

**DEPARTMENT OF AGRICULTURE****Rural Utilities Service****7 CFR Parts 1710, 1717 and 1718**

RIN 0572-AB06

**Loan Policies and Security Documents for Electric Borrowers**

AGENCY: Rural Utilities Service.

ACTION: Final rule.

**SUMMARY:** The Rural Utilities Service (RUS) hereby establishes new policies and requirements for loan contracts ordinarily required for loans made to electric distribution borrowers. The rule updates and clarifies the framework for loan contract provisions, conforms loan contract provisions with the new form of mortgage recently approved, and provides greater flexibility in addressing the financial needs of individual borrowers and the credit risks involved with individual lending situations. Conforming amendments to RUS lien accommodation requirements and to regulations regarding 110 percent borrowers, and changes to RUS operational controls, are also set forth.

**EFFECTIVE DATE:** This rule is effective January 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alex M. Cockey, Jr., Deputy Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Utilities Service, room 4037-S, Ag Box 1560, 14th Street & Independence Avenue, SW., Washington, DC 20250-1500. Telephone: 202-720-9547.

**SUPPLEMENTARY INFORMATION:** This rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This

rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

**Information Collection and Recordkeeping Requirements**

The recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), under control numbers 0572-0032 and 0572-0103.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, Rural Utilities Service, Ag Box 1522, Washington, DC 20250-1500.

**Background**

On September 29, 1994, at 59 FR 49594, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR part 1718 Loan Security Documents for Electric Borrowers, Subpart B Mortgage for Distribution Borrowers, which proposed the agency's policies and requirements for mortgages used to secure direct and guaranteed loans made to electric distribution borrowers. The final rule for the mortgage was published in the Federal Register on July 18, 1995 at 60 FR 36882. On that same day, at 60 FR 36904, RUS published a proposed rule on a model form of a new loan contract for distribution borrowers, 7 CFR part 1718 Loan Security Documents for Electric Borrowers, Subpart C Loan Contracts with Distribution Borrowers. The proposed rule also included proposed amendments to 7 CFR part 1710 and 7 CFR part 1717 Subpart R, to ensure consistency between these regulations and the new mortgage and proposed loan contract. It was also proposed that a new Subpart M Operational Controls be added to 7 CFR part 1717, which would cut back the reach of certain

operational controls contained in existing mortgages and loan contracts.

A total of 29 separate comments, representing 33 different organizations, were received on the proposed new loan contract for distribution borrowers and the associated proposed regulations. Comments were received from the National Rural Electric Cooperative Association (NRECA), CoBank, 3 state-wide and one multi-state borrower association, 17 distribution borrowers, and 10 generation and transmission borrowers (G&Ts). The individual distribution borrowers that commented were concentrated in the plains and Rocky Mountain states, with 8 in North Dakota, 3 in Colorado, 2 in Wyoming, and one each in South Dakota, Montana, Minnesota, and Iowa.

**Operational Controls**

Comments by the NRECA and one state-wide association focused primarily on the extent of operational controls retained in the loan contract and the general approach taken in the loan contract and 7 CFR part 1717 subpart M for defining RUS' rights with respect to operational controls. In the proposed loan contract some operational controls were stated in specific terms while others were stated in broad terms, with the agency relying on 7 CFR part 1717 subpart M and other regulations to define the controls in more specific terms and to narrow their reach.

NRECA and the one state-wide association recommended that (a) further cuts be made in operational controls, (b) all operational controls be stated in appropriately narrow and specific terms in the loan contract itself, rather than relying on regulations to further define and limit the controls, and (c) criteria be developed to exempt "creditworthy" borrowers from most of the remaining operational controls. Relatively few comments on operational controls were received from other commenters. Several commenters indicated their support either for individual changes in operational controls proposed by RUS or for the proposed changes in general, as well as for changes that have been made in RUS regulations over the past several years.

RUS agrees that further cuts can be made in operational controls and that some operational controls can and should be stated in more specific, narrower terms in the loan contract itself. Such changes have been made wherever possible in the final model loan contract. They are as follows:

- Section 5.15 of the proposed loan contract requiring the borrower to acquire and construct the electric system in conformance with RUS

regulations has been eliminated. RUS' more specific oversight interests regarding extensions and additions and construction standards are retained in other sections.

- Section 6.3 of the proposed loan contract granting RUS general approval rights over borrower expenditures for legal, engineering, and supervisory services has been eliminated. Certain limited approval rights, such as approval of contracts for engineering services when the construction is financed by RUS, have been retained.

- Section 6.7 of the proposed loan contract granting RUS general approval rights over the acquisition, construction, or procurement of generating facilities and existing facilities and systems has been eliminated. Limited approval authority with respect to such facilities and systems has been retained in section 6.2.

- Section 9.14 of the proposed loan contract authorizing RUS to appoint construction supervisors if construction does not proceed in accordance with the loan documents has been eliminated. RUS approval authority over general managers in cases of default has been retained.

- Paragraph (m) of section 4.1 of the proposed loan contract requiring compliance with RUS regulations as one of the conditions for the borrower to receive loan advances has been revised to require compliance with the loan contract and mortgage.

- Section 5.9 of the proposed loan contract on area coverage has been revised by eliminating the reference to "to the extent required by RUS" and in its place specifically stating the borrower's obligations and discretion with regard to contributions in aid of construction. These requirements are the same as those in existing 7 CFR part 1710.103(b).

- Section 5.14 of the proposed loan contract has been revised to eliminate the requirement that borrowers use construction plans and specifications in conformance with RUS regulations for projects funded from non-RUS sources. Thus, while distribution borrowers will continue to be required to follow RUS design and construction standards and the list of accepted materials regardless of the source of funding, plans and specifications for construction not financed by an RUS loan or loan guarantee will not be subject to agency review and approval.

- Section 5.16 of the proposed loan contract has been revised to limit to only those projects financed by RUS the requirement that borrowers use forms of contracts promulgated by RUS for

construction, procurement, and engineering and architectural services.

- Section 5.17 of the proposed loan contract has been revised to limit to only those projects financed by RUS the requirement that borrowers follow RUS contract bidding requirements.

- Section 6.2 of the proposed loan contract has been revised to limit RUS' authority to approve electric system extensions and additions to extensions and additions financed by RUS, and only 3 categories of extensions and additions funded from other sources: generating facilities, existing facilities and systems in service, and projects 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 of facilities. In addition, significance thresholds have been added to the first two categories, such that RUS approval will not be required if the generating and related facilities do not exceed the lesser of 5 megawatts or 30 percent of the borrower's equity, and if the existing facilities and systems in service do not exceed 10 percent of the borrower's net utility plant.

- Section 6.5(a) of the proposed loan contract has been revised to limit to projects financed by RUS the requirement that contracts for construction, procurement, and engineering and architectural services be subject to RUS approval.

As to the recommendation that a set of criteria be developed and included in the loan contract to exempt "creditworthy" borrowers from most remaining operational controls, further analysis and experience is needed before a reasoned decision can be made. RUS believes it would be very difficult to develop a set of criteria that would be appropriate for all borrowers and for all or most operational controls. Such an approach also raises significant issues regarding the flexibility that would be available to tailor individual loan contracts to deal with individual lending circumstances and specific credit risks. RUS believes it is only prudent to gain some actual experience with the new loan contract and mortgage before deciding whether such a significant step is warranted.

The changes to the proposed loan contract cited above go a long way toward further reducing RUS oversight over operational decisions. Those changes are in addition to the reductions in operational controls in the new distribution mortgage, the new loan contract as proposed and now codified,

and various regulations published by RUS over the past few years. Following are some examples of these reforms in operational oversight, which in most cases apply not just to borrowers that execute the new loan documents but also, pursuant to 7 CFR part 1717 subpart M, to borrowers under the existing "old" loan documents:

- Article II of the new distribution mortgage authorizes borrowers to issue additional secured debt and to refinance secured debt without mortgagee approval if certain objective tests are met.

- The new loan contract and 7 CFR 1717.604 limit RUS approval authority over borrowers' long-range engineering plans and construction work plans to construction financed by RUS.

- The new loan contract and 7 CFR 1717.608 limit RUS approval rights over power supply contracts, interconnection agreements, wheeling agreements, and pooling agreements to contracts and agreements having a term of more than 2 years. Moreover, RUS authority to approve system management and maintenance contracts is limited to contracts covering all or substantially all of the borrower's electric system.

- The new loan contract and 7 CFR 1717.609 eliminate RUS approval over general managers except for borrowers in default.

- The new loan contract and 7 CFR 1717.612 eliminate RUS approval authority over the bank used by the borrower, and require only that RUS loan funds be deposited in a bank insured by the Federal Deposit Insurance Corporation or other Federal agency acceptable to RUS.

- The new distribution mortgage and 7 CFR 1717.610 eliminate RUS approval over compensation of board members.

- Section 3.10 of the new distribution mortgage and 7 CFR 1717.615 authorize borrowers to merge or consolidate without mortgagee approval if certain objective tests are met.

- Section 3.11 of the new distribution mortgage and 7 CFR 1717.616 give borrowers greater latitude to sell, lease, or transfer mortgaged property without mortgagee approval.

- The new loan contract and 7 CFR 1717.617 reduce from 40 percent to 30 percent the level of equity a borrower must have before being subject to RUS approval of cash distributions.

- Subpart R of 7 CFR 1717 provides borrowers advance approval of lien accommodations if certain objective tests are met.

- Subpart N of 7 CFR 1717 totally exempts borrowers from RUS approval of their investments, loans and guarantees if certain objective tests are

met. Some 84 percent of distribution borrowers currently qualify for the exemption.

- 7 CFR 1717.613 exempts borrowers from obtaining RUS approval of purchases of data processing and system control equipment if the equipment is not financed by RUS.

- The new loan contract and 7 CFR 1717.614 reduce from 90 days to 30 days the prior notice to RUS required for prospective changes in the borrower's general rate structure, and require such notice only when specifically requested in writing by RUS.

- Recently published 7 CFR part 1726 carries out several reforms in RUS oversight of electric system construction policies and procedures relating to construction financed by RUS. For example:

- The requirement that RUS approve construction subcontracts was eliminated.
- The dollar thresholds for determining when competitive bidding must be used generally were raised.
- The dollar thresholds for determining when RUS approval of a contract is required were raised.
- The requirement that RUS approve contracts for headquarters facilities was eliminated.
- The requirement that RUS approve amendments to construction contracts was eliminated in certain cases.
- The number of forms that must be submitted to RUS for closing out construction contracts was reduced.

It was also recommended that the exemptions and waivers of controls set forth in 7 CFR part 1717 Subpart M be removed entirely and transferred to the new loan contract. Subpart M has been retained since it provides exemptions and waivers of controls contained in existing loan contracts and mortgages. If it were removed, only borrowers that execute the new loan contract and new mortgage would have the benefit of these changes.

As noted above, the narrower forms of RUS' approval rights and operational controls proposed in Subpart M have been adopted in the final loan contract. Furthermore, several additional provisions of the new mortgage and loan contract providing borrowers with greater latitude that were not included in proposed Subpart M have been included in final Subpart M and will be available to borrowers with the "old" forms of loan documents. For example, § 1717.615 will allow borrowers under the old loan documents to consolidate and merge without RUS approval under the same conditions as in section 3.10

of the new mortgage. Similarly, § 1717.616 will allow borrowers under the old loan documents to sell, lease or transfer capital assets without RUS approval under the same conditions as in section 3.11 of the new mortgage, if, in addition to their standard TIER and DSC requirements, they meet the Operating TIER and Operating DSC requirements of section 5.4 of the new loan contract. Also, § 1717.617 will allow borrowers under the old loan documents to pay cash distributions without RUS approval if their equity after the distribution is at least 30 percent and if the same conditions as under section 6.8 of the new loan contract are met.

#### Effect of Subsequent Rulemaking on Loan Contract Provisions

Related to the concerns expressed about those RUS approval rights and controls expressed in the loan contract in broad terms, several commenters also objected to loan contract terms being subject to amendment and modification by subsequent rulemaking, as proposed in 7 CFR 1718.100(d), even though such changes could not exceed the authority granted to RUS in the loan contract. As indicated above, many of the RUS approval rights and controls have been revised to limit them more precisely to the specific measures deemed necessary by RUS for loan security. In some cases (e.g., limitations on borrower investments and use of standard contract forms for RUS financed construction) this was not possible or only partly possible, and therefore these provisions remain subject to RUS rulemaking. To avoid any misunderstanding about the reach of § 1718.100(d), the section has been revised to clearly indicate that only those provisions of the loan contract that defer to RUS regulations or to the discretion of the Administrator or RUS, are subject to the interpretations and modifications of subsequent rulemaking, not to exceed the authority granted to the Administrator or RUS in the loan contract provision.

#### Applicability of Subpart M

Proposed § 1717.601 indicated that Subpart M would be applicable to all loan documents regardless of whether the loan documents were executed before or after the effective date of the rule. At the time the proposed loan contract was published, several operational controls in the loan contract were expressed in broad terms, while proposed Subpart M cut back the reach of those controls. As indicated above, the loan contract has been revised so that the reach of the controls in the loan

contract is the same as those in Subpart M. Thus, Subpart M in its final form affects only "old" loan documents with operational controls whose reach is broader than the corresponding provisions in Subpart M. Section 1717.601 has therefore been revised to indicate that the approvals and exceptions to controls contained in Subpart M apply only to loan documents dated prior to the effective date of Subpart M.

#### Operating TIER and DSC

The proposed rule proposed that an Operating Times Interest Earned Ratio (Operating TIER) and Operating Debt Service Coverage ratio (Operating DSC), both set at a minimum of 1.1, be added to standard TIER and standard DSC as part of the rate covenant.

NRECA did not comment on the concept or formulation of Operating TIER and Operating DSC, but recommended that the minimum level be set a 1.0. Several G&Ts and their members, concentrated in the plains and Rocky Mountain states, raised questions about the formulation or definition of the ratios, and in some cases about the level as well. One multi-state borrower association indicated support both for the formulation of the ratios and the 1.1 level.

One of the primary criticisms of the formulation of the ratios was the belief that the core business of the borrower, as reflected in the operating coverage ratios, ought to be defined to include cash received by distribution borrowers during the year from their G&T suppliers and secured lenders for patronage capital retirements. Many of these commenters also recommended inclusion of cash received from interest bearing accounts, and in some cases, from other borrower investments.

RUS agrees that cash received from the retirement of patronage capital by G&T suppliers and lenders does relate to a borrower's core utility business. The fact that a G&T or lender is capable of making such payments in cash also reflects to a substantial degree the current economic and financial performance of the G&T and lender, unlike patronage capital allocations, whose current and future value may be uncertain.

Cash received from interest income or other investments, on the other hand, may not bear much relationship to the current performance of the borrower's core utility business. At best, it may reflect only past performance which enabled the borrower to make the investments in the first place. Such income also reflects the up and down cycles of debt and equity markets and

does not reflect the current ability of the core utility business to meet expenses and generate a small margin. Such investments can provide needed capital to meet unexpected and unforeseeable costs arising from storm damage, litigation over service territory, and other unforeseeable events, but once used for these purposes it is not available to meet the expenses of the core utility business, and it should not be relied upon for that purpose in any event.

