

**IN THE MATTER OF: Duquesne Light Company**

**WARWICK MINE NO. 2 TREATMENT TRUST AGREEMENT**

This Trust Agreement ("Trust" or "Agreement") entered into this 11<sup>th</sup> day of February, 2011, by and among Duquesne Light Company, with its principal place of business at 411 Seventh Avenue, Pittsburgh, PA 15219 ("Settlor"), and the Huntington National Bank, with its principal place of business at 917 Euclid Ave, Cleveland, Ohio 44115 and incorporated under the laws of Maryland ("Trustee").

WHEREAS, the Settlor has entered into a Consent Order and Agreement dated January 26, 2011, (such Consent Order and Agreement, as amended hereafter referred to as the "CO&A"), with the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter referred to as "Department" or "Beneficiary") which is attached hereto as Exhibit "A" and incorporated by reference and which contains, among other things, a requirement that the Settlor provide financial guarantees to assure that funds will be available to provide for the Settlor's legal obligation to operate a mine drainage treatment system to treat and otherwise prevent discharges of mine drainage emanating from or hydrologically connected to Settlor's mines;

WHEREAS, the treatment system currently consists of the equipment described in Paragraph N of Exhibit A to this Trust and is located in Mononghela Township, Greene County (hereinafter referred to as the "Facility"). The discharge from the Facility flows into Whitley Creek;

WHEREAS, the Pennsylvania Surface Mining Conservation and Reclamation Act ("SMCRA"), requires a permittee to post with the Department a bond for each operation

WHEREAS, the Department has joined in this Agreement to indicate its acceptance of the terms and conditions set forth in, as well as the powers and authorities granted by, this Agreement;

WHEREAS, the Department has stated that, to the best of its knowledge and belief, the Facility currently has and is in compliance with all required federal and state permits and approvals necessary and required for the operation and maintenance of the Facility; and

WHEREAS, except as set forth in the CO&A, Settlor represents that, to the best of its knowledge, there are no violations of any environmental law regulating the Facility or the Property, as it is hereinafter defined, and that the Facility is operating in compliance with all applicable permits and approvals.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and undertakings of the parties as set forth herein, and with the intention of being legally bound hereby, the parties agree as follows:

## ARTICLE ONE

### Establishment of Trust

§1.1 The Settlor and the Trustee hereby establish this Trust for the benefit of the Department, or its successor, to be utilized for the primary purpose of addressing environmental obligations related to Settlor's mining activities permitted under SMCRA or the Coal Refuse Disposal Control Act or the Bituminous Mine Subsidence and Land Conservation Act and under the Clean Streams Law which includes providing for the continued operation and maintenance of the Facility. For purposes of this Agreement, operation includes, but is not limited to, the operation,

Improvement Account. The Trustee shall deposit the Trust principal identified in Sections 1.3 through 1.4 into the Primary Trust Account. The Trustee shall transfer funds into the Capital Improvement Account from the Primary Trust Account as directed by the Department and shall deposit into the Capital Improvement Account funds received from any person for deposit into this Account. The Capital Improvement Account principal may be commingled with the principal of the Primary Trust Account for purposes of investment, but must be accounted for and reported separately as if they are assets of separate and distinct funds. The Trustee shall manage and make disbursements from the two subaccounts in accordance with the provisions of ARTICLE TWO, Distribution Payments and ARTICLE THREE, Trust Management, as set forth in this Trust Agreement.

§1.6 The Trust Fund and any other real and personal property held by the Trustee pursuant to this Trust Agreement shall not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration, levy or other legal process, either voluntary, involuntary or by operation of law, by, on behalf of, or in respect of the Settlor and shall not be subject or applied to the debts, obligations or liabilities of the Settlor, including, without limitation, any direct action or seizure by any creditor or claimant under any writ or proceeding at law or in equity. Furthermore, the Settlor shall have no legal title to any part of the Trust Fund, and it is the intention of the parties to this Trust Agreement that Settlor's entry into the Trust shall extinguish and remove all of Settlor's interest in the Trust from Settlor's estate under the Bankruptcy Code or similar laws.

