

its common stock (other than with the proceeds of additional common stock financing), if, as a result thereof, the cumulative aggregate amount of such dividends, distributions and purchases exceeds the amount of the earned surplus of the Company (computed before deducting any amount in respect of such dividends, distributions and purchases) accumulated subsequent to December 31, 1944, determined in accordance with accepted accounting practice, and the Company warrants that it has not, since December 31, 1944, declared or paid any dividend nor made any distribution or purchase which would produce any such result; *provided, however*, that, for the purposes of this Section, in determining at any time or from time to time the amount of earned surplus for the aforesaid purposes arising subsequent to December 31, 1944,

“(a) there shall be deducted an amount equal to the excess, if any, of (i) the net proceeds realized from the sale of Gas Production Property (less an amount equal to any Federal or state income or profits tax arising out of such sale to the extent that the same shall have been paid or shall be payable) owned on December 31, 1944 over (ii) the book value on December 31, 1944 (estimated, if necessary, as to particular property) of the Gas Production Property so sold, after deducting therefrom applicable reserves for depreciation, retirements and/or depletion as of that date;

“(b) no deduction or addition shall be made for any or all of the following direct charges or credits to earned surplus:

(1) Surplus adjustments applicable to a period or periods prior to January 1, 1945;

(2) Charges to earned surplus for the write-off at any time of unamortized discount and expense, applicable to the funded debt of the Com-