Based on these considerations, Operating TIER and Operating DSC have been modified to include with operating margins cash received from a borrower's G&T and creditors for patronage capital retirements. With such cash receipts included with operating margins, recent experience indicates that very few if any borrowers will have difficulty in meeting Operating TIER and Operating DSC set at the minimum level of 1.1. Even without including such cash receipts with operating margins, only 18 borrowers in 1993 and only 13 borrowers in 1994 that met the standard TIER and standard DSC requirements failed to meet an Operating TIER and Operating DSC of 1.1, based on the average of the best 2 out of 3 years. Data for a small sample of borrowers that might have some problems in meeting the operating ratios without including cash received from G&T suppliers and creditors indicate that including such cash will substantially improve their results. Moreover, § 1710.114 gives the Administrator the authority to set coverage ratios below the normal levels if he or she determines that the lower ratios are required to ensure the repayment of, and/or reasonable security for, RUS loans.

Several borrowers argued that the rate covenant should be placed in the mortgage rather than the loan contract, while several others and a multi-state borrower association argued that it was appropriate to place it in the loan contract. RUS had included the rate covenant in the proposed mortgage, but shifted it to the loan contract based on the recommendations of several public commenters and the difficulty of reaching agreement among the principal lenders to rural electric systems over exactly how the coverage ratios should be structured. The rate covenant has been retained in the loan contract.

Finally, a technical amendment has been made to the definitions of TIER and DSC contained in the model mortgage for distribution borrowers, to eliminate inconsistencies between those two terms as defined in the mortgage, and to achieve greater consistency among the definitions of TIER, DSC,

OTIER, and ODSC as those terms are defined in the mortgage, the loan contract, and in § 1710.2. "Taxes paid, if any, based upon income" has been eliminated from the numerator of TIER in the mortgage. This term was not included in the numerator of DSC in the mortgage, nor was it included in the numerators of either TIER or DSC as defined in § 1710.2 or in the numerators of either OTIER or ODSC in the proposed loan contract.

The definition of DSC contained in the mortgage has been amended by eliminating the phrase starting with "provided, however," which related to the calculation of principal and interest required to be paid on long-term debt in the event any debt is refinanced. A similar provision was not included in the definition of TIER in the mortgage, with respect to calculating interest required to be paid in the event any long-term debt is refinanced. Nor was such a provision included in the definitions of DSC, TIER, ODSC or OTIER in § 1710.2 or in the definitions of OTIER and ODSC in the proposed loan contract. Properly calculating the coverage ratios under the existing mortgage when some debt has been refinanced during the year has not been a problem, and RUS does not believe the deleted provision is needed.

#### Use of Standard Contract Forms

One commenter noted that proposed 7 CFR 1717.606 provides that borrowers are required to use RUS-promulgated forms of contracts for construction and for engineering and architectural services only if the construction is financed by RUS, but that 7 CFR part 1726 sets dollar limits below which RUS-promulgated forms need not be used. The commenter wondered whether § 1717.606 is intended to override the flexibility provided by the dollar thresholds in part 1726. It is not, and § 1717.606 has been revised to make that clear.

#### Limitations on Issuing Additional Secured Indebtedness

A commenter questioned whether the first condition in section 6.14 of the proposed loan contract on issuing additional secured debt without RUS approval should read "the Maturity of the Loan" or "the weighted average life of the loan" shall not exceed the weighted average of the expected remaining useful lives of the assets being financed. RUS agrees that it should read "weighted average life of the loan", and has made the change.

Also in section 6.14 of the proposed loan contract, a technical error was made in conforming the contract to the

formatting style of the Federal Register. This has been corrected.

#### System of Accounts and Outside Accountants

NRECA recommended that RUS eliminate its system of accounts and rely exclusively on the Federal Energy Regulatory Commission's (FERC) system of accounts. Aspects of this question were addressed in developing the new distribution mortgage. It was concluded that so long as there were any outstanding notes held by the government, accounting standards would be based on the RUS system of accounts. This system is exactly the same as the FERC system of accounts, except for a small number of accounts needed to account for RUS loan funds and activities specific to the cooperative form of organization. RUS believes it is essential that borrowers' financial statements be consistent from year to year and from borrower to borrower, and conform to a consistent interpretation of accounting requirements. This is necessary to meet the agency's accountability to the President and Congress for the public funds lent to borrowers.

It has been suggested that relying exclusively on FERC's system of accounts will somehow eliminate the need to obtain accounting interpretations or insulate borrowers from changes in accounting requirements and interpretations promulgated by the Financial Accounting Standards Board. This, of course, is not true, since such interpretations and changes in requirements would continue regardless of the system of accounts followed.

NRECA also recommended that RUS rely exclusively on outside accountants, apparently meaning that RUS rely in particular on outside accountants to do audits of RUS loan fund accounts. RUS believes that it is important to retain agency accountants to oversee the system of accounts, render timely responses to borrowers' accounting questions, and to continue to audit RUS loan fund accounts. Based on discussions with individual borrowers, NRECA, and other borrower organizations, RUS is proceeding with certain changes in our oversight of the system of accounts to respond to problems and concerns that have been raised, and to provide more timely responses to borrower inquiries.

#### Immaterial Violations of Requirements

Several commenters argued that borrowers should not be held to an absolute standard in meeting certain requirements, since it would be very

difficult for borrowers to ensure that there will be no minor violations of requirements which have no material adverse effect on the interests of RUS. RUS agrees that minor violations of certain requirements, which in the agency's judgment will have no material adverse effect on the agency's interests, should not represent a default. This has been reflected in changes made to proposed sections 5.2(b), 5.6, 5.10, and 6.15.

#### Borrowers Exempt From Certain Controls Under Section 306E of the Act

Section 306E of the Rural Electrification Act directed RUS to issue interim final regulations to minimize approval rights and restrictions imposed on the operations of electric borrowers whose net worth exceeds 110 percent of the outstanding loans made or guaranteed by RUS, and to offer without delay to share the government's lien on the borrower's system or subordinate its lien on the property financed by a private lender. In issuing the regulations, RUS is authorized to establish requirements, guided by the practices of private lenders with respect to similar credit risks, to ensure that the security, including loan repayment, of the government's loans will remain reasonably adequate.

RUS issued the interim final regulations on January 28, 1994 at 59 FR 3982. Comments on the regulations were received from NRECA, the National Rural Utilities Cooperative Finance Corporation, and 6 borrowers. In general, the comments argued for greater relaxation of operational controls than in the interim final rule.

When the proposed loan contract and final new mortgage for distribution borrowers was published in July of this year, RUS indicated that comments on these documents as well as on the interim final rule would be considered in making revisions to the interim final rule relating to so-called 110 percent borrowers. As indicated above, the new loan contract has been substantially revised to reduce the number and breadth of operational controls. These controls are intended to apply to a fairly broad spectrum of credit risks, and as such RUS believes they reflect the types of controls that some private lenders would require for a similar spectrum of credit risks.

The provisions of the new mortgage and new loan contract, and 7 CFR part 1717 subpart M, in many cases provide greater latitude to borrowers than established originally in 7 CFR 1710.7 for 110 percent borrowers. Therefore, 1710.7 has been revised to reflect the

greater latitude provided by the new loan documents and Subpart M.

In assessing credit risks, private lenders look at a large number of factors relating to the size and quality of the financial assets of a borrower; the borrower's new worth and debt position; current and past financial performance; the strength and stability of the borrower's markets and the borrower's position in those markets; market diversity, concentrations, and growth or decline; the borrower's cost competitiveness and investment in new technologies and system modernization; commitments to research and development and innovation; experience and structure of management; internal cost and financial controls; and a number of other factors. When considering the adequacy of net worth, most private lenders look at the quality of the borrower's assets and the ratio of net worth to total debt, rather than only the long-term debt owed to the lender. It is RUS' judgment that the fact that a borrower has net worth equal to 110 percent of only the government's outstanding long-term loans does not justify further relaxation of operational controls over and above those provided in the new loan documents and regulations based on prudent private lending practices for a similar spectrum of credit risks. RUS is willing to consider, on a case by case basis, alternative loan document provisions for the better quality credits.

#### List of Subjects

##### 7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Rural areas.

##### 7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric utilities, Intergovernmental relations, Investments, Lien accommodation, Lien subordination, Loan programs—energy, Operational controls, Reporting and recordkeeping requirements, Rural areas.

##### 7 CFR Part 1718

Administrative practice and procedure, Electric power, Electric utilities, Loan programs—energy, Loan security documents, Reporting and recordkeeping requirements, Rural areas.

For the reasons explained in the preamble and under the authority of 7 U.S.C. 901 *et seq.*, RUS amends 7 CFR Chapter XVII as follows:

### PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Public Law 99–591, 100 Stat. 3341–16; Public Law 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. Section 1710.2 is amended in paragraph (a) by revising the definition for "Tier" and by adding the new definitions in alphabetical order to read as follows:

#### § 1710.2 Definitions and rules of construction.

(a) *Definitions.* \* \* \*

\* \* \* \* \*  
DSC means Debt Service Coverage of the borrower calculated as:

$$DSC = \frac{A + B + C}{D}$$

Where:

All amounts are for the same calendar year and are based on the RUS system of accounts and RUS Forms 7 and 12. References to line numbers in the RUS Forms 7 and 12 refer to the June 1994 version of RUS Form 7 and the December 1993 version of RUS Form 12, and will apply to corresponding information in future versions of the forms;

A=Depreciation and Amortization Expense of the borrower, which equals Part A, Line 12 of RUS Form 7 (distribution borrowers) or Section A, Line 20 of RUS Form 12a (power supply borrowers);

B=Interest expense on total long-term debt of the borrower, which equals Part A, Line 15 of RUS Form 7 or Section A, Line 22 of RUS Form 12a, except that interest expense shall be increased by 1/3 of the amount, if any, by which restricted rentals of the borrower (Part M, Line 3 of RUS Form 7 or Section K, Line 4 of RUS Form 12h) exceed 2 percent of the borrower's equity (RUS Form 7, Part C, Line 36 [Total Margins & Equities] less Line 26 [Regulatory Assets] or RUS Form 12a, Section B, Line 38 [Total Margins & Equities] less Line 28 [Regulatory Assets]);

C=Patronage Capital or Margins of the borrower, which equals Part A, Line 28 of RUS Form 7 or Section A, Line 35 of RUS Form 12a; and

D=Debt Service Billed (RUS + other), which equals the sum of all payments of principal and interest required to be made on account of total long-term debt of the borrower during the calendar year, plus 1/3 of the amount, if any, by which restricted rentals of the borrower (Part M, Line 3 of RUS Form 7 or Section K, Line 4 of RUS Form 12h) exceed 2 percent of the borrower's equity (RUS Form 7, Part C, Line 36 [Total Margins & Equities] less Line 26 [Regulatory Assets] or RUS Form 12a, Section B, Line 38 [Total Margins & Equities] less Line 28 [Regulatory Assets]);

\* \* \* \* \*

*Electric system* means all of the borrower's interests in all electric

production, transmission, distribution, conservation, load management, general plant and other related facilities, equipment or property and in any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, fabrication or processing of fossil, nuclear, or other fuel or in any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the borrower's generating plants, including any interest or participation of the borrower in any such facilities or any rights to the output or capacity thereof, together with all lands, easements, rights-of-way, other works, property, structures, contract rights and other tangible and intangible assets of the borrower in each case used or useful in such electric system.

\* \* \* \* \*

ODSC means Operating Debt Service Coverage of the electric system calculated as:

$$ODSC = \frac{A + B + C}{D}$$

Where:

All amounts are for the same calendar year and are based on the RUS system of accounts and RUS Form 7. References to line numbers in the RUS Form 7 refer to the June 1994 version of the form, and will apply to corresponding information in future versions of the form;

A=Depreciation and Amortization Expense of the electric system, which usually equals Part A, Line 12 of RUS Form 7;

B=Interest expense on total long-term debt of the electric system, which usually equals Part A, Line 15 of RUS Form 7, except that such interest expense shall be increased by 1/3 of the amount, if any, by which restricted rentals of the electric system (usually Part M, Line 3 of RUS Form 7) exceed 2 percent of the borrower's equity (RUS Form 7, Part C, Line 36 [Total Margins & Equities] less Line 26 [Regulatory Assets]);

C=Patronage Capital & Operating Margins of the electric system, which usually equals Part A, Line 20 of RUS Form 7, plus cash received from the retirement of patronage capital by suppliers of electric power and by lenders for credit extended for the Electric System; and

D=Debt Service Billed (RUS + other), which equals the sum of all payments of principal and interest required to be made on account of total long-term debt of the electric system during the calendar year, plus 1/3 of the amount, if any, by which restricted rentals of the Electric System (usually Part M, Line 3 of RUS Form 7) exceed 2 percent of the borrower's equity (RUS Form 7, Part C, Line 36 [Total Margins & Equities] less Line 26 [Regulatory Assets]).

\* \* \* \* \*

OTIER means Operating Times Interest Earned Ratio of the electric system calculated as:

$$OTIER = \frac{A + B}{A}$$

Where:

All amounts are for the same calendar year and are based on the RUS system of accounts and RUS Form 7. References to line numbers in the RUS Form 7 refer to the June 1994 version of the form, and will apply to corresponding information in future versions of the form;

A=Interest expense on total long-term debt of the electric system, which usually equals Part A, Line 15 of RUS Form 7, except that such interest expense shall be increased by 1/3 of the amount, if any, by which restricted rentals of the electric system (usually Part M, Line 3 of RUS Form 7) exceed 2 percent of the borrower's equity (RUS Form 7, Part C, Line 36 [Total Margins & Equities] less Line 26 [Regulatory Assets]); and

B=Patronage Capital & Operating Margins of the electric system, which usually equals Part A, Line 20 of RUS Form 7, plus cash received from the retirement of patronage capital by suppliers of electric power and by lenders for credit extended for the Electric System.

\* \* \* \* \*

TIER means Times Interest Earned Ratio of the borrower calculated as:

$$TIER = \frac{A + B}{A}$$

Where:

All amounts are for the same calendar year and are based on the RUS system of accounts and RUS Forms 7 and 12. References to line numbers in the RUS Forms 7 and 12 refer to the June 1994 version of RUS Form 7 and the December 1993 version of RUS Form 12, and will apply to corresponding information in future versions of the forms;

A=Interest expense on total long-term debt of the borrower, which equals Part A, Line 15 of RUS Form 7 or Section A, Line 22 of RUS Form 12a, except that interest expense shall be increased by 1/3 of the amount, if any, by which restricted rentals of the borrower (Part M, Line 3 of RUS Form 7 or Section K, Line 4 of RUS Form 12h) exceed 2 percent of the borrower's equity (RUS Form 7, Part C, Line 36 [Total Margins & Equities] less Line 26 [Regulatory Assets] or RUS Form 12a, Section B, Line 38 [Total Margins & Equities] less Line 28 [Regulatory Assets]); and

B=Patronage Capital or Margins of the borrower, which equals Part A, Line 28 of RUS Form 7 or Section A, Line 35 of RUS Form 12a.

\* \* \* \* \*

3. Section 1710.7 is revised as follows:

**§ 1710.7 Exemptions of RUS operational controls under section 306E of the RE Act.**

(a) *General policy.* (1) Section 306E of the RE Act directs the Administrator to issue interim final regulations to minimize approval rights, requirements, restrictions, and prohibitions imposed on the operations of electric borrowers whose net worth exceeds 110 percent of

the outstanding loans made or guaranteed to the borrower by RUS. The section also directs the Administrator, when requested by a private lender providing financing for capital investments by such borrowers, to offer, without delay, to share the government's lien on the borrowers' systems or subordinate the government's lien on the property financed by the private lender.