§1.7 All payments made to the Trust or deposits into the Trust by the Settlor shall be irrevocable once made, and upon delivery thereof, by or on behalf of the Settlor, all interest of the Settlor therein shall cease and terminate, and no part thereof, nor any income therefrom, shall

§2.2 The Trustee is authorized and shall, upon the written order of the Department, enter into contracts, and take title to easements, rights of way and other property interests and property as necessary to carry out the purposes of the Trust. The Trustee is authorized, upon the written order of the Department, to contract with or otherwise engage the services of, and pay reasonable compensation to, such persons or entities as the Trustee may require to carry out this provision. This authorization is in addition to the other powers granted to the Trustee by this Trust Agreement with regard to the retention and compensation of agents. Any property acquired or services provided under this provision shall not be deemed to be acquired or provided to the Trustee or the Department, but shall be deemed to be acquired or provided on behalf of the Trust, and the Trustee shall not incur any liability under the Trust when acting in accordance with the provisions of this paragraph.

§2.3 Except as provided by this Trust Agreement, no other disposition of monies shall be made unless directed, in writing, by the Department.

### ARTICLE THREE

#### Trust Management

§3.1 The Trustee shall invest and reinvest the principal and income of the Trust and keep the Trust invested as a single fund, without distinction between principal and income. The Trustee shall add to principal any income not distributed pursuant to the provisions of this Agreement.

§3.2 The Trustee shall have a fiduciary duty to act at all times in the best interest of the Trust. It shall be the responsibility and sole authority of the Trustee to make decisions concerning investment and disposition of the assets of the Trust, and the Trustee shall discharge its investment duty in a manner designed to meet the goals of the Trust. Subject to section 3.3(i),

- (f) In regard to any shares or other equity interests the Trustee may hold, the Trustee may join in any merger, reorganization, voting-trust plan or any other concerted action of owners or shareholders.
- (g) The Trustee, in the exercise of its investment powers, may utilize puts and calls, short sales, options and warrants or other investment strategies generally recognized as prudent when utilized to enhance returns, reduce risk or mitigate loss.
- (h) The Trustee may hold cash awaiting investment or distribution for a reasonable period of time, provided however, where possible and consistent with sound investment practices, shall invest such cash in overnight investments.
- (i) The Trustee shall not be responsible for any losses incurred hereunder whether it is due to market fluctuations or otherwise, except in the case of its gross negligence or willful misconduct or that of its agents.
- (j) The Trustee may not invest in high-risk non-transparent investment instruments, such as collateralized debt obligations, credit-default swaps, hedge funds or derivatives.

## ARTICLE FOUR

### Express Powers of Trustee

§4.1 Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Trust Agreement or by law, the Trustee is expressly authorized and empowered:

granted under this Trust Agreement. However, the Trustee shall not have the power to transfer, convey or sell such property without written authorization from the Department.

(e) To purchase public liability insurance and fire insurance, when directed to do so by the Department, to cover the operation, maintenance, improvement and all other activities associated with the real and personal property held by the Trust. The Trustee and the Commonwealth of Pennsylvania shall be listed on the policy as additional insureds. The insurance shall be written on an occurrence basis and shall provide bodily injury and property damage coverage in the amounts of \$500,000 per person and \$1,000,000 per occurrence. The fire insurance shall be in the amount determined by the Department.

## ARTICLE FIVE

### Advice of Counsel

§5.1 The Trustee may, from time to time, consult with counsel of its own choosing with respect to any question arising as to the construction or interpretation of this Agreement or any action to be taken hereunder. The Trustee shall be protected, to the extent permitted by law, in acting in good faith on the advice of counsel.

§5.2 The Trustee shall not be required to furnish any bond or security in any jurisdiction.

§5.3 No person dealing with the Trust or the Trustee shall be obligated to inquire as to the authority of the Trustee in connection with the acquisitions, investment, management or disposition of the Trust assets or in connection with the exercise of any other power granted under this Agreement.

or refusal to prosecute or defend the claim if deems such action to be in the best interest of the Trust.

## ARTICLE SEVEN

### Evaluation and Reports

§7.1 The Trustee shall at least quarterly furnish to the Department and to the Settlor a statement providing an accounting of all transactions involving the Trust and confirming the value of the Trust. Such statement shall value Trust investments at market value, which shall be that market value, determined not more than thirty (30) days prior to the date of statement.

Should the Settlor cease to exist or have its surety bonds forfeited, the Trustee is to discontinue providing any such statement to Settlor.

