

MORTGAGE RECORD 85

Section 5. Issue of Bonds on Retirement of Other Bonds.

(A) Subject to the provisions of Section 3 of this Article II, bonds in addition to those provided for in any other section of this Indenture 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 bonds which have been retired, under the conditions and provisions set forth in this Section 5 of Article II. In no event shall the bonds issued under this section exceed in amount the aggregate principal amount of any bonds previously issued under this Indenture, which shall have been sold by the Corporation in a sale made in good faith, or pledged by the Corporation to secure indebtedness incurred in good faith equal to at least seventy-five per cent. (75%) of the aggregate principal amount of the bonds pledged as security for such indebtedness. No bonds shall be issued under this Section 5 on the basis of the retirement by the Corporation of bonds upon transfers or exchanges pursuant to any of the provisions of Article I or pursuant to Section 3 of Article VI of this Indenture. Furthermore, no bonds shall be issued in respect to any retired bond which shall have been:

(a) Retired through the use of cash deposited with the Trustee pursuant to the provisions of Section 6 of this Article II; or

(b) Retired through the use of cash, or used in lieu of the deposit of cash, or used as a basis for withdrawal of cash under any provision of this Indenture, unless such cash shall have been the proceeds of the sale or conversion in any manner (including in such proceeds insurance moneys received on account thereof) of property not owned by the Corporation on March 31, 1941, and not used subsequent to March 31, 1941, in such manner as to be excluded from the definition of Available Capital Additions, pursuant to Paragraphs (a), (b), (c) or (d) of Section 11 of Article XVI hereof, or unless such cash shall have been deposited by the Corporation to obtain the release of any such property; or

(c) Retired through the operation of the provisions of either -

(i) Section 1 of Article III relating to the Sinking Fund for the benefit of bonds of Series A, or

(ii) Article IV relating to the Maintenance Fund; or

(d) Retired through the operation of any other sinking fund, purchase fund, or similar fund applicable to the retirement of any such bond if the provisions establishing such fund prohibit such issuance of additional bonds on the basis of bonds retired as a result thereof.

No application by the Corporation to the Trustee for the authentication and delivery of bonds under this Section 5 shall be granted by the Trustee unless the Trustee shall have received, in addition to the other documents required, a Treasurer's Certificate stating the aggregate principal amount of the bonds in respect of the retirement of which the bonds applied for in the accompanying application are to be authenticated and delivered; also stating that such principal amount of bonds does not include bonds retired as specified in the foregoing clauses (a), (b), (c) and (d) of the first paragraph of subdivision (A) of this Section 5; and also stating that prior to the retirement of such bonds they were sold by the Corporation in a sale made in good faith, or pledged by the Corporation to secure indebtedness incurred in good faith, equal to at least seventy-five per cent. (75%) of the aggregate principal amount of the bonds pledged as security for such indebtedness.

(B) No bond shall be issued in respect of any retired bond more than two years prior to the regular maturing (by passage of time and not by call for redemption) of such retired bond, unless the bond so issued bears no greater rate of interest than such retired bond, or, if the bond so issued bears a greater rate of interest than such retired bond, unless the Trustee shall have received a Net Earnings Certificate

(1) Showing that the Earnings Applicable to Bond Interest for a period of twelve consecutive months within the fifteen calendar months immediately preceding delivery to the Trustee of the application for the authentication and delivery of bonds shall have been in the aggregate equal to at least two times the interest requirement for a period of one year upon the following: (a) The bonds applied for, and (b) all bonds outstanding hereunder at 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, and

(2) Stating the aggregate principal amount of bonds authenticated and delivered under the provisions of this Article II since the commencement of the current calendar year, exclusive of bonds in connection with the authentication and delivery of which no Net Earnings Certificate was required, and of bonds in connection with the authentication and delivery of which an Independent Accountant's Certificate was previously delivered to the Trustee.

An Independent Accountant's Certificate confirming the facts stated in the above mentioned Net Earnings Certificate shall also be delivered to the Trustee if both of the following circumstances exist:

(a) The aggregate principal amount of (i) such bonds so stated in the above mentioned Net Earnings Certificate to have been authenticated and delivered since the commencement of the current calendar year and (ii) the bonds presently applied for is equal to or exceeds ten per cent. (10%) of the aggregate principal amount of all bonds issued under this Indenture at the time outstanding, as stated in the accompanying Treasurer's Certificate required by the provisions of Paragraph (4) of subdivision (A) of Section 3 of this Article II; and

(b) The twelve months' period in respect of which Earnings Applicable to Bond Interest are computed in the Net Earnings Certificate is a period with respect to which an annual report is required to be filed by the Corporation, pursuant to the provisions of Section 23 of Article V of this Indenture.

Section 6. Issue of Bonds on Deposit of Cash with Trustee.

(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 the deposit by the Corporation with the Trustee of cash equal to the principal amount of bonds requested to be authenticated and delivered, but only after the Trustee shall have received a Net Earnings Certificate meeting the requirements of the second paragraph of subdivision (A) and of Paragraph (4) of subdivision (B) of Section 4 of this Article II, and only after the Trustee shall have also received an Independent Accountant's Certificate meeting the requirements of the above-mentioned Paragraph (4) of subdivision (B) of Section 4 of this Article II in any case where the submission of an Independent Accountant's Certificate would have been required by the provisions of Paragraph (4) above mentioned if there had been involved the issue of additional bonds on the basis of Available Capital Additions.

(B) All cash deposited with the Trustee upon the basis of which bonds have been authenticated and delivered under the provisions of subdivision (A) of this Section 6 shall be held by the Trustee as part of the mortgaged and pledged property. However, whenever the Corporation shall become entitled to the authentication and delivery of a bond or bonds under any of the provisions of this Indenture other than those contained in subdivision (A) of this Section 6 (and for the purposes of this Section 6 without regard to the Earnings Applicable to Bond Interest) the Trustee, upon application of the Corporation evidenced by a Resolution, shall pay over to the Corporation, or upon its order (in lieu of a bond or bonds to the delivery of which the Corporation may then be so entitled) a sum in cash equal to the aggregate principal amount of such bond or bonds; provided, however, that the certificates and other documents delivered to the Trustee for the purpose of withdrawing cash under this subdivision (B) may contain such variations or omissions from and insertions in the certificates or other documents required to be delivered to the Trustee, for the purpose of procuring the authentication and delivery of bonds, as may be appropriate in the light of the purpose for which such certificates or other documents are to be used under this subdivision (B), and in no case shall it be necessary for the Corporation to deliver to the Trustee under this subdivision (3) any Net Earnings Certificate, or any of the documents provided for in subdivision (A) of Section 3 of this Article II, and furthermore, the provisions of the second paragraph of subdivision (A) of Section 4 of this Article II shall be inapplicable to the withdrawal of cash under this section.