(2) In issuing the regulations, the Administrator is authorized to establish requirements, guided by the practices of private lenders with respect to similar credit risks, to ensure that the security, including the assurance of repayment, for loans made or guaranteed by RUS will remain reasonably adequate. If the regulations are not issued within 180 days of enactment of section 306E, the Administrator may not, until the regulations are issued, require prior approval of, or establish any requirement, restriction, or prohibition, with respect to the operations of any electric borrower that meets the 110 percent ratio.

(3) Nothing in section 306E limits the authority of the Administrator to establish terms and conditions on the use of funds from loans made or guaranteed by RUS, to establish loan feasibility criteria and other requirements for the approval of RUS loans or loan guarantees, such as those set forth in this part, or to take any other action specifically authorized by law.

(4) This section addresses the application of section 306E of the RE Act to RUS operational controls and other requirements that apply in general to RUS borrowers. The application of section 306E to lien accommodations and subordinations is set forth in 7 CFR 1717.860 and 1717.904.

(5) The exemptions granted by this section, 7 CFR 1717.860, and 7 CFR 1717.904 apply only to RUS controls and approval rights. They do not affect the controls and approval rights of other co-mortgagees under the RUS mortgage.

(6) For purposes of this section, the terms "default," "financed or funded by RUS," "interchange agreement," "interconnection agreement," "loan documents," "pooling agreement," "power supply contract," and "wheeling agreement" have the meanings as set forth in 7 CFR 1717.602.

(b) *Determination of ratio.* The following principles and procedures will apply to the calculation of net worth as a ratio, expressed as a percent, to the outstanding balance of all loans made or guaranteed to the borrower by RUS, hereinafter called the borrower's "net worth to RUS debt ratio", or simply "the ratio":

(1) For purposes of determining whether a borrower is exempt from approvals, requirements, restrictions, or prohibitions imposed by RUS with respect to borrower operations, i.e., "operational controls," the ratio normally will be based on data as of December 31. Net worth will be based on the year-end financial and statistical reports submitted by borrowers to RUS, and outstanding loans made or guaranteed by RUS will be based on RUS's records. The financial and statistical reports (Form 7 for distribution borrowers and Form 12a for power supply borrowers) are subject to RUS review and revision, and they must comply with RUS's system of accounts and accounting principles set forth in 7 CFR part 1767. Since sinking fund depreciation is not approved under 7 CFR part 1767, net worth for borrowers using sinking fund depreciation will be calculated as if the borrower had been using straight line depreciation;

(2) Net worth will be calculated by taking total margins and equities (from Part C of RUS Form 7 for distribution borrowers, or Section B of RUS Form 12a for power supply borrowers) and subtracting assets properly recordable in account 182.2, Unrecovered Plant and Regulatory Study Costs, and account 182.3, Other Regulatory Assets, as defined in 7 CFR part 1767; and

(3) By no later than May 1 of each year, RUS will notify each borrower in writing of its ratio as of December 31 of the preceding year. If a borrower's net worth to RUS debt ratio exceeds 110 percent based on the year-end data, the borrower will be exempt from the operational controls exempted under paragraph (c) of this section until subsequently notified in writing by RUS that it is no longer exempt.

(c) *Borrower operations exempted from RUS controls.* Borrowers who are notified by RUS in writing that their net worth to RUS debt ratio exceeds 110 percent are exempted from the operational controls of the RUS mortgage and loan contract listed in this paragraph. These controls, which are implemented through RUS regulations and other documents, are as follows:

(1) *RUS approval of extensions and additions.* RUS approval of extensions and additions to borrowers' electric systems, except for the following:

(i) Extensions and additions financed by RUS;

(ii) Construction, procurement, or leasing of generating facilities, regardless of the source of funding, if the combined capacity of the facilities to be built, procured, or leased, including any future facilities included in the planned project, will exceed 25

megawatts in the case of power supply borrowers, or the lesser of 5 megawatts or 30 percent of the borrower's equity in the case of distribution borrowers;

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

(iv) Construction, procurement, or leasing of electric facilities, regardless of the source of funding, 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;

(2) *Long-range engineering plans and construction work plans.* RUS approval of long-range engineering plans and 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;

(3) *Plans and specifications.* RUS approval of plans and specifications for construction not financed by RUS;

(4) *Standard forms of construction contracts, and engineering and architectural services contracts.* RUS requirements to use standard forms of contracts for construction, procurement, engineering services, and architectural services, if the construction, procurement or services are not financed by RUS. To be eligible for this waiver the contracts used must not contain any provisions that prohibit or restrict the assignment of the contracts to the government upon the exercise by RUS of its remedies under security instruments securing loans made or guaranteed by RUS;

(5) *Contract bidding requirements.* RUS requirements regarding the competitive bidding of construction contracts, if the construction is not financed by RUS;

(6) *RUS approval of contracts.* (i) Construction contracts and architectural and engineering contracts. RUS approval of contracts for construction and procurement and for architectural and engineering services, if such construction, procurement or services are not financed by RUS.

(ii) *Large retail power contracts.* RUS approval of contracts to sell electric power to retail customers except when the contract is for longer than 2 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. This exemption applies regardless of the source of funding of any plant extensions, additions or improvements that may be involved in connection with the contract.

(iii) *Power supply arrangements.* (A) RUS approval of 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, if they have a term of 2 years or less. Amendments to said power supply arrangements are also exempted from RUS approval provided that the amendment does not extend the term of the arrangement for more than 2 years beyond the date of the amendment.

(B) Any amendment to a schedule or exhibit contained in any power supply arrangement subject to RUS approval that 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 formulary rate or charge.

(C) The exemptions under this paragraph (c)(6)(iii) 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.

(iv) *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, if such contracts do not cover all or substantially all of the electric system.

(v) *Other contracts.* [Reserved];

(7) *RUS approval of general manager.* RUS approval of the selection of a borrower's manager and employment contract, provided that the borrower is not in default under its loan documents or any other agreement with RUS. Nothing herein shall limit the right of RUS under the loan documents to request termination of the employment of a manager in the event of a default by the borrower;

(8) *Board of directors.* RUS approval of compensation of a borrower's board of directors;

(9) *Certain expenditures.* (i) RUS approval of expenditures for legal, accounting, and supervisory services by

a borrower. 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.

(ii) RUS approval of expenditures for engineering services by a borrower, if such engineering services will not be financed by RUS;

(10) *Banks.* RUS approval of banks or other depositories used by a borrower. 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.

(11) *Certain equipment.* RUS approval of the purchase of data processing equipment and system control equipment by a borrower, if the equipment is not financed by RUS;

(12) *Notification of rate changes.* Requirement that distribution borrowers notify RUS in writing of proposed changes in electric rates 90 days prior to the effective date of such rates. Instead, the required notification period shall be 30 days, and such notification shall be required only if requested by RUS;

(13) *Consolidations and mergers.* RUS approval of mergers and consolidations, and conveyances or transfers of the mortgaged property substantially as an entirety, if the following conditions are met:

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

(ii) 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;

(iii) Immediately after giving effect to such transaction, no default under the mortgage shall have occurred and be continuing;

(iv) 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;

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

(vi) 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:

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

(B) Having a pro forma TIER of not less than 1.50 and a pro forma DSC of not less than 1.25 for each of the two preceding calendar years; and

(C) Having net utility plant equal to or greater than 1.0 times its total long-term debt on a pro forma basis;

(14) *Sale, lease, or transfer of capital assets.* RUS approval for a distribution borrower to sell, lease, or transfer capital assets, if the following conditions are met:

(i) The borrower is not in default;

(ii) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.5, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1, in each case based on the average or the best 2 out of the 3 most recent years;

(iii) The sale, lease, or transfer 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;

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

(v) The aggregate value of assets sold, leased, or transferred in any 12-month period is less than 10 percent of the borrower's net utility plant prior to the transaction;

(vi) The proceeds of such sale, lease, or transfer, less ordinary and reasonable expenses incident to such transaction, are immediately:

(A) Applied as a prepayment of all notes secured under the mortgage equally and ratably;

(B) In the case of dispositions of equipment, materials or scrap, applied to the purchase of other property useful in the borrower's utility business; or

(C) Applied to the acquisition of construction of utility plant; and

(vii) If the borrower has an RUS-approved wholesale power contract

with a power supply borrower (seller), the circumstances of the sale, lease or transfer of capital assets conform with the conditions in such contract under which the seller may not withhold its consent to the sale, lease or transfer;

(15) *Limitations on distributions.* RUS approval for a borrower to declare or pay dividends, pay or determine to pay patronage refunds, retire patronage capital, or make any other cash distributions, if the following conditions are met:

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

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

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

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

(d) *RUS requirements and operational controls not exempted.* All requirements and operational controls contained in the RUS mortgage and loan contract, or otherwise imposed on borrowers pursuant to statute or regulation, that are not specifically listed in paragraph (c) of this section are not exempted and shall continue to apply according to their terms. Examples of such requirements and controls not exempted are listed in this paragraph for the convenience of the public. This list is not exhaustive, and the absence of a requirement or control from this list in no way means that the requirement or control has been exempted:

(1) Requirements and operational controls contained in the RUS mortgage or loan contract that are necessary to ensure that the security for loans made or guaranteed by RUS is reasonably adequate and that the loans will be repaid, or to accomplish other fundamental purposes of the RE Act. Some of these also represent terms and conditions with respect to the use by borrowers of the proceeds of loans made or guaranteed by RUS. Together, these controls include, but are not limited to, the following:

(i) Area coverage requirements set forth in the loan contract and in § 1710.103;

(ii) Requirement that certain borrowers maintain, on an ongoing basis, a power requirements study and a power requirements study work plan, as set forth in §§ 1710.201 and 1710.202;

(iii) Requirement that borrowers follow RUS construction standards and use RUS accepted materials, as set forth

in § 1710.41, § 1710.45, and 7 CFR part 1728;

(iv) Requirement that borrowers maintain, on an ongoing basis, a long-range engineering plan and a construction work plan, as set forth in § 1710.250(b);

(v) Requirement that borrowers set rates for electric service sufficient to maintain certain coverage ratios, as set forth in § 1710.114;

(vi) Certain RUS approvals of retirements of capital credits in excess of amounts specifically authorized in the mortgage;

(vii) RUS approval of borrower investments, loans, guarantees, and other obligations under 7 CFR part 1717, subpart N;

(viii) RUS requirements on accounting, auditing, irregularities, financial reporting, and access to books and records;

(ix) Requirement that borrowers record the mortgage and mortgage amendments;

(x) Requirement that the mortgagor maintain and preserve the priority lien of the mortgage and defend title to the mortgaged property;

(xi) Requirements on maintenance and repair of the mortgaged property;

(xii) Requirements on insurance of the mortgaged property; and

(xiii) Certain RUS approvals of borrower mergers and consolidations; and

(2) Requirements imposed on borrowers pursuant to statute or regulation and not specifically exempted by paragraph (c) of this section. See, for example, §§ 1710.122 through 1710.127.

(e) *Rescission of exemptions if borrower defaults.* If a borrower is in default with respect to any requirement of its mortgage, loan contract with RUS, or any other agreement with RUS that has not been exempted pursuant to paragraph (c) of this section or other RUS regulations, upon written notice to the borrower RUS may rescind all or any part of the exemptions granted pursuant to paragraph (c) of this section or other RUS regulations. The reinstated requirements and controls will remain in effect until RUS determines that they are no longer needed to help ensure that the security, including the assurance of repayment, for loans made or guaranteed by RUS will remain reasonably adequate.

(f) *Reinstated controls.* If RUS controls are reinstated because the borrower defaults or its net worth falls below 110 percent of RUS debt, such controls and approval rights will apply to all applicable subsequent actions of the borrower, including without limitation

the amendment of contracts that the borrower entered into while eligible for an exemption under this section.

#### § 1710.103 [Amended]

4. Section 1710.103 is amended by removing in paragraph (b) the sentence "The loan contract shall contain provisions to this effect."

5. Section 1710.114 is revised to read as follows:

#### § 1710.114 TIER, DSC, OTIER and ODSC requirements.

(a) *General.* Requirements for coverage ratios are set forth in the borrower's mortgage, loan contract, or other contractual agreements with RUS. The requirements set forth in this section apply to borrowers that receive a loan approved by RUS on or after February 10, 1992. Nothing in this section, however, shall reduce the coverage ratio requirements of a borrower that has contractually agreed with RUS to a higher requirement.

(b) *Coverage ratios.* (1) Distribution borrowers. The minimum coverage ratios required of distribution borrowers, whether applied on an annual or average basis, are a TIER of 1.50, DSC of 1.25, OTIER of 1.1, and ODSC of 1.1. OTIER and ODSC shall apply to distribution borrowers that receive a loan approved by RUS on or after January 29, 1996.

(2) The minimum coverage ratios required of power supply borrowers, whether applied on an annual or average basis, are a TIER of 1.05 and DSC of 1.00.

(3) When new loan contracts are executed, the Administrator may, case by case, increase the coverage ratios of distribution and power supply borrowers above the levels cited in paragraphs (b)(1) and (b)(2), respectively, of this section if the Administrator determines that the higher ratios are required to ensure reasonable security for and/or the repayment of loans made or guaranteed by RUS. Also, the Administrator may, case by case, reduce said coverage ratios if the Administrator determines that the lower ratios are required to ensure reasonable security for and/or the repayment of loans made or guaranteed by RUS.

(4) If a distribution borrower has in service or under construction a substantial amount of generation and associated transmission plant financed at a cost of capital substantially higher than the cost of funds under section 305 of the RE Act, then the Administrator may establish, in his or her sole discretion, blended levels for TIER, DSC, OTIER, and ODSC based on the

respective shares of total utility plant represented by said generation and associated transmission plant and by distribution and other transmission plant.

(c) *Requirements for loan feasibility.* To be eligible for a loan, borrowers must demonstrate to RUS that they will, on a pro forma basis, earn the coverage ratios required by paragraph (b) of this section in each of the years included in the borrower's long-range financial forecast prepared in support of its loan application, as set forth in subpart G of this part.

(d) *Requirements for maintenance of coverage ratios.* (1) *Prospective requirement.* Borrowers must design and implement rates for utility service to provide sufficient revenue (along with other revenue available to the borrower in the case of TIER and DSC) to pay all fixed and variable expenses, to provide and maintain reasonable working capital and to maintain on an annual basis the coverage ratios required by paragraph (b) of this section. Rates must be designed and implemented to produce at least enough revenue to meet the requirements of this paragraph under the assumption that average weather conditions in the borrower's service territory will prevail in the future, including average system damage and outages due to weather and the related costs. Failure to design and implement rates pursuant to the requirements of this paragraph shall be an event of default upon notice provided in accordance with the terms of the borrower's mortgage or loan contract.

(2) *Retrospective requirement.* The average coverage ratios achieved by a borrower in the 2 best years out of the 3 most recent calendar years must meet the levels required by paragraph (b) of this section. If a borrower fails to achieve these average levels, it must promptly notify RUS in writing. Within 30 days of such notification or of the borrower being notified in writing by RUS, whichever is earlier, the borrower, in consultation with RUS, must provide a written plan satisfactory to RUS setting forth the actions that will be taken to achieve the required coverage ratios on a timely basis. Failure to develop and implement a plan satisfactory to RUS shall be an event of default upon notice provided in accordance with the terms of the borrower's mortgage or loan contract.