§7.2 The Trustee shall be responsible for the keeping of all appropriate books and records relating to the receipt and disbursement of all monies and assets under this Trust Agreement. In addition, whenever called upon to do so, the Trustee shall exhibit to the Settlor, should the Settlor be in existence, and the Department all documents, instruments or reports relating to the Trust or the Trust Fund. The Trustee shall also cause to be prepared all income tax returns required to be filed with respect to the Trust and shall execute and file such returns. The Department, upon request, shall furnish the Trustee with such information as may be reasonably required in connection with the preparation of such income tax returns.

law such that the Trust would not be taxable for federal income tax purposes. If the Department elects not to exercise its right to petition to reform the Trust or to take measures to meet the requirements of federal law for the Trust to become tax exempt, then the Trustee is empowered with the right to petition the appropriate judicial forum to reform the Trust to be a federal charitable trust for federal income tax purposes.

Notwithstanding any provision of this subsection (a) to the contrary, the Trust may not be reformed such that the purposes and objectives of the Trust cannot be met or that would alter any of the rights, obligations and duties of the Settlor as are provided in this Trust Agreement and in the consent order and agreement between the Department and the Settlor executed the same day as this Trust Agreement.

§8.3 The Trust is intended to be categorized, for state income tax purposes, as a Pennsylvania charitable trust.

(a) Should it be determined this Trust is not a charitable trust or Pennsylvania law changes so this Trust becomes taxable for Pennsylvania income tax purposes, then Settlor agrees that Settlor will contribute to the Trustee the amount of the Pennsylvania income tax assessed or levied against or in respect of the Trust. The Trustee shall use the money contributed by the Settlor to pay the income tax assessed or levied against or in respect of the Trust. The money to pay the tax assessed or levied against the Trust shall not be taken from the Trust. The Trustee shall enter into such agreements with the Settlor as are necessary to carry out this provision.

(b) If, at any time, it is determined by a taxing authority with jurisdiction in the matter that this Trust is not a Pennsylvania charitable trust, the Settlor and the Trustee agree the Department shall have the right to appeal the decision to the appropriate



which minimizes the tax liability of the Trust, giving due consideration to market conditions so as to avoid, to the extent possible, losses on the conversion of existing instruments. In carrying out this investment objective, the Trustee shall invest in the following:

- (a) Any bonds or obligations of any state or municipality that are exempt from federal income tax.
- (b) Shares of any mutual fund or "money market fund" which has one hundred percent (100%) of its assets invested in the investments of the type described in the preceding subsection (a).
- (c) Such other investments as may be approved by the Department.

## ARTICLE NINE

### Successor Trustee

§9.1 The Trustee may resign or the Settlor may replace the Trustee at Settlor's discretion, which discretion is limited to replacement with a Pennsylvania chartered or national bank or corporate financial institution with trust powers or a trust company with offices in Pennsylvania and whose trust activities are examined or regulated by a state or federal agency. Any such action, however, shall only be effective by the Settlor after giving sixty (60) days notice to the Department. The Trustee's resignation or replacement shall not be effective until a successor trustee has been appointed and such appointment confirmed, in writing, by the Department, which confirmation will not be unreasonably withheld. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder and shall be subject to the same reservations, limitations, terms and conditions. The successor trustee shall specify the date on which it will assume administration of the Trust, in writing, sent to the Trustee and

## ARTICLE TEN

### Instructions to the Trustee

§10.1 All orders and instructions by the Department to the Trustee shall be in writing, and signed by the Deputy Secretary for Mineral Resources, the Director of the Bureau of Mining and Reclamation, the Director of the Bureau of District Mining Operations, the District Mining Manager, or such other persons as the Department may designate by amendment, in writing, to this Agreement. The Trustee shall be fully protected and shall not be liable to any party while acting in accordance with the Department's orders and instructions, when such orders and instructions are authorized by the Agreement and consistent with the Trustee's fiduciary duty to the Trust, and, to the extent necessary, shall be held harmless from the Trust fund. The Trustee shall not have the right to assume, in the absence of written notice to the contrary, that an event constituting a change or termination of the authority of any person to act on behalf of the Department hereunder has occurred. The Trustee, upon receipt of orders, requests or instructions by the Department which are signed by a person purporting to be designated by the Department, but not listed above or in any written amendment to this Agreement, shall with due diligence ascertain if such persons are designated by the Department and have authority to act on behalf of the Department hereunder.

§10.2 The Trustee may request and rely upon the written instruction of the Department with respect to decisions concerning the operation of the Facility and any other treatment facilities which may be required in the future. Decisions concerning investment and disposition of the assets of the Trust are the sole responsibility of the Trustee, and the Trustee shall act in a manner consistent with its fiduciary duty to the Trust, notwithstanding instructions of the Department related to investment and disposition of assets which may be to the contrary.

