

covenant of the Company, so far as the same relates to the maintenance and repair of the mortgaged properties, contained in subdivision (A) of this § 5.13, and in any such proceedings said report or reports of such independent engineer shall be conclusive evidence against the Company of the existence of the facts and conditions therein set forth.

The Company further covenants and agrees that, if such report shall state that (and the Company shall not have objected thereto) or if such arbitrators shall decide that there has not been recorded as retired on the books of the Company any mortgaged property which is no longer used or useful in the Company's Gas Business, it will forthwith make appropriate entries on its books recording the retirement of such mortgaged property and will file with the Trustee a certificate signed by its Treasurer or one of its Assistant Treasurers stating that such entries have been made.

All expense incurred under this subdivision (B) shall be paid by the Company.

§ 5.14. That so long as any of the Bonds of the 1976 Series shall be outstanding the Company will not directly or indirectly or through any subsidiary make any Payments on Stock (declarations or payment of dividends on capital stock of the Company, purchases, agreements to purchase, redemptions or retirements of capital stock of the Company, or distributions to stockholders of the Company, [excluding, however, any such which may be payable solely in capital stock of the Company] being herein collectively called Payments on Stock), except as follows:

- (1) The Company may, without restriction or limit as to amount, declare or pay dividends upon any stock preferred over common stock as to dividends (herein called "preferred stock") and may make sinking or analogous fund payments relating to any preferred stock.
- (2) The Company may make other Payments on Stock if, and to the extent that, after giving effect thereto,

(a) The amount of all Payments on Stock for the period March 1, 1951 to and including the date of the making of the Payments on Stock in question will not exceed one hundred

shall name one arbitrator and give notice of such selection to the Company. Within ten days after receipt of such notice, the Company shall name one arbitrator and give notice of such selection to the Trustee, and failure to do so shall entitle the Trustee to name an arbitrator to represent the Company. The two thus selected shall, within ten days after the appointment of the arbitrator representing the Company, select a third arbitrator, but if said arbitrators are unable, within said ten days, to agree upon such third arbitrator, then the District Judge of the United States of America for the Western District of South Carolina senior in service may appoint such third arbitrator, upon application to said District Judge by either party on five days' notice thereof to the other party. The written decision of a majority of such arbitrators shall be filed as soon as practicable with the Trustee and a copy thereof delivered to the Company, and shall be binding upon the Trustee, the Company and the Bondholders.

The Company further covenants and agrees that, if the independent engineer, appointed pursuant to the first paragraph of subdivision (B) of this § 5.13, shall report (and the Company shall not have objected thereto) or if such arbitrators shall decide that such a maintenance deficiency exists, the Company will with all reasonable speed make such repairs and/or do such other maintenance work as may be necessary to make good such deficiency as shall exist at the time of such report; whereupon the independent engineer, appointed pursuant to the first paragraph of subdivision (B) of this § 5.13 (or, in the case of his refusal or inability to act, some other independent engineer similarly appointed), or such arbitrators, as the case may be, shall report in writing to the Trustee that such deficiency has been made good.

If such deficiency shall not have been made good within one year, or such longer period as may be reported by the independent engineer, appointed pursuant to the first paragraph of subdivision (B) of this § 5.13; or such arbitrators, as the case may be, to be reasonably necessary for the purpose, the Trustee may, and upon proper request of the holders of at least a majority in principal amount of the Bonds at the time outstanding and indemnification satisfactory to it, shall, in accordance with the provisions of Article 9, proceed to enforce the