

19 August 2009

DATED 14 SEPTEMBER 1995

BETWEEN

**ROBERT HENRY ARVIDSON, PAUL CORBETT BROWN,
GAIL DOWLE, ALAN BERNARD MCINTYRE,
HELEN RUSSELL and DAVID MILLAIS WALTER**
("the trustees of the Counties Power Trust")

A N D

**ROBERT HENRY ARVIDSON, PAUL CORBETT BROWN,
GAIL DOWLE, ALAN BERNARD MCINTYRE,
HELEN RUSSELL and DAVID MILLAIS WALTER**
("the Trustees")

COUNTIES POWER CONSUMER TRUST

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SCHEDULE I Rules Governing the Appointment, Retirement and Proceedings of the Trustees

SCHEDULE II Trustees Specific Powers

SCHEDULE III Consumer Consultative Procedures

SCHEDULE IV Company's Statement of Corporate Intent

THIS DEED is made the 14th day of September 1995

BETWEEN ROBERT HENRY ARVIDSON, PAUL CORBETT BROWN, GAIL DOWLE, ALAN BERNARD MCINTYRE, HELEN RUSSELL and DAVID MILLAIS WALTER ("the trustees of the Counties Power Trust")

A N D ROBERT HENRY ARVIDSON, PAUL CORBETT BROWN, GAIL DOWLE, ALAN BERNARD MCINTYRE, HELEN RUSSELL and DAVID MILLAIS WALTER (hereinafter together with their successors in office called "the Trustees")

WHEREAS

- A. The Franklin Electric Power Board ("the Board") formed in 1993 a registered public company limited by shares, Counties Power Limited ("the Company") in which the sole subscriber was the Board.
- B. Pursuant to Section 27 of the Energy Companies Act 1992 ("the Act"), the Minister responsible for the administration of the Act approved the establishment plan prepared and submitted in relation to the transfer of the energy undertaking of the Board to the Company.
- C. The Company established the Counties Power Trust as an interim arrangement for the holding of the shares in the Company.
- D. The terms of the Counties Power Trust required a share allocation plan to be prepared within certain guidelines.
- E. The Counties Power Trust deed provided at Clause 4.8 for the power of resettlement of the shares in the capital of the Company and the other assets comprising the trust fund upon trust for the benefit of the Beneficiaries.
- F. The Trust established in accordance with this Deed is required to implement the share allocation plan which has been prepared by the trustees of the Counties Power Trust which provides for the resettlement referred to above.

NOW THE PARTIES AGREE as follows:

1. DEFINITIONS AND CONSTRUCTION

1.1 In this Deed, unless the context otherwise requires:

"Act" means the Energy Companies Act 1992;

"Annual General Meeting" means a meeting of Trustees held pursuant to Rule 8.1 of Schedule I;

"Balance Date" means 31 March or any other date adopted from time to time by the Trustees as the end of its Financial Year;

"Bank" means any bank listed in the register of registered banks referred to in Section 69 of the Reserve Bank of New Zealand Act 1989 as amended from time to time;

"Beneficiaries" (hereinafter referred to as the "Consumer" or "Consumers") means persons who, at any appropriate date designated by the Trustees from time to time are named in the records of the Company and/or any Electricity Supply Business as persons whose premises are connected to the Company's lines network within the District and who are liable (whether alone or jointly or with any other person) for payments to any Electricity Supply Business for electricity conveyed in relation to those lines. It is acknowledged that an Electricity Supply Business shall not be deemed to be a "Beneficiary" except to the extent that it is itself a consumer of such electricity as opposed to a seller of such electricity; *[This clause was amended 8 March 1999]*

"Board" means the Franklin Electric Power Board constituted by Section 10 of the Electric Power Boards Act 1925;

"Chairperson" means the Trustee elected as Chairperson pursuant to Rule 4 of Schedule I;

"Company" means Counties Power Limited and includes any successor company or any company arising out of any reconstruction, amalgamation or merger of the Company;

"Consumer Consultative Procedure" means the procedure for consultation set out in Schedule III;

"Deed" means this Deed and includes the Schedules and any amendments;

"Directors" means the Directors from time to time of the Company (and "Director" has a corresponding meaning);

"Distribution Plan" means a plan prepared pursuant to Clause 14 of this Deed;

"District" means the territory over which the Board was authorised to supply electricity immediately prior to 10 May 1993 pursuant to the Franklin Electric Power Board Supply Licence granted to the Board under Section 20 of the Electricity Act 1968 provided that in the event that the Company (or any Subsidiary) expands or reduces its energy distribution network in relation to a defined geographical area contiguous with the District (or the District following any previous expansion or reduction) the Trustees may from time to time by unanimous resolution declare that the District shall henceforth be deemed to include or exclude that contiguous geographical area, and this Deed shall be read and construed thenceforth as if the term District included or excluded such contiguous geographical area;

"Dividend" means, in relation to the Company, any distributions paid in cash or otherwise made by the Company to the Trustees as holders of shares in the Company under this Deed of Trust;

"Electricity Supply Business" has the meaning set out in the Electricity Industry Reform Act 1998; *[This clause was inserted 8 March 1999]*

"Environment" shall have the meaning ascribed to that term in the Resource Management Act 1991;

"Financial Statements" means the financial statements of the Trust prepared in accordance with Clause 10.2;

"Financial Year" means any year or other accounting period ending on a Balance Date;

"Local Authority" means a territorial authority within the meaning of the Local Government Act 1974;

"Operative Date" means the date of this deed; *[As inserted by Deed of Amendment dated 19 January 2005]*

"persons" includes any individual, corporation, partnership, joint venture, association, trust, organisation, government department or local authority;

"Resettlement Date" means the date upon which the trustees of the Counties Power Trust resettle the assets of that trust on the Counties Power Consumer Trust;

"Retirement Date" means the date the Returning Officer declares the names of the candidates elected under Rules 3.4(e), or 3.4(l) of Schedule I;

"Returning Officer" means the person appointed as returning officer pursuant to Rule 20 of Schedule I;

"Secretary" means the person appointed as Secretary pursuant to Rule 19 of Schedule I;

"Shares" means shares in the Company held by the Trust as part of the Trust Fund;

"Special Resolution" means a resolution of the Trustees passed by a majority of not less than seventy-five per cent (75%) of the Trustees;

"Subsidiary" means a subsidiary of the Company as defined by Sections 5 or 5A of the Companies Act 1993;

"Termination Date" means the earlier of 9 May 2072 or the date upon which the Trustees resolve that the Trust be wound up in accordance with Clauses 14 or 16 provided however that if the perpetuity period restrictions cease to apply to this Trust or are amended to permit the Trust to continue beyond the perpetuity period referred to in Clause 1.3 of this Deed (being the period ending 9 May 2073), this definition shall be amended so that the Termination Date shall be the date one year before the date beyond which the Trust may not continue.

"the Trust" means the trust established by this Deed;

"the Trustees" means the Trustees for the time being of the Trust;

"Trust" means the Counties Power Consumer Trust; *[Inserted by Deed of Amendment dated 19 January 2005]*

"Trust Deed" means the deed resettling the Trust, dated 14 September 1995; *[Inserted by Deed of Amendment dated 19 January 2005]*

"Trust Fund" means all the funds of the Trust and includes all capital and income for the time being held by the Trustees of the Trust; and

"Trustee Act" means the Trustee Act 1956.

1.2 In this Deed, unless the context otherwise requires:

- (a) references to one gender include the other gender;
- (b) references to the singular include the plural and vice versa;
- (c) the headings and the index shall not affect the construction of this Deed;
- (d) references to Clauses are references to Clauses of this Deed and references to Rules and Schedules are references to Rules in Schedules, and to Schedules to, this Deed;
- (e) references to a statute include references to regulations, orders or notices made under or pursuant to such statute. References to any statute, regulations, order or other statutory instrument by by-law shall be deemed to be references to the statute, regulation, order, instrument or by-law as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and
- (f) words, terms or expressions which are defined in the Act but are not defined in this Deed shall have the meaning attributed to them in the Act.

1.3 For the purposes of the Perpetuities Act 1964 the perpetuity period applicable to this Deed shall be the period until the date which is one day less than eighty years after the date of execution of the Counties Power Trust (which date of execution was 10 May 1993), and the perpetuity period applicable to this Deed is specified accordingly.

2. NAME OF THE TRUST

The Trust shall be known as Counties Power Consumer Trust or such other name as the Trustees may determine from time to time.

3. DECLARATION OF TRUST

The trustees of the Counties Power Trust hereby declare and direct that the Trustees of the Counties Power Consumer Trust shall stand possessed of the shares in the Company and the other assets of the Counties Power Trust resettled pursuant to the share allocation plan referred to in recital D contemporaneously with the execution of this Deed and all other moneys or property of whatever kind hereafter paid, given, bequeathed or transferred to, vested in, or purchased or acquired by (or agreed to be transferred to or purchased or acquired by) the Trustees to be held upon the trust hereby declared and any accumulations of income therefrom and all moneys, investments and property of whatever kind from time to time representing the same to be held upon the Trust and for the purposes and with the powers, authorities and discretions set out in this Deed.

