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B-32920 March 12, 1943

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The Honorable Malcolm C. Tarver, Chairman, House of Representatives

Dear Mr. Tarver:

"By direction of the sub-committee on Agricultural Appropriations of the Appropriations Committee of the House of Representatives, I am herewith enclosing transcript of the evidence of Hon. Harry Slattery, Administrator, Rural Electrification Administration, and his associates, delivered in connection with the consideration of budget estimates for the Department of Agriculture for the fiscal year 1944, and direct your attention particularly to the evident set out on pp.29, et. seq., first section and pp. 1 to 39, inclusive, second section, relating to legal authority for the expenditure of certain funds made available to the REA in the Agricultural Appropriation Act of 1943 and an estimate for $10,000,000 for identical purposes for the fiscal year 1944, for the acquisition of electric transmission lines.

"It will be noted that these expenditures are contemplated under section 4 of the Rural Electrification Act, and will not in the immediate future provide for electric power service to any rural persons not now served, although it is contemplated that at some indefinite time in future lines so purchased will be integrated into rural electric systems which will provide such additional service, when materials for additional construction may become available.

"The committee finds it difficult to appraise the needs of this agency for funds for the next fiscal year without authoritative advices as to whether expenditures for such purposes will be approved by you, and solicits your advises upon the subject."

So far as here material, the terms of the act of July 22, 1942, 56 Stat. 664, 698, making appropriations for the Department of Agriculture for the fiscal year 1943, provide as follows:

"To enable the Secretary of Agriculture to carry into effect the provisions of the Rural Electrification Act of 1938, approved May 20, 1936, as amended (7 U.S.C. 901-914), as follows:

* * *

"Loans: For loans in accordance with sections 3, 4, and 5, and for the purchase of property and costs and expenses incurred in connection therewith in accordance with section 7 of the Rural Electrification Act of May 20, 1936, as

amended (7 U.S.C. 901-914), $10,000,000 * * *."

In letter of December 1, 1942, to Congressman Lyle H. Boren, to which reference was made in the hearings here involved, it was stated, in pertinent part, as follows:

"The primary purpose of the Rural Electrification Act of 1936 is, as stated in section 2 thereof, 49 Stat. 1363 (7 U.S.c. 902), the making of loans 'for rural electrification' and section 4 of the act, 49 Stat. 1365 (7 U.S.C. 904), provides:

"The Administrator is authorized and empowered * * * to make loans to persons, corporations, States, Territories, and subdivisions and agencies thereof, municipalities, peoples utility districts and cooperative, nonprofit, or limited-dividend associations organized under the laws of any State or Territory of the United States, for the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines or systems for the furnishing of electric energy to persons in rural areas who are not receiving central sation service * * *.

"It is , of course, a cardinal principle of statutory construction that the terms of a statute should be so construed as to effectuate the legislative intent. The specific power embodied in the above-quoted statutory provision is the power 'to make loans' and, although the purposes for which a loan properly may be made necessarily are limited by the language appearing in the act, there would appear to be no doubt that the Congress contemplated that the extent of the Administrator's authority in this respect and any question as to whether the object of a loan in a particular case comes within his statutory power to make loans for the 'construction and operation of generating plants, electric transmission and distribution lines or systems' would be viewed in the light of the controlling intent of the Congress to provide electric service to persons in rural areas not receiving central station service.

"Obviously, where an application for a loan under the provisions of section 4 of the Rural Electrification Act of 1936, supra, is made on the basis that the entire amount payable under the requested loan contract is to be used exclusively for the purchase of existing electric facilities and the only persons to be benefited or affected are persons already served by such facilities the administrator would not be justified in authorizing the loan for the reason that there would be wholly lacking the essential statutory purpose of providing service to unserved persons in rural areas. But a different situation is presented where the Administrator desires to finance the construction of an electric transmission and distribution system designed to furnish electric energy to unserved persons in rural areas and which requires, for its effective operation, the erection of certain facilities and the acquisition of other facilities already providing service to persons in such areas; and since the acquisition of the existing facilities and the incorporation thereof into the larger, integrated system in such a case would merely constiture the incidental means by which the essential statutory purpose of providing electricity to unserved persons in rural areas would be accomplished, there would appear to be a substantial basis for the inclusion in the loan authorized by the Administrator of an amount to cover the acquisition of such facilities.

