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(1) For any twelve consecutive calendar months during the period of fifteen calendar months immediately preceding the first day of the month in which the application for such creation and delivery of additional Bonds is made, the net earnings available for interest, depreciation and property retirement have been in the aggregate equal to not less than the greater of two and one-half times the amount of the annual interest charges on, or ten per cent. (10%) of the principal amount of,

(i) all Bonds then outstanding under this Indenture and the additional Bonds applied for;

(ii) all prior lien bonds at the time outstanding, and all prior lien bonds, if any, simultaneously applied for; and

(iii) in case the Company shall have been consolidated or merged with or into or shall have made a conveyance to any other corporation as permitted by Article XII and the corporation formed by or resulting from such consolidation or merger or to which such conveyance shall have been made, as aforesaid, shall not have executed and delivered to the Trustee and caused to be recorded a supplemental indenture subjecting to the lien of the Indenture all property and franchises then owned and which may thereafter be acquired by such successor corporation (other than property of the character defined in the granting clauses hereof as excepted property), all other indebtedness of such successor corporation maturing more than one year from the date of creation thereof;

(2) The net earnings available for interest, depreciation and property retirement have been calculated in accordance with the definition thereof contained in Article I, and to that end specifying the operating revenues of the Company and the net non-oper-

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ating revenues of the properties of the Company and the deductions therefrom all as called for by said definition; and

(3) The Company is not, and by the making or granting of the application will not be, in default in the performance of any of the terms and covenants of this Indenture.

(c) An opinion of counsel to the effect that:

(1) Since the date of the last previous opinion of counsel filed with the Trustee pursuant to Sections 4, 5 or 6 of this Article VIII (or since June 30, 1933 in the case of the first opinion filed hereunder), no property described in the granting clauses of this Indenture or in any previous certificate with respect to property additions not subject to an unfunded prior lien filed with the Trustee, which is still owned by the Company, has become and still remains subject to any lien not existing thereon at such previous date prior to the lien of this Indenture as security for the additional Bonds then applied for, excepting specified judgment liens and permitted liens;

(2) The issue of the additional Bonds, the authentication and delivery of which are being applied for, has been duly authorized by all governmental authorities the consent of which is requisite to the legal issue of such Bonds or that no such consent is required; and, unless such opinion shall show that no consent of any governmental authority is requisite to the legal issue of the additional Bonds applied for, it shall specify any official certificates or other documents by which such consent is evidenced, and the same shall accompany such opinion; and

(3) The Company is duly authorized and entitled to the authentication and delivery of the additional Bonds applied for in accordance with the provisions of this

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Indenture and to issue such additional Bonds under the laws of the State of Kansas and the applicable laws of any other jurisdiction; that upon the issue of such Bonds, such Bonds will be the valid and binding obligations of the Company and entitled to the benefits and security of this Indenture; and that the amount of Bonds then outstanding under this Indenture will not exceed the amount at the time permitted by law.

(d) An amount of cash equal to the aggregate amount of all judgment liens specified in the opinion of counsel provided for in Subdivision (c) of this Section, less the amount of all cash then held by the Trustee on account of such judgment liens, which shall be held and applied by the Trustee as a part of the trust estate and which may be withdrawn only in accordance with Section 6 of Article VIII.

**SECTION 4.** From time to time hereafter the Company, in addition to the Bonds authorized to be executed, authenticated and delivered pursuant to the other provisions of this Article VIII, may execute and deliver to the Trustee, and the Trustee shall thereupon authenticate and deliver to or upon the order of the Company, additional Bonds for an aggregate principal amount equal to seventy per cent. (70%) of the net bondable value of property additions not subject to an unfunded prior lien. The Trustee shall authenticate and deliver such additional Bonds only upon receipt by it of:

(a) An engineer's certificate with respect to net bondable value of property additions not subject to an unfunded prior lien, showing in substance:

(1) The balance, if any, of the net bondable value of property additions not subject to an unfunded prior lien, as stated in the most recent certificate, if any, with respect to net bondable value of property additions not subject to an unfunded prior lien theretofore filed with the Trustee, which shall not, however, exceed Five hundred thousand dollars.

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(2) The aggregate cost to the Company of the gross property additions not subject to an unfunded prior lien purchased, constructed or otherwise acquired by the Company during the period specified in such certificate and not described in any previous certificate with respect to net bondable value of property additions not subject to an unfunded prior lien filed with the Trustee. A description in reasonable detail of such gross property additions, which may be in accordance with the classifications then used by the Company in its property account and may, in the case of tracts or parcels of land, be by reference to the deeds by which the same were acquired or to the supplemental indenture by which the same were or are being conveyed to the Trustee, and which shall specify any gross property additions consisting of an acquired plant or system, or which shall have been acquired and paid for, in whole or in part through the issue or delivery of shares of stock or other securities; whether the fair value to the Company (as of the date provided for in the definition of fair value to the Company contained in Article I) of any particular property addition included in the certificate, except such as have been retired by the Company, is less than the cost to the Company thereof, and, if so, such fair value thereof; a distribution of the cost to the Company, or the fair value to the Company, if the fair value is less than the cost, of the property additions described in the certificate among the various classes of such property additions, to such extent and upon such basis, which may be an estimate, as the signers deem proper. If the fair value of any property additions is less than the cost thereof to the Company, the fair value shall be used in determining the amount at which the gross property additions described pursuant to the provisions of this paragraph (2) are included in the engineer's certificate.

(In case the inclusion in the certificate of all of the gross property additions purchased, constructed