

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) 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

On December 17, 2019, the House approved by a vote of 409-7 H.R. 2548, the Hazard Eligibility and Local Projects Act. Sponsored by Representatives Lizzie Fletcher (D-TX) and Pete Olson (R-TX), the legislation would allow certain hazard mitigation projects that commence prior to FEMA approval to qualify for hazard mitigation funding. Only land acquisitions and projects

that are “categorically exempt” under the National Environmental Policy Act would qualify for this exemption. A companion bill (S. 3285) was introduced on February 12, 2020, by Senators Thom Tillis (R-NC) and Doug Jones (D-AL).

APPA strongly supports this legislation.

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 supports H.R. 2548 and urges passage of its companion legislation, S. 3285, in the Senate. FEMA and lawmakers should consider additional 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. APPA also encourages Congress to ensure that FEMA is not dragging its heels—intentionally or otherwise—on allowing the filing of a final expenditure and thus preventing the beginning of the new three-year statute of limitations for deobligation of public assistance funds.

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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.