(3) *Fixed and variable expenses,* as used in this section, include but are not limited to: all taxes, depreciation, maintenance expenses, and the cost of electric power and energy and other operating expenses of the electric

system, including all obligations under the wholesale power contract, all lease payments when due, and all principal and interest payments on outstanding indebtedness when due.

(e) *Requirements for advance of funds.* (1) If a borrower applying for a loan has failed to achieve the coverage ratios required by paragraph (b) of this section during the latest 12 month period immediately preceding approval of the loan, or if any of the borrower's average coverage ratios for the 2 best years out of the most recent 3 calendar years were below the levels required in paragraph (b) of this section, RUS may withhold the advance of loan funds until the borrower has adopted an annual financial plan and operating budget satisfactory to RUS and taken such other action as RUS may require to demonstrate that the required coverage ratios will be maintained in the future and that the loan will be repaid with interest within the time agreed. Such other action may include, for example, increasing system operating efficiency and reducing costs or adopting a rate design that will achieve the required coverage ratios, and either placing such rates into effect or taking action to obtain regulatory authority approval of such rates. If failure to achieve the coverage ratios is due to unusual events beyond the control of the borrower, such as unusual weather, system outage due to a storm or regulatory delay in approving rate increases, then the Administrator may waive the requirement that the borrower take the remedial actions set forth in this paragraph, provided that such waiver will not threaten loan feasibility.

(2) With respect to any outstanding loan approved by RUS on or after February 10, 1992, if, based on actual or projected financial performance of the borrower, RUS determines that the borrower may not achieve its required coverage ratios in the current or future years, RUS may withhold the advance of loan funds until the borrower has taken remedial action satisfactory to RUS.

6. Section 1710.250 is amended by revising paragraphs (b) and (e) and adding a new paragraph (k) to read as follows:

**§ 1710.250 General.**

\* \* \* \* \*

(b) Generally, all borrowers are required to maintain up-to-date long range engineering plans approved by their boards of directors. Current CWP's approved by the borrower's board must also be developed and maintained for distribution and transmission facilities and for improvements and replacements of generation facilities. All such

distribution, transmission or generation facilities must be included in the respective CWP's regardless of the source of financing.

\* \* \* \* \*

(e) Applications for a loan or loan guarantee from RUS (new loans or budget reclassifications) must be supported by a current CWP approved by both the borrower's board of directors and RUS. RUS approval of these plans relates only to the facilities, equipment, and other purposes to be financed by RUS, and means that the plans provide an adequate basis from a planning and engineering standpoint to support RUS financing. RUS approval of the plans does not mean that RUS approves of the facilities, equipment, or other purposes for which the borrower is not seeking RUS financing. If RUS disagrees with a borrower's estimate of the cost of one or more facilities for which RUS financing is sought, RUS may adjust the estimate after consulting with the borrower and explaining the reasons for the adjustment.

\* \* \* \* \*

(k) Upon written request from a borrower, RUS may waive in writing certain requirements with respect to long-range engineering plans and CWP's if RUS determines that such requirements impose a substantial burden on the borrower and that waiving the requirements will not significantly affect the accomplishment of the objectives of this subpart. For example, if a borrower's load is forecast to remain constant or decline during the planning period, RUS may waive those portions of the plans that relate to load growth.

**§ 1710.251 [Amended]**

7. Section 1710.251 is amended by removing the words "and RUS" from the first sentence of paragraph (a).

**§ 1710.252 [Amended]**

8. Section 1710.252 is amended by removing the words "and RUS" from the first sentence of paragraph (a).

**PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS**

9. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*), unless otherwise noted.

10. Subpart M is added to part 1717 to read as follows:

**Subpart M—Operational Controls**

Sec.

- 1717.600 General.
- 1717.601 Applicability.
- 1717.602 Definitions.
- 1717.603 RUS approval of extensions and additions.
- 1717.604 Long-range engineering plans and construction work plans.
- 1717.605 Design standards, plans and specifications, construction standards, and RUS accepted materials.
- 1717.606 Standard forms of construction contracts, and engineering and architectural services contracts.
- 1717.607 Contract bidding requirements.
- 1717.608 RUS approval of contracts.
- 1717.609 RUS approval of general manager.
- 1717.610 RUS approval of compensation of the board of directors.
- 1717.611 RUS approval of expenditures for legal, accounting, engineering, and supervisory services.
- 1717.612 RUS approval of borrower's bank or other depository.
- 1717.613 RUS approval of data processing and system control equipment.
- 1717.614 Notification of rate changes.
- 1717.615 Consolidations and mergers.
- 1717.616 Sale, lease, or transfer of capital assets.
- 1717.617 Limitations on distributions.

**Subpart M—Operational Controls**

**§ 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 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.

*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 long-range engineering plan and CWP approved by RUS.

(c) RUS approval is not required for long-range engineering plans and 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.

**§ 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 approval of contracts to sell electric power to retail customers is required only if the contract is for longer than 2 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. This requirement applies regardless of the source of funding of any plant extensions, additions or 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 2 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 2 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]

**§ 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.

(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 1.50 and a pro forma DSC of not less than 1.25 for each of the two preceding calendar years; and
- (3) Net utility plant equal to or greater than 1.0 times its total long-term debt on a pro forma basis.

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

A distribution borrower may without the prior approval of RUS sell, lease, or transfer any capital asset if the following conditions are met:

- (a) The borrower is not in default;
- (b) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.5, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1, in each case based on the average or the best 2 out of the 3 most recent years;
- (c) The sale, lease, or transfer 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;
- (d) Fair market value is obtained for the assets;
- (e) The aggregate value of assets sold, leased, or transferred in any 12-month period is less than 10 percent of the borrower's net utility plant prior to the transaction;
- (f) The proceeds of such sale, lease, or transfer, less ordinary and reasonable expenses incident to such transaction, are immediately:
  - (1) Applied as a prepayment of all notes secured under the mortgage equally and ratably;

(2) In the case of dispositions of equipment, materials or scrap, applied to the purchase of other property useful in the borrower's utility business; or

(3) Applied to the acquisition of construction of utility plant.

**§ 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.

11. Section 1717.850 is amended by revising paragraphs (a), (b), (f), (g)(1)(ii), (h)(2), and (m) to read as follows:

**§ 1717.850 General.**

(a) *Scope and applicability.* (1) This subpart R establishes policies and procedures for the accommodation, subordination or release of the Government's lien on borrower assets, including approvals of supporting documents and related loan security documents, in connection with 100 percent private sector financing of facilities and other purposes. Policies and procedures regarding lien accommodations for concurrent supplemental financing required in connection with an RUS insured loan are set forth in subpart S of this part.

(2) This subpart and subpart S of this part apply only to debt to be secured under the mortgage, the issuance of which is subject to the approval of the Rural Utilities Service (RUS) by the terms of the borrower's mortgage with respect to the issuance of additional debt or the refinancing or refunding of debt. If RUS approval is not required under such terms of the mortgage itself, a lien accommodation is not required. If the loan contract or other agreement between the borrower and RUS requires RUS approval with respect to the issuance of debt or making additions to or extensions of the borrower's system, such required approvals do not by

themselves result in the need for a lien accommodation.

(b) *Overall policy.* (1) Consistent with prudent lending practices, the maintenance of adequate security for RUS's loans, and the objectives of the Rural Electrification Act (RE Act), it is the policy of RUS to provide effective and timely assistance to borrowers in obtaining financing from other lenders by sharing RUS's lien on a borrower's assets in order to finance electric facilities, equipment and systems, and certain other types of community infrastructure. In certain circumstances, RUS may facilitate the financing of such assets by subordinating its lien on specific assets financed by other lenders.

(2) It is also the policy of RUS to provide effective and timely assistance to borrowers in promoting rural development by subordinating RUS's lien for financially sound rural development investments under the conditions set forth in § 1717.858.

\* \* \* \* \*

(f) *Safety and performance standards.* (1) To be eligible for a lien accommodation or subordination from RUS, a borrower must comply with RUS standards regarding facility and system planning and design, construction, procurement, and the use of materials accepted by RUS, as required by the borrower's mortgage, loan contract, or other agreement with RUS, and as further specified in RUS regulations.

(2) RUS "Buy American" requirements shall not apply.

(g) \* \* \*  
(1) \* \* \*

(ii) Obtain a certification from a registered professional engineer, for each year during which funds from the separate subaccount are utilized by the borrower, that all materials and equipment purchased and facilities constructed during the year from said funds comply with RUS safety and performance standards, as required by paragraph (f) of this section, and are included in an CWP or CWP amendment approved by the borrower's board of directors;

\* \* \* \* \*  
(h) \* \* \*

(2) To the extent that provisions in a borrower's loan contract or mortgage in favor of RUS may be inconsistent with paragraphs (g)(1) and (h)(1) of this section, paragraphs (g)(1) and (h)(1) of this section are intended to constitute an approval or waiver under the terms of such instruments, and in any regulations implementing such instruments, with respect to facilities financed with debt obtained entirely

from non-RUS sources without an RUS guarantee.

\* \* \* \* \*

(m) *Waiver authority.* Consistent with the RE Act and other applicable laws, any requirement, condition, or restriction imposed by this subpart, or subpart S of this part, on a borrower, private lender, or application for a lien accommodation or subordination may be waived or reduced by the Administrator, if the Administrator determines that said action is in the Government's financial interest with respect to ensuring repayment and reasonably adequate security for loans made or guaranteed by RUS.

\* \* \* \* \*

12. Section 1717.851 is amended by removing the definitions for "ODSC" and "OTIER" and by adding the following definitions in alphabetical order to read as follows:

**§ 1717.851 Definitions.**

\* \* \* \* \*

*Natural gas distribution system* means any system of community infrastructure whose primary function is the distribution of natural gas and whose services are available by design to all or a substantial portion of the members of the community.

\* \* \* \* \*

*Solid waste disposal system* means any system of community infrastructure whose primary function is the collection and/or disposal of solid waste and whose services are available by design to all or a substantial portion of the members of the community.

*Telecommunication and other electronic communication system* means any system of community infrastructure whose primary function is the provision of telecommunication or other electronic communication services and whose services are available by design to all or a substantial portion of the members of the community.

\* \* \* \* \*

*Water and waste disposal system* means any system of community infrastructure whose primary function is the supplying of water and/or the collection and treatment of waste water and whose services are available by design to all or a substantial portion of the members of the community.

\* \* \* \* \*

13. In § 1717.852, paragraphs (a)(1) introductory text and (a)(1)(ii) are amended by adding the words "and/or steam" before the word "power", paragraphs (a)(3) through (a)(7) and paragraph (b) are revised, and paragraph (a)(8) is added to read as follows:

**§ 1717.852 Financing purposes.**

(a) \* \* \*

(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 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.

\* \* \* \* \*  
 14. Section 1717.854 is amended by revising the section heading and paragraphs (a), (b), (c)(1) and (c)(2), removing paragraph (c)(7), redesignating paragraphs (c)(3) through (c)(6) as paragraphs (c)(4) through (c)(7), adding a new paragraph (c)(3), adding "and" at the end of newly designated paragraph (c)(6)(vi) and removing "and" at the end of newly designated paragraph (c)(7) and adding a period in its place to read as follows:

**§ 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) \* \* \*  
 (1) The borrower has achieved a TIER of at least 1.5 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;

\* \* \* \* \*  
 15. Section 1717.855 is amended by revising the section heading and paragraph (a) to read as follows:

**§ 1717.855 Application contents: Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure.**

(a) A certification by an authorized official of the borrower that the borrower and, as applicable, the loan are in compliance with all conditions set forth in § 1717.854(c) and all applicable provisions of §§ 1717.852 and 1717.853;

\* \* \* \* \*  
 16. Section 1717.856 is amended by revising the section heading, the introductory text, the introductory text of paragraph (a), and paragraph (c)(3) to read as follows:

**§ 1717.856 Application contents: Normal review—100 percent private financing.**

Applications for a lien accommodation or subordination for 100 percent private financing for eligible purposes that do not meet the requirements of § 1717.854 must include the following information and documents:

(a) A certification by an authorized official of the borrower that:

\* \* \* \* \*

(c) \* \* \*

(3) The borrower has achieved the TIER and DSC and any other coverage ratios required by its mortgage or loan contract in each of the two most recent calendar years; and

\* \* \* \* \*

**§ 1717.857 [Amended]**

17. Section 1717.857 is amended by removing paragraph (a)(5), by adding "and" at the end of paragraph (a)(3), and by removing "and" at the end of paragraph (a)(4)(ii) and adding a period in its place.

**§ 1717.860 [Amended]**

18. Section 1717.860 is amended by redesignating paragraph (f) as paragraph (e).

**PART 1718—LOAN SECURITY DOCUMENTS FOR ELECTRIC BORROWERS**

19. The authority citation for part 1718 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

20. Section 1.01 of Appendix A to Subpart B of part 1718 is amended by revising the definitions for "Debt Service Coverage Ratio ("DSC")" "and" Times Interest Earned Ratio ("TIER")" to read as follows:

**Appendix A to Subpart B of Part 1718—Model Form of Mortgage for Electric Distribution Borrowers**

\* \* \* \* \*

**Section 1.01 Definitions. \* \* \***

\* \* \* \* \*

*Debt Service Coverage Ratio ("DSC")* shall mean the ratio determined as follows: for each calendar year add (i) Patronage Capital or Margins of the Mortgagor, (ii) Interest Expense on Total Long Term Debt of the Mortgagor (as computed in accordance with the principles set forth in the definition of TIER) and (iii) Depreciation and Amortization Expense of the Mortgagor, and divide the total so obtained by an amount equal to the sum of all payments of principal and interest required to be made on account of Total Long-Term Debt during such calendar year increasing said sum by any addition to interest expense on account of Restricted Rentals as computed with respect to the Times Interest Earned Ratio herein.

\* \* \* \* \*

*Times Interest Earned Ratio ("TIER")* shall mean the ratio determined as follows: for each calendar year: add (i) patronage capital or margins of the Mortgagor and (ii) Interest Expense on Total Long-Term Debt of the Mortgagor and divide the total so obtained by Interest Expense on Total Long-Term Debt of the Mortgagor, *provided, however*, that in computing Interest Expense on Total Long-Term Debt, there shall be added, to the extent not otherwise included, an amount equal to 33–1/3% of the excess of Restricted Rentals paid by the Mortgagor over 2% of the Mortgagor's Equity.

\* \* \* \* \*

21. Subpart C is added to part 1718 to read as follows:

**Subpart C—Loan Contracts With Distribution Borrowers**

- Sec.  
 1718.100 General.  
 1718.101 Applicability.  
 1718.102 Definitions.  
 1718.103 Loan contract provisions.  
 1718.104 Availability of model loan contract.

**Appendix A to Subpart C of Part 1718—Model Form of Loan Contract for Electric Distribution Borrowers**

**Subpart C—Loan Contracts With Distribution Borrowers**

**§ 1718.100 General.**

(a) *Purpose.* The purpose of this subpart is to set forth the policies, requirements, and procedures governing loan contracts entered into between the Rural Utilities Service (RUS) and

distribution borrowers or, in some cases, other electric borrowers.

(b) *Flexibility for individual circumstances.* The intent of this subpart is to provide the flexibility to address the different needs and different credit risks of individual borrowers, and other special circumstances of individual lending situations. The model loan contract contained in Appendix A of this subpart provides an example of what a loan contract with an "average" or "typical" distribution borrower may look like under "average" or "typical" circumstances. Depending on the credit risks and other circumstances of individual loans, RUS may execute loan contracts with provisions that are substantially different than those set forth in the model. RUS may develop alternative model loan contract provisions. If it does, such provisions will be made available to the public.

