

Subparts E–L [Reserved]

Subpart M—Operational Controls

SOURCE: 60 FR 67405, Dec. 29, 1995, unless otherwise noted.

§ 1717.600 General.

(a) *General.* The loan contract and mortgage between the Rural Utilities Service (RUS) and electric borrowers imposes certain restrictions and controls on the borrowers and gives RUS (and other co-mortgagees in the case of the mortgage) the right to approve or disapprove certain actions contemplated by the borrowers. Certain of these controls and approval rights are referred to informally as “operational controls” because they pertain to decisions or actions with respect to the operation of the borrowers’ electric systems. The approval authority granted to RUS by the loan contract or mortgage regarding each decision or action subject to controls is often stated in broad, unlimited terms. This subpart lists the main operational controls affecting borrowers and establishes for each area of control the circumstances under which RUS approval of a decision or action by a borrower is either required or not required. In some cases, only the general principles or general circumstances pertaining to RUS approval or control are presented in this subpart, while the details regarding the circumstances and requirements of RUS approval or control are set forth in other RUS regulations. Since this subpart addresses only the main operational controls, failure to address a control or approval right in this subpart in no way invalidates such controls or rights established by the loan contract, mortgage, other agreements between a borrower and RUS, and RUS regulations.

(b) *Case by case amendments.* Upon written notice to a borrower, RUS may amend or annul the approvals and exceptions to controls set forth in this subpart or other RUS regulations if the borrower is in violation of any provision of its loan documents or any other agreement with RUS, or if RUS determines that loan security and/or repayment is threatened. Such amendment or annulment will apply to decisions

and actions of the borrower after said written notice has been provided by RUS.

(c) *Generic notices.* By written notice to all borrowers or a group of borrowers, RUS may grant or waive approval of decisions and actions by the borrowers that are controlled under the loan documents and RUS regulations. RUS may also by written notice withdraw or cut back its grant or waiver of approval of said decisions and actions made by previous written notice, but may not by such notice extend its authority to approve decisions and actions by borrowers beyond the authority granted by the loan documents and RUS regulations.

§ 1717.601 Applicability.

(a) The approvals and exceptions to controls conveyed by this subpart apply only to controls and approval rights normally included in RUS loan documents dated prior to January 29, 1996. They do not apply to special controls and approval requirements included in loan documents or other agreements executed between a borrower and RUS that relate to individual problems or circumstances specific to an individual borrower.

(b) The approvals and exceptions to controls granted by RUS in this subpart shall not in any way affect the rights of other co-mortgagees under the mortgage or their loan contracts.

§ 1717.602 Definitions.

Terms used in this subpart that are not defined in this section have the meanings set forth in 7 CFR part 1710. In addition, for the purposes of this subpart:

Default means an event of default as defined in the borrower’s loan documents or other agreement with RUS, and furthermore includes any event that has occurred and is continuing which, with notice or lapse of time and notice, would become an event of default.

Equity means the borrower’s total margins and equities computed pursuant to RUS accounting requirements but excluding any regulatory created assets.

Financed or funded by RUS means financed or funded wholly or in part by

§ 1717.603

a loan made or guaranteed by RUS, including concurrent supplemental loans required by 7 CFR 1710.110, loans to reimburse funds already expended by the borrower, and loans to replace interim financing.

Interchange agreement means a contractual arrangement that can include a variety of services utilities provide each other to increase reliability and efficiency, and to avoid duplicating expenses. Some examples are: transmission service (the use of transmission lines to move power and energy from one area to another); emergency service (an agreement by one utility to furnish another with power and energy to protect it in times of emergency, such as power plant outages); reserve sharing (contributions to a common pool of generating plant reserves so that each individual utility's reserves can be reduced); and economic exchanges (swapping power and energy from different plants to avoid running the most expensive units).

Interconnection agreement means a contract governing the terms for establishing or using one or more electrical connections between two or more electric systems permitting a flow of power and energy among the systems.

