



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 22, 2025

CBCA 8352-FEMA

In the Matter of SUMTER ELECTRIC COOPERATIVE, INC.

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Kelly A. Kennedy, Deputy General Counsel, and Caleb Keller, Senior Attorney, Florida Division of Emergency Management, Tallahassee, FL, counsel for Grantee; and Cassie Sykes, Recovery Appeals Officer, and Melody Cantrell, Recovery Legal Liaison, Florida Division of Emergency Management, Tallahassee, FL, appearing for Grantee.

Andrew Bevacqua and John Ebersole, 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 **RUSSELL**, **GOODMAN**, and **SHERIDAN**.

SHERIDAN, Board Judge, writing for the Panel.

The applicant, Sumter Electric Cooperative, Inc. (SECO), a private nonprofit (PNP) electric co-op that provides power throughout the state of Florida, seeks arbitration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121–5207 (2018). SECO requests \$3,188,531.45 in public assistance (PA) funding from the Federal Emergency Management Agency (FEMA) for costs incurred while pre-positioning power restoration and debris removal contractors ahead of Hurricane Idalia in August 2023. We conclude that SECO's pre-positioning costs are eligible for reimbursement.

Background

On August 26, 2023, ahead of Hurricane Idalia, the Florida Governor declared a State of Emergency across thirty-three counties, predominantly in SECO's territory. <http://www.flgov.com/eog/sites/default/files/executive-orders/2024/EO-23-171.pdf> (last visited May 6, 2025). The weather forecast predicted 58-110 miles-per-hour (mph) winds once Idalia made landfall within SECO's territory, which was the predicted center of the storm. Applicant's Exhibit 6 at 55, 57.¹ On August 28, the strength of the storm increased as it approached the coast, and it was anticipated that SECO's territory might experience 110 mph winds. Applicant's Exhibit 7 at 69, 71, 76. Idalia was expected to make landfall as a Category 3 hurricane on August 30. *Id.* at 76. Later that same day, the forecast upgraded Idalia to a Category 4 hurricane with potential winds up to 130 mph. <https://www.weather.gov/tae/HurricaneIdalia2023> (National Weather Service (NWS) Additional Information) (last visited May 2, 2025). Ultimately, Idalia weakened before landfall and made landfall as a Category 3 hurricane with the center of the storm landing further north than originally forecast. *Id.*

Hurricane Idalia was the third strongest hurricane in this region in modern history, and the hurricane caused approximately \$3.6 billion in damage to the area. https://www.nhc.noaa.gov/data/tcr/AL102023_Idalia.pdf (last visited May 21, 2025). However, because the storm underwent an eyewall replacement just prior to landing and the storm's trajectory changed, making landfall further north than originally forecast, the impact on SECO was less dramatic than anticipated. Request for Arbitration (RFA) at 9; NWS Additional Information. However, because Idalia was originally predicted to hit SECO's territory more directly, SECO pre-positioned its storm response to address the anticipated, significant storm damage. RFA at 9.

SECO began tracking the storm on August 26 and implemented its storm readiness process on August 29. RFA at 9-10. The storm readiness process assesses factors such as "historical outage data from previous storms with similar paths, the storm's projected path, the wind speed expected to impact SECO's service territory, the percentage of the service territory expected to be affected, and various scenarios regarding the impact and the manhours needed to restore electricity in those affected areas." RFA at 10. This process is used to guide decision making in preparing for the storm and assessing possible storm impact scenarios. The most likely impact scenario for Idalia, based on early storm forecasting, concluded that, in order to restore power to SECO's customers after a direct hit by Idalia, 11,311 power restoration man-hours would be required. Applicant's Exhibit 11 at 132.

¹ Applicant also asserts that SECO's territory overlaps with the red 74-110 mph potential shown on applicant's exhibit at 55. RFA at 6.

