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The Honorable, The Secretary of Agriculture

My dear Mr. Secretary:

I have your letter of July 11, 1944, as follows:

"This is in reply to your letter of July 1, 1944, addressed to the Secretary of Agriculture requesting a report showing the facts and circumstances of proposed loans under Section 4 of the Rural Elecrification Act of 1936, 49 Stat. 1365 (7 U.S.C. 904) to South Central Rural Electric Cooperative, Inc. (hereinafter for convenience referred to as South Central), Inter-County Rural Electric Cooperative, Inc. (hereinafter referred to as Inter-County), and Union Rural Electric Cooperative, Inc. (hereinafter referred to as Union), to beused in part for the acquisition of the properties of Ohio-Midland Light Power Company (hereinafter referred to as Ohio-Midland) of Canal Winchester, Ohio. In addition t setting forth the information requested, I also request your opinion with reference to the authority of the Rural Electrification Administration to make the proposed loans under the facts and curcumstances hereinafter set forth.

"The Ohio-Midland Light and Poer Company is a wholly owned subsidiary of Associated Electric Company (hereinafter referred to as Associated) which, in turn, is a wholly owned subsidiary of Associated Gas and Electric Company. This latter company has been required to devest itself of its relationship with Ohio-Midland under an order of the Securities and Exchange Commission dated August 13, 1942, issued pursuant to the Public Utility Holding Company Act of 1935. For the purpose of acquiring the properties of Ohio-Midland the three cooperatives named above made an offer to Associated to purchase all of the securities of Ohio-Midland held by Associated for the price of $2,115,000. The securities consist of secured and unsecured indebtedness and common and preferred stock. This offer was accepted by Associated on April 24, 1944.

"It is proposed under the loan applications by the said cooperatives to Rural Electrification Administration that total loans be made in the amount of $3,825,000 to be used in part for the acquisition referred to above and in part for new construction of electric facilities t serve approximately 3800 unserved persons in rural areas, which service would be made possible by the acquisition.

"The Administrator of the Rural Electrification Administration has determined that the proposed loans would be adequately secured and repaid under the requirements of the last sentence of Section 4 of the Rural Electrification Act of 1936. He has also determined administratively that the loans would be

desirable and would be for the basic purpose within the purport of the letter of the Comptroller General under date of March 12, 1943, addressed to Honorable Malcolm C. Tarver, Chairman of the Subcommittee on Appropriations of the House of Representatives, and designated B-32920.

"Funds for the purposes of the loans in question have been ear-marked and allotted by the Administrator of the Rural Electrification Administration. I am informed that, subsequent to such allotments, the said three cooperatives propose to change in certain respects the method of accomplishingt the proposed acquisition fromt eh proposal set forth in the original loan applications. I request your opinion as to whether the proposed loans may be made under the facts and circumstances hererinafter set forth, pursuant to the authority conformed by the Rural Electrification Act of 1936.

"The only method of acquiring the properties in question under conditions imposed by Associated is by the purchase on the part of said three cooperatives of the securities described above. It is proposed that the amount of the securities to be purchased by each cooperative will be proportionate t the value of the assets to be acquired respectively by each. This proportion will be approximately 80% by South Central, 10% by Union, and 10% by Inter-County. Immediately after the consumation of the purchase it is proposed that Ohio-Midland shall transfer to Union and Inter-County the electric properties desired to be acqired by them, respectively, in consideration of assignment and transfer to Ohio-Midland of said securities owned by said cooperatives. The properties thus acquired by each of these two cooperatives will be integrated with its respective system for the purpose of serving presently unserved persons in rural areas.

"The acquisition by South Central of the property desired t be acquired by it is proposed t be accomplished by adifferent procedure in the following manner and for the following reasons. A desirable feature of the proposed acquisition, of benefit to the present and prospective consumers of said cooperative, is a 99-year contract dated December 15, 1925, between Ohio- Midland and Columbus and Southern Ohio Electric Company (hereinafter referred to as Colubus and Southern) under the terms of which the latter company has agreed to funish all of the electric energy required by the former company at a rate of .75 cents per kilowatt hour, subject to adjustment upward or downward based upon the price of coal. The rate now being paid by the cooperative average 1.2 cents per kilowatt hour and the considerable saving in the cost of wholesale energy would make possible extension of service to a considerable number of unserved persons who could not otherwise feasibly be served.

"A further provision of said contract between Ohio-Midland and Columbus and Southern is and arrangement for transportation by the former company to the latter company of coal and other freight required by the latter company in the operation of one of its generating plant and facilities. The charge for such transportation constitutes, in effect, payment in part for the electric energy sold by Columbus and Southern to Ohio-Midland. Said coal and other freight is transmitted by Ohio-Midland over a single track, third rail, electric railway, approximately 13 miles in length, partly owned and partly leased by Ohio-Midland. Facilities of this railway consist of the right-of-way, two electric locamotives, and one work car. No coal cars or other rolling stock are owned by Ohio-Midland. Ohio-Midland transports no passengers and transports no reight for any persons other than Columbus and Southern. More than 99% of the freight transported is coal used by Columbus and Southern in the generation of

electric energy at the plant which provides electric energy for Ohio- Midland as hereinabove described. The value of the railway, as appraised by the said three cooperatives, is approximately $100,000 or less than 5% of the total purchase price involved in the acquisition.

"At the time of said contract between Ohio-Midland and Columbus and Southern, the former company abandoned its own generation of electric energy and relied solely upon said contract for its supply of energy to meet the needs of its customers. The generating plant of Columbus and Southern referred to above is the resent source of energy for South Central and for part of the needs of one of the other cooperatives under contracts by which Ohio-Midland sells to them, at a considerable profit, energy purchased from Columbus and Southern.