4. OBJECTS AND PURPOSES OF THE TRUST

The purpose and objects for which the Trust is established are:

- 4.1 On Resettlement Date, to receive Shares and other assets resettled by the trustees of the Counties Power Trust.
- 4.2 If the Trustees so elect to subscribe for, purchase or otherwise acquire additional shares in the capital of the Company.
- 4.3 To retain and hold the Shares until such time as the Shares or a portion of them are sold, transferred or disposed of.
- 4.4 In the event of any sale, transfer or other disposition of Shares or a portion of them to hold the proceeds of any such sale, transfer or other disposition upon the trust for capital in accordance with Clause 6.1.
- 4.5 To receive Dividends and other income and to distribute, pay, apply or appropriate the Dividends and other income of the Trust Fund which the Trustees do not resolve to accumulate in the manner provided in Clause 5 of this Deed.
- 4.6 Following the Termination Date to pay, apply and appropriate the capital of the Trust in the manner provided in Clause 6.2.

5. TRUSTS OF INCOME UNTIL DISTRIBUTION DATE

The Trustees shall until the Termination Date stand possessed of the income arising from the Trust Fund upon the following trusts and with and subject to the following powers:

- 5.1 The Trustees shall from the net annual income derived by the Trust Fund first pay all the fees, costs and disbursements of and incidental to administering the Trust including remuneration and allowances payable to Trustees as hereinafter provided and costs incurred in pursuance of their duties and may in addition set aside reserves of income to provide for any payments or liabilities which the Trustees have power to pay pursuant to this Clause 5.
- 5.2 The Trustees shall have power in their absolute discretion to accumulate so much of the income of the Trust Fund as they think fit by investing the same so that all such accumulations shall be added to and form part of the capital of the Trust Fund and be held by the Trustees upon the same trusts and with the powers herein declared in respect of such capital but provided that the Trustees may at any time or times resort to such accumulations and pay, apply or appropriate the whole or any part thereof as if the same were income of the Trust Fund arising in the Financial Year in which the same are resorted to.
- 5.3 The Trustees may distribute any of the current net annual income by paying applying or appropriating the same in such manner and in such proportions as the Trustees in their absolute and unfettered discretion shall think proper for the benefit of the Consumers and where such distributions comprise Dividends the Trustees shall consider any report of Directors given pursuant to Clause 5.4 **AND IT IS DECLARED** that distributions of income for the benefit of Consumers may be made in any one or more of the following ways and no such distribution shall be called into question by any Consumer:

- (a) By payment in cash to any one or more of the Consumers to the exclusion of other Consumers in such manner and in such shares and proportions as the Trustees in their absolute and unfettered discretion shall think proper;
- (b) By the provision of goods or services or an entitlement to goods and services to any Consumer or Consumers and generally in such form and at such value as the Trustees shall determine including the giving of an entitlement by voucher or some other form of entitlement (which may be transferable or not transferable as the Trustees decide) to goods and services which the Trustees may have purchased or provided for out of the income of the Trust Fund.

- 5.4** The Trustees may request the Directors to produce a report in respect of each Dividend received by the Trustees which report recommends an appropriate allocation of the Dividend amongst the classes of Consumer based on the contribution made by each class of Consumer to the earning of that Dividend and in such report the Directors may classify Consumers in any manner they see fit.
- 5.5** Any of the Consumers to whom or in respect of which income is paid, applied or appropriated by the Trustees pursuant to Clause 5.3, shall, subject to Clause 5.8, as from the date of such payment, application or appropriation take an absolute and indefeasibly vested interest in such income.
- 5.6** The foregoing provisions as to vesting of income shall not operate to vest any part of the corpus of the Trust Fund in any of the Consumers.
- 5.7** Each Trustee who is also a Consumer shall notwithstanding the provisions of this Deed or any applicable rule of law or equity, be entitled to receive any benefits as a Consumer which may be distributed to Consumers in accordance with Clause 5.3.
- 5.8** All payments made to Consumers or entitlements of Consumers to goods and services unclaimed for one year after having been sent (or attempted to be sent) or notified to any Consumer may be invested or otherwise made use of by or being an entitlement to goods and services disposed of by the Trustees for the benefit of the Trust Fund until claimed and the Trustees shall be entitled to mingle the amounts of any unclaimed payments or money from entitlements with other moneys forming part of the Trust Fund and to credit any income arising in any Financial Year from the investment of such unclaimed payments to the Trust Fund. Any amounts unclaimed on the earlier of the Termination Date or one year after the amount was sent (or attempted to be sent) or notified to any Consumer shall thereupon be deemed to form part of the Trust Fund.

6. TRUSTS OF CAPITAL

- 6.1** The Shares or the proceeds of sale or other disposition of the Shares and investments representing the same (the corpus of the Trust Fund) shall be held by the Trustees upon trust to pay, apply or allocate the same, on or before the Termination Date for the benefit of the Consumers in such manner and in such shares as the Trustees in their absolute and unfettered discretion consider fair and equitable (such payment, application or allocation to be made notwithstanding the manner in which income may have been distributed)

PROVIDED THAT the Trustees may at any time or times prior to the Termination Date pay, apply or allocate the corpus of the Trust Fund or any part or parts thereof as the Trustees think fit for the benefit of the Consumers in any of the ways set out in Clause 5.3 of this Deed as if the provisions of Clause 5.3 and Clause 9.3 with any necessary changes were reproduced in this Clause 6.1.

- 6.2** From and after the Termination Date the Trustees shall stand possessed of the corpus of the Trust Fund and the income thereof and any income previously derived by the Trustees that has not been paid, applied or appropriated in accordance with Clause 6.1 of this Deed, upon trust to pay, apply or appropriate the same to or for or otherwise howsoever for the benefit of the Consumers in such manner and in such shares (including if permitted by law, by establishing a further trust for the benefit of Consumers to be on the same terms mutatis mutandis as this Trust) as the Trustees shall in their absolute and unfettered discretion consider fair and equitable provided however that if the Trustees have not paid, applied or appropriated any or all of such Trust Fund and income on the day before the first anniversary of the Termination Date the amount so remaining shall be paid in equal shares to each Consumer as at the first anniversary of the Termination Date.

7. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES

- 7.1** The rules set forth in Schedule I hereto (with such amendments, deletions and additions thereto as may lawfully be made) shall upon the execution of this Deed govern the appointment, retirement and proceedings of the Trustees and associated matters.
- 7.2** A Trustee who ceases to hold office for any reason shall, at the direction of the remaining Trustees, transfer all Shares and other assets of the trust held in his or her name to such other Trustee, Trustees or person as the remaining Trustees shall nominate and shall execute all share transfers and other documents as shall be required for this purpose. Such a Trustee hereby irrevocably appoints the remaining Trustees or any one of them his or her attorney and on his or her behalf to execute all such share transfers and other documents. The provisions of Clause 9.3 shall not apply to any transfer pursuant to this Clause 7.2

8. GENERAL POWERS

- 8.1** The Trustees may exercise the powers, authorities and discretions conferred by this Deed in addition to and not by way of limitation of the powers, authorities and discretions conferred upon the Trustees generally by the Trustee Act or any other legislation (except where otherwise specified in this Deed). For the avoidance of doubt, the Trustees shall have no power, authority or discretion to participate in the management or operation of the Company and in exercising the powers conferred by this clause and Clause 9 the Trustees shall be restricted to exercising their rights as a shareholder subject always to the provisions of this Deed.
- 8.2** In the exercise of any power, authority or discretion under this Deed the Trustees shall have no obligation to deal with persons other than those who qualify as Consumers as defined in this Deed and in particular shall not be required to recognise any trust or other arrangement affecting any Consumer nor shall the Trustees be liable in any respect for any inaccuracies in the records of the

Company which affect the status of any person as being or not being a Consumer.

9. TRUSTEES' POWERS

9.1 Subject to the express terms of this Deed (and without limiting the generality of the foregoing) the Trustees shall have in relation to the Trust Fund and the income arising from the Trust Fund all the same powers as a natural person acting as beneficial owner of the property from time to time comprising the Trust Fund and such powers shall not be restricted to any principle of construction or rule of law except to the extent that such is obligatory.

9.2 Without limiting the generality of the preceding paragraph and merely by way of example the Trustees shall have the powers set out in Schedule II to this Deed which may be exercised either alone or jointly with any other person.

