USDA
United States Department of Agriculture

Rural Development

Rural Utilities Service

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To: **All Electric Program Borrowers**

Subject: **Joint Ownership/Control of Proposed Projects, the Environmental Review Process and RUS Financing**

The Electric Program is continuing its review of the regulations and processes in an effort to identify requirements which no longer add value to the Rural Utilities Service (RUS) loan underwriting process and its overall portfolio management. The Electric Program is identifying and implementing opportunities to streamline and/or improve our processes. As part of this analysis, the Electric Program has reviewed the environmental review process as it relates to **jointly owned facilities**.

The Electric Program is aware that a significant number of RUS borrowers are joint owners in numerous power plants, transmission lines, and related electric facilities. In many instances, these borrowers lack sufficient control to determine whether or not capital additions or improvements will be constructed or otherwise alter the timing or schedule of such construction. At times, RUS' environmental review process pursuant to 7 CFR 1794, *Environmental Policies and Procedures*, has not been followed for these actions in a timely manner resulting in the projects/actions being ineligible for RUS financing. In many of these instances, we had determined that these ineligible projects had qualified as categorical exclusions when the environmental process was completed in due course after the start of the improvements.

The environmental review is an extremely time sensitive aspect of the planning process. When planning a project, even a jointly owned project, it is essential that the potential impact of the proposed project/action on the environment be considered as early as possible. This is of benefit to both the borrower as well as RUS, in that it allows sufficient time to complete the environmental review process.

In order to assist our borrowers, RUS has developed a certification to clarify the environmental clearance process for projects where the borrower lacks sufficient control and avoid situations where the projects become ineligible for RUS financing. In addition, this certification will help to expedite RUS environmental review in instances where the borrower holds an ownership interest of less than 33 1/3 percent. The attached certification is to be executed and submitted to the Electric Program as soon as the borrower becomes aware of the construction projects where it lacks sufficient control so that environmental review can be expedited.

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The certification process will require the following information for all joint ownership borrowers:

1) Borrower information;
2) Project information;
3) The names and dates of all relevant ownership/participation agreements; and
4) The borrower's ownership percentage.

If a **borrower has an ownership interest of five percent or less in a project**, the project is NOT a Federal action subject to 7 CFR 1794. The borrower may execute and submit the certification to RUS for verification.

If a **borrower has an ownership interest of more than five percent but less than 33 1/3 percent**, the borrower will be required to provide the following additional information:

1) Would construction of the project be completed regardless of RUS financial assistance or approval? If the answer is yes, please reference the appropriate citation(s) in the related ownership/participation agreements;
2) At what stage will the borrower participate in planning and construction? Please include the appropriate citation(s) to the related ownership/participation agreements;
3) The borrower's ownership percentage; and
4) The names and ownership percentages of the other participants.

Borrowers that fall into this category should execute the certification and submit it to RUS for review and concurrence. Construction activities should not be initiated until RUS concurs in the certification.

Borrowers who have an ownership percentage of greater than 33 1/3 percent are required to follow the requirements found in 7 CFR 1794.21-25. As soon as these borrowers become aware of a proposed project, they should immediately notify both the appropriate Electric Program staff and RUS environmental staff.

Please feel free to reach out to Electric Program staff if you have any questions or require any clarification. My staff and I remain committed to providing you the highest degree of customer service.

Sincerely,

Nivin A. Elgohary
Assistant Administrator, Electric
Rural Utilities Service