NRECA
America's Electric Cooperatives

March 12, 2021

Mr. Tod Wells
Deputy Director of Public Assistance
Federal Emergency Management Agency
500 C Street, SW
Washington, DC 20472

Filed Electronically at: www.regulations.gov
Filed Electronically to: dhsdeskofficer@omb.eop.gov
RE: Docket ID FEMA–2020–0038

Dear Mr. Wells:

The National Rural Electric Cooperative Association ("NRECA") appreciates the opportunity to submit comments on FEMA's Notice of Proposed Rulemaking titled "Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program." As we explain below, we are opposed to FEMA's proposal to reduce the number of federal disaster declarations particularly at a time when Public Assistance (and Individual Assistance) recipients and subrecipients are being battered by the storms of an ongoing pandemic and associated economic strife.

I. Introduction and Background

NRECA is the national service organization for more than 900 private nonprofit rural electric utilities that provide electric energy to over 42 million people in 48 states. NRECA members serve 364 of the nation's 395 persistent poverty counties[1].

Every year, ice storms, tornadoes, floods, hurricanes, and similar natural disasters destroy NRECA's member cooperatives' critical facilities and infrastructure (such as poles, lines, and transformers). If this damage is caused by a major disaster declared by the President of the United States, then many of the cooperatives' response and recovery costs are eligible for reimbursement through grants from the Federal Emergency Management Agency ("FEMA"). These grants, authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act and administered under FEMA's Public Assistance Program, can amount to tens of millions of dollars and are critical to the

[1] Persistent poverty counties are defined by the U.S. Department of Agriculture's Economic Research Service as those counties where 20% or more of the population has lived in poverty for the last 30 years.

ability of cooperatives to recover from disasters and get the lights back on quickly and safely. The grant program best serves its purpose when it is adequately funded by Congress and efficiently administered so that meritorious cost reimbursement grants are speedily disbursed and subject to minimal/no risk of deobligation. NRECA's member cooperatives and numerous other grant applicants are best positioned to support the communities they serve and help restore strong local economies when the grant program is administered fairly and efficiently and offers certainty.

II. General Concern with FEMA's Proposal

Given an historic pandemic that has lasted over a year and has no end in sight, and the very negative economic impacts that the pandemic has caused to states and tribes (and NRECA member cooperatives), we are concerned that FEMA's proposal is ill-timed. FEMA's proposal will, in many cases, make federal disaster declarations more difficult to obtain, thus adding additional economic burdens to states, tribes and private nonprofits such as electric cooperatives. We urge FEMA to delay implementing the proposed changes until the economy of the United States has started to recover from the negative impacts the pandemic has wrought.

The Center on Budget and Policy Priorities estimated in October 2020 that revenue shortfalls faced by states, localities, tribal nations, and U.S. territories will reach between about $480 billion and $620 billion through 2022. The report further notes that Moody's Analytics similarly estimated state and local shortfalls totaling $450 billion ($650 billion if the United States experiences a double-dip recession).[2] Similarly, in September of 2020, the Brookings Institution estimated state revenue shortfalls of $467 billion for 2020, 2021, and 2022.[3] Thus the very capability that FEMA is attempting to reflect in its proposed updated minimum thresholds will be far lower than anticipated by FEMA in this rulemaking.

Another indicator of economic stress is the unemployment rate. According to the Bureau of Labor Statistics, all but 3 states had higher unemployment at the end of 2020 than they did at the end of the previous year. A total of 12 states more than doubled their unemployment rate over that year, including states like Florida, Texas, Colorado, and Illinois which all have a strong electric co-op

---

[2] https://www.cbpp.org/research/state-budget-and-tax/pandemics-impact-on-state-revenues-less-than-earlier-expected-but

[3] https://www.brookings.edu/blog/up-front/2020/09/24/how-much-is-covid-19-hurting-state-and-local-revenues/

presence. Missouri, Georgia, and Wisconsin also saw fairly large increases in unemployment. Under FEMA's proposal, those states, among others, would see significant increases in the COA indicator, and thus a lower probability of FEMA assistance.