9.3 Notwithstanding Clause 9.1, the Trustees shall not dispose (whether legally or beneficially) of any interest in the Shares or any other asset of the Trust Fund (and where more than one asset of the Trust Fund is disposed of in one or more transactions which substantially represent a single disposition of assets, those assets shall be regarded as a single asset) unless:

- (a) the disposal has been approved by a Special Resolution of the Trustees; and
- (b) where the disposition is of Shares, if the number of Shares proposed to be disposed of:
 - (i) is equal to or greater than 5 per cent of the total issued share capital of the Company or of the class or classes being disposed of (as determined in the manner provided by Section 24 of the Securities Amendment Act 1988); or
 - (ii) when aggregated with any previous dispositions of Shares which have not been the subject of a Consumer Consultative Procedure, would be equal to or greater than 5 per cent of the total issued share capital of the Company or of the class or classes being disposed of (as determined in the manner provided by Section 24 of the Securities Amendment Act 1988);

the Trustees have first implemented a Consumer Consultative Procedure in respect of the proposed disposal; and

- (c) where the disposition is of an asset (other than current year net annual income) which exceeds (or when aggregated with the value of assets previously disposed of which were not subject to a Consumer Consultative Procedure exceeds) in value five (5) per cent of the value of the Trust Fund, the Trustees have first implemented a Consumer Consultative Procedure in respect of the proposed disposal.

9.4 Notwithstanding the provisions of Section 13C of the Trustee Act 1956 and the likelihood that the Trustees will from time to time include persons whose profession, employment or business is or includes acting as a Trustee or

investing money on behalf of others, the care diligence and skill to be exercised by the Trustees in exercising any power of investment shall not be that required of such persons by Section 13C of the Trustee Act 1956 but, subject always to Clause 9.5, shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

- 9.5** Subject to Clause 15 but notwithstanding anything else in this Deed, no Trustee shall be liable for any breach of trust in respect of any duty to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others or that a prudent person engaged in a profession, employment or business that is or includes acting as a Trustee or investing money on behalf of others would exercise in managing the affairs of others merely (in either case) because the investments of the Trust Fund are not diversified.

10 Duties of Trustees *[The original Clause 10 (as amended by a Deed of Amendment dated 19 January 2005) has been reproduced immediately following the new clause]*

The Trustees shall:

- 10.1** Ensure that full and correct accounts of all financial transactions of the Trust and its assets and liabilities and funds are kept.

- 10.2** In each Financial Year, the Trustees shall hold an annual meeting of Beneficiaries at which the Beneficiaries shall appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual meeting of Beneficiaries. The auditor must:

- (a) be a person who is qualified to act as an auditor under section 199(1) of the Companies Act 1993 and, in selecting an auditor, the Beneficiaries may seek the advice of the Auditor General; and
- (b) must not be a Trustee, Director, employee or agent of the Trust or of the Company or otherwise disqualified from being an auditor under section 199(2)(b) and (d) of the Companies Act 1993.

- 10.3** Within four months after the end of each Financial Year -

- (a) prepare financial statements in accordance with generally accepted accounting practice (within the meaning of section 3 of the Financial Report Act 1993, applied as if the Trust were a reporting entity) with respect to the affairs of the Trust for that Financial Year; and
- (b) submit those financial statements to an auditor for audit; and
- (c) make available to the public in accordance with section 158B of the Electricity Act 1992, those audited financial statements and the auditor's report on those financial statements; and
- (d) prepare an annual report to Consumers giving a summary of the Trust's activities and actions during the year and the reasons for the actions taken and giving details of the remuneration paid to Trustees in respect of that financial year.

- 10.4** (1) Make the documents referred to in clause 10.3(c) and (d) available to the public by making copies of them available-
- (a) for inspection at every office of the Trust (during ordinary office hours) free of charge;
 - (b) for purchase at a reasonable price.
- (2) Notify the fact that the copies are so available (and where) by advertisement in the news section of two separate editions of each newspaper that is widely read by the customers of the Trust or by persons in the community of the Trust.
- 10.5** Make a copy of this Deed available to Consumers in accordance with Clause 11.
- 10.6** In respect of any Statement of Corporate Intent delivered to the Trustees by the Company (as required by the Constitution of the Company) make comments thereon to the Directors and require modifications, in accordance with the Constitution of the Company. The initial requirements set out in the Constitution of the Company are set out in Schedule IV of this Deed.
- 10.7** Make any completed Statement of Corporate Intent available to the public in accordance with Clause 11 except to the extent that the Trustees and the Directors agree that certain parts of that statement are commercially sensitive.
- 10.8** Act as a diligent shareholder and exercise the rights of shareholders for the benefit of the Consumers considered as a whole having due regard to the objective of the Company to be a successful business.
- 10.9** Notwithstanding anything else contained in this Deed (including Clauses 14 and 15), the Trustees shall prior to the Trust ceasing to be the owner of at least 51% of the issued share capital of the Company, seek by way of postal vote the views of the Consumers in relation to the proposed change in shareholding. At least 75% of all Consumers who vote in accordance with the postal vote must approve the proposed change in shareholding in order for the Trustees to proceed to implement such change in shareholding. The postal vote shall be conducted by the Returning Officer in the same manner (with necessary amendments) as the procedures for the election of Trustees set out in Schedule I."

[Original clause]

10. DUTIES OF TRUSTEES

The Trustees shall:

- 10.1** *Ensure that full and correct accounts of all the financial transactions of the Trust and its assets and liabilities and funds are kept.*
- 10.2** *After the end of each Financial Year cause to be prepared financial statements including a statement of financial position and a statement of financial performance and notes to those documents giving a true and fair view of the financial affairs of the Trust for that Financial Year and a Budget for the following financial year. The Financial Statements shall show separately the names or classes of persons or organisations to whom distributions of income have been made by the Trust in that Financial Year and the amounts distributed.*
- 10.3** *Appoint from time to time on such terms as they think fit as auditor of the Trust a person (not being the auditor of the Company) who is either:*

- (a) *a member of the Institute of Chartered Accountants of New Zealand, with a Certificate of Public Practice;*
 - (b) *a member, fellow, or associate of an Association of Accountants constituted in some part of the Commonwealth outside New Zealand and for the time being approved for the purpose of the audit of company accounts under Section 199(1) of the Companies Act 1993;*
 - (c) *is not a Trustee or a Director.*
- 10.4** *Ensure that the Financial Statements are audited.*
- 10.5** *Upon completion of the Financial Statements prepare an annual report to Consumers giving a summary of the Trust's activities and actions during the year and the reasons for the actions taken and giving details of the remuneration paid to the Trustees in respect of that financial year.*
- 10.6** *Upon completion of the audit of the Financial Statements insert advertisements in the principal newspaper or newspapers circulating in the District giving notice that the Financial Statements and the Trustee's annual report are available for inspection by Consumers in accordance with Clause 11.*
- 10.7** *Make a copy of this Deed available to Consumers in accordance with Clause 11.*
- 10.8** *In respect of any Statement of Corporate Intent delivered to the Trustees by the Company (as required by the Articles of Association or Constitution of the Company) make comments thereon to the Directors and require modifications, in accordance with the Articles of Association or Constitution of the Company. The initial requirements set out in the Articles of Association of the Company are set out in Schedule IV of this Deed.*
- 10.9** *Make any completed Statement of Corporate Intent available to the public in accordance with Clause 11 except to the extent that the Trustees and the Directors agree that certain parts of that statement are commercially sensitive.*
- 10.10** *Act as a diligent shareholder and exercise the rights of shareholders for the benefit of the Consumers considered as a whole having due regard to the objective of the Company to be a successful business.*
- 10.11** *Notwithstanding anything else contained in this Deed (including Clauses 14 and 15), the Trustees shall prior to the Trust ceasing to be the owner of at least 51% of the issued share capital of the Company, seek by way of postal vote the views of the Consumers in relation to the proposed change in shareholding. At least 75% of all Consumers who vote in accordance with the postal vote must approve the proposed change in shareholding in order for the Trustees to proceed to implement such change in shareholding. The postal vote shall be conducted by the Returning Officer in the same manner (with necessary amendments) as the procedures for the election of Trustees set out in Schedule I.*
- 10.12** *Comply with the Electricity Industry Reform Act 1998.*

11. INFORMATION TO CONSUMERS

- 11.1** For the purpose of complying with any requirement under this Deed to make any document or information available to Consumers, it shall be sufficient for the Trustees to make such document or information available for inspection at any office of the Trust or any office of the Company or at any other place in the District during normal business hours on any business day.
- 11.2** The Trustees shall give not less than 5 days notice in a principal newspaper or newspapers circulating in the District of the place at which and the times when such documents or information may be inspected by Consumers.

12. REMUNERATION AND EXPENSES OF TRUSTEES

- 12.1** **Remuneration:** The Trustees shall be entitled in each Financial Year to such remuneration for their services as Trustees as may be reasonable having regard to their duties and responsibilities.
- 12.2** **Expenses:** The Trustees shall be entitled to be indemnified out of the Trust Fund and reimbursed for any expenses incurred by them in the exercise of their powers and duties under this Deed.

- 12.3 Payments to be made from Trust Funds:** The payments of remuneration and expenses to the Trustees pursuant to Clause 12.1 or Clause 12.2 shall be paid out of the Trust Fund but, if there are no funds available in the Trust Fund, they shall be advanced by the Company until such time as funds are available.

13. VARIATION TO TRUST DEED

13.1 The Trustees shall have the power by Special Resolution (of which notice to propose that Special Resolution shall have been given in the notice convening the meeting) to alter or amend the terms of this Deed other than this Clause 13 and the provisions set out in Clause 13.2 which shall only be capable of being altered or amended in the manner set out in Clause 13.2. In exercising this power the Trustees shall consider any comments made by the Directors of the Company.