Loan documents means the mortgage (or other security instrument acceptable to RUS), the loan contract, and the promissory note entered into between the borrower and RUS.

Net utility plant means the amount constituting the total utility plant of the borrower, less depreciation, computed in accordance with RUS accounting requirements.

Pooling agreement means a contract among two or more interconnected electric systems to operate on a coordinated basis to achieve economies and/or enhance reliability in supplying their respective loads.

Power supply contract means any contract entered into by a borrower for the sale or purchase, at wholesale, of electric energy.

Regulatory created assets means the sum of any amounts properly recordable as unrecovered plant and regulatory study costs or as other regulatory assets, computed pursuant to RUS accounting requirements.

7 CFR Ch. XVII (1–1–24 Edition)

RUS accounting requirements means the system of accounts prescribed for electric borrowers by RUS regulations as such RUS accounting requirements exist at the date of applicability thereof.

RUS regulations mean regulations of general applicability published by RUS from time to time as they exist at the date of applicability thereof, and shall also include any regulations of other federal entities which RUS is required by law to implement.

Total assets means an amount constituting the total assets of the borrower as computed pursuant to RUS accounting requirements, but excluding any regulatory created assets.

Wheeling agreement means a contract providing for the use of the electric transmission facilities of one electric utility to transmit power and energy of another electric utility or other entity to a third party. Such transmission may be accomplished directly or by displacement.

§ 1717.603 RUS approval of extensions and additions.

(a) *Distribution borrowers.* Prior written approval by RUS is required for a distribution borrower to extend or add to its electric system if the extension or addition will be financed by RUS. For extensions and additions that will not be financed by RUS, approval is hereby given to distribution borrowers to make such extensions and additions to their electric systems, including the use of (or commitment to use) general funds of the borrower, except for the following:

(1) Construction, procurement, or leasing of generating facilities if the combined capacity of the facilities to be built, procured, or leased, including any future facilities included in the planned project, will exceed the lesser of 5 megawatts or 30 percent of the borrower's equity;

(2) Acquisition or leasing of existing electric facilities or systems in service whose purchase price, or capitalized value in the case of a lease, exceeds 10 percent of the borrower's net utility plant; and

(3) Construction, procurement, or leasing of electric facilities to serve a customer whose annual kWh purchases

or maximum annual kW demand in the foreseeable future is projected to exceed 25 percent of the borrower's total kWh sales or maximum kW demand in the year immediately preceding the acquisition or start of construction.

(b) *Power supply borrowers.* Prior written approval by RUS is required for a power supply borrower to extend or add to its electric system if the extension or addition will be financed by RUS. Requirements for RUS approval of extensions and additions that will not be financed by RUS are set forth in other RUS regulations.

(c) *Additional details.* Additional details relating to RUS approval of extensions and additions of a borrower's electric system financed by RUS are set forth in other RUS regulations, e.g., in 7 CFR parts 1710 and 1726.

§ 1717.604 Long-range engineering plans and construction work plans.

(a) All borrowers are required to maintain up-to-date long-range engineering plans and construction work plans (CWPs) in form and substance as set forth in 7 CFR part 1710, subpart F.

(b) Applications for financing from RUS must be supported by a CWP approved by RUS.

(c) RUS approval is not required for CWPs if the borrower does not intend to seek RUS financing for any of the facilities, equipment, or other purposes included in those plans. However, if requested by RUS, a borrower must provide an informational copy of such plans to RUS.

[60 FR 67405, Dec. 29, 1995, as amended at 86 FR 36197, July 9, 2021]

§ 1717.605 Design standards, plans and specifications, construction standards, and RUS accepted materials.

All borrowers, regardless of the source of funding, are required to comply with applicable RUS requirements with respect to system design, construction standards, and the use of RUS accepted materials. Borrowers must comply with applicable RUS requirements with respect to plans and specifications only if the construction or procurement will be financed by RUS. These requirements are set forth in other RUS regulations, especially in 7 CFR parts 1724 and 1728.