SECO's goal is to restore power to its customers within three days of a storm. Based on the early landfall and intensity predictions regarding Idalia, SECO determined that 383 power restoration and debris removal personnel would be required to restore power within three days. *Id.*; see Public Assistance Program and Policy Guide (PAPPG) (June 2020) at 30;² https://www.fema.gov/sites/default/files/2020-07/fema_incident-annex_power-outage.pdf (last visited May 7, 2025). The projected 383 power restoration and debris removal personnel included 66 SECO line personnel, 67 line contractors who were locally employed, and 250 out-of-area line contractors. Applicant's Exhibits 11 at 132, 12 at 144.³ With the out-of-area line contractors included, SECO estimated that it could restore power to its customers within 1.3 days at a minimum to 5.4 days at a maximum. *Id.* In the most likely scenario, SECO estimated that power would be restored in 2.7 days by employing 253 out-of-area contractors,⁴ including line personnel, and 152 tree removal personnel assisting in the power restoration process. RFA at 12; Exhibit 13 at 153.

SECO asserts that it first utilizes its workers during the service restoration process before turning to the assistance of out-of-area contractors. RFA at 13; Applicant's Exhibit 12 at 146. If, as a storm makes landfall, SECO determines that the out-of-area contractors it has pre-positioned are not needed by SECO, SECO's practice is to ask the State Emergency Operations Center and Florida Electric Cooperative Association if these resources are needed for any other operations. *Id.* SECO called in out-of-area contractors ahead of Idalia to have them "immediately available and pre-positioned" before the hurricane landed so power restoration could begin as soon as feasibly possible. RFA at 13. SECO asserts that, without pre-positioning, power restoration would be significantly delayed, in part, because out-of-area contracted personnel may not be able to reach the affected area. *Id.* at 13-14.

SECO claims that out-of-area contractors were put to work as soon as they arrived, participating in area-specific orientations regarding potential safety hazards, construction requirements, and safety guidelines. RFA at 14; *see also* Applicant's Exhibit 14. Each of the out-of-area contractors were assigned to crews, typically with SECO-employed

² This version of the PAPPG applies to declared incidents after June 1, 2020, but before January 6, 2025.

³ SECO requested \$3,188,531.45 in PA funding for the out-of-area contractors it brought in. \$2,550,561.95 was for power restoration contractors, and \$637,969.50 was for debris removal contractors. RFA at 16 n.37.

⁴ The initial projections predicted that 250 out-of-area contractors would be needed to restore power in a timely manner. SECO brought in 253 out-of-area contractors to assist. Applicant's Exhibit 13 at 153.

personnel. The out-of-area contractors were then sent to hotels to rest before the arrival of the hurricane. RFA at 14. The majority of contractors were released within twenty-four hours of arrival because updated forecasts predicted that the storm would not hit SECO's territory directly as had been previously forecast. *Id.*

When Idalia made landfall on the morning of August 30, although further north than expected, the effects of the storm spanned 350 miles and did impact SECO's territory. RFA at 15. The impact was not as severe as predicted, but 148 separate outages were reported across five counties, interrupting power for 13,122 members. *Id.* SECO sent its personnel and local contractors to begin restoration in its service area midday on August 30 and determined that the out-of-area contractors were not needed. Applicant's Exhibit 13 at 154. The out-of-area contractors were sent home in the afternoon of August 30. *Id.*; RFA at 15-16. Despite their release, these contractors had contracts with a requirement that SECO provide them with compensation for travel time from their starting or home location to SECO's pre-positioning location and for travel time home from SECO's pre-positioning location. *Id.* at 16.⁵ SECO asserts that it incurred \$3,188,531.45 in mobilization and preparation costs. *Id.*

SECO requested PA funding for pre-positioning costs. FEMA denied SECO's request for PA. RFA at 16. FEMA determined that the costs to pre-position contractors were ineligible because the contractors as resources "were not ultimately used to perform eligible emergency protective measures." Applicant's Exhibit 1 at 6, 2 at 13; *see also* Applicant's Exhibit 4A at 37. SECO subsequently filed its RFA with us.

