

MORTGAGE RECORD 85

Illinois (City National Bank and Trust Company of Chicago, successor trustee) and Eugene J. Mudd, as Trustees, and will deposit with City National Bank and Trust Company of Chicago funds sufficient to redeem all said outstanding Jackson Bonds on June 1, 1940, in trust for the purpose of such redemption and accompanied by irrevocable instructions to apply the same to effect such redemption, and, at the earliest date permitted by the terms of the Jackson Mortgage but in no event later than June 2, 1940, the Company will procure from the Trustees under the Jackson Mortgage duly executed counterparts of appropriate instruments evidencing the satisfaction and discharge thereof; and, promptly after the receipt of such instruments of satisfaction and discharge, the Company will cause the same, together with any similar instrument required by law to be executed by the Company, to be recorded in all places in which the Jackson Mortgage has been recorded;

(B) That, prior to or simultaneously with the authentication and delivery of any Bonds hereunder, the Company will, by proper Resolution of the Board, call for redemption and payment on February 1, 1940 the entire principal amount (namely, \$145,000) of General Lien Mortgage Gold Bonds (now First Mortgage), due November 1, 1940 (hereinafter called the "Webb City Bonds") now outstanding under the mortgage dated January 5, 1911 (hereinafter called the "Webb City Mortgage") made by Webb City and Cartersville Gas Company to The Conqueror Trust Company (of Joplin, Missouri), as Trustee, and will deposit with the Chase National Bank of the City of New York, for the account of said Trustee under the Webb City Mortgage, funds sufficient to redeem and pay off all said outstanding Webb City Bonds on February 1, 1940, in special trust for the purpose of such redemption and payment and accompanied by irrevocable instructions to apply the same to effect such redemption and payment, and, at the earliest date permitted by the terms of the Webb City Mortgage but in no event later than February 2, 1940, the Company will procure from the Trustee under the Webb City Mortgage duly executed counterparts of appropriate instruments evidencing the satisfaction and discharge thereof; and, promptly after the receipt of such instruments of satisfaction and discharge, the Company will cause the same, together with any similar instrument required by law to be executed by the Company, to be recorded in all places in which the Webb City Mortgage has been recorded.

The Company further agrees that it will take or cause to be taken all other action which may be necessary to effect the redemption and payment as aforesaid of the Jackson Bonds and the Webb City Bonds and the satisfaction and discharge of the mortgages securing the same.

Section 72. This Indenture is, and as long as any Bonds are outstanding hereunder will be kept, a direct lien upon the Trust Estate, subject only to such liens as are permitted by this Indenture; and, except as otherwise herein expressly permitted, the Company will not create or suffer to be created any debt, lien or charge which would constitute a lien prior to or upon a parity with the lien of this Indenture upon the Trust Estate or any part thereof or upon the income therefrom and the Company will from time to time pay or cause to be paid all taxes and assessments lawfully levied or assessed upon the Trust Estate or upon any part thereof or upon any income therefrom, when the same shall become lawfully due and payable, and also all taxes and assessments lawfully levied or assessed upon the lien or interest of the Trustee, or either of them, or of the Bondholders in respect of the Trust Estate, so that the lien of this Indenture shall at all times be wholly preserved at the cost of the Company and without expense to the Trustees, or either of them, or the Bondholders; and the Company will not suffer any mechanics', laborers', materialmen's statutory or other similar liens to remain upon the Trust Estate or any part thereof, the lien whereof might or could be held to be prior to or on a parity with the lien of this Indenture, and the Company will not suffer any other matter or thing whatsoever whereby the lien hereby created might be impaired; provided, however, that, if the Company shall have set up on its books in respect thereof such reserves as may be required by accepted accounting practice, the Company shall have the right to contest, in good faith, by legal proceedings, any such taxes, assessments or liens, and pending such contest may delay or defer the payment thereof, unless thereby the property will be forfeited; and provided further, that, except as provided in Section 82, nothing in this Indenture contained shall prevent the Company from hereafter acquiring any property subject to an existing mortgage, lien or other encumbrance thereon or from placing a purchase money mortgage or lien upon any such after-acquired property at the time of its acquisition as security for any unpaid balance of the purchase price thereof and holding the same subject to such mortgage, lien or other encumbrance or from subjecting to any Prior Lien hereby permitted any property acquired as betterments, extensions, improvements, repairs, renewals, replacements, substitutions or alterations to, upon, for or of property subject to such Prior Lien, but only to the extent that the after-acquired property or other provisions of such Prior Lien attach thereto, but no such mortgage, lien or other encumbrance shall be permitted to exist upon any such after-acquired property which is made the basis of the authentication and delivery of Bonds under Article Four or the withdrawal of Deposited Cash under Section 31 or the release of property under Article Seven or the withdrawal of Trust Moneys under Article Eight (except to the extent expressly permitted by Articles Seven and Eight).

Section 73. The Company will not, except as herein permitted, do or suffer any act or thing whereby the Trust Estate might or could be impaired, and it will at all times maintain, preserve and keep the Trust Estate and every part thereof, in good condition, repair and working order. The Company will from time to time make all needful and proper repairs, replacements, additions, betterments and improvements so that the operations and business of and pertaining to the Trust Estate and every part thereof shall at all times be conducted properly and advantageously; and whenever any portion of the Trust Estate shall have been worn out or destroyed or shall have become obsolete, inefficient or otherwise unfit for use, the Company will procure substitutes of at least equal utility and efficiency, so that at all times the efficiency of the Trust Estate shall be fully maintained. At all times, the Company will set apart use and apply for the purpose so much of the revenue of the Trust Estate as may be required for such maintenance and replacement, and will maintain a suitable reserve for the depreciation, depletion, retirement and/or replacement of its property which shall be reflected upon its books of account.

Nothing herein contained, however, shall be held to prevent the Company from permanently discontinuing the operation of any of its plants or properties, if, in the judgment of the Company, it is no longer advisable to operate the same or if the Company intends to sell or dispose of the same and within a reasonable time shall endeavor to effectuate such sale; nor shall anything herein contained be construed to prevent the Company from taking such action with respect to the user of its plants and properties as is proper under the circumstances, including the cessation or omission to exercise rights, permits, licenses, privileges or franchises which, in the judgment of the Company, can no longer be profitably exercised or availed of.

The Company will promptly classify as Property Retirements for the purpose of the computation of New Bondable Additions hereunder all Bonded Property that has permanently ceased to be used or useful in the business of the Company.

Whenever the holders of at least 25% in amount of the Bonds outstanding hereunder shall so request in writing, served upon the New York Trustee and the Company, the New York Trustee shall furnish to the Company the names of five Independent Engineers selected by it, and the Company shall promptly appoint one of said five Independent Engineers to make an inspection of the Trust Estate.

The Company shall cause such Independent Engineer, within a reasonable time after the date of his appointment, to report to the Company and to the New York Trustee whether or not the Trust Estate, as an operating system or systems, has been maintained in good repair, working order and condition, and whether or not there is any property of the Company which should be classified as Property Retirements for the purpose of computing New Bondable Additions hereunder and which has not been retired on the books of the Company. If such Independent Engineer shall report that the Trust Estate, as an operating system or systems, has not been so maintained, he shall state clearly in his report the character and extent and estimated cost of making good such deficiency, and, if longer than one year, the time reasonably necessary to make good such deficiency and, if he shall report that there is property of the Company which should be classified as Property Retirements for the purpose of computing New Bondable Additions hereunder and which has not been retired on the books of the Company, his report shall briefly describe such