§ 1717.606 Standard forms of construction contracts, and engineering and architectural services contracts.

All borrowers are encouraged to use the standard forms of contracts promulgated by RUS for construction, materials, equipment, engineering services, and architectural services, regardless of the source of funding for such construction and services. Borrowers are required to use these standard forms of contracts only if the construction, procurement or services are financed by RUS, and only to the extent required by RUS regulations. RUS requirements with respect to such standard forms of contract are set forth in 7 CFR part 1724 for architectural and engineering services, and in 7 CFR part 1726 for construction, materials, and equipment.

§ 1717.607 Contract bidding requirements.

Borrowers must follow RUS requirements regarding bidding for contracts for construction, materials, and equipment only if financing of the construction or procurement will be provided by RUS. These requirements are set forth in 7 CFR part 1726.

§ 1717.608 RUS approval of contracts.

(a) *Construction contracts and architectural and engineering contracts.* RUS approval of contracts for construction and procurement and for architectural and engineering services is required only when such construction, procurement or services are financed by RUS. Detailed requirements regarding RUS approval of such contracts are set forth in 7 CFR part 1724 for architectural and engineering services, and in 7 CFR part 1726 for construction and procurement.

(b) *Large retail power contracts.* RUS is required to be notified of contracts to sell electric power to retail customers if the contract is for longer than 5 years and the kWh sales or kW demand for any year covered by the contract exceeds 25 percent of the borrower's total kWh sales or maximum kW demand for the year immediately preceding execution of the contract. The requirement in this paragraph (b) applies regardless of the source of funding of any plant extensions, additions or

§ 1717.609

improvements that may be involved in connection with the contract.

(c) *Power supply arrangements.* (1) Power supply contracts (including but not limited to economy energy sales and emergency power and energy sales), interconnection agreements, interchange agreements, wheeling agreements, pooling agreements, and any other similar power supply arrangements subject to approval by RUS are deemed approved if they have a term of 5 years or less. Amendments to said power supply arrangements are also deemed approved provided that the amendment does not extend the term of the arrangement for more than 5 years beyond the date of the amendment.

(2) Any amendment to a schedule or exhibit contained in any power supply arrangement subject to RUS approval, which merely has the effect of either altering a list of interconnection or delivery points or changing the value of a variable term (but not the formula itself) contained in a formula rate or charge is deemed approved.

(3) The provisions of this paragraph (c) apply regardless of whether the borrower is a seller or purchaser of the services furnished by the contracts or arrangements, and regardless of whether or not a Federal power marketing agency is a party to any of them.

(d) *System management and maintenance contracts.* RUS approval of contracts for the management and operation of a borrower's electric system or for the maintenance of the electric system is required only if such contracts cover all or substantially all of the electric system.

(e) *Other contracts.* [Reserved]

[60 FR 67405, Dec. 29, 1995, as amended at 86 FR 36197, July 9, 2021]

§ 1717.609 RUS approval of general manager.

(a) If a borrower's mortgage or loan contract grants RUS the unconditioned right to approve the employment and/or the employment contract of the general manager of the borrower's system, such approval is hereby granted provided that the borrower is in compliance with all provisions of its loan documents and any other agreements with RUS.

7 CFR Ch. XVII (1-1-24 Edition)

(b) If a borrower is in default with respect to any provision of its loan documents or any other agreement with RUS:

(1) Such borrower, if directed in writing by RUS, shall replace its general manager within 30 days after the date of such written notice; and

(2) Such borrower shall not hire a general manager without prior written approval by RUS.

§ 1717.610 RUS approval of compensation of the board of directors.

If a borrower's mortgage or loan contract requires the borrower to obtain approval from RUS for compensation provided to members of the borrower's board of directors, such requirement is hereby waived.