"For the purpose of maintaining said contract for the purchase of electric energy by Ohio-Midland from Columbus and Southern, it is desired by South Central to maintain the corporate existence of Ohio-Midland. It is now proposed, therefore, that the acquisition of the properties in question on the part of South Central shall be accomplished in the following manner. Immediately after the acquisitiohn of the securities by South Central, as hereinabove described, South Central will assign, transfer and convey to Ohio-Midland all of its assets including the electric properties now owned by it and the securities purchased by it from Associated. In consideration of this transfer, assignment and conveyance, Ohio-Midland will issue to South Central sufficient shares of its no-par common capital stock in an amount sufficient to distribute such shares of sock to its members and prospective members, each such member receiving one share of stock. South Central will then be dissolved. As a result of this transaction, the only stockholders of Ohio-Midland will be the present members of South Central and such other future consumers of Ohio-Midland as may elect to become stockholders of Ohio-Midland in accordance with its articles of incorporation and bylaws, amended as proposed. The properties thus acquired will be integrated with the other properties now owned by South Central for the purpose of serving presently unserved persons in rural areas.

"It is proposed that the articles of incorporation and bylaws of Ohio- Midland willbe amended to provide for conduct of its business on the cooperative plan, with one share of stock issued to each consumer and with electric energy furnished at cost by the device of patronage refunds or dividends. The effect of the transaction as proposed will be the complete ownership and control by the members of South Central of the properties of Ohio-Midland allocated to South Central under the apportionment of the properties among the three cooperatives as hereinabove set forth.

"As a condition of the obligation of the government to disburse funds under the proposed loans, in the event that they are made, the Rural Electrification Administration, in its loan contracts with said borrowers, will require that all necessary approvals of state and regulatory bodies and officials will be obtained in order to consummate the transactions hereinabove set forth and compliance with such conditions is assumed for the purposes of this request for your opinion."

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 funishing of electric energy to persons in rural areas who are not receiving central station service ***."

So far as concerns the question as to whether there properly may be mad e by the Rural Electrification Administration a loan which has for its purpose the acquisition of existing electric facilities, and whether such acquisition is within ghe contemplation of the term "construction and operation" in section 4 of the said act of 1936, supra, it was stated in office letter of December 1, 1942, B-29463, to Congressman Lyle H. Boren, as follows:

"It is, of course, a cardinal principle of statutory constructiton 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 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 o fthe 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 sectio 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 esential 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 the 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 constitute 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 aquisition by a cooperative borrower has had as its purpose the extension of electric service to alarge number of unserved persons in rural areas who probably wuld 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 by 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."

Also, in office letter of March 12, 1943, B-32920 to the Chairman of a Subcommittee of the Committee on Appropriations, House of Representatives, it was said--after referring to the views expressed in the above-quoted letter of December 1, 1942:

"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 (7U.S.C. 904), is 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, 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 purposes of section 4 of the Rural Electrification Act, supra, by the above-quoted terms of the act of July22, 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 contrast is to be used exclusively for the aquisition of existing 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 ncessary funds therefor through private sources or from funds subsequently appropriated by the Congress.

"Of course, the question as to whether the basis 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 Administrator for approval at this time would be delayed, in all probability, until after the occasion 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."

While the foregoing letters do not constitute authoritative decisions by this office with respect bo the question presented, since no basis appears for departing from the views expressed therein, it would seem that those views and the conclusions reached in said letters equally are applicable to the present matter. That is to say, the inclusion in the proposed loan of an amount to cover the acquisition of the existing electric facilities of the Ohio-Midland Light and Power Company would appear to be free from legal objection if the acquisition of such facilities and the integration thereof with the properties now owned by the borrowers may be regarded as merely incidental to the accomplishment of the basic purpose of the act of 1936, which is to provide electricity to unserved persons in rural areas.

It is understood from your letter that the Inter-County Rural Electric Cooperative, Inc., and the Union Rural Electric Cooperative, Inc., will obtain certain of the physical properties of Ohio-Midland in consideration of the conveyance to the latter of the securities purchased from it by them with proceeds of the proposed loan; but, that the transaction as it effects the South Central Rural Electric Cooperative, Inc., is upon a somewhat different basis. In the case of the last named cooperative, it appears that in order to maintain the benefits to be derived from an existing contract of Ohio-Midland with the Columbus and Southern Ohio Electric Company for the furnishing of electrical energy, it will be necessary to continue Ohio-Midland as a corporate entity and, for that reason, the cooperative will be dissolved and its existing electric facilities integrated with those of Ohio-Midland which will take over and carry out the project of making electricity available to previously unserved rural areas.

It would seem that any doubt that may be entertained with respect to the propriety of the proposed loan stems from the fact that the ultimate acquisition of the physical proprieties will not be accomplished by direct purchase--which, it is presumed, is the usual practice--but by the purchase of stocks and other securities followed by the exchange thereof for such physical properties. However, so far as appears, the difference between such transactions is a difference in method, only, with the result being the same, to wit, the acquisition of the physical properties of the vendor and the integration thereof with the electric facilities of the borrowers. In view thereof, and in the absence of any specific statutory inhibition against the use of a protion of a loan made by the Rural Electrification Administration to purchase stock or other securities of an existing electric utility, a loan of that nature would not appear to be precluded where, as here, the purchase of such securities is the most practicable and economical, if not the only available, means of acquiring the physical properties of said utility.

Accordingly, if it be administratively determined that the proposed loan will accomplish the essential statutory purpose of providing electricity to unserved persons in rural areas, and that said loan would be adequately secured and repaid pursuant to the requirements of section 4 of the Rural Eclectrification Act of 1936, this office will not be required to object to the making of such

loan upon the basis set forth in your submission.

Respectfully,

Comptroller General of the United States