Therefore, we recommend that FEMA delay implementing the proposed changes to the elements of cost of assistance until the economy has a chance to recover from the adverse impacts of the pandemic. In addition, we urge FEMA to phase in any changes to the methodology after the end of the delay period. Phasing in the proposed changes over a 5-year period after economic recovery will give states, tribes and private nonprofit entities such as electric cooperatives who rely on FEMA Public Assistance to provide additional support for disaster recovery, sufficient time to prepare for a future with less FEMA support.

We also recommend that the state minimum threshold be applied for a period of a year rather than to just a single incident. This will better reflect the cumulative impact to a state that suffers from multiple disasters in a given year.

We appreciate FEMA's extension of time to file these comments, as well as the meeting FEMA hosted with stakeholders on February 24, 2021. The comments NRECA made at the meeting echoed those of the state emergency managers that made remarks – i.e., Applicants and sub-applicants are under extraordinary economic stress stemming from the COVID-19 pandemic and implementing FEMA's proposal now would create even more economic stress.

III. Section 1232 of the Disaster Recovery Reform Act of 2018

We are disappointed that FEMA has declined to provide more information on how it plans to implement Section 1232 of the DRRA. Section 1232(a) of the DRRA section requires that FEMA "{I}n making recommendations to the President regarding a major disaster declaration, the Administrator of the Federal Emergency Management Agency shall give greater consideration to severe local impact or recent multiple disasters. Further, the Administrator shall make corresponding adjustments to the Agency's policies and regulations regarding such consideration."[4] This is a very specific and detailed requirement and yet FEMA in the NOPR states ""{W}ith respect to the recent multiple disasters and localized impact factors, FEMA evaluated the provision of the DRRA as well as the current factors in regulation and determined that the regulation is sufficiently flexible to address the DRRA requirements."[5] FEMA provides no detail on which of its regulations or where in its regulations it

[4] Disaster Recovery Reform Act of 2018, Section 1232.
[5] Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program, 85 Fed. Reg., p 80720, December 14, 2020.

perceives this flexibility or how FEMA intends to exercise this flexibility, particularly in situations when the state threshold is not exceeded. FEMA points to a May 2019 memorandum issued to Regional Directors directing them to "include fulsome information regarding severe local impacts and the history of recent multiple disasters"[6] yet nowhere does FEMA indicate how it will use the information provided by the Regional Directors, and the memorandum contains only vague guidance on what information is to be provided to allow the Agency to give greater consideration to severe local impacts or recent multiple disasters.

FEMA states in a footnote in the NOPR that "…the DRRA did not amend section 401 of the Stafford Act which requires that the President determine that an event, to qualify as a major disaster warranting Federal assistance beyond the capabilities of the State and the affected local government {…} So while the President must give consideration to the impact of an event on local governments, he must also determine that the event exceeds the capabilities of the State."[7] This statement could be interpreted as FEMA's view that consideration of recent multiple disasters and local impacts will never change the outcome of the disaster declaration decision in situations where the state threshold has not been met. This would be contrary to the clear Congressional intent reflected in Section 1232 of the DRRA. FEMA has admitted that exceeding the state threshold provides for a strong correlation for granting assistance, but it has not indicated how it will assess a situation involving localized impacts and/or recent multiple disasters. [8]

We strongly urge FEMA to provide detailed information on how it intends to implement Section 1232 of the DRRA. The Congressional intent behind adding section 1232 is to help rural communities in large, populous states that struggle to meet the existing per capita benchmarks (let alone the proposed, increased benchmarks) yet suffer tremendously from natural disasters.

FEMA should revise this Notice of Proposed Rulemaking to include a proposal for a clear, comprehensive, transparent and reproducible methodology for how it will give the legislatively mandated greater consideration to severe local impacts and recent multiple disasters in its disaster relief determinations so that stakeholders can understand FEMA's plan and provide appropriate input.