§ 1717.611 RUS approval of expenditures for legal, accounting, engineering, and supervisory services.

(a) If a borrower's mortgage or loan contract requires the borrower to obtain approval from RUS before incurring expenses for legal, accounting, supervisory (other than for the management and operation of the borrower's electric system, see §1717.608(d)), or other similar services, such approval is hereby granted. However, while expenditures for accounting do not require RUS approval, the selection of a certified public accountant by the borrower to prepare audited reports required by RUS remains subject to RUS approval.

(b) If a borrower's mortgage or loan contract requires the borrower to obtain approval from RUS before incurring expenses for engineering services, such approval is hereby granted if such services will not be financed by RUS. Approval requirements with respect to engineering services financed by RUS are set forth in other RUS regulations.

§ 1717.612 RUS approval of borrower's bank or other depository.

If a borrower's mortgage or loan contract gives RUS the authority to approve the bank or other depositories used by the borrower, such approval is hereby granted. However, without the prior written approval of RUS, a borrower shall not deposit funds from loans made or guaranteed by RUS in

any bank or other depository that is not insured by the Federal Deposit Insurance Corporation or other Federal agency acceptable to RUS, or in any account not so insured.

§ 1717.613 RUS approval of data processing and system control equipment.

If a borrower's mortgage or loan contract requires the borrower to obtain approval from RUS before purchasing data processing equipment or system control equipment, such approval is hereby granted if the equipment will not be financed by RUS.

§ 1717.614 Notification of rate changes.

If a distribution borrower is required by its loan documents to notify RUS in writing of proposed changes in electric rates more than 30 days prior to the effective date of such rates, the required notification period shall be 30 days. Moreover, such notification shall be required only upon the request of RUS.

§ 1717.615 Consolidations and mergers.

A distribution or power supply borrower may without the prior approval of RUS, consolidate or merge with any other corporation or convey or transfer the mortgaged property substantially as an entirety if the following conditions are met:

(a) Such consolidation, merger, conveyance or transfer shall be on such terms as shall fully preserve the lien and security of the RUS mortgage and the rights and powers of the mortgagees;

(b) The entity formed by such consolidation or with which the borrower is merged or the corporation which acquires by conveyance or transfer the mortgaged property substantially as an entirety shall execute and deliver to the mortgagees a mortgage supplemental in recordable form and containing an assumption by such successor entity of the due and punctual payment of the principal of and interest on all of the outstanding notes and the performance and observance of every covenant and condition of the mortgage;

(c) Immediately after giving effect to such transaction, no default under the

mortgage shall have occurred and be continuing;

(d) The borrower shall have delivered to the mortgagees a certificate of its general manager or other officer, in form and substance satisfactory to each of the mortgagees, which shall state that such consolidation, merger, conveyance or transfer and such supplemental mortgage comply with this section and that all conditions precedent herein provided for relating to such transaction have been complied with;

(e) The borrower shall have delivered to the mortgagees an opinion of counsel in form and substance satisfactory to each of the mortgagees; and

(f) The entity formed by such consolidation or with which the borrower is merged or the corporation which acquires by conveyance or transfer the mortgaged property substantially as an entirety shall be an entity having:

(1) Equity equal to at least 27% of its total assets on a pro forma basis after giving effect to such transaction;

(2) A pro forma TIER of not less than 1.25 and a pro forma DSC of not less than 1.25 for each of the two preceding calendar years;

(3) Net utility plant equal to or greater than 1.0 times its total long-term debt on a pro forma basis.

[60 FR 67405, Dec. 29, 1995, as amended at 65 FR 51748, Aug. 25, 2000; 67 FR 70153, Nov. 21, 2002]

§ 1717.616 Sale, lease, or transfer of capital assets.

(a) The term "disposition" in this part shall mean any sale, lease, or any other transaction in which the borrower transfers an interest in a capital asset to another entity or person.