"In this connection, it may be stated that the Secretary of Agriculture reports that in each instance where the Administrator has approved a loan in which there

was included an amount for the purchase of existing electric facilities, the acquisition by a cooperative borrower has had as its purpose the extension of electric service to a large number of unserved persons in rural areas who probably would be denied the benefits of electricity unless such facilities were incorporated in the cooperative system and that, although in some instances the rural lines which were acquired y the cooperatives through the medium of such loans have necessarily included a few small towns, in all such instances the acquired system has been essentially a rural system and the acquisition has been merely incidental and contributory to the essential statutory purpose of making possible further extensions to a considerable number of unserved persons in rural areas."

As indicated in the above-quoted letter, it would appear to be clear that when the power delegated by the Congress to the Administrator of the Rural Electrification Administration to make loans of the type authorized by section 4 of the above-cited act, 49 Stat. 1365 (7 U.S.C. 904), is viewed in the light of the controlling intent of the Congress to provide electric serevice to persons in rural areas not receiving central station services, there is a substantial basis for the inclusion in a loan authorized by the Administrator of an amount to cover the purchase of existing electric facilities in a case when the acquisition of such facilities and the incorporation thereof into a larger integrated system are merely the incidental means whereby the essential statutory purpose of providing electricity to unserved persons in rural areas is accomplished.

However, if a loan of that type is to be regarded as coming within the scope of the terms of section 4 of the Rural Electrification Act, supra, it is not only necessary that the amount of the loan, as authorized by the Administrator, be sufficient to cover the purchase of the existing facilities required for the effective operation of the larger system and the expense of the erection of the additional facilities by which electric service would be extended to unserved persons in rural areas, but, also, that sufficient appropriated funds, not otherwise obligated nor allocated, be available to cover the entire amount of the loan. In other words, the Administrator would not be justified in authorizing the expenditure of funds appropriated for carrying out the purpose of section 4 of the Rural Electrification Act, supra, by the above-quoted terms of the act of July 22, 1942, or by any other act containing similar provisions, in a case where the application for the loan is made on the basis that the entire amount payable under the requested loan contract is to be used exclusively for the acquisition of existing facilities or where the erection of the additional facilities required in connection with the accomplishment of the essential statutory purpose is contingent upon future financing by the loan applicant for the purpose of obtaining the necessary funds therefor through private sources or from funds subsequently appropriated by the Congress.

Of course, the question as to whether the basic purpose of a proposed loan in a particular case is to provide electric service to unserved persons in rural areas is a matter for determination administratively, rather than by this office, after a thorough consideration of the pertinent facts and circumstances in the case. And, while it is realized that the accomplishment of the essential statutory purpose of a loan of the type here involved which is presented to the Administrtor for approval at this time would be delayed, in all probability, until after the cessation of the present emergency because of the shortage of critical materials required in connection with the erection of the facilities contemplated thereby, it would seem that, in view of the authority which the

Congress has vested in the Administrator and in the absence of any statutory provision prohibiting the use of appropriated funds for the purpose of such a loan, the determination made by the Administrator with respect to the question as to the approval of the loan must be regarded as a matter of policy and, therefore, not subject to review by this office.

Hence, if it be deemed desirable to limit the authority of the Administrator in this respect so as to preclude the possibility of the authorization by him of a loan of the type here involved where the funds included therein will not in the immediate future provide electric service to unserved persons in rural areas, it is suggested that such object may be effectuated by the enactment of legislation specifically prohibiting the authorization of a loan by the Administrator in any case where there is reason to believe that the essential statutory purpose of the loan cannot be accomplished until after the termination of the present emergency.

Sincerely yours,

(Signed) Lindsay C. Warren Comptroller General of the United States