

§ 1717.853

7 CFR Ch. XVII (1-1-18 Edition)

(2) The purchase, rehabilitation and integration of existing distribution facilities, equipment and systems, and associated service territory;

(3) The following types of community infrastructure substantially located within the electric service territory of the borrower: water and waste disposal systems, solid waste disposal systems, telecommunication and other electronic communications systems, and natural gas distribution systems;

(4) Front-end costs, when and as the borrower has obtained a binding commitment from the non-RUS lender for the financing required to complete the procurement or construction of the facilities;

(5) Transaction costs included as part of the cost of financing assets or refinancing existing debt, provided, however, that the amount of transaction costs eligible for lien accommodation or subordination normally shall not exceed 5 percent of the principal amount of financing or refinancing provided, net of all transaction costs;

(6) The refinancing of existing debt secured under the mortgage;

(7) Interest during construction of generation and transmission facilities if approved by RUS, case by case, depending on the financial condition of the borrower, the terms of the financing, the nature of the construction, the treatment of these costs by regulatory authorities having jurisdiction, and such other factors deemed appropriate by RUS; and

(8) Lien subordinations for certain rural development investments, as provided in § 1717.858.

(b) *Purposes ineligible.* The following financing purposes are not eligible for a lien accommodation or subordination from RUS:

(1) Working capital, including operating funds, unless in the judgment of RUS the working capital is required to ensure the repayment of RUS loans and/or other loans secured under the mortgage;

(2) Facilities, equipment, appliances, or wiring located inside the premises of the consumer, except:

(i) Certain load-management equipment (see 7 CFR 1710.251(c));

(ii) Renewable energy systems and RUS-approved programs of Demand

side management, energy efficiency and energy conservation; and

(iii) As determined by RUS on a case by case basis, facilities included as part of certain cogeneration projects to furnish electric and/or steam power to end-user customers of the borrower;

(3) Investments in a lender required of the borrower as a condition for obtaining financing; and

(4) Debt incurred by a distribution or power supply borrower to finance facilities, equipment or other assets that are not part of the borrower's electric system or one of the four community infrastructure systems cited in paragraph (a)(3) of this section, except for certain rural development investments eligible for a lien subordination under § 1717.858.

(c) *Lien subordination for electric utility investments.* RUS will consider subordinating its lien on specific electric utility assets financed by the lender, when the assets can be split off without materially reducing the stability, safety, reliability, operational efficiency, or liquidation value of the rest of the system.

[58 FR 53843, Oct. 19, 1993, as amended at 59 FR 3986, Jan. 28, 1994; 60 FR 67409, Dec. 29, 1995; 78 FR 73370, Dec. 5, 2013]

§ 1717.853 **Loan terms and conditions.**

(a) *Terms and conditions.* A loan, bond or other financing instrument, for which a lien accommodation or subordination is requested from RUS, must comply with the following terms and conditions:

(1) The maturity of the loan or bond used to finance facilities or other capital assets must not exceed the weighted average of the expected remaining useful lives of the assets being financed;

(2) The loan or bond must have a maturity of not less than 5 years, except for loans or bonds used to refinance debt that has a remaining maturity of less than 5 years;

(3) The principal of the loan or bond must be amortized at a rate that will yield a weighted average life not greater than the weighted average life that would result from level payments of principal and interest; and

(4) The loan, or any portion of the loan, may bear either a variable (set

annually or more frequently) or a fixed interest rate.

(b) *RUS approval.* Loan terms and conditions and the loan agreement between the borrower and the lender are subject to RUS approval. However, RUS will usually waive its right of approval for distribution borrowers that meet the conditions for advance approval of a lien accommodation or subordination set forth in §1717.854. RUS may also waive its right of approval in other cases. RUS's decision to waive its right of approval will depend on the adequacy of security for RUS's loans, the current and projected financial strength of the borrower and its ability to meet its financial obligations, RUS's familiarity with the lender and its lending practices, whether the transaction is ordinary or unusual, and the uncertainty and credit risks involved in the transaction.

§1717.854 Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure.

(a) *Policy.* Requests for a lien accommodation or subordination from distribution borrowers for 100 percent private financing of distribution, subtransmission and headquarters facilities, and for community infrastructure listed in §1717.852(a)(3), qualify for advance approval by RUS if they meet the conditions of this section and all other applicable provisions of this subpart. Advance approval means RUS will approve these requests once RUS is satisfied that the conditions of this section and all other applicable provisions of this subpart have been met.

(b) *Eligible purposes.* Lien accommodations or subordinations for the financing of distribution, subtransmission, and headquarters facilities and community infrastructure listed in §1717.852(a)(3) are eligible for advance approval, except those that involve the purchase of existing facilities and associated service territory.

(c) *Qualification criteria.* To qualify for advance approval, the following requirements, as well as all other applicable requirements of this subpart, must be met:

(1) The borrower has achieved a TIER of at least 1.25 and a DSC of at least

1.25 for each of 2 calendar years immediately preceding, or any 2 consecutive 12 month periods ending within 180 days immediately preceding, the issuance of the debt;

(2) The ratio of the borrower's equity, less deferred expenses, to total assets, less deferred expenses, is not less than 27 percent, after adding the principal amount of the proposed loan to the total assets of the borrower;

(3) The borrower's net utility plant as a ratio to its total outstanding long-term debt is not less than 1.0, after adding the principal amount of the proposed loan to the existing outstanding long-term debt of the borrower;

(4) There are no actions or proceedings against the borrower, pending or overtly threatened in writing before any court, governmental agency, or arbitrator that would materially adversely affect the borrower's operations and/or financial condition;

(5) The borrower is current on all debt payments and all other financial obligations, and is not in default under the RUS mortgage, the RUS loan contract, the borrower's wholesale power contract, any debt restructuring agreement, or any other agreement with RUS;

(6) The borrower has:

(i) Submitted the annual auditor's report, report on compliance, report on internal controls, and management letter in accordance with 7 CFR part 1773;

(ii) Received an unqualified opinion in the most recent auditor's report;

(iii) Resolved all material findings and recommendations made in the most recent Loan Fund and Accounting Review;

(iv) Resolved all material findings and recommendations made in the most recent financial statement audit, including those material findings and recommendations made in the report on internal control, report on compliance, and management letter;

(v) Resolved all outstanding material accounting issues with RUS; and

(vi) Resolved any significant irregularities to RUS's satisfaction; and

(7) If the borrower has a power supply contract with a power supply borrower, the power supply borrower is current