

guaranteed by RUS for rural electrification. Unless otherwise stated in the text, "borrower" shall mean power supply borrower.

Loan contract means the agreement, as amended, supplemented, or restated from time to time, between a borrower and RUS providing for loans made or guaranteed pursuant to the RE Act.

Power supply borrower means any borrower engaged in the wholesale sale of electric power and energy to distribution members either directly or through other power supply borrowers pursuant to RUS wholesale power contracts.

RE Act means Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA means the Rural Electrification Administration formerly an agency of the United States Department of Agriculture and predecessor agency to RUS with respect to administering certain electric and telephone loan programs.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178), successor to REA with respect to administering certain electric and telephone programs. See 7 CFR 1700.1.

RUS documents means the loan contract, mortgage and RUS wholesale power contract of a power supply borrower.

RUS mortgage means the mortgage and security agreement, as from time to time supplemented, amended and restated, made by and among the borrower, RUS, and, if a party thereto, third party lenders, or any other form of mortgage or security instrument or indenture of mortgage and deed of trust, securing the payment of outstanding loans made or guaranteed by RUS and other lenders.

RUS wholesale power contract means the contract for the wholesale sale of electric power and energy between a power supply borrower and its member as approved by RUS.

Secured loans shall mean outstanding loans secured pursuant to the RUS mortgage.

State regulatory authority means any state board or local governing body

having jurisdiction under state law to regulate, or in any way, approve the electric rates charged by a power supply borrower or electric distribution member of a power supply borrower.

(b) *Rules of Construction.* Unless the context shall otherwise indicate, the terms defined in §1717.302(a) hereof include the plural as well as the singular, and the singular as well as the plural. The words "herein," and "hereunder", and words of similar import, refer to this subpart as a whole. "Includes" and "including" are not limiting and "or" is not exclusive.

[55 FR 38646, Sept. 19, 1990, as amended at 59 FR 66440, Dec. 27, 1994]

§ 1717.303 Requirements of RUS documents.

(a) Pursuant to the terms of the RUS documents each power supply borrower shall establish and adjust rates for the sale of electric power and energy in such a manner as to assure that the borrower will be able to make required payments on secured loans.

(b) Pursuant to the terms of the RUS wholesale power contract, the Board of Directors or Board of Trustees of the power supply borrower shall review rates not less frequently than once each calendar year and revise its rates as therein set forth.¹ The RUS wholesale power contract further provides that the borrower shall notify the Administrator not less than 30 nor more than 45 days prior to the effective date

¹The Wholesale Power Contract, with minor modifications which are approved by RUS on a case by case basis, provides that the rate charged for electric power and energy, shall produce revenues which shall be sufficient, but only sufficient, with the revenues of the Seller from all other sources, to meet the cost of the operation and maintenance (including without limitation, replacements, insurance, taxes and administrative and general overhead expenses) of the generating plant transmission system and related facilities of the Seller, the cost of any power and energy purchased for resale hereunder by the Seller, the cost of transmission service, make payments on account of principal and interest on all indebtedness of the Seller, and to provide for the establishment and maintenance of reasonable reserves. (Section 4. Rates (b), RUS Form 444, "Wholesale Power Contract—Federated Cooperative"; Rev. 6-60.)

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of any adjustment and shall set forth the basis upon which the rate is to be adjusted and established. The RUS wholesale power contract provides that no final revision in rates shall be effective unless approved in writing by the Administrator.

(c) Pursuant to the terms of the RUS mortgage, each power supply borrower must design its rates as therein set forth and must give 90 days prior notice to RUS of any proposed change in its general rate structure.

(Approved by the Office of Management and Budget under control number 0572-0089)

§ 1717.304 State regulatory authority rate jurisdiction.

(a) In the event that rate revisions required by the terms of the RUS wholesale power contract or other RUS documents may be subject to the approval of a state regulatory authority, the power supply borrower shall seek such required approval in a timely manner.

(b) RUS recognizes the need of state regulatory authorities for documents, information and records for use in connection with an application for rate approval and will consider any reasonable request by a borrower or a state regulatory authority for such documents, information and records. The failure of RUS to provide requested documents, information or records shall not limit any rights of RUS including the right with respect to pre-emption of the state regulatory authority as provided in this subpart.

(c) In the event that the state regulatory authority shall fail to act favorably upon the borrower's application for rate increases required by terms of the RUS wholesale power contract or other RUS documents, the borrower shall pursue such legal and administrative appeals as may be available to it, unless RUS shall approve otherwise in writing.

§ 1717.305 Pre-emption.

(a) *Inadequate rates.* State regulatory authority jurisdiction over a power supply borrower's rates shall be pre-empted by the RE Act if the Administrator shall have determined that the borrower's rates approved by the state regulatory authority are, after taking

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into account the borrower's costs and expenses, inadequate to produce revenues sufficient to permit the borrower to make required payments on its secured loans and the borrower has failed to make required payments on its secured loans.

(b) *Public notice.* The Administrator shall:

(1) Notify the borrower and the state regulatory authority in writing of the determination, indicating the jurisdiction of the state regulatory authority over the rates of the borrower has been pre-empted pursuant to this part and the borrower shall henceforth establish its rates in accordance with the term of the RUS documents.

(2) publish a notice in the FEDERAL REGISTER informing the public of the action.

[55 FR 38646, Sept. 19, 1990; 55 FR 53100, Dec. 26, 1990]

§ 1717.306 RUS required rates.

(a) Upon the publication in the FEDERAL REGISTER of the notice of pre-emption of state regulatory authority as provided in this subpart, RUS will exercise exclusive jurisdiction over the rates of the borrower pursuant to the terms of the RUS documents. The borrower shall immediately establish rates with the approval of RUS that are sufficient to satisfy the requirements of the RUS wholesale power contract and other RUS documents described in § 1717.303 of this subpart. The borrower shall establish such rates notwithstanding provisions of state law, and rules, orders or other actions of state regulatory authorities, and notwithstanding any provision of the RUS documents referring to such laws, rules, orders or actions.

(b) So long as the state regulatory authority shall be pre-empted hereunder, RUS shall be considered the governmental regulatory body with jurisdiction over rates for the purposes of the RUS documents and for the purposes of section 1129(a)(6) of the Bankruptcy Code of 1978, as amended (11 U.S.C. 1129(a)(6)).

(c) If a borrower, which is subject to exclusive RUS rate jurisdiction, shall fail to establish rates in accordance with terms of the RUS wholesale power contract and other RUS documents in