

IN THE MATTER OF THE APPLICATION OF )  
THE DAYTON POWER AND LIGHT )  
COMPANY FOR AUTHORITY TO ISSUE FIRST ) Case No. 16-563-EL-AIS  
MORTGAGE BONDS, DEBENTURES, NOTES, )  
OR OTHER EVIDENCES OF INDEBTEDNESS )  
OR UNSECURED NOTES )

Applicant, The Dayton Power and Light Company (the “Company”), pursuant to the Commission’s Order of August 17, 2016, files the following report regarding the terms of the term loan credit facility among the Company, JPMorgan Chase Bank, N.A., Morgan Stanley Senior Funding, Inc., various managing agents, and the other lenders party thereto, as secured by the issuance of Company First Mortgage Bonds to JPMorgan Chase Bank, N.A. as the Collateral Agent, in the Principal Amount set forth below.

- A. Principal Amount: \$445,000,000
- B. Closing Date: August 24, 2016
- C. Maturity Date: August 24, 2022
- D. Interest Rate: Variable. The annual interest rate as of the date of this report is 4.00%, based on the selected interest rate formula of the Eurodollar Rate + 325bps.
- E. Price to Initial Lender: 99.50% (reflecting original issue discount of 0.50%)
- F. Annual Interest Cost: Variable. Based on the annual interest rate of 4.00% in effect as of the date of this report, the annual interest rate cost would be \$17,800,000.
- G. Arrangers' Fees: 1.25% of the original loan amount (\$5,562,500)
- H. Proceeds: \$437,212,500 (net of original issue discount & arrangers' fees)
- I. Other Estimated Financing and Financing Related Costs: \$3,112,500

- J. Total Estimated Net Proceeds: \$434,100,000
- K. Administrative Agent: JPMorgan Chase Bank, N.A.
- L. Managing Agents: BMO Capital Markets Corp., Fifth Third Securities, The Huntington National Bank, PNC Capital Markets LLC, Regions Capital Markets, a Division of Regions Bank, and SunTrust Robinson Humphrey, Inc.
- M. Joint Lead Arrangers and Joint Book Runners: JPMorgan Chase Bank, N.A. and Morgan Stanley Senior Funding, Inc.
- N. Initial Lender: Morgan Stanley Senior Funding, Inc.
- O. Amortization: 1% of the original loan amount per year paid quarterly
- P. Call Protection: 1.0% repayment premium on the principal amount of loans that are subject to a re-pricing transaction prior to the twelve month anniversary of the Closing Date.
- Q. Redemption/Prepayment: Voluntary prepayments without premium or penalty. Mandatory prepayments without premium or penalty upon disposition, recovery or debt issuance events.

A copy of the Credit Agreement, Pledge and Security Agreement and the 50<sup>th</sup> Supplemental Indenture are attached to this Report of Sale.

[signature page follows]

This Report of Sale has been executed by the undersigned this 5th day of October, 2016.

By:



Jeffrey K. MacKay

Treasurer

The Dayton Power and Light Company

[Signature Page to Report of Sale –  
The Dayton Power and Light Company PUCO Case No. 16-563-EL-AIS]

Deal CUSIP Number: 24001QAK7  
Facility CUSIP Number: 24001QAL5

**CREDIT AGREEMENT**

Dated as of August 24, 2016

among

**THE DAYTON POWER AND LIGHT COMPANY,**  
as the Borrower

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

JPMORGAN CHASE BANK, N.A.,  
as Collateral Agent

BMO CAPITAL MARKETS CORP., FIFTH THIRD SECURITIES,  
THE HUNTINGTON NATIONAL BANK, PNC CAPITAL MARKETS LLC,  
RBC CAPITAL MARKETS, LLC, REGIONS CAPITAL MARKETS, A DIVISION OF  
REGIONS BANK, AND SUNTRUST ROBINSON HUMPHREY, INC.,  
as Managing Agents

and

**THE OTHER LENDERS PARTY HERETO**

---

**JPMORGAN CHASE BANK, N.A.,**

and

**MORGAN STANLEY SENIOR FUNDING, INC.,**  
as Joint Lead Arrangers and Joint Book Runners

## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS.....	1
1.01 Defined Terms .....	1
1.02 Other Interpretive Provisions.....	28
1.03 Accounting Terms.....	28
1.04 Rounding .....	29
1.05 Times of Day .....	29
ARTICLE II. THE COMMITMENTS.....	29
2.01 Loans .....	29
2.02 Borrowings, Conversions and Continuations of Loans .....	29
2.03 Conversion and Continuation Options.....	30
2.04 Minimum Amounts and Maximum Number of Eurodollar Borrowing.....	30
2.05 Repayment of Loans .....	31
2.06 Voluntary Prepayments .....	31
2.07 Mandatory Prepayments.....	31
2.08 Application of Prepayments .....	33
2.09 Call Protection .....	33
2.10 [Reserved].....	33
2.11 Interest.....	33
2.12 Fees .....	34
2.13 Computation of Interest and Fees .....	34
2.14 Evidence of Debt .....	34
2.15 Payments Generally; Administrative Agent’s Clawback.....	35
2.16 Sharing of Payments by Lenders .....	36
2.17 Extension of Loans .....	37
2.18 Defaulting Lenders.....	39
ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY .....	40
3.01 Taxes .....	40
3.02 Illegality.....	44
3.03 Inability to Determine Rates.....	45
3.04 Increased Costs; Reserves on Eurodollar Rate Loans.....	46
3.05 Compensation for Losses .....	47
3.06 Mitigation Obligations; Replacement of Lenders.....	48
3.07 Survival .....	48
ARTICLE IV. CONDITIONS PRECEDENT TO CLOSING DATE .....	49
4.01 Conditions of Closing Date .....	49
ARTICLE V. REPRESENTATIONS AND WARRANTIES .....	51
5.01 Existence, Qualification and Power.....	51

## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
5.02 Authorization; No Contravention .....	51
5.03 Governmental Authorization; Other Consents .....	51
5.04 Binding Effect.....	52
5.05 Financial Statements; No Material Adverse Effect .....	52
5.06 Litigation .....	52
5.07 No Default .....	53
5.08 Ownership of Property .....	53
5.09 Environmental Compliance .....	53
5.10 Insurance .....	53
5.11 Taxes .....	54
5.12 ERISA Compliance.....	54
5.13 Subsidiaries.....	55
5.14 Margin Regulations; Investment Company Act; Federal Power Act .....	55
5.15 Disclosure .....	55
5.16 Compliance with Laws.....	56
5.17 Intellectual Property; Licenses, Etc .....	56
5.18 Solvency .....	56
5.19 Employment Matters.....	56
5.20 OFAC .....	56
5.21 Anti-Corruption Laws .....	56
5.22 PATRIOT Act, etc .....	57
5.23 Rights in Collateral; Perfection .....	57
5.24 Existing Liens .....	57
ARTICLE VI. AFFIRMATIVE COVENANTS .....	57
6.01 Financial Statements .....	58
6.02 Certificates; Other Information.....	58
6.03 Notices.....	59
6.04 Payment of Taxes and Claims .....	60
6.05 Preservation of Existence, Etc .....	60
6.06 Maintenance of Properties.....	60
6.07 Maintenance of Insurance .....	61
6.08 Compliance with Laws.....	61
6.09 Compliance with Material Contractual Obligations .....	61
6.10 Books and Records .....	61
6.11 Inspection Rights .....	61
6.12 Use of Proceeds .....	62
6.13 Senior Debt.....	62
6.14 Anti-Corruption Laws .....	62
6.15 Maintenance of Ratings.....	62
6.16 Lender Calls.....	62
6.17 Further Assurances.....	62
ARTICLE VII. NEGATIVE COVENANTS .....	63

## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
7.01 Indebtedness .....	63
7.02 Liens .....	64
7.03 Investments .....	66
7.04 Fundamental Changes .....	67
7.05 Subsidiaries .....	68
7.06 Dispositions .....	68
7.07 Change in Nature of Business .....	69
7.08 Transactions with Affiliates .....	69
7.09 Swap Agreements .....	69
7.10 Use of Proceeds .....	70
7.11 Accounting Changes .....	70
7.12 Series 2022 DP&L First Mortgage Bonds. ....	70
7.13 Limitation on Prepayments; Modifications of Debt Instruments .....	70
7.14 Sales and Leasebacks .....	70
ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES .....	71
8.01 Events of Default .....	71
8.02 Remedies Upon Event of Default .....	73
8.03 Application of Funds .....	73
ARTICLE IX. ADMINISTRATIVE AGENT AND COLLATERAL AGENT .....	74
9.01 Appointment and Authority .....	74
9.02 Rights as a Lender .....	74
9.03 Exculpatory Provisions .....	75
9.04 Reliance by Agents .....	76
9.05 Delegation of Duties .....	76
9.06 Resignation of Agents .....	76
9.07 Non-Reliance on Agents and Other Lenders .....	77
9.08 No Other Duties, Etc .....	77
9.09 Administrative Agent May File Proofs of Claim .....	77
ARTICLE X. MISCELLANEOUS .....	78
10.01 Amendments, Etc .....	78
10.02 Notices; Effectiveness; Electronic Communication .....	79
10.03 No Waiver; Cumulative Remedies; Enforcement .....	81
10.04 Expenses; Indemnity; Damage Waiver .....	82
10.05 Payments Set Aside .....	84
10.06 Successors and Assigns .....	84
10.07 Treatment of Certain Information; Confidentiality .....	89
10.08 Right of Setoff .....	90
10.09 Interest Rate Limitation .....	91
10.10 Counterparts; Integration; Effectiveness .....	91
10.11 Survival of Representations and Warranties .....	91

## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
10.12 Severability .....	92
10.13 Replacement of Lenders.....	92
10.14 Governing Law; Jurisdiction; Etc .....	93
10.15 Waiver of Jury Trial.....	94
10.16 No Advisory or Fiduciary Responsibility .....	94
10.17 Electronic Execution of Assignments and Certain Other Documents .....	95
10.18 USA PATRIOT Act .....	95
10.19 Acknowledgement and Consent to Bail-In of EEA Financial Institutions .....	95
SIGNATURES.....	S-1

## SCHEDULES

2.01	Commitments and Applicable Percentages
5.05(c)	Material Adverse Effect
5.06(a)	Litigation
5.24	Filing Requirements
7.01	Existing Indebtedness
7.02	Existing Liens
7.03	Existing Investments
10.02	Administrative Agent's Office; Certain Addresses for Notices

## EXHIBITS *Form of*

A-1	Borrowing Notice
A-2	Conversion Notice
B	Note
C	Compliance Certificate
D-1	Assignment and Assumption
D-2	Administrative Questionnaire
E	U.S. Tax Compliance Certificates
F	Pledge and Security Agreement



## CREDIT AGREEMENT

This CREDIT AGREEMENT (as may be hereafter amended, supplemented or otherwise modified from time to time, the “Agreement”) is entered into as of August 24, 2016, among THE DAYTON POWER AND LIGHT COMPANY, an Ohio corporation (the “Borrower” or “DP&L”), each lender from time to time party hereto (collectively, the “Lenders” and each individually, a “Lender”), JPMorgan Chase Bank, N.A. (“Administrative Agent”), as Administrative Agent and JPMorgan Chase Bank, N.A. (“Collateral Agent”), as Collateral Agent.

The Borrower has requested that the Lenders provide a term loan credit facility, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

### ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

**1.01 Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

“Acquisition” means any acquisition (a) on a going concern basis (whether by purchase, merger or otherwise) of assets constituting a business or a division or line of business of a Person that is not a Subsidiary of the Borrower or (b) of a majority of the outstanding Equity Interests in any such Person (whether by merger, stock purchase or otherwise).

“Act” has the meaning specified in Section 10.18.

“Administrative Agent” means JPMorgan Chase Bank, N.A., in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit D-2 or any other form approved by the Administrative Agent.

“AES” means The AES Corporation, a Delaware corporation.

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” has the meaning specified in the introductory paragraph hereto.

“Applicable Percentage” means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Total Outstandings held by such Lender at such time, subject to adjustment as provided in Section 2.16. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means, (a) 2.25% per annum, in the case of the Base Rate and (b) 3.25% per annum, in the case of the Eurodollar Rate.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arrangers” means, collectively, JPMorgan Chase Bank, N.A., and Morgan Stanley Senior Funding, Inc., in their capacities as joint lead arrangers and joint book runners.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit D-1 or any other form approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

“Audited Financial Statements” means the audited condensed consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2015, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the NYFRB Rate on such date plus ½ of 1.00% (b) the Prime Rate in effect for such date and (c) the Eurodollar Rate for an Interest Period of one month on such day plus 1.00% and if the Base Rate shall be less than zero such rate shall be deemed to be zero for purposes of this Agreement.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Bond Documents” means, collectively, the Fiftieth Supplemental Indenture, the Series 2022 DP&L First Mortgage Bonds and the Indenture.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a borrowing of Loans hereunder.

“Borrowing Date” means any Business Day specified by the Borrower in a Borrowing Notice as a date on which the relevant Lenders are requested to make Loans hereunder.

“Borrowing Notice” means, with respect to any request for borrowing of Loans hereunder, a notice from the Borrower, substantially in the form of, and containing the information prescribed by, Exhibit A-1, delivered to the Administrative Agent.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located or in New York, New York, and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

“Capital Lease” means, as applied to any Person, any lease of any property (whether real, personal or mixed) by such Person, as lessee, that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of that Person.

“Capitalized Lease Obligations” means all obligations under Capital Leases of the Borrower or any of its Subsidiaries in each case taken at the amount thereof accounted for as liabilities and identified as “capital lease obligations” (or any similar words) on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued; and provided further that, as to any Lender seeking reimbursement or compensation hereunder with respect to either of clause (x) or (y) immediately above, such Lender shall only be so reimbursed or compensated to the extent that such Lender is then generally seeking reimbursement or compensation in respect of credit transactions entered into

on or after the date hereof similar to the transactions contemplated hereby from borrowers similarly situated to the Borrower to the extent such act, or any such request, rule, guideline or directive, as the case may be, is applicable thereto.

“Change of Control” means:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than AES (directly or indirectly) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of 35% or more of the equity securities of the Parent entitled to vote for members of the board of directors or equivalent governing body of the Parent on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right);

(b) during any period of 12 consecutive months, a majority of the members (excluding vacancies) of the board of directors or other equivalent governing body of the Parent cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(c) the Parent shall cease to own (directly or indirectly) 100% of the outstanding shares of all classes of stock of the Borrower ordinarily having the right to vote at an election of directors, or any contingency shall occur that causes any class of stock of the Borrower, the shares of which are not owned by the Parent, to have the right to vote at an election of directors.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means, collectively, the Pledged Collateral and the Mortgaged and Pledged Property.

“Collateral Agent” means JPMorgan Chase Bank, N.A., in its capacity as collateral agent, or any successor collateral agent.

“Commitment” means, as to each Lender, its obligation to make Loans to the Borrower pursuant to Section 2.01 in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01.

“Compliance Certificate” means a certificate substantially in the form of Exhibit C.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated EBITDA” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for such period plus (a) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges for such period, (ii) the provision for Federal, state, local and foreign income taxes payable by the Borrower and its Subsidiaries for such period, (iii) depreciation and amortization expense for such period, (iv) other non-recurring expenses of the Borrower and its Subsidiaries reducing such Consolidated Net Income (x) which do not represent a cash item in such period or (y) which are cash items in such period that were incurred as a result of (A) the early termination of Borrower’s Capital Trust II Indebtedness or (B) termination of existing swap contracts (it being understood that cash charges described in this clause (B) will not exceed \$50,000,000 in the aggregate), (C) out-of pocket third party costs and expenses incurred directly in connection with the implementation, negotiation, documentation and closing of the Separation Transactions or (D) normal and customary out-of-pocket third party costs, expenses and fees incurred directly in connection with the refinancing of any existing Indebtedness, and (v) all other non-cash items reducing Consolidated Net Income for such period, and minus (b) the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits of the Borrower and its Subsidiaries for such period and (ii) all non-cash items increasing Consolidated Net Income for such period.

“Consolidated Interest Charges” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses of the Borrower and its Subsidiaries in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense of the Borrower and its Subsidiaries with respect to such period under capital leases that is treated as interest in accordance with GAAP.

“Consolidated Net Income” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the net income (or loss), without deduction for minority interests, of the Borrower and its Subsidiaries for that period determined in conformity with GAAP.

“Consolidated Tangible Assets” means, as of any date of determination, for the Borrower and its Subsidiaries on a consolidated basis, the consolidated total assets of the Borrower and its Subsidiaries calculated on a consolidated basis as of such date, but excluding therefrom goodwill, patents, patent applications, permits, trademarks, trade names, copyrights, licenses, franchises, experimental expense, organizational expense, unamortized debt discount and

expense, the excess of cost of shares acquired over book value of related assets and such other assets that are properly classified as “intangible assets” in accordance with GAAP.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise.

“Controlling” and “Controlled” have meanings correlative thereto.

“Credit Agreement Refinancing Indebtedness” means (a) Permitted First Priority Refinancing Indebtedness, (b) Permitted Junior Priority Refinancing Indebtedness, or (c) Permitted Unsecured Refinancing Indebtedness, in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace, repurchase, retire or refinance, in whole or part, existing Loans, or any then-existing Credit Agreement Refinancing Indebtedness (“Refinanced Indebtedness”); provided that (i) such Indebtedness has a maturity no earlier, and a Weighted Average Life to Maturity equal to or greater, than the Refinanced Indebtedness, (ii) such Indebtedness shall not have a greater principal amount than the principal amount of the Refinanced Indebtedness plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees and expenses associated with the refinancing, (iii) the terms and conditions of such Indebtedness (except as otherwise provided in clause (i) above and with respect to pricing, premiums, fees, rate floors and optional prepayment or redemption terms) are substantially identical to (or in the case of Permitted First Priority Refinancing Notes are on market terms) (so long as such Permitted First Priority Refinancing Notes (x) do not mature prior to the maturity date of such Refinanced Indebtedness and (y) do not contain any financial maintenance covenants) or (taken as a whole) are no more favorable to the lenders or holders providing such Indebtedness than the terms and conditions applicable to the Refinanced Indebtedness being refinanced (except for covenants or other provisions applicable only to periods after the Latest Maturity Date at the time of incurrence of such Indebtedness) (provided that a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (iii) shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent notifies the Borrower within such five Business Day period that it disagrees with such determination (including a description of the basis upon which it disagrees)) and (iv) such Refinanced Indebtedness shall be repaid, repurchased, retired, defeased or satisfied and discharged, all accrued interest, fees, premiums (if any) and penalties in connection therewith shall be paid, and all commitments thereunder terminated, on the date such Credit Agreement Refinancing Indebtedness is issued, incurred or obtained.

“Credit Facility” means each of (a) the Commitments and the Loans made hereunder (the “Loan Facility”) and (b) any Extended Loans of a given Loan Extension Series.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means the meaning set forth in Section 2.11(b).

“Defaulting Lender” means, subject to Section 2.16(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any other Lender in writing that it does not intend to comply with its funding obligations hereunder or under other agreements in which it commits to extend credit generally or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent or the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority; so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such

Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each other Lender promptly following such determination.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction (currently Crimea, Cuba, Iran, North Korea, Sudan, and Syria).

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith; provided that the term “Disposition” or “Dispose” shall not include any loss or damage to, or any condemnation or taking of, any property.

“Disqualified Equity Interests” means any Equity Interests that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are exchangeable), or upon the happening of any event or condition, (a) require the payment of any dividends (other than dividends payable solely in shares of Qualified Equity Interests), (b) mature or are mandatorily redeemable or subject to mandatory repurchase or redemption or repurchase at the option of the holders thereof (other than solely for Qualified Equity Interests), in each case in whole or in part and whether upon the occurrence of any event, pursuant to a sinking fund obligation on a fixed date or otherwise (including as the result of a failure to maintain or achieve any financial performance standards) or (c) are or become convertible into or exchangeable for, automatically or at the option of any holder thereof, any Indebtedness, Equity Interests or other assets other than Qualified Equity Interests, in the case of each of clauses (a), (b) and (c), prior to the date that is 91 days after the Latest Maturity Date at the time of issuance of such Equity Interests (other than (i) following the payment in full in cash of all Loans and other amounts owing to any Lender, the Administrative Agent, the Collateral Agent or the Arrangers in respect of the Obligations (other than contingent or indemnification obligations not then due) or (ii) upon a “change in control”; provided that any payment required pursuant to this clause (ii) is subject to the payment in full in cash of all Loans and other amounts owing to any Lender, the Administrative Agent, the Collateral Agent or the Arrangers in respect of the Obligations (other than contingent or indemnification obligations not then due); provided, however, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of the Borrower or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability.

“Disqualified Person” means any bank, financial institution or other entity designated as such by the Borrower in writing to the Arrangers (with their consent (such consent not to be unreasonably delayed or withheld)) prior to the commencement of the initial syndication of the Commitments hereunder and made available to the Lenders pursuant to Section 10.06(g)(iv).

“Dollar” and “\$” mean lawful money of the United States.



“DP&L First Mortgage Bonds” means those certain First Mortgage Bonds issued pursuant to the Indenture, dated as of October 1, 1935, as amended, supplemented or otherwise modified from time to time, between the Borrower and The Bank of New York Mellon (or its predecessors or successors).

“EEA Financial Institution” means (a) any institution established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent;

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii) and Section 10.06(b)(v), including any Purchasing Borrower Party (subject to such consents, if any, as may be required under Section 10.06(b)(iii)). For the avoidance of doubt, any Disqualified Person is subject to Section 10.06(b)(vii).

“Energy-Related Business” means any business engaged in or directly related to: (a) the production, sale, brokerage, management, transportation, delivery or other provision of energy products, including but not limited to, electricity, natural gas, oil, coal, propane and renewable energy producing materials; (b) the provision of energy conservation services, including, but not limited to, energy audits, installation of energy conservation devices, energy efficient equipment and related systems; (c) the provision of services and equipment in connection with the procurement of such energy products or conservation of energy; (d) engineering, consulting, construction, operational or maintenance services in connection with such energy products, the conservation of energy or with equipment utilizing such energy products; or (e) the manufacturing of equipment used in connection with energy production or conservation.

“Engagement Letter” means that certain letter agreement dated as of July 19, 2016 among the Borrower and the Arrangers evidencing the engagement of JPMorgan Chase Bank, N.A., and Morgan Stanley Senior Funding, Inc.

“Environmental Laws” means any and all applicable Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to Hazardous Materials, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any of its Subsidiaries directly or indirectly resulting from or based upon (a)

violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of such shares of capital stock of such Person, and all of the other ownership interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) the assessment of withdrawal liability under Title IV of ERISA upon the Borrower or any ERISA Affiliate in connection with the Borrower’s or any ERISA Affiliate’s complete or partial withdrawal from a Multiemployer Plan or the Borrower’s or any ERISA Affiliate’s notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate or the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; or (g) the imposition of any liability under Title IV of ERISA upon the Borrower or any ERISA Affiliate, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Eurodollar Borrowing” means the collective reference to Eurodollar Loans the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

“Eurodollar Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate (rounded upwards, if necessary, to the nearest 1/100th of 1.00% per annum) equal to the greater of (i)(x) the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate

for U.S. Dollars for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; in each case the “LIBO Screen Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement; provided further that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”) then the Eurodollar Rate shall be the Interpolated Rate; provided that if any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement multiplied by (y) the Statutory Reserve Rate and (ii) 0.75%.

“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on the definition of “Eurodollar Rate”.

“Event of Default” has the meaning specified in Section 8.01.

“Exchange Act” means the Securities and Exchange Act of 1934, as amended.

“Excluded Information” means any non-public information with respect to the Borrower or its Subsidiaries or any of their respective securities to the extent such information could have a material effect upon, or otherwise be material to, an assigning Lender’s decision to assign Loans or a purchasing Lender’s decision to purchase Loans.

“Excluded Taxes” means, any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a) or (c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Existing Revolving Credit Agreement” means that certain credit agreement dated as of July 31, 2015 among the Borrower, PNC Bank, National Association, as administrative agent and the financial institutions from time to time party thereto as lenders and issuing banks, as amended, replaced and refinanced in whole or in part from time to time prior to the date hereof.

“Extending Lender” has the meaning assigned to such term in Section 2.17(a)(i).

“Extended Loans” has the meaning assigned to such term in Section 2.17(a)(i).

“Extension Amendment” has the meaning assigned to such term in Section 2.17(a)(i).

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate.

“Fee Letter” means that certain letter agreement dated August 24, 2016 by and between the Borrower and the Administrative Agent.

“Fiftieth Supplemental Indenture” means that certain Fiftieth Supplemental Indenture, dated as of August 24, 2016, between the Borrower and the Trustee.

“Fitch” means Fitch Investors Service Inc. and any successor thereto.

“Fitch Rating” means, on any date of determination, the rating accorded the Borrower’s senior unsecured long-term debt by Fitch (or if the Obligations are secured and there is a rating accorded to the Borrower’s senior secured long-term debt by Fitch, then such senior secured long-term debt rating; but if not, the senior unsecured long-term debt rating; or, if neither such rating is available, the Borrower’s long-term issuer default rating accorded to it by Fitch).

“Foreign Lender” means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is a resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Forty-Seventh Supplemental Indenture” means that certain Forty-Seventh Supplemental Indenture, dated as of September 1, 2013, between the Borrower and the Trustee.

“FPA” means the Federal Power Act, as amended, and all rules and regulations promulgated thereunder.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied and subject to the provisions of Section 1.03.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Immaterial Subsidiary” means a Subsidiary that represents less than 1% of the Consolidated Tangible Assets of the Borrower and its Subsidiaries as would be shown in the consolidated financial statements of the Borrower and its Subsidiaries as at the beginning of the twelve (12) month period ending with the month in which such determination is made.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial) and bankers’ acceptances;

(c) all obligations of such Person to pay the deferred purchase price of capital assets or services that in accordance with GAAP would be shown on the liability side of the balance sheet of such Person;

(d) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(e) capital leases and Synthetic Lease Obligations;

(f) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Redeemable Stock in such Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends;

(g) the full outstanding balance of trade receivables, notes or other instruments sold with full recourse (and the portion thereof subject to potential recourse, if sold with limited recourse), other than in any such case any thereof sold solely for purposes of collection of delinquent accounts;

(h) all Guarantees of such Person in respect of any of the foregoing; and

(i) for the purposes of Section 7.02 only, all obligations of such Person in respect of Swap Contracts.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person and shall exclude trade payables and other similar accrued expenses arising in the ordinary course of business, obligations in respect of insurance policies or performance or surety bonds that themselves are not guarantees of Indebtedness (or drafts, acceptances or similar instruments evidencing the same or obligations

in respect of letters of credit supporting the payment of the same). The amount of any capital lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Documents and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitees” has the meaning specified in Section 10.04(b).

“Indenture” means the First and Refunding Mortgage, dated as of October 1, 1935, by and between the Borrower and The Bank of New York Mellon (formerly The Bank of New York (formerly Irving Trust Company)), as amended and supplemented prior to the Fiftieth Supplemental Indenture.

“Information” has the meaning specified in Section 10.07.

“Interest Payment Date” means, (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date and (c) as to any Loan which bears interest at the Default Rate in accordance with Section 2.11(b), on any Business Day upon demand by the Administrative Agent.

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, three, six or, if available to all Lenders, twelve months thereafter, as selected by the Borrower in its Borrowing Notice; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the Maturity Date.

“Internal Revenue Service” means the United States Internal Revenue Service, or any Governmental Authority succeeding to any of its principal functions.

“Interpolated Rate” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the

Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person (including any partnership or joint venture interest in such other Person), (b) a loan, advance or capital contribution to, or a Guarantee, assumption, purchase or other acquisition of any debt (other than accounts receivable and lease, utility or other deposits arising in the ordinary course of business on terms customary in the trade) of, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, less any amount paid, repaid, returned, distributed or otherwise received in cash in respect of such Investment not to exceed the original amount of such Investment. For the avoidance of doubt, the exchange of interests in electricity generating units among tenants-in-common as described in Section 7.06(i), shall not constitute an Investment hereunder.

“IP Rights” has the meaning specified in Section 5.17.

“Junior Indebtedness” means, collectively, any Indebtedness of the Borrower of the type described in clause (a) of the definition of Indebtedness that is (x) secured by a Lien that is junior in priority to the Lien securing the Obligations, (y) by its terms subordinated in right of payment to all or any portion of the Obligations or (z) unsecured; provided that up to \$200,000,000 in aggregate principal amount of Indebtedness under the Existing Revolving Credit Agreement or any amendment thereto or any Permitted Refinancing thereof, shall not constitute Junior Indebtedness.

“Latest Maturity Date” means, at any date of determination, the latest Maturity Date applicable to any Loan hereunder at such time, including the latest maturity date of any Loan or Extended Loan , in each case, as extended in accordance with this Agreement from time to time.

“Laws” means, as to any Person, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders of, and agreements with, any Governmental Authority, binding upon such Person or to which such Person is subject.

“Lender” has the meaning specified in the introductory paragraph hereto.



“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means an extension of credit by a Lender to the Borrower under Article II.

“Loan Documents” means this Agreement, each Note, the Bond Documents, the Fee Letters and the Pledge and Security Agreement.

“Loan Extension” has the meaning assigned to such term in Section 2.17(a).

“Loan Extension Offer” has the meaning assigned to such term in Section 2.17(a).

“Loan Extension Series” has the meaning assigned to such term in Section 2.17(a).

“Loan Notice” means a notice of (a) a conversion of Loans from one Type to the other, or (b) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit A-2.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Borrower and its Subsidiaries, taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or the Lenders under any Loan Document, or of the ability of the Borrower to perform its obligations under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower of any Loan Document; provided that the Separation Transactions shall not constitute a Material Adverse Effect.

“Maturity Date” means (i) with respect to any Loans other than Extended Loans, August 24, 2022, and (ii) with respect to any Extended Loans of a given Loan Extension Series, the final maturity date as specified in the applicable Extension Amendment; provided that, if any such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately succeeding such day.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Moody’s Rating” means, on any date of determination, the rating accorded the Borrower’s senior unsecured long-term debt by Moody’s (or if the Obligations are secured, the

rating accorded to the Borrower's senior secured long-term debt by Moody's), or if such rating is unavailable, the Borrower's long-term issuer credit rating accorded to it by Moody's.

"Mortgaged and Pledged Property" has the meaning set forth in the Indenture.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a Pension Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Net Cash Proceeds" means (a) in connection with any Disposition or any Recovery Event, the proceeds thereof in the form of cash or cash equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) received by the Borrower, net of (i) attorneys' fees, accountants' fees, investment banking fees, consulting fees and other customary fees and expenses actually incurred by the Borrower in connection therewith; (ii) taxes paid or reasonably estimated to be payable by the Borrower as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements as determined by the Borrower in its sole discretion exercised in good faith); (iii) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than DP&L First Mortgage Bonds (other than the Series 2022 DP&L First Mortgage Bonds), any Permitted First Priority Refinancing Indebtedness, any secured Permitted Refinancing Indebtedness permitted pursuant to Sections 7.01(a) and (b) and 7.02(b) and Indebtedness secured by Liens permitted by Section 7.02(i)) that is secured by a Lien on the Property subject to such Disposition or Recovery Event and is required to be repaid in connection with such Disposition or Recovery Event under the terms thereof as a result of such Disposition or Recovery Event; and (iv) the amount of any reasonable reserve established in accordance with GAAP against any liabilities (other than any taxes deducted pursuant to clause (ii) above) (A) associated with the assets that are the subject of such event and (B) retained by the Borrower, provided that the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Cash Proceeds of such event occurring on the date of such reduction and (b) in connection with any issuance of any preferred stock or issuance or sale of debt securities or instruments or the incurrence of Indebtedness by the Borrower or its Subsidiaries, if any, the cash proceeds received from such issuance or incurrence, net of attorneys' fees, investment banking fees, accountants' fees, consulting fees, underwriting discounts and commissions and other customary fees and expenses actually incurred in connection therewith other than as permitted under Section 7.01.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Note" means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit B.

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received to the Administrative Agent from a Federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, the Borrower arising under any Loan Document or otherwise with respect to any Loan, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees and premium that accrue after the commencement by or against the Borrower of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

“Outstanding Amount” means the aggregate outstanding principal amount of Loans after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

“Parent” means DPL Inc., an Ohio corporation.

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“PBGC” means the Pension Benefit Guaranty Corporation or any successor.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Acquisition” means and includes any Acquisition as to which all of the following conditions are satisfied: (a) such Acquisition (i) involves a line or lines of an Energy-Related Business, and (ii) involves a Person or a line or lines of business that are located and operated in the United States; (b) no Default or Event of Default shall exist prior to or immediately after giving effect to such Acquisition; (c) such Acquisition is not being consummated on a hostile basis and has been approved by the board of directors of the target Person and no material challenge to such Acquisition shall be pending or threatened by any shareholder or director of the seller or Person to be acquired, (d) as of the date of the consummation of such Acquisition, all approvals required in connection therewith shall have been obtained and (e) concurrently with the consummation of any such Acquisition, such acquired Person becomes a guarantor of the Obligations hereunder.

“Permitted First Priority Refinancing Indebtedness” means any Permitted First Priority Refinancing Notes and any Permitted First Priority Refinancing Loans.

“Permitted First Priority Refinancing Loans” means any Credit Agreement Refinancing Indebtedness incurred by the Borrower in the form of one or more tranches of loans under this Agreement; provided that (i) such Indebtedness is secured by the Collateral on a *pari passu* basis (but without regard to the control of remedies) with the Obligations and is not secured by any property or assets of the Borrower other than the Collateral, and (ii) such Indebtedness does not mature or have scheduled amortization or payments of principal in excess of 1.0% per annum (other than customary offers to repurchase upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) on or prior to the date that is the Latest Maturity Date at the time such Indebtedness is incurred or issued.

“Permitted First Priority Refinancing Notes” means any Credit Agreement Refinancing Indebtedness incurred by the Borrower in the form of one or more series of senior secured notes; provided that (i) such Indebtedness is secured by the Collateral on a *pari passu* basis (but without regard to the control of remedies) with the Obligations and is not secured by any property or assets of the Borrower other than the Collateral, (ii) such Indebtedness does not mature or have scheduled amortization or payments of principal (other than customary offers to repurchase upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) on or prior to the date that is the Latest Maturity Date at the time such Indebtedness is incurred or issued, (iii) the security agreements relating to such Indebtedness are substantially the same as or more favorable to the Borrower as the Indenture (with such differences as are reasonably satisfactory to the Administrative Agent) and (iv) the holders of such Indebtedness shall have entered into customary intercreditor agreements with the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent; provided that if such Indebtedness is secured by DP&L First Mortgage Bonds or constitutes DP&L First Mortgage Bonds, no intercreditor agreement shall be required. Permitted First Priority Refinancing Notes shall include any Registered Equivalent Notes issued in exchange therefor.

“Permitted Junior Priority Refinancing Indebtedness” means any Credit Agreement Refinancing Indebtedness incurred by the Borrower in the form of one or more series of second lien (or other junior lien) secured notes or second lien (or other junior lien) lien secured loans; provided that (i) such Indebtedness is secured by the Collateral on a second priority (or other junior priority) basis to the Liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Indebtedness and is not secured by any property or assets of the Borrower other than the Collateral, (ii) such Indebtedness may be secured by a Lien on the Collateral that is junior to the Liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Indebtedness, notwithstanding any provision to the contrary contained in the definition of “Credit Agreement “Refinancing Indebtedness” and (iii) the holders of such Indebtedness shall have entered into customary intercreditor agreements with the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent. Permitted Junior Priority Refinancing Indebtedness shall include any Registered Equivalent Notes issued in exchange therefor.

“Permitted Liens” means any Liens permitted under Section 7.02.

