

notice of such selection to the Company. Within ten (10) days after receipt of such notice, the Company shall name one arbitrator and give notice of such selection to the Corporate Trustee, and failure so to do shall entitle the Corporate Trustee to name an arbitrator to represent the Company. The two thus selected shall, within ten (10) days after the appointment of the arbitrator representing the Company, select, a third arbitrator, but if said arbitrators are unable, with/said ten (10) days, to agree upon such third Arbitrator, then, upon the election of either the Company or the Corporate Trustee, any District Judge of the United States of America for the District in which the Corporate Trustee has its principal place of business may appoint such third arbitrator, upon application to said District Judge by either party after five (5) 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 Corporate Trustee and a copy thereof delivered to the Company, and shall be binding upon the Trustee, the Company and the bondholders.

Pending the final determination pursuant to the foregoing provisions of this Section as to whether or not the Company has maintained the Mortgaged and Pledged Property as an operating system or systems in good repair, working order and condition, no statement contained in any report of any Independent Engineer filed with the Corporate Trustee, as hereinbefore in this Section provided, shall be deemed to be in any way evidence or proof of a failure to comply with this subsection (1).

The Company shall, with all reasonable speed, do such maintenance work as may be necessary to make good any such maintenance deficiency as shall have been determined to exist as hereinabove provided at the time of the report of such Independent Engineer or at the time of such decision of arbitrators, as the case may be, whereupon such Independent Engineer or such arbitrators, as the case may be (or, in case of his or their refusal or inability to act, some other Independent Engineer), shall report in writing to the Corporate Trustee whether such deficiency has been made good.

Unless the Corporate Trustee shall be so advised in writing by such Independent Engineer or arbitrators, as the case may be, within one year from the date of the report of such Independent Engineer or the date of such decision of arbitrators, as the case may be, or such longer period as may be reported by such Independent Engineer or the arbitrators, as the case may be, to be reasonably necessary for the purpose, that such deficiency has been made good, the Company shall be deemed to have defaulted in the due performance of the covenanted of this subsection (1), so far as concerns the maintenance of the Mortgaged and Pledged Property; and in any proceedings consequent upon such default, said report or reports of such Independent Engineer or said decision or decisions of such arbitrators, as the case may be, shall be conclusive <sup>evidence</sup> against the Company of the existence of the facts and conditions therein set forth.

All expenses incurred pursuant to this subsection (1) shall be borne by the Company.

In the event that any regulatory authority having jurisdiction over the Company shall determine that the expenditures required by this subsection (1) for repairs and maintenances are excessive or shall, by order or regulation, prohibit, in whole or in part, any such expenditures for repairs and maintenance, then, upon filing with the Corporate Trustee a certified copy of / <sup>or such order or a copy</sup> of such regulation, as the case may be, the Company shall, so long as such order or such regulation remains in effect, be relieved from compliance with the covenants contained in this subsection (1), to the extent that such expenditures for repairs and maintenance shall have been held excessive or shall be prohibited.

(11) The Company covenants that it will, within ninety (90) days after the close of calendar year 1941 and of each calendar year thereafter, file with the Corporate Trustee a Treasurer's Certificate (hereinafter called a "Treasurer's Certificate of Maintenance"), stating the following:

(1) The Gross Operating Revenues of the Company as in Section 7 hereof defined, for the calendar year next preceding such filing:

(2) the amount which is fifteen per centum (15%) of such Gross Operating Revenues;

(3) if, by reason of any order or regulation (as evidenced by a certified copy thereof delivered to the Corporate Trustee) of any regulatory authority having jurisdiction for the purpose, the amount applicable to such calendar year which the Company shall be permitted to include in operating expenses (incalculating the return allowed by any such regulatory authority on the Mortgaged and Pledged Property and on the automotive equipment used primarily in its electric utility business), or to charge against income, in each case for maintenance of and for provision for property retirement 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 the amount required by clause (2) above to be stated in such Treasurer's Certificate of Maintenance, the amount which is equal to the difference between such lesser, amount and the amount so required to be stated by clause (2) above in said certificate;

(4) the balance remaining after deducting the amount required to be stated in such certificate by clause (3) above from the amount required to be so stated therein by clause (2) above;