13.2 The Trustees shall have power on a unanimous resolution of all the Trustees after the Trustees have implemented a Consumer Consultative Procedure in respect of such proposal to alter or amend:

- (a) the definition of "Consumers", "Beneficiaries" or "District"; and
- (b) Clauses 4, 5, 6, 9.3 and 14.

13.3 Notwithstanding Clauses 13.1 and 13.2, no alteration or amendment may be made to this Deed that has the effect of limiting or restricting the obligations or powers of the Trustees under this Deed to:

- (a) review proposals and available options for the ownership of the Shares; or
- (b) sell, transfer or dispose of the Shares in accordance with Clause 9.3.

14. OWNERSHIP REVIEW PROCEDURE

14.1 Report: Within ten (10) years of the Resettlement Date the Trustees shall prepare a report considering proposals and available options for the future ownership of the shares of the Company and the other assets comprising the Trust Fund. Such report shall contain the following:

- (a) an analysis of the performance of the Trust to the date of the report together with a summary of the advantages and disadvantages of Trust ownership and the benefits or otherwise of such ownership to Consumers;
- (b) an analysis of other ownership options including, without limitation, share and other asset distribution to Consumers, sale of Shares and other assets to the public, sale of Shares and other assets to institutional investors, compared with retention of ownership of the Trust;
- (c) a comparison of the Company's performance with the performance of other companies engaged in energy distribution and/or trading;
- (d) the conclusion of the Trustees as to the most appropriate form of ownership together with an indication whether the conclusions are

unanimous and, if the decision is not unanimous, a summary of the conclusions of the dissenting Trustees;

- (e) the matters contained in paragraphs (a), (b), (c) and (d) of Clause 14.6 if a distribution of shares and other assets is recommended;
- (f) a statement of the view of the Directors of the Company together with an indication whether the conclusions are unanimous, and if the decision is not unanimous, a summary of the conclusions of the dissenting Directors;
- (g) a statement as to whether or not the Trustees have had regard to any views expressed by the public with respect to ownership;
- (h) a summary of the professional advice (if any) obtained in respect of the preparation of the report;
- (i) a statement of the extent to which any proposals require a modification of the Company's Statement of Corporate Intent.

14.2 Public Availability: The Trustees shall make the report available to the public in accordance with Clause 11.

14.3 Consumer Consultative Procedure: The Trustees shall not later than one (1) month after the date of the report, implement the Consumer Consultative Procedure contained in Schedule III of this Deed.

14.4 Decision: Following completion of the Consumer Consultative Procedure, and in any event not later than eleven (11) years after the Resettlement Date, the Trustees shall decide (subject to Clause 14.8) whether to:

- (a) retain the Shares and other assets of the Trust; or
- (b) dispose of a portion of the Shares and other assets and retain the remainder in the Trust; or
- (c) dispose of all the Shares and other assets; or
- (d) dispose of the Shares in whole or in part in conjunction with or separately from any other part of the Trust Fund;

14.5 Notification of Decision: The Trustees shall notify the public in accordance with Clause 11 of the decision made in Clause 14.4.

14.6 Distribution Plan: If at any time pursuant to the Ownership Review Procedure contemplated by this Clause 14 it is the decision of the Trustees that the Trust Fund including the shares of the Company or any portion of it be distributed the Trustees shall prepare a Distribution Plan which shall include the following:

- (a) to whom the Trust Fund is to be distributed;
- (b) the time and manner in which the Trust Fund is to be distributed;

- (c) whether the Trust Fund is to be distributed without consideration, at a concessionary consideration, or for full consideration;
- (d) whether the Shares of the Company are to be dealt with in the manner hereinbefore provided separately or in conjunction with the other assets comprising the Trust Fund.

14.7 Notification of Distribution Plan: The Distribution Plan shall be included in all aspects of the review plan including the Consumer Consultative Procedure.

14.8 Subsequent Reviews: If following the initial review all or any of the Trust Fund is retained by the Trustees, the following provisions shall apply:

- (a) Within ten (10) years of the decision of the Trustees on the initial review (referred to in Clause 14.4) the Trustees shall initiate a further review, and such review shall be completed in accordance with the preceding review provisions of Clause 14.1 to 14.7.
- (b) Thereafter the Trustees shall initiate further reviews at intervals not greater than ten (10) years after the date of the Trustees' decision on the immediately preceding review, and such reviews shall be completed in accordance with the preceding review provisions of Clauses 14.1 to 14.7.
- (c) Notwithstanding the foregoing provisions of this Clause 14.8, a majority of the Trustees may requisition a review. If a review is requisitioned in accordance with this Clause 14.8(c) the Trustees shall carry out a review in accordance with review provisions contained in Clauses 14.1 to 14.7.
- (d) Any legislative or other Governmental requirement or direction that the Trust Fund or any of it distributed, transferred, or otherwise disposed of by the Trustees shall be deemed to be a requisition (regardless of the time that may have lapsed since the previous decision) of the Trustees for the purposes of the preceding Clause 14.8(c) and shall immediately give rise to a review which shall be completed in accordance with Clauses 14.1 to 14.7.

15. AMALGAMATION, MERGER ETC

15.1 The Trustees shall consider any recommendations made by the Directors on any proposal relating to any complete amalgamation or merger of the Company with another entity or any modification of the rights of shareholders or any Major Transaction or any New Business Proposal or any increase in the permitted Debt/Equity Ratio of the Company (as each of those terms are defined in the Articles of Association or Constitution of the Company) and after giving full consideration to the recommendations of the Directors the Trustees may make a decision in respect of any such proposal as the Trustees may consider shall be for the benefit of or in the interests of the Trust.

15.2 In the event of the sale or exit of twenty five percent (25%) of the assets or greater in Counties Power Limited the Ownership Review Procedures as set out in Clause 14 of the Deed shall be observed.

16. WINDING UP OF TRUST

- 16.1** The Trustees may at any time after first having implemented a Consumer Consultative Procedure resolve by unanimous resolution to wind up the Trust.
- 16.2** If the Trust holds less than 5 per cent of the total share capital of the Company and does not hold any debt security issued by the Company the Trustees shall implement a Consumer Consultative Procedure to determine whether to wind up the Trust.
- 16.3** If a resolution to wind up the Trust has not been passed by the date referred to in Clause 1.3 the Trustees shall as soon as practical thereafter pass the resolutions requiring the Trust to be wound up. If the resolutions have not been passed by the date referred to in Clause 1.3 the provisions of Clause 16.4 shall apply as if the resolutions had been passed.
- 16.4** On the winding up of the Trust, all surplus assets after the payment of all costs, debts and liabilities shall be paid, applied or appropriated to or for or otherwise howsoever for the benefit of Consumers in accordance with Clause 6.2.

17. LIABILITY

- 17.1** No Trustee acting or purporting to act in the execution of the trusts of this Deed shall be liable for any loss not attributable to that Trustee's own dishonesty or to the wilful commission or omission by that Trustee of an act where such commission or omission is known by the Trustee to be a breach of trust and in particular no Trustee shall be bound to take or be liable for failure to take any proceedings against a co-Trustee for any breach of alleged breach of trust committed by such co-Trustee.
- 17.2** Every Trustee shall be chargeable only for such moneys as shall actually have been received by that Trustee although that Trustee may have joined in any receipt for money received by any other Trustee. No Trustee shall be answerable for the acts or omissions of any other Trustee nor for any loss which may arise by reason of any trust funds being lawfully deposited in the hands of any banker, solicitor or agent or for the sufficiency, insufficiency or deficiency of any security upon which any trust money or any part thereof may be invested or for any loss in the execution of any trust unless the same shall happen through that Trustee's neglect or default.

18. INDEMNITY

Any Trustee, officer or employee of the Trust shall be indemnified out of the assets of the Trust for and in respect of any loss or liability which he or she may sustain or incur by reason of the carrying out or omission of any function, duty or power under this Deed and also in respect of any expenses incurred by him or her in the management and administration of the Trust Fund unless such loss or liability is attributable to his or her dishonesty or to the wilful commission of an act known by him or her to be a breach of trust or to the wilful omission by him or her of any act when that omission is known by him or her to be a breach of trust.

19. NOTICES

- 19.1** Any notices of documents to be given to the Trustees pursuant to this Deed shall be in writing signed by the person giving the notice and served at the office of

the Trust or such other place as is nominated by the relevant Trustee from time to time.

19.2 Any notice or document given pursuant to Clause 19.1 shall be deemed to be duly given or made:

- (a) if delivered by hand, when so delivered;
- (b) if sent by facsimile, when receipt is confirmed;
- (c) if sent by post, on the third working day after posting.
- (d) if sent by email, 24 hours after it is sent, provided that the sender has not received an automated message that the email has not been delivered.