“Permitted Refinancing Indebtedness” means any modification, refinancing, refunding, renewal or extension of any Indebtedness; provided that (i) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if

applicable) of the Indebtedness being modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder; provided that with respect to a modification, refinancing, refunding, renewal or extension of Indebtedness under the Existing Revolving Credit Agreement, the principal amount of such Indebtedness may be in an amount up to \$200,000,000; (ii) such modification, refinancing, refunding, renewal or extension has a maturity no earlier and a Weighted Average Life to Maturity no shorter than the Indebtedness being modified, refinanced, refunded, renewed or extended; (iii) at the time thereof, no Default or Event of Default shall have occurred and be continuing; (iv) if the Indebtedness being modified, refinanced, refunded, renewed or extended is unsecured, such modification, refinancing, refunding, renewal or extension is unsecured; (v) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Obligations on terms, taken as a whole, at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended; (vi) if the Indebtedness being modified, refinanced, refunded, renewed or extended is secured, such modification, refinancing, refunding, renewal or extension is secured by no more collateral than the Indebtedness being modified, refinanced, refunded, renewed or extended; and (vii) the primary obligors and guarantors in respect of such Indebtedness being modified, refinanced, refunded, renewed or extended remain the same (or constitute a subset thereof); provided, that, notwithstanding the above, the Existing Revolving Credit Agreement may be modified, refinanced, refunded, renewed or extended in order to secure the Indebtedness thereunder, so long as the terms and conditions of such Indebtedness (except with respect to pricing, premiums, fees, rate floors and optional repayment and redemption terms) are on market terms (so long as such Permitted Refinancing Indebtedness does not mature prior to the maturity date of the Indebtedness being modified, refinanced, refunded, renewed or extended) or are substantially identical to or (taken as a whole) are not more favorable to the lenders or holders providing such Indebtedness that the terms and conditions applicable to the Existing Revolving Credit Agreement being refinanced (except for covenants or other provisions only applicable to periods after the Latest Maturity Date at the time of the incurrence of such Indebtedness) (provided that a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this proviso shall be conclusive evidence that such terms and conditions satisfy such requirement).

“Permitted Unsecured Refinancing Indebtedness” means any Credit Agreement Refinancing Indebtedness incurred by the Borrower in the form of one or more series of senior unsecured notes or loans; provided that such Indebtedness (i) constitutes Credit Agreement Refinancing Indebtedness and (ii) does not mature or have scheduled amortization payments of principal or payments of principal and is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (except customary asset sale or change of control provisions that provide for the prior repayment in full of the Loans and all other Obligations), in each case on or prior to the Latest Maturity Date at the time such Indebtedness is incurred.

Permitted Unsecured Refinancing Indebtedness shall include any Registered Equivalent Notes issued in exchange therefor.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Platform” has the meaning specified in Section 6.02.

“Pledge and Security Agreement” has the meaning set forth in Section 4.01(a)(vi).

“Pledged Collateral” has the meaning set forth in the Pledge and Security Agreement.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its office located at 270 Park Avenue, New York, New York; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“Public Lender” has the meaning specified in Section 6.02.

“PUCO” means the Public Utilities Commission of Ohio.

“Purchasing Borrower Party” means the Borrower or any Affiliate of the Borrower.

“Qualified Equity Interests” means Equity Interests that are not Disqualified Equity Interests.

“Rating” means any of the Fitch Ratings, Moody’s Ratings or S&P Ratings.

“Rating Agency” means any of Fitch, Moody’s or S&P.

“Recipient” means the Administrative Agent, the Collateral Agent and any Lender.

“Recovery Event” means the receipt by the Borrower of any cash payments or proceeds under any casualty insurance policy in respect of a covered loss thereunder or as a result of the taking of any assets of the Borrower by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking.

“Redeemable Stock” means, with respect to any Person, any Equity Interests of such Person that (a) is by its terms subject to mandatory redemption, in whole or in part, pursuant to a sinking fund, scheduled redemption or similar provisions, at any time prior to the Maturity Date; or (b) otherwise is required to be repurchased or retired on a scheduled date or dates, upon the occurrence of any event or circumstance, at the option of the holder or holders thereof, or otherwise, at any time prior to the Maturity Date, other than any such repurchase or retirement occasioned by a “change of control” or similar event.

“Register” has the meaning specified in Section 10.06(c).

“Registered Equivalent Notes” means, with respect to any notes originally issued in an offering pursuant to Rule 144A under the Securities Act or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived under ERISA or applicable regulations.

“Repricing Transaction” means each of (a) the prepayment, repayment, refinancing, substitution or replacement of all or a portion of the Loan with the incurrence by the Borrower of any debt financing, First Mortgage Bond or any other financing similar to the Credit Facility having an effective interest cost or weighted average yield (after giving effect to, among other factors, margin, interest rate floors, upfront or similar fee or “original issue discount” shared with all lenders of such loans, as the case may be, but excluding the effect of any arrangement, structuring, syndication or other fees payable in connection therewith that are not shared with all lenders of such loans, as the case may be, and without taking into account any fluctuations in the Eurodollar Rate) that is less than the interest rate for or weighted average yield of the Loans and (b) any amendment, waiver or other modification to this Agreement that would have the effect of reducing the effective interest cost of, or weighted average yield of the Loans, in each case that occurs during the period commencing on or after the Closing Date and ending on the one-year anniversary of the Closing Date.

“Required Lenders” means, as of any date of determination, Lenders holding in the aggregate more than 50% of the Total Outstandings; provided that the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of the Borrower and, solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of the Borrower or, in each case, any officer of the Borrower with a similar title. Any document delivered hereunder that is signed by a Responsible Officer of the Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of the Borrower and such Responsible Officer shall be conclusively presumed to have acted on behalf of the Borrower.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

“S&P Rating” means, on any date of determination, the rating accorded to the Borrower’s senior unsecured long-term debt by S&P (or if the Obligations are secured, the rating accorded to



the Borrower's senior secured long-term debt by S&P), or if such rating is unavailable, the Borrower's long-term issuer credit rating accorded to it by S&P.

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury ("HMT") or other relevant sanctions authority.

"Scheduled Payment Date" means each March 31st, June 30th, September 30th and December 31st of each calendar year or, if any such day is not a Business Day, the Business Day immediately prior thereto.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Secured Parties" means collectively, the Administrative Agent, the Collateral Agent and the Lenders.

"Separation Transactions" means the restructuring of the Borrower's operations in accordance with an order by PUCO, including the separation of the Borrower's generation assets from its transmission and distribution assets, in compliance with the laws of the state of Ohio and any rules and regulations thereunder.

"Series 2016 DP&L First Mortgage Bonds" means those certain 1.875% DP&L First Mortgage Bonds due 2016 issued pursuant to the Forty-Seventh Supplemental Indenture.

"Series 2022 DP&L First Mortgage Bonds" means those certain Variable Rate DP&L First Mortgage Bonds due 2022 issued pursuant to the Fiftieth Supplemental Indenture.

"Short Term Investments" means short-term investments as defined by GAAP.

"Solvent" means, with respect to any Person, as of any date of determination, (a) the amount of the "present fair saleable value" of the assets of such Person will, as of such date, exceed the amount of all "liabilities of such Person, contingent or otherwise," as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, (d) such Person will be able to pay its debts as they mature and (e) such Person is not insolvent within the meaning of any applicable Law. For purposes of this definition, (i) "debt" shall mean liability on a "claim," and (ii) "claim" shall mean any (A) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB to which the Administrative Agent is subject with respect to the Eurodollar Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the FRB). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise Controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Substantial Portion” means, with respect to the property of the Borrower and its Subsidiaries, property that (a) represents more than 20% of the Consolidated Tangible Assets of the Borrower and its Subsidiaries as would be shown in the consolidated financial statements of the Borrower and its Subsidiaries as at the beginning of the twelve-month period ending with the month in which such determination is made or (b) is responsible for more than 20% of the consolidated net sales or of the Consolidated EBITDA of the Borrower and its Subsidiaries as reflected in the financial statements referred to in clause (a) above.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Synthetic Lease Obligation” means the monetary obligation of a Person under any lease (a) that is accounted for by the lessee as an operating lease and (b) under which the lessee is intended to be the “owner” of the leased property for Federal income tax purposes.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans.

“Trustee” means The Bank of New York Mellon, as trustee under the Indenture.

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“US Bank Credit Facility” means that certain Credit Agreement, dated as of July 31, 2015, by and among the Parent, as borrower, U.S. Bank National Association, as administrative agent, PNC Bank, National Association as co-syndication agents, Bank of America, N.A., as documentation agent, and the financial institutions from time to time party thereto as lenders, as amended, replaced and refinanced in whole or in part from time to time.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(III).

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

“Withholding Agent” means the Borrower and the Administrative Agent.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time

to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

**1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

**1.03 Accounting Terms.** Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders not to be unreasonably withheld or delayed); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

**1.04 Rounding.** Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**1.05 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

## **ARTICLE II. THE COMMITMENTS**

### **2.01 Loans.**

(a) Subject to the terms and conditions set forth herein, each Lender agrees, severally and not jointly, to make a Loan to the Borrower on the Closing Date in an amount equal to the Commitment of such Lender; and

(b) The Borrower may make only one borrowing under the Commitment, which shall be on the Closing Date. Any amount borrowed under this Section 2.01 and subsequently repaid or prepaid may not be reborrowed. Subject to Section 2.07 and Section 2.08, all amounts owed hereunder with respect to the Loans shall be paid in full no later than the Maturity Date. Each Lender's Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the funding of such Lender's Commitment on the Closing Date.

### **2.02 Borrowings, Conversions and Continuations of Loans.**

(a) The Borrower shall deliver to the Administrative Agent a fully executed Borrowing Notice no later than (x) one Business Day in advance of the proposed Borrowing Date in the case of Base Rate Loans and (y) three Business Days in advance of the proposed Borrowing Date in the case of Eurodollar Loans (or such shorter period as may be acceptable to the Administrative Agent). If no election as to the Type of Borrowing is specified in any such notice, then the requested Borrowing shall be a Base Rate Borrowing. If no Interest Period with respect to any Eurodollar Borrowing is specified in any such notice, then the Borrower shall be deemed to have selected an Interest Period of three month's duration. The Administrative Agent shall promptly advise the applicable Lenders of any notice given pursuant to this Section 2.02 (and the contents thereof), and of each Lender's portion of the requested Borrowing.

(b) Upon satisfaction or waiver of the conditions precedent specified herein, each Lender shall make its Loan available to the Administrative Agent not later than 1:00 p.m. (New York City time) on the applicable Borrowing Date by wire transfer of same day funds in Dollars, at the principal office designated by the Administrative Agent. Upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent shall make all funds so received immediately available to the Borrower on the applicable Borrowing Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by Administrative Agent from the Lenders to be transferred, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

### **2.03 Conversion and Continuation Options**

(a) The Borrower may elect from time to time to convert Eurodollar Loans to Base Rate Loans by giving the Administrative Agent prior irrevocable notice of such election not later than 11:00 a.m. (New York City time) one Business Day prior to the next Interest Period; provided that any such conversion of Eurodollar Loans may be made only on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert Base Rate Loans to Eurodollar Loans by giving the Administrative Agent prior irrevocable notice of such election (which notice shall specify the length of the initial Interest Period therefor) at least three Business Days prior to the next Interest Period; provided that no Base Rate Loan may be converted into a Eurodollar Loan (i) when any Default has occurred and is continuing, unless the Required Lenders have determined to permit such conversion, or (ii) after the date that is one month prior to the Maturity Date. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) The Borrower may elect to continue any Eurodollar Loan as such upon the expiration of the then current Interest Period with respect thereto by giving irrevocable notice to the Administrative Agent, in accordance with the applicable provisions of the definition of “Interest Period”, of the length of the next Interest Period to be applicable to such Loans; provided that no Eurodollar Loan may be continued as such (i) when any Default has occurred and is continuing, unless the Required Lenders have determined to permit such conversion, or (ii) after the date that is one month prior to the Maturity Date; provided, further, that if the Borrower shall fail to give any required notice as described above in this Section 2.03(b) or if such continuation is not permitted pursuant to the preceding proviso, such Loans shall be converted automatically to Base Rate Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

### **2.04 Minimum Amounts and Maximum Number of Eurodollar Borrowing**

Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions, continuations and optional prepayments of Eurodollar Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Eurodollar Borrowing shall be equal to \$1,000,000 or a whole multiple of \$500,000 in excess thereof and (b) no more than six Eurodollar Borrowings shall be outstanding at any one time.

## **2.05 Repayment of Loans.**

(a) The Borrower shall repay to the Administrative Agent (for the ratable account of each Lender) the aggregate principal amount of the Loans on each Scheduled Payment Date (commencing on March 31, 2017) in an amount equal to 0.25% of the total principal amount of the Loans; provided, however, that the final principal installment shall be repaid on the Maturity Date and in any event shall be in an amount equal to the aggregate principal amount of the Loans outstanding on such date.

(b) The Borrower shall repay to the Lenders with respect to any Extended Loans the aggregate principal amount of all Extended Loans of a given Extension Series outstanding on the date(s) and in the amounts specified in the applicable Extension Amendment.

## **2.06 Voluntary Prepayments.**

(a) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay the outstanding principal amount of Loans in whole or in part without premium or penalty (other than as set forth in Section 3.05 and Section 2.09) together with accrued interest to the date of such prepayment on the aggregate principal amount prepaid and any additional amounts required pursuant to Section 3.05; provided that (i) such notice must be received by the Administrative Agent not later than 1:00 p.m. (A) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that a notice of prepayment delivered by the Borrower may state that such notice is conditioned upon the effectiveness of the other credit facilities or instruments of Indebtedness or the occurrence of any other specified event, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such conditions are not satisfied. Subject to Section 2.16, each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.

## **2.07 Mandatory Prepayments.**

(a) Dispositions. No later than the fifth Business Day following the date of receipt by the Borrower of any Net Cash Proceeds of any Disposition (other than any Disposition permitted by Section 7.06(a), (b), (c), (d), (f), (h) or (i)) the Borrower shall prepay the Loans as set forth in Section 2.08(b) in an aggregate amount equal to such Net Cash Proceeds; provided that so long as no Default or Event of Default shall have occurred and be continuing, the Borrower shall have the option, directly or through one or more of its Subsidiaries that is a guarantor of the

Borrower's obligations hereunder, to invest such Net Cash Proceeds within 540 days of receipt thereof in long-term productive assets of the type used in the business of the Borrower or such Subsidiary. In the event that such Net Cash Proceeds are not reinvested by the Borrower prior to the last day of such 540 day period, the Borrower shall prepay the Loans in an amount equal to such Net Cash Proceeds as set forth in Section 2.08(b).

(b) Recovery Events. No later than the fifth Business Day following the date of receipt by the Borrower or the Administrative Agent as loss payee, of any Net Cash Proceeds of any Recovery Event, the Borrower shall prepay the Loans as set forth in Section 2.08(b) in an aggregate amount equal to such Net Cash Proceeds; provided that so long as no Default or Event of Default shall have occurred and be continuing, the Borrower shall have the option, directly or through one or more of its Subsidiaries that is a guarantor of the Borrower's obligations hereunder to invest such Net Cash Proceeds within 540 days of receipt thereof in long-term productive assets of the type used in the business of the Borrower or such Subsidiary, which investment may include the repair, restoration or replacement of the affected assets. In the event that such Net Cash Proceeds are not reinvested by the Borrower prior to the last day of such 540 day period, the Borrower shall prepay the Loans in an amount equal to such Net Cash Proceeds as set forth in Section 2.08(b).

(c) Issuance of Debt. No later than the third Business Day following the date of receipt by the Borrower or its Subsidiaries, if any, of any Net Cash Proceeds from any issuance of any preferred stock or issuance or sale of debt securities or instruments or the incurrence of Indebtedness by the Borrower or its Subsidiaries, if any, (other than with respect to any Indebtedness permitted to be incurred pursuant to Section 7.01 (other than any Credit Agreement Refinancing Indebtedness), the Borrower shall prepay the Loans as set forth in Section 2.08(b) in an aggregate amount equal to 100% of such Net Cash Proceeds.

(d) [Reserved].

(e) Any amounts required to be applied by the Borrower to the mandatory prepayment of Loans pursuant to Sections 2.07(a) or (b) may be applied pro rata as between the Loans, DP&L First Mortgage Bonds (other than the Series 2022 DP&L First Mortgage Bonds), any Permitted First Priority Refinancing Indebtedness, any secured Permitted Refinancing Indebtedness permitted pursuant to Sections 7.01(a) and (b) and 7.02(b) and Indebtedness secured by Liens permitted by Section 7.02(i) to the extent such other Indebtedness requires the application of such proceeds to the mandatory prepayment of principal incurred thereunder in accordance with the terms thereof.

(f) Prepayment Certificate. Concurrently with any prepayment of the Loans pursuant to Section 2.07(a) through Section 2.07(d), the Borrower shall deliver to the Administrative Agent a certificate of a Responsible Officer demonstrating (i) the calculation of the amount of the applicable Net Cash Proceeds and (ii) with respect to a prepayment pursuant to Sections 2.07(a) or (b), the allocation thereof among the Loans, DP&L First Mortgage Bonds (other than the Series 2022 DP&L First Mortgage Bonds), any Permitted First Priority Refinancing Indebtedness and any secured Permitted Refinancing Indebtedness permitted pursuant to Sections 7.01(a) and (b) and 7.02(b). In the event that the Borrower shall subsequently determine that the actual amount received exceeded the amount set forth in such



certificate, the Borrower shall promptly make an additional prepayment of the in an amount equal to such excess, and the Borrower shall concurrently therewith deliver to the Administrative Agent a certificate of a Responsible Officer demonstrating the derivation of such excess.

## **2.08 Application of Prepayments.**

(a) Application of Voluntary Prepayments. Any prepayment or purchase of any Loan pursuant to Section 2.06 shall be applied as specified by the Borrower in the applicable notice of prepayment.

(b) Application of Mandatory Prepayments. Any amount required to be paid pursuant to Section 2.07 shall be applied, *first*, in accordance with Section 2.07(e) and, *second*, to the scheduled installments of principal of the Loans in direct order of maturity of the remaining amortization payments.

## **2.09 Call Protection.**

In the event that a Repricing Transaction occurs on or prior to the date that is one year after the Closing Date, the Borrower shall pay to the Administrative Agent, for the ratable account of each Lender, a fee equal to 1.00% of the aggregate principal amount of the Loans subject to such Repricing Transaction. If, on or prior to the date that is one year after the Closing Date, all or any portion of the Loans held by any Lender are prepaid, repaid, refinanced, substituted or replaced pursuant to Section 10.13 as a result of, or in connection with, such Lender not agreeing or otherwise consenting to any waiver, consent or amendment in connection with a Repricing Transaction or acceleration, such prepayment, acceleration, repayment, refinancing, substitution or replacement will be made at 101.0% of the principal amount so prepaid, repaid, refinanced, substituted or replaced.

## **2.10 [Reserved].**

## **2.11 Interest.**

(a) Subject to the provisions of subsection (b) below, (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) Automatically, after the occurrence and during the continuance of an Event of Default described in Section 8.01(a), Section 8.01(g) or Section 8.01(h), (x) the Loans (whether or not overdue) shall bear interest at a rate per annum that is equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section 2.11 plus 2.00% and (y) any other Obligations shall bear interest at the rate specified herein plus 2.00% per annum, or if no such rate is specified, at the rate applicable to Base Rate Loans plus 2.00% per annum (the “Default Rate”), in each case, from the date of such Event of Default until such Event of Default is cured or waived.

(ii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

## **2.12 Fees.**

(a) The Borrower shall pay to the Arrangers and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letters and the Engagement Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever. The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified, such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(b) The Loans will be net funded with an original issue discount in an amount equal to 0.50% of the stated principal amount of Loans funded on the Closing Date (the “**Loan Discount**”), which Loan Discount shall be earned, due and payable in full on the Closing Date. The Loan Discount will be allocated ratably to each Lender and deducted from the proceeds of the Loans funded by each Lender on the Closing Date.

(c) The parties agree that for U.S. federal income tax purposes, the Loan Discount shall be treated as an amount giving rise to a reduction to the “issue price” of the Loans.

**2.13 Computation of Interest and Fees.** All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

## **2.14 Evidence of Debt.**

The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the

accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto. For the avoidance of doubt, the provisions of this Section 2.14 are not intended to conflict with, and shall in all cases be subject to, the provisions of Section 10.06(c).

## **2.15 Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the

Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent. Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the Closing Date set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

**2.16 Sharing of Payments by Lenders.** (a) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal or interest on any of the Loans made by it resulting in such Lender's receiving payment of a proportion of the aggregate principal amount of such Loans and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably

in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this Section shall apply).

(b) The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

## **2.17 Extension of Loans.**

(a) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, pursuant to one or more offers (each, a “Loan Extension Offer”) made from time to time by the Borrower to all Lenders on a pro rata basis (based on the aggregate outstanding principal amount of the respective Loans) and on the same terms to each such Lender, the Borrower may from time to time, with the consent of each Lender that shall have accepted such Loan Extension Offer, extend the Maturity Date of the Loans of each such Lender and otherwise modify the terms of such Loans pursuant to the terms of the relevant Loan Extension Offer (including, without limitation, by increasing the interest rate or fees payable in respect of such Loans and/or modifying the amortization schedule in respect of such Loans) (each, a “Loan Extension” and any Loans extended thereby, a “Loan Extension Series”), so long as the following terms are satisfied:

(i) no Default or Event of Default shall exist at the time the notice in respect of a Loan Extension Offer is delivered to the Lenders, and no Default or Event of Default shall exist immediately prior to or after giving effect to the effectiveness of any Extended Loans;

(ii) except as to interest rates, fees, amortization, final maturity date, premium, required prepayment dates and participation in prepayments (which shall, subject to Section 2.17(a)(iii), Section 2.17(a)(iv) and Section 2.17(a)(v), be determined by the Borrower and set forth in the relevant Loan Extension Offer), the Loans of any Lender that agrees to a Loan Extension with respect to such Loans (each, an “Extending”

Lender”) extended pursuant to any Loan Extension (“Extended Loans”) shall the same terms as the Loans originally subject to such Loan Extension Offer;

(iii) the final maturity date of any Loans shall be no earlier than the then Latest Maturity Date and at no time shall the Loans (including Extended Loans) have more than five different maturity dates;

(iv) the Weighted Average Life to Maturity of any Extended Loans shall be no shorter than the remaining Weighted Average Life to Maturity of the non-extended Loans;

(v) any Extended Loans may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any voluntary or mandatory repayments or prepayments hereunder, as specified in the applicable Loan Extension Offer;

(vi) if the aggregate principal amount of Loans (calculated on the face amount thereof) in respect of which Lenders shall have accepted the relevant Loan Extension Offer shall exceed the maximum aggregate principal amount of Loans (calculated on the face amount thereof) offered to be extended by the Borrower pursuant to such Loan Extension Offer, then the Loans of such Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Loan Extension Offer; and

(vii) all documentation in respect of such Loan Extension shall be consistent with the foregoing.

(b) With respect to all Loan Extensions consummated by the Borrower pursuant to this Section 2.17, (i) such Loans Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.06 and Section 2.07 and (ii) each Loan Extension Offer is required to be in any minimum amount of \$100,000,000 and in a multiple integral of \$50,000,000 in excess thereof.

(c) Each of the parties hereto hereby (i) agrees that this Agreement and the other Loan Documents may be amended to give effect to each Loan Extension (an “Extension Amendment”), without the consent of any Lenders other than extending Lenders, to the extent (but only to the extent) necessary to (A) reflect the existence and terms of the Extended Loans incurred pursuant thereto, (B) modify the prepayments set forth in Section 2.06 and Section 2.07 to reflect the existence of the Extended Loans and the application of prepayments with respect thereto and (C) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.17, and the Lenders hereby expressly and irrevocably, for the benefit of all parties hereto, authorize the Administrative Agent to enter into any such Extension Amendment and (ii) consent to the transactions contemplated by this Section 2.17 (including, for the avoidance of doubt, payment of interest, fees or premiums in respect of any Extended Loans on such terms as may be set forth in the relevant Extension Amendment).

Without limiting the foregoing, in connection with any Loan Extension, the Borrower shall (at its expense) amend (and the Collateral Agent is hereby directed to amend) any Bond Document that has a maturity date prior to the then Latest Maturity Date so that such maturity date is extended to the Latest Maturity Date after giving effect to such Extension (or such later date as may be advised by counsel to the Collateral Agent); provided, however, that any such amendment shall be in form and substance reasonably acceptable to the Administrative Agent.

(d) In connection with any Loan Extension, the Borrower shall provide the Administrative Agent at least 20 Business Days' (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.17.

(e) This Section 2.17 shall supersede any provisions in Sections 2.16, 10.01 or Section 10.06 to the contrary.

## **2.18 Defaulting Lenders.**

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 10.01, Section 10.06 or otherwise hereunder.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08, shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fourth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *fifth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made at a time

when the conditions set forth in Section 4.01 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the Commitments hereunder. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing that a Defaulting Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

### **ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY**

#### **3.01 Taxes.**

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made free and clear of and without reduction or withholding for any Taxes, except as required by applicable Law. If, however, applicable Laws require the applicable Withholding Agent to withhold or deduct any Tax (as determined in the good faith discretion of an applicable Withholding Agent), then the applicable Withholding Agent shall withhold or make such deductions as are determined by the applicable Withholding Agent to be required and shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with applicable Law. If such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including such deductions and withholdings applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrower. Without limiting or duplicating the provisions of subsection (a) above, the Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.



(c) Tax Indemnifications. (i) Without limiting or duplicating the provisions of subsection (a) or (b) above, the Borrower shall, and does hereby, indemnify each Recipient, and shall make payment in respect thereof within 15 days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount and basis for calculation of any such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 15 days after written demand therefor, (A) the Administrative Agent and the Collateral Agent, as applicable, against any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent or Collateral Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (B) the Administrative Agent and the Collateral Agent, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register, and (C) the Administrative Agent and the Collateral Agent, as applicable, against any Excluded Taxes attributable to such Lender, in each case that are payable or paid by the Administrative Agent or the Collateral Agent (and not deducted or withheld by the Collateral Agent or the Administrative Agent in connection with any Loan Document, as applicable, from any payment otherwise due hereunder to such Lender) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Collateral Agent or the Administrative Agent (as applicable) shall be conclusive absent manifest error. Each Lender hereby authorizes the Collateral Agent or the Administrative Agent to set off and apply any and all amounts at any time owing by the Administrative Agent or the Collateral Agent (as applicable) to such Lender under this Agreement or any other Loan Document otherwise payable by the Administrative Agent or the Collateral Agent (as applicable) to the Lender from any other source against any amount due to the Collateral Agent or the Administrative Agent (as applicable) under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent or the Collateral Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders; Tax Documentation. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Laws or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E (or W-8BEN if applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or W-8BEN if applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed copies of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN-E (or W-8BEN if applicable); or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN if applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments

made to FATCA after the date of this Agreement and for purposes of this Section 3.01 the term “applicable Laws” shall include FATCA.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund in respect of any Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses incurred by such Recipient and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Recipient agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. This subsection 3.01(f) shall not be construed to require the Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person. Notwithstanding anything to the contrary in this paragraph (f), in no event will the Administrative Agent or any Lender be required to pay any amount to the Borrower pursuant to this paragraph (f) the payment of which would place the Administrative Agent or such Lender in a less favorable net after-Tax position than the Administrative Agent or such Lender would have been in if the Taxes subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Taxes had never been paid.

**3.02 Illegality.** If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to perform its obligations hereunder or make, maintain or fund or charge interest with respect to any Loan, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Loan or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent in accordance with this Agreement without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans

(the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent in accordance with this Agreement without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender in accordance with this Agreement without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

**3.03 Inability to Determine Rates.** If in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a) the Administrative Agent determines that (i) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (ii) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan (in each case, with respect to clause (a)(i) above, “Impacted Loans”), or (b) the Required Lenders reasonably determine that for any reason the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loan or Interest Period), and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders in the case of clause (b) above) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods), or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (a)(i) of this section, the Administrative Agent, in consultation with the Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (a) of the first sentence of this section, (2) the Administrative Agent or the affected Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to

such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

### **3.04 Increased Costs; Reserves on Eurodollar Rate Loans.**

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e));

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender (except for Taxes);

and the result of any of the foregoing shall be to increase the cost to such Lender, by an amount which such Lender deems to be material in its sole discretion, of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the Eurodollar Rate, or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered; provided that such additional costs incurred and reductions suffered shall be determined by such Lender's reasonable allocation of the aggregate additional cost incurred or reduction suffered due to such events that are allocable to this Agreement. If the Borrower so notifies the Administrative Agent within five Business Days after any Lender notifies the Borrower of any additional cost incurred or reduction suffered pursuant to the foregoing provisions of this Section, the Borrower may convert all Eurodollar Rate Loans of such Lender then outstanding into Base Rate Loans in accordance with the terms hereof.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), by an amount deemed by such Lender to be material in its sole discretion, then from time to time, upon the request of such

Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered that such Lender reasonably determines is allocable to this Agreement.

(c) Certificates for Reimbursement. Each Lender shall notify the Borrower of any Change in Law that would entitle such Person to any amount under subsection (a) or (b) of this Section as soon as reasonably practicable and promptly thereafter deliver to the Borrower a written certificate setting forth the amounts due under such subsections and setting forth in reasonable detail the calculations upon which such amounts were determined. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurodollar Rate Loans. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which shall be due and payable on each date on which interest is payable on such Loan; provided that the Borrower shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

**3.05 Compensation for Losses.** Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurodollar Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurodollar Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

excluding any loss of anticipated profits and including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

### **3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrower, such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04 or gives a notice under Section 3.02, or if the Borrower is required to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 10.13.

**3.07 Survival.** All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.



## **ARTICLE IV. CONDITIONS PRECEDENT TO CLOSING DATE**

**4.01 Conditions of Closing Date.** The obligation of each Lender to make its Applicable Percentage of the Loans on the Closing Date is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies or electronic copies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the Borrower, as applicable, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement and each of the Bond Documents sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of the Borrower as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that the Borrower is duly organized or formed, and that the Borrower is validly existing, in good standing and qualified to engage in business in the jurisdiction where it is organized;

(v) a pledge and security agreement in substantially the form of Exhibit F hereto (the "Pledge and Security Agreement"), duly executed by the Borrower and the Collateral Agent together with:

(A) proper financing statements in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary in order to perfect and protect the first priority liens, subject to Permitted Liens, and security interests created under the Pledge and Security Agreement, covering the Pledged Collateral described in the Pledge and Security Agreement;

(B) completed requests for information, dated on or before the Closing Date, listing all effective financing statements filed in the jurisdictions referred to in clause (A) above that name the Borrower as debtor, together with copies of such other financing statements;

(C) evidence of the completion of all other recordings and filings of or with respect to the Pledge and Security Agreement that the Administrative Agent may deem necessary in order to perfect and protect the security interest created thereunder and payment of all filing and recording fees related thereto from the Loan proceeds; and

(D) the original Series 2022 DP&L First Mortgage Bonds, issued to the Collateral Agent for the ratable benefit of the Secured Parties;

(vi) written opinion(s) of counsel to the Borrower, addressed to the Administrative Agent and each Lender, in form and substance reasonably acceptable to the Administrative Agent;

(vii) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.01(e) and (f) have been satisfied and (B) the current Ratings;

(viii) evidence that the Series 2016 DP&L First Mortgage Bonds are being repaid concurrently with the receipt of the proceeds of the Loans; and

(ix) evidence that the conditions precedent to the effectiveness of the Bond Documents have been satisfied and all documentation thereof and required thereunder has been executed.

(b) Any fees required to be paid on or before the Closing Date shall have been paid to the extent invoiced at least two (2) Business Days prior to the Closing Date.

(c) Receipt by the Lenders of all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations requested by such Lender at least ten (10) days prior to the Closing Date.

(d) Unless waived by the Arrangers, and subject to the provisions of the Fee Letter and the Engagement Letter, the Borrower shall have paid all reasonable fees, charges and disbursements of counsel due to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced at least two (2) Business Days prior to the Closing Date and required to be paid pursuant to the Fee Letters or the Engagement Letter.

(e) The representations and warranties of the Borrower contained in Article V shall be true and correct in all material respects on and as of the Closing Date, except that (i) if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation or warranty shall be required to be true and correct in all respects, (ii) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date (except that if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation or warranty shall be required to be true and correct in all respects), (iii) for purposes of this Section 4.01, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(f) No Default shall exist, or would result from the proposed Borrowing or from the application of the proceeds thereof.

(g) The Borrower has all approvals, consents and authorizations from PUCO or any other Governmental Authority which are necessary or required in order to permit the Borrower to incur Obligations hereunder.

(h) The Administrative Agent shall have received a Borrowing Notice in accordance with the requirements hereof.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

## **ARTICLE V. REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

**5.01 Existence, Qualification and Power.** The Borrower (a) is duly organized, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.02 Authorization; No Contravention.** The execution, delivery and performance by the Borrower of each Loan Document, have been duly authorized by all necessary corporate action, and do not and will not (a) contravene the terms of any of the Borrower's Organization Documents; (b) conflict with or result in any contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which the Borrower is a party or the Borrower or the properties of the Borrower or any of its Subsidiaries is bound or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which the Borrower or its property is subject; or (c) violate any Law, except in any case referred to in clause (b) or (c), to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.03 Governmental Authorization; Other Consents.** No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Borrower of this Agreement or any other Loan Document, except for such approvals, consents, exemptions, authorizations, actions, notices and

filings that have been obtained or made on or before the Closing Date and are in full force and effect.

**5.04 Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by the Borrower. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, subject to Debtor Relief Laws and general equity and public policy principles.

**5.05 Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for Taxes, material commitments and Indebtedness (other than any liability incident to any litigation, arbitration or proceeding that could not reasonably be expected to have a Material Adverse Effect).

(b) The unaudited consolidated balance sheets of the Borrower and its Subsidiaries dated June 30, 2016, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, except as set forth on Schedule 5.05(c), there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

**5.06 Litigation.**

(a) Except as set forth on Schedule 5.06(a), there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries that (i) question the validity or the enforceability of the Loan Documents, or any action to be taken by the Borrower pursuant to any of the Loan Documents or (ii) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(b) No action, suit, proceeding or investigation has been instituted, or to the knowledge of the Borrower or any of its Subsidiaries, threatened, and no rule, regulation, order, judgment or decree has been issued or proposed to be issued by any Governmental Authority that, solely as a result of the incurrence of Obligations or the entering into this Agreement or any

other Loan Document or any transaction contemplated hereby or thereby, would cause or deem the Administrative Agent, any Lenders or any of their respective Affiliates to be subject to, or not exempted from, regulation under the FPA.

**5.07 No Default.** The Borrower and each Subsidiary are in full compliance with all material terms, covenants and conditions of each of its Contractual Obligations, except for any noncompliance that could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

**5.08 Ownership of Property.** The Borrower and each Subsidiary has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title or interest as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.09 Environmental Compliance.** The Borrower and each of its Subsidiaries is in compliance with all Environmental Laws governing its business, except to the extent that any such failure to comply (together with any resulting penalties, fines or forfeitures) would not reasonably be expected to have a Material Adverse Effect. All licenses, permits, registrations or approvals required for the conduct of the business of the Borrower and each of its Subsidiaries under any Environmental Law have been secured and the Borrower and each of its Subsidiaries is in substantial compliance therewith, except for such licenses, permits, registrations or approvals the failure to secure or to comply therewith is not reasonably likely to have a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries has received written notice, or otherwise knows, that it is in any respect in noncompliance with, breach of or default under any applicable writ, order, judgment, injunction, or decree to which the Borrower or such Subsidiary is a party or that would affect the ability of the Borrower or such Subsidiary to operate any real property and no event has occurred and is continuing that, with the passage of time or the giving of notice or both, would constitute noncompliance, breach of or default thereunder, except in each such case, such noncompliance, breaches or defaults as would not reasonably be expected to, in the aggregate, have a Material Adverse Effect. There are no claims under any Environmental Law pending or, to the best knowledge of the Borrower, threatened wherein an unfavorable decision, ruling or finding would reasonably be expected to have a Material Adverse Effect. There are no facts, circumstances, conditions or occurrences on any real property now or at any time owned, leased or operated by the Borrower or any of its Subsidiaries or on any Property adjacent to any such real property, that are known by the Borrower or as to which the Borrower or any such Subsidiary has received written notice, that could reasonably be expected: (i) to form the basis of an environmental claim against the Borrower or any of its Subsidiaries or any real property of the Borrower or any of its Subsidiaries; or (ii) to cause such real property to be subject to any restrictions on the ownership, occupancy, use or transferability of such real property under any Environmental Law, except in each such case where such claims or restrictions individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

**5.10 Insurance.** The properties of the Borrower and its Subsidiaries are insured pursuant to policies and other bonds which are valid and in full force and effect and which

provide adequate coverage from reputable and financially sound insurers in amounts sufficient to insure the assets and risks of the Borrower and each such Subsidiary in accordance with prudent business practice in the industry of such Borrower and Subsidiaries, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

**5.11 Taxes.** The Borrower and its Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all material Taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or the non-payment of which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, there is no proposed tax assessment against the Borrower or any Subsidiary that would, if made, have a Material Adverse Effect.

