

**Lyon Rural Electric Cooperative, PA ID# 000-UZX1A-00, PW 81**  
**Iowa Lakes Electric Cooperative, PA ID# 000-UX90V-00, PW 82**  
**Osceola Electric Cooperative, PA ID# 000-ULD08-00, PW 83**  
**Sanborn Electric and Telecommunications Utility,**  
**PA ID# 141-U87Z8-00, PW 84**

## **FEMA-4114-DR-IA; First Appeals**

### **Background**

FEMA-4114-DR-IA was declared a major disaster by the President in response to severe winter storms which occurred from April 9-11, 2013. As a result of the ice storm, conductor lines belonging to the three private nonprofit rural electric cooperatives (Osceola, Iowa Lakes and Lyon) and Sanborn Electric and Telecommunications Utility (Sanborn), a municipal utility, were damaged. All four performed emergency repairs to their damaged lines in the immediate aftermath of the storm. Based on the emergency repairs to their conductors, FEMA approved the following Category "B" Project Worksheets (PWs); 43 for Lyon REC for \$209,932.94, 22 and 23 for Osceola Electric for a total of \$262,784.88, and 62 for Sanborn Electric Utility for \$7,527.83. No Category "B" was written for Iowa Lakes Electric Cooperative. There is no dispute relating to the emergency repairs that these applicants performed.

The PWs at issue in this appeal (81-84) were prepared under the guidelines in FEMA's Disaster Assistance Program Fact Sheet 9580.6, *Electric Utility Repair (Public and Private Nonprofit)* (DAP 95980.6) to address replacement of the applicants' damaged conductors.<sup>1</sup> The PWs that were written requested the following assistance: PW 81, Lyon REC estimated at \$4,505,572.50; PW 83, Osceola Electric estimated at \$14,495,545.44; PW 82, Iowa Lakes Electric estimated at \$145,057.65; and Sanborn Electric Utility estimated at \$69,316.50. These PWs are attached to this appeal as Exhibits 1 – 4.

On August 30, 2013, FEMA obligated these four PWs but denied the disaster assistance which the applicants requested based on a series of inter-related concerns that: 1) the emergency repairs which the applicants had performed were adequate and there was no need for replacement of any of the damaged conductors; 2) the applicants were unable to document the pre- and post-disaster condition of their damaged conductors; 3) the applicants were unable to demonstrate that their damages were caused by the ice storm; and 4) the applicants were unable to demonstrate that there were codes and standards in place in Iowa relating to construction and repair responsibilities for the applicants' facilities. Therefore, FEMA denied all of the assistance that the four applicants had requested.

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<sup>1</sup> "Conductor" is defined by the National Electrical Safety Code to be a material, usually in the form of a wire, cable, or bus bar, suitable for carrying an electric current.

In 2009 FEMA issued DAP 9580.6 to clarify its conductor replacement policy. As described in the Affidavit of Tim Edwards (the Edwards Affidavit), the Affidavit of Martha Duggan (the Duggan Affidavit) and the Affidavit of Stuart Lowry (the Lowry Affidavit). FEMA sought input from the public, including the National Rural Electrical Cooperative Association (NRECA) and representatives of Kansas utilities, as the policy was being developed. In the aftermath of previous disasters which have been declared since DAP 9580.6 was issued, FEMA followed the policy. See para. 13-14 of the Edwards Affidavit and para. 13 of the Lowry Affidavit. However, in the aftermath of the April 2013 ice storms, FEMA unilaterally revised the policy without input from and notification to stakeholders. FEMA's Project Specialist imposed new requirements above and beyond DAP 9580.6, including requirements for laboratory testing of damaged conductors. The changes to DAP 9580.6 will have a significant adverse impact on the applicants (and their rates of their members) and would be in violation of section 325 of the Stafford Act.

In light of the obvious change in FEMA policy, the Iowa Homeland and Emergency Management Division (HSEMD) wrote to FEMA's Regional Office on September 18, 2013, to request clarification of the Agency's determinations. The HSEMD letter is attached as Exhibit 5. The next day the Regional Office responded to the HSEMD letter and stated that it had not been involved in the discussions relating to these PWs, so it was not able to answer the HSEMD questions about the policy change. FEMA's September 19 letter is attached as Exhibit 6.<sup>2</sup>

### **Analysis**

The primary provision of the Stafford Act at issue in this appeal is section 406, 42 U.S.C. 5172. That states in pertinent part:

- (a) Contributions – (1) In General. The President may make contributions –
  - (A) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster...and
  - (B)...to a person that owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of the facility....<sup>3</sup>

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<sup>2</sup> FEMA's September 19 letter professing a lack of regional involvement in the decision making is inconsistent with the August 30, 2013, email notifications to HSEMD from the regional office's Infrastructure Branch Director outlining the basis for the PWs. Those emails are attached as Exhibit 7. In addition, FEMA's regional office sent HSEMD a June 11, 2013, email indicating regional involvement in the decision making relating to these PWs. That email is attached as Exhibit 8.

