

February 2019

**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.**

This is a request for extension of a currently approved information collection package. 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, based 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.

## **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 documentation is as follows:

### Section of Regulations:

#### 7 CFR 1717.152; Documentation Needed to Legally Conduct Business with a Successor:

In order for RUS to legally advance funds, send bills, and otherwise conduct business with a successor following a merger, these documents must be submitted to RUS regardless of the need for RUS approval of the merger:

Transmittal letters from each borrower that is a party to the proposed merger. This letter is the formal notification to RUS that the borrower intends to merge. In order to allow RUS to prepare the necessary documents, the letter must provide tentative timeframes.

Board resolution from each borrower and non-borrower party to the proposed merger. This resolution affirms the intention of the board of directors to merge.

#### Documents needed to evidence the proposed merger pursuant to state and local law.

These documents include copies of the merger plan, articles of incorporation, bylaws, and notices and filings required by law. These documents are usually copies of documents filed elsewhere with a state or local agency.

Letter from counsel to at least one of the borrowers, prior to the merger. This letter describes the merger and indicates the state and local laws under which the merger will be consummated.

Opinion of counsel, after the merger is effective. This letter indicates that the merger has been consummated, and that all documents relating to RUS' security interest have been filed.

Letter from the successor, after the merger is effective. This letter provides the corporate name and address, names of officers, and the taxpayer identification number.

Perfection of RUS' lien and executed loan contract. RUS will either prepare these documents for the borrower's execution, or give the borrower detailed instructions.

7 CFR 1717.153 through 1717.155; Transitional Assistance Following Mergers: Some types of transitional assistance are available on the borrower's request, subject to availability of loan funds; Others are subject to RUS approval per 7 CFR 1717.154(a) and (b). RUS encourages borrowers to combine documents where possible. For example, if a borrower submits documents under 7 CFR 1717.152, described above, and this regulation at the same time, a single board resolution addressing both will suffice.

Transmittal letter(s) formally requesting the assistance. If the request is submitted before the effective date of the merger, a separate letter must be submitted by each borrower. If the request is submitted afterwards, the request must be from the successor.

Board resolution(s). If the request is submitted before the effective date of the merger, a separate letter must be submitted by each borrower. If the request is submitted afterwards, the request must be from the successor.

Merger plan. This plan must include a cost benefit analysis of the merger. If the transitional assistance requires RUS approval, the borrower must explain why the assistance is needed. RUS assumes that any prudent business conducts this type of analysis before entering into a merger, and that the borrowers will submit copies of analyses prepared for internal use or for the state commissions.

7 CFR 1717.615; Applications For RUS Approval of Mergers: Pursuant to 7 CFR 1717.615, published December 29, 1995, very few merges require RUS approval. RUS encourages borrowers to combine documents where possible, as referenced above.

Transmittal letters from all parties to the proposed action. This letter is the formal notification to RUS that the borrower intends to merge. In order to allow RUS to prepare the necessary documents, the letter must give tentative timeframes.

Board resolutions from all parties to the proposed action. This resolution affirms the intention of the board to merge.

Analyses and/or other evidence that the successor will be a viable entity. RUS assumes that any prudent business conducts this type of analysis before entering into a merger,

and that borrowers will submit copies of analyses prepared for internal use or for their state commissions.

Regulatory information. Pending Federal or State proceedings pertaining to any of the borrowers parties that could have material effects on the successor.

Rate schedules for the successor. This includes copies of rate schedules for the successor and information about any pending rate cases before a state commission.

Area coverage and line extension policies for the successor. RUS requires copies of information that distribution borrowers prepare for their own consumers concerning area coverage and line extension policies.

**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 Spreadsheet.

**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-I), describe any methods used to minimize burden.**

All but 10% of the electric borrowers meet the Small Business Administration criteria for a small business. RUS has made every effort to ensure that the burden on these small entities is the minimum necessary to effectively administer the agency programs.

**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 and is collected only once for each application. It is necessary for the Agency to obtain this information in order 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 comments was published on September 6, 2018, at 83 FR 45209 (173). A copy of the Federal Register is included as an attachment. No public comments were received.

RUS maintains close contact with borrowers through its General Field Representatives (GFRs), field accountants, and headquarters staff. GFRs have direct personal contact with the borrower in connection with the fulfillment of RUS requirements. GFRs pass on any substantive comments to the headquarters staff. Suggestions and comments are always considered by the Agency.

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.:

Scott St. John  
Accountant  
NorVal Electric Cooperative, Inc.  
P.O. Box 951  
Glasgow, MT 5923-0951  
406-228-9351

The borrower believes that the collection of information requested is not too burdensome and materials such as CFR and Website are very accessible. The assistance of the GFR was invaluable in helping through the process.

Mylo Einarson  
President and CEO  
Nodak Electric Cooperative, Inc.  
P.O. Box 13000  
Grand Forks, ND 58208-3000  
307-856-9426

Overall the borrower believes that the collection of information requested is necessary and not too burdensome and materials such as CFR and Website are very accessible. Instructions and record keeping instructions are explained by GFR or Program staff and is clear and useful.