(b) A borrower may, without the prior approval of RUS, sell, lease, transfer, or otherwise dispose of any capital asset if the following conditions are met:

(1) The borrower is not in default on any of its obligations to RUS;

(2) In the most recent year for which data is available, the borrower has met its coverage ratios as set forth in 7 CFR 1710.114(b) or other financial requirements as established by their mortgages, loan contracts, or other security agreements;

§ 1717.616

7 CFR Ch. XVII (1-1-24 Edition)

(3) The sale, lease, transfer, or disposition of assets will not reduce the borrower's existing or future requirements for energy or capacity being furnished to the borrower under any wholesale power contract which has been pledged as security to the government;

(4) Fair market value is obtained for the assets;

(5) No employee or board member of the organization has a direct personal financial interest in the disposition of the capital assets;

(6) The aggregate value of assets sold, leased, transferred, or disposed of in any 12-month period is less than 10 percent of the borrower's net utility plant prior to the disposition, not to exceed \$10,000,000.00; and

(7) If the disposition of the capital asset:

(i) Results in the borrower not retaining an interest in the asset; or

(ii) Constitutes a "capital lease" under 7 CFR 1767.15(s)(1) and the borrower does not retain the right to utilize the asset during the term of the lease, and the borrower disposes of the proceeds, less ordinary and reasonable expenses incident to such disposition, in a manner consistent with paragraph (e) of this section.

(c) The requirements for all dispositions include:

(1) The borrower shall receive fair market value for the disposition of capital assets;

(2) The sale shall be in the best interests of the creditors;

(3) All approvals required by law, by the articles of incorporation, by the bylaws of the seller, or by all the creditors, shall be obtained prior to delivery of the assets;

(4) In the case of dispositions involving exchanges or trades of a plant in place between an RUS borrower and a non-RUS borrower, the borrower must provide evidence, satisfactory to RUS, that the exchange or trade is equitable to the RUS borrower and that the plant acquired in the exchange or trade can be economically integrated into the borrower's system; and

(5) Unless the seller, as an existing RUS borrower is dissolved, its electric system after the disposition will constitute a satisfactory operating unit

and the disposition of the asset will not jeopardize the repayment of the seller's RUS loan and other loans or impair the collateral serving as security for all RUS loans. If the purchaser is a RUS borrower, the same determinations shall also be made with respect to the purchaser's operations and loan repayment.

(d) The methods of handling disposition include:

(1) Dispositions of capital assets generally shall be for cash except as otherwise approved by RUS in writing.

(2) If the disposition of the assets is not subject to RUS approval as provided in paragraph (b) of this section but the purchaser requires the government to release its lien on the assets subject to the disposition, the following shall apply:

(i) The borrower shall prepare either:

(A) A transmittal letter to RUS requesting a partial release of the lien with respect to the assets to be disposed; or

(B) RUS Form 369, Request for Approval to Sell Capital Assets, or its successor.

(ii) The partial release of lien should be prepared by the attorney for the borrower or the purchaser. It is the borrower's responsibility to assure the accuracy and legal effectiveness of a proposed release. When a partial release of lien requires execution and acknowledgement by a creditor, such execution and acknowledgment by the other creditor should be obtained by the borrower.

(iii) If the borrower elects to submit a transmittal letter to request the release of lien, the letter should contain the following information:

(A) Insert address of property or assets being sold;

(B) Name and address of purchaser;

(C) Approximate original cost or book value;

(D) The consideration the borrower is receiving in exchange for the disposition of the assets' prices;

(E) A statement that the borrower received fair market value for the property being disposed;

(F) A statement from the borrower that the net proceeds have been or will be deposited into the Construction

Fund Trustee Account or will be applied as a prepayment on all debt secured under the mortgage or other security agreement applicable to the assets being disposed, equally and proportionally,

(iv) A statement from the borrower's manager stating that there was no distribution of funds to any employees and/or board members. If any amount of funds arising from the disposition have been distributed to employees and/or board members, specific identification of the employees and/or board members, and reasons why funds were provided to those persons (if applicable) must be stated in the transmittal letter. Include borrower contact information, including email address, for questions.