(c) *Resolution of any differences in contractual provisions.* If any provision of the loan contract appears to be in conflict with provisions of the mortgage, the loan contract shall have precedence with respect to the contractual relationship between the borrower and RUS with respect to such provision. If either document is silent on a matter addressed in the other document, the other document shall have precedence with respect to the contractual relationship between the borrower and RUS with respect to such matter.

(d) *Certain loan contract provisions subject to subsequent rulemaking.* If a loan contract provision imposes an obligation or limitation on the borrower whose interpretation or specification is subject to RUS regulations or the discretion of the Administrator or RUS, such interpretation or specification shall be subject to subsequent rulemaking. Such interpretation or specification of the borrower's obligations or limitations may not exceed the authority granted to the Administrator or RUS in the loan contract provision.

#### § 1718.101 Applicability.

(a) *Distribution borrowers.* The provisions of this subpart apply to all distribution borrowers that obtain a loan or loan guarantee from RUS approved on or after January 29, 1996. Distribution borrowers that obtain a lien accommodation or any other form of financial assistance from RUS after January 29, 1996, may be required to execute a new loan contract and new mortgage. Moreover, any distribution borrower may submit a request to RUS that a new loan contract and new mortgage be executed. Within the constraints of time and staff resources,

RUS will attempt to honor such requests. Borrowers must first obtain the concurrence of any other mortgagees on their existing mortgage before a new mortgage can be executed.

(b) *Other borrowers.* Borrowers other than distribution borrowers may also submit requests for execution of a new loan contract pursuant to this subpart and a new mortgage pursuant to subpart B of this part. RUS may approve such requests if it determines that such approval is in the government's financial interest. If other mortgagees are on the borrower's existing mortgage, their concurrence would be required before a new mortgage could be executed.

#### § 1718.102 Definitions.

For the purposes of this subpart:

*Borrower* means any organization that has an outstanding loan made or guaranteed by the Rural Utilities Service (RUS) or its predecessor, the Rural Electrification Administration, for rural electrification, or that is seeking such financing.

*Distribution borrower* means a borrower that sells or intends to sell electric power and energy at retail in rural areas, the latter being defined in 7 CFR 1710.2.

*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.

#### § 1718.103 Loan contract provisions.

Loan contracts executed pursuant to this subpart shall contain such provisions as RUS determines are appropriate to further the purposes of the RE Act and to ensure that the security for the loan will be reasonably adequate and that the loan will be repaid according to the terms of the promissory note. Such loan contracts will contain provisions addressing, but not necessarily limited to, the following matters:

- (a) Description of the purpose of the loan;
- (b) Specification of the interest to be charged on the loan, including the method for determining the interest rate if it is not fixed for the entire term of the loan;
- (c) Specification of the method for repaying the loan principal, including the final maturity of the loan;
- (d) The conditions under which the loan may be prepaid before its maturity date, including but not limited to requirements regarding the prepayment of loans made concurrently by RUS and another secured lender;
- (e) The method for making scheduled payments on the loan;

(f) Accounting principles and system of accounts, and RUS authority to approve the accountant used by the borrower;

(g) The method and time period for advancing loan funds and the conditions precedent to the advance of funds;

(h) Representations and warranties by the borrower as a condition of obtaining the loan, including but not limited to: the legal authority of the borrower to enter into the loan contract and operate its system; that the loan documents will be a legal, valid and binding obligation of the borrower enforceable according to their terms; compliance of the borrower in all material respects with all federal, state, and local laws, regulations, codes, and orders; existence of any pending or threatened legal actions that could have a material adverse effect on the borrower's ability to perform its obligations under the loan documents; the accuracy and completeness of all information provided by the borrower in the loan application and with respect to the loan contract, and the existence of any material adverse change since the information was provided; and the existence of any material defaults under other agreements of the borrower;

(i) Representations, warranties, and covenants with respect to environmental matters;

(j) Reports and notices required to be submitted to RUS, including but not limited to: annual financial statements; notice of defaults; notice of litigation; notice of orders or other directives received by the borrower from regulatory authorities; notice of any matter that has resulted in or may result in a material adverse change in the condition or operations of the borrower; and such other information regarding the condition or operations of the borrower as RUS may reasonably require;

(k) Annual written certification that the borrower is in compliance with its loan contract, note, mortgage, and any other agreement with RUS, or if there has been a default in the fulfillment of any obligation under said agreements, specifying each such default and the nature and status thereof;

(l) Requirement that the borrower design and implement rates for utility services to meet certain minimum coverage of interest expense and/or debt service obligations;

(m) Requirement that the borrower maintain and preserve its mortgaged property in compliance with prudent utility practice and all applicable laws, which may include certain specific actions and certifications set forth in the borrower's loan contract or mortgage;

(n) Requirement that the borrower plan, design and construct its electric system according to standards and other requirements established by RUS, and if directed by the Administrator, that the borrower follow RUS planning, design and construction standards and requirements for other utility systems constructed by the borrower;

(o) Limitations on extensions and additions to the borrower's electric system without approval by RUS;

(p) Limitations on contracts and contract amendments that the borrower may enter into without approval by RUS;

(q) Limitations of the transfer of mortgaged property by the borrower;

(r) Limitations on dividends, patronage refunds, and cash distributions paid by the borrower;

(s) Limitations on investments, loans, and guarantees made by the borrower;

(t) Authority of RUS to approve a new general manager and to require that an existing general manager be replaced if the borrower is in default under its mortgage, loan contract, or any other agreements with RUS;

(u) Description of events of default under the loan contract and the remedies available to RUS;

(v) Applicability of state and federal laws;

(w) Severability of the individual provisions of the loan documents;

(x) Matters relating to the assignment of the loan contract;

(y) Requirements relating to federal laws and regulations, including but not limited to the following matters: area coverage for electric service; civil rights and equal employment opportunity; access to buildings and other matters relating to the handicapped; design and construction standards relating to earthquakes; the National Environmental Policy Act of 1969 and other environmental laws and regulations; flood hazard insurance; debarment and suspension from federal assistance programs; and delinquency on federal debt; and

(z) Special requirements applicable to individual loans, and such other provisions as RUS may require to ensure loan repayment and reasonably adequate loan security.

**§ 1718.104 Availability of model loan contract.**

Single copies of the model loan contract (RUS Informational Publication 1718 C) are available from the Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250-1533. This document may be reproduced.

**Appendix A to Subpart C of Part 1718—  
Model Form of Loan Contract for  
Electric Distribution Borrowers**

**LOAN CONTRACT  
TABLE OF CONTENTS  
RECITALS**

**ARTICLE I—DEFINITIONS**

**ARTICLE II—REPRESENTATIONS AND  
WARRANTIES**

Section 2.1. Representations and Warranties.

**ARTICLE III—LOAN**

Section 3.1. Advances.

Section 3.2. Interest Rate and Payment.

Section 3.3. Prepayment.

**ARTICLE IV—CONDITIONS OF LENDING**

Section 4.1. General Conditions.

Section 4.2. Special Conditions.

**ARTICLE V—AFFIRMATIVE COVENANTS**

Section 5.1. Generally.

Section 5.2. Annual Certificates.

Section 5.3. Simultaneous Prepayment of Contemporaneous Loans.

Section 5.4. Rates to Provide Revenue Sufficient to Meet Coverage Ratios Requirements.

Section 5.5. Depreciation Rates.

Section 5.6. Property Maintenance.

Section 5.7. Financial Books.

Section 5.8. Rights of Inspection.

Section 5.9. Area Coverage.

Section 5.10. Real Property Acquisition.

Section 5.11. "Buy American" Requirements.

Section 5.12. Power Requirements Studies.

Section 5.13. Long Range Engineering Plans and Construction Work Plans.

Section 5.14. Design Standards, Construction Standards, and List of Materials.

Section 5.15. Plans and Specifications.

Section 5.16. Standard Forms of Construction Contracts, and Engineering and Architectural Services Contracts.

Section 5.17. Contract Bidding Requirements.

Section 5.18. Nondiscrimination.

Section 5.19. Financial Reports.

Section 5.20. Miscellaneous Reports and Notices.

Section 5.21. Special Construction Account.

Section 5.22. Additional Affirmative Covenants.

**ARTICLE VI—NEGATIVE COVENANTS**

Section 6.1. General.

Section 6.2. Limitations on System Extensions and Additions.

Section 6.3. Limitations on Changing Principal Place of Business.

Section 6.4. Limitations on Employment and Retention of Manager.

Section 6.5. Limitations on Certain Types of Contracts.

Section 6.6. Limitations on Mergers and Sale, Lease or Transfer of Capital Assets.

Section 6.7. Limitations on Using non FDIC-insured Depositories.

Section 6.8. Limitation on Distributions.

Section 6.9. Limitations on Loans, Investments and Other Obligations.

Section 6.10. Depreciation Rates.

Section 6.11. Historic Preservation.

Section 6.12. Rate Reductions.

Section 6.13. Limitations on Additional Indebtedness.

Section 6.14. Limitations on Issuing Additional Indebtedness Secured Under the Mortgage.

Section 6.15. Impairment of Contracts Pledged to RUS.

Section 6.16. Additional Negative Covenants.

**ARTICLE VII—DEFAULT**

Section 7.1. Events of Default.

**ARTICLE VIII—REMEDIES**

Section 8.1. Generally.

Section 8.2. Suspension of Advances.

**ARTICLE IX—MISCELLANEOUS**

Section 9.1. Notices.

Section 9.2. Expenses.

Section 9.3. Late Payments.

Section 9.4. Filing Fees.

Section 9.5. No Waiver.

Section 9.6. Governing Law.

Section 9.7. Holiday Payments.

Section 9.8. Rescission.

Section 9.9. Successors and Assigns.

Section 9.10. Complete Agreement; Amendments.

Section 9.11. Headings.

Section 9.12. Severability.

Section 9.13. Right of Setoff.

Section 9.14. Schedules and Exhibits.

Section 9.15. Prior Loan Documents.

Section 9.16. Authority of Representatives of RUS.

Section 9.17. Term.

**SCHEDULE 1**

**SCHEDULE 2—Existing Liens**

**SCHEDULE 3—Additional Contracts**

**EXHIBIT A—Form of Promissory Note**

**EXHIBIT B—Equal Opportunity Contract Provisions**

**EXHIBIT C-1—Manager's Certificate**

**Required Under Loan Contract**

**Section 6.14 for Additional Notes**

**Exhibit C-2—Manager's Certificate Required**

**Under Loan Contract**

**Section 6.14 for Refinancing Notes**

**Loan Contract**

**AGREEMENT, dated**

\_\_\_\_\_, 199\_\_\_\_, between \_\_\_\_\_ ("Borrower"), a corporation organized and existing under the laws of the State of \_\_\_\_\_ (the "State") and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Utilities Service ("RUS").

**Recitals**

The Borrower has applied to RUS for a loan for the purpose(s) set forth in Schedule 1 hereto.

RUS is willing to make such a loan to the Borrower pursuant to the Rural Electrification Act of 1936, as amended, on the terms and conditions stated herein.

THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree and bind themselves as follows:

**Article I—Definitions**

Capitalized terms that are not defined herein shall have the meanings as set forth in the Mortgage. The terms defined herein include the plural as well as the singular and the singular as well as the plural.

"Act" shall mean the Rural Electrification Act of 1936, as amended.

“Advance” or “Advances” shall mean advances by RUS to Borrower pursuant to the terms and conditions of this Agreement.

“Agreement” shall mean this Loan Contract together with all schedules and exhibits and also any subsequent supplements or amendments.

“Business Day” shall mean any day that RUS is open for business.

“Contemporaneous Loan” shall mean any loan which the Borrower has used to satisfy RUS Regulations or loan conditions requiring that supplemental financing be obtained in order to obtain a loan from RUS. Any loan used to refinance or refund a Contemporaneous Loan is also considered to be a Contemporaneous Loan.

“Coverage Ratios” shall mean, collectively, the following financial ratios: (i) TIER of 1.5; (ii) Operating TIER of 1.1; (iii) DSC of 1.25; and Operating DSC of 1.1.

“Debt Service Coverage Ratio” (“DSC”) shall have the meaning provided in the Mortgage.

“Distributions” shall mean for the Borrower, in any calendar year, declare or pay any dividends, or pay or determine to pay any patronage refunds, or retire any patronage capital or make any other Cash Distributions, to its members, stockholders or consumers; provided, however, that for the purposes of this Agreement a “Cash Distribution” shall be deemed to include any general cancellation or abatement of charges for electric energy or services furnished by the Borrower, but not the repayment of a membership fee upon termination of a membership or the rebate of an abatement of wholesale power costs previously incurred pursuant to an order of a state regulatory authority or a wholesale power cost adjustment clause or similar power pricing agreement between the Borrower and a power supplier.

“Electric System” shall have the meaning as defined in the Mortgage.

“Equity” shall mean the Borrower’s total margins and equities computed pursuant to RUS Accounting Requirements but excluding any Regulatory Created Assets.

“Event of Default” shall have the meaning as defined in Section [7.1].

“Independent” when used with respect to any specified person or entity means such a person or entity who (1) is in fact independent, (2) does not have any direct financial interest or any material indirect financial interest in the Borrower or in any affiliate of the Borrower and (3) is not connected with the Borrower as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

“Interest Expense” shall mean the interest expense of the Borrower computed pursuant to RUS Accounting Requirements.

“Loan” shall mean the loan described in Article III which is being made pursuant to the RUS Commitment in furtherance of the objectives of the Act.

“Loan Documents” shall mean, collectively, this Agreement, the Mortgage and the Note.

“Long-Term Debt” shall mean the total of all amounts included in the long-term debt of the Borrower pursuant to RUS Accounting Requirements.

“Maturity Date” shall have the meaning as defined in the Note.

“Monthly Payment Date” shall have the meaning as defined in the Note.

“Mortgage” shall have the meaning as described in Schedule 1 hereto.

“Mortgaged Property” shall have the meaning as defined in the Mortgage.

“Net Utility Plant” shall mean the amount constituting the Total Utility Plant of the Borrower, less depreciation, computed in accordance with RUS Accounting Requirements.

“Note” shall mean a promissory note executed by the Borrower in the form of exhibit A hereto, and any note executed and delivered to RUS to refund, or in substitution for such a note.

“Operating DSC” or “ODSC” shall mean Operating Debt Service Coverage calculated as:

$$ODSC = \frac{A + B + C}{D}$$

Where:

All amounts are for the same calendar year and are computed pursuant to RUS Accounting Requirements and RUS form 7;

A=Depreciation and Amortization Expense of the Electric System;

B=Interest Expense on Total Long-Term Debt of the Electric System, except that such Interest Expense shall be increased by 1/3 of the amount, if any, by which the Restricted Rentals of the Electric System exceed 2 percent of the Mortgagor’s Equity;

C=Patronage capital & operating margins of the Electric System, (which equals operating revenue and patronage capital of Electric System operations, less total cost of electric service, including Interest Expense on Total Long-Term Debt of the Electric System) plus cash received from the retirement of patronage capital by suppliers of electric power and by lenders for credit extended for the Electric System; and

D=Debt service billed which equals the sum of all payments of principal and interest required to be made on account of Total Long-Term Debt of the Electric System during the calendar year, plus 1/3 of the amount, if any, by which Restricted Rentals of the Electric System exceed 2 percent of the Mortgagor’s Equity.