#### **5.12 ERISA Compliance.**

(a) Each Pension Plan of the Borrower and its Subsidiaries is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Neither the Borrower nor any Subsidiary has, or has at any time during the preceding six years had, an obligation to contribute to a Multiemployer Plan. Each Pension Plan of the Borrower and its Subsidiaries that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Pension Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Pension Plan of the Borrower and its Subsidiaries that could reasonably be expected to have a Material Adverse Effect. There has been no nonexempt prohibited transaction or violation of the fiduciary responsibility rules with respect to any Pension Plan of the Borrower and its Subsidiaries that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event with respect to any Pension Plan of the Borrower or its Subsidiaries has occurred, and neither the Borrower nor any Subsidiary is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any such Pension Plan except as could reasonably be expected individually or in the aggregate not to exceed \$50,000,000; (ii) the Borrower and each Subsidiary has met in all material respects all applicable requirements under the Pension Funding Rules in respect of each Pension Plan of the Borrower and its Subsidiaries, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan of the Borrower and its Subsidiaries, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and

neither the Borrower nor any Subsidiary knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such Pension Plan to drop below 60% as of the most recent valuation date; (iv) neither the Borrower nor any Subsidiary has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Borrower nor any Subsidiary has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan of the Borrower and its Subsidiaries has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any such Pension Plan.

(d) For the avoidance of doubt, references to “Pension Plan” and “Multiemployer Plan” in this Section 5.12 refer only to Pension Plans and Multiemployer Plans of the Borrower and its Subsidiaries and do not refer to the Pension Plans or Multiemployer Plans of other ERISA Affiliates of the Borrower and its Subsidiaries.

**5.13 Subsidiaries.** As of the Closing Date, the Borrower has no Subsidiaries.

**5.14 Margin Regulations; Investment Company Act; Federal Power Act.**

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940, as amended.

(c) None of the Borrower or any of its Subsidiaries, or any Affiliate of any of them, is subject to regulation under the FPA or under applicable state or other Laws respecting the rates or the financial or organizational regulation of electric utilities, as a result of the creation or incurrence of the Obligations or entering into this Agreement or any other Loan Document or the consummation of any transaction contemplated hereby or thereby.

**5.15 Disclosure.** No report, financial statement, certificate or other information (other than projections and forward-looking information and information of a general economic nature or industry nature) furnished by or on behalf of the Borrower to the Administrative Agent or any Lender in writing in connection with the transactions contemplated hereby or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein (when so furnished and taken as a whole), in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time; it being recognized by the Administrative Agent and the Lenders that such projections as to future events are not to be viewed as facts and that actual results during the

period or periods covered by any such projections may differ materially from the projected results.

**5.16 Compliance with Laws.** The Borrower and each Subsidiary is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**5.17 Intellectual Property; Licenses, Etc.** The Borrower and its Subsidiaries own, or possess the right to use, all of the material trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “IP Rights”) that are necessary for the operation of their respective businesses, without any known conflict with the rights of any other Person, except for any IP Rights or any conflicts that, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**5.18 Solvency.** The Borrower, both immediately before and immediately after the consummation of the transactions to occur on the Closing Date and immediately following the making of the Loans and after giving effect to the application of the proceeds of each Loan, will be and will continue to be Solvent.

**5.19 Employment Matters.** The Borrower is in compliance with all employment agreements, employment contracts, collective bargaining agreements and other agreements between the Borrower and its employees (collectively, “Labor Contracts”) and all applicable Federal, state and local labor and employment Laws including those related to equal employment opportunity and affirmative action, labor relations, minimum wage, overtime, child labor, medical insurance continuation, worker adjustment and retraining notices, immigration controls and worker and unemployment compensation, where the failure to comply would constitute a Material Adverse Effect. There are no outstanding grievances, arbitration awards or appeals therefrom arising out of the Labor Contracts or current or threatened strikes, picketing, handbilling or other work stoppages or slowdowns at facilities of the Borrower which in any case would constitute a Material Adverse Effect.

**5.20 OFAC.** Neither the Borrower, nor any of its Subsidiaries, nor, to the knowledge of the Borrower or any of its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individuals or entities that are (i) currently the subject or target of any Sanctions, (ii) included on OFAC’s List of Specially Designated Nationals, HMT’s Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

**5.21 Anti-Corruption Laws.** The Borrower and its Subsidiaries (a) have conducted their businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other applicable anti-corruption legislation in other jurisdictions and



(b) have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws. No Borrowing or use of proceeds of the Loans will violate the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 or any other similar anti-corruption legislation in other jurisdictions.

**5.22 PATRIOT Act, etc.** The Borrower is in compliance, in all material respects, with (a) Sanctions and (b) the Patriot Act, and the Borrower shall not use the proceeds of any Borrowing (x) for the purpose of funding, financing or facilitating any activities, business or transaction in violation of Sanctions, or (y) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

### **5.23 Rights in Collateral; Perfection.**

(a) The security interests granted pursuant to the Pledge and Security Agreement constitute a legal and valid security interest in favor of the Agent, for the benefit of the Secured Parties, securing the payment and performance of the Grantor's Secured Obligations and upon making of the filings and taking of the other actions set forth on Schedule 5.24, all filings and other actions necessary to perfect the security interests in the Pledged Collateral created under the Pledge and Security Agreement shall have been duly made or taken.

(b) The Borrower has properly delivered or caused to be delivered to the Collateral Agent all Pledged Collateral that requires perfection of the Liens and security interests described above by possession. All filings and other actions necessary to perfect the security interests in the Mortgaged and Pledged Property created under the Indenture have been duly made or taken.

(c) The Borrower is the legal and beneficial owner of the Collateral pledged by it free and clear of any Lien, other than Permitted Liens.

(d) No financing statement, mortgage or other public notice with respect to all or any part of the Pledged Collateral is on file or of record in any public office, except such as have been filed in favor of the Collateral Agent, for the benefit of the Secured Parties, pursuant to the Pledge and Security Agreement or as are permitted by this Agreement.

(e) Without limiting the foregoing, the Borrower has taken all actions necessary or desirable, including without limitation those specified in Section 5.23(b) to establish the Collateral Agent's "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Pledged Collateral constituting Certificated Securities (as defined in Section 8-102 of the UCC).

**5.24 Existing Liens.** Except for Liens permitted under Section 7.02, there are no Liens on the property or assets of the Borrower or its Subsidiaries.

## **ARTICLE VI. AFFIRMATIVE COVENANTS**

So long as any Loan or other Obligation relating solely to the payment of principal or interest on any Loan or fees payable hereunder shall remain unpaid or unsatisfied, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Subsidiary to:

**6.01 Financial Statements.** Deliver to the Administrative Agent and each Lender:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Borrower, a condensed consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related condensed consolidated statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such condensed consolidated statements to be audited and accompanied by a report and opinion of Ernst & Young LLP or another independent certified public accountant of nationally recognized standing selected by the Borrower in its sole discretion, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like material qualification or exception or any material qualification or exception as to the scope of such audit; and

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, a condensed consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, the related condensed consolidated statements of income or operations for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, and the related condensed consolidated statements of cash flows for the portion of the Borrower's fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, such condensed consolidated statements to be certified by a Responsible Officer of the Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to Section 6.02(c), the Borrower shall not be separately required to furnish such information under clause (a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in clauses (a) and (b) above at the times specified therein.

**6.02 Certificates; Other Information.** Deliver to the Administrative Agent and each Lender:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower (which delivery may, unless the Administrative Agent, or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes);

(b) promptly after the same are filed with the SEC, copies of all proxies which the Borrower may file with the SEC under Section 14(a) of the Exchange Act and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file with the SEC under Section 13 or 15(d) of the Exchange Act, and not otherwise required to be delivered to the Administrative Agent pursuant hereto; and

(c) promptly, such additional information regarding the business, financial or corporate affairs of the Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(b) or (c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts (or electronically delivers) such documents, or provides a link thereto on the Borrower's website on the Internet at one or more of the website addresses listed on Schedule 10.02; (ii) on which such documents are posted to the SEC's website at [www.sec.gov](http://www.sec.gov) or (iii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent).

The Borrower hereby acknowledges that (a) the Administrative Agent and/or any Arranger will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, SyndTrak or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that (w) all Borrower Materials provided by the Borrower to the Administrative Agent and/or any Arranger, which are to be made available to Public Lenders, shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, each Arranger and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and each Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

**6.03 Notices.** Promptly, after a Responsible Officer of the Borrower has knowledge thereof, notify the Administrative Agent and each Lender:

- (a) of the occurrence of any Default;
- (b) of any (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or

proceeding affecting the Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws, in each case under any of the foregoing clauses (i), (ii) and (iii) where such event could reasonably be expected to have a Material Adverse Effect;

- (c) of the occurrence of any ERISA Event;
- (d) of any material change in accounting policies or financial reporting practices by the Borrower or any Subsidiary;
- (e) of any amendment to the Organization Documents of the Borrower filed by the Borrower in the applicable office in the jurisdiction where it is organized; and
- (f) any Rating change.

Each notice pursuant to this Section 6.03 (other than Sections 6.03(d), (e) and (f)) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document known by such Responsible Officer to have been breached.

**6.04 Payment of Taxes and Claims.** Pay and discharge prior to the date on which penalties attach thereto, (a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, and (b) all lawful claims which, if unpaid, would by law become a Lien upon its property not permitted hereunder, in each case unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary or, in the case of clause (b), the failure to pay or discharge could not reasonably be expected to result in a Material Adverse Effect.

**6.05 Preservation of Existence, Etc.** (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.03 or 7.04; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06 Maintenance of Properties.** (a) Maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof, except in the case of clauses (a) and (b) where the failure to do so could not reasonably be expected to have a Material Adverse Effect (it being understood that this covenant relates to only to the good working order and repair of such property and equipment and shall not be construed as a covenant not dispose of any such property or equipment by sale, lease, transfer or otherwise or to discontinue operation thereof to the extent not prohibited under this Agreement).

**6.07 Maintenance of Insurance.** Maintain insurance coverage by such insurers and in such forms and amounts and against such risks as are generally consistent with the insurance coverage maintained by the Borrower and its Subsidiaries at the date hereof, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

**6.08 Compliance with Laws.** Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its property (including, without limitation, Environmental Laws, ERISA and taxation laws), except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.09 Compliance with Material Contractual Obligations.** Comply in all material respects with the requirements of all agreements or instruments applicable to it or to its property, except in such instances in which the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.10 Books and Records.** Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made in all material respects of all financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be.

**6.11 Inspection Rights.** Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect (but not to conduct invasive sampling of environmental media or building materials) any of its material properties, and to discuss its affairs, finances and accounts with its executive officers and independent public accountants (provided that the Borrower shall be permitted to attend any such discussions with such accountants) and, if a Default exists, to examine its books of records and account and make copies thereof or abstracts therefrom, all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided, however, that unless an Event of Default has occurred and is continuing, the Borrower shall not be required to permit more than one such visit, inspection or examination during any calendar year. All costs and expenses incurred by the Administrative Agent or any Lender in connection with any of the foregoing shall be paid by the Administrative Agent or such Lender, as the case may be, unless an Event of Default shall have occurred and be continuing at the time such costs and/or expenses are incurred, in which case all such costs and expenses shall be paid by the Borrower. Subject to the proviso above, in the event any Lender desires to visit and inspect the Borrower or any of its Subsidiaries, such Lender shall make a reasonable effort to conduct such visit and inspection contemporaneously with any visit and inspection to be performed by the Administrative Agent or another Lender. Notwithstanding anything to the contrary in this Section 6.10, neither the Borrower nor any of its Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to the Administrative Agent (or its representatives) or any Lender (or its representatives) is prohibited by Law or (c) is subject to attorney-client or similar privilege or constitutes attorney work product.

**6.12 Use of Proceeds.** Use the proceeds of the Loans to repay and indefeasibly discharge the Series 2016 DP&L First Mortgage Bonds and pay any fees, costs and expenses incurred in connection therewith.

**6.13 Senior Debt.** Ensure that (a) the claims of the Administrative Agent and the Lenders in respect of the Obligations of the Borrower will not be subordinate to, and will in all respects rank at least *pari passu* with or senior to, the claims of every secured creditor of the Borrower, and (b) any Indebtedness of the Borrower that is subordinated in any manner to the claims of any other senior creditor of the Borrower will be subordinated in like manner to such claims of the Administrative Agent and the Lenders.

**6.14 Anti-Corruption Laws.** Conduct its businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions, and maintain policies and procedures designed to promote and achieve compliance with such laws.

**6.15 Maintenance of Ratings.** At all times, use commercially reasonable efforts to maintain corporate family ratings and ratings with respect to its senior secured debt issued by at least two Rating Agencies (but in each case not to maintain a specific rating).

**6.16 Lender Calls.** Participate in semi-annual conference calls with the Administrative Agent and the Lenders, such calls to be held at such time as may be agreed to by the Borrower and the Administrative Agent, but in any event not later than the date which is 10 Business Days after (x) the annual financial statements are to be delivered pursuant to Section 6.01(a) and the (y) the quarterly financial statements for the fiscal quarter ending June 30 are to be delivered pursuant to Section 6.01(b); provided, however, that such calls shall not commence until after the filing of the Borrower's financial statements for the fiscal year ending on December 31, 2016 with the SEC.

**6.17 Further Assurances.** Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's properties, assets, rights or interests to the Liens now or hereafter intended to be covered by the Indenture and the Pledge and Security Agreement, (iii) perfect and maintain the validity, effectiveness and priority of any of the Indenture and the Pledge and Security Agreement, respectively, and any of the Liens intended to be created under each such agreement and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Lenders and Agents the rights granted or now or hereafter intended to be granted to the Lenders and Agents under the Pledge and Security Agreement or under any other instrument executed in connection with the Pledge and Security Agreement to which the Borrower or any of its Subsidiaries is or is to be a party.

## ARTICLE VII. NEGATIVE COVENANTS

So long as any Lender shall have any Loan or other Obligation relating solely to the payment of principal or interest on any Loan or fees payable hereunder shall remain unpaid or unsatisfied, the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

**7.01 Indebtedness.** Create, incur, assume or permit to exist any Indebtedness, except:

- (a) Indebtedness created hereunder and Credit Agreement Refinancing Indebtedness;
- (b) Indebtedness (i) existing on the date hereof and set forth in Schedule 7.01, and Permitted Refinancing Indebtedness in respect thereof and (ii) without duplication, up to \$200,000,000 in aggregate principal amount of Indebtedness under the Existing Revolving Credit Agreement or any amendment thereto or any Permitted Refinancing in respect thereof;
- (c) Indebtedness of the Borrower incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; provided that (i) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (c) shall not exceed, (x) prior to the consummation of the Separation Transactions, \$150,000,000 and (y) after the consummation of the Separation Transactions, \$100,000,000, in each case, at any time outstanding;
- (d) to the extent constituting Indebtedness, contingent obligations under or in respect of performance bonds, bid bonds, appeal bonds, surety bonds, financial assurances and completion guarantees, indemnification obligations, obligations to pay insurance premiums, take or pay obligations and similar obligations in each case incurred in the ordinary course of business and not in connection with Indebtedness for borrowed money (which shall include under acceptance, letter of credit or similar facilities)
- (e) to the extent constituting Indebtedness, payment obligations under Swap Contracts incurred in the ordinary course of business and consistent with prudent business practice);
- (f) to the extent constituting Indebtedness, Indebtedness of the Borrower arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services in the ordinary course of business; provided that such Indebtedness is extinguished within 10 Business Days of its incurrence;
- (g) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts; and
- (h) other unsecured Indebtedness in an aggregate principal amount not exceeding \$25,000,000 at any time outstanding.

**7.02 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document or securing obligations in respect of Credit Agreement Refinancing Indebtedness permitted to be incurred under this Agreement;

(b) Liens existing on the date hereof and listed on Schedule 7.02 and Liens securing any Permitted Refinancing Indebtedness in respect thereof, provided that the aggregate principal amount of Indebtedness secured or benefited thereby is not increased except as contemplated by clause (i) of the definition of “Permitted Refinancing Indebtedness”;

(c) Liens for Taxes, assessments or charges or levies on property not yet delinquent or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained in accordance with GAAP;

(d) Liens imposed by law, such as carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or other like Liens arising in the ordinary course of business which do not secure obligations overdue for a period of more than 60 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained;

(e) Liens, pledges or deposits in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other social security legislation, other than Liens imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, indemnity or performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, zoning, restrictions or other similar encumbrances or imperfections in title and obligations contained in similar instruments and prior rights of other Persons which, do not materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries or could not reasonably be expected to have a Material Adverse Effect;

(h) Liens securing judgments, decrees or attachments not constituting an Event of Default under Section 8.01(i);

(i) Liens securing up to \$200,000,000 in aggregate principal amount of Indebtedness under the Existing Revolving Credit Agreement or any amendment thereto or any Permitted Refinancing in respect thereof;

(j) Liens on property of the Borrower in connection with collateralized pollution control bonds;

(k) Liens on property of the Borrower and its Subsidiaries in connection with (i) any construction project or generating plant as security for any Indebtedness incurred for the purpose of financing all or part of such construction project or generating plant, and in each case, Liens



and charges incidental thereto; provided that the aggregate amount of Indebtedness secured by Liens permitted pursuant to this clause (k)(i) shall not exceed \$50,000,000 at any time outstanding and (ii) security for any Indebtedness incurred for the purpose of financing capital improvements for any generating plant owned by the Borrower or its Subsidiaries which the Borrower or such Subsidiary reasonably deems as necessary or advisable in order to comply with Laws; provided that the aggregate amount of Indebtedness secured by Liens pursuant to clause (k)(i) and this clause (k)(ii) shall not exceed, (x) prior to the consummation of the Separation Transactions, \$150,000,000 and (y) after the consummation of the Separation Transactions, \$100,000,000, in each case, at any time outstanding;

(l) banker's liens and rights of setoff arising by operation of law and contractual rights of setoff;

(m) leases or subleases granted in the ordinary course of business to others not interfering in any material respect with the business of the Borrower or its Subsidiaries and any interest or title of a lessee under any lease not in violation of this Agreement;

(n) purported Liens evidenced by the filing of precautionary Uniform Commercial Code financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(o) the right reserved to, or vested in, any municipality or public authority by the terms of any right, power, franchise, grant, license or permit, or any provision of law, to purchase or capture or designate a purchaser of any property;

(p) Liens with respect to cash collateral deposited by the Borrower and its Subsidiaries with counterparties in the ordinary course of the Borrower and its Subsidiaries' purchase and sale of energy, power, interest rate hedges, coal and other commodities;

(q) Liens arising from the rights of lessors under leases (including financing statements regarding property subject to such lease) permitted under this Agreement; provided that such Liens are only in respect of property subject to, and secure only, the respective lease (and any other lease with the same or affiliated lessor);

(r) any Lien (i) existing on any property at the time such property is acquired by the Borrower or any of its Subsidiaries or on any property of any Person at the time such Person becomes, or is merged into, a Subsidiary of the Borrower; provided that (A) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming, or being merged into, such Subsidiary, as the case may be, (B) such Lien shall not attach or apply to any other property or assets of the Borrower or any of its Subsidiaries, and (C) such Lien shall secure only those obligations that it secures on the date of such acquisition or the date such Person becomes, or is merged into, such Subsidiary, as the case may be, and any extension, renewal, refunding or refinancing thereof, so long as the aggregate principal amount so extended, renewed, refunded or refinanced is not increased, or (ii) securing Indebtedness in respect of purchase money obligations for the acquisition, lease, construction or improvement of fixed assets or Capitalized Lease Obligations, provided that (A) such Lien only attaches to such fixed assets being acquired, leased, constructed or improved and (B) the Indebtedness secured by such

Lien does not exceed the cost or fair market value, whichever is lower, of the fixed assets being acquired, leased, constructed or improved on the date of acquisition, lease, construction or improvement; provided that the aggregate principal amount of Indebtedness at any time outstanding secured by a Lien described in this subsection (r) shall not exceed an amount equal to 5% of the Consolidated Tangible Assets at such time; and

(s) Liens, in addition to those listed above, securing Indebtedness and other obligations in an aggregate amount at any time not exceeding \$25,000,000.

**7.03 Investments.** Make any Investments, except:

(a) Investments held by the Borrower or such Subsidiary in the form of cash, cash equivalents or other Short Term Investments;

(b) loans and advances to officers, directors and employees of the Borrower or any of its Subsidiaries in an aggregate amount not to exceed \$10,000,000 at any time outstanding, for travel, entertainment, relocation, payroll, office equipment, tuition and analogous ordinary business purposes;

(c) Investments of the Borrower permitted by Section 7.05 in any Subsidiary and Investments of any Subsidiary in the Borrower or in another Subsidiary;

(d) Permitted Acquisitions in an amount not to exceed \$150,000,000 in the aggregate during the term of this Agreement;

(e) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and Investments in account debtors received in connection with a proceeding under any Debtor Relief Laws in settlement of the obligations of account debtors;

(f) Promissory notes, earn-outs, other contingent payment obligations and other non-cash consideration received by the Borrower or any of its Subsidiaries as partial payment of the total consideration of any Disposition made in accordance with Section 7.06(f);

(g) Guarantees of the Borrower or any Subsidiary in respect of (i) Indebtedness of the Borrower or any Subsidiary permitted under this Section 7.03 and (ii) ordinary course of business obligations of the Borrower or any Subsidiary that do not constitute Indebtedness;

(h) Investments comprised of the purchase of receivables from other energy marketers as required from time to time by one or more applicable Governmental Authorities;

(i) Investments existing on the date hereof and set forth on Schedule 7.03;

(j) [Reserved];

(k) other Investments not otherwise permitted hereunder in an amount not to exceed \$25,000,000, in the aggregate at any time outstanding;

(l) Investments which may be necessary or advisable to complete the Separation Transactions; and

(m) any Investment made by a captive insurance company Subsidiary that is a legal investment for an insurance company under the laws of the jurisdiction in which such captive insurer is formed and made in the ordinary course of business.

**7.04 Fundamental Changes.** Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

(a) any Subsidiary may merge, dissolve, liquidate or consolidate with or into (i) the Borrower, provided that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that if such Subsidiary was a guarantor of the Borrower's Obligations hereunder, such surviving or continuing Subsidiary shall become a guarantor of the Obligations hereunder;

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Subsidiary; provided that if the transferor in such a transaction is a wholly-owned Subsidiary, then the transferee must either be the Borrower or a wholly-owned Subsidiary; provided that if such Subsidiary was a guarantor of the Borrower's Obligations hereunder, such transferee Subsidiary shall become a guarantor of the Obligations hereunder;

(c) any Subsidiary may merge with any Person (other than the Borrower or a Subsidiary) in a transaction permitted by Section 7.02(d); provided that (i) the Subsidiary shall be the continuing or surviving Person, (ii) immediately before and after such merger there shall not exist any Default or Event of Default and (iii) if such Subsidiary was a guarantor of the Borrower's Obligations hereunder, such surviving or continuing Subsidiary shall become a guarantor of the Obligations hereunder;

(d) the Borrower and any Subsidiary may liquidate or dissolve (i) Immaterial Subsidiaries, so long as all Immaterial Subsidiaries liquidated or disposed of pursuant to this Section 7.04(d) do not exceed 5% of the Consolidated Tangible Assets of the Borrower and its Subsidiaries in the aggregate during the term of this Agreement and (ii) Persons whose assets are sold in a Disposition permitted by Section 7.06;

(e) the Borrower or any of its Subsidiaries may conduct any such transactions which may be necessary or advisable to complete the Separation Transactions;

(f) the Borrower may merge with any Person (other than a Subsidiary) in a transaction permitted by Section 7.03(d); provided that (i) the Borrower shall be the continuing or surviving Person and (ii) immediately before and after such merger there shall not exist any Default or Event of Default; and

(g) the Borrower and any Subsidiary may make dispositions of all or substantially all of the assets of a Subsidiary that do not constitute all or substantially all of the assets of the Borrower and its Subsidiaries taken as a whole in a transaction permitted by Section 7.06.

**7.05 Subsidiaries.** Create, acquire or permit to exist any Subsidiaries or become a limited partner or general partner in any partnership, a member in any limited liability company or venturer in any joint venture, except in connection with (a) a Permitted Acquisition or (b) as may be necessary or advisable to complete the Separation Transaction; *provided* that any Subsidiary created or acquired pursuant to clause (a) becomes a guarantor of the Obligations hereunder.

**7.06 Dispositions.** Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of surplus, obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions of inventory in the ordinary course of business;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions of property by any Subsidiary to the Borrower or to a wholly-owned Subsidiary; provided that if such transferor Subsidiary is a guarantor of the Borrower's Obligations hereunder, such transferee Subsidiary shall become a guarantor of the Obligations hereunder;

(e) Dispositions permitted by Sections 7.02, 7.03 and 7.04;

(f) Dispositions, individually or in a series of related transactions, of property having a fair market value of less than \$5,000,000 individually;

(g) Dispositions by the Borrower or any of its Subsidiaries not otherwise permitted under this Section 7.05 so long as (A) the aggregate amount (based upon the fair market value of the assets) of all property sold or otherwise disposed pursuant to all such Dispositions on and after the Closing Date at the time of and after giving effect to any such Disposition does not constitute a Substantial Portion of the property of the Borrower or any of its Subsidiaries, (B) at least 75% of the total consideration received by the Borrower or any of its Subsidiaries, as applicable, for such Disposition or series of Dispositions consists of cash or cash equivalents and (C) the Borrower complies with the provisions of Section 2.07(a), (e) and (f) and Section 2.08(b) with respect to each such Disposition;

(h) Dispositions necessary or advisable to complete the Separation Transactions; and

(i) Dispositions of interests held by the Borrower or any of its Subsidiaries in electricity generating units to tenants-in-common (or Affiliates thereof) in exchange for reasonably equivalent tenants-in-common interests in other electricity generating units.

provided, however, that any Disposition pursuant to this Section 7.06 shall be for fair market value.

**7.07 Change in Nature of Business.** Engage in any business if, as a result, the general nature of the business, taken on a consolidated basis, that would then be engaged in by the Borrower and its Subsidiaries would be substantially changed from the general nature of the business engaged in by the Borrower and its Subsidiaries on the Closing Date or would result in the Borrower and its Subsidiaries becoming an EEA Financial Institution; provided that the foregoing restriction shall not prohibit actions necessary or advisable to complete the Separation Transactions.

**7.08 Transactions with Affiliates.** Enter into any transaction of any kind with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate; provided that the foregoing restriction shall not apply to (a) transactions between or among the Borrower and any of its Subsidiaries that are guarantors of the Borrower's obligations hereunder or between and among any Subsidiaries; provided that if any of such Subsidiaries is a guarantor of the Borrower's obligations hereunder, this clause (a) shall only apply to (x) transactions which each such Subsidiary is also a guarantor of the Borrower's obligation hereunder and (y) transactions in which none of such Subsidiaries is a guarantor, (b) agreements and transactions with and payments to officers, directors and shareholders that are either (i) entered into in the ordinary course of business and not prohibited by any of the provisions of this Agreement or (ii) entered into outside the ordinary course of business, approved by the directors or shareholders of the Borrower, and not prohibited by any of the provisions of this Agreement, (c) the issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock option and stock ownership plans or similar employee benefit plans and other compensation arrangements with respect to the procurement of services with their respective officers and employees, and any employment agreements entered into by Borrower or any Subsidiary, in each case approved by the Borrower or any Subsidiary in good faith, (d) actions necessary or advisable to complete the Separation Transactions, (e) that certain Services Agreement, dated December 23, 2013 (effective January 1, 2014), among AES US Services, LLC, the DPL, and certain affiliates thereof, for the provision of various services to the Borrower including accounting, legal, human resources, information technology and similar services, and any amendment thereto, (f) any agreements between the Borrower and an Affiliate necessary or advisable in assisting the Borrower's operations as a result of the Separation Transactions and any amendments thereto or (g) leases of real property, easements and licenses granted to Affiliates at the site of the Tait Generating Station located in City of Moraine, State of Ohio.

**7.09 Swap Agreements.** Enter into any Swap Contract other than any Swap Contract entered into by such Person pursuant to which such Person has hedged its reasonably estimated

interest rate, foreign currency or power and other commodity exposure, and not for speculative purposes.

**7.10 Use of Proceeds.** Use the proceeds of any Loans, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.11 Accounting Changes.** Make any change in its fiscal year.

**7.12 Series 2022 DP&L First Mortgage Bonds.**

Cast any vote or take any other action taken which, would impair the Pledged Collateral or which would be inconsistent with or result in any violation of any provision of this Agreement or any other Loan Document; *provided* that the Borrower shall be permitted to exercise all voting and corporate rights in order to effectuate the Separation Transaction.

**7.13 Limitation on Prepayments; Modifications of Debt Instruments.**

(a) Make or offer to make (or give any notice in respect thereof) any optional or voluntary payment, prepayment, repurchase or redemption of, or voluntarily or optionally defease, or otherwise satisfy prior to the scheduled maturity thereof in any manner, any Junior Indebtedness, or segregate funds for any such payment, prepayment, repurchase, redemption or defeasance, except:

(i) any Permitted Refinancing Indebtedness in respect thereof; and

(ii) the Borrower may convert any Junior Indebtedness to Qualified Equity Interests of the Parent; or

(b) amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of any Junior Indebtedness, if, after giving effect to such amendment, modification, waiver, change or consent, the obligors with respect to such Junior Indebtedness would not have been permitted to incur, guarantee or secure such Junior Indebtedness, pursuant to the terms hereof if such Junior Indebtedness, as amended, modified, waived or otherwise changed, was instead incurred, guaranteed or secured as Permitted Refinancing Indebtedness in respect of such Junior Indebtedness;

**7.14 Sales and Leasebacks.** Directly or indirectly, become or remain liable as lessee or as a guarantor or other surety, with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which the Borrower (i) has sold or transferred or is to sell or to transfer to any other Person, or (ii) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by the Borrower to any Person in connection with such lease.

## ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES

**8.01 Events of Default.** Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or (ii) within five days after the same becomes due, any interest on any Loan, any fee due hereunder or under any other Loan Document or any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.05, 6.12 or 6.13 or Article VII; or

(c) Additional Covenants. The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03(a) or (b), 6.07, 6.10, 6.11 or 6.17 and such failure continues for fifteen (15) days; or

(d) Other Defaults. The Borrower fails to perform or observe any other covenant or agreement (not specified in subsection (a), (b) or (c) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after notice thereof from the Administrative Agent to the Borrower; or

(e) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect (except that if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation or warranty shall be required to be true and correct in all respects) when made or deemed made; or

(f) Cross-Default. (i) The Borrower or any Subsidiary (A) defaults in any payment (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise and after applicable notices have been given and grace periods have expired) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate outstanding principal amount (including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$50,000,000, or (B) defaults in the performance of any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto (after all applicable notices have been given and grace periods have expired), or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required and after all applicable grace periods have expired, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded, except with respect to the financial maintenance covenants contained in the Existing Revolving Credit Agreement or any amendment thereto or any Permitted Refinancing thereof or in the Bond Purchase and Covenants

Agreement or any amendment thereto or any Permitted Refinancing thereof, (ii) a default or event of default shall occur under any Indebtedness or Guarantee if that default results in the acceleration of such Indebtedness prior to its stated maturity or such Guarantee becoming payable or cash collateral in respect thereof being demanded, and, in each case, the principal amount of any such Indebtedness or Guarantee exceeds \$50,000,000 in the aggregate; or (iii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Borrower or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Borrower or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Borrower or such Subsidiary as a result thereof is greater than \$50,000,000; or

(g) Insolvency Proceedings, Etc. The Borrower or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 consecutive calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 consecutive calendar days, or an order for relief is entered in any such proceeding; or

(h) Inability to Pay Debts. The Borrower or any Subsidiary becomes unable or admits in writing its inability to pay its debts as they become due; or

(i) Judgments. There is entered against the Borrower or any Subsidiary (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding \$50,000,000 (to the extent not covered by third-party insurance as to which the insurer does not dispute coverage), and (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(j) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted in liability of the Borrower under Title IV of ERISA to the Pension Plan, a Multiemployer Plan or the PBGC in an aggregate amount in excess of \$50,000,000, and the Borrower or any ERISA Affiliate fails to make any payment in satisfaction of such liability after the expiration of any applicable grace period, in accordance with applicable law or any agreement entered into in respect thereof, (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$50,000,000 or (iii) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which could reasonably be expected to result in a Material Adverse Effect; or



(k) Invalidity of Loan Documents. Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or the Borrower or any of its Affiliates contests in any manner the validity or enforceability of any Loan Document; or the Borrower denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(l) Change of Control. There occurs any Change of Control, other than a Change of Control resulting from the pledge (but not the foreclosure, any transfer-in-lieu of foreclosure or any other transfer except as collateral security) by AES or a subsidiary of AES of any equity interest in the Parent or the Borrower to secure its corporate obligations.

(m) Loss of Lien Collateral. (i) The Pledge and Security Agreement or any Bond Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof) or shall be declared null and void, (ii) the Borrower shall contest the validity or enforceability of any Loan Document in writing or deny in writing that it has any further liability under any Loan Document to which it is a party or shall contest the validity or perfection of any Lien on any Collateral purported to be covered by the Pledge and Security Agreement or the Indenture, (iii) the Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Pledged Collateral purported to be covered by the Pledge and Security Agreement with the priority required by Section 4.01(a)(v), or (iv) the Trustee shall not have or shall cease to have a valid and perfected Lien in any material portion of the Mortgaged and Pledged Property purported to be covered by the Indenture with the priority required by the Indenture.

**8.02 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(b) exercise on behalf of itself and the Lenders all rights and remedies available to it, the Lenders under the Loan Documents;

provided, however, that upon the occurrence of an Event of Default described in Section 8.01(g), the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable without further act of the Administrative Agent or any Lender.

**8.03 Application of Funds.** After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.15 and 2.16, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent to the extent required to be reimbursed hereunder and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders to the extent required to be reimbursed hereunder and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

## **ARTICLE IX. ADMINISTRATIVE AGENT AND COLLATERAL AGENT**

**9.01 Appointment and Authority.** Each of the Lenders hereby irrevocably appoints JPMorgan Chase Bank, N.A., to act on its behalf as the Administrative Agent and as the Collateral Agent (collectively, the (“Agents”) hereunder and under the other Loan Documents and authorizes the Agents to take such actions on its behalf and to exercise such powers as are delegated to the Agents by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agents and the Lenders, and the Borrower shall not have rights as a third party beneficiary of any of such provisions, except as provided in Section 9.06. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Agents is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

**9.02 Rights as a Lender.** The Person serving as the Agents hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as such Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders.

**9.03 Exculpatory Provisions.** The Agents shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agents:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that such Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity; and

(d) shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Persons. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or prospective Lender is a Disqualified Person or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Person.

No Agent shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agents shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) and (ii) in the absence of its own gross negligence or willful misconduct. The Collateral Agent shall not be liable for any action taken by it or at the direction of the Administrative Agent. Neither Agent shall be deemed to have knowledge of any Default unless and until notice describing such Default is given to such Agent by the Borrower or a Lender.

