

MORTGAGE RECORD 83

are met, or are waived by the corporate Trustee.

The assent of Bondholders to any such change shall be evidenced by an instrument or instruments in writing in a form approved by the corporate Trustee, signed by such holders and filed with the corporate Trustee. Any such change made as hereinabove provided shall be binding upon all the Bondholders. The supplemental indenture embodying such change shall be recorded or filed at all offices where, at the time of such change, this Indenture shall be recorded or on file, and any recital in any such supplemental indenture as to the number of Bondholders assenting thereto, the amount of Bonds held by such Bondholders, and/or the manner, form, fact, validity or genuineness of any such assent, shall be conclusive on all holders of Bonds issued hereunder and on the Company and the Trustees.

The Trustees shall be entitled to rely upon any certificate or written statement of the Company, or any other person, firm or corporation, as to whether any Bond is owned or controlled, directly or indirectly, by the Company, or by any corporation which directly or indirectly controls the Company, but the Trustees may make further investigation as to any such ownership or control if in their sole discretion they wish to do so. The determination of the corporate Trustee as to the ownership or control of any Bond whether based on any such certificate or written statement or otherwise, and the determination of the corporate Trustee as to the validity or genuineness of any such assent, shall be binding and conclusive on the Company and the Bondholders, and the Trustees shall be under no liability whatsoever in respect of any such determination made by the corporate Trustee.

ARTICLE FIFTEEN.

MERGER, CONSOLIDATION, TRANSFER OR LEASE.

SECTION 90. Nothing in this Indenture contained shall prevent any consolidation or merger of the Company with or into any other corporation or corporations, or any conveyance, transfer or lease, subject to the lien of this Indenture, of all or substantially all the mortgaged property as an entirety to any corporation lawfully entitled to acquire or lease and operate the same; provided, however, and the Company covenants and agrees, that such consolidation, merger, conveyance, transfer or lease shall be upon such terms as fully to preserve and in no respect to impair the lien or security of this Indenture or any of the rights or powers of the Trustees or the Bondholders hereunder; and provided, further, that every such lease shall be made expressly subject to termination by the Company or by the Trustees at any time upon the happening of an event of default hereunder, and also by the purchaser at any sale hereunder of the property so leased, whether such sale be made under the power of sale hereby conferred or pursuant to judicial proceedings; and provided, further, that, upon and in connection with any such consolidation, merger, conveyance or transfer the due and punctual payment of the principal of and interest on all the Bonds according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this Indenture to be performed or observed by the Company, shall be assumed by the successor corporation formed by such consolidation or into which such merger shall have been made or which acquires by conveyance or transfer all or substantially all the mortgaged property as an entirety; and such successor corporation shall execute and deliver to the Trustees, simultaneously with such consolidation, merger, conveyance or transfer an indenture supplemental hereto containing

(1) an agreement on the part of such successor corporation punctually to make all such payments and to perform and observe all the covenants and conditions of this Indenture to be performed or observed by the Company, with the same effect and to the same extent as if the maker of such agreement had been the party of the first part hereto, and

(2) a grant, conveyance, transfer and mortgage of the character described in Paragraph A or Paragraph B of the following Section 91; and provided, further, that, upon and in connection with any such lease, the lessee under such lease shall execute and deliver to the Trustees, simultaneously with such lease, an indenture supplemental hereto containing a grant, conveyance, transfer and mortgage subjecting to the direct lien of this Indenture all properties and franchises of the character described in Paragraph B of the following Section 91 which may be acquired by such lessee after the date of such lease.

SECTION 91. In case the Company, pursuant to Section 90 hereof, shall be consolidated with or merged into any other corporation or corporations or shall convey or transfer, subject to the lien of this Indenture, all or substantially all the mortgaged property as an entirety, the successor corporation formed by such consolidation or into which the Company shall have been merged or which shall have received a conveyance or transfer as aforesaid, upon causing to be recorded the supplemental indenture referred to in said Section 90, shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the mortgagor company, subject, however, to the following limitations and restrictions:

A. If said supplemental indenture shall contain a grant, conveyance, transfer and mortgage in terms sufficient to include and subject to the lien of this Indenture all property and franchises then owned and which may be thereafter acquired by such successor corporation (other than property of the character hereinabove expressly excepted and excluded from the lien hereof), thereupon and thereafter such successor corporation may cause to be executed, either in its own name or in the name of Kansas Public Service Company, and delivered to the corporate Trustee for authentication, any Bonds issuable hereunder. Upon the order of such successor corporation in lieu of the Company, and subject to all the terms, conditions, and restrictions in this Indenture prescribed, the corporate Trustee shall authenticate and deliver any of the Bonds which shall have been previously executed and delivered by the Company to the corporate Trustee for authentication, and any of such Bonds which such successor corporation shall thereafter, in accordance with the provisions of this Indenture, cause to be executed and delivered to the corporate Trustee for such purpose. Such changes in phraseology and form (but not in substance) may be made in such Bonds as may be appropriate in view of such consolidation or merger or conveyance and transfer. All such Bonds when issued by such successor corporation shall in all respects have the same legal rank and security as the Bonds theretofore or thereafter authenticated and delivered in accordance with the terms of this Indenture and issued, as though all of said Bonds had been issued at the date of the execution hereof.

B. If said supplemental indenture shall not contain the grant, conveyance, transfer and mortgage described in the preceding Paragraph A, then such successor corporation shall not be entitled to procure the authentication and delivery of Bonds hereunder, and this Indenture shall, by virtue of such consolidation, merger, conveyance and transfer, or by virtue of said supplemental indenture, become and be a lien upon only the following properties and franchises acquired by such successor corporation after the date of such consolidation, merger, conveyance and transfer, to wit:

(1) all betterments, extensions, improvements, additions, repairs, renewals, replacements, substitutions and alterations to, upon, for and of the property and/or franchises subject to the lien hereof;

(2) all property made the basis of the withdrawal of cash or the release of property from the lien of this Indenture, and all property acquired or constructed with the proceeds of any insurance on any part of the trust estate or with the proceeds of any part of the trust estate released from the lien of this Indenture, or a prior lien, or taken by the exercise of the power of eminent domain; and

(3) all property acquired in pursuance of the covenants herein contained to maintain and preserve and keep in good condition, repair, and working order the franchises and property comprising the trust estate, or in pursuance of some other covenant or agreement herein contained to be performed by the Company;

and in such event said supplemental indenture shall contain a grant, conveyance, transfer and mortgage subjecting the property described in the preceding Clauses (1), (2) and (3) to the direct lien of this Indenture.