(v) A statement of how or if the disposition will affect the borrower's existing customers.

(3) If the disposition does not fall within the ambit of paragraph (b) of this section so that RUS Approval is required, the following then apply:

(i) If the Federal Government is the sole lien holder of the borrower's capital assets, approval of the disposition by the Federal Government will be indicated on RUS Form 369, when returned to the seller.

(ii) If the Federal Government holds a lien jointly with supplemental lenders, joint approval for the disposition will be necessary and the borrower will forward the following:

(A) Information should be forwarded directly to RUS and one copy to all supplemental lenders;

(B) When approved by RUS, the information will be forwarded by RUS to the supplemental lenders (and a notice letter advising that RUS has forwarded this information to supplemental lenders will be issued by RUS to the borrower); and

(C) The supplemental lenders will be instructed, in the RUS transmittal memorandum, to execute the documents and return them to the seller. The supplemental lenders will also be instructed to notify RUS when the completed documents are returned to the seller.

(e) The disposition of proceeds will be handled as follows:

(1) The disposition of proceeds from the disposition of a capital asset shall be the same regardless of whether or not RUS approval of the sale is required.

(2) If the gross proceeds from the disposition of the assets total less than \$50,000 the borrower shall deposit the proceeds in its general fund account and are to be used for purposes related to the utility business as determined by the management of the borrower.

(3) Proceeds from individual dispositions of property where the gross proceeds total \$50,000 or more, should be distributed and accounted for as follows:

(i) Deposited into the Construction Fund Trustee Account. When funds are deposited into the Construction Fund Trustee Account, the borrower shall notify RUS in writing so that the budget records can be adjusted. The funds are to be used for the construction or acquisition of the borrower's utility system;

(ii) Paid to RUS and any secured supplemental lenders if the borrower has concurrent loans outstanding, by application of such funds as a prepayment on the notes of all lenders pro-rata according to the aggregate unpaid principal amount of the notes then outstanding, as designated by the noteholders, and in accordance with the borrower's loan documents;

(iii) If the borrower has no concurrent supplemental loans outstanding, applied to RUS as a payment to be applied to the note or notes issued with respect to loans made or guaranteed by RUS, or any portion of a note with respect to a loan made by RUS, and designated by the borrower or RUS; or

(iv) In the case of dispositions of SO₂ allowances, the funds from the sale of allowances should be deposited into the Construction Fund Trustee Account. If any entity prefers to deposit the funds into the General Fund Account, specific RUS approval will be given on a case-by-case basis. Accompanying any request for approval to deposit the funds into the General Fund Account should be a completed RUS Form 369 along with a summary of the anticipated disposition of funds from the General Fund Account;

(v) In the case of dispositions of equipment, materials, or scrap, all proceeds (regardless of the amount) from the sale should be deposited into the General Fund Account to be used for the purchase of other property useful in the mortgagor's utility business, not necessarily of the same kind as the property disposed, which is subject to the lien of the mortgage;

(vi) The Administrator may allow a borrower to deposit the proceeds of the disposition of the asset directly into the General Funds Account instead of the Construction Fund Trustee Account if the borrower has no 'Balance in Reserve' on its most recent loan advances 605 report and does not anticipate submitting any new loan applications to RUS. The borrower must receive written approval from RUS before it deposits any proceeds into its General Funds Account.

