

MORTGAGE RECORD 85

pledged coupons and claims for interest contained in Section 11 of Article IX hereof) all coupons issued under and pursuant to this Indenture and at any time outstanding shall in all respects be equally and ratably secured hereby (except in so far as a sinking fund, or other fund, established in accordance with the provisions of the Indenture, may afford additional security for the bonds of any specific series) without preference, priority or distinction on account of the date or dates or the actual time or times of the issue or maturity of such bonds or coupons. All bonds and coupons at any time issued and outstanding hereunder (subject to the provisions above mentioned as to certain coupons and claims for interest) shall have the same right, lien and preference by virtue of this Indenture, and shall be equally secured hereby, with the same effect as if they had all been executed, authenticated and delivered simultaneously on the date of this Indenture, regardless of whether such bonds and coupons, or any of them, shall actually be sold or disposed of on the date of this Indenture or on some date thereafter, or of whether such bonds and coupons, or any of them, shall have been authorized to be issued under the provisions of Section 1 of this Article II, or under any other provision of this Indenture.

Section 3. Provisions Applicable Generally to Issue of Additional Bonds.

(A) No bonds shall be authenticated and delivered by the Trustee under the provisions of Sections 4, 5 and 6 of this Article II unless the Trustee shall have received prior to or at the time of the authentication and delivery of such bonds, the following:

(1) A written request or application dated not more than ninety (90) days preceding the date of the authentication and delivery of bonds then applied for, executed in the name of the Corporation by the President or a Vice-President of the Corporation, stating the principal amount, denomination and form (whether coupon or registered) of the bonds requested to be authenticated and delivered, the series thereof, and the person or persons to whom or upon whose order such bonds are to be delivered, and stating whether, and if so in what respect and to what extent, the Corporation is to the knowledge of the signer in default in the observance or performance of any provision hereof or of any of the bonds;

(2) A Resolution, authorizing such request or application;

(3) An Opinion of Counsel that no consent of any governmental authority is requisite to the legal issue of the bonds of which the authentication and delivery have been applied for, or that the issue of such bonds has been duly authorized by any and all governmental authorities, the consent of which is requisite to the legal issue of such bonds (any officially authenticated certificates or other document by which such consent is evidenced to be specifically referred to in such Opinion); that all mortgage, registration and other similar taxes in respect to the bonds applied for have been paid, or that provision for the payment of such taxes has been made, or that no such payment is required by law; that the amount of indebtedness or bonded indebtedness which may be incurred by the Corporation is not then limited by law or by any corporate action limiting the total authorized indebtedness or bonded indebtedness of the Corporation, or that the total amount of outstanding indebtedness or bonded indebtedness of the Corporation, which is stated in the accompanying Treasurer's Certificate provided for in Paragraph (4) of this Subdivision, plus the aggregate principal amount of the bonds applied for in the accompanying application of the Corporation, does not exceed the amount of the indebtedness or bonded indebtedness of the Corporation as then limited by law or by such corporate action; and that all corporate action necessary to be taken by the Corporation to permit the legal and valid issue and authentication and delivery of the bonds which have been applied for has been duly taken;

(4) A Treasurer's Certificate stating the aggregate principal amount of all bonds at the time outstanding under this Indenture and, unless the Opinion of Counsel provided for in Paragraph (3) of this Subdivision shall state that the amount of indebtedness or bonded indebtedness which may be incurred by the Corporation is not then limited by law or by corporate action, also stating that the total amount of indebtedness or bonded indebtedness of the Corporation outstanding at the time of such certificate (including the aggregate principal amount of the bonds issued and outstanding under this Indenture, plus the aggregate principal amount of bonds applied for in the accompanying application) does not exceed an amount which shall be specified in such Treasurer's Certificate;

(5) The officially authenticated certificates or other documents, if any, specifically referred to in the Opinion of Counsel provided for in Paragraph (3) of this Subdivision, together with evidence satisfactory to the Trustee of the payment or provision for payment of any taxes referred to in such Opinion of Counsel;

(6) If the bonds for the authentication and delivery of which application is then being made are not a part of any series then existing, a Resolution or Resolutions and an indenture supplemental to this Indenture, creating the series of which such bonds are a part.

(B) At no time when the Trustee has knowledge that a completed default of the character specified in Section 1 of Article IX of this Indenture has occurred, and has not been rescinded or annulled as provided for in that section, or has not been otherwise cured or made good to the satisfaction of the Trustee, shall any additional bonds be authenticated and delivered under this Article II.

Section 4. Issue of Bonds on Basis of Available Capital Additions.

(A) Subject to the provisions of Section 3 of this Article II, bonds in addition to those provided for in any other section hereof may from time to time be executed by the Corporation and delivered to the Trustee, and shall be authenticated and delivered by the Trustee, upon the basis of Available Capital Additions of the Corporation. Such additional bonds, however, shall be authenticated and delivered only in accordance with and subject to the conditions, provisions and limitations set forth in this Section 4. The aggregate principal amount of bonds which may be authenticated and delivered from time to time under the provisions of this Section 4 is limited to sixty per cent. (60%) of the Amount of Available Capital Additions made the basis of the authentication and delivery of such bonds and certified as provided in subdivision (B) of this Section 4.

No bonds shall be authenticated and delivered under this Section 4 unless as shown by a Net Earnings Certificate the Earnings Applicable to Bonds Interest for a period of twelve (12) consecutive calendar months within the fifteen (15) calendar months immediately preceding the delivery to the Trustee of any application for authentication and delivery of bonds shall have been in the aggregate at least equal to two times the interest requirements for the period of one year upon the following:

(a) The bonds then applied for; and
(b) All bonds outstanding under the Indenture on the date of such application; and
(c) All other indebtedness outstanding on the date of such application which is secured by any lien for the payment of money, or its equivalent, prior to or on a parity with the lien of this Indenture other than Permitted Liens.

(B) No application by the Corporation to the Trustee for the authentication and delivery of bonds under this Section 4 shall be granted by the Trustee until the Trustee shall have received the following:

(1) The documents provided for in Section 3 of this Article II.

(2) An Engineer's Certificate dated not more than thirty (30) days preceding the date of the authentication and delivery of bonds applied for in the accompanying application, which Engineer's Certificate shall -

(a) State the amount, if any, of the unapplied balance of the Amount of Available Capital Additions included in the most recent Engineer's Certificate, if any, which stated an Amount of Available Capital Additions and which had theretofore been delivered to the Trustee for the purpose of obtaining the authentication and delivery of bonds or the withdrawal of cash under any provision of this Indenture or of taking a credit to the Maintenance Fund under the provisions of Article IV hereof;

(b) Specify the Available Capital Additions purchased, constructed or otherwise acquired by the Corporation subsequent to March 31, 1941, and between dates to be specified in the certificate, and proposed as a basis for the authentication and delivery of bonds then applied for, describing such Available Capital Additions in such manner and detail as to show conformity thereof with the definition of Capital Additions as set forth in Section 11 of Article XVI of this Indenture;