

August 19, 2024

Submitted electronically via www.regulations.gov

Re: **FEMA's Public Assistance Program and Policy Guide (PAPPG)**
Docket ID: FEMA-2024-0010

The Honorable Deanne Criswell
Administrator
Federal Emergency Management Agency
500 C Street SW Washington, DC 20472

The National Rural Electric Cooperative Association (NRECA) is the national trade association representing America's nearly 900 consumer-owned, not-for-profit electric cooperatives. America's electric cooperatives are owned by the people that they serve and comprise a unique sector of the electric industry. From suburbs to remote farming communities, electric cooperatives power 1 in 8 Americans and serve as engines of economic development for 42 million Americans across 56 percent of the nation's landscape. America's electric cooperatives serve 92% of all persistent poverty counties in the United States.

The Federal Emergency Management Agency's (FEMA's) Public Assistance program is critical for our member cooperatives who rely upon federal assistance when the response to and recovery from events exceed available resources. NRECA appreciates the opportunity to provide feedback and the many applicant-supportive changes proposed to FEMA's policy including but not limited to changes that improve rural access, strengthen the Nation's disaster resilience consistent with the Build Back Better initiative, and incorporate changes to the law that have occurred since 2020. NRECA's overall impression is that FEMA's proposed changes would improve the Public Assistance Program and Policy Guide (PAPPG). Although NRECA is generally supportive of FEMA's proposed changes, we do see continued areas for improvement. Accordingly, NRECA recommends that FEMA revise the proposed PAPPG version 5 as follows:

1. Explicitly identify broadband as an eligible critical communication / utility service.
 - a. In Table 1 on page 29, within the list of utilities, revise the first bullet to read:
Communications transmission and switching, and distribution of telecommunications traffic **including broadband**.
 - b. On page 174, at line 4966, revise the bullet to read:
Communications and telecommunications systems, **including broadband**.
 - c. Page 34. At lines 842-843, revise the first bullet to read:

System including flood control, navigation, irrigation, reclamation, public power, **communications (including broadband)**, **public water** (e.g., sewage treatment and collection, water supply and distribution), or watershed development;”

Reason: NRECA is concerned that FEMA has not revised the PAPPG to explicitly identify broadband as a critical communication / utility service. NRECA believes that FEMA would (and perhaps already does) treat the repair and replacement of broadband infrastructure damaged by disaster the same as it treats cooperative electric transmission and distribution facilities under its existing authorities. The repeated use of the terms “communications” and “telecommunications” throughout the Stafford Act, 44 Code of Federal Regulations (CFR), and PAPPG lead a very clear path to FEMA eligibility for Private Non-Profit (PNP) broadband.¹ However, at present there is nothing in FEMA’s regulations, or policy specifically addressing Public Assistance eligibility of broadband. Given the Federal Government’s press for greater rural broadband access², and the Nation’s growing reliance upon the internet as being the predominant communications medium and a critical part of the infrastructure³, this is a topic that is ripe for clear FEMA policy direction confirming eligibility. When implementing this, FEMA should treat an electric cooperative’s (co-op’s) broadband facilities in the same way as, and perhaps even indistinguishable from, the co-op’s electric transmission and distribution facilities, including broadband equipment, fiber optic cables, and poles as part of the eligible facility in the same fashion that the agency evaluates the eligibility of electric transmission and distribution equipment, cable, and poles.

