

April 2009

SUPPORTING STATEMENT

OMB Control No. 0572-0114

**7 CFR Part 1717, Subpart D
Mergers and Consolidations of Electric Borrowers**

A. JUSTIFICATION

1. Circumstances that make this collection of information necessary.

The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste water facilities in rural areas. Loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, and as prescribed by Office Management and Budget (OMB) Circular A-129, Policies for Federal Credit Programs and Non-Tax Receivable, which states that agencies must, base on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance.

The Agency's Electric Program is a leader in lending to upgrade, expand, maintain, and replace the vast rural American electric infrastructure. Electric loans are fully amortized over a period approximately equal to the useful life of the facilities financed by the loan, not to exceed 35 years. Borrowers typically draw down on approved loan funds over a 3-4 year period.

The Administrator, acting on behalf of the United States and the Agency, signs the official mortgage and loan documents as the Mortgagee on behalf of the Federal government and, thereby, attests to the feasibility and security of the loan. Prudent management and oversight of loans must be exercised by the Agency Administrator in order to protect and ensure the Government's security interest in loans, and in the exercise of due diligence as custodian of the Government's interest.

The Agency has a paramount interest in loan security and protection of the Government's interest over the long term life of a loan, which is generally secured by a first mortgage and amortized over a period up to 35 years. Therefore, the Agency necessarily has a strong interest in the business, financial, and operating aspects of its borrowers. Accordingly, the RE Act provides authorities for the agency to carry out its obligations and responsibilities. Specifically, the RE Act:

Mergers and Consolidations

The electric utility industry is changing rapidly and advancing toward an increasingly competitive environment. State and Federal Legislation, as well as recent actions and proposals by the Federal Energy Regulatory Commission, has drastically altered the regulatory and business environment of all electric utilities, including systems financed by the Agency. At the same time, changes in overall business trends and in technology continue to place pressure on the Agency financed systems to operate more efficiently and hedge risks.

In order to maintain and improve the electric infrastructure that is vital to rural communities, borrowers must have the flexibility to respond quickly and aggressively to business opportunities and challenges. At the same time, the Agency as a secure lender has a fiduciary responsibility to protect the security of Government loans and avoid defaults.

One frequent response to the challenge of a volatile industry in transition is merger and consolidation. This collection of information implements the Agency policies and procedures for mergers and consolidations of electric borrowers. The information collection affects three aspects of merger activities. A detailed list of the documents is included in RUS Form 36, Summary of Information Collection.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate that actual use the Agency has made of the information received from the current collection.

Documentation needed to conduct business with successor: Most mergers and consolidations do not require the Agency approval. However, the Agency, as a secure lender, needs certain documentation in order to legally advance loan funds, send bills, and otherwise conduct business with the new or surviving entity. This information collection includes this documentation. The specific documents required for each merger vary according to state law and the particular circumstances of the merger. However, most of the information needed by the Agency consists of copies of documents that the borrower must file with state and local authorities.

Transitional assistance: Short-term financial stresses can follow mergers and consolidation that will, in the long term, benefit rural America and enhance the security of the Agency loans. Title 7 CFR 1717 subpart D offers transitional assistance to help mitigate these stresses. This information collection includes documentation from the borrowers requesting such assistance.

RUS approval of a merger: A few mergers and consolidations require the approval of the Agency, as a secured lender. This information collection includes the list of documents that the Agency needs to approve the merger. Except for a formal transmittal letter and board resolution from each of the companies involved, the Agency believes that the

information required is prepared by any prudent business attempting to enter into a merger.

The agency may not require borrowers either to merge or to study the possibility of a merger. The provisions of this rule may be utilized only at the borrower's request. This collection of information encompasses the procedures for borrowers who wish to enter into mergers or who request transitional assistance.

The information collection streamlines the Agency procedures and allows borrowers the flexibility to meet new business challenges and opportunities. The information will be used by the Agency as stated in Item. 1. A list of the documents and the specific use of each is included in the Exhibit.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection.

Rural Development is committed to meeting the requirements of the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. There is no feasible alternative to requiring that the information be submitted to the Agency a hard copy, at this time, with computer generated charts and graphs as supporting data where appropriate. Borrowers use their own software to prepare letters, board resolutions, and supporting analysis. The relatively small number of respondents does not make it financially feasible to automate this collection of information.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The information specific to: each individual borrower involved in a merger or consolidation; the details of the merger; and, the State(s) in which the borrowers operate. There is generally no similar information available. Except for signed transmittal letters and certified board resolutions, the Agency will accept copies of documents submitted to other entities such as state regulatory commissions.

5. If the collection of information impacts small businesses or other small entities (item 5 of OMB Form 83-1), describe any methods used to minimize burden.

The Agency believes that the information requested is the minimum necessary for it to meet statutory requirements with respect to both large and small entities. Agency headquarters and field staff are available to assist borrowers in preparing documents.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The information is collected only when borrowers wish to merge. It is collected only once for each application. It is necessary for the Agency to obtain this information to; 1) conduct business with successor entity while protecting the security of Government loans and avoiding defaults, 2) provide for transitional assistance, and 3) grant merger approval when required.