Joel Stevens  
 Vice President Finance  
 Berkeley Electric Cooperative  
 P.O. Box1234  
 Moncks Corner, SC 29461-1234  
 719-743-2431

The borrower stated that they found the information readily available and instructions for submitting the information to RUS are clear and accessible.

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 does not contain questions of a sensitive nature.

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

The calculation of burden hours is based on the amount of activity required under several section of the regulation (7 CFR 1717, Subpart D). Each component of the collection requires one response and is detailed in the attached spreadsheet, RUS Form 36, Summary of Information Collection. The burden calculation is summarized in the table below.

Section of Regulations	Brief description of documentation	Numbers of Respondents	Hours per Response	Total Hours
1717.152 Documentation Needed to Legally Conduct Business with Successor	A. Transmittal letters from each borrower that it is a proposed party to merger	10	2	20
	B. Board resolution from each borrower	10	1	10



	affirming board intention to merge			
	C. Documents to evidence proposed merger pursuant to state/local law	4	1	4
	D. Letter from borrowers counsel prior to merger	4	1	4
	E. Opinion of counsel after merger is effective	4	1	4
	F. Letter from successor after merger is effective	4	1	4
	G. Perfection of RUS' lien & executed loan contract	4	2	8
1717,153 thru 1717.155 Transitional Assistance Following Mergers	A Transmittal letter formally requesting the assistance	10	2	20
	B. Board resolution	10	1	10
	C. Merger plan	10	1	10
1717.615 Applications for RUS Approval of Merger	A. Transmittal letters from all parties to proposed action	10	2	20
	B. Board resolutions from all parties to proposed action	10	1	10
	C. Analyses and/or other evidence that successor will be viable entity	4	1	4
	D. Regulatory Information	4	1	4
	E. Rates for the successor	4	1	4
	F. Successor area coverage and line extension policies	4	1	4
Total Hour Burden				0

Estimated annualized respondent cost for this collection is \$9,022.72. The agency estimates that 80 percent of the total burden, or 112 hours, required for preparation and submission of the information is professional time (attorney or equivalent) and the remaining 20 percent, or 28 hours, is clerical/administrative tasks performed by a legal secretary or the equivalent. The wage rates for the two wage categories of respondents are selected from the Department of Labor, Bureau of Labor Statistics, May 2017 National Occupational Employment and Wage Estimates located at [http://www.bls.gov/oes/current/oes\\_nat.htm#11-0000](http://www.bls.gov/oes/current/oes_nat.htm#11-0000). The two categories and codes are Lawyer (Occupation Code 23-1011; median hourly wage rate \$57.33) and Legal Support Workers (Occupation Code 23-2099; median hourly wage \$26.98). Data provided by the Bureau of Labor Statistics indicates that employer cost for employee benefits for the private industry was 30.5% of wages. See; Bureau of Labor Statistics Employer Costs for Employee Compensation – June 2015, <http://www.bls.gov/news.release/ecec.nr0.htm>. Cost of hourly wages and benefits for Lawyer is \$74.82 and for Clerical/Administrative is \$35.21. The calculation for annualized estimated respondent cost is shown below:

Job Position	Hourly wage/benefits	Burden Hours	Cost
Attorney/ Professional	\$74.82	112	\$8,379.84

Clerical/Admin	\$35.21	28	\$985.88
Total Cost			0

**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.**

The annualized cost to the Federal Government is \$10,929.30. Calculation is based on the U.S. Office of Personnel Management 2019 General Schedule Tables located at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/general-schedule>. There are four wage categories involved in RUS review and evaluation of proposals for merger and consolidation, General Counsel (GS15, step 5, \$73.20 per hour), an operations chief (GS 14, step 5, \$62.23 per hour), a senior loan analyst (GS 13, step 5, \$52.66 per hour), and clerical administrative (GS6, step 5, \$22.46 per hour). After calculating the cost of total wage and benefits, the hourly rate for attorney (GS15, step 5) is \$99.92; operations chief (GS14, step 5) is \$84.94; the cost of wage and benefits for a senior loan analyst is \$71.84; and the cost of wage and benefits for clerical administrative support employee (GS6, step5) is \$30.66.<sup>1</sup> The calculation of the cost to the Federal Government for collection and evaluation of this information collection is as follows:

Attorney (GS 15, step 5) @ \$99.92/hr X 10 hours	= \$ 999.20
Operations Chief Review and Approval @\$84.94/hr X 10	= \$ 849.40
Loan Analyst (GS 13, step 5) @ \$71.84 X 120 hr	= \$ 8,620.80
Clerical/Admin Support (GS 6, step 5) @ \$30.66/hr X 15 hours	= \$ 459.90
Total cost to the Government	\$ 10,929.30

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

This renewal package requests an extension of a currently approved collection. There is no change in the regulations, program operations or burden estimate.

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

All comments will become a matter of public record.

<sup>1</sup> Cost of total benefits as a percentage of total hourly compensation for Federal Government Employees has been calculated by multiplying 36.25% by the hourly OPM wage in accordance with OMB Memorandum M-08-13.

**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.**

The agency is not requesting an exemption to not display the OMB expiration date.

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

None requested.

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**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This information collection does not employ statistical methods.