<sup>3</sup> Based on the Stafford Act's definitions of "local government" and "private nonprofit facility" at subsections 102 (8) and (11), respectively, Sanborn is an

In addition to section 406, there are two FEMA regulations which relate to this appeal. 44 CFR 206.223(a) states: "To be eligible for financial assistance, an item of work must...be required as the result of the...major disaster...." Also, 44 CFR 206.226(d), *Standards*, provides:

(d) *Standards*. For the costs of Federal, State, and local repair or replacement standards which change the predisaster construction of facility to be eligible, the standards must: (1) Apply to the type of repair or replacement required...(2) Be appropriate to the predisaster use of the facility; (3)(i) Be found reasonable, in writing, and formally adopted and implemented by the State...on or before the disaster declaration date...(4) Apply uniformly to all similar types of facilities within the jurisdiction of owner of the facility; and (5) For any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect.

In addition to these statutory provisions and FEMA's implementing regulations, FEMA has published guidance relating specifically to electric utility repairs. DAP 9580.6 was developed in coordination with the National Rural Electric Cooperative Association (NRECA) and representatives of Kansas utilities in 2008 and 2009 following ice storms in February of 2007, in accordance with section 325 of the Stafford Act. Those storms demonstrated a need for clarification of FEMA's policy relating to the provision of disaster assistance to rural electric cooperatives. See para. 5 of the Duggan Affidavit and para. 4 and 7 of the Lowry Affidavit.

DAP 9580.6 contains several provisions relating to post-disaster conductor replacement. The first is titled *Replacing Conductors*, and it appears at p. 3 of DAP 9580.6. That provision notes specifically that "FEMA recognizes local, State and national standards (for example, the National Electrical Safety Code...) as appropriate when determining eligible cost to repair or replace damaged electrical facilities." (emphasis added) The policy also states:

***Establishing Pre-Disaster Condition*** – Applicants should provide the following information to establish pre-disaster condition of their facilities: (1) Certification of the pre-disaster condition and capacity of the conductor from a licensed professional engineer who has direct experience with the damaged electrical transmission or distribution system. Records providing satisfactory evidence of the condition and capacity of the conductor as it existed prior to the disaster. The certification *may be* supplemented by a professional engineering evaluation.... (emphasis added)

This provision of the DAP 9580.6 describes FEMA's policy relating to documentation of the pre-disaster condition of REC facilities.

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eligible applicant and the three private nonprofit applicants are also eligible for assistance.

Another provision of DAP 9580.6, *Criteria for Conductor Replacement*, also relates to this appeal. It appears at p. 4 of DAP 9580.6 and states in pertinent part:

Determining the disaster-related damages to some components...of an electrical transmission or distribution system can usually be accomplished by visual inspection. However, *determining the full extent of disaster-related damages to conductors...is more challenging*, particularly with older systems....A conductor is beyond the point where it can be effectively repaired when one or more of the following criteria exist within a line section: 1) 25% or more of the conductor spans are damaged....2) 30% or more of the line spans are visibly out of sag or do not meet clearance....3) 40% or more of the poles were replaced or need to be replaced or plumbed...due to the disaster. 4) 40% or more of the supporting structures have a disaster-related damaged component (or)....5) The sum of the percentages of the above criteria is 65% or more. 6) Other additional compelling information provided by a licensed professional engineer. (emphasis added)

This provision describes FEMA policy relating to the calculation which determines whether RECs are eligible for assistance to replace their disaster-damaged conductors.

As described at para. 12 of the Edwards Affidavit and para. 8 of the Lowry Affidavit, the criteria on page 4 of DAP 9580.6 were agreed to during FEMA's 2008-2009 discussions with NRECA and the Kansas representatives because it is so difficult to quantify precisely eligibility for conductor replacement. As demonstrated below, these criteria were met with respect to the applicants' conductors which were damaged during FEMA-4114-DR-IA. Therefore, the applicants are eligible for assistance to replace the identified portions of their conductors, poles and associated equipment. However, as described below, FEMA has denied this assistance in PWs 81-84 based on new criteria which its Project Specialist unilaterally imposed in the aftermath of this disaster.