Neither Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the

occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, except as it relates to enforceability against such Agent or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent.

**9.04 Reliance by Agents.** The Agents shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agents also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Agents may presume that such condition is satisfactory to such Lender unless the Agents shall have received notice to the contrary from such Lender prior to the making of such Loan. The Agents may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05 Delegation of Duties.** The Agents may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by such Agent. The Agents and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of such Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as such Agent. No Agent shall be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

**9.06 Resignation of Agents.**

(a) Each Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, to appoint a successor, which shall be a commercial bank organized and licensed under the laws of the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after such retiring Agent gives notice of its resignation, then such retiring Agent may on behalf of the Lenders, with the prior written consent of the Borrower (so long as no Event of Default has occurred and is continuing), appoint a successor Agent meeting the qualifications set forth above; provided that if such Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) such retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by

such Agent on behalf of the Lenders under any of the Loan Documents, such retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through such Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as an Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of such retiring (or retired) Agent, and such retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section), except for its obligations under Section 10.07. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After such retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while such retiring Agent was acting as an Agent.

**9.07 Non-Reliance on Agents and Other Lenders.** Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Managing Agents, the Arrangers or Joint Book Runners listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as an Agent or a Lender hereunder.

**9.09 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

## ARTICLE X. MISCELLANEOUS

**10.01 Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any previously terminated Commitment);

(b) (i) release all or substantially all of the Collateral (except as permitted by Section 7.06) without the written consent of each Lender or (ii) instruct the Collateral Agent to vote the Series 2022 DP&L First Mortgage Bonds in favor of the release of all or substantially all of the Mortgaged and Pledged Property without the written consent of each Lender (it being agreed that the Separation Transactions do not constitute a such a release);

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (iii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate or (ii) to amend or waive compliance with any covenant hereunder (or any defined term used therein) even if the effect of

such amendment or waiver would be to reduce the rate of interest on any Loan or to reduce any fee payable hereunder;

(e) change Section 2.16 or 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender; or

(f) change any provision of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

and, provided further, that (i) the Fee Letters may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; and (ii) the Administrative Agent may, with the written consent of the Borrower, amend, modify or supplement this Agreement to cure any obvious error or omission. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

#### **10.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent or Collateral Agent to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent (which in turn has promptly notified the Borrower) that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent and the Collateral Agent may change its address, electronic mail address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address, electronic mail address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative



Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Agents and Lenders. The Agents and the Lenders shall be entitled to rely and act upon any notices purportedly given by a Responsible Officer of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and other telephonic communications with any Agent may be recorded by such Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies; Enforcement.** No failure by any Lender, the Borrower or any Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrower shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders (other than any rights vested in the Collateral Agent pursuant to the Pledge and Security Agreement); provided, however, that the foregoing shall not prohibit (a) an Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as an Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.16), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to the Borrower under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.16, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### **10.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. Subject to the provisions of the Fee Letters, the Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by each of the Agents and their respective Affiliates (including the reasonable and documented fees, charges and disbursements of a single counsel for the Agents), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable out-of-pocket expenses incurred by the Agents, any Lender (including the fees, charges and disbursements of a single counsel for the Agents or any Lender, taken as a whole and, if reasonably required, one local and/or regulatory counsel as necessary in each appropriate jurisdiction and, solely in the case of a conflict of interest, one additional counsel to each affected Person), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Arrangers, the Administrative Agent and the Collateral Agent (and any of their respective sub-agents), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of a single counsel for all such Indemnitees, taken as a whole, and, if reasonably required, one local and/or regulatory counsel as necessary in each appropriate jurisdiction and, solely in the case of a conflict of interest, one additional counsel to each affected Person), incurred by any Indemnatee or asserted against any Indemnatee by any third party or by the Borrower arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent or the Collateral Agent (and any of their respective sub-agents) and each Related Party of any of the foregoing Persons only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses, (A)(x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee or (y) result from a claim brought by the Borrower against an Indemnatee for breach in bad faith of such Indemnatee’s obligations hereunder or under any other Loan Document, if the Borrower has obtained a final and

nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (B) arise out of any claim, litigation, investigation or proceeding that does not involve an act or omission by the Borrower or any of its affiliates and that is brought by an Indemnitee against any other Indemnitee (other than any claim, litigation, investigation or proceeding that is brought by an Indemnitee against the Administrative Agent, the Collateral Agent or either Arranger (provided that such indemnity shall not be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee)). This subsection 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent or the Collateral Agent (or any of their respective sub-agents) or any Related Party of any of the foregoing Persons, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or the Collateral Agent (or any of their respective sub-agents) or against any Related Party of any of the foregoing Persons acting for the Administrative Agent or the Collateral Agent (or any such sub-agent), as applicable. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.15(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, each party hereto and each Indemnitee shall not assert, and hereby waives, any claim against each other party hereto and each Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof; provided that this provision shall not limit the Borrower's indemnity obligations under Section 10.04(b) for claims asserted against any Indemnitee by any third party. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent or the Collateral Agent, as applicable, the replacement of any Lender and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, the Collateral Agent or any Lender, or the Administrative Agent, the Collateral Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the Collateral Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the applicable Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by such Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### **10.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (other than any Defaulting Lender) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement. The Administrative Agent in its capacity as such may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Borrower, except in compliance with Section 9.06.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Reserved.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans assigned.

(iii) Required Consents. Subject to subsection (b)(i)(B) each Assignment and Assumption requires:

(A) the consent of the Borrower (such consent not to be unreasonably withheld) unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender (other than any Defaulting Lender), an Affiliate of a Lender (other than any Defaulting Lender) or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) unless such assignment is to a Person that is a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (A) or (B) a natural person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the prior written consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment

of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Assignments to Purchasing Borrower Parties. Any Lender may, so long as no Default or Event of Default has occurred and is continuing, at any time, assign all or a portion of its rights and obligations with respect to Loans under this Agreement to a Purchasing Borrower Party through (x) Dutch auctions open to all Lenders on a pro rata basis in accordance with customary procedures to be agreed between the Borrower and the Administrative Agent or (y) open market purchases on a non-pro rata basis, in each case, notwithstanding Sections 2.15 and 2.16 or any other provision in this Agreement; provided that in connection with assignments pursuant to clauses (x) and (y) above, (1) the principal amount of such Loans, along with all accrued and unpaid interest thereon, so contributed, assigned or transferred to the Purchasing Borrower Party shall be deemed automatically cancelled and extinguished on the date of such contribution, assignment or transfer, (2) the aggregate outstanding principal amount of Loans of the remaining Lenders shall reflect such cancellation and extinguishing of the Loans then held by the Purchasing Borrower Party, (3) the Purchasing Borrower Party shall promptly provide notice to the Administrative Agent of such assignment or transfer of such Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Loans in the Register and (4) the Borrower shall represent and warrant, as of (x) the date of the launch of the Dutch auction or the open-market purchases, as the case may be, and (y) on the date of any such assignment, that neither it, its Affiliates nor any of its respective directors or officers has any Excluded Information that has not been disclosed to the Lenders generally (other than to the extent any such Lender does not wish to receive material non-public information with respect to the Borrower or its Subsidiaries or any of their respective securities) prior to such date.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 and be bound by all of the provisions of this Agreement with respect to facts and circumstances occurring prior to the effective date of such assignment and shall continue to remain obligated under Sections 10.03, 10.07, 10.10, 10.12, 10.14, and 10.15 on and after the effective of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such

Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal and interest amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding any notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender or a Disqualified Person) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant, and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letter of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in subsections (a), (b) or (c) of the first proviso to Section 10.01 that adversely affects such Participant. Subject to

subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (subject to the requirements and limitations therein, including the requirements under Section 3.01(e) (it being understood that the documentation required under Section 3.01(e) shall be delivered to the participating Lender)). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided such Participant agrees to be subject to Section 2.16 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation or unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Disqualified Persons.

(i) No assignment shall be made to any Person that was a Disqualified Person as of the date (the "Trade Date") on which the assigning Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Person for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Person after the applicable Trade Date, (x) such assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Assumption with respect to such assignee will not by itself result in such assignee no longer being considered a Disqualified Person. Any assignment in violation of this Section 10.06(g) shall not be void, but the other provisions of Section 10.06(b)(vii) shall apply.

(ii) If any assignment is made to any Disqualified Person without the Borrower's prior written consent in violation of Section 10.06(g)(i) or if any Person becomes a Disqualified Person after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Person and the Administrative Agent, (A) purchase or prepay any Term Loans held by Disqualified Persons by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Person paid to acquire such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (B) require such Disqualified Person to assign, without recourse (in accordance with and subject to the restrictions contained in this Section



10.06), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Person paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Persons (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Person will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Persons consented to such matter, and (y) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws (a “Bankruptcy Plan”), each Disqualified Person party hereto hereby agrees (1) not to vote on such Bankruptcy Plan, (2) if such Disqualified Person does vote on such Bankruptcy Plan notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Bankruptcy Plan in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by court of competent jurisdiction effectuating the foregoing clause (2).

(iv) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to (A) post the list of Disqualified Persons provided by the Borrower (collectively, the “DQ List”) on the Platform, including that portion of the Platform that is designated for Public Lenders and/or (B) provide the DQ List to each Lender requesting the same.

**10.07 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), and use the Information only in connection with the transactions contemplated hereby, except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates’ respective partners, directors, officers, employees, agents, trustees, advisors and representatives (provided that the Person to whom such disclosure is made needs to know such Information in connection with the transactions contemplated hereby and it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential and shall have agreed to be bound by the confidentiality and use provisions of this Section to the same extent as if they were parties hereto and that the disclosing Person shall be responsible for any breach of this provision), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance

Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto on a confidential basis, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same, but no less restrictive, as those of this Section and to which the Borrower is a beneficiary thereof, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the prior written consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or other known confidentiality agreements or obligations or (y) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than the Borrower that was not known to be bound by a confidentiality agreement or obligation; provided that with respect to subsections (b), (c), (e) and (f), the Administrative Agent or such Lender, as the case may be, provides notification to the Borrower within a reasonable time prior to any disclosure or, if such prior notification is not reasonably practicable, then as soon as reasonably practicable, in either case to the extent such notification is not prohibited by the regulatory authority to which such disclosure is made, the legal process in which such disclosure is made and applicable law, as applicable. For purposes of this Section, "Information" means all information received from or on behalf of the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses or Affiliates, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by the Borrower or any Subsidiary and any other than information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed reasonable and customary compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws. The obligations contained in this Section 10.07 shall survive the expiration or termination of this Agreement.

**10.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any

demand under this Agreement or any other Loan Document and although such obligations of the Borrower are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.18 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.10 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of an original executed counterpart of this Agreement.

**10.11 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the

Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default on the Closing Date, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

**10.12 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13 Replacement of Lenders.** (i) If any Lender requests compensation under Section 3.04, (ii) if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (iii) if any Lender gives a notice under Section 3.02, (iv) if any Lender is a Defaulting Lender, (v) if any Lender is a Restricted Lender (as defined below) and no Event of Default has occurred; then, the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(a) the Borrower shall have received the prior written consent of the Administrative Agent (not to be unreasonably withheld or delayed);

(b) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(c) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 2.09 or Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(d) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(e) in the case of any such assignment by a Restricted Lender, the assignee must have approved in writing the substance of the amendment, waiver or consent which caused the assignor to be a Restricted Lender; and

(f) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, a reasonable time prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower or the Administrative Agent to require such assignment and delegation cease to apply.

For the purposes of this Section 10.13, a “Restricted Lender” means a Lender that fails to approve an amendment, waiver or consent requested by the Borrower pursuant to Section 10.01 that has received the written approval of not less than the Required Lenders but also requires the approval of such Lender; provided that that any such Restricted Lender must be replaced with an assignee that approves the applicable amendment, waiver or consent.

#### **10.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE BORROWER, THE ADMINISTRATIVE AGENT, ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO

THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**10.15 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**10.16 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Arrangers, are arm's-length commercial transactions between the Borrower, on the one hand, and the Administrative Agent, the Lenders and each Arranger, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and each Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent nor any Arranger has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and each Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor any Arranger has any obligation to disclose any of such interests to the Borrower or its Affiliates. To

the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent and any Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**10.17 Electronic Execution of Assignments and Certain Other Documents.** The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**10.18 USA PATRIOT Act.** Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

**10.19 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(c) a reduction in full or in part or cancellation of any such liability;

(d) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(e) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

*[Signature pages follow.]*



IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed as of the date first written above.

THE DAYTON POWER AND LIGHT COMPANY

By: 

Name: **Jeffrey K. MacKay**

Title: **Treasurer**


JPMORGAN CHASE BANK, N.A., as  
Administrative Agent and Collateral Agent

By: 

Name: Peter Christensen

Title: Vice President

MORGAN STANLEY SENIOR FUNDING, INC.,  
as a Lender

By:   
Name: William Graham  
Title: Managing Director

***SCHEDULE 2.01***

**COMMITMENTS  
AND APPLICABLE PERCENTAGES**

<b>Lender</b>	<b>Commitment</b>	<b>Applicable Percentage</b>
Morgan Stanley Senior Funding Inc.	\$ 445,000,000	<b>100%</b>
<b>Total</b>	<b>\$ 445,000,000</b>	<b>100%</b>

Schedule 2.01  
Commitments and Applicable Percentages

**MATERIAL ADVERSE EFFECT<sup>1</sup>**

The events and circumstances described in the following Company filings with the SEC:

- Form 8-K filed August 8, 2016
- Form 10-Q filed August 5, 2016
- Form 8-K filed June 23, 2016
- Form 10-Q filed May 9, 2016
- Form 10-K filed February 24, 2016 (and the amendment thereto filed March 17, 2016)
- Form 8-K filed February 22, 2016

---

<sup>1</sup> The fact that any event or circumstance is disclosed on this schedule shall not in and of itself deem such event or circumstance, individually or in the aggregate, an event or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.”

**LITIGATION<sup>2</sup>**

The events and circumstances described in the following Company filings with the SEC:

- Form 8-K filed August 8, 2016
- Form 10-Q filed August 5, 2016
- Form 8-K filed June 23, 2016
- Form 10-Q filed May 9, 2016
- Form 10-K filed February 24, 2016 (and the amendment thereto filed March 17, 2016)
- Form 8-K filed February 22, 2016

---

<sup>2</sup> The fact that any event or circumstance is disclosed on this schedule shall not in and of itself deem such event or circumstance, individually or in the aggregate, an event or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.”

**FILING REQUIREMENTS**

**Collateral Perfected by Filing:**

Financing Statements

Grantor

The Dayton Power and Light Company

Filing Jurisdiction

Ohio Secretary of State

**Collateral Perfected by Possession:**

Delivery of the Series 2022 DP&L First Mortgage Bonds to the Collateral Agent for the ratable benefit of the Secured Parties.

**SCHEDULE 7.01****EXISTING INDEBTEDNESS**

	<b>Interest Rate</b>	<b>Maturity</b>	<b>Amounts (\$ in millions)</b>
First Mortgage Bonds 1.875% Series Due 2016 <sup>3</sup>	1.875%	2016	\$ 445.0
First Mortgage Bonds, 4.80% Pollution Control Series 2006 due 2036 .....	4.8%	2036	100.0
First Mortgage Bonds, Variable Rate Pollution Control Series 2015-A due 2040 (and the corresponding loan obligation under the Loan Agreement <sup>4</sup> ).....		2040	100.0
First Mortgage Bonds, Variable Rate Pollution Control Series 2015-B due 2034 (and the corresponding loan obligation under the Loan Agreement <sup>5</sup> ).....		2034	100.0
U.S. Government note .....	4.2%	2061	18.0
Revolving Credit Agreement <sup>6</sup>		2020	175.0

---

<sup>3</sup> To be redeemed in connection with the loan transaction.

<sup>4</sup> Series A Loan Agreement between DP&L and Ohio Air Quality Development Authority dated August 3, 2015.

<sup>5</sup> Series B Loan Agreement between DP&L and Ohio Air Quality Development Authority dated August 3, 2015.

<sup>6</sup> Indebtedness arising from time to time under the Credit Agreement, dated as of July 31, 2015, among The Dayton Power and Light Company, PNC Bank, National Association, as Administrative Agent, Swing Line Lender and an L/C Issuer, Fifth Third Bank, as Syndication Agent and an L/C Issuer, Bank of America, N.A., as Documentation Agent and an L/C Issuer, and the other lenders party to the Credit Agreement.



**SCHEDULE 7.02****EXISTING LIENS**

Liens securing the Indebtedness listed below:

	<b>Interest Rate</b>	<b>Maturity</b>	<b>Amounts (\$ in millions)</b>
First Mortgage Bonds 1.875% Series Due 2016 <sup>7</sup>	1.875%	2016	\$ 445.0
First Mortgage Bonds, 4.80% Pollution Control Series 2006 due 2036 .....	4.8%	2036	100.0
First Mortgage Bonds, Variable Rate Pollution Control Series 2015-A due 2040 (and the corresponding loan obligation under the Loan Agreement <sup>8</sup> ).....		2040	100.0
First Mortgage Bonds, Variable Rate Pollution Control Series 2015-B due 2034 (and the corresponding loan obligation under the Loan Agreement <sup>9</sup> )		2034	100.0

---

<sup>7</sup> To be redeemed in connection with the loan transaction.

<sup>8</sup> Series A Loan Agreement between DP&L and Ohio Air Quality Development Authority dated August 3, 2015.

<sup>9</sup> Series B Loan Agreement between DP&L and Ohio Air Quality Development Authority dated August 3, 2015.

**EXISTING INVESTMENTS**

The Dayton Power and Light Company owns a 4.9% equity ownership interest in Ohio Valley Electric Corporation (OVEC), an electric generation company. In connection with such ownership, The Dayton Power and Light Company guarantees certain obligations and indebtedness of OVEC which are reflected in footnotes of The Dayton Power and Light Company financial statements.

**ADMINISTRATIVE AGENT'S OFFICE;  
CERTAIN ADDRESSES FOR NOTICES**

**BORROWER**

The Dayton Power and Light Company  
1 Monument Circle  
Indianapolis, IN 46204  
Attention: Jeff MacKay, Treasurer  
Telephone: 317-261-8274  
Telecopier: 317-630-5762  
Electronic Mail: jeff.mackay@aes.com  
Website Addresses: www.dpandl.com; www.dplinc.com  
U.S. Taxpayer Identification Number: 31-0258470

**With a mandatory copy to:**

The Dayton Power and Light Company  
1 Monument Circle  
Indianapolis, IN 46204  
Attention: Charles J. Hofmann, Jr., Assistant Treasurer  
Telephone: 317-829-7589  
Telecopier: 317-630-5762  
Electronic Mail: chuck.hofmann@aes.com

**ADMINISTRATIVE AGENT:**

JPMorgan Chase Bank, N.A.  
500 Stanton Christiana Rd  
Newark, Delaware 19713  
Attention: Jacqueline Zellman  
Telephone: 302-634-1980  
Telecopier: 302-634-1417  
Electronic Mail: jacqueline.l.zellman@jpmorgan.com

**With a copy to:**

Attention: Rea Seth  
Telephone: 302-634-1867  
Telecopier: 302-634-1417  
Electronic Mail: rea.n.seth@jpmorgan.com

JPMorgan Chase Bank, N.A.  
ABA No.: 021000021  
Account Name: LS2 Incoming Account  
Account No.: 9008113381H3972  
Attention: Loan & Agency  
Reference: Dayton Power & Light Co

**COLLATERAL AGENT:**

JPMorgan Chase Bank, N.A.  
c/o JPMorgan Chase & Co.  
CIB DMO WLO  
Mail code NY1-C413  
4 CMC, Brooklyn, NY, 11245-0001  
Attention: Robin Lande  
Telephone: 718 242 5567  
Electronic Mail: robin.l.lande@chase.com

**FORM OF BORROWING NOTICE**

Date: \_\_\_\_\_, 20\_\_<sup>10</sup>

To: JPMorgan Chase Bank, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of August 24, 2016 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement," the terms defined therein being used herein as therein defined), among The Dayton Power and Light Company, an Ohio corporation (the "Borrower"), the Lenders from time to time party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, and the other agents party from time to time thereto.

The undersigned, on behalf of the Borrower, hereby irrevocably requests a borrowing of Loans:

1. On \_\_\_\_\_ (a Business Day).
2. In the amount of \$\_\_\_\_\_.
3. Comprised of \_\_\_\_\_.  
[Type of Loan requested]
4. For Eurodollar Rate Loans: with an Interest Period of \_\_\_\_ months.

The Borrowing, if any, requested herein complies with Section 2.02(a) of the Agreement.

**THE DAYTON POWER AND LIGHT  
COMPANY**

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

Name: \_\_\_\_\_

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

---

<sup>10</sup> Note: The borrowing notice must be delivered no later than (x) one Business Day in advance of the proposed Borrowing Date in the case of Base Rate Loans and (y) three Business Days in advance of the proposed Borrowing Date in the case of Eurodollar Loans.

**FORM OF CONVERSION NOTICE**

Date: \_\_\_\_\_, 20\_\_<sup>11</sup>

To: JPMorgan Chase Bank, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of August 24, 2016 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement," the terms defined therein being used herein as therein defined), among The Dayton Power and Light Company, an Ohio corporation (the "Borrower"), the Lenders from time to time party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, and the other agents party from time to time thereto.

The undersigned, on behalf of the Borrower, hereby irrevocably requests a conversion or continuation of Loans:

1. On \_\_\_\_\_ (a Business Day).
2. In the amount of \$\_\_\_\_\_.
3. Comprised of \_\_\_\_\_.  
[Type of Loan requested]
4. For Eurodollar Rate Loans: with an Interest Period of \_\_\_\_\_ months.

The Borrowing, if any, requested herein complies with Section 2.03 of the Agreement.

**THE DAYTON POWER AND LIGHT  
COMPANY**

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

Name: \_\_\_\_\_

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

---

<sup>11</sup> Note: The conversion notice must be delivered no later than 11:00 a.m. (New York City time) (x) one Business Day prior to the next Interest Period in the case of conversions of Eurodollar Rate Loans to Base Rate Loans or (y) three Business Days prior to the next Interest Period in the case of conversions of Base Rate Loans to Eurodollar Rate Loans.

**FORM OF NOTE**

[FOR U.S. FEDERAL INCOME TAX PURPOSES ONLY, THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”) WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. THE ISSUE PRICE, AMOUNT OF OID, ISSUE DATE AND YIELD TO MATURITY MAY BE OBTAINED BY CONTACTING THE [CHIEF FINANCIAL OFFICER] OF THE DAYTON POWER AND LIGHT COMPANY AT [\_\_\_\_].]<sup>12</sup>

[\_\_\_\_], 20\_\_\_\_

FOR VALUE RECEIVED, the undersigned (the “Borrower”), hereby promises to pay to \_\_\_\_\_ or registered assigns (the “Lender”), in accordance with the provisions of the Agreement (as hereinafter defined), the principal amount of each Loan from time to time made by the Lender to the Borrower under that certain Credit Agreement, dated as of August 24, 2016 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement,” the terms defined therein being used herein as therein defined), among the Borrower, the Lenders from time to time party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, and the other agents party from time to time thereto.

The Borrower promises to pay interest on the unpaid principal amount of each Loan from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Administrative Agent’s Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

Except as permitted by Section 10.06 of the Credit Agreement, this Note may not be assigned by the Lender to any Person.

This Note is one of the Notes referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and continuation of one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Agreement. Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

---

<sup>12</sup> To add if the OID is more than de minimis.

To the extent the terms of this Note conflict with the terms of the Agreement, the terms of the Agreement shall control.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.



THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE  
WITH THE LAWS OF THE STATE OF NEW YORK.

**THE DAYTON POWER AND LIGHT  
COMPANY**

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

Name: \_\_\_\_\_

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

## LOANS AND PAYMENTS WITH RESPECT THERETO

[illegible]

**FORM OF COMPLIANCE CERTIFICATE**

Financial Statement Date: \_\_\_\_\_, 20\_\_

To: JPMorgan Chase Bank, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of August 24, 2016 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement,” the terms defined therein being used herein as therein defined), among The Dayton Power and Light Company, an Ohio corporation (the “Borrower”), the Lenders from time to time party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, and the other agents party from time to time thereto.

The undersigned Responsible Officer, solely in his/her capacity as a Responsible Officer of the Borrower and not in his/her individual capacity and without personal liability to the Administrative Agent or the Lenders with respect hereto, on behalf of the Borrower, hereby certifies as of the date hereof that he/she is the \_\_\_\_\_ of the Borrower, and that, as such, he/she is authorized to execute and deliver this Certificate to the Administrative Agent on behalf of the Borrower, and that:

*[Use following paragraph 1 for fiscal **year-end** financial statements]*

1. The Borrower has delivered the year-end audited financial statements required by Section 6.01(a) of the Agreement for the fiscal year of the Borrower ended as of the above date, together with the report and opinion of an independent certified public accountant required by such section.

*[Use following paragraph 1 for fiscal **quarter-end** financial statements]*

1. The Borrower has delivered the unaudited financial statements required by Section 6.01(b) of the Agreement for the fiscal quarter of the Borrower ended as of the above date. Such financial statements fairly present the financial condition, results of operations, shareholder’s equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes.

2. The undersigned has reviewed and is familiar with the terms of the Agreement and has made, or has caused to be made under his/her supervision, a reasonably detailed review of the transactions and condition (financial or otherwise) of the Borrower during the accounting period covered by such financial statements, and

*[select one:]*

**[to the knowledge of the undersigned, as of the date hereof no Default has occurred and is continuing.]**

**--or--**

**[to the knowledge of the undersigned, the following is a list of each such Default and its nature and status:]**

3. The representations and warranties of the Borrower contained in Article V of the Agreement are true and correct in all material respects on and as of the date hereof, except that (i) if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation or warranty is true and correct in all respects, (ii) to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date (except that if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation or warranty is true and correct in all respects), and (iii) for purposes of this Compliance Certificate, the representations and warranties contained in subsections (a) and (b) of Section 5.05 of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01 of the Credit Agreement, including the statements in connection with which this Compliance Certificate is delivered.

*IN WITNESS WHEREOF*, the undersigned has executed this Compliance Certificate as of

\_\_\_\_\_, \_\_\_\_\_.

**THE DAYTON POWER AND LIGHT  
COMPANY**

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

Name: \_\_\_\_\_

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

**FORM OF ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (this “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between **[the][each]**<sup>13</sup> Assignor identified in item 1 below (**[the][each, an]** “Assignor”) and **[the][each]**<sup>14</sup> Assignee identified in item 2 below (**[the][each, an]** “Assignee”). **[It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]<sup>15</sup> hereunder are several and not joint.]**<sup>16</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by **[the][each]** Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, **[the][each]** Assignor hereby irrevocably sells and assigns to **[the Assignee][the respective Assignees]**, and **[the][each]** Assignee hereby irrevocably purchases and assumes from **[the Assignor][the respective Assignors]**, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of **[the Assignor’s][the respective Assignors’]** rights and obligations in **[its capacity as a Lender][their respective capacities as Lenders]** under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of **[the Assignor][the respective Assignors]** under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of **[the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)]** against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by **[the][any]** Assignor to **[the][any]** Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as **[the][an]** “Assigned Interest”). Each such sale and assignment is without recourse to **[the][any]** Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by **[the][any]** Assignor.

---

<sup>13</sup> For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

<sup>14</sup> For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

<sup>15</sup> Select as appropriate.

<sup>16</sup> Include bracketed language if there are either multiple Assignors or multiple Assignees.

1. Assignor[s]: \_\_\_\_\_  
\_\_\_\_\_
2. Assignee[s]: \_\_\_\_\_  
\_\_\_\_\_  
[for each Assignee, indicate [Affiliate][Approved Fund] of [*identify Lender*]]
3. Borrower: The Dayton Power and Light Company
4. Administrative Agent: JPMorgan Chase Bank, N.A., as the administrative agent under the Credit Agreement
5. Credit Agreement: Credit Agreement, dated as of August 24, 2016, among the Borrower, the Lenders from time to time party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, and the other agents party from time to time thereto.
6. Assigned Interest[s]:

Assignor[s] <sup>17</sup>	Assignee[s] <sup>18</sup>	Aggregate Amount of Loans for all Lenders <sup>19</sup>	Amount of Loans Assigned	Percentage Assigned of Commitment <sup>20</sup>	CUSIP Number
		\$	\$	%	
		\$	\$	%	
		\$	\$	%	

[7. Trade Date: \_\_\_\_\_]<sup>21</sup>

Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

<sup>17</sup> List each Assignor, as appropriate.

<sup>18</sup> List each Assignee, as appropriate.

<sup>19</sup> Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>20</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment of all Lenders thereunder.

<sup>21</sup> To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR  
[NAME OF ASSIGNOR]

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

ASSIGNEE  
[NAME OF ASSIGNEE]

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

[Consented to and]<sup>22</sup> Accepted:

JPMorgan Chase Bank, N.A., as  
Administrative Agent

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

[Consented to:]<sup>23</sup>

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

---

<sup>22</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

<sup>23</sup> To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

## ***ANNEX 1 TO ASSIGNMENT AND ASSUMPTION***

### **STANDARD TERMS AND CONDITIONS FOR**

#### **ASSIGNMENT AND ASSUMPTION**

##### **1. Representations and Warranties.**

1.1. Assignor. **[The][Each]** Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of **[the][the relevant]** Assigned Interest, (ii) **[the][such]** Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is not a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. **[The][Each]** Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 10.06(b) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of **[the][the relevant]** Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by **[the][such]** Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire **[the][such]** Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase **[the][such]** Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase **[the][such]** Assigned Interest, and (vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by **[the][such]** Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, **[the][any]** Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not



taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of **[the][each]** Assigned Interest (including payments of principal, interest, fees and other amounts) to **[the][the relevant]** Assignor for amounts which have accrued to but excluding the Effective Date and to **[the][the relevant]** Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the laws of the State of New York.

**FORM OF ADMINISTRATIVE QUESTIONNAIRE**

*See attached.*

## Administrative Questionnaire



**DEAL NAME: DAYTON POWER & LIGHT COMPANY**

Agent Address:	JPMorgan Chase Bank, N.A	Return form to:	Jeffrey Mohr
	500 Stanton Christiana Road	Telephone:	(302) 634-1711
	Ops Building 2, 3 <sup>rd</sup> Floor	Closer Email:	jeffrey.mj.mohr@chase.com
	Newark, DE 19713-2107	E-mail:	Deal.Management.Team@jpmchase.com

It is very important that **all** of the requested information be completed accurately and that this questionnaire be returned promptly. If your institution is sub-allocating its allocation, please fill out an administrative questionnaire for each legal entity.

Lender Markit Entity Identifier (MEI): \_\_\_\_\_

Legal Name of Lender to appear in Documentation:

\_\_\_\_\_

Signature Block  
Information:

\_\_\_\_\_

- |  |                              |                             |
|--|------------------------------|-----------------------------|
| <input checked="" type="checkbox"/> Signing Credit Agreement | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Coming in via Assignment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Type of  
Lender:

(Bank, Asset Manager, Broker/Dealer, CLO/CDO; Finance Company, Hedge Fund, Insurance, Mutual Fund, Pension Fund, Other Regulated Investment Fund, Special Purpose Vehicle, Other-please specify)

Fund Manager: N/A

Lender Parent: N/A

\_\_\_\_\_

Domestic Address

---

---

---

Eurodollar Address

---

---

---

**Contacts/Notification Methods: Borrowings, Paydowns, Interest, Fees, etc.**

Syndicate-level information (which may contain material non-public information about the Borrower and its related parties or their respective securities) will be made available to the Credit Contact(s). The Credit Contacts identified must be able to receive such information in accordance with his/her institution's compliance procedures and applicable laws, including Federal and state securities laws.

	<u>Primary Credit Contact</u>	<u>Secondary Credit Contact</u>
Name:	<hr/>	<hr/>
Company:	<hr/>	<hr/>
Title	<hr/>	<hr/>
Address:	<hr/>	<hr/>
	<hr/>	<hr/>
Telephone:	<hr/>	<hr/>
Facsimile:	<hr/>	<hr/>
E-mail address:	<hr/>	<hr/>

	<u>Additional IntraLinks Credit Contact</u>	<u>Additional IntraLinks Credit Contact</u>
Name:	<hr/>	<hr/>
Company:	<hr/>	<hr/>
Title	<hr/>	<hr/>
Address:	<hr/>	<hr/>
	<hr/>	<hr/>
Telephone:	<hr/>	<hr/>
Facsimile:	<hr/>	<hr/>
E-mail address:	<hr/>	<hr/>

*The above listed individuals will be given access to any related IntraLinks site for information distribution.*

*Should your institution require more than the contacts listed above, please add additional names on the Annex A provided with the above information for ALL individuals who require IntraLinks access.*

	<u>Primary Operations Contact</u>	<u>Secondary Operations Contact</u>
Name:	<hr/>	<hr/>
Company:	<hr/>	<hr/>
Title	<hr/>	<hr/>
Address:	<hr/>	<hr/>
	<hr/>	<hr/>
Telephone:	<hr/>	<hr/>
Facsimile:	<hr/>	<hr/>
E-mail address:	<hr/>	<hr/>

Operations Contact

Operations Contact

Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
Title \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Bid Contact

L/C Contact

Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
Title \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### Domestic Wire Instructions

Bank Name: \_\_\_\_\_  
ABA/Routing No.: \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
FFC Account Name: \_\_\_\_\_  
FFC Account No.: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Reference: \_\_\_\_\_

#### Lender's Foreign Wire Instructions

Currency: \_\_\_\_\_  
Bank Name: \_\_\_\_\_  
Swift/Routing No.: \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
FFC Account Name: \_\_\_\_\_  
FFC Account No.: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Reference: \_\_\_\_\_

#### Agent's Wire Instructions

Bank Name: JPMorgan Chase Bank, N.A. \_\_\_\_\_  
ABA/Routing No.: 021 000 021 \_\_\_\_\_  
Account Name: LS2 Incoming Account \_\_\_\_\_  
Account No.: 9008113381H3972 \_\_\_\_\_  
FFC Account Name: N/A \_\_\_\_\_  
FFC Account No.: N/A \_\_\_\_\_  
Attention: Loan & Agency \_\_\_\_\_

D-2-7

Form of Administrative Questionnaire



Reference:

---

Dayton Power & Light Company

---

Agent's DTCC Account Number:

DTCC00006161

---

## **NON-U.S. LENDER INSTITUTIONS:**

### **I. Corporations:**

If your institution is incorporated outside of the United States for U.S. federal income tax purposes, and is the beneficial owner of the interest and other income it receives, you must complete one of the following three tax forms, as applicable to your institution: a.) Form W-8BEN-E (Certificate of Foreign Status of Beneficial Owner), b.) Form W-8ECI (Income Effectively Connected to a U.S. Trade or Business), or c.) Form W-8EXP (Certificate of Foreign Government or Governmental Agency) d.) Form W-8BEN (Foreign Individuals)

A U.S. taxpayer identification number is required for any institution submitting Form W-8ECI. It is also required on Form W-8BEN-E for certain institutions claiming the benefits of a tax treaty with the U.S. Please refer to the instructions when completing the form applicable to your institution.

### **II. Flow-Through Entities:**

If your institution is organized outside the U.S., and is classified for U.S. federal income tax purposes as either a Partnership, Trust, Qualified or Non-Qualified Intermediary, or other non-U.S. flow-through entity, an original *Form W-8IMY (Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding)* must be completed by the intermediary together with a withholding statement. Flow-through entities other than Qualified Intermediaries are required to include tax forms for each of the underlying beneficial owners.

Please refer to the instructions when completing this form.