Discussion

At issue in this decision is whether SECO's costs incurred for pre-positioning out-of-area debris removal and power restoration contractors, resources that went largely unused, are reimbursable as an eligible emergency protective measure (EPM) in response to Hurricane Idalia. For the reasons stated below, the panel concludes that these pre-positioning costs are eligible EPMs that were reasonably incurred, and SECO is eligible for public assistance.

Emergency work is defined as "[e]mergency protective measures to save lives, to protect public health and safety, and to protect improved property." 44 CFR 206.225(a)(1) (2022). Eligible emergency protective measures "(i) [e]liminate or lessen immediate threats to live[s], public health or safety; or (ii) [e]liminate or lessen immediate threats of significant

⁵ The RFA only discusses time traveled and does not break out expenses as a separate item.

additional damage to improved public or private property through measures which are cost effective.” *Id.* 206.225(a)(3). An “immediate threat” is defined as “the threat of additional damage or destruction from an incident that can reasonably be expected to occur within 5 years of the declared incident.” PAPPG at 97.

There are specific pre-positioned resources that are eligible EPMs according to the PAPPG. These resources include “[t]ransporting and pre-positioning equipment and *other resources* for response.” PAPPG at 110 (emphasis added). And “[c]osts related to pre-positioning resources specifically for the declared incident are eligible if the resources are used in the performance of eligible Emergency Work.” *Id.* at 113.⁶

The power restoration work that SECO conducted was eligible emergency work. This is because power restoration is critical to lessening “immediate threats to live[s], public health or safety.” 44 CFR 206.225(a)(3). Without power, resources that run on electricity, such as machines for emergency care and electronics used to communicate in case of an emergency, would not function. Furthermore, power generation is a “critical service.” PAPPG at 45. The Stafford Act defines “critical services” as “includ[ing] power, water, . . . sewer, wastewater treatment, communications, . . . education, and emergency medical care.” 42 U.S.C. § 5172(a)(3)(B). The PAPPG further itemizes critical services for private nonprofits and lists “[e]lectric power generation, transmission, and distribution” as eligible critical “[u]tility” services. PAPPG at 45.

In evaluating whether debris removal was eligible emergency work, we look to section 403 of the Stafford Act, which states, “Federal agencies may . . . provide assistance essential to meeting immediate threats to life and property resulting from a major disaster.” 42 U.S.C. § 5170b(a). This assistance includes “[p]erforming on public or private lands or waters any work or services essential to saving lives and protecting and preserving property” such as “debris removal.” *Id.* § 5170b(a)(3)(A). Debris removal is, therefore, eligible

⁶ FEMA attempts to argue that version 5 of the PAPPG limits reimbursable pre-positioning costs to equipment and supplies if said resources are used for emergency work. *See* PAPPG (Jan. 2025) at 133. This is irrelevant. Version 5 of the PAPPG is not applicable here because we apply the version of the PAPPG that was in effect when the incident occurred, which is version 4 published in June 2020. Version 5 of the PAPPG separately states that, for EPMs that protect public health and safety or save lives, “[t]ransporting and *pre-positioning* equipment and *other resources*” are eligible EPMs. *Id.* at 130 (emphasis added). This language mirrors what is stated in version 4 of the PAPPG. PAPPG (June 2020) at 113. FEMA’s cited version 5 paragraph refers the reader back to the force account labor section of the PAPPG, which discusses the pre-positioning of labor. *Id.* As discussed herein, the out-of-area contractors are not considered force account labor.

Category A emergency work. *See* PAPPG at 99 (“[A]ctivities, such as clearance, removal, and disposal, are eligible . . . if the removal is in the public interest” when the work “[e]liminates immediate threats to lives, public health, and safety.”).

