



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

---

June 22, 2023

CBCA 7735-FEMA

In the Matter of CITY OF BRYAN, TEXAS

Michael A. Shaunessy, April E. Lucas, and J. McLean Bell of McGinnis Lochridge LLP, Austin, TX, counsel for Applicant.

Julie Masek, Assistant General Counsel, The Texas A&M University System, College Station, TX, counsel for Grantee; and Joshua Bryant, Division Chief–Recovery, Texas Division of Emergency Management, Austin, TX; and Michelle Ellis, Regional Section Chief, Texas Division of Emergency Management, Houston, TX, appearing for Grantee.

Emanuel Rier Soto, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Guaynabo, PR; and Maureen Dimino, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **VERGILIO**, **SHERIDAN**, and **KULLBERG**.

**SHERIDAN**, Board Judge, writing for the panel.

The City of Bryan, Texas (applicant), supported by the Texas Division of Emergency Management, filed a request for arbitration disputing the determinations by the Federal Emergency Management Agency (FEMA) denying a public assistance request for purchases of natural gas used to provide additional electricity during Winter Storm Uri. The panel held a hearing as requested by the applicant. The panel concludes that the applicant is not entitled to the requested public assistance because the record reveals no specific emergency health and safety tasks to be accomplished. The applicant continued to provide electricity before, throughout, and after the disaster. Its costs of natural gas simply represent varying operational costs for which public assistance is not available.

### Background

On February 19, 2021, the President issued a major disaster declaration for Texas as a result of Winter Storm Uri, with an incident period of February 11 through 21, 2021. This enabled FEMA to provide public assistance pursuant to statute, 42 U.S.C. § 5170b(a) (2018), and implementing regulations and guidelines. The storm caused record stretches of freezing temperatures and brought snow and ice, which made travel dangerous. The applicant owns and operates Bryan Texas Utilities (BTU), a municipality power utility, which provides electricity in the region. The applicant maintains that to meet the increased demand by its customers for electricity due to the storm, it was required to buy additional natural gas. The panel need not resolve the accuracy or specifics of the applicant's assertion that for the incident period it incurred increased natural gas costs of \$58,422,739.06 to provide electricity. The applicant contends that these costs were incurred to provide electricity as an emergency protective measure and should be eligible for public assistance.

On the initial request and first appeal, FEMA determined that public assistance was not available because the wholesale power costs incurred by the applicant are increased operating costs and, therefore, ineligible costs.

### Discussion

The panel need address only a basic underlying issue regarding the availability of public assistance for the costs at issue here. The applicable FEMA Public Assistance Program and Policy Guide (PAPPG) specifies:

Increased costs of operating a facility or providing a service are generally ineligible, even when directly related to the incident. However, short-term increased costs that are directly related to accomplishing specific emergency health and safety tasks as part of emergency protective measures may be eligible, as discussed in Chapter 7:II.F. *Expenses Related to Operating a Facility or Providing a Service*.

PAPPG (June 2020) at 96. Here, no specific emergency health and safety task as part of emergency protective measures exists. The applicant provided electricity to customers before, during, and after the emergency event, although there was greater usage because of the disaster event. The fluctuations in its operating costs were consistent with the applicant's agreements to purchase natural gas, albeit impacted by the declared disaster, not reflective of a specific emergency health and safety task.

The applicant asserts that purchasing additional natural gas was a response to the emergency situation and declared disaster and that the purchase qualifies it to receive public assistance. The argument is not persuasive. As noted above, the applicant provided electricity as it was required to do, with or without a disaster. Had the applicant purchased additional electricity from an outside source, those costs specifically would be ineligible under the PAPPG. This underscores the basic function of providing electricity and a limitation on obtaining public assistance. The applicant provided additional electricity itself, incurring additional costs for natural gas. Those costs reflect basic operating costs, ineligible for public assistance, because the applicant simply provided necessary electricity.

Decision

The panel denies the request for public assistance.

*Patricia J. Sheridan*

PATRICIA J. SHERIDAN  
Board Judge

*Joseph A. Vergilio*

JOSEPH A. VERGILIO  
Board Judge

*H. Chuck Kullberg*

H. CHUCK KULLBERG  
Board Judge