“Operating TIER” or “OTIER” shall mean Operating Times Interest Earned Ratio calculated as:

$$OTIER = \frac{A + B}{A}$$

Where:

All amounts are for the same calendar year and are computed pursuant to RUS Accounting Requirements and RUS form 7;

A=Interest Expense on Total Long-Term Debt of the Electric System, except that such Interest Expense shall be increased by 1/3 of the amount, if any, by which Restricted Rentals of the Electric System exceed 2 percent of the Mortgagor’s Equity; and

B=Patronage capital & operating margins of the Electric System, (which equals operating revenue and patronage capital of Electric System operations, less total cost of electric

service, including Interest Expense on Total Long-Term Debt of the Electric System) plus cash received from the retirement of patronage capital by suppliers of electric power and by lenders for credit extended for the Electric System.

“Payment Notice” shall mean a notice furnished by RUS to Borrower that indicates the precise amount of each payment of principal and interest and the total amount of each payment.

“Permitted Debt” shall have the meaning as defined in section [6.13].

“Prior Loan Contracts” shall have the meaning as defined in section 9.15.

“Regulatory Created Assets” shall mean 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.

“RUS Accounting Requirements” shall mean any system of accounts prescribed by RUS Regulations as such RUS Accounting Requirements exist at the date of applicability thereof.

“RUS Commitment” shall have the meaning as defined in schedule 1 hereto.

“RUS Regulations” shall 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.

“Special Construction Account” shall have the meaning as defined in section 5.21.

“Subsidiary” shall mean a corporation that is a subsidiary of the Borrower and subject to the Borrower’s control, as defined by RUS Accounting Requirements.

“Termination Date” shall have the meaning as defined in the Note.

“Times Interest Earned Ratio” (“TIER”) shall have the meaning provided in the Mortgage.

“Total Assets” shall mean an amount constituting the total assets of the Borrower as computed pursuant to RUS Accounting Requirements, but excluding any Regulatory Created Assets.

“Total Utility Plant” shall mean the amount constituting the total utility plant of the Borrower computed in accordance with RUS Accounting Requirements.

“Utility System” shall have the meaning as defined in the Mortgage.

Article II—Representations and Warranties

Section 2.1. Representations and Warranties.

To induce RUS to make the Loan, and recognizing that RUS is relying hereon, the Borrower represents and warrants as follows:

- (a) *Organization, Power, Etc.* The Borrower:
  - (i) is duly organized, validly existing, and in good standing under the laws of its state of incorporation; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business makes such qualification necessary; (iii) has all requisite corporate and legal power to own and operate its assets and to carry on its business and to enter into and perform the Loan Documents; (iv) has duly and lawfully obtained and maintained all licenses, certificates, permits, authorizations, approvals, and the like which are material to the conduct of its business or which may be

otherwise required by law; and (v) is eligible to borrow from RUS.

(b) *Authority.* The execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate action and shall not violate any provision of law or of the Articles of Incorporation or By-Laws of the Borrower or result in a breach of, or constitute a default under, any agreement, indenture or other instrument to which the Borrower is a party or by which it may be bound.

(c) *Consents.* No consent, permission, authorization, order, or license of any governmental authority is necessary in connection with the execution, delivery, performance, or enforcement of the Loan Documents, except (i) such as have been obtained and are in full force and effect and (ii) such as have been disclosed on Schedule 1 hereto.

(d) *Binding Agreement.* Each of the Loan Documents is, or when executed and delivered shall be, the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its terms, subject only to limitations on enforceability imposed by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally.

(e) *Compliance With Laws.* The Borrower is in compliance in all material respects with all federal, state, and local laws, rules, regulations, ordinances, codes, and orders (collectively, "Laws"), the failure to comply with which could have a material adverse effect on the condition, financial or otherwise, operations, properties, or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents, except as the Borrower has disclosed on Schedule 1 attached hereto.

(f) *Litigation.* There are no pending legal, arbitration, or governmental actions or proceedings to which the Borrower is a party or to which any of its property is subject which, if adversely determined, could have a material adverse effect on the condition, financial or otherwise, operations, properties, profits or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents, and to the best of the Borrower's knowledge, no such actions or proceedings are threatened or contemplated, except as the Borrower has disclosed to RUS in writing.

(g) *Title to Property.* As to property which is presently included in the description of Mortgaged Property, the Borrower holds good and marketable title to all of its real property and owns all of its personal property free and clear of any Lien except the Liens specifically identified on Schedule 2 attached hereto (the "Existing Liens"), and Permitted Encumbrances or Liens permitted under the Mortgage.

(h) *Financial Statements; No Material Adverse Change; Etc.* All financial statements submitted to RUS in connection with the application for the Loan or in connection with this Agreement fairly and fully present the financial condition of the Borrower and

the results of the Borrower's operations for the periods covered thereby and are prepared in accordance with RUS Accounting Requirements consistently applied. Since the dates thereof, there has been no material adverse change in the financial condition or operations of the Borrower. All budgets, projections, feasibility studies, and other documentation submitted by the Borrower to RUS are based upon assumptions that are reasonable and realistic, and as of the date hereof, no fact has come to light, and no event or transaction has occurred, which would cause any assumption made therein not to be reasonable or realistic.

(i) *Principal Place of Business; Records.* The principal place of business and chief executive office of the Borrower is at the address of the Borrower shown on Schedule 1 attached hereto.

(j) *Location of Properties.* All property owned by the Borrower is located in the counties identified in Schedule 1 hereto.

(k) *Subsidiaries.* The Borrower has no subsidiary, except as the Borrower has disclosed to RUS in writing.

(l) *Defaults Under Other Agreements.* The Borrower is not in default under any agreement or instrument to which it is a party or under which any of its properties are subject that is material to its financial condition, operations, properties, profits, or business.

(m) *Survival.* All representations and warranties made by the Borrower herein or made in any certificate delivered pursuant hereto shall survive the making of the Advances and the execution and delivery to RUS of the Note.

#### Article III—Loan

##### Section 3.1. Advances

RUS agrees to make, and the Borrower agrees to request, on the terms and conditions of this Agreement, Advances from time to time in an aggregate principal amount not to exceed the RUS Commitment. On the Termination Date, RUS may stop advancing funds and limit the RUS Commitment to the amount advanced prior to such date. The obligation of the Borrower to repay the Advances shall be evidenced by the Note in the principal amount of the unpaid principal amount of the Advances from time to time outstanding. The Borrower shall give RUS written notice of the date on which each Advance is to be made.

##### Section 3.2. Interest Rate and Payment

The Note shall be payable and bear interest as follows:

(a) *Payments and Amortization.* Principal shall be amortized in accordance with the method stated in Schedule 1 hereto and more fully described in the form of Note attached hereto as Exhibit A.

(b) *Application of Payments.* All payments which the Borrower sends to RUS on any outstanding obligation owed to RUS shall be applied in the manner provided in the Borrower's loan documents to which such payments relate and in a manner consistent with RUS policies, practices, and procedures for obligations that have been similarly classified by RUS.

(c) *Electronic Funds Transfer.* Except as otherwise prescribed by RUS, the Borrower

shall make all payments on the Note utilizing electronic funds transfer procedures as specified by RUS.

(d) *Fixed or Variable Rate.* The Note shall bear interest at either a fixed or variable rate in accordance with the method stated in Schedule 1 hereto and as more particularly described in the form of Note attached hereto as Exhibit A.

##### Section 3.3. Prepayment

The Borrower has no right to prepay the Note in whole or in part except such rights, if any, as are expressly provided for in the Note. However, prepayment of the Note (and any penalties) shall be mandatory under Section [5.3] hereof if the Borrower has used a Contemporaneous Loan in order to qualify for the RUS Commitment, and later prepays the Contemporaneous Loan.

#### Article IV—Conditions of Lending

##### Section 4.1. General Conditions

The obligation of RUS to make any Advance hereunder is subject to satisfaction of each of the following conditions precedent on or before the date of such Advance:

(a) *Legal Matters.* All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for RUS.

(b) *Loan Documents.* That RUS receive duly executed originals of this Agreement and the other Loan Documents.

(c) *Authorization.* That RUS receive evidence satisfactory to it that all corporate documents and proceedings of the Borrower necessary for duly authorizing the execution, delivery and performance of the Loan Documents have been obtained and are in full force and effect.

(d) *Approvals.* That RUS receive evidence satisfactory to it that all consents and approvals (including without limitation the consents referred to in Section [2.1(c)] of this Agreement) which are necessary for, or required as a condition of, the validity and enforceability of each of the Loan Documents have been obtained and are in full force and effect.

(e) *Event of Default.* That no Event of Default specified in Article VII and no event which, with the lapse of time or the notice and lapse of time specified in Article VII would become such an Event of Default, shall have occurred and be continuing, or shall have occurred after giving effect to the Advance on the books of the Borrower.

(f) *Continuing Representations and Warranties.* That the representations and warranties of the Borrower contained in this Agreement be true and correct on and as of the date of such Advance as though made on and as of such date.

(g) *Opinion of Counsel.* That RUS receive an opinion of counsel for the Borrower (who shall be acceptable to RUS) in form and content acceptable to RUS.

(h) *Mortgage Filing.* The Mortgage shall have been duly recorded as a mortgage on real property, including after-acquired real property, and duly filed, recorded or indexed as a security interest in personal property, including after acquired personal property, wherever RUS shall have requested, all in accordance with applicable law, and the

Borrower shall have caused satisfactory evidence thereof to be furnished to RUS.

(i) *Wholesale Power Contract.* That the Borrower shall not be in default under the terms of, or contesting the validity of, any contract for sales for resale that has been pledged by any entity to RUS as security for the repayment of any loan made or guaranteed by RUS under the Act.

(j) *Material Adverse Change.* That there has occurred no material adverse change in the business or condition, financial or otherwise, of the Borrower and nothing has occurred which in the opinion of RUS materially and adversely affects the Borrower's ability to meet its obligations hereunder.

(k) *Requisitions.* That the Borrower shall requisition all Advances by submitting its requisition to RUS in form and substance satisfactory to RUS. Requisitions shall be made only for the purpose(s) set forth herein. The Borrower agrees to apply the proceeds of the Advances in accordance with its loan application with such modifications as may be mutually agreed.

(l) *Flood Insurance.* That for any Advance used in whole or in part to finance the construction or acquisition of any building in any area identified by the Secretary of Housing and Urban Development pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Insurance Act") or any rules, regulations or orders issued to implement the Flood Insurance Act ("Rules") as any area having special flood hazards, or to finance any facilities or materials to be located in any such building, or in any building owned or occupied by the Borrower and located in such a flood hazard area, the Borrower has submitted evidence, in form and substance satisfactory to RUS, or RUS has otherwise determined, that (i) the community in which such area is located is then participating in the national flood insurance program, as required by the Flood Insurance Act and any Rules, and (ii) the Borrower has obtained flood insurance coverage with respect to such building and contents as may then be required pursuant to the Flood Insurance Act and any Rules.

(m) *Compliance With Loan Contract and Mortgage.* That the Borrower is in material compliance with all provisions of this Agreement and the Mortgage.

#### Section 4.2. Special Conditions

The obligation of RUS to make any Advance hereunder is also subject to satisfaction, on or before the date of such Advance, of each of the special conditions, if any, listed in Schedule 1 hereto.

#### Article V—Affirmative Covenants

##### Section 5.1. Generally

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, whether or not any Advance is outstanding, the Borrower agrees to duly observe each of the affirmative covenants contained in this Article:

##### Section 5.2. Annual Certificates

(a) *Performance Under Loan Documents.* The Borrower shall duly observe and perform all of its obligations under each of the Loan Documents.

(b) *Annual Certification.* Within ninety (90) days after the close of each calendar year, commencing with the year following the year in which the initial Advance hereunder shall have been made, the Borrower shall deliver to RUS a written statement signed by its General Manager, stating that during such year the Borrower has fulfilled all of its obligations under the Loan Documents throughout such year in all material respects or, if there has been a default in the fulfillment of any such obligations, specifying each such default known to said person and the nature and status thereof.

##### Section 5.3. Simultaneous Prepayment of Contemporaneous Loans

If the Borrower shall at any time prepay in whole or in part the Contemporaneous Loan described on Schedule 1, the Borrower shall prepay the RUS Note correspondingly in order to maintain the ratio that the Contemporaneous Loan bears to the RUS Commitment. If the RUS Note calls for a prepayment penalty or premium, such amount shall be paid but shall not be used in computing the amount needed to be paid to RUS under this section to maintain such ratio. In the case of Contemporaneous Loans and RUS Notes existing prior to the date of this Agreement under previous agreements, prepayments shall be treated as if governed by this section. Provided, however, in all cases prepayments associated with refinancing or refunding a Contemporaneous Loan pursuant to Article II of the Mortgage are not considered to be prepayments for purposes of this Agreement if they satisfy each of the following requirements:

(a) *Principal.* The principal amount of such refinancing or refunding loan is not less than the amount of loan principal being refinanced; and

(b) *Weighted Average Life.* The weighted average life of the refinancing or refunding loan is materially equal to the weighted average remaining life of the loan being refinanced.

##### Section 5.4 Rates to Provide Revenue Sufficient to Meet Coverage Ratios Requirements

(a) *Prospective Requirement.* The Borrower shall design and implement rates for utility service furnished by it to provide sufficient revenue (along with other revenue available to the Borrower in the case of TIER and DSC) (i) to pay all fixed and variable expenses when and as due, (ii) to provide and maintain reasonable working capital, and (iii) to maintain, on an annual basis, the Coverage Ratios. In designing and implementing rates under this paragraph, such rates should be capable of producing at least enough revenue to meet the requirements of this paragraph under the assumption that average weather conditions in the Borrower's service territory shall prevail in the future, including average Utility System damage and outages due to weather and the related costs.

(b) *Retrospective Requirement.* The average Coverage Ratios achieved by the Borrower in the 2 best years out of the 3 most recent calendar years must be not less than any of the following:

TIER=1.5

DSC=1.25  
OTIER=1.1  
ODSC=1.1

(c) *Prospective Notice of Change in Rates.* The Borrower shall give thirty (30) days prior written notice of any proposed change in its general rate structure to RUS if RUS has requested in writing that it be notified in advance of such changes.

(d) *Routine Reporting of Coverage Ratios.* Promptly following the end of each calendar year, the Borrower shall report, in writing, to RUS the TIER, Operating TIER, DSC and Operating DSC levels which were achieved during that calendar year.

(e) *Reporting Non-achievement of Retrospective Requirement.* If the Borrower fails to achieve the average levels required by paragraph (b) of this section, it must promptly notify RUS in writing to that effect.

(f) *Corrective Plans.* Within 30 days of sending a notice to RUS under paragraph (e) of this section, or of being notified by RUS, whichever is earlier, the Borrower in consultation with RUS, shall provide a written plan satisfactory to RUS setting forth the actions that shall be taken to achieve the required Coverage Ratios on a timely basis.

(g) *Noncompliance.* Failure to design and implement rates pursuant to paragraph (a) of this section and failure to develop and implement the plan called for in paragraph (f) of this section shall constitute an Event of Default under this Agreement in the event that REA so notifies the Borrower to that effect under section [7.1(d)] of this Agreement.