## **U.S. LENDER INSTITUTIONS:**

If your institution is incorporated or organized *within* the United States, you must complete and return *Form W-9 (Request for Taxpayer Identification Number and Certification)*. **Please be advised that we request that you submit an original Form W-9.**

*Pursuant to the language contained in the tax section of the Credit Agreement, the applicable tax form for your institution must be completed and returned prior to the first payment of income. Failure to provide the proper tax form when requested may subject your institution to U.S. tax withholding.*

## ANNEX A

### Additional IntraLinks Credit Contact

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Title \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-mail address: \_\_\_\_\_

### Additional IntraLinks Credit Contact

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### Additional IntraLinks Credit Contact

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Title \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-mail address: \_\_\_\_\_

### Additional IntraLinks Credit Contact

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

	<u>Additional IntraLinks Credit Contact</u>	<u>Additional IntraLinks Credit Contact</u>
Name:	<hr/>	<hr/>
Company:	<hr/>	<hr/>
Title	<hr/>	<hr/>
Address:	<hr/>	<hr/>
	<hr/>	<hr/>
Telephone:	<hr/>	<hr/>
Facsimile:	<hr/>	<hr/>
E-mail address:	<hr/>	<hr/>

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Credit Agreement, dated as of August 24, 2016 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement,” the terms defined therein being used herein as therein defined), among The Dayton Power and Light Company, an Ohio corporation (the “Borrower”), the Lenders from time to time party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, and the other agents party from time to time thereto.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a “10-percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN-E (or W-8BEN, if applicable). By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_, 20[ ]

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Credit Agreement, dated as of August 24, 2016 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement,” the terms defined therein being used herein as therein defined), among The Dayton Power and Light Company, an Ohio corporation (the “Borrower”), the Lenders from time to time party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, and the other agents party from time to time thereto.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a “10-percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN-E (or W-8BEN, if applicable). By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_, 20[ ]

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Credit Agreement, dated as of August 24, 2016 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement,” the terms defined therein being used herein as therein defined), among The Dayton Power and Light Company, an Ohio corporation (the “Borrower”), the Lenders from time to time party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, and the other agents party from time to time thereto.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a “bank” extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a “10-percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN-E (or W-8BEN, if applicable) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN-E (or W-8BEN, if applicable) from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

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



Name: \_\_\_\_\_

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

Date: \_\_\_\_\_, 20[ ]

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Credit Agreement, dated as of August 24, 2016 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement,” the terms defined therein being used herein as therein defined), among The Dayton Power and Light Company, an Ohio corporation (the “Borrower”), the Lenders from time to time party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, and the other agents party from time to time thereto..

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a “bank” extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a “10-percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN-E (or W-8BEN, if applicable) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN-E (or W-8BEN, if applicable) from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_, 20[\_\_\_\_]

***EXHIBIT F***

**FORM OF PLEDGE AND SECURITY AGREEMENT**

*See attached.*

---

---

PLEDGE AND SECURITY AGREEMENT

between

THE DAYTON POWER AND LIGHT COMPANY,

and

JPMORGAN CHASE BANK, N.A.,  
as Collateral Agent

Dated as of August [ ], 2016

---

---

## TABLE OF CONTENTS

	<u>Page</u>
<b>1. DEFINED TERMS .....</b>	<b>1</b>
1.1 Definitions.....	1
1.2 Other Definitional Provisions.....	2
<b>2. ISSUANCE OF AND GRANT OF SECURITY INTEREST IN THE SERIES 2022 DP&amp;L FIRST MORTGAGE BONDS AND PLEDGED COLLATERAL .....</b>	<b>2</b>
2.1 Issuance of Bonds and Grant of Security .....	2
<b>3. REPRESENTATIONS AND WARRANTIES .....</b>	<b>3</b>
<b>4. COVENANTS.....</b>	<b>4</b>
4.1 Maintenance of Perfected Security Interest; Further Documentation .....	4
4.2 Changes in Locations, Name, Jurisdiction of Incorporation, Etc.....	4
4.3 Notices.....	5
4.4 Investment Property .....	5
4.5 Voting and Other Rights .....	5
4.6 Events of Default.....	5
4.7 Indenture Amendments .....	6
<b>5. REMEDIAL PROVISIONS.....</b>	<b>6</b>
5.1 Code and Other Remedies.....	6
5.2 Effect of Securities Laws .....	8
5.3 Deficiency .....	8
<b>6. POWER OF ATTORNEY AND FURTHER ASSURANCES.....</b>	<b>8</b>
6.1 Collateral Agent’s Appointment as Attorney-in-Fact, Etc.....	8
6.2 Performance of Obligations .....	9
6.3 Costs and Expenses .....	10
6.4 Ratification.....	10
6.5 Authorization of Financing Statements.....	10
6.6 Further Assurances .....	10
<b>7. THE COLLATERAL AGENT .....</b>	<b>10</b>
7.1 Authority of Collateral Agent .....	10
7.2 Duty of Agent.....	11
7.3 Delegation of Duties.....	11
7.4 No Individual Foreclosure, Etc .....	12
7.5 Rights of Collateral Agent.....	12
<b>8. MISCELLANEOUS.....</b>	<b>12</b>
8.1 Amendments in Writing .....	12
8.2 Notices.....	12

8.3	No Waiver by Course of Conduct; Cumulative Remedies.....	12
8.4	Enforcement Expenses; Indemnification.....	12
8.5	Successors and Assigns.....	13
8.6	Set-Off.....	13
8.7	Counterparts .....	13
8.8	Severability .....	13
8.9	Section Headings.....	14
8.10	Integration/Conflict .....	14
8.11	<b>GOVERNING LAW</b> .....	14
8.12	Acknowledgments.....	14
8.13	Releases.....	14
8.14	Incorporation by Reference .....	15

SCHEDULE 1    Exact Legal Name, Location of Jurisdiction of Organization and  
Chief Executive Office

PLEDGE AND SECURITY AGREEMENT, dated as of August [ ], 2016, between The Dayton Power and Light Company (the “Grantor”), and JPMorgan Chase Bank, N.A., as Collateral Agent (in such capacity and together with its successors and assigns in such capacity, the “Collateral Agent”) for the banks and other financial institutions or entities (the “Lenders”) from time to time parties to the Credit Agreement, dated as of August [ ], 2016 (as amended, restated, supplemented or otherwise modified or replaced from time to time, the “Credit Agreement”), among The Dayton Power and Light Company, as borrower, JPMorgan Chase Bank, N.A., as administrative agent and collateral agent, the Lenders, and other financial institutions or entities from time to time parties thereto.

#### W I T N E S S E T H:

WHEREAS, pursuant to the Credit Agreement, the Lenders have severally agreed to make extensions of credit to the Grantor upon the terms and subject to the conditions set forth therein; and

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Grantor under the Credit Agreement that it shall have executed and delivered this Agreement to the Collateral Agent for the benefit of the Secured Parties (as defined below) and issued and delivered to the Collateral Agent for the benefit of the Secured Parties its Series 2022 DP&L First Mortgage Bonds in order to evidence and secure the Obligations;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Grantor thereunder and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor hereby agrees with the Collateral Agent, for the benefit of the Secured Parties, as follows:

### **1. DEFINED TERMS**

#### **1.1 Definitions.**

- (a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.
- (b) The following terms shall have the following meanings:

“Agreement” shall mean this Pledge and Security Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Credit Agreement” shall have the meaning set forth in the preamble hereto.

“Discharge of the Obligations” shall mean and shall have occurred when (i) all Obligations shall have been paid in full in cash and all other obligations under the Loan Documents shall have been performed (other than (a) those expressly stated to survive termination and (b) contingent obligations as to which no claim has been asserted) and (ii) all Commitments shall have terminated or expired.

“Pledged Collateral” shall have the meaning set forth in Section 2.

“Proceeds” shall mean all “proceeds” as such term is defined in Section 9-102(a)(64) of the UCC and, in any event, shall include, without limitation, all principal, interest and other income from the Pledged Collateral and all collections thereon and any money or property realized or collected in connection with any collateral security or guarantee with respect to the Pledged Collateral.



“Secured Parties” shall mean collectively, the Administrative Agent, the Collateral Agent and the Lenders.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Supporting Obligations” shall mean “supporting obligations” as such term is defined in Section 9-102(a)(78) of the UCC.

“UCC” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Pledged Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

1.2 Other Definitional Provisions. (a) The words “hereof”, “herein”, “hereto” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule, Exhibit and Annex references, are to this Agreement unless otherwise specified. References to any Schedule, Exhibit or Annex shall mean such Schedule, Exhibit or Annex as amended or supplemented from time to time in accordance with this Agreement.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) The expressions “payment in full,” “paid in full” and any other similar terms or phrases when used herein shall mean payment in cash in immediately available funds.

(d) The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

(e) All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

## **2. ISSUANCE OF AND GRANT OF SECURITY INTEREST IN THE SERIES 2022 DP&L FIRST MORTGAGE BONDS AND PLEDGED COLLATERAL**

2.1 Issuance of Bonds and Grant of Security. The Grantor hereby issues and delivers and, to the extent of any rights or interests the Grantor may at any time have in the Series 2022 DP&L First Mortgage Bond, if any, transfers, assigns and pledges and to the Collateral Agent, for the ratable benefit of the Secured Parties, the Series 2022 DP&L First Mortgage Bonds to evidence and secure the Grantor’s Obligations, and hereby grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in, all of the following property, in each case, wherever located and now owned or at any time hereafter acquired by the Grantor or in which the Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Pledged Collateral”), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Grantor’s Obligations:

(a) to the extent of any rights or interests the Grantor has in the Series 2022 DP&L First Mortgage Bond (the “Pledged Bonds”), all such rights and interests of the Grantor in and under the Pledged Bonds;

(b) all books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time evidence or contain information relating to any of the Pledged Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon; and

(c) all Proceeds, products, accessions, rents and profits of any and all of the foregoing Supporting Obligations and other documents and instruments that from time to time guarantee or, subject to the following sentence, secure payment of such Pledged Bond.

The Pledged Collateral includes the rights and interest of the registered holder of the Pledged Bonds under the Indenture and Fiftieth Supplemental Indenture, but does not include any property or asset of the Grantor subject to the lien of the Indenture and the Fiftieth Supplemental Indenture.

Subject to the terms hereof, the Grantor hereby agrees that the Collateral Agent is, and will have all the rights and interests of, a holder and registered owner of the Series 2022 DP&L First Mortgage Bonds, and all rights and interests under and in the Pledged Collateral, and may exercise such rights and any other rights set forth herein or under applicable law, and realize on such interests, in each case for the ratable benefit of the Secured Parties, to satisfy, in whole or in part, the Grantor’s Obligations. The Grantor shall cause the physical delivery of the Series 2022 DP&L First Mortgage Bonds in certificated form to the Collateral Agent on the Closing Date, registered in its name as Collateral Agent

### **3. REPRESENTATIONS AND WARRANTIES**

To induce the Administrative Agent, Collateral Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Grantor thereunder, the Grantor hereby represents and warrants to the Secured Parties on the Closing Date that:

(a) The Grantor’s exact legal name (as indicated on the public record of its jurisdiction of formation or organization), jurisdiction of organization, and the location of the Grantor’s chief executive office or sole place of business are specified on Schedule 1;

(b) The Grantor is organized solely under the law of the jurisdiction so specified and has not filed any certificates of domestication, transfer or continuance in any other jurisdiction. Except as specified on Schedule 1, it has not changed its name, jurisdiction of organization, chief executive office or sole place of business (if applicable) or its corporate structure in any way (e.g. by merger, consolidation, change in corporate form or otherwise) within the past five years and has not within the last five years become bound (whether as a result of merger or otherwise) as Grantor under a security agreement entered into by another Person, which has not heretofore been terminated; and

(c) The Grantor is a transmitting utility as defined in UCC § 9-102(a)(80).

(d) Each of the Series 2022 DP&L First Mortgage Bonds constitutes the legal, valid and binding obligation of the Grantor with respect thereto, enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing).

(e) Upon delivery in certificated form to the Collateral Agent of the Series 2022 DP&L First Mortgage Bonds, subject to Section 4.5 hereof, the Collateral Agent shall be entitled to all voting, consensual and other rights accruing to the holders of Series 2022 DP&L First Mortgage Bonds under the Indenture.

(f) There exists no default under the Series 2022 DP&L First Mortgage Bonds.

#### **4. COVENANTS**

The Grantor covenants and agrees with the Secured Parties that, from and after the date of this Agreement until the Discharge of the Obligations:

4.1 Maintenance of Perfected Security Interest; Further Documentation. (a) The Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.01(a)(v)(A) of the Credit Agreement and shall defend such security interest against the claims and demands of all Persons whomsoever.

(b) The Grantor shall furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Pledged Collateral and such other reports in connection with the assets and property of the Grantor as the Collateral Agent may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Collateral Agent, and at the sole expense of the Grantor, the Grantor shall promptly and duly authorize, execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Collateral Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (i) the filing of any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) taking any actions necessary to enable the Collateral Agent to obtain “control” (within the meaning of the applicable Uniform Commercial Code) with respect thereto, to the extent required hereunder.

(d) If any of the Pledged Collateral is or shall become evidenced or represented by any Certificated Security, such Certificated Security shall be immediately delivered to the Collateral Agent, duly endorsed in a manner satisfactory to the Collateral Agent, to be held as Pledged Collateral pursuant to this Agreement.

4.2 Changes in Locations, Name, Jurisdiction of Incorporation, Etc. The Grantor will not, except upon fifteen (15) days’ prior written notice to the Collateral Agent and delivery to the Collateral Agent of duly authorized and, where required, executed copies of all additional financing statements and other documents reasonably requested by the Collateral Agent to maintain the validity, perfection and priority of the security interests provided for herein:

(a) without limiting the prohibitions on mergers involving the Grantor contained in the Credit Agreement, change its legal name, jurisdiction of organization or the location of its chief executive office or sole place of business, if applicable, from that set forth on Schedule 1; or

(b) change its legal name, identity or structure to such an extent that any financing statement filed by the Collateral Agent in connection with this Agreement would become misleading.

4.3 Notices. The Grantor will advise the Collateral Agent promptly, in reasonable detail, of any Lien (other than any Permitted Lien) on any of the Pledged Collateral which would adversely affect the ability of the Collateral Agent to exercise any of its remedies hereunder.

4.4 Investment Property.

(a) Without the prior written consent of the Collateral Agent and except as permitted by the Credit Agreement (including any Separation Transaction, which is expressly permitted), the Grantor will not enter into any agreement or undertaking restricting the right or ability of the Grantor or the Collateral Agent to sell, assign or transfer any of the Pledged Collateral thereof or any interest therein.

(b) If the Grantor shall become entitled to receive or shall receive any securities or option or rights in respect of the Pledged Collateral, whether in addition to, in substitution of, as a conversion of, or in exchange for, any Pledged Collateral, or otherwise in respect thereof, the Grantor shall accept the same as the agent of the Secured Parties, hold the same in trust for the Secured Parties and deliver the same forthwith to the Collateral Agent in the exact form received, duly endorsed in a manner satisfactory to the Collateral Agent and with, if the Collateral Agent so requests, signature guaranteed, to be held by the Collateral Agent, subject to the terms hereof, as additional collateral security for the Obligations. If an Event of Default shall have occurred and be continuing and any sums of money or property so paid or distributed in respect of the Pledged Collateral shall be received by the Grantor, the Grantor shall, until such money or property is paid or delivered to the Collateral Agent, hold such money or property in trust for the Secured Parties, segregated from other funds of the Grantor, as additional collateral security for the Obligations.

4.5 Voting and Other Rights.

(a) Unless an Event of Default shall have occurred and be continuing, the Collateral Agent shall not sell, assign or transfer the Series 2022 DP&L First Mortgage Bonds (except to a successor Collateral Agent in its capacity as such).

(b) Unless an Event of Default shall have occurred and be continuing, where consent of holders of DP&L First Mortgage Bonds is sought, the Collateral Agent shall, subject to Section 4.7, be deemed to have voted, or deemed to have consented with respect thereto, proportionately with the vote or consent of all other DP&L First Mortgage Bonds then outstanding and eligible to vote or consent (other than in the case of any vote which would impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document, in which case, the Collateral Agent shall vote in accordance with the direction of the Administrative Agent). Subject to Section 4.7, if an Event of Default shall have occurred and be continuing, the Collateral Agent may vote the Series 2022 DP&L First Mortgage Bonds as contemplated by Article 5 of this Agreement.

4.6 Events of Default. If an Event of Default shall occur and be continuing: (a) all rights of the Grantor (if any) to exercise or refrain from exercising any consensual rights with respect to the Pledged Collateral which it would otherwise be entitled to exercise shall cease and all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right, but shall be under no obligation, to exercise or refrain from exercising any voting and other consensual rights and (b) the Collateral Agent shall have the right, without notice to the Grantor, to transfer all or any portion of the Pledged Collateral to its name or the name of its nominee or agent. In addition, the Collateral Agent shall have the right at any time, without notice to the Grantor, to exchange any certificates representing any Pledged Collateral for certificates or instruments of smaller or larger denominations. In order to permit

the Collateral Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto, the Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all proxies and other instruments as the Collateral Agent may from time to time reasonably request and the Grantor acknowledges that the Collateral Agent may utilize the power of attorney set forth herein.

4.7 Indenture Amendments. By its acceptance thereof, the Collateral Agent, as holder of the Series 2022 DP&L First Mortgage Bonds, consents to the amendments set forth in Article Four of the Fiftieth Supplemental Indenture, subject to the conditions of their effectiveness as provided in Section 1 of Article Four of the Fiftieth Supplemental Indenture.

## **5. REMEDIAL PROVISIONS**

5.1 Code and Other Remedies. (a) If an Event of Default shall occur and be continuing, the Collateral Agent, on behalf of the Secured Parties, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the UCC (whether or not the UCC applies to the affected Pledged Collateral) and all rights under any other applicable law or in equity, and in addition and without limitation. (i) the right to notify the trustee under the Indenture of such Event of Default and cause a redemption of the Series 2022 DP&L First Mortgage Bonds by the Company pursuant to the terms of the Indenture, (ii) the right to collect all amounts payable under the Series 2022 DP&L First Mortgage Bonds or any other Collateral for the benefit of the Secured Parties and hold it for their benefit or apply it to the Obligations, (iii) the right to attend or be represented by proxy at any meeting of bondholders under the Indenture, (iv) the right to vote the Series 2022 DP&L First Mortgage Bonds in accordance with the terms of the Indenture pursuant to Section 4.6 (but subject to Section 4.7) , (v) the right to issue consents and waivers with respect to the Series 2022 DP&L First Mortgage Bonds pursuant to Section 4.6 (but subject to Section 4.7), (vi) the right to issue any and all instructions and requests for action to the trustee under the Indenture that are permitted to a bondholder under the Indenture and (vii) the right to exercise all other rights and remedies of a “holder” of a Series 2022 DP&L First Mortgage Bond under the Indenture. Without limiting the generality of the foregoing, the Collateral Agent, without demand of performance or other demand, defense, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon the Grantor or any other Person (all and each of which demands, presentments, protests, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Pledged Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Pledged Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker’s board or office of any Secured Party, on the internet or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Collateral Agent may store any Pledged Collateral or otherwise prepare any Pledged Collateral for disposal in the manner and to the extent that the Collateral Agent deems appropriate. Each Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Pledged Collateral so sold, free of any right or equity of redemption in the Grantor, which right or equity is hereby waived and released.

(b) The Secured Parties hereby irrevocably authorize the Collateral Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Pledged Collateral in satisfaction of some or all of the Obligations or the Series 2022 DP&L First Mortgage Bonds pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase

(either directly or through one or more acquisition vehicles) all or any portion of the Pledged Collateral (i) at any sale thereof conducted under the provisions of any Debtor Relief Law (including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States), or (ii) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Collateral Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid by the Collateral Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) the Collateral Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Parties' ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Collateral Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 10.01 of the Credit Agreement), (iv) the Collateral Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Pledged Collateral for any reason, such Obligations shall automatically be reassigned to the Secured Parties pro rata and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive interests in or debt instruments issued by such acquisition vehicle) as the Collateral Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

(c) Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of the Grantor, and the Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to the Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Pledged Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Collateral Agent

may sell the Collateral without giving any warranties as to the Pledged Collateral. The Collateral Agent may specifically disclaim or modify any warranties of title or the like. The foregoing will not be considered to adversely affect the commercial reasonableness of any sale of the Pledged Collateral. The Grantor agrees that it would not be commercially unreasonable for the Collateral Agent to dispose of the Pledged Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Pledged Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. The Grantor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Pledged Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Pledged Collateral to more than one offeree. The Grantor further agrees, at the Collateral Agent's request, to assemble the Pledged Collateral and make it available to the Collateral Agent at places which the Collateral Agent shall reasonably select, whether at the Grantor's premises or elsewhere. The Collateral Agent shall have no obligation to marshal any of the Pledged Collateral.

(d) The Collateral Agent shall deduct from such Proceeds all reasonable costs and expenses of every kind incurred in connection with the exercise of its rights and remedies against the Pledged Collateral or incidental to the care or safekeeping of any of the Pledged Collateral or in any way relating to the Pledged Collateral or the rights of the Secured Parties hereunder, including, without limitation, reasonable attorneys' fees and disbursements. Any net Proceeds remaining after such deductions shall be applied or retained by the Collateral Agent in accordance with the Credit Agreement. Only after such application and after the payment by the Collateral Agent of any other amount required by any provision of law, including, without limitation, Section 9-615(a) of the UCC, need the Collateral Agent account for the surplus, if any, to the Grantor. If the Collateral Agent sells any of the Pledged Collateral upon credit, the Grantor will be credited only with payments actually made by the purchaser and received by the Collateral Agent. In the event the purchaser fails to pay for the Pledged Collateral, the Collateral Agent may resell the Pledged Collateral and the Grantor shall be credited with proceeds of the sale. To the extent permitted by applicable law, the Grantor waives all claims, damages and demands it may acquire against any Secured Party arising out of the exercise by it or them of any rights hereunder.

5.2 Effect of Securities Laws. The Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any or all of the Pledged Collateral by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. The Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Collateral Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit the Grantor to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if the Grantor would agree to do so.

5.3 Deficiency. The Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Pledged Collateral are insufficient to pay its Obligations and the fees and disbursements of any attorneys employed by any Secured Party to collect such deficiency.

## **6. POWER OF ATTORNEY AND FURTHER ASSURANCES**

6.1 Collateral Agent's Appointment as Attorney-in-Fact, Etc. (a) The Grantor hereby irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power

of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Grantor and in its name or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, the Grantor hereby gives the Collateral Agent the power and right, on behalf of the Grantor, without notice to or assent by the Grantor, to do any or all of the following:

(b) in the name of the Grantor or its own name, or otherwise, take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due with respect to any Pledged Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Collateral Agent for the purpose of collecting any and all such moneys due with respect to any other Pledged Collateral whenever payable;

(c) pay or discharge taxes and Liens levied or placed on or threatened against the Pledged Collateral, effect any repairs or purchase any insurance called for by the terms of the Loan Documents and pay all or any part of the premiums therefor and the costs thereof;

(d) execute, in connection with any sale provided for in Section 5.1 or 5.2, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Pledged Collateral; and

(e) (i) direct any party liable for any payment under any of the Pledged Collateral to make payment of any and all moneys due or to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct; (ii) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Pledged Collateral; (iii) sign and endorse any assignments, verifications, notices and other documents in connection with any of the Pledged Collateral; (iv) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Pledged Collateral or any portion thereof and to enforce any other right in respect of any Pledged Collateral; (v) defend any suit, action or proceeding brought against the Grantor with respect to any Pledged Collateral; (vi) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Collateral Agent may deem appropriate and (vii) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Pledged Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and do, at the Collateral Agent's option and the Grantor's expense, at any time, or from time to time, all acts and things which the Collateral Agent deems necessary to protect, preserve or realize upon the Pledged Collateral and the Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as the Grantor might do.

Anything in this Section 6.1 to the contrary notwithstanding, the Collateral Agent agrees that, except as provided in Section 6.2, it will not exercise any rights under the power of attorney provided for in this Section 6.1 unless an Event of Default shall have occurred and be continuing.

6.2 Performance of Obligations. If the Grantor fails to perform or comply with any of its agreements contained herein, the Collateral Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement; provided, however, that unless an Event of Default has occurred and is continuing or time is of the essence, the Collateral Agent shall not exercise this power without first making demand on the Grantor and the Grantor failing to promptly comply therewith.



6.3 Costs and Expenses. The expenses of the Collateral Agent incurred in connection with actions undertaken as provided in this Article 6, together with interest thereon at a rate per annum equal to the rate per annum at which interest would then be payable on past due Loans that are Base Rate Loans under the Credit Agreement, from the date of payment by the Collateral Agent to the date reimbursed by the Grantor, shall be payable by the Grantor to the Collateral Agent on demand.

6.4 Ratification. The Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until a Discharge of the Obligations.

6.5 Authorization of Financing Statements. The Grantor acknowledges that pursuant to Section 9-509(b) of the UCC and any other applicable law, the Collateral Agent is authorized to file or record financing or continuation statements, and amendments thereto, and other filing or recording documents or instruments with respect to the Pledged Collateral in such form and in such offices as the Collateral Agent reasonably determines appropriate to perfect or maintain the perfection of the security interests of the Collateral Agent under this Agreement. The Grantor agrees that such financing statements may describe the collateral in the same manner as described herein or such other description as the Collateral Agent, in its sole judgment, determines is necessary or advisable. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

6.6 Further Assurances. The Grantor agrees that from time to time, at the expense of the Grantor, it shall promptly execute and deliver all further instruments and documents and take all further action that may be necessary or desirable, or that the Collateral Agent may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted or purported to be granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder in respect of any Pledged Collateral. Without limiting the generality of the foregoing, the Grantor shall:

(a) file such financing or continuation statements, or amendments thereto and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary or desirable, or as the Collateral Agent may reasonably request, in order to effect, reflect, perfect and preserve the security interests granted or purported to be granted hereby;

(b) at any reasonable time, upon request by the Collateral Agent, assemble the Pledged Collateral and allow inspection of the Pledged Collateral by the Collateral Agent or persons designated by the Collateral Agent;

(c) at the Collateral Agent's request, appear in and defend any action or proceeding that may affect the Grantor's title to or the Collateral Agent's interest in all or any part of the Pledged Collateral; and

(d) furnish the Collateral Agent with such information regarding the Pledged Collateral, including, without limitation, the location thereof, as the Collateral Agent may reasonably request from time to time.

## **7. THE COLLATERAL AGENT**

7.1 Authority of Collateral Agent. The Grantor acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right,

request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Agent and the other Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and the Grantor, the Collateral Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and the Grantor shall not be under any obligation, or entitlement, to make any inquiry respecting such authority. The Collateral Agent shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Pledged Collateral), solely in accordance with this Agreement and the Credit Agreement.

7.2 Duty of Agent. Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not the Collateral Agent has or is deemed to have knowledge of such matters, as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Collateral, or as to taking any action to monitor or protect against any diminution in value of the Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which it accords its own property. Neither the Collateral Agent nor any other Secured Party nor any of their respective officers, directors, partners, employees, agents, attorneys or other advisors, attorneys-in-fact or affiliates shall be liable for failure to demand, collect or realize upon any of the Pledged Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Pledged Collateral upon the request of the Grantor or any other Person or to take any other action whatsoever with regard to the Pledged Collateral or any part thereof. The powers conferred on the Secured Parties hereunder are solely to protect the Secured Parties' interests in the Pledged Collateral and shall not impose any duty upon any Secured Party to exercise any such powers. The Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be responsible to the Grantor for any act or failure to act hereunder, except to the extent that any such act or failure to act is found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely and proximately from their own gross negligence or willful misconduct in breach of a duty owed to the Grantor.

7.3 Delegation of Duties. The Collateral Agent may perform any and all of its duties and exercise its rights and powers under this Agreement by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Article 7 shall apply to any such sub-agent and to any of the Affiliates of the Collateral Agent and any such sub-agents, and shall apply to their respective activities as if such sub-agent and Affiliates were named herein in connection with the transactions contemplated hereby. Notwithstanding anything herein to the contrary, each sub-agent appointed by the Collateral Agent or Affiliate of the Collateral Agent or Affiliate of any such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Secured Parties, and such

rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent or Affiliate acting in such capacity.

7.4 No Individual Foreclosure, Etc. No Secured Party shall have any right individually to realize upon any of the Pledged Collateral or to enforce any guarantee of the Obligations except to the extent expressly contemplated by this Agreement or the other Loan Documents, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Collateral Agent on behalf of the Secured Parties in accordance with the terms thereof. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Pledged Collateral and of the guarantees of the Obligations provided hereunder and under any other Loan Documents, to have agreed to the foregoing provisions and the other provisions of this Agreement. Without limiting the generality of the foregoing, each Secured Party authorizes the Collateral Agent to credit bid all or any part of the Obligations held by it.

7.5 Rights of Collateral Agent. Without limiting the foregoing, the Collateral Agent shall be entitled to the rights, protections, immunities and indemnities set forth in the Credit Agreement as if specifically set forth herein.

## **8. MISCELLANEOUS**

8.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Grantor and the Collateral Agent.

8.2 Notices. All notices, requests and demands to or upon the Collateral Agent or the Grantor hereunder shall be effected in the manner provided for in Section 10.02 of the Credit Agreement.

8.3 No Waiver by Course of Conduct; Cumulative Remedies. No Secured Party shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4 Enforcement Expenses; Indemnification. (a) The Grantor agrees to pay or reimburse each Secured Party for all its costs and expenses incurred in enforcing or preserving any rights under this Agreement and the other Loan Documents to which the Grantor is a party, including, without limitation, the fees and disbursements of counsel, (including the allocated fees and expenses of in-house counsel) to each Secured Party and of counsel to the Collateral Agent.

(b) The Grantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Pledged Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) The Grantor agrees to pay, and to save the Secured Parties (including all Indemnitees pursuant to Section 10.04 of the Credit Agreement), harmless from, any and all liabilities, obligations,

losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Grantor would be required to do so pursuant to Section 10.04 of the Credit Agreement (it being understood and agreed that the indemnification obligations set forth in this Section 8.4(c) shall apply to the Secured Parties to the same extent that they apply to the Collateral Agent and the Lenders under the Credit Agreement).

(d) The Grantor agrees that the provisions of Section 3.04 of the Credit Agreement are hereby incorporated herein by reference, mutatis mutandis, and each Secured Party shall be entitled to rely on each of them as if they were fully set forth herein.

(e) The agreements in this Section 8.4 shall survive repayment of the Obligations and all other amounts payable under the Credit Agreement and the other Loan Documents.

8.5 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Grantor and shall inure to the benefit of the Secured Parties and their successors and assigns; provided that the Grantor shall not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent and any such assignment, transfer or delegation without such consent shall be null and void.

8.6 Set-Off. The Grantor hereby irrevocably authorizes each Secured Party at any time and from time to time while an Event of Default pursuant to Section 8.01(g) of the Credit Agreement shall have occurred and be continuing, without notice to the Grantor, any such notice being expressly waived by the Grantor, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such party to or for the credit or the account of the Grantor, or any part thereof in such amounts as such Secured Party may elect, against and on account of the obligations and liabilities of the Grantor to such Secured Party hereunder and claims of every nature and description of such Secured Party against the Grantor, in any currency, whether arising hereunder, under the Credit Agreement, any other Loan Document or otherwise, as such Secured Party may elect, whether or not any Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured, provided that, such Secured Party complies with Section 10.08 of the Credit Agreement. Each Secured Party exercising any right of set-off shall notify the Grantor promptly of any such set-off and the application made by such Secured Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Secured Party under this Section 8.6 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Secured Party may have.

8.7 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic imaging means), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic transmission (e.g. "pdf" or "tif" format) shall be effective as delivery of a manually executed counterpart hereof.

8.8 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any

other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

8.9 Section Headings. The section headings and Table of Contents used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.10 Integration/Conflict. This Agreement and the other Loan Documents represent the entire agreement of the Grantor, the Collateral Agent and the other Secured Parties with respect to the subject matter hereof and thereof, and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. There are no promises, undertakings, representations or warranties by the Collateral Agent or any other Secured Party relative to the subject matter hereof and thereof not expressly set forth or referred to herein or therein.

8.11 **GOVERNING LAW**. **THIS AGREEMENT AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OR PRIORITY OF THE SECURITY INTERESTS).**

8.12 Acknowledgments. The Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) no Secured Party has any fiduciary relationship with or duty to the Grantor arising out of or in connection with this Agreement or any of the other Loan Documents and the provisions of Section 10.16 of the Credit Agreement are incorporated herein, mutatis mutandis (to apply to this Agreement rather than the Credit Agreement), and the relationship between the Grantor, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Grantor and the Secured Parties.

8.13 Releases. (a) At such time as there has been a Discharge of the Obligations, the Pledged Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Collateral Agent and the Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Pledged Collateral shall revert to the Grantor. At the request and sole expense of the Grantor following any such termination, the Collateral Agent shall deliver to the Grantor any Pledged Collateral held by the Collateral Agent hereunder, and execute and deliver to the Grantor such documents as it shall reasonably request to evidence such termination.

(b) If any of the Pledged Collateral shall be Disposed of by the Grantor in a transaction permitted by the Credit Agreement, then, the Collateral Agent, at the request and sole expense of the Grantor, shall execute and deliver to the Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Pledged Collateral; provided that the Grantor shall have delivered to the Collateral Agent, at least ten (10) Business Days prior to the date of the proposed release, a written request for release identifying the Grantor and Pledged Collateral to be released, together with a certification by the Grantor stating that such transaction is in compliance with the Credit Agreement and the other Loan Documents and that the Proceeds of such Disposition will be applied in accordance therewith.

(c) The Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement originally filed in connection herewith without the prior written consent of the Collateral Agent, subject to the Grantor's rights under Section 9-509(d)(2) of the UCC.

8.14 Incorporation by Reference. Section 10.14 (Governing Law; Jurisdiction; Etc.) and Section 10.15 (Waiver of Jury Trial) of the Credit Agreement are hereby incorporated by reference, *mutatis mutandis*.

IN WITNESS WHEREOF, each of the undersigned has caused this Pledge and Security Agreement to be duly executed and delivered as of the date first above written.

GRANTOR:

THE DAYTON POWER AND LIGHT COMPANY

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

[DP&L Pledge and Security Agreement]

COLLATERAL AGENT:

JPMORGAN CHASE BANK, N.A.,  
as Collateral Agent

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

[DP&L Pledge and Security Agreement]



EXACT LEGAL NAME, LOCATION OF JURISDICTION OF ORGANIZATION AND CHIEF  
EXECUTIVE OFFICE

<u>Exact Legal Name</u>	<u>Jurisdiction of Organization</u>	<u>Organizational I.D.</u>	<u>Chief Executive Office or Sole Place of Business</u>
The Dayton Power and Light Company	Ohio	27514	1065 Woodman Drive Dayton, OH 45432

---

---

PLEDGE AND SECURITY AGREEMENT

between

THE DAYTON POWER AND LIGHT COMPANY,

and

JPMORGAN CHASE BANK, N.A.,  
as Collateral Agent

Dated as of August 24, 2016

---

---

## TABLE OF CONTENTS

	<u>Page</u>
<b>1. DEFINED TERMS .....</b>	<b>1</b>
1.1 Definitions.....	1
1.2 Other Definitional Provisions.....	2
<b>2. ISSUANCE OF AND GRANT OF SECURITY INTEREST IN THE SERIES 2022 DP&amp;L FIRST MORTGAGE BONDS AND PLEDGED COLLATERAL .....</b>	<b>2</b>
2.1 Issuance of Bonds and Grant of Security .....	2
<b>3. REPRESENTATIONS AND WARRANTIES .....</b>	<b>3</b>
<b>4. COVENANTS.....</b>	<b>4</b>
4.1 Maintenance of Perfected Security Interest; Further Documentation .....	4
4.2 Changes in Locations, Name, Jurisdiction of Incorporation, Etc.....	4
4.3 Notices.....	5
4.4 Investment Property .....	5
4.5 Voting and Other Rights .....	5
4.6 Events of Default.....	5
4.7 Indenture Amendments .....	6
<b>5. REMEDIAL PROVISIONS.....</b>	<b>6</b>
5.1 Code and Other Remedies.....	6
5.2 Effect of Securities Laws .....	8
5.3 Deficiency .....	8
<b>6. POWER OF ATTORNEY AND FURTHER ASSURANCES.....</b>	<b>8</b>
6.1 Collateral Agent’s Appointment as Attorney-in-Fact, Etc.....	8
6.2 Performance of Obligations .....	9
6.3 Costs and Expenses .....	10
6.4 Ratification.....	10
6.5 Authorization of Financing Statements.....	10
6.6 Further Assurances .....	10
<b>7. THE COLLATERAL AGENT .....</b>	<b>10</b>
7.1 Authority of Collateral Agent .....	10
7.2 Duty of Agent.....	11
7.3 Delegation of Duties.....	11
7.4 No Individual Foreclosure, Etc .....	12
7.5 Rights of Collateral Agent.....	12
<b>8. MISCELLANEOUS.....</b>	<b>12</b>
8.1 Amendments in Writing .....	12
8.2 Notices.....	12

8.3 No Waiver by Course of Conduct; Cumulative Remedies..... 12

8.4 Enforcement Expenses; Indemnification..... 12

8.5 Successors and Assigns..... 13

8.6 Set-Off..... 13

8.7 Counterparts ..... 13

8.8 Severability ..... 13

8.9 Section Headings..... 14

8.10 Integration/Conflict ..... 14

8.11 **GOVERNING LAW** ..... 14

8.12 Acknowledgments..... 14

8.13 Releases..... 14

8.14 Incorporation by Reference ..... 15

SCHEDULE 1    Exact Legal Name, Location of Jurisdiction of Organization and  
                         Chief Executive Office

PLEDGE AND SECURITY AGREEMENT, dated as of August 24, 2016, between The Dayton Power and Light Company (the “Grantor”), and JPMorgan Chase Bank, N.A., as Collateral Agent (in such capacity and together with its successors and assigns in such capacity, the “Collateral Agent”) for the banks and other financial institutions or entities (the “Lenders”) from time to time parties to the Credit Agreement, dated as of August 24, 2016 (as amended, restated, supplemented or otherwise modified or replaced from time to time, the “Credit Agreement”), among The Dayton Power and Light Company, as borrower, JPMorgan Chase Bank, N.A., as administrative agent and collateral agent, the Lenders, and other financial institutions or entities from time to time parties thereto.

