tions, except land owned in fee, that has permanently ceased to be used or useful in the business of the Company.

SECTION 4.08. That, whenever necessary to avoid or fill a vacancy in the office of the Trustee, the Company will appoint a Trustee in the manner provided in Section 13.16, so that there shall at all times be a Trustee hereunder which shall at all times be a bank or trust company having its principal office and place of business in the Borough of Manhattan, The City of New York, or in the City and County of Denver, Colorado, if there be such a bank or trust company willing and able to accept the trust upon reasonable or customary terms, and which shall at all times be a corporation organized under the laws of the State of New York or the State of Colorado or of the United States, with a combined capital and surplus of at least $3,000,000, and authorized under such laws to exercise corporate trust powers.

SECTION 4.09. That the Company will at all times keep or cause to be kept proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the plants, properties, business and affairs of the Company. That the Company will make such depreciation charges on its books as may be necessary to provide for the retirement of all depreciable mortgaged property at the end of its useful life.

SECTION 4.10. That, so long as any of the bonds of the 1977 Series shall be outstanding, the Company will not declare or pay any dividends on its capital stock (other than dividends payable in shares of its capital stock), or make any other distribution on any shares of its capital stock, or purchase, acquire or otherwise retire, directly or indirectly, any shares of its capital stock (other than with the net proceeds of additional capital stock financing), if, as a result thereof, the cumulative aggregate amount of such dividends, distributions, purchases and retirements subsequent to December 31, 1956 exceeds the amount of the net income of the Company (computed before deducting

any amount in respect of such dividends, distributions, purchases and retirements) accumulated subsequent to December 31, 1956, and the Company warrants that it has not, since December 31, 1956, declared or paid any dividend nor made any distribution, purchase or retirement which would produce any such result.

The net income of the Company for any period shall be determined by deducting from the amount of its gross revenues for such period (excluding gains from the sale or disposition of capital assets) all operating expenses and other proper deductions from income for such period, including (without in any respect limiting the generality of the foregoing) interest on all outstanding indebtedness, amortization of debt discount and expense, amortization of all other deferred items to the extent required by sound accounting practice, provisions for all taxes, including income taxes, provisions for all contingency reserves, whether general or special, which are not mere segregations of surplus, losses from the sale or disposition of capital assets, provisions for depletion, if any, provisions for depreciation and obsolescence in amounts not less than those actually deducted on the books of the Company and not less than 2¾% of depreciable property (or such lesser amount as the Company shall be required to charge on its books by order of The Public Utilities Commission of Colorado, *provided, however*, that net income shall not reflect as earnings or as a deduction from earnings any adjustment of more than Five Thousand Dollars ($5,000) in any single instance, made during such period (whether made through surplus or income accounts) properly attributable to operations prior to December 31, 1956, or mere reversals of reserves existing on December 31, 1956.

The provisions of this Section 4.10 shall not prevent (a) the declaration and payment of dividends upon shares of preferred stock of the Company, or the retirement through redemption, purchase or otherwise of shares of preferred stock to the extent required by any sinking fund established for the benefit of any class of preferred stock by the terms thereof, but amounts expended for such purposes shall, nevertheless,