¹ In general, eligible Private Non-Profit (PNP) entities provide “educational... center-based childcare, utility, irrigation, emergency, medical...” services or “essential social services to the general public.” (See Stafford Act Sec 102(11), Definitions (42 U.S.C. § 5122(11).) Essential social services include broadcasting facilities and facilities that provide health and safety services of a governmental nature. Section 406 of the Stafford Act places further restrictions on PNP applicants, and in doing so, requires that before a PNP applicant can apply directly to FEMA for a PA grant, it must first seek a loan from the U.S. Small Business Administration (“SBA”) – *unless* that PNP applicant provides a “critical service”. (See, Stafford Act Sec. 406(a)(3), Repair, Restoration, and Replacement of Damaged Facilities (42 U.S.C. § 5172). As defined by the Stafford Act, the term critical service “includes...communications (including broadcasting and telecommunications)”. (See, Stafford Act Sec. 406(a)(3)(B), Repair, Restoration, and Replacement of Damaged Facilities (42 U.S.C. § 5172).) Similar to applicant eligibility, facilities that provide educational, utility, emergency, medical, or custodial care services, including a facility for senior citizens or individuals with disabilities, and other essential social-type services to the general public are eligible. (Section 102(11)(A) of the Stafford Act, and 44 C.F.R. §206.222(b), FP 104-009-2, Public Assistance Program & Policy Guide (“PAPPG”) Version 4, at 43 (June 1, 2020).) FEMA’s regulations mirror the Stafford Act in their definitions of PNP facility and critical services. (44 C.F.R. 206.206(c), and 44 C.F.R. 206.221(e).) However, when defining PNP facility, FEMA’s regulation further defines “utility” as “buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, *or other similar public service facilities*.” (44 C.F.R. 206.221(e)(2).) Version 4 of the PAPPG, as well as proposed version 5 continue to use inclusive language to define PNP utilities and critical services. The PAPPG explains that electric generation, transmission, and distribution is an eligible “Category F” Utility under the PA program. (See, PAPPG v. 4, at 176, and proposed v. 5 at 173.) Other Category F utilities “include” water storage facilities, treatment plants, and delivery systems, natural gas transmission and distribution facilities, sewage collection systems and treatment plants, *and communication systems*. Services that are considered to be a utility include “communications transmission and switching, and distribution of telecommunications traffic.” (PAPPG v. 4 at pg. 45, and 176, and v. 5 at pg. 29.)

² See e.g., Executive Order 13821 (Jan. 8, 2018); and the Biden/Harris “Internet for All” initiative (<https://www.internet4all.gov/>); National telecommunications and information Administration’s Tribal Broadband Connectivity Program, Broadband Infrastructure Program, and Connecting Minority Communities Pilot Program (<https://www.fema.gov/emergency-managers/practitioners/recovery-resilience-resource-library/tribal-broadband-connectivity>)

³ See e.g., *Id*; FEMA’s IPAWS 2022-2026 Strategic Plan, (https://www.fema.gov/sites/default/files/documents/fema_ipaws-strategic-plan-fy-2022-2026.pdf); FirstNet public safety Broadband initiative, (<https://firstnet.gov/about/history>) ; and FEMA Guide to Expanding Mitigation: Making the Connection to Communications Systems, (https://www.fema.gov/sites/default/files/documents/fema_mitigation-guide_communication-systems.pdf)

2. Pages 17-18, lines 487 – 498, add **“FEMA will issue Determination Memorandums (DMs) for all denials of eligibility or costs, including any during a closeout version of a Project Worksheet (PW).”**

Reason: FEMA has been issuing DMs for all denials except for those in closeout versions of projects. Instead, at closeout FEMA has been imbedding the appeal notice requirements within the closeout PW version. This is inconsistent and causes many subrecipients to not be aware of appeal timelines.

3. Page 26, lines 732 – 766, eliminate the **“50% Rule and mixed-use Rules”**.

Reason: These rules are an unnecessarily complex product of agency policy that makes the program inaccessible. If the program exists to provide financial assistance to restore the critical and non-critical essential social services of communities who are recovering from disaster, then that assistance should be available to restore those services regardless of the amount of square footage or hours in a day that the eligible service is provided.