[Sub clause 19.2 (d) Inserted by Deed of Amendment 19 January 2005]

IN WITNESS WHEREOF this Deed has been executed the day and year first hereinbefore written.
Executed as a Deed

SIGNED by **ROBERT HENRY ARVIDSON** in the presence of:

Signature of Witness

Signature of **ROBERT HENRY ARVIDSON**

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by **PAUL CORBETT BROWN** in the presence of:

Signature of Witness

Signature of **PAUL CORBETT BROWN**

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by **GAIL DOWLE** in the presence of:

Signature of Witness

Signature of **GAIL DOWLE**

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by **ALAN BERNARD MCINTYRE** in
the presence of:

Signature of Witness

Signature of **ALAN BERNARD MCINTYRE**

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by **HELEN RUSSELL** in the presence
of:

Signature of Witness

Signature of **HELEN RUSSELL**

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by **DAVID MILLAIS WALTER** in
the presence of:

Signature of Witness

Signature of **DAVID MILLAIS WALTER**

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by **ROBERT HENRY ARVIDSON** in
the presence of:

Signature of Witness

Signature of **ROBERT HENRY ARVIDSON**

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by **PAUL CORBETT BROWN** in the presence of:

Signature of Witness

Signature of **PAUL CORBETT BROWN**

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by **GAIL DOWLE** in the presence of:

Signature of Witness

Signature of **GAIL DOWLE**

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by **ALAN BERNARD MCINTYRE** in the presence of:

Signature of Witness

Signature of **ALAN BERNARD MCINTYRE**

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by **HELEN RUSSELL** in the presence
of:

Signature of Witness

Signature of **HELEN RUSSELL**

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by **DAVID MILLAIS WALTER** in
the presence of:

Signature of Witness

Signature of **DAVID MILLAIS WALTER**

Name of Witness

Occupation of Witness

Town of Residence

SCHEDULE I

[As amended by unanimous resolution of Trustees 19 August 2009]

RULES GOVERNING THE APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES

These Rules are those referred to in Clause 7 of the Deed. Terms in these Rules to which are ascribed special meanings in the Deed have the meanings so ascribed to them, unless otherwise provided or the context otherwise requires. These Rules shall be construed subject to the provisions of the Deed, and in the case of conflict between the provisions of these Rules and those of the Deed, the provisions of the Deed shall prevail.

1. NUMBER OF TRUSTEES

1.1 The maximum number of Trustees shall be five and the minimum number of Trustees shall be four. If at any time the number of Trustees is less than five the following shall apply:

- (a) If the number of Trustees is four, any two Trustees may call a by-election (**By-Election**) at any time to increase the number of Trustees to five;
- (b) If the number of Trustees falls below four, the Trustees must call a By-Election to be held within five months to increase the number of Trustees to five, provided that the By-Election will occur more than six months before the next scheduled two yearly election under Rule 1.5. If the By-Election cannot occur more than six months before the next scheduled two yearly election, the Trustees may call a By-Election or fill vacancies at the next scheduled two yearly election under Rule 1.5, to increase the number of Trustees to five. At a scheduled two yearly election, Trustees shall be elected to fill casual vacancies first. Thereafter Trustees shall be elected to replace those retiring in accordance with Rule 1.2;
- (c) Pending any such By-Election or election the remaining Trustees shall be entitled to act and no act or decision of the Trustees shall be called into question on such account; and
- (d) For the purposes of holding a By-Election under this Rule 1.1:
 - (i) the provisions of Schedule 1 relating to elections shall, in the case of a By-Election, apply in the same way as for a scheduled two yearly election, but shall be read in each case to apply to the election of one or more Trustees as required to fill any vacancy; and
 - (ii) any person who is elected at a By-Election shall hold office from the date of appointment as a Trustee in accordance with Rule 3.4(1) until they are due to retire in accordance with Rule 1.2.

- 1.2 Subject to Rules 1.3 and 1.4, every two years following the fourth Annual General Meeting, two Trustees shall retire. Any Trustee(s) required to retire under this Rule 1.2 will be the Trustee(s) who have served the longest terms in office (provided that if two or more Trustees have been in office for an equal period, the retiring Trustee(s) shall be determined by lot).
- 1.3 Where a casual vacancy has arisen under Rule 1.1, the number of Trustees required to retire under Rule 1.2 shall be reduced accordingly.
- 1.4 Any Trustee who has served a term of seven years or more shall be required to retire at the next Annual General Meeting. The number of Trustees required to retire under Rule 1.2 shall be reduced accordingly.
- 1.5 Every two years after the fourth Annual General Meeting, two Trustees, or such number of Trustees as required by Rule 1.2, shall be elected in place of those retiring (by casual vacancy or otherwise) in accordance with these Rules.

2. ELIGIBILITY

- 2.1 Subject to Rule 2.2, the following persons shall not be eligible for election as a Trustee and may not hold office as a Trustee, and, in addition shall not be eligible for appointment, or remain appointed under Rule 21:
 - (a) a bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not fulfilled, or to any order under Section 111 of the Insolvency Act 1967;
 - (b) a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed upon that person;
 - (c) a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence;
 - (d) a person to whom an order made under Section 151 of the Companies Act 1993 applies;
 - (e) a person who is mentally disordered within the meaning of the Mental Health Act 1969;
 - (f) a person who is subject to a property order made under Section 30 or Section 31 of Protection of Personal and Property Rights Act 1988; *[By virtue of the Deed of Amendment 19 January 2005 this new sub clause replaces the original, being (f) a person who is subject to a property order made under Section 30 or Section 31 of the Protection of Personal and Property Rights Act 1989;]*
 - (g) a person who is not ordinarily resident in the District;
 - (h) a person who is not ordinarily a Consumer of the Company;
 - (i) a person who is a Director of the Company;

- (j) a person who is not a parliamentary elector for the purposes of the Electoral Act 1956;
- (k) a person who is the Returning Officer; or
- (l) a person who is an employee of the Company. *[This clause was inserted 8 March 1999]*

2.2 A person shall not be disqualified from appointment and may continue to hold that office:

- (a) in any case to which Rule 2.1(b) applies, until the expiration of the time for appealing against the conviction and, in the event of an appeal against conviction, until the appeal has been determined;
- (b) in any case to which Rule 2.1(c) applies, until the expiration of the time for appealing against the sentence of imprisonment and, in the event of an appeal, until the appeal has been determined;
- (c) in any case to which Rule 2.1(i) applies, until the declaration of the result of the first election of Trustees pursuant to Rule 3.4(e) or 3.4(l); or
- (d) in any case to which Rule 2.1(i) applies, after the declaration of the result of the first election of Trustees pursuant to Rule 3.4(e) or 3.4(l), if the Trustee resigns the office or employment disqualifying that Trustee from holding office as Trustee, which resignation is to have effect within two weeks of appointment as a Trustee.

3. TERM OF OFFICE

3.1 A Trustee shall cease to hold office if:

- (a) the Trustee resigns by written notice to the Trustees;
- (b) the Trustee is ineligible for election as a Trustee pursuant to Rule 2.1;
- (c) the Trustee dies while holding office as a Trustee; or
- (d) the Trustee is not re-elected pursuant to Rule 3.4, when the Trustee shall retire at an Annual General Meeting as specified in Rule 3.4(o).

3.2 The provisions of Rule 2.2 shall apply, mutatis mutandis, to Rule 3.1. During any appeal period the Trustee shall be deemed to have taken leave of absence and shall not be capable of acting as a Trustee. If the conviction or sentence of imprisonment (as the case may be) is not upheld the Trustee shall be immediately reinstated. If the conviction or sentence (as the case may be) is upheld the disqualification as Trustee shall take immediate effect.

3.3 Upon every appointment, reappointment, retirement or cessation of office of any Trustee the Trustees shall cause an entry thereof to be recorded in the minute book of the Trust.

3.4 Other than the first Trustees all Trustees shall be elected by the Consumers (determined in accordance with Rule 3.4(g) and every reference to 'Consumers' in Rules 3.4(f), (h) and (j) shall be a reference to those Consumers as so determined) in the following manner, or in such other manner as the Trustees may by Special Resolution determine from time to time:

- (a) Not later than three months before the proposed date of the election the Returning Officer shall insert a notice in a newspaper or newspapers circulating in the District giving:
 - (i) advice of the proposed election;
 - (ii) the place or places at which nomination forms may be obtained;
 - (iii) where completed nominations may be lodged;
 - (iv) notice that the nominator, candidate and seconder must be, at the time of making the nomination, Consumers; and
 - (v) the day and time nominations close.

- (b) Every nomination of a candidate shall be in writing. Nomination forms shall be in such form as the Returning Officer decides, but shall include:
 - (i) the full name and address of the candidate;
 - (ii) a statement by the candidate that the candidate is not, and to the best of the candidate's knowledge and belief will not be on the date of the election, disqualified from holding office as a Trustee by reason of any of the matters set out in Rule 2.1;
 - (iii) the signature of the nominator and seconder and the candidate all of whom must be Consumers; and
 - (iv) a required deposit, being such amount as the Returning Officer considers reasonable. This shall be refundable to the candidate in the event that the candidate received more than 25% of votes cast for the lowest successful candidate.