Greater consideration of local impacts and recent multiple disasters will allow electric cooperatives to continue to provide affordable, reliable and safe electric service to the communities they

[6] Ibid p 80721
[7] Ibid, p. 80730
[8] Ibid, p. 80721

serve. We offer as an example the case of Golden Spread Electric Cooperative, Inc., a non-profit electric generation and transmission cooperative based in Amarillo, Texas, serving some of the most rural regions of Texas. Golden Spread is owned by 16 member non-profit distribution cooperatives which serve approximately 230,000 retail electric meters over an expansive area, including the Panhandle, South Plains and Edwards Plateau regions of Texas (covering 24% of the State), the Panhandle of Oklahoma, and small portions of Southwestern Kansas and Southeastern Colorado.

In October 2020, the Oklahoma and Texas Panhandles were hit by a severe winter storm. Several Golden Spread members suffered damage, totaling approximately $15-$20 million. This translates to more than $1,000 in damages per person in one county. By comparison, in 2020, FEMA's state threshold was $1.53 per capita, and the county threshold was $3.89 per capita. These per capita figures are enormous, but because Section 1232 of the DRRA largely has been ignored to date, no federal aid reached these impacted communities.

Similarly, in 2017, North Plains Electric Cooperative, Inc., located in Perryton, Texas, suffered over $11 million in damages from Winter Storm Jupiter. The per capita impacts were almost $500 per person for the counties impacted. North Plains Electric Cooperative did not receive assistance because the total cost of the impact did not exceed Texas' state threshold. However, electric cooperatives in Oklahoma, only a few miles away, were granted FEMA assistance for comparable damage related to the same storm. By prioritizing state thresholds over per capita damage, North Plains and people in the Panhandle of Texas were denied assistance essentially for being Texan. To be clear, the North Plains impact was suffered prior to the passage of the DRRA and thus was not eligible for consideration under severe local impacts or recent multiple disasters as that standard did not yet exist in 2017. Nevertheless, it is the type of situation that we believe led to Congress legislating consideration of local impacts and recent multiple disasters.

Natural disasters, like electrons, do not respect state boundaries. We urge FEMA to update its declaration policy to recognize that a natural disaster can have severe impacts on a portion of a state and that FEMA 's current policy penalizes rural areas of states.

Finally, we point to the recent Executive Order No. 13985 "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government"[9] which defines persons who live in rural areas as among those that have been denied equity. The Executive Order states: "Because

[9] Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Executive Order 13985. 86 Fed Reg page 7009, January 20, 2021.

advancing equity requires a systematic approach to embedding fairness in decision making processes, executive departments and agencies (agencies) must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity." In our view, this Executive Order should apply to the consideration that FEMA gives to rural communities when making disaster declaration recommendations.

IV. Summary and Conclusion

NRECA appreciates the opportunity to submit these comments. We recognize and applaud FEMA's goal to serve as a good steward of federal resources, however we are concerned with the timing of changes to the elements the agency considers in deciding whether to recommend to the President that he/she declare a federal disaster. We recommend that FEMA delay the implementation of its proposed changes until the economy has a chance to recover from the COVID-19 pandemic. Further, we recommend that, once the economy is in recovery, FEMA phase in the adoption of the new methodology over at least 5 years, giving those impacted by the change a chance to plan for it. Finally, we urge FEMA to revise this Notice of Proposed Rulemaking to include a proposal for a clear, comprehensive, transparent and reproducible methodology for how it will give the legislatively mandated greater consideration to severe local impacts and recent multiple disasters in its disaster relief determinations.

Respectfully submitted,

____

Martha A. Duggan, CLCP
Senior Director, Regulatory Affairs
National Rural Electric Cooperative Association
4301 Wilson Blvd.
Arlington, VA 22203
Email: Martha.Duggan@NRECA.coop
Cell Phone: (202) 271-4395