

Disaster Recovery, Hazard Mitigation, And the Stafford Act

Background

Most emergencies are handled at the local level, without assistance from the state or federal government. However, major disasters or emergencies disrupt the normal functioning of governments and communities and special federal measures are necessary and appropriate to expedite the rendering of aid, emergency services, and recovery. This public assistance is primarily provided and overseen by the Federal Emergency Management Agency (FEMA) under authorization of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, as amended). The Stafford Act also authorizes FEMA to provide assistance in planning for disasters and emergencies and in disaster mitigation planning, design, and investments.

Categories of assistance that public power utilities generally receive include debris removal, emergency protective measures, and utility restoration and reconstruction. Public power utilities also receive assistance in planning and design for hazard mitigation and in making disaster mitigation investments. However, given the appropriate life-safety emphasis on getting power restored as quickly as possible, the ability to pause to consider how to rebuild systems with increased resiliency is often impaired. As a result, while FEMA has provided roughly \$12 billion in hazard mitigation funding since 1989, just \$435 million was for electric utility protective measures—and of that \$435 million, roughly \$185 million was for public power utility protective measures (rural electric cooperatives received the remaining \$250 million), according to an American Public Power Association (APPA or Association) analysis of FEMA data.

In some instances, FEMA will decide that public assistance was not appropriate after payment has already been made. In those instances, it can seek to recover (or “deobligate”) such payments either directly or through an administrative offset of future federal payments. Deobligation can result because FEMA has discovered that the type of project is not appropriate, that the payment was duplicative, or quite often, because the recipient failed to follow federal procurement rules when making purchases with assistance funds. These rules can be found

in the Federal Acquisition Regulation (FAR), a 1,917-page document that includes requirements related to: competition and acquisition planning; contracting methods and contracting types; socioeconomic programs; general contracting requirements; special contracting categories; and contract management. Meeting these requirements is difficult in any instance, more so when normal governmental functions have been disrupted by a major disaster or emergency. Nonetheless, FEMA routinely seeks to deobligate funds given to states, tribal governments, and localities, including public power utilities, based upon failure to follow these rules, often years after the disaster. In fact, the Department of Homeland Security’s Office of Inspector General has said that if procurement requirements are not followed, FEMA can and should seek deobligation “even if costs were otherwise reasonable, and the grantee or subgrantee otherwise accomplished the purpose of the grant” (OIG-16-126-D, Sept. 2, 2016).

Congress sought to limit the time in which FEMA could deobligate funds in the Disaster Assistance Improvement Act of 2018 (P.L. 115-254). Under this new provision, which APPA strongly supported, FEMA may only seek to deobligate funds if it has notified the recipient of its intent to do so within three years of the transmission of the final expenditure report for the specific project. This statute of limitations does not apply to deobligations announced prior to the October 5, 2018, enactment of the new law. The act also provides a permanent funding source for pre-disaster mitigation assistance, equal to six percent of disaster-related public assistance provided each year.

Congressional Action

With enactment of a major overhaul of the Stafford Act having just been signed into law, the bulk of congressional activity in the near-term will likely be on oversight of the Stafford Act and the amendments made by the 2018 law. In addition, given the recent report by FEMA regarding its response to the 2017 hurricane season, which found the agency lacked both the numbers of personnel and the level of training to handle three destructive

storms, Congress is expected to hold several oversight hearings on FEMA and the findings of its 2017 Hurricane Season After-Action Report.

American Public Power Association Position

APPA would like to see improvements to the Stafford Act beyond those enacted in 2018. For example, the Association proposes a safe harbor from FAR requirements for debris removal and emergency protective measures. Under this proposal, state, tribal, or local government compliance with state, tribal, or local government procurement requirements that promote full and open competition would constitute compliance with federal procurement requirements for purposes of the Stafford Act.

APPA also believes FEMA and lawmakers should consider ways to make it easier to use disaster mitigation funds to improve electric power system resiliency. Again, while electric power restoration is fundamental to all recoveries, a small fraction of FEMA mitigation grants have been for electric utility protective measures. For example, mitigation funds are extremely limited and so projects that would otherwise qualify may not receive FEMA assistance. A utility can shelve the project and wait for another disaster to try to receive mitigation funds, but under FEMA rules, a utility that proceeds with the project is no longer eligible for mitigation funds in the future. In theory, this

is because FEMA cannot accurately make a cost-benefit analysis once a project is started. This serves to encourage a delay in investment when reasonable compromises balancing concerns could be found.

American Public Power Association Contact

John Godfrey, Senior Government Relations Director,
202-467-2929 / jgodfrey@publicpower.org

The American Public Power Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government to protect the interests of the more than 49 million people that public power utilities serve, and the 93,000 people they employ. Our association advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.