

in respect of the Mortgaged and Pledged Property and automotive equipment used primarily in the electric utility business of the Company, shall be less than fifteen per centum (15%) of the Gross Operating Revenues of the Company for such calendar year, the Company shall, as to expenditures, accruals and appropriations in respect of such calendar year, be relieved from compliance with the covenants contained in this subsection (III) to the extent of the difference between such lesser amount and the amount which is fifteen per centum (15%) of such Gross Operating Revenues of the Company for such calendar year.

(IV) The Company further covenants and agrees that, so long as any of the bonds of the 1965 Series remain Outstanding, the Company will not declare or pay any dividends upon its common stock (other than dividends in common stock) or make any other distribution on its common stock or purchase or otherwise retire any shares of its common stock, unless immediately after such declaration, payment, purchase, retirement or distribution (hereinafter in this subsection (IV) referred to as "restricted payments"), and giving effect thereto, the amount arrived at by adding,

(a) the aggregate amount of all such restricted payments made by the Company during the period from January 1, 1940 to and including the effective date of the restricted payment in respect of which the determination is being made, plus

(b) an amount equal to the aggregate amount of cumulative dividends for such period (whether or not paid) on all preferred stock of the Company from time to time outstanding during such period at the rate or rates borne by such preferred stock, will not exceed the amount of the aggregate net income of the Company for said period available for dividends (computed and ascertained in accordance with sound accounting practice, on a cumulative basis, including the making of proper deduction for any deficits occurring during any part of said period) plus \$1,000,000.

The Company further covenants and agrees that not later than May 1 of each year beginning with the year 1941 it will furnish to the Corporate Trustee a Treasurer's Certificate stating whether or not the Company has fully observed the restrictions imposed upon it by the covenant contained in this subsection (IV).

SECTION 39. The Company covenants that, so long as any bonds issued under this Indenture shall remain Outstanding, it will, as an improvement fund for the benefit of the bonds Outstanding hereunder, on or before October 1 of each year beginning with the year 1941, deliver to the Corporate Trustee:

(A) A Treasurer's Certificate which shall state as to each series of bonds then Outstanding:

(a) the greatest principal amount of all bonds prior to January 1 of such year at any one time Outstanding of such series; and

(b) the Cost or then Fair Value to the Company (whichever is less) of any Property Additions which are not then Funded Property (after making any deductions and any additions required by the provisions of Section 4 hereof) and which the Company elects to make the basis of a credit under this Section;

(c) the aggregate principal amount of any bond(s) or fraction of a bond to the authentication and delivery of which the Company shall then be entitled under the provisions of Section 26 or Section 29 hereof by virtue of compliance with all applicable provisions of said Section 26 or Section 29, as the case may be (except as hereinafter in this Section otherwise provided); and that the Company elects to make its right to the authentication and delivery of such bond (s) or fraction of a bond the basis of a credit under this Section; and/or

(d) the aggregate principal amount of any bond(s) theretofore retired pursuant to Section 64 but which have not theretofore been made the basis of a credit under subsection (II) of Section 38 or under this Section or Section 40 hereof, and which the Company then elects to make the basis of a credit under this Section, and which were retired either (i) by the use of cash representing the proceeds of property that was not Funded Property released, taken by eminent domain or purchased by any governmental body or agency or its designee upon the exercise of any right which it may have had to purchase the same or designate a purchaser thereof, or of cash representing payment on account of principal of, or consideration for the release of, obligations secured by purchase money mortgage which shall have been deposited with the Corporate Trustee as the basis for the release of property that was not Funded Property, or (ii) by the use of cash deposited with the Corporate Trustee solely by reason of the Company's obligation under Section 64 to replace an equivalent amount of cash of the character specified in the preceding subclause (i) theretofore withdrawn from the Corporate Trustee on the basis of Property Additions or on the basis of the waiver of a right to the authentication and delivery of bonds under Section 26 or Section 29 hereof.

(B) As to each series of bonds then Outstanding, an amount in cash and/or principal amount of bonds of such series equivalent to one-half ($\frac{1}{2}$) of one per centum (1%) of the greatest principal amount of bond of such series prior to January 1 of such year at any one time Outstanding provided, however, that, against the amount of cash of bonds payable or deliverable pursuant to this paragraph (B) in respect of any series, there shall be credited (1) the Cost or then Fair Value to the Company (whichever is less) of any Property Additions which shall be set forth in the Treasurer's Certificate provided for by this Section pursuant to the requirements of clause (b)