

MORTGAGE RECORD 85

C. AN EARNINGS CERTIFICATE of the Company dated not more than thirty days prior to the date at which such property is to be acquired, of the character required by Paragraph F of Section 25 (with such appropriate omissions and variations as are applicable by reason of the fact that the Certificate is being furnished under this Section); provided, however, that (a) the period of twelve months ascertained for the purpose of Clauses (1) and (2) of such Earnings Certificate shall be a period of twelve months within the fifteen calendar months immediately preceding the calendar month in which such property is to be acquired, (b) effect shall be given to the proposed acquisition in determining the amount of interest charges of the Company, (c) the actual net earnings from the property to be acquired for the entire twelve months' period aforesaid shall be included in all computations of net earnings of the Company, and (d) in determining Net Operating Revenues from the Mortgaged Property all of the property so to be acquired other than property of the character of Excepted Property shall be treated as property subject to the lien of this Indenture.

D. AN OPINION OR OPINIONS OF COUNSEL stating that the nature and extent of the lien or liens on the property so to be acquired are correctly stated in said Certificate of the Company. The Company further covenants that within 10 days after each such acquisition it will file with the New York Trustee a supplemental Opinion or Opinions of Counsel stating that all such property so acquired which is of the character required to be subjected to the lien of this Indenture has become subject to the lien hereof free and clear of all liens prior to the lien of this Indenture except the lien or liens specified in the Certificate of the Company filed with the New York Trustee pursuant to Paragraph A of this Section and except Prepaid Liens and Permitted Encumbrances.

Section 25. So long as any of the Bonds of Series A shall be outstanding, the Company will not, except out of the proceeds of a new issue of capital stock of the Company, either

(i) declare or pay any dividends (other than stock dividends) or make any other distribution on its capital stock or to the holders thereof, or redeem, purchase or otherwise retire any shares or its capital stock; or

(ii) make any cash advance or loan to any Related Company of the Company; unless such declaration, payment, purchase, redemption, retirement, distribution, advance or loan (herein referred to as "allowable payments") shall be made out of net income or net profits of the Company then available for dividends, determined in accordance with accepted accounting practice, accumulated since October 24, 1939 nor unless, immediately after such allowable payment,

(A) the amount arrived at by adding

(i) the aggregate amount of all such allowable payments made by the Company (except dividends paid solely in stock of the Company and except other payments, purchases, redemptions, retirements, distributions, advances and loans made out of the proceeds of a new issue of capital stock of the Company and except cash advances or loans to Related Companies to the extent that they shall have been repaid to the Company) during the period from October 24, 1939 to and including the date of such allowable payment (hereinafter referred to as the "Computation date"), plus

(ii) the aggregate amount of all payments made by the Company during said period (except out of the proceeds of a new issue of capital stock of the Company) in reduction below the sum of \$4,700,000 of the principal of the indebtedness of the Company presently evidenced by Ten Year 6% Notes of the Company, now past due, presently held by Citicor Service Power & Light Company or in reduction below the sum of \$2,131,627.67 of the principal of the indebtedness of the Company presently evidenced by 6% Demand Notes of the Company presently held by Citicor Service Company.

will not exceed the amount arrived at by deducting from the amount of the aggregate net income of the Company for said period available for dividends (computed and ascertained in accordance with accepted accounting practice, on a cumulative basis and after making proper deductions for any deficits occurring during any part of said period) the following amounts:-

(1) such amount, if any, as shall be equal to the excess of

(a) the aggregate amount which would have resulted from the following depreciation charges during said period, namely (i) a minimum amount determined by making charges for depreciation, retirements and/or depletion at the rate of \$50,000 per annum during said period, plus (ii) such additional amount as would result from making charges for depreciation, retirements and/or depletion at the rate of 2% per annum during said period on the excess from time to time (determined monthly, but any fraction of a month to be prorated upon the basis of the excess existing at the end of the last preceding month) of the aggregate amount of additions subsequent to October 24, 1939 of depreciable property to the property account over the aggregate amount of retirements subsequent to October 24, 1939 of depreciable property from the property account, all as shown by the books of the Company,

over

(b) the aggregate amount of the charges, as determined by the Company, for depreciation, retirements and/or depletion during said period;

(2) an amount equal to the sum of (i) all amounts which on or prior to the computation date, have become payable hereunder as sinking fund payments in respect of any and all Bonds theretofore issued hereunder (including Bonds issued in pledge), plus (ii) the aggregate principal amount of Bonds theretofore issued hereunder (including Bonds issued in pledge) which have matured by their terms, or would have matured by their terms had they not theretofore been redeemed or otherwise retired, on or prior to the computation date, plus (iii) the aggregate of the amounts of all Bonds sinking fund requirements payable and of all Bond maturities occurring, in either case, within 12 months after the computation date;

nor unless, immediately after such allowable payment,

(B) the amount of the current assets of the Company will be at least equal to 150% of the amount of the current liabilities of the Company (both determined in accordance with the following provisions of this Section);

provided, however, that anything herein contained to the contrary notwithstanding, the Company shall have the right at any time prior to September 1, 1940 to declare a cash dividend payable prior to said date on the capital stock of the Company in an amount not exceeding \$135,000, provided only that in such case immediately after such declaration the condition prescribed in the preceding Paragraph (B) shall be complied with; provided further that no such dividend declared prior to September 1, 1940, within the limits aforesaid, shall be included, for any purpose, in the computation provided for by Paragraph (A) above.

For all purposes of this Section, the amount of the current assets and the amount of the current liabilities of the Company shall be ascertained and computed in accordance with accepted accounting practice, but the amount of the current assets shall in any event include current assets of the character which are classified by the Company as current assets as of October 25, 1939 (whether or not the same are subject to the lien hereof), and the amount of the current liabilities shall in any event include the amounts of all sinking fund requirements of the Company and the principal amounts of all indebtedness (other than the principal amount of the indebtedness evidenced by the Ten Year 6% Notes and the 6% Demand Notes hereinabove in this Section referred to) of the Company payable, in either case, within 12 months from the computation date, but shall not in any event include amounts of customers' deposits.

All references in this Section to the indebtedness of the Company presently represented by the Ten Year 6% Notes and the 6% Demand Notes hereinabove described shall be deemed to include any other indebtedness which may be any time hereafter be substituted for all or any part of said indebtedness represented by said Notes, whether through refunding, replacement, conversion or in any other manner.