

MORTGAGE RECORD 88

be required to be so deposited. The Company covenants and agrees that any and all such cash or obligations remaining with any such trustee or mortgagee of a prior lien, upon the discharge and cancellation thereof, shall forthwith be deposited with the Trustee hereunder, to be held subject to the lien of this Indenture.

SECTION 6.09. Notwithstanding the foregoing provisions of this Article Six whenever Section 6.02 provides for the deposit of cash with the Trustee, such cash need not be deposited to the extent that the Company, pursuant to Paragraph A of Section 7.01, would at the time be entitled to withdraw such cash if deposited, and to the extent that the requirements of said Paragraph A of Section 7.01 have been fully complied with. all

SECTION 6.10. Notwithstanding the foregoing provisions of this Article Six if all or substantially of the mortgaged property shall be sold or disposed of or shall be taken by the exercise of the power of eminent domain, the Company shall not accept any consideration other than cash and will apply such cash solely to the retirement of the Bonds issued hereunder as provided in Paragraph B of Section 7.01 hereof.

SECTION 6.11. Additional property within the meaning of this Article Six and Article Seven shall be deemed to mean any property subject to the lien of this Indenture of a permanent nature and permanent physical betterments, improvements and additions of, upon and to the property of the Company, purchased, constructed or otherwise acquired by the Company, subsequent to December 31, 1941, properly chargeable to plant or capital account (or an account analogous to plant or capital account) and used or useful for public utility purposes which the Company is authorized to own and use, also mains, pipes, machines and other movable equipment constructed or maintained under franchises, licenses or permits or easements on premises owned by other (including Federal and State governments) and permanent improvements, betterments or additions constructed or acquired by the Company on State of Federal land under authority of any franchise, permit or license granted by any governmental authority and franchises, licenses, permits and similar rights necessary for the operation of the Company's public utility property, provided, however, that all such additional property shall be located in the State of Kansas, excluding, however, (a) any public utility property used or useful in the business of furnishing transportation, manufacturing and distributing of ice and refrigeration and natural gas production property consisting of natural gas wells or leases, natural gas transmission or gathering lines, or other works or property used in the production or transmission of natural gas up to the point of connection with any distribution system; (b) any property, improvement, addition or betterment the cost of which is properly chargeable to operating expenses, or repairs, or maintenance, or renewals, or the cost of which is not properly chargeable to plant or capital account (or account analogous to plant or capital account); provided, however, that whenever old, inadequate or worn out property is replaced by property costing and having a value to the Company of more than the original cost to the Company of such old, inadequate or worn out property, then, to the extent of such excess of cost or value, whichever shall be less, and to such extent only, such property so acquired to replace the old inadequate or worn out property shall be deemed additional property for the purposes of this Article Six and Article Seven; and (c) any additional property previously used as the basis for the release of property or for the release or withdrawal of insurance or other moneys to the Company.

SECTION 6.12. For the purposes of this Article Six and Article Seven the value of property to be used as the basis for the withdrawal of money or release of property hereunder shall be deemed to be the value to the Company as of the date of the execution of any certificate stipulating such value provided for in this Article Six or in Article Seven but in no event more than the amount of cash or other consideration actually expended therefor by the Company. Any and all additional property as hereinbefore defined, acquired before the execution of any release or sale of property or withdrawal of money may be used as a basis for the release or sale of property or for the withdrawal of money, provided, however, that if such property so added shall have been used for any such release, sale or withdrawal purposes to the extent only of a part of its value, the excess thereof not so used may thereafter be used as a basis for the release or sale of property or for the withdrawal of money to the extent of such excess, provided, however, that in case the Company shall request the use of any such excess at a time more than twelve months after the date of the certificate of the Company filed pursuant to Section 7.01 in which such additional property was included, the Company shall deliver to the Trustee an additional certificate of the Company setting forth the value of such property at the date of such additional certificate; and provided further that in the event that the value of such property as so stated shall be less than the value thereof as stated in said certificate previously filed pursuant to Section 7.01 the amount of such excess shall be deemed to be reduced accordingly.

ARTICLE SEVEN APPLICATION OF DEPOSITED MONEY.

SECTION 7.01. Subject to the provisions of Section 6.10, all moneys received by the Trustee as consideration for property released from the lien of this Indenture, including the principal of all purchase money obligations therefor when paid, and all moneys received by the Trustee as compensation for any part of the trust estate taken by the exercise of the power of eminent domain subject to the provisions of Section 6.04 and all moneys received by the Trustee as proceeds of insurance upon any part of the trust estate, and all other moneys elsewhere herein provided to be held and applied as in this Article Seven provided, and all moneys, if any, received by the Trustee whose disposition is not elsewhere herein specifically otherwise provided for, shall be held by the Trustee as a part of the trust estate and, upon default in the payment of the principal of any of the Bonds when and as the same shall become due and payable, whether by the terms thereof or by declaration or otherwise, as herein provided, said moneys shall be forthwith applicable to the purposes specified in and in accordance with the provisions of Section 8.09, hereof; but so long as the Company is not in default hereunder to the knowledge of the Trustee, all or any part of said moneys, at the request and election of the Company evidenced by a resolution of the Board delivered to the Trustee, and upon receipt of a certificate of the Company that the Company is not, to the knowledge of the signers, in default in the performance of any of the covenants on its part to be performed under the provisions of this Indenture, shall (unless some lien prior the lien of this Indenture shall, in the opinion of counsel, otherwise require) be applied by the Trustee as follows:

A. They may be paid over to the Company from time to time upon the written order of the Company (unless otherwise applied as provided in Section 7.02) to an amount or amounts equal to the value of additional property acquired by the Company as defined in Section 6.11 not previously used as a basis for the release of cash or property under the Indenture, when and only when the Trustee shall have previously received or shall receive contemporaneously with the release of cash

(1) a certificate of the Company, signed also by an engineer selected by the Board of Directors of the Company, and acceptable to the Trustee, who may be in the employ of the Company, setting forth in substance as follows:

- (a) that the Company has acquired additional property (as defined in Section 6.11 hereof) (which shall be described with reasonable detail in the certificate or in exhibit attached to and make a part thereof);
- (b) the value (as defined in Section 6.12 hereof) of such additional property; and
- (c) that none of such additional property has been previously used as a basis for the

release of property nor as the basis for the payment of release sale, insurance or other moneys to the Company hereunder and that the same is properly chargeable and has been so charged to the plant or capital account (or an account analogous to plant or capital account) of the Company after December 31, 1941; and

(2) Opinion of counsel stating in substance

(a) that the Company has good title to the additional property described in the certificate of the Company provided for in (1) above;

(b) that such additional property is subject to the lien of this Indenture and that the Company has acquired a valid, legal title to such additional property and that the same and every part thereof is free and clear of all liens, charges or encumbrances prior to the lien of this Indenture, except taxes or assessments not delinquent and any prior liens, charges or encumbrances to which the property to be released may at the time be subject and except also undetermined liens and charges, if any, incidental to construction and easements and similar encumbrances which in the opinion of such counsel do not impair the use of such property by the Company; and