4. Page 35, lines 873 – 887, eliminate the prohibition against funding portions of a facility that would benefit a non-active area, **and the requirement that 50% of the facility had to be in active use for an eligible purpose at the time of the incident to be eligible.**

Reason: If the purpose of the Public Assistance program is to restore critical and non-critical but essential social services – applicants who provide those services should receive assistance to restore the facilities in which those services are provided, regardless of whether they used the entire building to perform that function. Instead of deeming any facility 100% ineligible if the applicant only used 49% of it at the time of the disaster, obligate funding for that loss and allow the applicant to use that funding in whatever way it deems appropriate to restore the damaged function. For example, if 20% of a building was used for an eligible purpose and 80% was not in use at the time of the disaster – then, approve the funding for the 20% and allow the applicant to determine the scope of the work that will restore the lost function with that 20%, rather than deeming the entire facility ineligible and leaving an applicant unable to provide that otherwise eligible function.

5. Page 35, line 892, add **“The non-federal funds allocated or budgeted for repair or replacement are not considered a prohibited duplication of benefits.”**

Reason: These funds should not be considered a prohibited duplication of benefits because there were not funds provided or available to repair disaster damage.

6. Page 85, line 2284-2286, FEMA should clarify in this section that both **emergency and permanent work** is eligible for interest reimbursement.

Reason: Provides a clear understanding that both types of work are eligible.

7. Page 104, lines 2824-2843, do not delete **“residential electrical meter repair”** from the list of eligible emergency protective measures that may occur on private property.

Reason: Sometimes to restore power to a residence after a storm, the utility must repair the meter. With the removal of this language the eligible work would not actually restore electric service to the resident.

8. Page 105:
 - a. Line 2865, add a bullet that reads “**utility call centers and (Emergency Operation Centers (EOCs))**”.
 - b. Line 2854-2855, revise the sentence to read: “**For eligible PNPs, emergency protective measures are generally limited to activities associated with preventing damage to an eligible facility and its contents or related to eligible work to restore a critical service.**”

Reason: See recent Civil Board of Contract Appeals (CBCA) decision, *In the Matter of Baldwin County Electric Membership Corporation*, CBCA-7914-FEMA (Jul. 16, 2024).

9. Page 105, line 2879, revise the sentence to read “Additionally, costs related to pre-positioning equipment and supplies outside of the declared area are eligible when **related to work to restore critical services**, or conducting search and rescue, evacuation, sheltering, or providing emergency medical care during the evacuation period (such as ambulances and buses), provided the resources were ultimately used for the declared area.
10. Page 106, lines 2891 - 2894. Do not delete “**generators**” and “**EOC facility costs**” from eligible increased operating costs.

Reason: The revision conflicts with page 107 in the EOC section which still says “increased utility costs” are eligible.

11. On page 141, in the guidance on Codes and Standards, do not make the currently proposed change from “Only upgrade work within the same system as the damage is eligible.” to “**Eligibility is limited to code compliance for discrete elements within the system that was damaged.**”

Reason: This is an unnecessary limitation in eligibility that signals a lack of support for compliance with codes and standards.

12. Page 209, line 5958. FEMA should make programmatic agreements available to subrecipients so that they may use the predetermined compliance determinations to prepare their methods of repair. At present, this information is not accessible to subrecipients in the early days when they are trying to develop Environmental and Historic Preservation compliant projects.
13. General. Despite FEMA’s efforts to improve consistent implementation of its program across its 10 regions, its Consolidated Resource Centers, and countless Joint Field Offices, room for improvement remains. To facilitate consistent implementation of the PAPPG and program compliance, NRECA recommends that when releasing the new version 5, FEMA create training videos for its staff in the field and publicly post them so that the recipients and subrecipients can also watch and learn. By recording videos, as opposed to providing one-time learning sessions, information and training can be consistent, individuals can watch at their convenience, and all parties can operate with the same level of understanding.

Conclusion

We appreciate FEMA’s openness to receiving and considering public input on its proposed changes to the PAPPG, and hope that you will improve upon the document consistent with the comments we’ve shared

here. Thank you for your consideration and we welcome further discussion with your team. Please contact me at bronson.brown@nreca.coop or 703-216-5061 if you have any questions about the information provided.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Bronson Brown', with a stylized 'B' and 'B'.

Bronson Brown
Director, Regulatory Affairs
National Rural Electric Cooperative Association