

§ 1717.304

7 CFR Ch. XVII (1-1-08 Edition)

borrower will be able to make required payments on secured loans.

(b) Pursuant to the terms of the RUS wholesale power contract, the Board of Directors or Board of Trustees of the power supply borrower shall review rates not less frequently than once each calendar year and revise its rates as therein set forth.¹ The RUS wholesale power contract further provides that the borrower shall notify the Administrator not less than 30 nor more than 45 days prior to the effective date of any adjustment and shall set forth the basis upon which the rate is to be adjusted and established. The RUS wholesale power contract provides that no final revision in rates shall be effective unless approved in writing by the Administrator.

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

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

§ 1717.304 State regulatory authority rate jurisdiction.

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

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

such required approval in a timely manner.

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

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

§ 1717.305 Pre-emption.

(a) *Inadequate rates.* State regulatory authority jurisdiction over a power supply borrower's rates shall be pre-empted by the RE Act if the Administrator shall have determined that the borrower's rates approved by the state regulatory authority are, after taking into account the borrower's costs and expenses, inadequate to produce revenues sufficient to permit the borrower to make required payments on its secured loans and the borrower has failed to make required payments on its secured loans.

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

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

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

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