The Returning Officer shall be entitled to declare any nomination invalid where on reasonable grounds he has good cause to believe that the candidate is ineligible for election in terms of Rule 2.1.

- (c) The nomination of a candidate shall be deemed to have never been made, and the candidate shall be ineligible for election, if:
 - (i) the nominator withdraws the nomination by notice received by the Returning Officer before closure of nominations;

- (ii) the candidate withdraws by notice received by the Returning Officer before a result is declared;
 - (iii) the candidate dies before a result is declared; or
 - (iv) the candidate becomes disqualified by virtue of Rule 2.1 before a result is declared.
- (d) Nominations shall close six weeks after the first notice calling for nominations was given pursuant to Rule 3.4(a).
- (e) If, on the closure of nominations, the number of valid nominations which have been received are equal to or less than the number of vacancies for the office of Trustee the Returning Officer shall declare the candidates duly elected and no election shall be held. If less nominations are received than there are vacancies the Returning Officer shall declare the candidates duly elected, and shall re-open nominations for such period as required to receive sufficient nominations to increase the number of Trustees to five. Once sufficient nominations are received to increase the number of Trustees to five, the Returning Officer shall declare the candidates duly elected or conduct an election, as the case may be.
- (f) Should nominations be received for more than the number of vacancies, the Returning Officer shall give, not less than 14 days prior to the date on which votes are to be counted, to the Consumers, in such manner as the Returning Officer shall deem fit, a postal ballot paper which shall contain:
- (i) the names of all candidates validly nominated in alphabetical order of their surnames and appropriate provision for recording the Consumer's vote;
 - (ii) a pre-paid envelope in which the ballot paper is to be placed and returned to the Returning Officer; and
 - (iii) a written explanation of the method for recording the Consumer's vote, the date on which and the manner in which the ballot paper is to be returned, and the date on which votes are to be counted.

Biographical and other details of the candidates may, if the Trustees approve, be included in the information given to the Consumers. The ballot papers shall state a time and date by which ballot papers are to be returned to the Returning Officer. The Returning Officer shall commence to count the votes as soon as reasonably practicable after the stated time.

- (g) Not later than six weeks before an election date, the Returning Officer shall establish a roll by obtaining from the Company the full names and addresses of all Consumers as of a date to be nominated by the Returning Officer. The Returning Officer shall accept the information

provided as accurate and correct, but shall be entitled to add names and addresses to the roll if satisfied that the name or address of any Consumer has been omitted. The Returning Officer may at any time remove from the roll the name of any person if, to the knowledge of the Returning Officer, that person has ceased to be a Consumer. The details appearing on the consumer roll are provided to the Returning Officer on a confidential basis and are only to be used for the generation of voting papers. The Returning Officer may however confirm to a Consumer that he or she is on the consumer roll, but cannot make the Consumer details available for public information.

- (h) The following provisions shall apply with respect to votes:
 - (i) each Consumer shall be distributed one voting paper, regardless of the number of power connections that the Consumer may have;
 - (ii) in respect of joint Consumers a vote shall be deemed to have been exercised in the name of the joint Consumers upon receipt of the completed voting paper by the Returning Officer;
 - (iii) Consumers may not vote for the election of more Trustees than there are vacancies;
 - (iv) Ballot papers received by the Returning Officer after the date stated in the notice to Consumers as the date on which ballot papers are to be returned shall not be counted.
- (i) The Trustees shall appoint a Returning Officer pursuant to Rule 20. The Returning Officer may employ staff. On the date appointed for voting the Returning Officer and any staff shall, under supervision of a Justice of the Peace (nominated by the President or Vice President of the Franklin and Districts Justices of the Peace Association), count the number of valid votes cast for each candidate and ascertain the candidates elected.
- (j) A vote is invalid and shall not be counted if:
 - (i) the Consumer votes for more candidates than there are Trustees to be elected;
 - (ii) in the opinion of the Returning Officer, the voting paper does not clearly indicate the candidate or candidates for whom the Consumer intended to vote.
- (k) Where, because two or more candidates have received the same number of valid votes, the Returning Officer cannot determine which of them has been elected, the Returning Officer shall decide which of them is elected by lot drawn by those candidates in the presence of the Returning Officer and such other person or persons (if any) as the Returning Officer may decide.

- (l) Forthwith after ascertaining which candidates have been elected, the Returning Officer shall declare the names of the candidates so elected, and shall publish those names in one or more principal newspapers circulating in the District. The candidates elected shall be appointed Trustees at the conclusion of the relevant Annual General Meeting as specified in Rule 1.2, or as soon as practicable in the case of a By-Election.
- (m) After one month of declaring the result of the election the Returning Officer shall have the voting papers destroyed.
- (n) The Returning Officer and every person assisting the Returning Officer shall sign a confidentiality undertaking and shall faithfully and impartially perform their duties and shall not, directly or indirectly:
 - (i) before the declaration of the result of the election make known the state of the vote, or give or pretend to give any information by which the state of the vote might be known;
 - (ii) make known for which candidate or candidates any person has voted; or
 - (iii) give any person any information likely to defeat the secrecy of the election.
- (o) Notwithstanding any other provision in the Deed or these rules, the retiring Trustees shall remain in office until the conclusion of the Annual General Meeting at which they are to retire as specified in Rule 1.5. Forthwith upon the conclusion of the relevant Annual General Meeting the candidates declared elected pursuant to Rule 3.4(e) or 3.4(l) shall assume office in place of the retiring Trustees.

4. CHAIRPERSON

The Trustees shall elect a Chairperson, who shall also be a Trustee, at the first meeting of Trustees following their Annual General Meeting and at any other time when the position becomes vacant.

5. QUORUM

A quorum at meetings of the Trustees shall comprise four Trustees until the conclusion of the first Annual General Meeting, and thereafter shall comprise three Trustees.

6. VALIDITY OF PROCEEDINGS

All acts done by any meeting of Trustees or of a committee of Trustees or by any person acting as a Trustee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee or person acting as aforesaid or that they or any of them were for any reason disqualified, be as valid as if such person had been duly appointed and was qualified to be a Trustee.

7. RESCISSION OR VARIATION OF RESOLUTIONS

Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees at any subsequent meeting by the same majority as was necessary to pass the resolution being rescinded or varied.

8. MEETINGS OF TRUSTEES

- 8.1 The Trustees shall hold an Annual General Meeting no later than five months after Balance Date.
- 8.2 The Secretary shall give no less than thirty days notice of the Annual General Meeting to the Trustees such notice to specify the date, time and place of the Annual General Meeting.
- 8.3 The business to be transacted at the Annual General Meeting shall be the receipt of the annual reports, accounts, appointment of the auditor and the setting of the remuneration of Trustees. Any other business shall be deemed special business and shall be dealt with in accordance with Rule 8.4.
- 8.4 Notice in writing of any special business shall be given to the Secretary no less than twenty eight days prior to the Annual General Meeting. The Secretary shall circulate an agenda, including all special business, to the Trustees no later than fourteen days prior to the Annual General Meeting and shall also give to Consumers not less than fourteen days prior written notice to the time, place and date and agenda of the Annual General Meeting by an advertisement placed in a newspaper or newspapers circulating in all the areas of the District. *[This clause was amended 8 March 1999]*
- 8.5 Consumers shall be entitled to attend and speak at the Annual General Meeting but shall not be entitled to vote at such meetings. Any statements made by Consumers at the Annual General Meeting shall be recorded.
- 8.6 The Trustees shall otherwise meet at such times and places as they may agree to dispatch the business of the Trust. The Trustees shall be entitled to develop standing orders for the conduct of such meetings.
- 8.7 Any two or more Trustees may at any time summon a meeting of Trustees.

9. NOTICE OF MEETINGS

Notice in writing of every meeting shall be delivered or sent by post or facsimile to each Trustee by the Secretary or other person acting under the direction of the Trustees. In the case of a meeting summoned pursuant to Rule 8.7, the Trustees, persons summoning it or the Secretary or other person acting under the direction of the Trustees shall give at least ten days notice of that meeting. No notice shall be necessary for adjourned meetings except to Trustees not present when the meeting was adjourned. Notice shall be given to all Trustees including those outside New Zealand at the relevant time. Notices may be given by facsimile.

10. ADJOURNMENT

If a quorum is not present within thirty minutes after the time appointed for any meeting the Trustee or Trustees present shall adjourn the meeting. Any meeting shall be adjourned by the Chairperson upon the adoption of a resolution of its adjournment.

11. CONTENT OF NOTICE

Every notice of meeting shall state the place, day and hour of the meeting and every notice of a meeting summoned pursuant to Rule 8.7 shall state the matters to be discussed at that meeting. Notice of any meeting may be abridged or waived if all the Trustees consent in writing to such abridgment or waiver.

12. COMMITTEES

The Trustees may from time to time appoint any one or more Trustees to be a committee for making any inquiry, for considering supervising or transacting any business of the Trust, for the investment and management of the Trust Funds or any part thereof, or for the performance of any duty or function which in the opinion of the Trustees will further the purposes and objects of the Trust. Subject to these rules and to any directions from time to time given by the Trustees every such committee may regulate its own procedure but so that a quorum at any meeting of the committee will be a majority of its members for the time being.

