

service commission or other governmental authority, if any, at the time having jurisdiction in the premises, to own and use said additional property; (4) that said additional property is subject to the lien of this Indenture, or that said additional property will be subject to the lien of this Indenture upon the execution and delivery to the Trustee of instruments of conveyance, assignment or transfer therein described; and (5) that no instruments of conveyance, assignment or transfer are necessary or advisable to perfect the lien of this Indenture upon said additional property, except such, if any, as may theretofore have been executed and delivered or may be specified under the preceding clause (4).

(d) Such instruments of conveyance, assignment or transfer, if any, as may be specified as necessary or advisable under clause (4) of the above required opinion of counsel.

§2.07. The outstanding bonds of Southern Power Company and Catawba Power Company, described in the granting clauses hereof, are hereby established as refundable under this Indenture; and any other bonds or evidences of indebtedness secured at the time of acquisition by a mortgage or other lien upon properties (not herein specifically described) hereafter acquired by the Company and becoming subject to the lien hereof may, at or after such acquisition, be established as similarly refundable in the manner provided in this §2.07; *provided, however,* that aggregate principal amount of such bonds or other evidences of indebtedness secured by prior lien upon any particular property or group of properties hereafter acquired shall not exceed 75% of the cost or fair value to the Company, at the time of acquisition, of the fixed properties constituting or included in the security therefor.

Whenever the Company shall desire to establish such bonds as refundable it shall include the additional property subject to the lien thereof in an additional property certificate pursuant to §2.06. In such cases the certificate required by paragraph (a) of said Section shall describe and state the aggregate principal amount of such bonds or other evidences of indebtedness with the nature of the lien securing the same, the principal amount thereof deposited or then being deposited with the Trustee hereunder and the principal amount thereof (with a description by serial number or otherwise sufficient for identification) not then so to be deposited (such aggregate principal amount not exceeding 75% of the net amount of such additional property), and also that the Board of Directors of the Company has resolved to establish those last mentioned as refundable under this Indenture.

The Company shall also, in the application made next thereafter pursuant to §2.05, direct that said undeposited prior lien bonds be established as refundable under this Indenture in lieu of the authentication and delivery upon such application of an equal principal amount of the bonds secured hereby; and upon acceptance of such application such prior lien bonds shall become refundable prior lien bonds, and bonds secured by this Indenture may thereafter be authenticated and delivered on account thereof in accordance with the provisions of §2.09. Prior lien bonds may be established as refundable upon an application pursuant to §2.05, even though the application does not direct the authentication and delivery of any bonds or any payments of cash in lieu thereof, and if 75% of the net amount of the additional property subject to such prior lien exceeds the principal amount of the prior lien bonds to be established as refundable, the balance may be used as the basis of the authentication and delivery of additional bonds hereunder pursuant to §2.05.

Within any limit of the total aggregate principal amount of bonds at any time authorized to be issued hereunder which may hereafter be fixed by the directors or stockholders of the Company or by supplemental indenture, there shall at all times be reserved and kept available for issue only for the purpose of refunding prior lien bonds in accordance with the provisions of §2.09, bonds issuable hereunder to an aggregate principal amount which shall at all times be equal to the aggregate principal amount of all prior lien bonds established as refundable prior to such time but not then or theretofore refunded as provided in said §2.09.

Nothing herein shall be deemed to require the Company to establish as refundable any of the following permitted liens, none of which shall for the purposes of this Indenture be deemed prior liens or encumbrances, namely; (1) liens and encumbrances on properties of the Company which are, and are expressed to be, junior to the lien of this Indenture; (2) the lien of taxes or assessments for the current year or which are not yet due; (3) encumbrances (otherwise than to secure the payment of money), easements, servitudes, conditions or restrictions which shall have been certified by an engineer to be of such a character as not, in the opinion of such engineer, to interfere materially with the proper operation and development of the property affected thereby for the purposes of the business of the Company, and to have been taken into account in any certificate as to the value of the property subject thereto theretofore furnished or then being furnished to the Trustee; and also any right which any municipal or governmental body or agency may have, by virtue of any franchise or related contract or by statute, to purchase any fixed property of the Company upon payment of the fair value thereof; and (4) any lien or encumbrance on property of the Company securing any bonds or other obligations capable of being discharged by the payment of money when cash and/or a principal amount of such obligations sufficient for the discharge thereof are deposited with the Trustee, or with any other depository satisfactory to it, with authority to apply such cash and/or principal amount of such obligations, so far as necessary, to the discharge of such lien or encumbrance. In case the validity or amount of any such lien or encumbrance is disputed by the Company, the terms of the deposit of such cash and/or principal amount of such obligations with the Trustee may be such as to authorize the Trustee to apply such cash and/or principal amount of such obligations to the discharge of such lien or encumbrance only when found valid by a court of competent jurisdiction or when so directed by the Company prior to such adjudication.

§2.08. As used in this Article (and elsewhere in this Indenture, unless a different meaning is apparent from the context), the following terms have the following meanings, namely:

(a) The term "net amount", as applied to any unit of additional property as below defined, means the cost or fair value thereof to the Company, whichever of said amounts is the lesser; *provided, however* that, in the case of any unit of additional property which shall have been acquired or constructed by the Company as a replacement of or substitute for any other unit of fixed property which shall have become obsolete, inadequate or worn out, or for any other reason has been retired from service, there shall be deducted from said lesser amount the original cost of the property of which the new property is a replacement or for which it is a substitute. In no event, however, shall the "net amount" of any unit of additional property exceed the amount properly chargeable and actually charged, in respect of the acquisition or construction thereof, to some one or more of the fixed capital accounts of the Company under recognized accounting practices applicable to the Company.

(b) The term "additional property" means fixed property as below defined, subject to the lien of this Indenture, which shall have been acquired or constructed by the Company, and properly charged to its fixed capital accounts, after the day of the execution and delivery of this Indenture; and the term "fixed property" means all property, real or personal, now or hereafter owned by the Company, of the character properly chargeable to fixed capital accounts under recognized accounting practices applicable to the Company, and which is used by or useful to the Company in the business of generating, transmitting and/or distributing electricity for light, heat and/or power, directly or indirectly to the public within the United States of America. Without limiting the generality of the foregoing, it is expressly provided that said terms shall include, but shall not be limited to, additions, improvements, betterments, developments, extensions and enlargements to, of or upon