##### Section 5.5. Depreciation Rates

The Borrower shall adopt as its depreciation rates only those which have been previously approved for the Borrower by RUS.

##### Section 5.6. Property Maintenance

The Borrower shall maintain and preserve its Utility System in compliance in all material respects with the provisions of the Mortgage, RUS Regulations and all applicable laws.

##### Section 5.7. Financial Books

The Borrower shall at all times keep, and safely preserve, proper books, records and accounts in which full and true entries shall be made of all of the dealings, business and affairs of the Borrower and its Subsidiaries, in accordance with any applicable RUS Accounting Requirements.

##### Section 5.8. Rights of Inspection

The Borrower shall afford RUS, through its representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and the right to inspect the Utility System, any other property encumbered by the Mortgage, and any or all books, records, accounts, invoices, contracts, leases, payrolls, canceled checks, statements and other documents and papers of every kind belonging to or in the possession of the Borrower or in

anyway pertaining to its property or business, including its Subsidiaries, if any, and to make copies or extracts therefrom.

*Section 5.9. Area Coverage*

(a) The Borrower shall make diligent effort to extend electric service to all unserved persons within the service area of the Borrower who (i) desire such service and (ii) meet all reasonable requirements established by the Borrower as a condition of such service.

(b) If economically feasible and reasonable considering the cost of providing such service and/or the effects on consumers' rates, such service shall be provided, to the maximum extent practicable, at the rates and minimum charges established in the Borrower's rate schedules, without the payment of such persons, other than seasonal or temporary consumers, of a contribution in aid of construction. A seasonal consumer is one that demands electric service only during certain seasons of the year. A temporary consumer is a seasonal or year-round consumer that demands electric service over a period of less than five years.

(c) The Borrower may assess contributions in aid of construction provided such assessments are consistent with this section.

*Section 5.10. Real Property Acquisition*

In acquiring real property, the Borrower shall comply in all material respects with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the "Uniform Act"), as amended by the Uniform Relocation Act Amendments of 1987, and 49 CFR part 24, referenced by 7 CFR part 21, to the extent the Uniform Act is applicable to such acquisition.

*Section 5.11. "Buy American" Requirements*

The Borrower shall use or cause to be used in connection with the expenditures of funds advanced on account of the Loan only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or any eligible country substantially all from articles, materials, and supplies mined, produced or manufactured, as the case may be, in the United States or any eligible country, except to the extent RUS shall determine that such use shall be impracticable or that the cost thereof shall be unreasonable. For purposes of this section, an "eligible country" is any country that applies with respect to the

United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative.

*Section 5.12. Power Requirements Studies*

The Borrower shall prepare and use power requirements studies of its electric loads and future energy and capacity requirements in conformance with RUS Regulations.

*Section 5.13. Long Range Engineering Plans and Construction Work Plans*

The Borrower shall develop, maintain and use up-to-date long-range engineering plans and construction work plans in conformance with RUS Regulations.

*Section 5.14. Design Standards, Construction Standards, and List of Materials*

The Borrower shall use design standards, construction standards, and lists of acceptable materials in conformance with RUS Regulations.

*Section 5.15. Plans and Specifications*

The Borrower shall submit plans and specifications for construction to RUS for review and approval, in conformance with RUS Regulations, if the construction will be financed in whole or in part by a loan made or guaranteed by RUS.

*Section 5.16. Standard Forms of Construction Contracts, and Engineering and Architectural Services Contracts*

The Borrower shall use the standard forms of contracts promulgated by RUS for construction, procurement, engineering services and architectural services in conformance with RUS Regulations, if the construction, procurement, or services are being financed in whole or in part by a loan being made or guaranteed by RUS.

*Section 5.17. Contract Bidding Requirements*

The Borrower shall follow RUS contract bidding procedures in conformance with RUS Regulations when contracting for construction or procurement financed in whole or in part by a loan made or guaranteed by RUS.

*Section 5.18. Nondiscrimination*

(a) *Equal Opportunity Provisions in Construction Contracts.* The Borrower shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from RUS or borrowed on the credit of the United States pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such grant, contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Exhibit B hereto entitled Equal Opportunity Contract Provisions.

(b) *Equal Opportunity Contract Provisions Also Bind the Borrower.* The Borrower further agrees that it shall be bound by such equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government.

(c) *Sanctions and Penalties.* The Borrower agrees that it shall cooperate actively with RUS and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it shall furnish RUS and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of RUS's primary responsibility for securing compliance. The Borrower further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by RUS or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246. In addition, the Borrower agrees that if it fails or refuses to comply with these undertakings RUS may cancel, terminate or suspend in whole or in part this contract, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from such Borrower, or may refer the case to the Department of Justice for appropriate legal proceedings.

*Section 5.19. Financial Reports*

The Borrower shall cause to be prepared and furnished to RUS a full and complete annual report of its financial condition and of its operations in form and substance satisfactory to RUS, audited and certified by Independent certified public accountants satisfactory to RUS and accompanied by a report of such audit in form and substance satisfactory to RUS. The Borrower shall also furnish to RUS from time to time such other reports concerning the financial condition or operations of the Borrower, including its Subsidiaries, as RUS may reasonably request or RUS Regulations require.

*Section 5.20. Miscellaneous Reports and Notices*

The Borrower shall furnish to RUS:

(a) *Notice of Default.* Promptly after becoming aware thereof, notice of: (i) the occurrence of any default; and (ii) the receipt of any notice given pursuant to the Mortgage with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an "Event of Default" under the Mortgage.

(b) *Notice of Non-Environmental Litigation.* Promptly after the commencement thereof,

notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality affecting the Borrower which, if adversely determined, could have a material adverse effect on the condition, financial or otherwise, operations, properties or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents.

(c) *Notice of Environmental Litigation.* Without limiting the provisions of Section [5.20(b)] above, promptly after receipt thereof, notice of the receipt of all pleadings, orders, complaints, indictments, or other communications alleging a condition that may require the Borrower to undertake or to contribute to a cleanup or other response under laws relating to environmental protection, or which seek penalties, damages, injunctive relief, or criminal sanctions related to alleged violations of such laws, or which claim personal injury or property damage to any person as a result of environmental factors or conditions for which the Borrower is not fully covered by insurance, or which, if adversely determined, could have a material adverse effect on the condition, financial or otherwise, operations, properties or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents.

(d) *Notice of Change of Place of Business.* Promptly in writing, notice of any change in location of its principal place of business or the office where its records concerning accounts and contract rights are kept.

(e) *Regulatory and Other Notices.* Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding which could have a material adverse effect on the condition, financial or otherwise, operations, properties, or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents.

(f) *Material Adverse Change.* Promptly, notice of any matter which has resulted or may result in a material adverse change in the condition, financial or otherwise, operations, properties, or business of the Borrower, or the ability of the Borrower to perform its obligations under the Loan Documents.

(g) *Other Information.* Such other information regarding the condition, financial or otherwise, or operations of the Borrower as RUS may, from time to time, reasonably request.

#### *Section 5.21. Special Construction Account*

The Borrower shall hold all moneys advanced to it by RUS hereunder in trust for RUS and shall deposit such moneys promptly after the receipt thereof in a bank or banks which meet the requirements of Section [6.7] of this Agreement. Any account (hereinafter called "Special Construction Account") in which any such moneys shall be deposited shall be insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS and shall be designated by the corporate name of the Borrower followed by the words "Trustee,

Special Construction Account." Moneys in any Special Construction Account shall be used solely for the construction and operation of the Utility System and may be withdrawn only upon checks, drafts, or orders signed on behalf of the Borrower and countersigned by an executive officer thereof.

#### *Section 5.22. Additional Affirmative Covenants*

The Borrower also agrees to comply with any additional affirmative covenant(s) identified in Schedule 1 hereto.

#### Article VI—Negative Covenants

##### *Section 6.1. General*

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, whether or not any Advance is outstanding hereunder, the Borrower shall duly observe each of the negative covenants set forth in this Article.

##### *Section 6.2. Limitations on System Extensions and Additions*

(a) The Borrower shall not extend or add to its Electric System either by construction or acquisition without the prior written approval of RUS if the construction or acquisition is financed or will be financed, in whole or in part, by a RUS loan or loan guarantee.

(b) The Borrower shall not extend or add to its Electric System with funds from other sources without prior written approval of RUS in the case of:

(1) 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) Existing electric facilities or systems in service whose purchase price, or capitalized value in the case of a lease, exceeds ten percent of the Borrower's Net Utility Plant; and

(3) Any project to serve a customer whose annual Kwh purchases or maximum annual Kw demand 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 of facilities.

##### *Section 6.3. Limitations on Changing Principal Place of Business*

The Borrower shall not change its principal place of business or keep property in a county not shown on a schedule to the Mortgage if the change would cause the lien in favor of RUS to become unperfected or fail to become perfected, as the case may be, unless, prior thereto, the Borrower shall have taken all steps required by law in order to assure that the lien in favor of RUS remains or becomes perfected, as the case may be, and, in either event, such lien has the priority accorded by the Mortgage.

##### *Section 6.4. Limitations on Employment and Retention of Manager*

At any time any Event of Default, or any occurrence which with the passage of time or giving of notice would be an Event of Default, occurs and is continuing the Borrower shall

not employ any general manager of the Utility System or the Electric System or any person exercising comparable authority to such a manager unless such employment shall first have been approved by RUS. If any Event of Default, or any occurrence which with the passage of time or giving of notice would be an Event of Default, occurs and is continuing and RUS requests the Borrower to terminate the employment of any such manager or person exercising comparable authority, or RUS requests the Borrower to terminate any contract for operating the Utility System or the Electric System, the Borrower shall do so within thirty (30) days after the date of such notice. All contracts in respect of the employment of any such manager or person exercising comparable authority, or for the operation of the Utility System or the Electric System, shall contain provisions to permit compliance with the foregoing covenants.

##### *Section 6.5. Limitations on Certain Types of Contracts*

Without the prior approval of RUS in writing, the Borrower shall not enter into any of the following contracts:

(a) *Construction Contracts.* Any contract for construction or procurement or for architectural and engineering services in connection with its Electric System if the project is financed or will be financed, in whole or in part, by a RUS loan or loan guarantee;

(b) *Large retail power contracts.* Any contract to sell electric power and energy for periods exceeding two (2) years if the kWh sales or kW demand for any year covered by such contract shall exceed 25 percent of the Borrower's total kWh sales or maximum kW demand for the year immediately preceding the execution of such contract;

(c) *Wholesale power contracts.* Any contract to sell electric power or energy for resale and any contract to purchase electric power or energy that, in either case, has a term exceeding two (2) years;

(d) *Power supply arrangements.* Any interconnection agreement, interchange agreement, wheeling agreement, pooling agreement or similar power supply arrangement that has a term exceeding two (2) years;

(e) *System management and maintenance contracts.* Any contract for the management and operation of all or substantially all of its Electric System; or

(f) *Other contracts.* Any contracts of the type described on Schedule 3.

##### *Section 6.6. Limitations on Mergers and Sale, Lease or Transfer of Capital Assets*

(a) The Borrower shall not consolidate with, or merge, or sell all or substantially all of its business or assets, to another entity or person except to the extent it is permitted to do so under the Mortgage. The exception contained in this paragraph (a) is subject to the additional limitation set forth in paragraph (b) of this section.

(b) The Borrower shall not, without the written approval of the Administrator, voluntarily or involuntarily sell, convey or dispose of any portion of its business or assets (including, without limitation, any

portion of its franchise or service territory) to another entity or person if such sale, conveyance or disposition could reasonably be expected to 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 RUS.

#### *Section 6.7. Limitations on Using non-FDIC Insured Depositories*

Without the prior written approval of RUS, the Borrower shall not place the proceeds of the Loan or any loan which has been made or guaranteed by RUS in the custody of any bank or other depository that is not insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS.

#### *Section 6.8. Limitation on Distributions*

Without the prior written approval of RUS, the Borrower shall not in any calendar year make any Distributions (exclusive of any Distributions to the estates of deceased natural patrons) to its members, stockholders or consumers except as follows:

(a) Equity above 30%. If, after giving effect to any such Distribution, the Equity of the Borrower shall be greater than or equal to 30% of its Total Assets; or

(b) Equity above 20%. If, after giving effect to any such Distribution, the aggregate of all Distributions made during the calendar year when added to such Distribution shall be less than or equal to 25% of the prior year's margins.

Provided however, that in no event shall the Borrower make any Distributions if there is unpaid when due any installment of principal of (premium, if any) or interest on its Notes, if the Borrower is otherwise in default hereunder or if, after giving effect to any such Distribution, the Borrower's current and accrued assets would be less than its current and accrued liabilities.

#### *Section 6.9. Limitations on Loans, Investments and Other Obligations*

The Borrower shall not make any loan or advance to, or make any investment in, or purchase or make any commitment to purchase any stock, bonds, notes or other securities of, or guaranty, assume or otherwise become obligated or liable with respect to the obligations of, any other person, firm or corporation, except as permitted by the Act and RUS Regulations.

#### *Section 6.10. Depreciation Rates*

The Borrower shall not file with or submit for approval of regulatory bodies any proposed depreciation rates which are inconsistent with RUS Regulations.

#### *Section 6.11. Historic Preservation*

The Borrower shall not, without approval in writing by RUS, use any Advance to construct any facilities which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

#### *Section 6.12. Rate Reductions*

Without the prior written approval of RUS, the Borrower shall not decrease its rates if it has failed to achieve all of the Coverage Ratios for the calendar year prior to such reduction.

#### *Section 6.13. Limitations on Additional Indebtedness*

Except as expressly permitted by Article II of the Mortgage and subject to the further limitations expressed in the next section, the Borrower shall not incur, assume, guarantee or otherwise become liable in respect of any debt for borrowed money and Restricted Rentals (including Subordinated Indebtedness) other than the following: ("Permitted Debt")

(a) Additional Notes issued in compliance with Article II of the Mortgage;

(b) Purchase money indebtedness in non-Utility System property, in an amount not exceeding 10% of Net Utility Plant;

(c) Restricted Rentals in an amount not to exceed 5% of Equity during any 12 consecutive calendar month period;

(d) Unsecured lease obligations incurred in the ordinary course of business except Restricted Rentals;

(e) Unsecured indebtedness for borrowed money, except when the aggregate amount of such indebtedness exceeds 15% of Net Utility Plant and after giving effect to such unsecured indebtedness the Borrower's Equity is less than 30% of its Total Assets;

(f) Debt represented by dividends declared but not paid; and

(g) Subordinated Indebtedness approved by RUS.

PROVIDED, However, that the Borrower may incur Permitted Debt without the consent of RUS only so long as there exists no Event of Default hereunder and there has been no continuing occurrence which with the passage of time and giving of notice could become an Event of Default hereunder.

PROVIDED, FURTHER, by executing this Agreement any consent of RUS that the Borrower would otherwise be required to obtain under this Section is hereby deemed to be given or waived by RUS by operation of law to the extent, but only to the extent, that to impose such a requirement of RUS consent would clearly violate federal laws or RUS Regulations.

#### *Section 6.14. Limitations on Issuing Additional Indebtedness Secured Under the Mortgage*

(a) The Borrower shall not issue any Additional Notes under the Mortgage to finance Eligible Property Additions without the prior written consent of RUS unless the following additional requirements are met in addition to the requirements set forth in the Mortgage for issuing Additional Notes:

(1) The weighted average life of the loan evidenced by such Notes does not exceed the weighted average of the expected remaining useful lives of the assets being financed;

(2) The principal of the loan evidenced by such Notes is amortized at a rate that shall yield a weighted average life that is not greater than the weighted average life that would result from level payments of principal and interest; and

(3) The principal of the loan being evidenced by such Notes has a maturity of not less than 5 years.

