

MORTGAGE RECORD 85

Within three (3) months after the accruing of any lawful claims or demands for labor, material, supplies or other objects (which claims or demands if unpaid might by law be given precedence over this Indenture as a lien or charge upon the mortgaged or pledged property, whether now owned or hereafter acquired, or the income or profits therefrom), the Corporation will pay such claims or demands or cause them to be paid or discharged or make adequate provisions to satisfy or discharge them.

The covenants contained in this Section 5 are, however, subject to the proviso that nothing contained in this Indenture shall require the Corporation to observe or conform to any requirement of any governmental authority or to cause to be paid or discharged or to make provision for any such tax, assessment, lien or charge as is above mentioned in this section, as long as the validity thereof shall be contested by the Corporation in good faith and if necessary by appropriate legal proceedings, provided that such security for the payment of such tax, assessment, lien or charge shall be given as the Trustee may require, and provided further that nothing contained in this section shall prohibit the Corporation from acquiring or holding property subject to easements, conditions or restrictions which do not impair the usefulness of such property in the business of the Corporation.

Section 6. Preservation of Franchises and Other Rights.

The Corporation will preserve, maintain, and renew all the rights, powers, privileges and franchises owned by it, or to which it is now or may hereafter be entitled, and it will comply with the laws of the United States of America and of the State of Kansas so as effectually to preserve, maintain and secure the rights and privileges now or hereafter necessary or proper for the protection and preservation, extension or renewal of its corporate existence and the conduct of its business and affairs. It will not do or allow to be done any matter or thing whatsoever whereby the lien of this Indenture, or the security intended to be given hereby, might or could be impaired, or the mortgaged and pledged property suffer any waste, until the bonds secured hereby and any premium which may be due upon them, and all interest to become due upon them, according to the terms thereof, shall be fully paid and satisfied. The Corporation will at all times actively conduct and carry on its business, subject to accidents, strikes and other causes beyond its control.

Section 7. Maintenance of Mortgaged Property.

The Corporation will at all times maintain, preserve and keep the --- mortgaged and pledged property and every part thereof, with all the appurtenances thereto, in good repair, working order and condition, and from time to time will make or cause to be made all needful and proper repairs and renewals, replacements and substitutions so that at all times the efficiency of the property hereby mortgaged and pledged as the security for the bonds issued hereunder, shall be fully preserved and maintained.

The Corporation covenants and agrees that at least once in every five years the Corporation will cause an examination of its property subject to the lien hereof to be made by an Independent Engineer qualified as to the operation and maintenance of such property. If the Trustee and the Corporation cannot agree upon such Independent Engineer, to be appointed as aforesaid, an appointment shall be made by three arbitrators, one appointed by the Trustee, one by the Corporation and the third by the two thus named. The arbitrators may act by a majority and the decision of a majority shall be final and conclusive. When a decision is reached, the arbitrators shall at once notify the Trustee and the Corporation in writing of the Independent Engineer whom they appoint. If the two arbitrators when named by the Trustee and the Corporation shall fail to name a third arbitrator, or, if the arbitrators shall fail to make a decision within a reasonable time, such Independent Engineer may be appointed by a judge of any Massachusetts Probate Court or any Kansas court of appellate jurisdiction upon application of the Trustee or of the Corporation.

Such Independent Engineer, within a reasonable time from the date of his appointment, shall report to the Trustee and to the Corporation whether or not the property of the Corporation (exclusive of property retired on the books of the Corporation) subject to the lien hereof is in general being maintained in good physical condition and in a state of good operating efficiency for the purposes of the Corporation and whether or not all such property that is no longer used or useful in the Corporation's business has been duly recorded as retired on the books of the Corporation. If such Engineer shall report that such property in general is not being so maintained, he shall state clearly in his report the character and extent and the estimated cost of making good such deficiency and, if he shall report that there is property which is no longer used or useful in the business of the Corporation which has not been recorded as retired on the books of the Corporation he shall briefly describe such property and shall state the aggregate retirement which should be recorded on the books in respect of such property. Said report, which shall include a certificate of said Engineer containing the statements required by Section 25 of Article XVI of this Indenture, shall be placed on file by the Trustee and shall be open to inspection by any bondholder at any reasonable time.

The Corporation further covenants and agrees that if such Independent Engineer shall report that such a maintenance deficiency exists the Corporation will, with all reasonable speed, make such repairs and/or do such other maintenance work as may be necessary to make good such deficiency as shall exist at the time of such report; whereupon such Independent Engineer (or, in the case of his refusal or inability to act, some other Independent Engineer similarly appointed) shall report in writing to the Trustee that such deficiency has been made good.

If such deficiency shall not have been made good within one year or such longer period as may be reported by such Independent Engineer to be reasonably necessary for the purpose, the Trustee may, and, upon proper request of the holders of at least a majority in principal amount of the bonds at the time outstanding, and indemnification to the extent provided in Section 16 of Article XI of this Indenture, shall, in accordance with the provisions of Article IX, proceed to enforce the covenant of the Corporation so far as the same relates to the maintenance and repair of the mortgaged properties contained in this Section 7 of Article V and, in any such proceedings, said report or reports of such Independent Engineer shall be conclusive evidence against the Corporation of the existence of the facts and conditions therein set forth.

The Corporation further covenants and agrees that if such report shall state that there has not been recorded as retired on the books of the Corporation property which is no longer used or useful in the business of the Corporation, it will forthwith make appropriate entries on its books recording the retirement of such property and will file with the Trustee a Treasurer's Certificate stating that such entries have been made.

All expense incurred under this Section 7 of Article V shall be borne by the Corporation.

Section 8. Maintenance and Depreciation to Amount to 27% of Gross Operating Revenues. In the calendar year ending December 31, 1941, and in each calendar year thereafter, as long as any of the bonds of Series A are outstanding, the sum of (a) all amounts spent by the Corporation for maintenance of its properties and (b) all amounts credited by the Corporation during the year to a reserve for depreciation or retirements, subject to any rule, regulation or order of any federal or state regulatory commission or authority having jurisdiction as to such matters, shall be not less than twenty-seven and one-half per cent. (27½%) of the Gross Operating Revenues of the Corporation for the preceding calendar year.

Section 9. Seizin and Title.

The Corporation is lawfully seized and possessed of all the real estate and other property described in the granting clauses of this Indenture and mortgaged hereby, and upon the first issue of any bonds hereunder such real estate and other property will be free and clear of any lien prior to or on a parity with the lien of this Indenture, except permitted liens. The Corporation has lawful authority to mortgage such property as provided for in this Indenture. It has and will preserve, subject to the provisions of Section 5 of this Article V, good and indefeasible title to all the mortgaged and pledged property and will warrant and forever defend such property to the Trustee against the claims of all persons. Neither the value of the mortgaged and pledged property, nor the lien of this Indenture, will be diminished or impaired in any way as the result of any action or failure to act on the part of the Corporation.