

MORTGAGE RECORD 85

this Indenture, the additional property described in said certificate, or stating that said additional property is then subject to the direct lien of this Indenture, and that no such mortgage, deed, conveyance, assignment, transfer or instrument of further assurance is necessary for such purpose;

(4) in case the consideration for the property to be released, or any part thereof, consists of additional property, stating that the Company has acquired a valid legal title to such additional property, and that the same and every part thereof is free and clear of all liens, charges or encumbrances prior to the lien of this Indenture, except taxes or assessments not delinquent and any prior liens, charges or encumbrances to which the property to be released may at the time be subject, and except also, undetermined liens and charges, if any, incidental to construction, and easements and similar encumbrances which, in the opinion of such counsel, do not impair the use of such property by the Company; and

(5) stating that the Company has lawful power to acquire, own and use said additional property in its business.

SECTION 6.03. So long as the Company is not in default hereunder to the knowledge of the Trustee, the Trustee shall from time to time, upon the written request of the Treasurer or Assistant Treasurer of the Company, release any of the mortgaged property which is subject to any prior lien upon receipt of a certificate of the trustee or mortgagee under any such prior lien that the Company has complied with all of the terms and conditions for the sale or exchange of such property under any such prior lien and that the property has been released by it thereunder. Such certificate shall be full authority to the Trustee for executing such release and it is expressly agreed and understood that no substitution of property or cash whatever shall be required to be made by the Company as a basis for the release under this Indenture if the aforesaid certificate shall be furnished the Trustee. It is further expressly understood and agreed however, that the net proceeds derived from any such sale or exchange, either property or cash, shall be subject to the lien of this Indenture.

SECTION 6.04. Should any of the mortgaged property be taken by the exercise of the power of eminent domain the Trustee may release the property so taken and shall be fully protected in so doing upon being furnished with an opinion of counsel to the effect that such property has been duly taken by the exercise of the power of eminent domain; and unless, in the opinion of counsel, some other disposition to be required by some lien prior to the lien of this Indenture, all moneys or other consideration payable as compensation for any part of the trust estate so taken shall be paid to the Trustee and shall be held and paid over or applied by the Trustee as provided in Article Seven hereof, and provided, that in the event all or substantially all of the mortgaged property shall be taken by the power of eminent domain it will not accept any consideration other than cash and will use such cash solely for the retirement of the Bonds as provided in Paragraph B of Section 7.01 hereof.

SECTION 6.05. In case an event of default shall have happened and shall not have been remedied, the Company, while in possession of the mortgaged property, may do any of the things enumerated in Section 6.01. If the Trustee, in its uncontrolled discretion, or the holders of at least a majority in amount of the Bonds at the time outstanding shall in writing expressly authorize or consent to such action. In case the Company shall be in default hereunder, the Company, while in possession of the mortgaged property, may do any of the things enumerated in Section 6.02, if the Trustee, in its uncontrolled discretion, or the holders of at least a majority in amount of the Bonds at the time outstanding shall in writing expressly authorize or consent to such action, in which event the certificate required by Paragraph B of Section 6.02 need not contain the statement required by Clause (c) of said Paragraph B.

SECTION 6.06. In case the mortgaged property shall be in the possession of a receiver lawfully appointed, or a trustee in bankruptcy or in reorganization proceedings (including a trustee appointed under the provisions of an Act to establish a uniform system of bankruptcy throughout the United States, approved July 1, 1898, as amended) or of an assignee for the benefit of creditors, the powers hereinbefore in this Article Six conferred upon the Company with respect to the sale or exchange of the mortgaged property may be exercised by such receiver, trustee, or assignee, with the approval of the Trustee, regardless of whether or not the Company is in default hereunder, and in such event a written request signed by such receiver, trustee or assignee shall be deemed the equivalent of the resolution of the Board required by Paragraph A of Section 6.02, and a certificate signed by such receiver, trustee or assignee shall be deemed the equivalent of the certificate required by Paragraph B of said Section 6.02, and such certificate need not contain the statement required by Clause (c) of said Paragraph B; and if the Trustee shall be in possession of the mortgaged property under any provision of this Indenture, then such powers may be exercised by the Trustee in its uncontrolled discretion.

SECTION 6.07. No purchaser in good faith of property purporting to be released herefrom shall be bound to ascertain the authority of the Trustee to execute the release or to inquire as to the existence of any conditions required by the provisions hereof for the exercise of such authority. No action taken by the Company, and no release executed by the Trustee, under any of the provisions of this Article Six, shall affect in any manner, the liability of the Company for the payment of the indebtedness secured by this Indenture, or the security of this Indenture upon or the priority thereof on the remainder of the properties covered hereby.

SECTION 6.08. In case in the opinion of counsel, the provisions of any prior lien shall require the deposit with the trustee or mortgagee thereunder of the cash or obligations received in payment for any part of the trust estate released from such prior lien or taken by the exercise of the power of eminent domain, the Company may deposit the same with the trustee or mortgagee of such prior lien to the extent that the same may be required to be so deposited. The Company covenants and agrees that any and all such cash or obligations remaining with any such trustee or mortgagee of a prior lien, upon the discharge and cancellation thereof, shall forthwith be deposited with the Trustee hereunder, to be held subject to the lien of this Indenture.

SECTION 6.09. Notwithstanding the foregoing provisions of this Article Six, whenever Section 6.02 provides for the deposit of cash with the Trustee, such cash need not be deposited to the extent that the Company, pursuant to Paragraph A of Section 7.01 would at the time be entitled to withdraw such cash if deposited, and to the extent that the requirements of said Paragraph A of Section 7.01 have been fully complied with.

SECTION 6.10. Notwithstanding the foregoing provisions of this Article Six if all or substantially all of the mortgaged property shall be sold or disposed of or shall be taken by the exercise of the power of eminent domain, the Company shall not accept any consideration other than cash and will apply such cash solely to the retirement of the Bonds issued hereunder as provided in Paragraph B of Section 7.01 hereof.

SECTION 6.11. Additional property within the meaning of this Article Six and Article Seven shall be deemed to mean any property subject to the lien of this Indenture of a permanent nature and permanent physical betterments, improvements and additions of, upon and to the property of the Company, purchased, constructed or otherwise acquired by the Company, subsequent to December 31, 1933, properly chargeable to plant or capital account (or an account analogous to plant or capital account) and used or useful for public utility purposes which the Company is authorized to own and use, also mains, pipes, machines and other movable equipment constructed or maintained under franchises, licenses or permits or easements on premises owned by others (including Federal and State governments) and permanent improvements, betterments or additions constructed or acquired by the Company on State or Federal lands under authority of any franchise, permit or license granted by any governmental authority and franchises, licenses, permits and similar rights necessary for the operation of the Company's public utility property, provided, however, that all such additional property shall be located in the counties of Douglas, Jefferson, Leavenworth, Johnson and Shawnee in the State of Kansas, excluding, however, (a)