

bonds of the series entitled to the benefits of such sinking fund remain outstanding;

(d) any bonds surrendered, purchased, paid or redeemed pursuant to §5.08 through the use of cash deposited with the Trustee, or through the use of any cash deposited with the trustee of a prior lien mortgage or subsidiary mortgage and certified or otherwise evidenced to the Trustee pursuant to §5.06, or

(e) any bonds which may from time to time be surrendered to the Trustee by the Company, either cancelled or for cancellation, accompanied by a written instrument executed on behalf of the Company by its President or a Vice-President, under its corporate seal attested by its Secretary or an Assistant Secretary, consenting that the same shall not thereafter be refundable under §2.09.

Except as to bonds which at the time of the application are actually held by the Trustee for account of any sinking fund hereafter created, or which are presented to the Trustee in cancelled form, the Trustee shall be fully protected in assuming that any bonds tendered to it are bonds which are properly refundable under §2.09. In the case of bonds presented in cancelled form, the Trustee may accept a certificate of the Treasurer or an Assistant Treasurer of the Company as conclusive evidence that the bonds so presented are bonds which are properly refundable under §2.09.

§2.11. Prior lien bonds deposited with the Trustee under this Indenture shall be held by it upon the following terms:

(a) Such prior lien bonds, unless previously cancelled, shall be held by the Trustee for the protection and for the security of all bonds issued hereunder, until authorized to be surrendered or cancelled as hereinafter in this §2.11 provided. All such prior lien bonds held by the Trustee shall be stamped or endorsed with a legend substantially as follows:

“Not negotiable. Held upon and subject to trusts declared in the First and Refunding Mortgage of Duke Power Company, to Guaranty Trust Company of New York, Trustee, dated December 1, 1927.”

(b) Except after the happening and during the continuance of an event of default as defined in §6.02, no payment by way of interest or otherwise on any of the prior lien bonds held by the Trustee shall be made or demanded and any coupons thereto appertaining representing such interest shall be cancelled by the Trustee as they mature and delivered when cancelled to or on the order of the Treasurer or an Assistant Treasurer of the Company, unless default be made in the payment of interest or principal on other prior lien bonds of the same issue not held by the Trustee and then outstanding. In such event the Trustee may demand and enforce payment of all sums due, whether for interest on or principal of any of the deposited prior lien bonds of the issue in respect of which such default exists, or may take such other action as shall, in its judgment, be desirable or necessary to avail itself of the security created for the prior lien bonds in such issue by the mortgage or other lien securing the same. In all respects, such deposited prior lien bonds shall stand and be enforceable on a *pro rata* equality with all other like prior lien bonds not so deposited.

(c) Whenever the trustee under any prior lien mortgage securing any prior lien bonds held by the Trustee under this Indenture shall advertise for tenders of such prior lien bonds to absorb cash held in any sinking fund under such mortgage, the Trustee shall, on request of the Treasurer or an Assistant Treasurer of the Company, offer for such sinking fund any or all such deposited prior lien bonds at any price stated by such Treasurer or Assistant Treasurer in such request. As and when, pursuant to the above provision, any such prior lien bond shall be sold to the trustee under any mortgage securing the same, or whenever any such prior lien bond shall be called for redemption or is to be paid out of any sinking fund under any such mortgage, the

Trustee shall, upon request of the Treasurer or an Assistant Treasurer of the Company and upon payment to the Trustee of the amount due, surrender such prior lien bond to the trustee under such mortgage. The cash received by the Trustee in payment of any prior lien bonds so surrendered for a sinking fund shall be paid over by the Trustee to or on the written order of the Treasurer or an Assistant Treasurer of the Company, without any substitution being required to be made therefor, anything elsewhere contained in this Indenture to the contrary notwithstanding.

(d) When the trustee under any mortgage securing deposited prior lien bonds shall have cash available for the retirement of such prior lien bonds, other than cash held for account of any sinking fund, the Trustee shall, on written request of the Treasurer or an Assistant Treasurer of the Company, offer all or a part of any such deposited prior lien bonds to absorb all or any part of such cash, at any price (not less than the principal amount thereof) specified in such request. As and when, pursuant to the provisions of this paragraph, any such prior lien bonds shall be sold to the trustee under the mortgage securing the same, or when any such prior lien bonds shall be called for redemption or are to be paid out of any such cash, the Trustee shall, upon like request and upon payment to the Trustee of the amount due, surrender such prior lien bonds to the trustee under such mortgage. Such cash received by the Trustee in payment for any such deposited prior lien bonds so surrendered shall be held and applied by the Trustee as provided in §5.08, except as otherwise permitted by §5.06.

(e) Whenever all prior lien bonds of any one issue (except any lost or destroyed bonds for which satisfactory indemnity shall have been given and as to which the Trustee shall have received the certificate to that effect of the trustee under the mortgage securing the same) shall have been deposited under this Indenture, or, if not so deposited, shall have been cancelled or paid in full, and delivered by or on behalf of the Company to the Trustee, or when the Trustee shall receive the certificate of the trustee under the mortgage securing such prior lien bonds or other evidence satisfactory to the Trustee, that all prior lien bonds of the issue in question not deposited hereunder have been deposited with such trustee or paid and/or cancelled or provision duly made for the payment thereof, the Trustee, if advised by counsel that no lien or encumbrance (disregarding the permitted liens specified in §2.07) on the same property which is junior to the lien of the mortgage securing such prior lien bonds but prior to the lien of this Indenture is outstanding, and that such action will not in any way impair the security of the bonds issued hereunder, shall, upon the written request of the Treasurer or an Assistant Treasurer of the Company, surrender all prior lien bonds of such issue deposited with it to the trustee under the mortgage securing the same for cancellation and shall request such trustee to discharge the mortgage securing the same, and/or take such other action as may, in the opinion of counsel, be necessary or proper to secure cancellation of such prior lien bonds and the discharge of the mortgage securing the same.

(f) The Trustee shall, when requested by the Company or by the holders of 10% in amount of all bonds outstanding hereunder, waive, for and on behalf of any prior lien bonds deposited with the Trustee hereunder, any and all defaults which may at any time occur under the prior lien mortgage securing said prior lien bonds, provided that no other event of default as defined in §6.02 shall have happened and be continuing and provided further that all agreements in respect of which default shall have been made under said prior lien mortgage shall be fully performed and all arrears of interest upon all prior lien bonds upon which default has been made and the principal of any such bonds which have matured in due course by their terms (except such interest and principal the payment of which is expressly waived by the authority granted herein) shall be paid, of which the opinion of counsel may be taken by the Trustee as conclusive.