**W I T N E S S E T H:**

WHEREAS, pursuant to the Credit Agreement, the Lenders have severally agreed to make extensions of credit to the Grantor upon the terms and subject to the conditions set forth therein; and

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Grantor under the Credit Agreement that it shall have executed and delivered this Agreement to the Collateral Agent for the benefit of the Secured Parties (as defined below) and issued and delivered to the Collateral Agent for the benefit of the Secured Parties its Series 2022 DP&L First Mortgage Bonds in order to evidence and secure the Obligations;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Grantor thereunder and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor hereby agrees with the Collateral Agent, for the benefit of the Secured Parties, as follows:

**1. DEFINED TERMS**

**1.1 Definitions.**

- (a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.
- (b) The following terms shall have the following meanings:

“Agreement” shall mean this Pledge and Security Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Credit Agreement” shall have the meaning set forth in the preamble hereto.

“Discharge of the Obligations” shall mean and shall have occurred when (i) all Obligations shall have been paid in full in cash and all other obligations under the Loan Documents shall have been performed (other than (a) those expressly stated to survive termination and (b) contingent obligations as to which no claim has been asserted) and (ii) all Commitments shall have terminated or expired.

“Pledged Collateral” shall have the meaning set forth in Section 2.

“Proceeds” shall mean all “proceeds” as such term is defined in Section 9-102(a)(64) of the UCC and, in any event, shall include, without limitation, all principal, interest and other income from the Pledged Collateral and all collections thereon and any money or property realized or collected in connection with any collateral security or guarantee with respect to the Pledged Collateral.

“Secured Parties” shall mean collectively, the Administrative Agent, the Collateral Agent and the Lenders.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Supporting Obligations” shall mean “supporting obligations” as such term is defined in Section 9-102(a)(78) of the UCC.

“UCC” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Pledged Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

1.2 Other Definitional Provisions. (a) The words “hereof”, “herein”, “hereto” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule, Exhibit and Annex references, are to this Agreement unless otherwise specified. References to any Schedule, Exhibit or Annex shall mean such Schedule, Exhibit or Annex as amended or supplemented from time to time in accordance with this Agreement.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) The expressions “payment in full,” “paid in full” and any other similar terms or phrases when used herein shall mean payment in cash in immediately available funds.

(d) The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

(e) All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

## **2. ISSUANCE OF AND GRANT OF SECURITY INTEREST IN THE SERIES 2022 DP&L FIRST MORTGAGE BONDS AND PLEDGED COLLATERAL**

2.1 Issuance of Bonds and Grant of Security. The Grantor hereby issues and delivers and, to the extent of any rights or interests the Grantor may at any time have in the Series 2022 DP&L First Mortgage Bond, if any, transfers, assigns and pledges and to the Collateral Agent, for the ratable benefit of the Secured Parties, the Series 2022 DP&L First Mortgage Bonds to evidence and secure the Grantor’s Obligations, and hereby grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in, all of the following property, in each case, wherever located and now owned or at any time hereafter acquired by the Grantor or in which the Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Pledged Collateral”), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Grantor’s Obligations:

(a) to the extent of any rights or interests the Grantor has in the Series 2022 DP&L First Mortgage Bond (the “Pledged Bonds”), all such rights and interests of the Grantor in and under the Pledged Bonds;

(b) all books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time evidence or contain information relating to any of the Pledged Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon; and

(c) all Proceeds, products, accessions, rents and profits of any and all of the foregoing Supporting Obligations and other documents and instruments that from time to time guarantee or, subject to the following sentence, secure payment of such Pledged Bond.

The Pledged Collateral includes the rights and interest of the registered holder of the Pledged Bonds under the Indenture and Fiftieth Supplemental Indenture, but does not include any property or asset of the Grantor subject to the lien of the Indenture and the Fiftieth Supplemental Indenture.

Subject to the terms hereof, the Grantor hereby agrees that the Collateral Agent is, and will have all the rights and interests of, a holder and registered owner of the Series 2022 DP&L First Mortgage Bonds, and all rights and interests under and in the Pledged Collateral, and may exercise such rights and any other rights set forth herein or under applicable law, and realize on such interests, in each case for the ratable benefit of the Secured Parties, to satisfy, in whole or in part, the Grantor’s Obligations. The Grantor shall cause the physical delivery of the Series 2022 DP&L First Mortgage Bonds in certificated form to the Collateral Agent on the Closing Date, registered in its name as Collateral Agent

### **3. REPRESENTATIONS AND WARRANTIES**

To induce the Administrative Agent, Collateral Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Grantor thereunder, the Grantor hereby represents and warrants to the Secured Parties on the Closing Date that:

(a) The Grantor’s exact legal name (as indicated on the public record of its jurisdiction of formation or organization), jurisdiction of organization, and the location of the Grantor’s chief executive office or sole place of business are specified on Schedule 1;

(b) The Grantor is organized solely under the law of the jurisdiction so specified and has not filed any certificates of domestication, transfer or continuance in any other jurisdiction. Except as specified on Schedule 1, it has not changed its name, jurisdiction of organization, chief executive office or sole place of business (if applicable) or its corporate structure in any way (e.g. by merger, consolidation, change in corporate form or otherwise) within the past five years and has not within the last five years become bound (whether as a result of merger or otherwise) as Grantor under a security agreement entered into by another Person, which has not heretofore been terminated; and

(c) The Grantor is a transmitting utility as defined in UCC § 9-102(a)(80).

(d) Each of the Series 2022 DP&L First Mortgage Bonds constitutes the legal, valid and binding obligation of the Grantor with respect thereto, enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing).

(e) Upon delivery in certificated form to the Collateral Agent of the Series 2022 DP&L First Mortgage Bonds, subject to Section 4.5 hereof, the Collateral Agent shall be entitled to all voting, consensual and other rights accruing to the holders of Series 2022 DP&L First Mortgage Bonds under the Indenture.

(f) There exists no default under the Series 2022 DP&L First Mortgage Bonds.

#### **4. COVENANTS**

The Grantor covenants and agrees with the Secured Parties that, from and after the date of this Agreement until the Discharge of the Obligations:

4.1 Maintenance of Perfected Security Interest; Further Documentation. (a) The Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.01(a)(v)(A) of the Credit Agreement and shall defend such security interest against the claims and demands of all Persons whomsoever.

(b) The Grantor shall furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Pledged Collateral and such other reports in connection with the assets and property of the Grantor as the Collateral Agent may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Collateral Agent, and at the sole expense of the Grantor, the Grantor shall promptly and duly authorize, execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Collateral Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (i) the filing of any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) taking any actions necessary to enable the Collateral Agent to obtain “control” (within the meaning of the applicable Uniform Commercial Code) with respect thereto, to the extent required hereunder.

(d) If any of the Pledged Collateral is or shall become evidenced or represented by any Certificated Security, such Certificated Security shall be immediately delivered to the Collateral Agent, duly endorsed in a manner satisfactory to the Collateral Agent, to be held as Pledged Collateral pursuant to this Agreement.

4.2 Changes in Locations, Name, Jurisdiction of Incorporation, Etc. The Grantor will not, except upon fifteen (15) days’ prior written notice to the Collateral Agent and delivery to the Collateral Agent of duly authorized and, where required, executed copies of all additional financing statements and other documents reasonably requested by the Collateral Agent to maintain the validity, perfection and priority of the security interests provided for herein:

(a) without limiting the prohibitions on mergers involving the Grantor contained in the Credit Agreement, change its legal name, jurisdiction of organization or the location of its chief executive office or sole place of business, if applicable, from that set forth on Schedule 1; or

(b) change its legal name, identity or structure to such an extent that any financing statement filed by the Collateral Agent in connection with this Agreement would become misleading.



4.3 Notices. The Grantor will advise the Collateral Agent promptly, in reasonable detail, of any Lien (other than any Permitted Lien) on any of the Pledged Collateral which would adversely affect the ability of the Collateral Agent to exercise any of its remedies hereunder.

4.4 Investment Property.

(a) Without the prior written consent of the Collateral Agent and except as permitted by the Credit Agreement (including any Separation Transaction, which is expressly permitted), the Grantor will not enter into any agreement or undertaking restricting the right or ability of the Grantor or the Collateral Agent to sell, assign or transfer any of the Pledged Collateral thereof or any interest therein.

(b) If the Grantor shall become entitled to receive or shall receive any securities or option or rights in respect of the Pledged Collateral, whether in addition to, in substitution of, as a conversion of, or in exchange for, any Pledged Collateral, or otherwise in respect thereof, the Grantor shall accept the same as the agent of the Secured Parties, hold the same in trust for the Secured Parties and deliver the same forthwith to the Collateral Agent in the exact form received, duly endorsed in a manner satisfactory to the Collateral Agent and with, if the Collateral Agent so requests, signature guaranteed, to be held by the Collateral Agent, subject to the terms hereof, as additional collateral security for the Obligations. If an Event of Default shall have occurred and be continuing and any sums of money or property so paid or distributed in respect of the Pledged Collateral shall be received by the Grantor, the Grantor shall, until such money or property is paid or delivered to the Collateral Agent, hold such money or property in trust for the Secured Parties, segregated from other funds of the Grantor, as additional collateral security for the Obligations.

4.5 Voting and Other Rights.

(a) Unless an Event of Default shall have occurred and be continuing, the Collateral Agent shall not sell, assign or transfer the Series 2022 DP&L First Mortgage Bonds (except to a successor Collateral Agent in its capacity as such).

(b) Unless an Event of Default shall have occurred and be continuing, where consent of holders of DP&L First Mortgage Bonds is sought, the Collateral Agent shall, subject to Section 4.7, be deemed to have voted, or deemed to have consented with respect thereto, proportionately with the vote or consent of all other DP&L First Mortgage Bonds then outstanding and eligible to vote or consent (other than in the case of any vote which would impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document, in which case, the Collateral Agent shall vote in accordance with the direction of the Administrative Agent). Subject to Section 4.7, if an Event of Default shall have occurred and be continuing, the Collateral Agent may vote the Series 2022 DP&L First Mortgage Bonds as contemplated by Article 5 of this Agreement.

4.6 Events of Default. If an Event of Default shall occur and be continuing: (a) all rights of the Grantor (if any) to exercise or refrain from exercising any consensual rights with respect to the Pledged Collateral which it would otherwise be entitled to exercise shall cease and all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right, but shall be under no obligation, to exercise or refrain from exercising any voting and other consensual rights and (b) the Collateral Agent shall have the right, without notice to the Grantor, to transfer all or any portion of the Pledged Collateral to its name or the name of its nominee or agent. In addition, the Collateral Agent shall have the right at any time, without notice to the Grantor, to exchange any certificates representing any Pledged Collateral for certificates or instruments of smaller or larger denominations. In order to permit

the Collateral Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto, the Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all proxies and other instruments as the Collateral Agent may from time to time reasonably request and the Grantor acknowledges that the Collateral Agent may utilize the power of attorney set forth herein.

4.7 Indenture Amendments. By its acceptance thereof, the Collateral Agent, as holder of the Series 2022 DP&L First Mortgage Bonds, consents to the amendments set forth in Article Four of the Fiftieth Supplemental Indenture, subject to the conditions of their effectiveness as provided in Section 1 of Article Four of the Fiftieth Supplemental Indenture.

## **5. REMEDIAL PROVISIONS**

5.1 Code and Other Remedies. (a) If an Event of Default shall occur and be continuing, the Collateral Agent, on behalf of the Secured Parties, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the UCC (whether or not the UCC applies to the affected Pledged Collateral) and all rights under any other applicable law or in equity, and in addition and without limitation. (i) the right to notify the trustee under the Indenture of such Event of Default and cause a redemption of the Series 2022 DP&L First Mortgage Bonds by the Company pursuant to the terms of the Indenture, (ii) the right to collect all amounts payable under the Series 2022 DP&L First Mortgage Bonds or any other Collateral for the benefit of the Secured Parties and hold it for their benefit or apply it to the Obligations, (iii) the right to attend or be represented by proxy at any meeting of bondholders under the Indenture, (iv) the right to vote the Series 2022 DP&L First Mortgage Bonds in accordance with the terms of the Indenture pursuant to Section 4.6 (but subject to Section 4.7) , (v) the right to issue consents and waivers with respect to the Series 2022 DP&L First Mortgage Bonds pursuant to Section 4.6 (but subject to Section 4.7), (vi) the right to issue any and all instructions and requests for action to the trustee under the Indenture that are permitted to a bondholder under the Indenture and (vii) the right to exercise all other rights and remedies of a “holder” of a Series 2022 DP&L First Mortgage Bond under the Indenture. Without limiting the generality of the foregoing, the Collateral Agent, without demand of performance or other demand, defense, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon the Grantor or any other Person (all and each of which demands, presentments, protests, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Pledged Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Pledged Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker’s board or office of any Secured Party, on the internet or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Collateral Agent may store any Pledged Collateral or otherwise prepare any Pledged Collateral for disposal in the manner and to the extent that the Collateral Agent deems appropriate. Each Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Pledged Collateral so sold, free of any right or equity of redemption in the Grantor, which right or equity is hereby waived and released.

(b) The Secured Parties hereby irrevocably authorize the Collateral Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Pledged Collateral in satisfaction of some or all of the Obligations or the Series 2022 DP&L First Mortgage Bonds pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase

(either directly or through one or more acquisition vehicles) all or any portion of the Pledged Collateral (i) at any sale thereof conducted under the provisions of any Debtor Relief Law (including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States), or (ii) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Collateral Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid by the Collateral Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) the Collateral Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Parties' ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Collateral Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 10.01 of the Credit Agreement), (iv) the Collateral Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Pledged Collateral for any reason, such Obligations shall automatically be reassigned to the Secured Parties pro rata and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive interests in or debt instruments issued by such acquisition vehicle) as the Collateral Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

(c) Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of the Grantor, and the Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to the Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Pledged Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Collateral Agent

may sell the Collateral without giving any warranties as to the Pledged Collateral. The Collateral Agent may specifically disclaim or modify any warranties of title or the like. The foregoing will not be considered to adversely affect the commercial reasonableness of any sale of the Pledged Collateral. The Grantor agrees that it would not be commercially unreasonable for the Collateral Agent to dispose of the Pledged Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Pledged Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. The Grantor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Pledged Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Pledged Collateral to more than one offeree. The Grantor further agrees, at the Collateral Agent's request, to assemble the Pledged Collateral and make it available to the Collateral Agent at places which the Collateral Agent shall reasonably select, whether at the Grantor's premises or elsewhere. The Collateral Agent shall have no obligation to marshal any of the Pledged Collateral.

(d) The Collateral Agent shall deduct from such Proceeds all reasonable costs and expenses of every kind incurred in connection with the exercise of its rights and remedies against the Pledged Collateral or incidental to the care or safekeeping of any of the Pledged Collateral or in any way relating to the Pledged Collateral or the rights of the Secured Parties hereunder, including, without limitation, reasonable attorneys' fees and disbursements. Any net Proceeds remaining after such deductions shall be applied or retained by the Collateral Agent in accordance with the Credit Agreement. Only after such application and after the payment by the Collateral Agent of any other amount required by any provision of law, including, without limitation, Section 9-615(a) of the UCC, need the Collateral Agent account for the surplus, if any, to the Grantor. If the Collateral Agent sells any of the Pledged Collateral upon credit, the Grantor will be credited only with payments actually made by the purchaser and received by the Collateral Agent. In the event the purchaser fails to pay for the Pledged Collateral, the Collateral Agent may resell the Pledged Collateral and the Grantor shall be credited with proceeds of the sale. To the extent permitted by applicable law, the Grantor waives all claims, damages and demands it may acquire against any Secured Party arising out of the exercise by it or them of any rights hereunder.

5.2 Effect of Securities Laws. The Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any or all of the Pledged Collateral by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. The Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Collateral Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit the Grantor to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if the Grantor would agree to do so.

5.3 Deficiency. The Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Pledged Collateral are insufficient to pay its Obligations and the fees and disbursements of any attorneys employed by any Secured Party to collect such deficiency.

## **6. POWER OF ATTORNEY AND FURTHER ASSURANCES**

6.1 Collateral Agent's Appointment as Attorney-in-Fact, Etc. (a) The Grantor hereby irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power

of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Grantor and in its name or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, the Grantor hereby gives the Collateral Agent the power and right, on behalf of the Grantor, without notice to or assent by the Grantor, to do any or all of the following:

(b) in the name of the Grantor or its own name, or otherwise, take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due with respect to any Pledged Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Collateral Agent for the purpose of collecting any and all such moneys due with respect to any other Pledged Collateral whenever payable;

(c) pay or discharge taxes and Liens levied or placed on or threatened against the Pledged Collateral, effect any repairs or purchase any insurance called for by the terms of the Loan Documents and pay all or any part of the premiums therefor and the costs thereof;

(d) execute, in connection with any sale provided for in Section 5.1 or 5.2, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Pledged Collateral; and

(e) (i) direct any party liable for any payment under any of the Pledged Collateral to make payment of any and all moneys due or to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct; (ii) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Pledged Collateral; (iii) sign and endorse any assignments, verifications, notices and other documents in connection with any of the Pledged Collateral; (iv) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Pledged Collateral or any portion thereof and to enforce any other right in respect of any Pledged Collateral; (v) defend any suit, action or proceeding brought against the Grantor with respect to any Pledged Collateral; (vi) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Collateral Agent may deem appropriate and (vii) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Pledged Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and do, at the Collateral Agent's option and the Grantor's expense, at any time, or from time to time, all acts and things which the Collateral Agent deems necessary to protect, preserve or realize upon the Pledged Collateral and the Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as the Grantor might do.

Anything in this Section 6.1 to the contrary notwithstanding, the Collateral Agent agrees that, except as provided in Section 6.2, it will not exercise any rights under the power of attorney provided for in this Section 6.1 unless an Event of Default shall have occurred and be continuing.

6.2 Performance of Obligations. If the Grantor fails to perform or comply with any of its agreements contained herein, the Collateral Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement; provided, however, that unless an Event of Default has occurred and is continuing or time is of the essence, the Collateral Agent shall not exercise this power without first making demand on the Grantor and the Grantor failing to promptly comply therewith.

6.3 Costs and Expenses. The expenses of the Collateral Agent incurred in connection with actions undertaken as provided in this Article 6, together with interest thereon at a rate per annum equal to the rate per annum at which interest would then be payable on past due Loans that are Base Rate Loans under the Credit Agreement, from the date of payment by the Collateral Agent to the date reimbursed by the Grantor, shall be payable by the Grantor to the Collateral Agent on demand.

6.4 Ratification. The Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until a Discharge of the Obligations.

6.5 Authorization of Financing Statements. The Grantor acknowledges that pursuant to Section 9-509(b) of the UCC and any other applicable law, the Collateral Agent is authorized to file or record financing or continuation statements, and amendments thereto, and other filing or recording documents or instruments with respect to the Pledged Collateral in such form and in such offices as the Collateral Agent reasonably determines appropriate to perfect or maintain the perfection of the security interests of the Collateral Agent under this Agreement. The Grantor agrees that such financing statements may describe the collateral in the same manner as described herein or such other description as the Collateral Agent, in its sole judgment, determines is necessary or advisable. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

6.6 Further Assurances. The Grantor agrees that from time to time, at the expense of the Grantor, it shall promptly execute and deliver all further instruments and documents and take all further action that may be necessary or desirable, or that the Collateral Agent may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted or purported to be granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder in respect of any Pledged Collateral. Without limiting the generality of the foregoing, the Grantor shall:

(a) file such financing or continuation statements, or amendments thereto and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary or desirable, or as the Collateral Agent may reasonably request, in order to effect, reflect, perfect and preserve the security interests granted or purported to be granted hereby;

(b) at any reasonable time, upon request by the Collateral Agent, assemble the Pledged Collateral and allow inspection of the Pledged Collateral by the Collateral Agent or persons designated by the Collateral Agent;

(c) at the Collateral Agent's request, appear in and defend any action or proceeding that may affect the Grantor's title to or the Collateral Agent's interest in all or any part of the Pledged Collateral; and

(d) furnish the Collateral Agent with such information regarding the Pledged Collateral, including, without limitation, the location thereof, as the Collateral Agent may reasonably request from time to time.

## **7. THE COLLATERAL AGENT**

7.1 Authority of Collateral Agent. The Grantor acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right,

request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Agent and the other Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and the Grantor, the Collateral Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and the Grantor shall not be under any obligation, or entitlement, to make any inquiry respecting such authority. The Collateral Agent shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Pledged Collateral), solely in accordance with this Agreement and the Credit Agreement.

7.2 Duty of Agent. Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not the Collateral Agent has or is deemed to have knowledge of such matters, as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Collateral, or as to taking any action to monitor or protect against any diminution in value of the Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which it accords its own property. Neither the Collateral Agent nor any other Secured Party nor any of their respective officers, directors, partners, employees, agents, attorneys or other advisors, attorneys-in-fact or affiliates shall be liable for failure to demand, collect or realize upon any of the Pledged Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Pledged Collateral upon the request of the Grantor or any other Person or to take any other action whatsoever with regard to the Pledged Collateral or any part thereof. The powers conferred on the Secured Parties hereunder are solely to protect the Secured Parties' interests in the Pledged Collateral and shall not impose any duty upon any Secured Party to exercise any such powers. The Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be responsible to the Grantor for any act or failure to act hereunder, except to the extent that any such act or failure to act is found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely and proximately from their own gross negligence or willful misconduct in breach of a duty owed to the Grantor.

7.3 Delegation of Duties. The Collateral Agent may perform any and all of its duties and exercise its rights and powers under this Agreement by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Article 7 shall apply to any such sub-agent and to any of the Affiliates of the Collateral Agent and any such sub-agents, and shall apply to their respective activities as if such sub-agent and Affiliates were named herein in connection with the transactions contemplated hereby. Notwithstanding anything herein to the contrary, each sub-agent appointed by the Collateral Agent or Affiliate of the Collateral Agent or Affiliate of any such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Secured Parties, and such

rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent or Affiliate acting in such capacity.

7.4 No Individual Foreclosure, Etc. No Secured Party shall have any right individually to realize upon any of the Pledged Collateral or to enforce any guarantee of the Obligations except to the extent expressly contemplated by this Agreement or the other Loan Documents, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Collateral Agent on behalf of the Secured Parties in accordance with the terms thereof. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Pledged Collateral and of the guarantees of the Obligations provided hereunder and under any other Loan Documents, to have agreed to the foregoing provisions and the other provisions of this Agreement. Without limiting the generality of the foregoing, each Secured Party authorizes the Collateral Agent to credit bid all or any part of the Obligations held by it.

7.5 Rights of Collateral Agent. Without limiting the foregoing, the Collateral Agent shall be entitled to the rights, protections, immunities and indemnities set forth in the Credit Agreement as if specifically set forth herein.

## **8. MISCELLANEOUS**

8.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Grantor and the Collateral Agent.

8.2 Notices. All notices, requests and demands to or upon the Collateral Agent or the Grantor hereunder shall be effected in the manner provided for in Section 10.02 of the Credit Agreement.

8.3 No Waiver by Course of Conduct; Cumulative Remedies. No Secured Party shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4 Enforcement Expenses; Indemnification. (a) The Grantor agrees to pay or reimburse each Secured Party for all its costs and expenses incurred in enforcing or preserving any rights under this Agreement and the other Loan Documents to which the Grantor is a party, including, without limitation, the fees and disbursements of counsel, (including the allocated fees and expenses of in-house counsel) to each Secured Party and of counsel to the Collateral Agent.

(b) The Grantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Pledged Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) The Grantor agrees to pay, and to save the Secured Parties (including all Indemnitees pursuant to Section 10.04 of the Credit Agreement), harmless from, any and all liabilities, obligations,



losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Grantor would be required to do so pursuant to Section 10.04 of the Credit Agreement (it being understood and agreed that the indemnification obligations set forth in this Section 8.4(c) shall apply to the Secured Parties to the same extent that they apply to the Collateral Agent and the Lenders under the Credit Agreement).

(d) The Grantor agrees that the provisions of Section 3.04 of the Credit Agreement are hereby incorporated herein by reference, mutatis mutandis, and each Secured Party shall be entitled to rely on each of them as if they were fully set forth herein.

(e) The agreements in this Section 8.4 shall survive repayment of the Obligations and all other amounts payable under the Credit Agreement and the other Loan Documents.

8.5 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Grantor and shall inure to the benefit of the Secured Parties and their successors and assigns; provided that the Grantor shall not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent and any such assignment, transfer or delegation without such consent shall be null and void.

8.6 Set-Off. The Grantor hereby irrevocably authorizes each Secured Party at any time and from time to time while an Event of Default pursuant to Section 8.01(g) of the Credit Agreement shall have occurred and be continuing, without notice to the Grantor, any such notice being expressly waived by the Grantor, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such party to or for the credit or the account of the Grantor, or any part thereof in such amounts as such Secured Party may elect, against and on account of the obligations and liabilities of the Grantor to such Secured Party hereunder and claims of every nature and description of such Secured Party against the Grantor, in any currency, whether arising hereunder, under the Credit Agreement, any other Loan Document or otherwise, as such Secured Party may elect, whether or not any Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured, provided that, such Secured Party complies with Section 10.08 of the Credit Agreement. Each Secured Party exercising any right of set-off shall notify the Grantor promptly of any such set-off and the application made by such Secured Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Secured Party under this Section 8.6 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Secured Party may have.

8.7 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic imaging means), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic transmission (e.g. "pdf" or "tif" format) shall be effective as delivery of a manually executed counterpart hereof.

8.8 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any

other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

8.9 Section Headings. The section headings and Table of Contents used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.10 Integration/Conflict. This Agreement and the other Loan Documents represent the entire agreement of the Grantor, the Collateral Agent and the other Secured Parties with respect to the subject matter hereof and thereof, and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. There are no promises, undertakings, representations or warranties by the Collateral Agent or any other Secured Party relative to the subject matter hereof and thereof not expressly set forth or referred to herein or therein.

8.11 **GOVERNING LAW**. **THIS AGREEMENT AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OR PRIORITY OF THE SECURITY INTERESTS).**

8.12 Acknowledgments. The Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) no Secured Party has any fiduciary relationship with or duty to the Grantor arising out of or in connection with this Agreement or any of the other Loan Documents and the provisions of Section 10.16 of the Credit Agreement are incorporated herein, mutatis mutandis (to apply to this Agreement rather than the Credit Agreement), and the relationship between the Grantor, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Grantor and the Secured Parties.

8.13 Releases. (a) At such time as there has been a Discharge of the Obligations, the Pledged Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Collateral Agent and the Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Pledged Collateral shall revert to the Grantor. At the request and sole expense of the Grantor following any such termination, the Collateral Agent shall deliver to the Grantor any Pledged Collateral held by the Collateral Agent hereunder, and execute and deliver to the Grantor such documents as it shall reasonably request to evidence such termination.

(b) If any of the Pledged Collateral shall be Disposed of by the Grantor in a transaction permitted by the Credit Agreement, then, the Collateral Agent, at the request and sole expense of the Grantor, shall execute and deliver to the Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Pledged Collateral; provided that the Grantor shall have delivered to the Collateral Agent, at least ten (10) Business Days prior to the date of the proposed release, a written request for release identifying the Grantor and Pledged Collateral to be released, together with a certification by the Grantor stating that such transaction is in compliance with the Credit Agreement and the other Loan Documents and that the Proceeds of such Disposition will be applied in accordance therewith.

(c) The Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement originally filed in connection herewith without the prior written consent of the Collateral Agent, subject to the Grantor's rights under Section 9-509(d)(2) of the UCC.

8.14 Incorporation by Reference. Section 10.14 (Governing Law; Jurisdiction; Etc.) and Section 10.15 (Waiver of Jury Trial) of the Credit Agreement are hereby incorporated by reference, *mutatis mutandis*.

IN WITNESS WHEREOF, each of the undersigned has caused this Pledge and Security Agreement to be duly executed and delivered as of the date first above written.

GRANTOR:

THE DAYTON POWER AND LIGHT COMPANY


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

Name: **Jeffrey K. Mackay**

Title: **Treasurer**

COLLATERAL AGENT:

JPMORGAN CHASE BANK, N.A.,  
as Collateral Agent

By: 

Name: Peter Christensen

Title: Vice President

EXACT LEGAL NAME, LOCATION OF JURISDICTION OF ORGANIZATION AND CHIEF  
EXECUTIVE OFFICE

<u>Exact Legal Name</u>	<u>Jurisdiction of Organization</u>	<u>Organizational I.D.</u>	<u>Chief Executive Office or Sole Place of Business</u>
The Dayton Power and Light Company	Ohio	27514	1065 Woodman Drive Dayton, OH 45432

**THE DAYTON POWER AND LIGHT COMPANY**

**AND**

**THE BANK OF NEW YORK MELLON**  
**(formerly The Bank of New York)**  
*Trustee*

---

**Fiftieth Supplemental Indenture**

---

**Dated as of August 1, 2016**

---

---

## TABLE OF CONTENTS

	<u>Page</u>
FIRST. REAL PROPERTY AND INTERESTS IN REAL PROPERTY .....	5
SECOND. ELECTRIC GENERATING PLANTS. ....	5
THIRD. TRANSMISSION LINES. ....	6
FOURTH. SUBSTATIONS AND SUBSTATION SITES. ....	6
FIFTH. ELECTRIC DISTRIBUTION SYSTEMS. ....	6
SIXTH. LIQUEFIED PETROLEUM GAS PRODUCTION AND STORAGE FACILITIES.....	7
SEVENTH. GAS DISTRIBUTION SYSTEMS. ....	7
EIGHTH. OFFICE AND DEPARTMENTAL BUILDINGS. ....	7
NINTH. TELEPHONE LINES.....	7
TENTH. FRANCHISES.....	8
ELEVENTH. OTHER REAL ESTATE AND APPURTENANCES.....	8
TWELFTH. PROPERTY HEREAFTER TO BECOME SUBJECT TO THE LIEN OF THE FIRST MORTGAGE AS AMENDED.....	9
SECTION 1. Amendments to First Mortgage .....	15
SECTION 2. Amendments to Article One of First Mortgage .....	15
SECTION 3. Amendments to Article One of First Mortgage .....	18
SECTION 4. Amendments to Article Six of First Mortgage .....	18
SECTION 5. Amendments to Section 3 of Article Eleven of First Mortgage .....	19
SECTION 6. Amendments to Section 1 of Article Fifteen of First Mortgage .....	21
SECTION 7. Effectuating Provisions; Required Consent .....	21
ARTICLE FIVE     22	
SECTION 1. Confirmation of Covenants by the Company in First Mortgage .....	22
SECTION 2. Covenant of the Company and Legal Opinion as to Recording .....	22
ARTICLE SIX     22	
SECTION 3. Authentication and Delivery of New Bonds in Advance of the Recording of Fiftieth Supplemental Indenture .....	22
SECTION 4. Fiftieth Supplemental Indenture to Form Part of First Mortgage .....	22
SECTION 5. Definitions in First Mortgage Shall Apply to Fiftieth Supplemental Indenture .....	23
SECTION 6. Execution in Counterparts.....	23



Testimonium  
Signatures  
Acknowledgments

## EXHIBITS

Exhibit A – Form First Mortgage Bond, Variable Rate Series 2016 Due 2022

FIFTIETH SUPPLEMENTAL INDENTURE, dated as of August 1, 2016, between THE DAYTON POWER AND LIGHT COMPANY, a corporation of the State of Ohio (hereinafter sometimes called the “**Company**”), party of the first part, and THE BANK OF NEW YORK MELLON (formerly The Bank of New York), a corporation of the State of New York (hereinafter called the “**Trustee**”), as Trustee, party of the second part, whose mailing address is 101 Barclay Street, New York, New York 10286.

