becomes effective.
IV

PRINCIPAL PROVISIONS OF THE STATE AGREEMENT

While these provisions are not being submitted to the Commission as part of the Offer of Settlement for review and approval, they are summarized below to aid in understanding the comprehensive package of which the FERC Agreement is a part:

(1) Section I of the State Agreement sets out the objectives of the State Agreement.

(2) Sections II and III and Appendices A, B, C, and D deal with compensation for past and future fish mortality. They provide for the transfer of land and money by the Licensees and the funding of angler access projects by the Licensees. They relate to non-FERC proceedings and not matters before FERC.

(3) Section IV and Appendix E relate to the Trust to be established to receive and administer some of the lands and all of the moneys to be provided by Licensees pursuant to Sections II and III.

(4) Sections V and VI cover largely the same types of matters as Sections III and IV and Appendix B of the FERC Agreement, including some additional responsibilities for the Team. Section VI and Appendix F also provide for a Consent Order.

The parties do not submit for Commission review or approval any of these matters in the State Agreement and mention them herein merely to provide the Commission with a complete picture of the comprehensive settlement package and to comply with 18 C.F.R. § 385.602(c)(iii) regarding submission of matters relevant to the offer of settlement.

V

APPROVAL OF THE OFFER OF SETTLEMENT IS IN THE PUBLIC INTEREST

FERC approval of the FERC Agreement is one step in the FERC Agreement and the State Agreement becoming effective. The Agreements
would provide significant benefits to the public, and particularly to the citizens of the State of Michigan. Those benefits have been calculated at $172 million over the term of Ludington's license. Yet, the direct cost to the Licensees would be a more modest $60 million. The benefit most relevant to the instant proceedings would be a significant decrease in long-term turbine mortality due to the seasonal barrier net, changes in dispatching the LPSP and the exploration of new technologies. Angler access issues would also be resolved. Other benefits are related to the values associated with lost fish, which losses are being litigated in Michigan courts. Those other benefits include significant new Great Lakes access, funds for Great Lakes fisheries programs and additional public lands. Finally, FERC approval of the FERC Agreement would help end years of multifaceted litigation and allow the parties to the FERC Agreement and the State Agreement to put their energies toward finding and implementing remedies on a cooperative basis. In light thereof, the Licensees submit that the FERC Agreement is in the public interest and should be approved without modification.

Respectfully submitted,

By William M. Lange

ON BEHALF OF CONSUMERS POWER COMPANY AND THE DETROIT EDISON COMPANY, LICENSORS OF PROJECT NO. 2680 (LUDINGTON)

February 28, 1995
UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

Consumers Power Company and
The Detroit Edison Company

Project No. 2680—
(Ludington)

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Offer of Settlement filing upon all parties designated in the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 28th day of February, 1995.

William M. Lang