### **1. Applicable Codes and Standards**

Each of the PWs contains identical language to summarize the basis for FEMA's denial of the requests for assistance to replace the damaged conductors, poles and associated equipment. With respect to whether the applicants were in compliance with applicable codes and standards pursuant to 44 CFR 206.226(d), each of the PWs states at section 5(c) of the Summary and Conclusions discussion: "Conductor replacement claims as a code and standard are not eligible, as the applicant has not met the five (5) criteria outlined in 44 CFR 206.226(d)(1-5)."

Although it is not clear from this sentence in the PWs which of the five paragraphs in 44 CFR 206.226(d) the Project Specialist is referring to, this was clarified by the Federal Coordinating Officer (FCO) in a September 12, 2013, letter to Pat Hall, the

Alternate Governor's Authorized Representative for this disaster, in response to an HSEMD Request for Information. See Exhibit 9. The September 12 letter states in pertinent part: "During project formation, no formally adopted or written codes and standards information was provided by any REC entities." It appears that the FCO believes there is no code or standard in Iowa for the applicants to follow in the course of their post-disaster repair work, as required by 44 CFR 206.226(d)(3).

It is clear that the applicable code involved in the construction, maintenance and post-disaster repairs of electric transmission and distribution facilities is the Iowa Electrical Safety Code, which is codified at Chapter 199 IAC 25.1 et seq. of the Iowa Administrative Code (IAC). A copy of that chapter is attached as Exhibit 25. As noted at section 199 IAC 25.2(1), the Code is based on the National Electrical Safety Code. It is noteworthy that at p. 3 of DAP 9580.6, FEMA explicitly states that the Agency "recognizes... national codes (for example, the National Electrical Safety Code...) as appropriate when determining eligible cost to repair or replace damaged electrical facilities." The statement in the PWs which questions whether there was an applicable code or standard for the applicants' post-disaster repairs is inconsistent with DAP 9580.6. FEMA recognizes the National Electrical Safety Code (NESC) in this context. In addition, the Iowa Electrical Safety Code states that it is based on the NESC. There can be no dispute that the Iowa Electrical Safety Code is consistent with 44 CFR 206.226(d)(3). Therefore, there is no basis for FEMA to deny the PWs based on this codes and standards issue.<sup>4</sup>

## **2. FEMA's DAP 9580.6 2012 Policy Change**

DAP 9580.6 was published by FEMA in 2009, after substantial consultation with the National Rural Electrical Cooperative Association (NRECA) and Kansas utility representatives. See para. 5 of the Duggan Affidavit and para. 4, 7 and 8 of the Lowry Affidavit. Although the FEMA policy addresses a number of issues, the most significant in the context of this appeal is the guidance which describes the criteria for post-disaster replacement of damaged conductors. FEMA acknowledges the inherent difficulty of quantifying such damage at p. 4 of DAP 9580.6, which states in pertinent part: "...determining the full extent of disaster-related damages to conductors, and the appropriate method to repair the damages, is more challenging, particularly with older systems."

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<sup>4</sup> The Rural Utilities Service (RUS) of the USDA, pursuant to 7 CFR §1724.50, requires all borrowers, regardless of the source of financing to ensure that its electric system, including all electric distribution, transmission, and generating facilities, is designed, constructed, operated, and maintained in accordance with all applicable provisions of the most current and accepted criteria of the National Electrical Safety Code (NESC) and all applicable and current electrical and safety requirements of any State or local governmental entity. These mandates also are "applicable codes and standards" which conform to 44 CFR 206.226(d)(3).

Because of this difficulty, FEMA established a two-step process for post-disaster analyses of damaged conductors. With respect to the first step – the pre-disaster condition of conductors - FEMA’s policy requires REC applicants to provide information on the pre-disaster condition of their conductors. Documents provided to FEMA by Lyon REC included the 2005 – 2013 Iowa Utilities Board annual inspections reports, the 2010 – 2013 annual Reliability Reports, and the 2012 pole inspection report performed by Ameripole Inspection Company. Iowa Lakes Electric Coop provided copies of the 2011 and 2012 Iowa Utilities Board annual Inspection Reports, the 2010 -2012 Iowa Utilities Board Annual Reports, and the 2013 Construction Work Plan for scheduled maintenance and repairs. Osceola Electric Cooperative provided the 2010 – 2012 Iowa Utilities Board annual Inspection Reports, the 2012 Construction Work Plan, and the 2013 – 2018 Long Range Construction Work Plan. Documents submitted by Sanborn Electric utility included the 2004 – 2012 Iowa Utilities Board annual Inspection Reports and Letters and the 2003 and 2013 long range Maintenance Plans. We are resubmitting these documents as Exhibits 10 for Lyon, 11 for Iowa Lakes, 12 for Osceola and 25 for Sanborn, respectively.