13. VOTING

13.1 Except as otherwise provided in this Deed and subject to the quorum requirements as to meetings, the Trustees shall exercise their powers and discretions by a simple majority vote of the Trustees present, provided that if at any time after the first Annual General Meeting there are only three Trustees present any resolution must be unanimous in order to be passed.

13.2 The Chairperson shall not have a casting vote in addition to his or her deliberative vote.

14. INTERESTED TRUSTEES

14.1 A Trustee who in any way, whether directly or indirectly, has a material interest in any contract or proposed contract or arrangement or dealing with the Trust (other than as a Consumer or as a member, officer, or employee of any firm, company or organisation that is a Consumer) shall disclose the nature of that interest at a meeting of the Trustees and such disclosure shall be recorded in the minutes of the meeting.

14.2 A Trustee required to disclose an interest by Rule 14.1 may be counted in a quorum present at a meeting but shall not vote in respect of the matter in which the Trustee is interested (and if the Trustee does so vote the vote shall not be counted) provided that the Trustee may be expressly permitted to vote by a unanimous vote of the other Trustees present given after the disclosure of the interest.

14.3 If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not

resolved by the Trustee voluntarily agreeing to abstain from voting, such question shall be referred to the Chairperson of the meeting and the Chairperson's ruling in relation to any such Trustee shall be final and conclusive except in a case where the nature or extent of the interest of the Trustee concerned has not been fairly disclosed.

15. MINUTES

- 15.1** A minute book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the minute book.
- 15.2** Minutes signed by the Chairperson of the meeting at which the proceedings were transacted or by the Chairperson of the next succeeding meeting shall be evidence of the proceedings.
- 15.3** Where minutes of the proceedings at any meeting of Trustees have been made in accordance with the provisions of these rules then, until the contrary is proved, the meeting shall be deemed duly held and convened and all proceedings at that meeting to have been duly conducted.

16. RESOLUTIONS IN WRITING

Notwithstanding any other provisions in the Deed or these rules, a resolution in writing signed by all the Trustees or (as the case may be) by all the members of a committee, shall be as effective for all purposes as a resolution passed at a meeting of the Trustees or of such committee (as the case may be) duly convened, held and constituted. Such resolution may consist of several documents in the same form, each signed by one or more of the Trustees or members of the committee, (as the case may be).

17. Meetings by Telecommunication Device *[By virtue of the Deed of Amendment dated 19 January 2005, the entire rule 17 has been replaced – the original is shown in Italics below]*

- 17.1** Notwithstanding any other provision in the Deed or these rules, the contemporaneous linking together of a number of the Trustees or members of a committee ("the participants") being not less than a quorum, together with the Secretary or a person acting as a Secretary, shall be deemed to constitute a meeting and all the provisions in these rules as to meetings shall apply to such meetings by telephone or any other telecommunication device that permits the users to send to and receive from each other voice messages instantaneously, as if the sender and receiver are in each other's presence ("Telecommunication Device") so long as the following conditions are met:
- (a) all the participants for the time being entitled to receive notice of a meeting shall be entitled to notice of a meeting by Telecommunication Device and to be linked by Telecommunication Device for the purposes of such meeting. Notice of such meeting may be given by Telecommunication Device;
 - (b) each of the participants taking part in the meeting by Telecommunication Device, and the Secretary or person acting as a Secretary, must be able to hear each of the others taking part at the commencement of the meeting;

- (c) at the commencement of the meeting each participant must acknowledge his or her presence for the purpose of such meeting to all the others taking part;
- (d) a participant may not leave the meeting by disconnecting his or her Telecommunication Device without having previously obtained the express consent of the Chairperson of the meeting and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by Telecommunication Device unless having obtained the express consent of the Chairperson to leave the meeting as aforesaid.

17.2 Minutes of the proceedings at such meetings by Telecommunication Device shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting or by the Secretary or person acting as a Secretary."

17. MEETINGS BY TELEPHONE

17.1 *Notwithstanding any other provision in the Deed or these rules, the contemporaneous linking together of a number of the Trustees or members of a committee ("the participants") being not less than a quorum, together with the Secretary or a person acting as a Secretary, shall be deemed to constitute a meeting and all the provisions in these rules as to meetings shall apply to such meetings by telephone so long as the following conditions are met:*

- (a) *all the participants for the time being entitled to receive notice of a meeting shall be entitled to notice of a meeting by telephone and to be linked by telephone for the purposes of such meeting. Notice of such meeting may be given by telephone;*
- (b) *each of the participants taking part in the meeting by telephone, and the Secretary or person acting as a Secretary, must be able to hear each of the others taking part at the commencement of the meeting;*
- (c) *at the commencement of the meeting each participant must acknowledge his or her presence for the purpose of such meeting to all the others taking part;*
- (d) *a participant may not leave the meeting by disconnecting his or her telephone without having previously obtained the express consent of the Chairperson of the meeting and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless having obtained the express consent of the Chairperson to leave the meeting as aforesaid.*

17.2 *Minutes of the proceedings at such meetings by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting or by the Secretary or person acting as a Secretary.*

18. EXECUTION OF DOCUMENTS

All documents required to be executed by the Trustees shall be deemed to be validly executed and binding on the Trust if these documents have been entered into and executed by the authority of the Trustees previously given and signed by at least two Trustees or any other person approved by the Trustees for the purpose.

19. SECRETARY

19.1 The Trustees shall appoint from time to time a Secretary who shall not be a Trustee.

19.2 It shall be the duty of the Secretary to keep usual records of the business of the Trust and to notify Trustees of intended meetings and the business to be transacted at such meetings.

19.3 It shall be the duty of the Secretary to keep usual and proper books of account and other financial records of the business, to report to the Trustees from time to time on the finances of the Trust Fund, to present annual statements of account for audit and for consideration by the Trustees, and to prepare and file from time to time with the Inland Revenue Department all necessary tax returns.

20. RETURNING OFFICER

- 20.1** The Trustees shall appoint for each election of Trustees, a Returning Officer, such appointment to be made not less than five months, or as soon as practicable in the case of a By-Election, before each election date. Neither a Trustee, the Secretary, nor a Director shall be appointed as a Returning Officer.
- 20.2** In the event of the death, incapacity or resignation of the Returning Officer, a substitute Returning Officer shall be appointed in the stead of the previous Returning Officer.
- 20.3** It shall be the duty of the Returning Officer to conduct the election of Trustees. To the extent that these Rules do not prescribe as to a particular matter in connection with such an election, the Returning Officer shall be entitled to determine the procedure and act accordingly, mindful at all times of the principles and provisions of the Local Elections and Polls Act 1976, and/or any other relevant legislation.
- 20.4** The Returning Officer shall be entitled to utilize the services of such persons as the Returning Officer may deem appropriate and to require that all reasonable costs of such services to be met out of the Trust Fund.

21. DELEGATION BY TRUSTEES

Any Trustee may, in any of the circumstances permitted by Section 31 of the Trustee Act, exercise the powers under that section of delegating to any person, who has been approved by the other Trustees and who is eligible for appointment pursuant to this Deed, during any period for which that Trustee may be absent from New Zealand or incapable of performing his or her duties as a Trustee, all or any trusts powers authorities and discretions vested in him or her as a Trustee of the Trust.

22. BANK ACCOUNTS

Bank accounts in the name of the Trust shall be opened and kept with a bank or banks to be from time to time selected by the Trustees. All sums of money received on account of the Trust shall be forthwith paid into the credit of such account or accounts unless otherwise expressly ordered by the Trustees. All negotiable instruments and all receipts for money paid to the Trust shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Trustees from time to time determine.

23. AMENDMENTS

The Rules set forth in Rules 1 to 23 of this Schedule I may only be altered by the unanimous resolution in writing of all of the Trustees.

SCHEDULE II

TRUSTEES' SPECIFIC POWERS

Subject to any express terms in this Deed limiting or restricting such powers, the Trustees shall, in addition and not by way of limitation of the powers, authorities and discretions conferred upon the Trustees generally by the Trustee Act or any other legislation, have the power to:

- (a) Invest or reinvest the Trust Fund or any portion thereof, notwithstanding that it may be subject to any liability, in any form of investment whether in New Zealand or overseas.
- (b) Sell all or any part of the property comprising the Trust Fund at such price on such terms and subject to such conditions as they in their absolute discretion think fit with power to allow the whole or any part of the purchase money to remain owing as a debt to the Trust.
- (c) Retain property forming part of the Trust Fund.
- (d) Borrow moneys on such terms and subject to such conditions as the Trustees think fit.
- (e) Lease or take on lease or licence any property on such terms and subject to such conditions as they think fit and to accept or effect such surrenders of leases and licences as they think fit.
- (f) Lend moneys on such terms and subject to such conditions as the Trustees think fit.
- (g) Maintain manage repair improve and develop any property which or an interest in which for the time being forms part of the Trust Fund in such manner as the Trustees shall think fit.
- (h) Employ and pay any person (including any Trustee) to do any act of whatever nature relating to the Trust including the receipt and payment of money without being liable for the loss incurred thereby.
- (i) Open an account or accounts at any time or times in the name of the Trust or any similar name and either on their own behalf or jointly with another at any bank and to overdraw any such account with or without giving security and in addition to the powers conferred by Section 81 of the Trustee Act 1956 to make arrangements with any Bank for any one or more of the following, namely, the Trustees and/or any nominee or nominees named in writing by all the Trustees to operate upon any account at the Bank. All sums of money received on account of the Trust shall be forthwith paid into the credit of such account or accounts unless otherwise expressly ordered by the Trustees. All negotiable instruments and all receipts for money paid to the Trust shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Trustees from time to time determine.

