

MORTGAGE RECORD 75

amount except in consequence of depreciation, obsolescence, amortization or losses incurred in the ordinary course of business, and will use its best efforts to make good any impairment from such depreciation, obsolescence, amortization or losses as soon as reasonably may be; and the Company will not suffer or permit any default to occur under any of the Bonds, Underlying Obligations, pledges of current assets or purchase money or pre-existing mortgages or liens on after-acquired property permitted by the provisions of section 12 of this Article, or under this Indenture, but will faithfully observe and perform all the provisions, conditions, covenants and requirements of the Bonds, of the Underlying Obligations, of such pledges, mortgages and liens, and hereof, and of any other instrument or instruments (pursuant to the provisions hereof) which the Company may enter into with the Trustee and which shall be expressed to be supplemental to this Indenture, and will promptly comply with and discharge all such pledges, mortgages and liens except as the same may be renewed, extended or refunded.

The Company covenants that it will, in each five (5) year period computed from January 1, 1929, expend or reserve for repairs, renewals, replacements, additions, betterments, alterations and improvements to its plants and properties, not including any expenditures for property which shall have been treated as Additional Property not less than Twenty five per cent (25%) (or, in case of a revision of such percentage pursuant to the terms of this section, such revised percentage for each succeeding year) of its gross operating revenues for each year during such five (5) year period; and no property acquired from such expenditures or reserves shall ever be used as the basis for the issue of Bonds hereunder.

The Company will file with the Trustee on March 1, 1930 and on March 1 in each year thereafter, an Accountant's Certificate covering the preceding calendar year setting forth in reasonable detail, satisfactory to the Trustee, the amounts which during such year the Company shall have actually expended for repairs, renewals, replacements, additions, betterments, alterations and improvements to its plants and properties but not including any expenditures for property which has been treated as Additional Property. Such certificate in each year subsequent to the calendar year 1930, shall also show any credit other than any portion thereof previously used to make up the required percentage for any year to which the Company shall be entitled by reason of any excess in the previous year or years during the five (5) year period then current, of such expenditures over the percentage required by the provisions of this section and shall further show all payments which the Company shall have received during the previous year from moneys deposited with the Trustee under the provisions of this section, including any payments to the Company or others made from such moneys pursuant to the provisions of Article XI hereof. If the aggregate expenditures and credits other than any portion thereof previously used to make up the required percentage for any year less such payments, all as shown by such certificate shall be less in any year than twenty five per cent (25%) (or in case of a revision of such percentage pursuant to the terms of this section such revised percentage) of the gross operating revenues for that year the amount of the deficiency thus shown will be deposited with the Trustee by the Company within thirty (30) days from the date of the receipt by the Trustee of such certificate. If such expenditures and credits, less such payments, shall exceed such required percentage such excess shall be credited to the Company in the certificate filed in the next succeeding year, provided that with respect to the successive five (5) year periods computed from January 1, 1929 no such credit shall be made from any five (5) year period to a later five (5) year period. Any amounts so deposited with the Trustee shall from time to time, at the request of the Company be disposed of under the provisions of section 6 of Article XI hereof, or (to the extent that the most recent certificate filed with the Trustee pursuant to the provisions of this section shall show an excess of such expenditures and credits, less such payments, over the percentage required by the provisions of this section for such previous year) shall be paid over to the Company. No property acquired from moneys deposited with the Trustee to make good such deficiency shall ever be used by the Company as the basis for any issue of Bonds or withdrawal of money or release of property hereunder. Until so applied all sums so deposited with the Trustee shall be held by it as part of the security hereunder, subject to the provisions of subsection E of section 1 of Article VII hereof.

From time to time after May 1, 1933 but not within five (5) years from the last previous determination, the percentage of gross operating revenue which shall serve as allowance for maintenance and depreciation may be determined, effective as of the first day of the succeeding calendar year, either by an agreement in writing executed by the Company, and the Trustee and approved in writing by holders of not less than a majority in principal amount of the Bonds then outstanding, or by a board of arbitration (a) on application of the Company to the Trustee, or (b) on application of the Trustee to the Company, or (c) on application of ten per cent (10%) of the Bondholders to the Company and to the Trustee. Such board of arbitration shall fix the allowance at such percentage of the gross operating revenues as will suffice in the board's opinion to maintain the properties of the Company at a high standard of operating efficiency. No notice of any application need be given to the Bondholders except any Bondholders who shall have filed with the Trustee a request to be notified. Within thirty (30) days after the delivery of any such application for arbitration (a) the Company shall select one arbitrator and (b) any ten per cent (10%) of the Bondholders may nominate an arbitrator or arbitrators (unless the same Bondholders shall have made such nomination in such application) and the Trustee shall select the one nominated by the largest proportion of Bondholders or the Trustee shall select an arbitrator without limitation upon its choice if no such nomination is made within said thirty (30) days. The Company and the Trustee shall notify each other of their respective selections and if any Bondholders have applied for the arbitration or joined in the nomination of an arbitrator or filed with the Trustee a request to be notified, the Trustee shall notify such Bondholders of both selections. Within ten (10) days after the said thirty (30) days, the two arbitrators, so selected shall select a third. If the third shall not be selected within the said ten (10) days, application may be made by either arbitrator to a judge of a United States District Court or to such other judge as they may agree upon for the appointment of the third arbitrator. The arbitrators may consider any matters which they deem competent or material to the question before them. The decision of a majority shall be conclusive. Any vacancy shall be filled in the manner of the appointment of the arbitrator whose place becomes vacant.

If the percentage is not determined by the board of arbitration and their report filed with the parties thereto within sixty (60) days from the date of the selection of the third arbitrator, the arbitrators shall be deemed discharged, and, upon application of the Company, the Trustee, or ten per cent (10%) of the Bondholders, a new arbitration may be had in like manner, provided, however, that if the Company, the Trustee and a majority of the Bondholders, if any, who applied for the arbitration or joined in the nomination of an arbitrator, shall by writings filed with the Trustee request that the time limit be extended beyond sixty (60) days, it shall be extended for the shortest period specified in such requests. The expense of the arbitration shall forthwith be paid by the Company. Until the arbitrators have rendered their decision, the Trustee need take no action with regard to the matter in issue but the provisions hereof relating to default shall not be suspended nor shall the rights of the Trustee or of the Bondholders arising from any default be affected.

Section 10. The Company will at all times insure and keep insured all its property of an insurable nature and of a character usually insured by companies, carrying on a business similar to the business of the Company against loss or damage by fire and other casualties usually insured against by such similar companies, and further in such manner, against such risks, to such extent, in such companies (mutual or otherwise) and by such forms of policies as, in the opinion of the Trustee, shall be necessary to protect such property adequately and as similar property is usually insured by similar companies. The policies of insurance on the Mortgaged Property shall be made payable to the Trustee and/or the Company, as their interests may appear, and shall be