

220

at the date therein mentioned such person had on deposit with such depository the Bonds described in such certificate. The Trustee may assume the continuance of any such ownership unless and until it receives proof, satisfactory to it, to the contrary.

The Trustee may nevertheless in its discretion require further proof in cases where it deems further proof desirable. The ownership of coupon Bonds registered as to principal and of registered Bonds without coupons shall be proved by the registry books.

The Trustee shall not be bound to recognize any person as a Bondholder unless and until his title to the Bonds held by him is proved in the manner in this Article provided.

Subject to the provisions of Article XV, any demand, request or consent of the holder of any Bond shall bind all future holders of the same Bond in respect of anything done or suffered by the Company or Trustee in pursuance thereof.

ARTICLE XI.

IMMUNITY OF INCORPORATES, STOCKHOLDERS, OFFICERS AND DIRECTORS.

No recourse shall be had for the payment of the principal of, or the interest on, any Bond, or for any claim based thereon or on this Indenture or any Indenture supplemental hereto, against any incorporator or against any stockholder, director or officer, past, present or future, of the Company, or of any predecessor or successor corporation, as such, either directly or through the Company or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitution, statute or otherwise, of incorporators, stockholders, directors or officers being released as a condition of and consideration for the execution of this Indenture and of the issue of the Bonds and coupons.

222

any twelve consecutive calendar months during the period of fifteen calendar months immediately preceding the first day of the month in which such consolidation, merger or sale is to be made, shall have amounted in the aggregate 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 indebtedness secured by such liens on the properties of such other corporation which will be outstanding immediately after such consolidation, merger or sale, and (ii) all other indebtedness of such other corporation maturing more than one year from the date of creation thereof which will be outstanding immediately after such consolidation, merger or sale. In case such other corporation shall not, simultaneously with such consolidation, merger or sale, execute and deliver to the Trustee and cause 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 described in the granting clauses hereof as excepted property):

(c) upon any such consolidation, merger or sale, the due and punctual payment of the principal and interest of all Bonds at the time outstanding according to their tenor, and, subject to the provisions of Section 3 of this Article, the due and punctual performance and observance of all the covenants and conditions of this Indenture shall, by supplemental Indenture and as a condition of any such consolidation or merger or as a consideration for any such sale, be expressly assumed by the successor corporation formed by or resulting from any such merger or consolidation or to which such sale shall have been made; and

(d) any such loan shall be made expressly subject to immediate termination by the Trustee at any time when any event of default, as specified in Section 1 of Article IX,

221

ARTICLE XII.

CONSOLIDATION, MERGER AND SALE.

SECTION 1. Nothing in this Indenture contained, or in any Bond secured hereby, shall prevent the consolidation with the Company or the merger into the Company of any other corporation or prevent any merger of the Company into any other corporation or prevent the sale or lease by the Company of its property as an entirety or substantially as an entirety upon the terms hereinafter set forth; provided that:

(a) any such consolidation or merger or sale or lease shall be on such terms as not to impair the lien and security of this Indenture upon any part of the trust estate or any of the rights and powers of the Trustee or of the holders of the Bonds;

(b) in case of any such consolidation, merger into another corporation or sale;

(1) the principal amount of indebtedness which is outstanding immediately after such consolidation, merger or sale and which will be secured by a lien or liens on the properties of such other corporation, other than a lien or liens either junior to the lien of this Indenture or constituting funded prior liens, shall not exceed seventy per cent. (70%) of the fair value of the property of the nature of property additions then owned by such other corporation, without limitation as to the date of acquisition, as stated in an independent engineer's certificate to be filed with the Trustee prior to or simultaneously with such consolidation, merger or sale; or the cost to such other corporation of such properties, if such cost is lower; and

(2) the net earnings of such other corporation available for interest, depreciation and property retirement (determined in the manner provided in Article I) for

223

shall have happened and be continuing, and also by the purchaser of the property so leased at any sale (hereof hereunder, whether such sale be made under the power of sale hereby conferred or under judicial proceedings.

SECTION 2. Every successor corporation resulting from a consolidation of the Company with another corporation or a merger of the Company into another corporation or the sale by the Company of all or substantially all of its property as an entirety to another corporation, all on the terms set forth in Section 1 of this Article XII, shall upon executing, acknowledging and delivering to the Trustee, and causing to be recorded and filed, as required by Section 10 of Article IV, an Indenture supplemental hereto, as provided in Section 1 of this Article, in form satisfactory to the Trustee, succeed to and be substituted for the Company with the same effect as if it had been named herein as the party of the first part. Such successor corporation may thereupon cause to be signed, either in its own name or in the name of the Company, with such suitable reference, if any, to such consolidation, merger or sale, as may be required by the Trustee, any or all of the Bonds which shall not theretofore have been signed by the Company and authenticated by the Trustee; and upon the written order of such successor corporation in lieu of the Company, and subject to the terms, conditions and restrictions herein prescribed with respect to the authentication and delivery of Bonds, the Trustee shall authenticate and deliver any and all Bonds which shall have been previously signed by the proper officers of the Company and delivered to the Trustee for authentication and any of such Bonds which such successor corporation shall thereafter, in accordance with the provisions of this Indenture, cause to be signed and delivered to the Trustee for that purpose. As a condition precedent to the execution by such successor corporation and the authentication and delivery by the Trustee of any additional Bonds other than upon the basis of the retirement of Bonds or to the withdrawal upon the basis of property additions of any cash deposited with the Trustee as a basis for the authentication and delivery of additional Bonds,