7. Explain any special circumstances that would cause an information collection to conduct in a manner:

a. Requiring respondent to reporting information more than quarterly.

This information is not collected periodically. It is required only when borrowers wish to merge

b. Requiring written response in less than 30 days.

There is no requirement to respond in less than 30 days.

c. Requiring more than an original and two copies.

There is no requirement of more than original and two copies to be submitted.

d. Requiring respondent to retain records for more than 3 years.

Record retention requirements shall be in accordance with 7 CFR 1767.

e. In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study.

This collection is not a survey.

f. Requiring the use of a statistical data classification that has not be reviewed and approved by OMB.

This collection does not employ statistical sampling.

- g. **Requiring a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use.**

This is no requirement of a pledge of confidentiality.

- h. **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There is no requirement to submit propriety trade secrets.

8. If applicable, identify the date and page number of publication in the Federal Register of the agency's notice soliciting comments on the information collection. Summarize public comments received and describe actions taken by the agency in response to these comments. Describe efforts to consult with persons outside the Agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, reporting format (if any), and on data elements to be recorded, disclosed, or reported.

As required by 5 CFR 1320.8(d), a Notice to request public comments was published on January 30, 2009, at 74 FR 5636. No comments were received. A copy of the Notice is attached.

The following individuals have been consulted to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, etc.:

Brad Schardin
Southeastern Electric Cooperative, Inc.
P.O. Box 388
Marion, SD 57043
(605) 648-3619

This borrower has experience in a prior merger and is familiar with the process. The borrower finds the instructions easily available and understood while working with the General Field Representative (GFR).

Scott St. John
Norval Electric Cooperative, Inc.
P.O. Box 287
Opheim, MT 59250-0287
(406) 762-3411

The borrower worked with the GFR to obtain the information needed for this process. The GFR gave the borrower a detailed list of instructions which contained the necessary information need for this process.

Rick Haile
Heart of Texas Electric Cooperative, Inc.
P.O. Box 357
McGregor, TX 76657-0357
(254) 840-2871

The borrower stated that they found the information readily available. The borrower worked with the GFR to complete the necessary paper work for this process.

The Agency's regional offices maintain close contact with borrower through both general field representatives and a headquarters staff. The Agency also conducts seminars for borrowers. Suggestions and comments are always considered by the Agency.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

Payments or gifts are not provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or Agency policy.

This information collection does not require confidentiality.

11. Provide additional justification for any question of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private.

This information collection includes no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information.

- Number of respondents 12
This is an average of five mergers and consolidations per year which involved approximately 12 borrowers. Most of the mergers and potential mergers involve two active borrowers. However, some activity is a result of a 3- or 4-way merger. Mergers are often in the negotiation stage for several years, and some potential mergers may never occur.
- Burden hours per respondent. This information collection involves 170 burden hours. The number of hours for each component of the collection is shown in the RUS Form 36.

- Annualized cost to respondents. The Agency estimates that approximately 80 percent of the time required to prepare and submit this information is professional time (lawyer or equivalent) estimated at \$55 per hour, and the balance of 20 percent is clerical costing \$21 per hour. The cost is thus:

Professional	216 hours X \$55.00 =	\$7,612.00
Clerical	34.60 hours X \$21.00 =	<u>726.60</u>
Total annualized cost to respondents		\$8,338.60

The Department of Labor, Bureau of Labor Statistics, Standard Occupational Classification wage rates were used as the basis for the cost estimates. The hourly earnings for a lawyer in a non-metropolitan area is \$55.00 and a Legal Secretary is \$21.00.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

There are no capital and start-up costs and purchase of services components involved with this collection.

14. Provide estimates of annualized cost to the Federal Government.

Most documents submitted by the borrowers pursuant to this information collection are copies of documents that borrowers must prepare either state or local governments or for their own internal analysis of a potential merger. All documents submitted to the Agency must, however, be carefully reviewed by the agency. In some cases, such as a new loan contract for a successor, the documents are prepared by the Agency and simply executed by the borrower. Therefore, based on prior experience, the Agency estimates that then annualized cost to the Federal government is about one third higher than the cost to respondents shown in Item 12, or about \$11,118.13.

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of the OMB Form 83-1.

The Agency determined that the previous cost estimates to respondents was not accurate and has used the Department of Labor, Bureau of Labor Statistics, Standard Occupational Classification wage rates to determine the cost to respondents. The cost per respondent has decreased from \$200.00 to \$55.00 for Professional and \$30.00 to \$21.00 for clerical. In addition, the annualized cost to the Government was reviewed for accuracy has been decreased from \$38,290.67 to \$10,152.00.

16. For collection of information whose results will be published, outline plans for tabulation and publication.

There are no plans to publish this information collection for statistical use.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

None.

18. Explain each exception to the certification statement identified in item 19 on OMB 83-1.

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This information collection does not employ statistical methods.