(b) The Borrower shall not issue any Additional Notes under the Mortgage to refund or refinance Notes without the prior written consent of RUS unless, in addition to the requirements set forth in the Mortgage for issuing Refunding or Refinancing Notes, the weighted average life of any such Refunding or Refinancing Notes is not greater than the weighted average remaining life of the Notes being refinanced.

(c) Any request for consent from RUS under this section, shall be accompanied by a certificate of the Borrower's manager substantially in the form attached to this Agreement as Exhibit C-1 in the case of Notes being issued under Section [2.01] of the Mortgage and C-2 in the case of Notes being issued under Section [2.02] of the Mortgage.

#### *Section 6.15. Impairment of Contracts Pledged to RUS*

The Borrower shall not materially breach any obligation to be paid or performed by the Borrower on any contract, or take any action which is likely to materially impair the value of any contract, which has been pledged as security to RUS by the Borrower or any other entity.

#### *Section 6.16. Additional Negative Covenants*

The Borrower also agrees to comply with any additional negative covenant(s) identified in Schedule 1 hereto.

#### *Article VII—Default*

##### *Section 7.1. Events of Default*

The following shall be Events of Default under this Agreement:

(a) *Representations and Warranties.* Any representation or warranty made by the Borrower in Article II hereof or any certificate furnished to RUS hereunder or under the Mortgage shall prove to have been incorrect in any material respect at the time made and shall at the time in question be untrue or incorrect in any material respect and remain uncured;

(b) *Payment.* Default shall be made in the payment of or on account of interest on or principal of the Note when and as the same shall be due and payable, whether by acceleration or otherwise, which shall remain unsatisfied for five (5) Business Days;

(c) *Borrowing Under the Mortgage in Violation of the Loan Contract.* Default by the Borrower in the observance or performance of any covenant or agreement contained in Section 6.14 of this Agreement.

(d) *Other Covenants.* Default by the Borrower in the observance or performance of any other covenant or agreement contained in any of the Loan Documents, which shall remain unremedied for 30 calendar days after written notice thereof shall have been given to the Borrower by RUS;

(e) *Corporate Existence.* The Borrower shall forfeit or otherwise be deprived of its corporate charter, franchises, permits, easements, consents or licenses required to carry on any material portion of its business;

(f) *Other Obligations.* Default by the Borrower in the payment of any obligation,

whether direct or contingent, for borrowed money or in the performance or observance of the terms of any instrument pursuant to which such obligation was created or securing such obligation;

(g) *Bankruptcy*. A court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Borrower in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official, or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of ninety (90) consecutive days or the Borrower shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors; and

(h) *Dissolution or Liquidation*. Other than as provided in the immediately preceding subsection, the dissolution or liquidation of the Borrower, or failure by the Borrower promptly to forestall or remove any execution, garnishment or attachment of such consequence as shall impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within 30 days. The term "dissolution or liquidation of the Borrower", as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Borrower resulting either from a merger or consolidation of the Borrower into or with another corporation following a transfer of all or substantially all its assets as an entirety, under the conditions permitting such actions.

#### Article VIII—Remedies

##### Section 8.1. Generally

Upon the occurrence of an Event of Default, then RUS may pursue all rights and remedies available to RUS that are contemplated by this Agreement or the Mortgage in the manner, upon the conditions, and with the effect provided in this Agreement or the Mortgage, including, but not limited to, a suit for specific performance, injunctive relief or damages. Nothing herein shall limit the right of RUS to pursue all rights and remedies available to a creditor following the occurrence of an Event of Default listed in Article VII hereof. Each right, power and remedy of RUS shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

##### Section 8.2. Suspension of Advances

In addition to the rights, powers and remedies referred to in the immediately preceding section, RUS may, in its absolute discretion, suspend making Advances hereunder if (i) any Event of Default, or any occurrence which with the passage of time or giving of notice would be an Event of Default, occurs and is continuing; (ii) there has

occurred a change in the business or condition, financial or otherwise, of the Borrower which in the opinion of RUS materially and adversely affects the Borrower's ability to meet its obligations under the Loan Documents, or (iii) RUS is authorized to do so under RUS Regulations.

#### Article IX—Miscellaneous

##### Section 9.1. Notices

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Address for Notices of the respective parties are as follows:

Rural Utilities Service, United States  
Department of Agriculture, Washington,  
DC 20250-1500  
Fax: (202) xxx-xxxx

Attention: [Administrator]

The Borrower:

The address set forth in Schedule 1 hereto

##### Section 9.2. Expenses

To the extent allowed by law, the Borrower shall pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Loan Documents or with the preparation for such enforcement if RUS has reasonable grounds to believe that such enforcement may be necessary.

##### Section 9.3. Late Payments

If payment of any amount due hereunder is not received at the United States Treasury in Washington, DC, or such other location as RUS may designate to the Borrower within five (5) Business Days after the due date thereof or such other time period as RUS may prescribe from time to time in its policies of general application in connection with any late payment charge (such unpaid amount being herein called the "delinquent amount", and the period beginning after such due date until payment of the delinquent amount being herein called the "late-payment period"), the Borrower shall pay to RUS, in addition to all other amounts due under the terms of the Note, the Mortgage and this Agreement, any late-payment charge as may be fixed by RUS Regulations from time to time on the delinquent amount for the late-payment period.

##### Section 9.4. Filing Fees

To the extent permitted by law, the Borrower agrees to pay all expenses of RUS (including the fees and expenses of its counsel) in connection with the filing or recordation of all financing statements and

instruments as may be required by RUS in connection with this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. Borrower agrees to save harmless and indemnify RUS from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by RUS in connection with this Agreement. The provisions of this subsection shall survive the execution and delivery of this Agreement and the payment of all other amounts due hereunder or due on the Note.

##### Section 9.5. No Waiver

No failure on the part of RUS to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

##### Section 9.6. Governing Law

EXCEPT TO THE EXTENT GOVERNED BY APPLICABLE FEDERAL LAW, THE LOAN DOCUMENTS SHALL BE DEEMED TO BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE [IN WHICH THE BORROWER IS INCORPORATED].

##### Section 9.7. Holiday Payments

If any payment to be made by the Borrower hereunder shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

##### Section 9.8. Rescission

The Borrower may elect not to borrow the RUS Commitment in which event RUS shall release the Borrower from its obligations hereunder, provided the Borrower complies with such terms and conditions as RUS may impose for such release and provided also that if the Borrower has any remaining obligations to RUS for loans made or guaranteed by RUS under any Prior Loan Contracts, RUS may, under Section [9.15] of this Loan Contract, withhold such release until all such obligations have been satisfied and discharged.

##### Section 9.9. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Borrower and RUS and their respective successors and assigns, except that the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of RUS.

##### Section 9.10. Complete Agreement; Amendments

Subject to RUS Regulations, this Agreement and the other Loan Documents are intended by the parties to be a complete and final expression of their agreement. However, RUS reserves the right to waive its rights to compliance with any provision of this Agreement and the other Loan

Documents. No amendment, modification, or waiver of any provision hereof or thereof, and no consent to any departure of the Borrower herefrom or therefrom, shall be effective unless approved in writing by RUS in the form of either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 9.11. Headings

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

Section 9.12. Severability

If any term, provision or condition, or any part thereof, of this Agreement or the Mortgage shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement, the Note, and the Mortgage shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

Section 9.13. Right of Setoff

Upon the occurrence and during the continuance of any Event of Default, RUS is hereby authorized at any time and from time to time, without prior notice to the Borrower, to exercise rights of setoff or recoupment and apply any and all amounts held or hereafter held, by RUS or owed to the Borrower or for the credit or account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing hereunder or under the Note. RUS agrees to notify the Borrower promptly after any such setoff or recoupment and the application thereof, provided that the failure to give such notice shall not affect the validity of such setoff, recoupment or application. The rights of RUS under this section are in addition to any other rights and remedies (including other rights of setoff or recoupment) which RUS may have. Borrower waives all rights of setoff, deduction, recoupment or counterclaim.

Section 9.14. Schedules and Exhibits

Each Schedule and Exhibit attached hereto and referred to herein is each an integral part of this Agreement.

Section 9.15. Prior Loan Contracts

It is understood and agreed that with respect to all loan agreements previously entered into by and between RUS and the Borrower (hereinafter being referred to as "Prior Loan Contracts") the Borrower shall be required, after the date hereof, to meet affirmative and negative covenants as set forth in this Agreement rather than those set forth in the Prior Loan Contracts. In addition, any remaining obligation of RUS to make additional advances on promissory notes of the Borrower that have been previously delivered to RUS under Prior Loan Contracts shall, after the date hereof, be subject to the conditions set forth in this Agreement. In the

event of any conflict between any provision set forth in a Prior Loan Contract and any provision in this Agreement, the requirements as set forth in this Agreement shall apply. Nothing in this section shall, however, eliminate or modify any special condition, special affirmative covenant or special negative covenant, if any, unless specifically agreed to in writing by RUS.

Section 9.16. Authority of Representatives of RUS

In the case of any consent, approval or waiver from RUS that is required under this Agreement or any other Loan Document, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this section, "authorized RUS representative" means the Administrator of RUS, and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

Section 9.17. Term

This Agreement shall remain in effect until one of the following two events has occurred:

- (a) The Borrower and RUS replace this Agreement with another written agreement; or
(b) All of the Borrower's obligations under the prior loan contracts and this Agreement have been discharged and paid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

(Name of Borrower)
(SEAL)
By \_\_\_\_\_
President
Attest: \_\_\_\_\_
Secretary
RURAL UTILITIES SERVICE
By \_\_\_\_\_
Administrator

Schedule 1
[citations subject to change]

- 1. The purpose of this loan is \_\_\_\_\_ and such other purposes that RUS may agree to in writing in order to carry out the purposes of the Rural Electrification Act.
2. The Mortgage shall mean the Restated Mortgage and Security Agreement, dated as of \_\_\_\_\_, between the Borrower and RUS, as it may have been or shall be supplemented, amended, consolidated, or restated from time to time.
3. The governmental authority referred to in Section [2.1(c)] is \_\_\_\_\_.
4. The exception being taken to the representations in Section [2.1(e)] concerning material compliance with laws is as follows: \_\_\_\_\_.
5. The litigation referred to in Section [2.1(f)] is described as follows: \_\_\_\_\_.
6. The date of the Borrower's financial information referred to in Section [2.1(h)] is \_\_\_\_\_.

7. The principal place of business of the Borrower referred to in Section [2.1(i)] is \_\_\_\_\_.

8. All of the property of the Borrower is located in the counties of \_\_\_\_\_.

9. The subsidiary (or subsidiaries) referred to in Section [2.1(k)] is (are): \_\_\_\_\_.

10. The Contemporaneous Loan referred to in Section [5.3] is described as follows: \_\_\_\_\_.

Lender: \_\_\_\_\_
Amount: \_\_\_\_\_
Year of Final Maturity: \_\_\_\_\_

11. The RUS Commitment referred to in the definitions means a loan in the principal amount of \$ \_\_\_\_\_ which is being made by RUS to the Borrower at the \_\_\_\_\_ Hardship Rate \_\_\_\_\_ Municipal Rate (CHECK ONE) pursuant to the Rural Electrification Act and RUS Regulations.

12. Amortization of Advance shall be based upon the method indicated below:
\_\_\_\_\_ level principal
\_\_\_\_\_ level debt service
\_\_\_\_\_ other

13. The SPECIAL condition(s) referred to in Section [4.2] is (are): \_\_\_\_\_.

14. The additional AFFIRMATIVE covenant(s) referred to in Section [5.22] is (are) as follows: \_\_\_\_\_. 15. The additional NEGATIVE covenant(s) referred to in Section [6.16] is (are) as follows: \_\_\_\_\_.

16. The address of the Borrower referred to in Section [9.1]. is \_\_\_\_\_.

Schedule 2—Existing Liens

The Existing Liens referred to in Section [2.1(g)] are as follows:
[INSERT DESCRIPTION OF EXISTING LIENS, IF ANY, HERE]

Schedule 3—Additional Contracts

The additional contracts referred to in Section [6.5(f)] are described as follows:
[INSERT LIST OF ANY ADDITIONAL CONTRACTS HERE]

Exhibit A—Form of Promissory Note

[INSERT EITHER MUNICIPAL or HARSHIP RATE PROMISSORY NOTE FORM HERE]

Exhibit B—Equal Opportunity Contract Provisions

During the performance of this contract, the contractor agrees as follows:

- (a) The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including

apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliances with such rules, regulations and orders.

(f) In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation or order of the

Secretary of Labor, or as otherwise provided by law.

(g) The contractor shall include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, dated September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Exhibit C-1—Manager's Certificate Required Under Loan Contract Section 6.14 for Additional Notes**

On behalf on \_\_\_\_\_ [Name of Borrower] \_\_\_\_\_ I hereby certify that the Additional Note or Notes to be issued under Section [2.01] of the Mortgage on or about \_\_\_\_\_ [Date Note or Notes are to be Signed] \_\_\_\_\_ meet all of the requirements of Section [6.14] of the Loan Contract, namely:

(a) The weighted average life of the loan evidenced by such Notes (\_\_\_\_\_ years) does not exceed the weighted average of the expected remaining useful lives of the assets being financed (\_\_\_\_\_ years) as evidenced by the attached calculation of said weighted average lives.

(b) The principal of the loan evidenced by such Notes shall either be [check one and provide evidence in the second case]:

\_\_\_\_\_ (1) repaid based on level payments of principal and interest throughout the life of the loan, or

\_\_\_\_\_ (2) amortized at a rate that shall yield a weighted average life that is not

greater than the weighted average life that would result from level payments of principal and interest throughout the life of the loan as evidenced by the attached analysis of said weighted average lives.

(c) The principal of the loan evidenced by such Notes has a maturity of not less than 5 years.

[Signed] \_\_\_\_\_  
 [Dated] \_\_\_\_\_  
 [Name] \_\_\_\_\_  
 [Title] \_\_\_\_\_  
 [Name and Address of Borrower] \_\_\_\_\_

**Exhibit C-2—Manager's Certificate Required Under Loan Contract Section 6.14 for Refinancing Notes**

On behalf on \_\_\_\_\_ [Name of Borrower] \_\_\_\_\_ I hereby certify that the Additional Note or Notes to be issued under Section [2.02] of the Mortgage on or about \_\_\_\_\_ [Date Note or Notes are to be Signed] \_\_\_\_\_

\_\_\_\_\_ meet the requirement of Section [6.14] of the Loan Contract that the weighted average life of such Notes is not greater than the weighted average remaining life of the Notes being refinanced, as evidenced by the attached calculation of said weighted average lives.

[Signed] \_\_\_\_\_  
 [Dated] \_\_\_\_\_  
 [Name] \_\_\_\_\_  
 [Title] \_\_\_\_\_  
 [Name and Address of Borrower] \_\_\_\_\_

Dated: December 18, 1995.  
 Jill Long Thompson,  
*Under Secretary, Rural Economic and Community Development.*  
 [FR Doc. 95-31227 Filed 12-28-95; 8:45 am]  
**BILLING CODE 3410-15-P**