

## Rural Utilities Service, USDA

## § 1717.356

members pursuant to RUS Wholesale Power Contracts, the RUS Wholesale Power Contract.

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

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

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

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

*State regulatory authority* means any state board or local governing body having jurisdiction under state law to regulate, or in any way, approve the electric rates charged by a borrower.

(b) *Rules of construction.* Unless the context shall otherwise indicate, the terms defined in §1717.352(a) hereof include the plural as well as the singular, and the singular as well as the plural. The words "herein," and "hereunder", and words of similar import, refer to this subpart as a whole. "Includes" and "including" are not limiting and "or" is not exclusive.

[55 FR 38653, Sept. 19, 1990, as amended at 59 FR 66440, Dec. 27, 1994]

### §1717.353 Requirements of RUS documents.

Each borrower shall establish and adjust rates for electric service as set forth in the RUS documents to assure that the borrower will be able to make required payments on secured loans and to otherwise meet the terms of the RUS documents.

### §1717.354 Pre-emption.

State Regulatory Authority jurisdiction over an RUS borrower's rates shall

be pre-empted by the RE Act and RUS shall have exclusive jurisdiction over the borrower's rates:

(a) On October 19, 1990, with respect to any borrower by or against whom a case under the Bankruptcy Code of 1978, as amended, was commenced prior to and remains outstanding on October 19, 1990; and

(b) With respect to all other borrowers, upon the filing of a petition by or against the borrower commencing a case under the Bankruptcy Code of 1978, as amended.

### § 1717.355 RUS required rates.

(a) Upon the pre-emption of State Regulatory Authority as provided in this subpart, RUS will exercise exclusive jurisdiction over the rates of the borrower pursuant to the terms of the RUS documents.

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

(c) RUS shall, pursuant to the terms of the RUS documents, exercise exclusive jurisdiction over the rates of the borrower until the Administrator shall in writing approve the resumption of jurisdiction by the State Regulatory Authority. The Administrator shall approve resumption only after determining that such jurisdiction shall be exercised in a manner consistent with Federal interests.

### §1717.356 Additional statutory pre-emption.

This subpart addresses pre-emption of State law and State Regulatory Authority upon the filing of a petition by or against the borrower commencing a case under the Bankruptcy Code of 1978, as amended. Nothing in this subpart waives, limits, or otherwise affects the explicit pre-emption or pre-emption, which is implicit and shall occur pursuant to the RE Act as a matter of law, of State law or action of a State Regulatory Authority where