WHEREAS, the Company has heretofore executed and delivered to Irving Trust Company (now The Bank of New York Mellon) a certain Indenture, dated as of October 1, 1935 (hereinafter called the “**First Mortgage**”), to secure the payment of the principal of and interest on an issue of bonds of the Company, unlimited in aggregate principal amount (hereinafter sometimes called the “**Bonds**”); and

WHEREAS, the Company has issued under the First Mortgage its Bonds of a series known as the First and Refunding Mortgage Bonds, 3½% Series Due 1960, authorized in unlimited aggregate principal amount, all of which have been redeemed or otherwise retired; and

WHEREAS, in Article Two of the First Mortgage it is provided in substance, among other things, that the Bonds may be issued in series, the Bonds of each series maturing on such dates and bearing interest at such rates, respectively, as the Board of Directors of the Company may determine prior to the authentication thereof; and

WHEREAS, the Company has heretofore executed and delivered to the Trustee forty-nine supplemental Indentures numbered, dated and, except as set forth below, providing for their respective series of Bonds, all as set forth in the tabulation below:

Supplemental Indenture	Dated As Of	Series Provided For	Principal Amount Outstanding
First	March 1, 1937	3¼% Series Due 1962	None
Second	January 1, 1940	3% Series Due 1970	None
Third	October 1, 1945	2¾% Series Due 1975	None
Fourth	January 1, 1948	3% Series Due 1978	None
Fifth	December 1, 1948	3% Series A Due 1978	None
Sixth	February 1, 1952	3¼% Series Due 1982	None
Seventh	September 1, 1954	3% Series Due 1984	None
Eighth	November 1, 1957	5% Series Due 1987	None
Ninth	March 1, 1960	5½% Series Due 1990	None
Tenth	June 1, 1963	4.45% Series Due 1993	None
Eleventh	May 1, 1967	5½% Series Due 1997	None
Twelfth	June 15, 1968	6¾% Series Due 1998	None
Thirteenth	October 1, 1969	8¼% Series Due 1999	None
Fourteenth	June 1, 1970	9½% Series Due 2000	None
Fifteenth	August 1, 1971	8% Series Due 2001	None
Sixteenth	October 3, 1972	None issued	None
Seventeenth	November 1, 1973	8% Series Due 2003	None
Eighteenth	October 1, 1974	10½% Series Due 1981	None
Nineteenth	August 1, 1975	10.70% Series Due 2005	None
Twentieth	November 15, 1976	8¾% Series Due 2006	None
Twenty-First	April 15, 1977	6.35% Series Due 2007	None
Twenty-Second	October 15, 1977	8½% Series Due 2007	None

Twenty-Third	April 1, 1978	8.95% Series Due 1998	None
Twenty-Fourth	November 1, 1978	9½% Series Due 2003	None
Twenty-Fifth	August 1, 1979	10¼% Series Due 1999	None
Twenty-Sixth	December 1, 1979	12⅞% Series Due 2009	None
Twenty-Seventh	February 1, 1981	14⅞% Series Due 1988	None
Twenty-Eighth	February 18, 1981	14⅞% Series Due 1988	None
Twenty-Ninth	September 1, 1981	17% Series Due 1991	None
Thirtieth	March 1, 1982	16¾% Series Due 2012	None
Thirty-First	November 1, 1982	11½% Series Due 2012-A	None
Thirty-Second	November 1, 1982	11½% Series Due 2012-B	None
Thirty-Third	December 1, 1985	9½% Series Due 2015	None
Thirty-Fourth	April 1, 1986	9% Series Due 2016	None
Thirty-Fifth	December 1, 1986	8⅞% Series Due 2016	None
Thirty-Sixth	August 15, 1992	6.40% Pollution Control Series 1992-A Due 2027	None
		6.40% Pollution Control Series 1992-B Due 2027	None
Thirty-Seventh	November 15, 1992	6.50% Pollution Control Series 1992-C Due 2022	None
Thirty-Eighth	November 15, 1992	8.40% Series Due 2022	None
Thirty-Ninth	January 15, 1993	8.15% Series Due 2026	None
Fortieth	February 15, 1993	7⅞% Series Due 2024	None
Forty-First	February 1, 1999	None issued	None
Forty-Second	September 1, 2003	5.125% Series Due 2013	None
Forty-Third	August 1, 2005	4.80% Pollution Control Series 2005-A Due 2034	None
		4.80% Pollution Control Series 2005-B Due 2034	None
		4.70% Pollution Control Series 2005-C Due 2028	None
Forty-Fourth	September 1, 2006	4.80% Pollution Control Series 2006 Due 2036	\$100,000,000
Forty-Fifth	November 1, 2007	Variable Rate Pollution Control Series 2007 Due 2040	None
Forty-Sixth	December 1, 2008	Variable Rate Pollution Control Series 2008-A Due 2040	None
		Variable Rate Pollution Control Series 2008-B Due 2040	None
Forty-Seventh	September 1, 2013	1.875% Series Due 2016	\$445,000,000
Forty-Eighth	August 1, 2015	Variable Rate Pollution Control Series 2015-A Due 2040	\$100,000,000
Forty-Ninth	August 1, 2015	Variable Rate Pollution Control Series 2015-B Due 2040	\$100,000,000

WHEREAS, said Eleventh Supplemental Indenture, which created the 5⅞% Series Due 1997, provided in its Article Three for certain amendments to the First Mortgage, as theretofore amended, each such amendment to become effective on the earliest date on which either (a) there shall not be any Bonds outstanding of Series Due 1975, Series Due 1978, Series A, Due 1978, Series Due 1982, Series Due 1984, or Series Due 1993, or (b) there shall have been executed and delivered a supplemental indenture or indentures embodying said amendment (either alone or with other amendments) consented to by the holders of seventy-five per centum (75%) in aggregate principal amount of the Bonds at the time outstanding of the series enumerated in the foregoing clause (a), or of each said series of which Bonds are then outstanding; and

WHEREAS, said Fifteenth Supplemental Indenture, which created the 8⅞% Series Due 2001, provided (a) in its Article Four for an amendment to the First Mortgage, as theretofore amended, to become effective on the date on which the amendments provided for by Section 3 of Article Three of said Eleventh Supplemental Indenture shall become effective and (b) in its Article Five for certain additional amendments to the First Mortgage, as theretofore amended, to become effective on the earliest date on which either (i) there shall not be any Bonds outstanding

of Series Due 1975, Series Due 1978, Series A, Due 1978, Series Due 1982, Series Due 1984, Series Due 1993, Series Due 1997, Series Due 1998, Series Due 1999, or Series Due 2000, or (ii) there shall have been executed and delivered a supplemental indenture or indentures embodying said amendments (either alone or with other amendments) consented to by the holders of seventy-five per centum (75%) in aggregate principal amount of the Bonds at the time outstanding of the series enumerated in the foregoing clause (i), or of each said series of which Bonds are then outstanding; and

WHEREAS, the Company has heretofore executed and delivered to the Trustee a Sixteenth Supplemental Indenture dated as of October 3, 1972, which provided in its Article One for an amendment of Article Five of the First Mortgage, as theretofore amended, altering the requirements for the opinion of counsel to be delivered to the Trustee as a condition precedent to the authentication and delivery of additional Bonds under Article Five or the withdrawal of cash under Article Seven of the First Mortgage, as theretofore amended; and

WHEREAS, none of the Bonds of Series Due 1975, Series Due 1978, Series A, Due 1978, Series Due 1982, Series Due 1984, or Series Due 1993 remain outstanding and the amendments contained in said Eleventh Supplemental Indenture have become effective; and

WHEREAS, none of the Bonds of Series Due 1975, Series Due 1978, Series A, Due 1978, Series Due 1982, Series Due 1984, Series Due 1993, Series Due 1997, Series Due 1998, Series Due 1999, or Series Due 2000 remain outstanding and the amendments contained in said Fifteenth Supplemental Indenture that did not theretofore become effective by virtue of the Sixteenth Supplemental Indenture have become effective; and

WHEREAS, said Forty-Second Supplemental Indenture, which created the 5-1/8% Series Due 2013, provided in its Article Two for certain amendments to the First Mortgage, as theretofore amended, to become effective on the earliest date on which either (i) there shall not be any Bonds outstanding of 6.35% Series Due 2007, Pollution Control Series 1992-A Due 2027, Pollution Control Series 1992-B Due 2027, Pollution Control Series 1992-C Due 2022, Series Due 2026 and Series Due 2024, or (ii) there shall have been executed and delivered a supplemental indenture or indentures embodying said amendment (either alone or with other amendments) consented to by the holders of seventy-five per centum (75%) in aggregate principal amount of the Bonds at the time outstanding of the series enumerated in the foregoing clause (i); and

WHEREAS, none of the Bonds of 6.35% Series Due 2007, Pollution Control Series 1992-A Due 2027, Pollution Control Series 1992-B Due 2027, Pollution Control Series 1992-C Due 2022, Series Due 2026 and Series Due 2024 remain outstanding and the amendments contained in said Forty-Second Supplemental Indenture have become effective; and

WHEREAS, the First Mortgage as amended by the First through the Forty-Ninth Supplemental Indentures is hereinafter called the “**First Mortgage as amended**”; and

WHEREAS, it is provided in Article Seven of the First Mortgage as amended, among other things, that the Company may issue additional Bonds thereunder upon the deposit with the Trustee of cash equal to the principal amount of such additional Bonds to be issued; it is

provided in Article Six of the First Mortgage as amended, among other things, that if Bonds are paid, retired, redeemed, canceled or surrendered to the Trustee for cancellation (except when canceled pursuant to certain provisions of the First Mortgage as amended), the Company may issue additional Bonds thereunder in principal amount equivalent to the principal amount of the Bonds so paid, retired, redeemed, canceled or surrendered to the Trustee for cancellation; it is provided in Article Five of the First Mortgage as amended, among other things, that the Company may issue additional Bonds thereunder upon the basis of property additions in accordance with and subject to the conditions, provisions and limitations set forth in said Article Five; and it is provided in Article Eighteen of the First Mortgage as amended, among other things, that the Company and the Trustee may from time to time enter into one or more indentures supplemental to the First Mortgage as amended for the purposes, among other things which may be therein set forth, to mortgage or pledge additional property under the First Mortgage as amended and to establish the terms and provisions of any series of Bonds other than the 3½% Series Due 1960; and

WHEREAS, the Company, pursuant to resolutions duly adopted by its Board of Directors by unanimous written consent in lieu of a meeting, has determined under and in accordance with the provisions of the First Mortgage as amended and of this Fiftieth Supplemental Indenture to create a new series of Bonds to be known as its First Mortgage Bonds, Variable Rate Series 2016 Due 2022 (hereinafter called the “**New Bonds**”), in an aggregate principal amount of \$455,000,000, the maturity date of which being August 1, 2022; and

WHEREAS, the New Bonds are to be issued by the Company and pledged as collateral security to the Agent (as hereinafter defined), on behalf of and for the benefit of the Lenders (as hereinafter defined), to evidence and secure the obligations of the Company to repay the loan made by the Lenders to the Company pursuant to that certain Credit Agreement, dated as of August 24, 2016 (hereinafter called the “**Credit Agreement**”), among the Company, each lender from time to time party thereto (hereinafter called the “**Lenders**”) and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, together with its successors and assigns in such capacity, hereinafter called the “**Administrative Agent**”) and as collateral agent (in such capacity, together with its successors and assigns in such capacity hereinafter called the “**Collateral Agent**”, and the Collateral Agent, together with the Administrative Agent, collectively hereinafter called the “**Agent**”), the proceeds of which will be applied to the refunding of the Bonds of the 1.875% Series Due 2016 outstanding in the principal amount of \$445,000,000; and

WHEREAS, the New Bonds, and the Trustee’s certificate to be endorsed thereon, are to be respectively and substantially in the form established hereby and approved by the aforesaid resolutions, which are substantially in the form of Exhibit A hereto; and

WHEREAS, the Board of Directors adopted resolutions that authorized officers of the Company to approve the form, terms and provisions of this Fiftieth Supplemental Indenture (including the form of the New Bonds), and the execution by the Company of this Fiftieth Supplemental Indenture; and

WHEREAS, all things necessary to make the New Bonds hereinafter described, when duly authenticated by the Trustee and issued by the Company, valid, binding and legal

obligations of the Company, and to make this Indenture a valid and binding agreement supplemental to the First Mortgage as amended, have been done and performed.

**NOW, THEREFORE, THIS INDENTURE WITNESSETH**

that, in order further to secure the payment of all the Bonds at any time issued and outstanding under the First Mortgage as amended or this Fiftieth Supplemental Indenture according to their tenor, purport and effect, as well the interest thereon and the principal thereof, and further to secure the performance and observance of all the covenants and conditions therein and in the First Mortgage as amended and herein contained, and further to set forth the terms and conditions upon which the New Bonds are to be issued, secured and held, and for and in consideration of the premises and of the acceptance or purchase of the New Bonds by the holders or registered owners thereof, and of the sum of one dollar, lawful money of the United States of America, to the Company duly paid by the Trustee at or before the ensealing and delivery of this Fiftieth Supplemental Indenture, the receipt whereof is hereby acknowledged, the Company has executed and delivered this Fiftieth Supplemental Indenture, and has granted, bargained, sold, released, conveyed, assigned, transferred, pledged, set over and confirmed, and by these presents does mortgage, grant, bargain, sell, release, convey, assign, transfer, pledge, set over and confirm unto the Trustee, and to its successor or successors in said trust, and to it and its and their assigns forever with covenant of general warranty, and does hereby subject to the lien of the First Mortgage as heretofore and hereby amended all the following described properties (all of which properties are included in and constitute a part of the “mortgaged property” and the “mortgaged and pledged property” as such terms are used and defined in the First Mortgage as heretofore and hereby amended and whenever used in the First Mortgage as heretofore and hereby amended such terms include and refer to such properties), to wit:

**FIRST.**

**REAL PROPERTY AND INTERESTS IN REAL PROPERTY.**

All and singular, all real property and interests in real property acquired by the Company between August 1, 2015, the date of the Forty-Ninth Supplemental Indenture, and the date of this Fiftieth Supplemental Indenture, and owned by the Company at the latter date, including, without limitation, such real property and improvements to be more fully and specifically described in any document, if any, necessary and appropriate for recordation accompanying the filing of this Fiftieth Supplemental Indenture in the appropriate recorder’s office.

**SECOND.**

**ELECTRIC GENERATING PLANTS.**

All electric generating plants and stations of the Company acquired by it between August 1, 2015, the date of the Forty-Ninth Supplemental Indenture, and the date of this Fiftieth Supplemental Indenture, and owned by it at the latter date, including all power houses, buildings, structures and works, and the land on which the same are situated, and all other lands and easements, rights-of-way, permits, privileges, towers, poles, wires, machinery, equipment,

appliances, appurtenances and supplies forming a part of such plants and stations, or any of them, or occupied, enjoyed or used in connection therewith.

### **THIRD.**

#### **TRANSMISSION LINES.**

All electric overhead and underground transmission lines of the Company acquired by it between August 1, 2015, the date of the Forty-Ninth Supplemental Indenture, and the date of this Fiftieth Supplemental Indenture, and owned by it at the latter date, including towers, poles, pole lines, conduits, manholes, switching devices, insulators, and other structures, appliances, devices and equipment, and all the property forming a part thereof or appertaining thereto, and all service lines extending therefrom, together with all real property, rights-of-way, easements, permits, privileges, franchises, and rights for or relating to the construction, maintenance or operation thereof, through, over, under or upon any private property or any public way within as well as without the corporate limits of any municipal corporation.

### **FOURTH.**

#### **SUBSTATIONS AND SUBSTATION SITES.**

All substations and switching stations of the Company acquired by it between August 1, 2015, the date of the Forty-Ninth Supplemental Indenture, and the date of this Fiftieth Supplemental Indenture, and owned by it at the latter date, for transforming or otherwise regulating electric current at any of its plants, together with all buildings, transformers, wires, cables, insulators, structures, appliances, devices, equipment and all other property, real or personal, forming a part of, or appertaining thereto, or used, occupied or enjoyed in connection with any of such substations and switching stations.

### **FIFTH.**

#### **ELECTRIC DISTRIBUTION SYSTEMS.**

All electric distribution systems of the Company acquired by it between August 1, 2015, the date of the Forty-Ninth Supplemental Indenture, and the date of this Fiftieth Supplemental Indenture, and owned by it at the latter date, including substations, transformers, switchboards, towers, poles, wires, insulators, conduits, cables, manholes, appliances, devices, equipment and all other property, real or personal, forming a part of or appertaining thereto, or used, occupied or enjoyed in connection with such distribution systems or any of them, together with all rights-of-way, easements, permits, privileges, franchises, and rights in or relating to the construction, maintenance or operation thereof, through, over, under or upon any private property or public ways within as well as without the corporate limits of any municipal corporation.

## **SIXTH.**

### **LIQUEFIED PETROLEUM GAS PRODUCTION AND STORAGE FACILITIES.**

All additions to liquefied petroleum gas production plants and storage facilities of the Company acquired by it between August 1, 2015, the date of the Forty-Ninth Supplemental Indenture, and the date of this Fiftieth Supplemental Indenture, and owned by it at the latter date, including all buildings, structures, underground storage caverns, and works, and the land on which the same are situated, and all other lands and easements, rights-of-way, permits, privileges, pipe lines, machinery, equipment, appliances, appurtenances and supplies forming a part of such plants and stations, or any of them, or occupied, enjoyed or used in connection therewith.

## **SEVENTH.**

### **GAS DISTRIBUTION SYSTEMS.**

All gas distribution systems of the Company acquired or constructed by it between August 1, 2015, the date of the Forty-Ninth Supplemental Indenture, and the date of this Fiftieth Supplemental Indenture, and owned by it at the latter date, for distribution of gas, including pipes, mains, conduits, meters, appliances, equipment, and all other property, real or personal, forming a part of or appertaining to or used, occupied or enjoyed in connection with such distribution systems, or any of them, together with all rights-of-way, easements, permits, privileges, franchises and rights, for or relating to the construction, maintenance or operation thereof, through, over, under or upon any private property or any public streets or highways, within as well as without the corporate limits of any municipal corporation.

## **EIGHTH.**

### **OFFICE AND DEPARTMENTAL BUILDINGS.**

All office and departmental buildings of the Company, including the real estate on which such structures stand, acquired by it between August 1, 2015, the date of the Forty-Ninth Supplemental Indenture, and the date of this Fiftieth Supplemental Indenture, and owned by it at the latter date, appertaining to, used, occupied or enjoyed in connection with the rendition of public utility service.

## **NINTH.**

### **TELEPHONE LINES.**

All telephone lines of the Company acquired by it between August 1, 2015, the date of the Forty-Ninth Supplemental Indenture, and the date of this Fiftieth Supplemental Indenture, and owned by it at the latter date, used or available for use in the operation of its properties or otherwise.



## **TENTH.**

### **FRANCHISES.**

All and singular the franchises, grants, immunities, privileges and rights of the Company granted to or acquired by it between August 1, 2015, the date of the Forty-Ninth Supplemental Indenture, and the date of this Fiftieth Supplemental Indenture, and to which it was entitled at the latter date, including all and singular the franchises, grants, immunities, privileges and rights of the Company granted by all municipalities or political subdivisions, and all right, title and interest therein owned by the Company on the date of the execution of this Fiftieth Supplemental Indenture, and all renewals, extensions and modifications of said franchises, grants, immunities, privileges and rights, or any of them, and of all other franchises, grants, immunities, privileges and rights now subject to the lien of the First Mortgage as amended.

## **ELEVENTH.**

### **OTHER REAL ESTATE AND APPURTENANCES.**

A. All other real estate and interests in real estate and all other physical electric power and light, gas and other property owned by the Company at the date of execution of this Fiftieth Supplemental Indenture.

B. All other real estate and interests in real estate and all other physical electric power and light, gas and other property which the Company may hereafter acquire or construct.

C. All present and future appurtenances of the real estate and interests in real estate which now are, or hereafter shall be, subject to the lien of the First Mortgage as amended, and all plants, works, buildings, structures, fixtures, improvements, betterments and additions now owned, or hereafter acquired or constructed by the Company, upon any of the real estate which, or interests in which, now are or hereafter shall be subject to the lien of the First Mortgage as amended.

D. All corporate rights, privileges, immunities and franchises, powers, licenses, easements, leases, contracts and other rights and all renewals and extensions thereof held or acquired for use or used upon, or in connection with or appertaining to, any of the properties which now are or hereafter shall be subject to the lien of the First Mortgage as amended, or which the Company has or may have the right to exercise in respect of any of said properties.

E. All machinery, tools and equipment now owned or hereafter acquired by the Company, which now or hereafter belong or appertain to or are used in connection with the plants, works, transmission lines, distribution systems, buildings, structures and fixtures which now are or hereafter shall be subject to the lien of the First Mortgage as amended.

Together with all and singular the tenements, hereditaments and appurtenances belonging or in any way appertaining to the aforesaid property or any part thereof, with the reversion and reversions, remainder and remainders, rents, issues, income and profits thereof, and all the estate, right, title, interest and claim whatsoever at law or in equity, which the Company now has or which it may hereafter acquire in and to the aforesaid property and every part and parcel thereof.

It is not intended to include in the lien of the First Mortgage as amended and this grant shall not be deemed to apply (1) to any revenues, earnings, rents, issues, income or profits of the mortgaged property, or any cash (except cash deposited with the Trustee pursuant to any of the provisions of the First Mortgage as heretofore and hereby amended), or any bills, notes or accounts receivable, contracts or choses in action, or any materials or supplies or construction equipment, or any merchandise, equipment or apparatus manufactured or acquired for the purpose of sale or resale in the usual course of business, except in case of the happening of a completed default as defined in Section 1 of Article Twelve of the First Mortgage as heretofore and hereby amended, and following such completed default, in case the Trustee or a receiver or trustee shall enter upon and take possession of the mortgaged property, or (2) in any case, to any cars, trucks or other vehicles of any nature for the transportation of personnel, materials or equipment by any means which may have been acquired after the effective date of the amendment to this Clause made by or pursuant to the provisions of the Eleventh Supplemental Indenture, or to any bonds, notes, evidences of indebtedness, shares of stock or other securities, except such as may be specifically subjected to the lien of the First Mortgage as amended.

#### **TWELFTH.**

#### **PROPERTY HEREAFTER TO BECOME SUBJECT TO THE LIEN OF THE FIRST MORTGAGE AS AMENDED.**

A. Any and all property, real, personal and mixed, including franchises, grants, immunities, privileges and rights, which the Company may hereafter acquire or to which it may hereafter become entitled, excepting, however, the following property which is not intended to be subjected to the lien of the First Mortgage: (1) any revenues, earnings, rents, issues, income or profits of the mortgaged property, or any cash (except cash deposited with the Trustee pursuant to any of the provisions of the First Mortgage as heretofore and hereby amended), or any bills, notes or accounts receivable, contracts or choses in action, or any materials or supplies or construction equipment, or any merchandise, equipment or apparatus manufactured or acquired for the purpose of sale or resale in the usual course of business, except in case of the happening of a completed default as defined in Section 1 of Article Twelve of the First Mortgage as heretofore and hereby amended, and following such completed default, in case the Trustee or a receiver or trustee shall enter upon and take possession of the mortgaged property, or (2) in any case, any cars, trucks or other vehicles of any nature for the transportation of personnel, materials or equipment by any means, or any bonds, notes, evidences of indebtedness, shares of stock or other securities, except such as may be specifically subjected to the lien of the First Mortgage as amended.

B. Any and all property of every name and nature, including shares of stock, bonds, other securities or obligations and cars, trucks or other vehicles for the transportation of personnel, materials or equipment by any means, which, from time to time after the execution of this Fiftieth Supplemental Indenture, by delivery or by writing of any kind for the purposes hereof, shall have been conveyed, mortgaged, pledged, assigned or transferred by, or by anyone on behalf of, the Company to the Trustee, which is hereby authorized to receive any property at any and all times, as and for additional security, and also, when and as provided in the First Mortgage as amended as and for substituted security, for the payment of the Bonds to be issued

under the First Mortgage as amended, and to hold and apply any and all such property subject to the terms hereof and of the First Mortgage as amended.

TO HAVE AND TO HOLD all such properties, real, personal and mixed, mortgaged, pledged or conveyed by the Company as aforesaid, or intended so to be, unto the Trustee and its successors and assigns forever.

SUBJECT, HOWEVER, as to property hereby conveyed, to liens for taxes, assessments and other charges levied or to be levied by the State of Ohio or Commonwealth of Kentucky, as applicable, and any of the subdivisions thereof for the year 2015 and thereafter and, as to any property hereafter acquired by the Company and which may become subject to the lien of the First Mortgage as amended, to any lien or charge thereon existing at the time of the acquisition thereof by the Company;

IN TRUST NEVERTHELESS, upon and subject to the terms, conditions and stipulations hereinafter and in the First Mortgage as amended set forth, for the equal and proportionate benefit and security of the holders from time to time of the Bonds and interest coupons issued and to be issued under the First Mortgage as amended and this and other indentures supplemental thereto, without preference, priority or distinction as to lien or otherwise of any of the Bonds and coupons over any others by reason of priority in time of issue, sale or negotiation thereof or otherwise howsoever, and for the uses and purposes and upon and subject to the terms, conditions, provisions and agreements in the Bonds and hereinafter and in the First Mortgage as amended expressed and declared.

## **ARTICLE ONE.**

### **BONDS OF THE VARIABLE RATE SERIES 2016 DUE 2022 AND ISSUE THEREOF.**

SECTION 1. Series and Form of New Bonds. There shall be a series of Bonds designated "Variable Rate Series 2016 Due 2022", each of which shall bear the descriptive title First Mortgage Bond. The aggregate principal amount of the New Bonds which may be issued and outstanding under the First Mortgage as amended and this Fiftieth Supplemental Indenture shall be \$445,000,000.00.

SECTION 2. Issue of New Bonds. Upon the execution and delivery of this Fiftieth Supplemental Indenture and upon delivery of \$445,000,000.00 aggregate principal amount of the New Bonds, executed by the Company, and upon compliance by the Company with the provisions of Article Six of the First Mortgage as amended, the Trustee shall, without awaiting the filing or recording of this Fiftieth Supplemental Indenture, authenticate said New Bonds and deliver said New Bonds as provided in said Article Six. The New Bonds are to be issued to and registered in the name of the Collateral Agent under the Credit Agreement to evidence and secure the obligations of the Company under the Credit Agreement.

SECTION 3. Dates, Interest, Etc. of New Bonds. The New Bonds shall be dated as provided in Section 3 of Article Two of the First Mortgage as amended; shall mature on August 24, 2022; and shall bear interest from August 24, 2016 as provided in said Section 3 of Article Two at such rate or rates per annum as shall cause the amount of interest payable on each Interest Payment Date (as hereinafter defined) on the New Bonds to equal the amount of interest payable

on such Interest Payment Date on the corresponding loans under the Credit Agreement (hereinafter called the “**Loans**”), such interest to be payable on the same date as interest is payable on said Loans (each such date relating to the New Bonds herein called an “**Interest Payment Date**”), until the maturity of the New Bonds, or, in the case of any such New Bonds duly called for redemption, until the redemption date, or in the case of any default by the Company in the payment of the principal due on any such New Bonds, until the Company’s obligation with respect to the payment of the principal shall be discharged as provided in the First Mortgage as amended. The amount of interest payable on each Interest Payment Date shall be computed on the same basis as the amount of interest is computed on the corresponding Loan.

The Trustee shall be entitled to request, receive and conclusively rely upon the certification of the Company, in an officer’s certificate of the interest rate of, Interest Payment Date of and basis on which interest is computed for, the Loans, from time to time as necessary to enable the Trustee to determine for the New Bonds their corresponding interest rate, Interest Payment Date and basis on which interest shall be computed.

The interest payable on the New Bonds on any Interest Payment Date shall be paid to the holders in whose names such New Bonds are registered, except that if the Company shall default in the payment of any installment of interest on any New Bonds, such interest in default shall be paid to the holders in whose names the New Bonds are registered at the close of business on a date established for the payment of such defaulted interest by the Company in any lawful manner. The New Bonds shall be payable as to both principal and interest in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, at the office or agency of the Company in the Borough of Manhattan, The City of New York.

SECTION 4. Denominations and Exchangeability of New Bonds; Temporary Bonds May Be Authenticated and Delivered. The New Bonds shall be issued in denominations of \$1,000 and any integral multiple of \$1,000.

Whenever any New Bond or New Bonds shall be surrendered at the office or agency of the Company in said Borough of Manhattan for exchange for a New Bond or New Bonds of other authorized denomination or denominations, the Company shall execute, and the Trustee shall authenticate and deliver, upon cancellation of the New Bond or New Bonds so surrendered, a New Bond or New Bonds of such other authorized denomination or denominations of like aggregate principal amount as the holder making the exchange shall have requested and shall be entitled to receive. On presentation of any New Bond which is to be redeemed pursuant to the provisions of this Fiftieth Supplemental Indenture in part only, the Company shall execute, and the Trustee shall authenticate and deliver, a New Bond or New Bonds in principal amount equal to the unredeemed portion of the New Bonds so presented.

The Company shall not be required to (a) register a transfer of, or exchange, any New Bond during a period of fifteen (15) days next preceding any selection of New Bonds to be redeemed or (b) register a transfer of, or exchange, any New Bond which shall have been selected for redemption in whole or in part.

A service charge will not be made for any registration of transfer or exchange of New Bonds, but the Company may require payment of a sum sufficient to cover any stamp tax or other governmental charge payable in connection therewith.

Until definitive New Bonds shall be ready for delivery, the Company may execute and, upon request of the Company, the Trustee shall authenticate and deliver, in lieu of such definitive New Bonds but subject to the same provisions, limitations and conditions except as to the denominations thereof, temporary printed or lithographed New Bonds as provided in Section 8 of this Article One. Such temporary New Bonds shall be exchangeable for definitive New Bonds, when ready for delivery, in the manner provided in the First Mortgage as amended, and shall in all other respects be subject to and entitled to the benefits of the terms and provisions and lien of this Fiftieth Supplemental Indenture, and the terms and provisions and lien of the First Mortgage as amended as therein provided.

SECTION 5. Mandatory Redemption or Repurchase. The New Bonds shall be subject to mandatory redemption by the Company prior to maturity at any time in whole or in part at a redemption price of 100% of the principal amount to be redeemed, plus accrued and unpaid interest, if any, to the redemption date, upon receipt by the Trustee of notice from the Company to the effect that (a) the Company is required to mandatorily prepay or repay the Loans in whole or in part, as the case may be, as provided in Section 2.07 of the Credit Agreement and (b) an equivalent principal amount of such Loans are being prepaid or repaid. Said notice shall specify the redemption date of such New Bonds (which redemption date shall be the same date as the prepayment or repayment date of the corresponding Loan). Any such redemption shall be made upon the notice and in the manner provided in this Article One, subject to the provisions of the First Mortgage as amended.

SECTION 6. [Reserved].

SECTION 7. Optional Redemption. The New Bonds shall also be subject to redemption prior to maturity, at the option of the Company, in whole or in part, at any time, at a redemption price, including premium, if any, plus accrued and unpaid interest, if any, to the redemption date, as shall be payable on the corresponding Loans to be prepaid or repaid concurrently therewith.

Prior to any such redemption, the Trustee shall have received an officers' certificate to the effect that (a) the Company has given notice to the Agent that the Company is exercising its option to voluntarily prepay or repay in whole or in part, as the case may be, as provided in Section 2.06 of the Credit Agreement and (b) an equivalent principal amount of Loans are being concurrently prepaid or repaid. Such officers' certificate shall specify the principal amount of New Bonds to be redeemed and the redemption price plus accrued interest, including premium, if any, thereof, shall have attached to it a copy of said notice to the Agent and shall specify the redemption date of such New Bonds (which redemption date shall be not less than 3 days (unless a shorter time period shall be acceptable to the Trustee) after the date of such notice and shall be the same date as the prepayment or repayment date specified in said attached notice to the Agent of the Loans being concurrently prepaid or repaid). Any such redemption shall be made upon the notice, which may be conditional as provided in Section 8 of this Article

One, and in the manner provided in this Article One, subject to the provisions of the First Mortgage as amended.

SECTION 8. Notice of Redemption. Subject to the provisions of the First Mortgage as amended, written notice of redemption of the New Bonds pursuant to any of Sections 5 or 7 of this Article One shall be given by the Company by mailing, first class postage prepaid, or delivering by hand to the registered owner of such New Bonds to be redeemed a notice of such redemption at its last address as it shall appear upon the books of the Company for the registration and transfer of such New Bonds. Any notice of redemption pursuant to said Sections 5 or 7 shall be mailed or delivered by hand as least 30 days and not earlier than 60 days before the redemption date; provided, however, that the registered owner or owners of all New Bonds may hereby consent(s) to a shorter notice period equal to the corresponding notice period for prepayment or repayment of the Loans under the Credit Agreement, and such shorter notice period shall be binding upon the Company and such registered owners and their transferees. In the case of any notice of redemption of New Bonds pursuant to said Section 7, such notice shall state that such redemption is conditional to the same extent and with the same effect, if any, as the notice of prepayment of Loans being concurrently prepaid.

SECTION 9. [Reserved].

SECTION 10. New Bonds Deemed Paid in Additional Circumstances. In the event and to the extent the principal of, or premium, if any, or interest on any Loans shall be paid, whether at maturity, upon redemption, prepayment, acceleration or otherwise or shall otherwise be deemed to be paid, an equal amount of principal or premium, if any, or interest, as the case may be, payable with respect to an aggregate principal amount of corresponding New Bonds equal to an aggregate principal amount of such Loans shall be deemed to have been paid.

SECTION 11. Surrender of New Bonds in Certain Circumstances. All New Bonds deemed to have been paid in full as provided in Section 10 of this Article One, and the Credit Agreement (including with limitation, any commitments thereunder) shall have been terminated, shall be surrendered to the Trustee for cancellation and the Trustee shall forthwith cancel the same.

SECTION 12. Satisfaction and Discharge. The Trustee may conclusively presume that the obligation of the Company to pay the principal of, premium, if any, and interest on the New Bonds, as the case may be, on each date when due shall have been fully satisfied and discharged on each date when due unless and until a responsible officer of the Trustee within the corporate trust group administering the Indenture shall have received a written notice from the Collateral Agent, signed by a person certifying that he or she is an authorized signatory of the Collateral Agent, stating that the payment of principal of or interest on the New Bonds has not been fully paid when due and specifying the amount of funds required to make such payment.

SECTION 13. Restrictions on Transfer. The New Bonds shall be issued to and registered in the name of the Collateral Agent and, unless an Event of Default (as defined in the Credit Agreement) has occurred and is continuing, shall not be transferable by the Collateral Agent, except to (i) a successor Collateral Agent appointed pursuant to the terms of Section 9.06 of the Credit Agreement or (ii) the Company; *provided* that if an Event of Default (as defined in the

Credit Agreement) has occurred and is continuing, the Collateral Agent shall have the right to transfer, assign or otherwise dispose of the New Bonds in accordance with the Credit Agreement and the Loan Documents (as defined in the Credit Agreement). The Company hereby instructs the Trustee to comply with such limited transfers requested by a holder (other than the Company) of the New Bonds.

SECTION 14. Application of Article Ten of First Mortgage as Amended. Except as in this Fiftieth Supplemental Indenture or otherwise provided with respect to any matter or question, the provisions of Article Ten of the First Mortgage as amended shall be applicable in the case of the redemption of all or any part of the New Bonds at any time outstanding.

SECTION 15. Form of New Bonds. The New Bond shall be in fully registered form only. The form of the New Bonds, and of the Trustee's certificate of authentication thereon, shall be substantially as set forth in Exhibit A.

SECTION 16. Treatment under UCC Article 8. The New Bonds are "Securities" for purposes of, and governed by, Article 8 of the Uniform Commercial Code, as in effect in the State of New York on the date hereof.

SECTION 17. Certain Term. The term "officers' certificate" as used in this Article One shall mean a certificate signed by the President or a Vice President and any other Vice President, the Treasurer, Assistant Treasurer, the Secretary or Assistant Secretary or any other officer of the Company.

SECTION 18. Transfers. Before any transfer of this Bond by the registered holder or his or its legal representative will be recognized or given effect by the Trustee, the registered holder shall note the amounts of all reductions in the stated principal amount of this Bond, and shall notify the Trustee of the name and address of the transferee and, unless an Event of Default shall have occurred and be continuing under the Credit Agreement, shall afford the Trustee the opportunity of verifying the notation as to such reductions. By acceptance hereof the holder of this Bond and each transferee shall be deemed to have agreed to provide reasonable indemnity to the Trustee with respect to, and hold harmless the Trustee against, all losses, claims, damages or liability arising out of any failure on part of the holder or of any such transferee to comply with the requirements of the preceding sentence.

## **ARTICLE TWO.**

[RESERVED].

## **ARTICLE THREE.**

[RESERVED].

## **ARTICLE FOUR.**

### **AMENDMENTS TO FIRST MORTGAGE AS AMENDED**

to become effective at a later date.

SECTION 1. Amendments to First Mortgage. The Company, and the holders of any New Bonds by their acceptance and holding thereof, hereby consent and agree that each of the amendments provided for by the following Sections 2, 3, 4, 5, 6 and 7 of this Article Four shall become effective on the earliest date on which either (a) there shall not be any Bonds outstanding of (i) 4.80% Pollution Control Series 2005-A Due 2034, (ii) 4.80% Pollution Control Series 2005-B Due 2034, (iii) 4.70% Pollution Control Series 2005-C Due 2028, (iv) 4.80% Pollution Control Series 2006 Due 2036, (v) Variable Rate Pollution Control Series 2008-A Due 2040, (vi) Variable Rate Pollution Control Series 2008-B Due 2040, and (vii) 1.875% Series Due 2016; or (b) there shall have been executed and delivered a supplemental indenture or indentures embodying said amendments (either alone or with other amendments) consented to by the holders of at least a majority in aggregate principal amount of the Bonds at the time outstanding (including in determining such majority the amount of the New Bonds embodied herein), all in conformity with the provisions of Article Eighteen of the First Mortgage as amended.