- (a) The Department determines that the Trust is no longer required.
- (b) The Trustee determines that the size of the Trust does not warrant the continuation of the Trust.
- (c) The Trustee determines administration of the Trust renders it impractical to continue the Trust and the Department agrees.
- (d) Upon termination of the Trust, the Trustee shall distribute any residuum, less final trust administration expenses of the Trustee, to the Department, unless directed otherwise, in writing, by the Department.

## **ARTICLE THIRTEEN**

### **Amendments**

§13.1 This Trust Agreement may be amended by an instrument in writing, executed by the Settlor or Trustee and the Department or by the Trustee and the Department in the event the Settlor ceases to exist or has had its bonds forfeited, but during the existence of the Settlor any amendment of this Trust Agreement cannot in any manner affect the irrevocable nature of the Trust.

## **ARTICLE FOURTEEN**

### **Notices**

§14.1 All notices, inquiries, directions or other written communications made or given pursuant to the Trust shall be given to the Department and the Trustee by certified mail, return receipt requested, addressed to the following addresses, and shall be deemed to be received upon the

## ARTICLE SIXTEEN

### Construction

§16.1 This Agreement shall be constructed and governed in all respects in accordance with the laws of the Commonwealth of Pennsylvania.

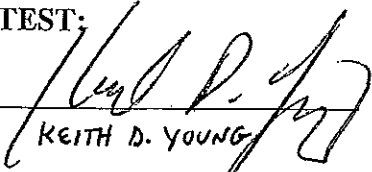
§16.2 In case of the merger or consolidation of any corporate Trustee serving hereunder, the resultant company shall become such Trustee's successor without notice to any party.

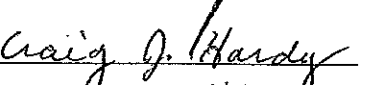
§16.3 Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

§16.4 All covenants and agreements contained herein shall be binding upon and inure to benefit the Department and the Trustee, as well as their successors and assigns. Similarly, any request, notice, direction, consent, waiver or other writing or action, taken by the Department or the Trustee shall bind their successors and assigns.

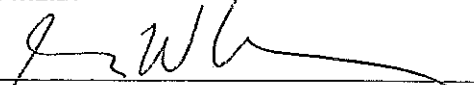
§16.5 It is the intention of the parties hereto that this Trust remain in existence until terminated in accordance with the provisions of ARTICLE TWELVE hereof and that the Trust be exempt from the application of any rule against perpetuities by reason of the Department's beneficial interest herein because the Trust is authorized by the Pennsylvania Surface Mining Conservation and Reclamation Act which contemplates no limitation on duration, and because the Trust is for the public purpose of assuring funds will be available in the future to ensure the Facility will continue to be maintained and operated to protect the environment and the health and welfare of the public. However, in the event that it is ever finally determined by a court with jurisdiction in

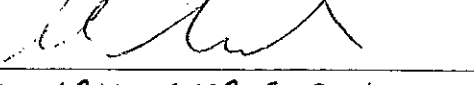
ATTEST:

  
\_\_\_\_\_  
KEITH D. YOUNG


  
\_\_\_\_\_  
CRAIG J. HARDY

TRUSTEE:

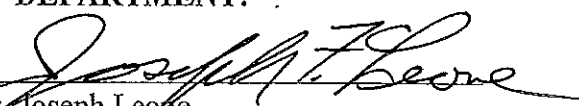
BY:   
\_\_\_\_\_  
Name: GREGORY W. KLUCHER  
Title: V.P. + TRUST OFFICER

BY:   
\_\_\_\_\_  
Name: CHRISTOPHER G. CWIKLINSKI  
Title: SVP + PORTFOLIO MGR.

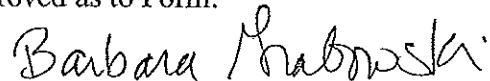
ATTEST:

  
\_\_\_\_\_  
Joseph Leone

DEPARTMENT:

BY:   
\_\_\_\_\_  
Name: Joseph Leone  
Title: Director,  
Greensburg District Mining Office

Approved as to Form:

BY:   
\_\_\_\_\_  
Name: Barbara J. Grabowski  
Title: Assistant Counsel  
Southwest Regional Office of Chief Counsel