- (j) Insure against loss or damage by any cause whatsoever any insurable property to any amount not exceeding the full insurance value thereof or the full replacement value thereof as the Trustees may in their absolute discretion from time to time think fit.
- (k) Enter into contracts of any nature whatsoever for the purpose of protecting maintaining or enhancing the value of all or any assets acquired or held by the Trustees or which the Trustees have the right to acquire or hold.
- (l) Delegate any of the powers and duties to any committee or committees consisting of such of the Trustees (or such other persons) as they may appoint for such purpose.
- (m) Subject to the provisions of this Deed, to exercise as the Trustees in their absolute discretion think fit all the voting powers attaching to any Shares forming part of the Trust Fund including to consider any recommendations made by the Directors of the Company on any proposal relating to any reconstruction or amalgamation or merger of the Company or any Subsidiary or any modification of the rights of shareholders or any increase or reduction of capital or other dealing with the Shares and after giving due consideration to the recommendations of the Directors to make a decision in respect of any such proposal as the Trustees may consider in their absolute discretion will be for the benefit of or in the interests of the Trust.
- (n) To appoint Directors in the manner provided by the Articles of Association or the Constitution of the Company provided however that the Trustees be satisfied that any person to be so appointed will be a person who has business acumen, sufficient time to devote to the affairs of the Company and the expertise to enable the Company to operate as a successful business.
- (o) To determine whether any money for the purposes of this Deed is to be considered as income or capital and what expenses ought to be paid out of income and capital respectively and also to apportion payments and every such determination or apportionment shall be final and binding on all persons beneficially interested in the Trust Fund and income thereof.
- (p) To determine all questions and matters of doubt which may arise in the course of the trusteeship of this Trust.
- (q) Appoint and pay any person, who is not a Trustee, as Secretary of the Trust and to remove such person and appoint replacement Secretaries as they see fit.
- (r) Exercise the powers conferred by Section 50 of the Trustee Act to appoint any corporation to be a custodian trustee of the Trust Fund.
- (s) Take and act upon the opinion of any barrister, or barrister and solicitor, of the High Court of New Zealand, of not less than seven years standing, whether in relation to the interpretation of this Deed or any other document or any statutory provision, relating to the administration of the Trust, without being liable to any person who may claim to be in any way beneficially interested in respect of any act done in accordance with such opinion provided that nothing in this Clause (s) shall preclude

the Trustees from applying to the High Court of New Zealand for directions, should they think fit.

- (t) Exercise as the Trustees in their absolute discretion shall think fit all of the powers attaching to any shares in the Company forming part of the Trust Fund.
- (u) Accept or take up any bonus shares or other benefits or entitlements given by any company in respect of any shares held as part of the Trust Fund.
- (v) Sell any of the Shares to the Company as permitted under the Companies Act 1993 (provided that the provisions of clause 9.3 of the Deed shall not apply to any such sale).
- (w) Do such other acts and things as the Trustees may in their absolute discretion consider incidental or conducive to the attainment of the general purpose of the Trust.

SCHEDULE III

CONSUMER CONSULTATIVE PROCEDURE

In respect of any provision of this Deed which requires the Trustees to implement a Consumer Consultative Procedure, the Trustees shall:

- (a) Place notice of the proposal before a meeting of the Trustees.
- (b) Give notice of the proposal to Consumers in accordance with Clause 11 of the Deed.
- (c) In every notice given under paragraph (b) of this schedule, specify a period within which Consumers interested in the proposal may make submissions on the proposal to the Trustees.
- (d) Ensure that any Consumer who makes written submissions on the proposal within the period specified in the notice given under paragraph (b) of this Schedule is given a reasonable opportunity to be heard by the Trustees.
- (e) Ensure that every meeting at which submissions are heard are open to Consumers.
- (f) Make all written submissions on the proposal available to Consumers.

The period specified pursuant to paragraph (c) above shall be not less than one month and no more than three months.

SCHEDULE IV

COMPANY'S STATEMENT OF CORPORATE INTENT

The following extract from the Company's constitution outlines the Company's obligation to prepare a Statement of Corporate Intent in respect of each Accounting Period (as that term is defined in the Company's constitution). *[This paragraph was amended 8 March 1999]*

28 STATEMENT OF CORPORATE INTENT

28.1 Obligation to Prepare a Statement of Corporate Intent: The Company shall prepare a Statement of Corporate Intent in respect of each Accounting Period until such time as the Trust ceases to hold at least fifty percent of the Company's Voting Securities.

28.2 Preparation and Contents of Statement of Corporate Intent:

28.2.1 Preparation: The Board shall deliver to the shareholders a draft Statement of Corporate Intent not later than one month after the commencement of each Accounting Period.

28.2.2 Contents: Each draft Statement of Corporate Intent shall specify for the Company and its subsidiaries (if any) ("the Group") and in respect of the Accounting Period in which it is delivered and each of the following two Accounting Periods, the following information:

- (a) the objectives of the Group;
- (b) the nature and scope of the activities to be undertaken by the Group;
- (c) the ratio of the Group's Shareholders Funds to total assets, including definitions of those terms;
- (d) the Group's accounting policies;
- (e) the Group's performance targets and other measures (including the after tax rate of return on Shareholders Funds) by which the performance of the Group may be judged in relation to its objectives;
- (f) an estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed by the Company to shareholders;
- (g) the type of information to be provided to shareholders by the Group during the course of the Accounting Period to which

the Statement of Corporate Intent relates, including the information which will be disclosed in each half yearly report;

- (h) the procedures to be followed before any company in the Group subscribes for, purchases or otherwise acquires shares in any company or other organisation;
- (i) the details of all transactions intended to be entered into between any company in the Group and -
 - (i) any Local Authority that is a shareholder in any company in the Group;
 - (ii) every company that, in relation to any company in the Group, is a Related Company;
 - (iii) every company in relation to which any company in the Group is a Related Company; and
 - (iv) every company that, in relation to any Local Authority that is a shareholder in any company in the Group, would be a Related Company if the Local Authority were a company; and
- (j) such other matters as may be proposed by the Board and agreed upon by the shareholders at any general meeting of the Company.

28.3 Board to Consider Comments: The Board shall consider any written comments which they may receive from shareholders on the draft Statement of Corporate Intent within two months of the commencement of each Accounting Period.

28.4 Finalised Statement of Corporate Intent: The Board shall deliver the finalised Statement of Corporate Intent to shareholders within three months of the commencement of each Accounting Period.

28.5 Modification of Statement of Corporate Intent:

28.5.1 Modification by Board: The Statement of Corporate Intent in respect of any Accounting Period may be modified, at any time, by written notice by the Board so long as the Board shall have first:

- (a) given written notice to the shareholders of the proposed modification; and
- (b) considered any written comments received from shareholders on the proposed modification within:

- (i) one month after the date on which the notice under paragraph (a) was given; or
- (ii) such shorter period of time as the shareholders may agree upon by ordinary resolution at any meeting of the Company.

28.5.2 Modification by Shareholders: The shareholders may, from time to time, by ordinary resolution passed at any meeting of the Company require the Board to modify the Statement of Corporate Intent by including or omitting any provision or provisions referred to in paragraphs (a) to (i) of clause 28.2 and the Board shall comply with any such notice.

28.5.3 Consultation with Directors: Before giving any notice under clause 28.5.2 the shareholders present at the general meeting at which the proposed amendment to the Statement of Corporate Intent is considered shall:

- (a) have regard to sections 36 and 44 of the Energy Companies Act 1992; and
- (b) consult with the Board regarding the proposed amendments.

28.6 Availability of Statement of Corporate Intent: Where a finalised Statement of Corporate Intent is delivered to the shareholders in accordance with clause 28.4 or any modification to a Statement of Corporate Intent is adopted in accordance with clause 32.5 the Board shall, not later than one month after that finalised Statement of Corporate Intent is delivered to the shareholders or, as the case may be, the modification is adopted, make that finalised Statement of Corporate Intent or modification available to the public except to the extent that the Board and the shareholders agree that certain parts of the Statement of Corporate Intent or modification are commercially sensitive.

28.7 Failure to Comply: A failure by the Company to comply with:

28.7.1 any provision of clauses 28.1 to 28.5; or

28.7.2 any provision contained in any Statement of Corporate Intent;

shall not affect the validity or enforceability of any deed, agreement, right, or obligation entered into, obtained or incurred by the Company.