SECTION 2. Amendments to Article One of First Mortgage. Effective on a date fixed as provided in Section 1 of this Article Four, Article One of the First Mortgage as amended, shall be amended by restating Section 7 in its entirety to read as follows:

“The term “net earnings certificate”, shall mean a certificate signed by the Chairman of the Board or Chief Executive Officer or President or a Vice President of the Company and an accountant, who unless, required to be independent, may be an officer or employee of the Company, stating:

(A) the adjusted net earnings of the Company for a period of twelve (12) consecutive calendar months within the eighteen (18) calendar months immediately preceding the first day of the month in which the application for the authentication and delivery under this Indenture of Bonds then applied for is made, being and specifying for the Company and its subsidiaries on a consolidated basis:

(1) the net income (or loss), without deduction for minority interests, of the Company and its subsidiaries for that period determined in conformity with generally accepted accounting principles in the United States;

(2) to the extent deducted in calculating such net income (loss) specified in clause (1) of this Section the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses of the Company and its subsidiaries in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with generally accepted accounting principles in the United States, and (b) the portion of rent expense of the



Company and its subsidiaries with respect to such period under capital leases that is treated as interest in accordance with generally accepted accounting principles in the United States;

(3) to the extent deducted in calculating such net income (loss) specified in clause (1) of this Section the provision for Federal, state, local and foreign income taxes payable by the Company and its subsidiaries for such period;

(4) to the extent deducted in calculating such net income (loss) specified in clause (1) of this Section depreciation and amortization expense for such period;

(5) to the extent deducted in calculating such net income (loss) specified in clause (1) of this Section other non-recurring expenses of the Company and its subsidiaries reducing such net income (loss) specified in clause (1) of this Section (a) which do not represent a cash item in such period or (b) which are cash items in such period that were incurred as a result of (i) the early termination of Company's Capital Trust II indebtedness, (ii) termination of existing swap contracts (it being understood that cash charges described in this clause (ii) will not exceed \$50,000,000 in the aggregate) or (iii) normal and customary out-of-pocket third party costs, expenses and fees incurred directly in connection with the refinancing of any existing indebtedness;

(6) to the extent deducted in calculating such net income (loss) specified in clause (1) of this Section out-of-pocket third party costs and expenses incurred directly in connection with the implementation, negotiation, documentation and closing of the Separation;

(7) to the extent deducted in calculating such net income (loss) specified in clause (1) of this Section all other non-cash items reducing net income (loss) specified in clause (1) of this Section for such period;

(8) the sum of the amounts required to be stated in such certificate by clauses (1), (2), (3), (4), (5), (6) and (7) of this Section;

(9) to the extent included in calculating such net income (loss) specified in clause (1) of this Section Federal, state, local and foreign income tax credits of the Company and its Subsidiaries for such period;

(10) to the extent included in calculating such net income (loss) specified in clause (1) of this Section all non-cash items increasing net income (loss) specified in clause (1) of this Section such period;

(11) the sum of the amounts required to be stated in such certificate by clauses (9) and (10) of this Section; and

(12) the adjusted net earnings of the Company for such period of twelve (12) consecutive calendar months (being the amount remaining after reducing the amount required to be stated in such certificate by clause (8) of this Section by the amount required to be stated therein by clause (11) of this Section);

(B) the annual interest requirements, being the interest requirements, if any, for twelve (12) months upon:

(i) all Bonds outstanding hereunder at the date of such certificate, except any for the payment of which the Bonds applied for are to be issued; provided that, if any such series of outstanding Bonds bears interest at a variable rate, then the interest on such series of Bonds shall be computed at the average annual rate in effect for such series during the period of twelve (12) consecutive calendar months (or any portion thereof in which Bonds of such series are outstanding) being used for the calculation of adjusted net earnings; and if such outstanding Bonds have been issued after the end of such twelve (12) consecutive calendar months, then computed at the initial rate upon issuance;

(ii) all Bonds then applied for in pending applications, including the application in connection with which such certificate is made, computed at the initial rate upon issuance;

(iii) the principal amount of all other indebtedness (except indebtedness for the payment of which the Bonds applied for are to be issued and indebtedness for the purchase, payment or redemption of which moneys in the necessary amount shall have been deposited with or be held by the Trustee or the trustee or other holder of a lien prior to the lien of this Indenture upon property subject to the lien of this Indenture with irrevocable direction so to apply the same; provided that, in the case of redemption, the notice required therefor shall have been given or have been provided for to the satisfaction of the Trustee), outstanding in the hands of the public on the date of such certificate and secured by a lien prior to the lien of this Indenture upon property subject to the lien of this Indenture, if said indebtedness has been assumed by the Company or if the Company customarily pays the interest upon the principal thereof.

If any of the property of the Company owned by it at the time of the making of any net earnings certificate shall have been acquired during or after any period for which adjusted net earnings of the Company are to be computed, the adjusted net earnings of such property (computed in the manner in this Section provided for the computation of the adjusted net earnings of the Company) during such period or such part of such period as shall have preceded the acquisition thereof, to the extent that the same have not otherwise been included and unless such property shall have been acquired in exchange or substitution for property the earnings of which have been included, may, at the option of the Company, be included in the adjusted net earnings of the Company for all purposes of this Indenture, and shall be included if such property has been operated as a separate unit or if the earnings therefrom are readily ascertainable.

In any case where a net earnings certificate is required as a condition precedent to the authentication and delivery of Bonds, such certificate shall also be made and signed by an independent public accountant, if the aggregate principal amount of Bonds then applied for plus the aggregate principal amount of Bonds authenticated and delivered hereunder since the commencement of the then current calendar year (other than those with respect to which a net earnings certificate is not required, or with respect to which a net earnings certificate made and signed by an independent public accountant has previously been furnished to the Trustee) is ten per centum (10%) or more of the aggregate principal amount of the Bonds at the time outstanding hereunder; but no net earnings certificate need be made and signed by any person other than the Chairman of the Board or Chief Executive Officer or President or a Vice President and an accountant, as to dates or periods not covered by annual reports required to be filed by the Company, in the case of conditions precedent which depend upon a state of facts as of a date or dates or for a period or periods different from that required to be covered by such annual reports.

Each such certificate shall include the statements required by Section 1 of Article Twenty hereof.

Unless otherwise specifically provided with respect to a series of Bonds, if interest on any Bonds outstanding hereunder is payable solely in the coin or currency of a foreign nation, then the annual interest requirements for such Bonds shall be based upon the estimated value (on a date within 10 days prior to the date of the application for the authentication and delivery under this Indenture of Bonds in connection with which such net earnings certificate is delivered) of such foreign coin or currency in The City of New York, New York, in the written opinion of an independent appraiser or other expert delivered to the Trustee.”

SECTION 3. Amendments to Article One of First Mortgage. Effective on a date fixed as provided in Section 1 of this Article Four, Article One of the First Mortgage as amended, shall be further amended by adding a new Section 8 thereto, as follows:

“Section 8. The term “Generation Assets” shall mean the Company’s assets and operations which form part of the Company’s generation business and any assets or operations necessary or incidental to the Company’s generation business.”

“The term “Separation” shall mean the separation of the Company’s Generation Assets, as defined in Section 8 of Article One hereof, from its transmission and distribution assets, including the restructuring of the Company’s operations in connection therewith, all in accordance and compliance with an order of the Public Utilities Commission of Ohio and any rules and regulations thereunder and the laws of the State of Ohio.”

SECTION 4. Amendments to Article Six of First Mortgage. Effective on a date fixed as provided in Section 1 of this Article Four, Article Six of the First Mortgage as amended shall be amended in its entirety to read as follows:

## ARTICLE SIX

### ISSUANCE OF BONDS UPON RETIREMENT OF BONDS PREVIOUSLY OUTSTANDING HEREUNDER.

Whenever Bonds authenticated and delivered hereunder (i) are paid, retired, redeemed, canceled or surrendered to the Trustee for cancellation (except when canceled pursuant to the provisions of Section 3 of Article Eleven to obtain the release of funded property; or any sinking fund provisions contained in any indenture supplemental hereto, so long as any Bonds of the series to which such sinking fund provisions relate shall be outstanding; or canceled through use by the Trustee of funded cash; or canceled pursuant to the provisions of Section 5 of Article Eight of this Indenture), or (ii) for the purchase, payment or redemption of which money in the necessary amount shall have been deposited with the Trustee (including in any such case described in clause (i) or (ii) with the proceeds of new Bonds ("Refinancing Bonds") authenticated and delivered pursuant to this Article Six for the purpose of refinancing, replacing, defeasing or refunding Bonds concurrently with the issuance of such Refinancing Bonds), upon the request of the Company evidenced by a resolution such as is described in subdivision (1) of Section 6 of Article Five, and upon receipt of a Treasurer's certificate and an opinion of counsel such as are described in subdivisions (2) and (4) respectively of Section 1 of Article Seven and of a further Treasurer's certificate, as defined in Section 3 of Article One, stating (a) the aggregate principal amount of Bonds authenticated and delivered hereunder and made the basis of such request which have been (or will be concurrently with the receipt of proceeds of Refinancing Bonds) paid, retired, redeemed, canceled or surrendered to the Trustee for cancellation, and (b) the aggregate principal amount of Bonds for the purchase, payment or redemption of which money in the necessary amount shall have been deposited with the Trustee (or will be concurrently with the receipt of proceeds of Refinancing Bonds), and that such Bonds have not been canceled pursuant to the provisions of Section 13 of Article Two, or Section 3 of Article Eleven to obtain the release of funded property, or canceled through the use by the Trustee of funded cash, or canceled pursuant to the provisions of Section 5 of Article Eight of this Indenture, or, if any Bonds of the series to which such sinking fund provisions relate shall then be outstanding, canceled pursuant to any sinking fund provisions of any indenture supplemental hereto, the Trustee shall authenticate and deliver additional Bonds of the same or another series in principal amount equivalent to the principal amount of the Bonds so paid, retired, redeemed, canceled or surrendered to the Trustee for cancellation or for the purchase, payment or redemption of which money in the necessary amount shall have been so deposited with the Trustee (together with all accrued and unpaid interest on such Bonds and the amount of any premium necessary to accomplish such refinancing if such Bonds are paid, retired, redeemed, cancelled or surrendered to the Trustee for cancellation on the basis of and with the proceeds of Refinancing Bonds); provided, however, that, unless the Company shall deliver to the Trustee a net earnings certificate such as is described in subdivision (6) of Section 6 of Article Five, no Bonds shall be authenticated or delivered under this Article for Bonds so paid, retired, redeemed, canceled or surrendered if such Bonds shall not have been at some time held by the public."

SECTION 5. Amendments to Section 3 of Article Eleven of First Mortgage. Effective on a date fixed as provided in Section 1 of this Article Four, Section 3 of Article Eleven of the First Mortgage as amended shall be amended as follows:

(a) the portion of the first sentence thereof appearing before subdivision (1) of Section 3 shall be deleted, and the following shall be inserted:

“So long as the Company is not in default under any of the provisions of this Indenture, the Company may obtain the release of any of the mortgaged and pledged property, including, without limiting the generality of the foregoing, any one or more of the Company's heating, gas or water properties substantially as an entirety (provided, however, that the electric property of the Company shall not in any event be released substantially as an entirety (other than the Generation Assets, as defined in Section 8 of Article One hereof, pursuant to the Separation, as defined in Section 8 of Article One hereof) and, further, that prior lien bonds deposited with the Trustee shall not be released except as provided in Article Nine hereof), and the Trustee shall release the same from the lien hereof upon the application of the Company and receipt by the Trustee of”;

(b) subdivision (2) of Section 3 shall be amended to add a new proviso at the end thereof to read as follows:

“provided that, anything contained in this subdivision (2) to the contrary notwithstanding, in connection with an application of the Company for the release of the Generation Assets, as defined in Section 8 of Article One hereof, from the lien hereof pursuant to the Separation, as defined in Section 8 of Article One hereof, the Trustee need not receive so much and such a part of any one or more of the statements otherwise required hereunder to be included in such certificate, and such certificate need not be made by an independent engineer, if and to the extent that the Company determines, in good faith based on advice of counsel, that under the terms of that section and/or any interpretation or guidance as to the meaning thereof of the Securities and Exchange Commission and its staff, including any one of more “no action” letters or exemptive orders (whether issued to the Company or any other Person), all or any portion of Section 314(d) of the Trust Indenture Act of 1939 as then in effect as might otherwise have been applicable to any one or more of the statements otherwise required hereunder to be included in such certificate shall not be applicable to such certificate, and upon receipt by the Trustee of an opinion of counsel to such effect;”

(c) subdivision (3) of Section (3) shall be amended to add a new proviso at the end thereof to read as follows:

“provided that this subdivision (3) shall not apply in the case of the release of the Generation Assets, as defined in Section 8 of Article One hereof, from the lien hereof pursuant to the Separation, as defined in Section 8 of Article One hereof, if (i) the amendments to Section 3 of Article Eleven of this Indenture provided for in Article Four of the Forty-Eighth Supplemental Indenture, dated as of August 1, 2015, to this Indenture become effective as provided for in Section 1(a) of said Article Four or (ii) the amendments to Section 3 of Article Eleven of this Indenture provided for in Article Four of the Forty-Eighth Supplemental Indenture, dated as of August 1, 2015, to this Indenture become effective as

provided in Section 1(b) of Article Four of the Forty-Eighth Supplemental Indenture, dated as of August 1, 2015, and the Trustee receives in connection with the Company's application for such release an engineer's certificate made by an independent engineer and dated not more than sixty (60) days prior to the date of making of such application and stating that the fair value, in the opinion of the signer, of the property subject to the lien hereof after giving effect to the release of the lien hereof on the Generation Assets, as defined in Section 8 of Article One hereof, is not less than 110% of the principal amount of the Bonds outstanding at the time of such application, and a net earnings certificate such as is described in subdivision (6) of Section 6 of Article Five, in each case, determined on a pro forma basis giving effect to the Separation, as defined in Section 8 of Article One hereof); provided, further, that in the case of clause (i) or clause (ii), as applicable, no default under any of the provisions of this Indenture and no completed default as defined in Section 1 of Article Twelve hereof shall exist or be continuing before or after giving effect to such release."

SECTION 6. Amendments to Section 1 of Article Fifteen of First Mortgage. Effective on a date fixed as provided in Section 1 of this Article Four, Section 1 of Article Fifteen of the First Mortgage as amended shall be amended to add the following parenthetical at the end of the first paragraph thereof:

"(provided, however, that, in connection with the Separation, as defined in Section 8 of Article One hereof, the Company may convey or transfer all of the Generation Assets, as defined in Section 8 of Article One hereof, without the transferee being required to expressly assume in writing the due and punctual payment of the principal and interest of all the Bonds according to their tenor and the due and punctual performance and observance of all the covenants and conditions of the Indenture, so long as no default under any of the provisions of this Indenture and no completed defaults as defined in Section 1 of Article Twelve hereof shall exist or be continuing before or after giving effect to such conveyance or transfer and the liens hereof on such Generation Assets are released in accordance with Article Eleven hereof)".

SECTION 7. Effectuating Provisions; Required Consent. Any supplemental indentures may contain such other provisions as may be necessary or appropriate to carry into effect the purposes of the amendments provided for by this Article Four or as may be otherwise appropriate and permissible under the provisions of Article Eighteen of the First Mortgage as amended to accomplish the purposes of said amendments. To the extent permitted by Article Eighteen of the First Mortgage as amended, any supplemental indenture may terminate or modify specified obligations of the Company to the holders of the Bonds of a particular series and such amendment will only require the consent by holders of at least a majority in aggregate principal amount of the Bonds outstanding of said series. Said amendments may effect the purposes herein contemplated either by adding provisions to, or eliminating provisions from, the First Mortgage as amended, or by both adding and eliminating provisions, or may accomplish said purposes in any other appropriate manner.

No further consent of the holders of New Bonds shall be required to effect any of the amendments provided for in, or permitted by, this Article Four.

## **ARTICLE FIVE.**

### **COVENANTS OF THE COMPANY.**

SECTION 1. Confirmation of Covenants by the Company in First Mortgage. All covenants and agreements by the Company in the First Mortgage as heretofore and hereby amended are hereby confirmed.

SECTION 2. Covenant of the Company and Legal Opinion as to Recording. Promptly after the execution and delivery of this Fiftieth Supplemental Indenture, the Company will take such action with respect to the recording, filing, re-recording and re-filing of the First Mortgage as amended and this Fiftieth Supplemental Indenture as may be necessary to make effective the lien intended to be created hereby, and will furnish to the Trustee an opinion of counsel selected by the Company and satisfactory to the Trustee (who may be of counsel to the Company) either (a) stating that in the opinion of such counsel such action has been taken with respect to the recording, filing, re-recording and re-filing of the First Mortgage as amended and this Fiftieth Supplemental Indenture as to make effective the lien intended to be created thereby, and reciting the details of such action, or (b) stating that in the opinion of such counsel no such action is necessary to make such lien effective.

## **ARTICLE SIX.**

### **MISCELLANEOUS.**

SECTION 3. Authentication and Delivery of New Bonds in Advance of the Recording of Fiftieth Supplemental Indenture. The New Bonds may be authenticated and delivered by the Trustee and issued by the Company in advance of the recording or filing of this Fiftieth Supplemental Indenture.

SECTION 4. Fiftieth Supplemental Indenture to Form Part of First Mortgage. The provisions of this Fiftieth Supplemental Indenture shall become effective immediately upon the execution and delivery hereof, except that the provisions of Article Four of this Fiftieth Supplemental Indenture modifying and amending the First Mortgage as amended shall become effective on the date or dates fixed as provided in said Article Four. From and after the initial issue of the New Bonds, this Fiftieth Supplemental Indenture shall form a part of the First Mortgage and all the terms and conditions herein contained shall be deemed to be part of the terms of the First Mortgage, as fully and with the same effect as if all the terms and provisions of this Fiftieth Supplemental Indenture, including the provisions which determine the dates on which the amendments provided for in Article Four of this Fiftieth Supplemental Indenture shall become effective, had been set forth in the First Mortgage as originally executed. Except as modified or amended by this Fiftieth Supplemental Indenture, the First Mortgage as amended shall remain and continue in full force and effect in accordance with the terms and provisions thereof, and all the covenants, conditions, terms and provisions of the First Mortgage, as heretofore modified and amended and as further modified and amended by this Fiftieth

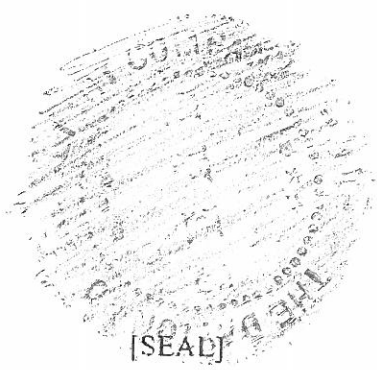
Supplemental Indenture, shall be applicable with respect to the New Bonds, except insofar as such covenants, conditions, terms and provisions are limited and applicable only to the Bonds of another or other series, or are expressed to continue only so long as Bonds of another or other series are outstanding, and all the covenants, conditions, terms and provisions of the First Mortgage as amended with respect to the Trustee shall remain in full force and effect and be applicable to the Trustee under this Fiftieth Supplemental Indenture in the same manner as though set out herein at length. All representations and recitals contained in this Fiftieth Supplemental Indenture and in the New Bonds (save only the Trustee's certificates upon said New Bonds) are made by and on behalf of the Company, and the Trustee is in no way responsible therefor or for any statement therein contained.

SECTION 5. Definitions in First Mortgage Shall Apply to Fiftieth Supplemental Indenture. The terms defined in Article One of the First Mortgage as heretofore and hereby amended, when used in this Fiftieth Supplemental Indenture, shall, respectively, have the meanings set forth in said Article One.

SECTION 6. Execution in Counterparts. This Fiftieth Supplemental Indenture may be simultaneously executed in several counterparts and each counterpart shall be an original instrument.



IN WITNESS WHEREOF, THE DAYTON POWER AND LIGHT COMPANY has caused this instrument to be signed on its behalf by its President or a Vice President and its corporate seal to be hereunto affixed and attested by its Secretary or an Assistant Secretary, in City of Dayton, Ohio, and THE BANK OF NEW YORK MELLON has caused this instrument to be signed on its behalf by a Vice President or an Assistant Vice President and its corporate seal to be hereunto affixed and attested by a Vice President, Assistant Vice President or an Assistant Treasurer, in The City of New York, New York, as of the day and year first above written.



THE DAYTON POWER AND  
LIGHT COMPANY

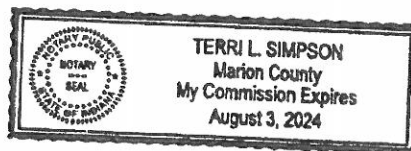
By Craig L. Jackson  
Craig L. Jackson, Vice President and  
Chief Financial Officer

STATE OF INDIANA ) ss.:  
COUNTY OF Marion )

On this day of Aug, 2016, personally appeared before me, a Notary Public within and for said County in the State aforesaid, Craig L. Jackson, to me known and known to me to be the Vice President and Chief Financial Officer of THE DAYTON POWER AND LIGHT COMPANY, an Ohio corporation and one of the corporations which executed the foregoing instrument, who acknowledged that he did sign and seal said instrument as such Vice President and Chief Financial Officer for and on behalf of said corporation and that the same is his free act and deed as such Vice President and Chief Financial Officer, and the free and corporate act and deed of said corporation; and said Craig L. Jackson, being by me duly sworn, did depose and say: that he resides in Montgomery County, Ohio; that he is the Vice President and Chief Financial Officer of THE DAYTON POWER AND LIGHT COMPANY, an Ohio corporation and one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

IN WITNESS WHEREOF I have hereunto set my hand and official seal

Terr L. Simpson



[Supplemental Indenture]

Attest:

Judi L. Sobecki  
Judi L. Sobecki, Vice President, General  
Counsel and Secretary

Signed and acknowledged in our presence by  
The Dayton Power and Light Company.

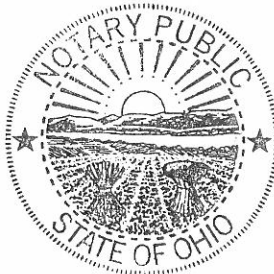
Brian A. Clark

Christine A. Hammer

STATE OF OHIO )  
COUNTY OF MONTGOMERY ) ss.:

On this 22<sup>nd</sup> day of AUGUST, 2016, personally appeared before me, a Notary Public within and for said County in the State aforesaid, Judi L. Sobecki, to me known and known to me to be the Vice President, General Counsel and Secretary of THE DAYTON POWER AND LIGHT COMPANY, an Ohio corporation and one of the corporations which executed the foregoing instrument, who acknowledged that she did sign and seal said instrument as such Vice President, General Counsel and Secretary for and on behalf of said corporation and that the same is her free act and deed on said Vice President, General Counsel and Secretary, and the free and corporate act and deed of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.



MARY C. MITCHELL, Notary Public  
In and for the State of Ohio  
My Commission Expires Aug. 3, 2018

Mary C. Mitchell

THE BANK OF NEW YORK  
MELLON, as Trustee

By

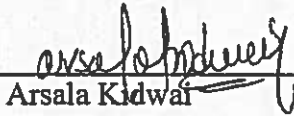


Francine Kincaid  
Vice President



[SEAL]

Attest:



Arsala Kidwai  
Vice President

Signed and acknowledged in our presence by  
The Bank of New York Mellon.

  
\_\_\_\_\_  
\_\_\_\_\_

)

On this 22<sup>nd</sup> day of August, 2016, personally appeared before me, a Notary Public within and for said County in the State aforesaid, Francine Kincaid and Arsala Kidwai, to me known and known to me to be, respectively, a Vice President and a Vice President of THE BANK OF NEW YORK MELLON, one of the corporations which executed the foregoing instrument, who severally acknowledged that they did sign and seal said instrument as such Vice President and Vice President for and on behalf of said corporation and that the same is their free act and deed as such Vice President and Vice President, respectively, and the free and corporate act and deed of said corporation; and said Francine Kincaid being by me duly sworn, did depose and say: that she resides in Suffolk County, NY that she is a Vice President of THE BANK OF NEW YORK, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of such corporation; and that he signed his name thereto by like order.

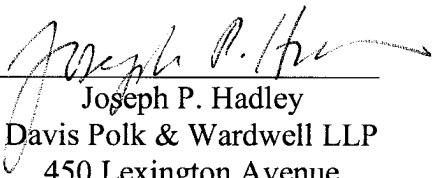
IN WITNESS WHEREOF I have hereunto set my hand and official seal.

Notary Public, State of New York

CHRISTOPHER J. TRAINA  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01TR6297825  
Qualified in Queens County  
Certified in New York County  
My Commission Expires March 03, 2018



This instrument prepared by

  
\_\_\_\_\_

Joseph P. Hadley  
Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017

EXHIBIT A

[FORM OF FIRST MORTGAGE BOND, VARIABLE RATE SERIES 2016 DUE 2022]  
No. \_\_\_\_

THIS BOND IS NOT TRANSFERABLE EXCEPT AS PERMITTED IN SECTION 13 OF  
ARTICLE ONE OF THE FIFTIETH SUPPLEMENTAL INDENTURE.

**THE DAYTON POWER AND LIGHT COMPANY**  
**(Incorporated under the laws of the State of Ohio)**

**First Mortgage Bond,**  
**Variable Rate Series 2016 Due 2022**

THE DAYTON POWER AND LIGHT COMPANY, a corporation of the State of Ohio (hereinafter called the Company), for value received, hereby promises to pay to \_\_\_\_\_, as collateral agent (in such capacity, the “**Collateral Agent**”) for the Lenders under and as defined in the Credit Agreement (the “**Credit Agreement**”), dated as of August 24, 2016 among the Company, each lender from time to time party thereto (hereinafter called the “**Lenders**”) and JPMorgan Chase Bank, N.A., as Agent, or registered assigns, at the office or agency of the Company in the Borough of Manhattan, The City of New York, \$445,000,000 on August 1, 2022, unless called for earlier redemption, or on any other date the amount of principal of the corresponding loans (hereinafter called the “**Loans**”) under the Credit Agreement (as hereinafter defined) become due and payable (whether by prepayment, upon acceleration or otherwise) in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, and to pay to the registered owner hereof interest thereon from the Interest Payment Date (as hereinafter defined) to which interest has been paid or duly provided for last preceding the date hereof, at such rate or rates per annum on each Interest Payment Date as shall cause the amount of interest payable on such Interest Payment Date on this Bond (as hereinafter defined) to equal the amount of interest payable on such Interest Payment Date on the corresponding Loans, such interest to be payable on the same dates as interest is payable on said Loans (each such date herein called an “**Interest Payment Date**”) until the maturity of this Bond, or if this Bond shall be duly called for redemption, until the redemption date, or if the Company shall default in the payment of the principal amount of this Bond, until the Company's obligation with respect to the payment of such principal shall be discharged as provided in the Indenture (as hereinafter defined). The amount of interest payable on each Interest Payment Date shall be computed on the same basis as the amount of interest is computed on the corresponding said Loans.

The interest payable on any Interest Payment Date shall be paid to the holder in whose name this Bond is registered, except that if the Company shall default in the payment of any installment of interest on this Bond, such interest in default shall be paid to the holder in whose name this Bond is registered at the close of business on a date established for the payment of such defaulted interest by the Company in any lawful manner. This Bond shall be payable as to principal,

premium, if any, and interest in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, at the office or agency of the Company in the Borough of Manhattan, The City of New York.

This Bond is one of an issue of First Mortgage Bonds (hereinafter called the “**Bonds**”) of the Company issued and to be issued in series under and pursuant to and equally secured by an indenture of mortgage and deed of trust dated as of October 1, 1935, executed by the Company to Irving Trust Company (now The Bank of New York Mellon), as Trustee, as said indenture has been amended and supplemented as hereinafter stated, and is one of a series of said First Mortgage Bonds, which series is designated as the “First Mortgage Bonds, Variable Rate Series 2016 Due 2022”, of the Company (hereinafter called the “**New Bonds**”) created and described in a Fiftieth Supplemental Indenture dated as of August 1, 2016, executed by the Company and The Bank of New York Mellon, as Trustee (such supplemental indenture, the “**Fiftieth Supplemental Indenture**”). Subsequent to the execution and delivery of said indenture of mortgage and deed of trust there have been executed and delivered fifty indentures supplemental thereto, including the Fiftieth Supplemental Indenture, supplementing and amending as therein set forth certain provisions thereof (said indenture mortgage, together with all such indentures supplement, the “**First Mortgage, as amended**”). Said indenture of mortgage and deed of trust and such supplemental indentures collectively are hereinafter sometimes called the “**Indenture**”.

For a description of the property mortgaged and pledged, the nature and extent of the security, the rights of the holders of the Bonds and of the Trustee therein and thereto, the duties and immunities of the Trustee, and the terms and conditions upon which the Bonds are issued and secured, reference is hereby made to the Indenture. The rights and obligations of the Company and of the holders and registered owners of the Bonds of this issue may be modified or amended at the request of the Company by an indenture or indentures supplemental to the Indenture, executed pursuant to the consent in writing of the holders or registered owners of a majority in principal amount of the Bonds then outstanding affected by such modification or amendment, all in the manner and subject to the limitations set forth in the Indenture, any consent by the holder or registered owner of any Bond being conclusive and binding upon such holder or registered owner and upon all future holders and owners of such Bond, irrespective of whether or not any notation of such consent is made upon such Bond; provided that no such modification or amendment by such supplemental indenture shall extend the maturity of, or reduce the rate of interest on, or otherwise modify the terms of payment of the principal or interest of, this Bond, which obligations are absolute and unconditional, nor permit the creation of any lien ranking prior to or equal with the lien of the Indenture on any of the mortgaged property. Notwithstanding the foregoing, pursuant to such Fiftieth Supplemental Indenture, the holders of the Bonds, by their acceptance and holding hereof, consent and agree to the amendments provided for in Article Four of such Fiftieth Supplemental Indenture. The New Bonds are to be issued by the Company to the Collateral Agent and pledged as collateral security to the Collateral Agent, or its assignee, on behalf of and for the benefit of the Lenders, to evidence and secure the obligations of the Company to repay the Loans made by the Lenders to the Company pursuant to that certain Credit Agreement to assist in the refunding of the Company’s issued and outstanding Bonds of the 1.875% Series Due 2016 outstanding in the principal amount of \$445,000,000.

Unless an Event of Default (as defined in the Credit Agreement) has occurred and is continuing, this Bond shall not be transferable by the Collateral Agent, except to (i) a successor Collateral Agent appointed pursuant to the terms of Section 9.06 of the Credit Agreement or (ii) the Company; provided that if an Event of Default (as defined in the Credit Agreement) has occurred and is continuing, the Collateral Agent shall have the right to transfer, assign or otherwise dispose of the New Bonds in accordance with the Credit Agreement and the Loan Documents (as defined in the Credit Agreement).

In the event and to the extent the principal of, or premium, if any, or interest on any Loans shall be paid, whether at maturity, upon redemption, prepayment, acceleration or otherwise or shall otherwise be deemed to be paid, an equal amount of principal or premium, if any, or interest, as the case may be, payable with respect to an aggregate principal amount of corresponding New Bonds equal to an aggregate principal amount of such Loans shall be deemed to have been paid.

In the event that this Bond shall be deemed to have been paid in full in accordance with the paragraph immediately above, and the Credit Agreement (including without limitation, all commitments thereunder) shall have been terminated, this Bond shall be surrendered to the Trustee for cancellation and the Trustee shall forthwith cancel the same

The New Bonds are subject to mandatory redemption by the Company prior to maturity at any time in whole or in part as provided in Section 5 of Article One of the Fiftieth Supplemental Indenture at a redemption price of 100% of the principal amount to be redeemed, plus accrued interest, if any, to the redemption date.

The New Bonds are subject to optional redemption by the Company prior to maturity at any time in whole or in part as provided in Section 7 of Article One of the Fiftieth Supplemental Indenture at the same redemption price, plus accrued interest and premium, if any, to the redemption date, as shall be payable on the Loans being concurrently prepaid therewith.

Any redemption of the New Bonds shall be made in the manner provided in Section 8 of Article One of the Fiftieth Supplemental Indenture, subject to the provisions of the First Mortgage as amended.

The principal hereof may be declared or may become due on the conditions, in the manner and at the time set forth in the Indenture, upon the happening of a completed default as provided in the Indenture.

The Trustee shall be entitled to request, receive and conclusively rely upon the certification of the Company, in an officer's certificate of the interest rate of, Interest Payment Date of and basis on which interest is computed for, the Loans, from time to time as necessary to enable the Trustee to determine for the New Bonds their corresponding interest rate, Interest Payment Date and basis on which interest shall be computed.

The Trustee may conclusively presume that the obligation of the Company to pay the principal of, premium, if any, and interest on the New Bonds, as the case may be, on each date when due shall have been fully satisfied and discharged on each date when due unless and until a responsible officer of the Trustee within the corporate trust group administering the Indenture shall have received a written notice from the Collateral Agent, signed by a person certifying that



he or she is an authorized officer of the Collateral Agent, stating that the payment of principal of or interest on the new Bonds has not been fully paid when due and specifying the amount of funds required to make such payment.

Before any transfer of this Bond by the registered holder or his or its legal representative will be recognized or given effect by the Trustee, the registered holder shall note the amounts of all reductions in the stated principal amount of this Bond, and shall notify the Trustee of the name and address of the transferee and, unless an Event of Default shall have occurred and be continuing under the Credit Agreement, shall afford the Trustee the opportunity of verifying the notation as to such reductions. By acceptance hereof the holder of this Bond and each transferee shall be deemed to have agreed to provide reasonable indemnity to the Trustee with respect to, and hold harmless the Trustee against, all losses, claims, damages or liability arising out of any failure on part of the holder or of any such transferee to comply with the requirements of the preceding sentence.

This Bond may be exchanged for a like principal amount of other New Bonds, or transferred as prescribed in the Indenture by the registered owner hereof in person, or by his duly authorized attorney, at the office or agency of the Company in the Borough of Manhattan, The City of New York, upon surrender and cancellation of this Bond and thereupon a new registered New Bond or New Bonds without coupons for a like principal amount and of authorized denominations will be issued in exchange therefor as provided in the Indenture. The Company and the Trustee may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal and premium, if any, and interest due hereon and for all other purposes.

Any costs or expenses (including any stamp tax or other governmental charge payable in connection with any such exchange or transfer) shall be for the account of the Company. The New Bonds are issuable as registered Bonds without coupons in denominations of \$1,000 and any integral multiple of \$1,000.

No recourse shall be had for the payment of the principal of, or premium, if any, or interest on, this Bond, or under or upon any obligation, covenant or agreement contained in the Indenture, against (a) any incorporator, (b) any past, present, or future subscriber to capital stock, (c) any shareholder or (d) any officer or director, in each case, of (x) the Company or (y) of any predecessor or successor corporation of the Company either directly or through the Company or any such predecessor or successor corporation of the Company, under any present or future rule of law, statute or constitution or by the enforcement of any assessment or otherwise, all such liability of incorporators, subscribers, shareholders, officers and directors being released by the registered owner hereof by the acceptance of this Bond and being likewise waived and released by the terms of the Indenture; provided that such limitation of liability of the persons and entities described in clauses (a) – (d) above shall not extend to any such persons or entities of a successor of the Company that expressly assumes the obligations of the Company or is liable under Section 2 of Article 15 of the First Mortgage if such persons or entities described in clauses (a)-(d) above waive such limitation of liability.

This Bond shall not become valid or obligatory for any purpose until The Bank of New York Mellon, the Trustee under the Indenture, or its successor thereunder, shall have signed the form of certificate endorsed hereon.

IN WITNESS WHEREOF, The Dayton Power and Light Company has caused this Bond to be executed in its name by the manual or facsimile signature of its President or any Vice President and its corporate seal to be hereunto affixed or a facsimile thereof reproduced hereon and attested by the manual or facsimile signature of its Corporate Secretary or an Assistant Corporate Secretary.

Dated:

[SEAL]

THE DAYTON POWER AND LIGHT  
COMPANY

By: \_\_\_\_\_  
[President] [Vice President]

Attest: \_\_\_\_\_  
[Corporate Secretary]  
[Assistant Corporate Secretary]

## **TRUSTEE'S CERTIFICATE**

This Bond is one of the Bonds of the Series designated therein, described in the within-mentioned Indenture.

THE BANK OF NEW YORK MELLON, as  
Trustee

By: \_\_\_\_\_  
Authorized Signatory

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**10/5/2016 4:35:53 PM**

**in**

**Case No(s). 16-0563-EL-AIS**

Summary: Report of Sale electronically filed by Eric R Brown on behalf of The Dayton Power and Light Company