(f) The borrower must provide the following to RUS for any disposition of a capital asset that does not fall within the scope of paragraph (b) of this section and requires RUS approval:

(1) RUS Form 369 with original signature;

(2) If the disposition involves a condemnation, the borrower must attach a copy of the petition or complaint in the condemnation suit to the RUS Form 369. Items 10, 11, and 12 of the RUS Form 369 may be completed by referring to the attachment. Item 14 need not be completed. The RUS Form 369 and a copy of the petition or complaint in condemnation cases should be submitted to RUS promptly after the petition or complaint has been received by the borrower;

(3) If the purchaser will require the disposition of the asset be free and clear of liens, the partial release of the lien should be prepared by the attorney for the seller or purchaser. It will be the responsibility of the borrower and the borrower's attorney to ensure the accuracy and legal effectiveness of a proposed partial release of the lien;

(4) If the disposition involves real estate or plant in place, in addition to the information required for all dispositions, the seller will provide a brief description of the property being disposed and a statement explaining why the asset is no longer needed for the

borrower's system. The borrower shall also provide the following information to RUS for the disposition of real estate and plant in place:

(i) Except in condemnation cases, a statement of agreement between the seller and the purchaser on the proposed selling price. When applicable, include adjustments such as capital additions and retirements, depreciation, taxes, distribution of membership fees, deposits and contributions, prepaid and delinquent bills and accounts, insurance, assignment of easements, the proposed closing date, and other pertinent information. Generally, the closing date selected should not be less than 90 days after the date the required information is forwarded to RUS;

(ii) A complete legal description or real property supported by key and detail maps showing the location of lines or other capital assets to be disposed;

(iii) A breakdown of consumers by classification showing number, mileage, average kWh usage, and revenues for the portion of lines being disposed;

(iv) An inventory of lines on a priced assembly or record unit basis, or, in the case of facilities other than lines, a detailed breakdown of separable units and their costs;

(v) Description and estimated costs of changes, if any, which must be made in the seller's system in order to maintain satisfactory operations after the sale has been completed;

(vi) Other pertinent data such as the physical condition of the property to be disposed, a copy of the lease if facilities to be disposed of are on leased land, and the approval of applicable regulatory bodies where required;

(vii) The retail rates to be applied to the consumers on the lines being disposed (comparative rate schedules); and

(viii) If the purchaser is another RUS borrower or a borrower from a supplemental lender, a description and the estimated costs of the changes, if any, necessary to integrate the properties being acquired with the purchaser's existing system for satisfactory operations.

(5) If the purchaser is to pay the seller in installments, such information should be noted on Item 9 of the RUS Form 369. A sales agreement between

the seller and the purchaser, a note or other debt instrument in favor of the seller, and a security agreement in favor of the seller should be executed and collaterally assigned by the seller to the U.S. Government and the supplemental lenders, if applicable. The partial release of the lien will not be executed by RUS, if applicable, until the final installment payment has been received by the seller. The disposition of the proceeds from installment sales will be the same as from cash dispositions);

(6) Dispositions involving exchanges or trades of real estate or plant in place between a borrower and a non-RUS borrower will be considered on an individual case-by-case basis.

(g) Expenditures by the seller in conjunction with the dispositions of capital assets will be properly accounted for and all associated documents shall be retained for review when RUS conducts its next Loan Fund and Accounting Review.

[87 FR 73440, Nov. 30, 2022]

§ 1717.617 Limitations on distributions.

If a distribution or power supply borrower is required by its loan documents to obtain prior approval from RUS before declaring or paying any dividends, paying or determining to pay any patronage refunds, or retiring any patronage capital, or making any other cash distributions, such approval is hereby given if the following conditions are met:

(a) After giving effect to the distribution, the borrower's equity will be greater than or equal to 30 percent of its total assets;

(b) The borrower is current on all payments due on all notes secured under the mortgage;

(c) The borrower is not otherwise in default under its loan documents; and

(d) After giving effect to the distribution, the borrower's current and accrued assets will be not less than its current and accrued liabilities.

§ 1717.618 Wholesale power contracts.

(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. 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 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.

NOTE 1 TO PARAGRAPH (b): The 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.

(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)

[84 FR 32615, July 9, 2019]

Subpart N—Investments, Loans, and Guarantees by Electric Borrowers

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