To support its argument that pre-positioning costs are reimbursable EPMs, SECO refers to decisions by other arbitration panels: *Virginia Department of Emergency Management*, CBCA 6848-FEMA, 20-1 BCA ¶ 37,689, and *Carroll Electric Membership Cooperative*, CBCA 7968-FEMA, 24-1 BCA ¶ 38,594.⁷

In *Virginia Department of Emergency Management*, the applicant sought PA reimbursement of funds paid to its contractor for the last three days of a seven-day emergency services contract after it was determined that the contractor was only needed for the first four days. 20-1 BCA at 182,982. In analyzing the reasonableness of applicant’s award of a contract with a minimum order of seven days, the panel determined that “[a] contract for services generally has some minimum duration. It could be reasonable to pay for a day of ordered services even if the need for those services did not materialize.” *Id.* at 182,983. The panel stated:

FEMA’s categorical argument that it can *never* reimburse an applicant for contract time when no eligible work was performed is not supportable, as its logic leads to the implausible conclusion that it could *never* be reasonable for an applicant to order a duration of work that is even slightly longer than an emergency turns out to last.

Id.

In *Carroll Electric Membership Cooperative*, the applicant sought reimbursement for services procured to accommodate out-of-town emergency crews helping to restore power after Hurricane Zeta. 24-1 BCA at 187,627. The panel determined that most of the costs were eligible for reimbursement, concluding that, based on the applicant’s estimates of the amount of resources that would be needed to restore service, “[its] labor projections were sound under the circumstances, [and that] the contracted . . . services to support those projections were necessary.” *Id.* at 187,630.

Here, SECO seeks reimbursement for the pre-positioning costs associated with bringing in the out-of-area contractors to prepare for Hurricane Idalia even though,

⁷ While the Board’s rules expressly state that “[a FEMA arbitration] decision is primarily for the parties” and is “not precedential.” Rule 613 (48 CFR 6106.613 (2024)), we consider the decisions by other panels cited herein to be persuasive here.

admittedly, the contractors were largely unused. We determine that SECO's actions were reasonable given the data available during the pre-storm planning process. SECO used reasonably reliable efforts, including its established storm readiness process, to follow historical outage data from storms with similar paths, up-to-date projected path and wind speeds, the scope of the territory that could be impacted, and how long it would take to restore power to the harmed areas based on impact. This readiness process returned "impact scenarios," and the most likely scenario predicted it would require 11,311 man-hours to fully restore power. Based on this data, SECO reasonably predicted the amount of personnel it would need, which included 250 out-of-area contractors. It is evident that SECO utilized due diligence in determining how many contractors would be needed for pre-position staging. The fact that the hurricane shifted paths at the last minute and resulted in fewer outages and contractor personnel does not mean that SECO should not be reimbursed for the expenditures related to pre-positioning the out-of-area contractors. Had SECO not been prepared ahead of the storm, the damage caused and the time spent achieving power restoration and debris removal may have cost much more than \$3 million.

FEMA also argues that SECO's pre-positioned out-of-area contractors were solely on standby and asserts that the costs associated with these contractors should not be reimbursed because the work they were brought in to do does not fall into any of the standby categories. *See* PAPPG at 71. This is inaccurate. First, standby time only applies to force account labor. *Id.* The PAPPG explains that "FEMA refers to the Applicant's personnel as 'force account.'" *Id.* at 68. Here, the out-of-area power restoration and debris removal personnel are contractors, not SECO personnel, and therefore cannot be considered force account labor. Additionally, even if the contractors' personnel could fall under the force account labor category, "[s]tandby time is separate and distinct from pre-positioning resources." PAPPG at 72. Furthermore, the out-of-area contractors did engage in work upon arrival as they attended operational and safety briefings in preparation for the storm. The out-of-area contractors were not merely on "standby." Pre-positioned resources would not fall under the standby time categories since the resources used were out-of-area contractors not SECO personnel, and these contractors were used in the performance of eligible emergency work.

Decision

SECO's pre-positioning costs are reimbursable.

Patricia J. Sheridan

PATRICIA J. SHERIDAN
Board Judge

Beverly M. Russell

BEVERLY M. RUSSELL
Board Judge

Allan H. Goodman

ALLAN H. GOODMAN
Board Judge