

gas utility system has within six months prior to the date of acquisition thereof by the Company been used or operated by a person or persons other than the Company in a business similar to that in which it has been or is to be used or operated by the Company, an independent engineer's certificate dated not more than sixty (60) days prior to the time of such application, stating, as to such gas utility system, the then fair value thereof to the Company in the opinion of the signer, together with the signer's report thereon which shall contain a brief statement of the conditions governing the signer's determination of such fair value and a brief statement of the condition, serviceability and location of such gas utility system, and such certificate shall cover the fair value to the Company of any gas utility system (if there be any) so used or operated, which has been subjected to the lien hereof as a basis for the authentication and delivery of bonds, the withdrawal of cash, or the release of property subject to the lien hereof, since the commencement of the then current calendar year, and as to which a certificate of an independent engineer has not previously been furnished; and, in determining any such fair value, it shall be proper in the case of any such gas utility system to include as an element of the value thereof an amount deemed proper by said engineer for any rights and intangible property (except going concern value or good will) simultaneously acquired with such gas utility system for which no separate or distinct consideration shall have been paid or apportioned.

(5) In case any property additions are shown by the engineer's certificate provided for in subdivision (3) to have been acquired, made or constructed in whole or in part through the delivery of securities or other property, an engineer's certificate stating in the opinion of the signer the fair value of such securities (being the fair market value of any) and other property at the time of delivery thereof in payment for or for the acquisition of such property additions.

(6) A net earnings certificate by an accountant, certifying the amount of the net earnings of the Company to be as required by § 3.03, and showing the calculation of such net earnings in the manner set forth in § 2.06. Said certificate shall, subject to the provisions of subdivision (1) of § 3.03, be made by an independent public accountant, if the aggregate principal amount

every part thereof are free and clear of all liens, charges and encumbrances prior to the lien of this Indenture, except the prior liens or prepaid liens (if any) described in the accompanying engineer's certificate, and permitted encumbrances;

(d) that this Indenture is, or upon the delivery of the instruments of conveyance, assignment or transfer, if any, specified in said opinion will be, a lien on all the property additions certified pursuant to Clause (B) of subdivision (3) above which are still owned and have not been retired by the Company, subject to no lien thereon prior to the lien of this Indenture, except the prior liens or prepaid liens (if any) described in the accompanying engineer's certificate, and permitted encumbrances;

(e) that the Company has corporate authority and all necessary permission from governmental authorities to acquire, own, use and operate such property additions;

(f) that the issue of the bonds, the authentication and delivery of which are being applied for, has been duly authorized by the Company and by any and all governmental authorities the consent of which is requisite to the legal issue of such bonds, specifying any duly certified documents by which such consent is or may be evidenced or that no consent of any governmental authorities is requisite, and specifying the certificate or other evidence which will be sufficient to show compliance with the requirements, if any, of any mortgage recording tax law or other tax law applicable to the issuance of the bonds applied for, or stating that there are no such legal requirements; and

(g) that the general nature and extent of prior liens and prepaid liens and the principal amount of the then outstanding indebtedness secured thereby, if any, mentioned in the accompanying engineer's certificate, are correctly stated;

(8) The instruments of conveyance, assignment and transfer, if any, and the duly certified documents, if any, specified in the opinion of counsel provided for in subdivision (7) above; provided that if any property additions certified pursuant to Clause (B) of subdivision (3) above include any additional tract or parcel of real estate, there shall in any event be delivered to the Principal Trustee, if it shall so request, a supplemental

of bonds then applied for plus the aggregate principal amount of bonds authenticated and delivered since the commencement of the then current calendar year, rather than those with respect to which a certificate of an accountant is not required, or with respect to which a certificate of an independent public accountant has previously been furnished) is ten per centum (10%) or more of the aggregate principal amount of bonds at the time outstanding;

(7) An opinion of counsel stating

(a) that the instruments which have been or are to be delivered to the Principal Trustee conform to the requirements of this Indenture and constitute sufficient authority under this Indenture for the Principal Trustee to authenticate and deliver the bonds applied for; and that, on the basis thereof, the bonds applied for may be lawfully authenticated and delivered under this Article;

(b) that this Indenture has been duly recorded or filed, which together with certain instruments of conveyance, assignment or transfer, specified in such opinion, will be sufficient to subject to the lien of this Indenture the property additions certified pursuant to Clause (B) of subdivision (3) above, subject to no lien thereon prior to the lien of this Indenture, except the prior liens or prepaid liens (if any) described in the accompanying engineer's certificate, and permitted encumbrances, or stating that no such instruments are necessary for such purposes; and that, upon the recording or filing in the manner stated in such opinion of the instruments, as specified, if any, or without such recording or filing, if none is so specified, and upon each further recording or filing of this Indenture or any supplemental indenture in the manner stated in such opinion, or without any such further recording or filing if such opinion shall so state, no further recording or re-recording or filing or re-filing of this Indenture or any other instrument is required; No maintenance of the lien of this Indenture with respect to such property additions as against any creditors or subsequent purchasers;

(c) that the Company has acquired good and valid legal title to such property additions which are still owned and have not been retired by the Company, and that the same and

indenture or other instrument of conveyance specifically subjecting said tract or parcel to the direct lien of this Indenture;

(9) An engineer's certificate, made and dated not more than ten (10) days prior to the date of such application, stating that the signer has no knowledge of and does not believe that there have been, since the close of the period covered by the engineer's certificate specified in subdivision (3) above, property retirements in an amount exceeding property additions since the close of said period by more than the amount of the unapplied balance of net property additions calculated to be remaining upon the granting of the application; and

(10) A certificate of the Company and an opinion of counsel as to compliance with conditions precedent.

§ 3.07. The Principal Trustee shall from time to time upon the written request of the Company authenticate and deliver bonds hereunder (other than bonds of the 1929 Series) of an aggregate principal amount equal to the aggregate principal amount of any bonds (except as otherwise provided in this Section) theretofore authenticated and delivered under this Indenture that shall have been paid, retired, redeemed or cancelled or surrendered to the Principal Trustee for cancellation, or for the payment, retirement or redemption of which moneys in the necessary amount shall have been deposited with, or shall then be held by, the Principal Trustee (with irrevocable direction and authorization satisfactory to the Principal Trustee as to apply the same, and as regards bonds to be redeemed, either with proof satisfactory to the Principal Trustee that notice of redemption has been duly given or with irrevocable authorization to the Principal Trustee to give such notice of redemption), but only after the Principal Trustee shall have received:

(1) A certified resolution such as is described in subdivision (1) of § 3.06;

(2) A certificate of the Company stating (a) that the Company is not, and by the granting of the application then being made will not become, to the best of the knowledge and belief of the signers, in default under any of the provisions of this Indenture; and (b) that bonds theretofore authenticated and delivered