The second step in the process is to establish objective criteria to determine when conductors can be replaced with FEMA disaster assistance, which FEMA did in the *Criteria for Conductor Replacement* section at page 4 of DAP 9580.6. In response to this FEMA policy, in the aftermath of this disaster the applicants provided for each qualifying electrical distribution line section the Evaluation Form for Storm Damaged Conductor (the Evaluation Form) that were completed, stamped with the licensed profession engineer’s stamp, and signed by licensed profession engineers. The Evaluation Form for Storm Damaged Conductor list each qualifying criteria from the DAP 9580.6 and calculates the appropriate percentages based on the information provided by licensed profession engineers. This form was developed by FEMA to be used during the project worksheet formulation for the project worksheets written for DR 1877 and DR 1880 that occurred in December 2009 and January 2010, respectively.<sup>5</sup> Exhibits 14 - 17 indicate that the applicants met the criteria for conductor replacement pursuant to DAP 9580.6.<sup>6</sup>

However, in this disaster FEMA’s Project Specialist unilaterally revised and expanded the criteria for conductor replacement. This change is most clearly

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<sup>5</sup> All of the Evaluation Forms for Lyon REC at located in Exhibit 14, for Iowa Lakes in Exhibit 15, for Osceola in Exhibit 16, and for Sanborn in Exhibit 17.

<sup>6</sup> Exhibit 18 is an October 19, 2011, memorandum entitled *Applicant Provided Information*. That FEMA HQ guidance dictates that “To the greatest extent possible, FEMA should accept information provided by an applicant that is appropriately substantiated, verified and/or certified, without duplicating the same work or efforts.” In this appeal the Project Specialist’s insistence on documentation in addition to that which has already been provided by the applicants violates not only DAP 9580.6, but also this 2011 HQ directive.

described in the PW discussions relating to pre-disaster condition of the conductors. While DAP 9580.6 lists three ways in which REC applicants can demonstrate the pre-disaster condition of their conductors, the PWs in this appeal list two additional requirements which, according to the Project Specialist, REC applicants must also meet. Those two new criteria are described in the PWs as follows:

(d) Load growth last five year's summary of the line section evaluated for conductor replacement. (e) Inspection records, maintenance reports, information relating to the age/capacity, and hardcore technical data that validates the mechanical and electrical characteristics of the conductor compared to the original manufacturer's design specifications must be provided by the applicant for lines being claimed for conductor replacement (when it was originally installed, now long it has been in service, how many people it services, present tensile strength of the conductor, sag and tension readings, has it been annealed due to overload, corrosion level, burs, kinks, bird caging, etc.) to account for at least five (5) years prior to the declared event; this list is not exhaustive and must be supplemented by additional records as required by the field inspection teams. Failure to establish a pre-disaster condition of the line will result in a negative eligibility determination for conductor replacement claims....

See para. 1 under the Scope of Work heading in each of the PWs which are being appealed.

In summary, subsections 1(a) – (c) of the PWs are taken verbatim from DAP 9580.6, but subsections 1(d) and (e) are both new. The new mandates imposed by the Project Specialist are inconsistent with DAP 9580.6, so they are not an appropriate basis for rejection of the applicants' requests. In addition, as described in section 5 of this analysis, the new mandates were developed without public input, which is required by section 325 of the Stafford Act. For that reason as well, FEMA cannot implement this new policy for the current disaster.

### **3. Pre- and Post-Disaster Condition of Applicants' Conductors**

The PWs in this appeal are based on the Project Specialist's belief that the applicants failed to demonstrate the pre- and post-disaster condition of their damaged conductors. Each of the PWs states that "The applicant has been unable to validate the pre and post disaster condition of the line conductors in question." Based on the emergency repairs performed by the applicants in the immediate aftermath of the ice storm, the FEMA Project Specialist cites 44 CFR 206.223(a)(1) (i.e., "an item of work must...be required as a result of the...major disaster") and concludes that the applicants are not eligible for conductor replacement because the emergency repairs returned the conductors to their pre-disaster conditions and there is no need for any additional disaster assistance.

The Project Specialist says in all of the PWs that *“In addition to DAP 9580.6 percent evaluation criteria, the signed professional engineer report regarding possible conductor replacement must comply with all the above mentioned pre and post-disaster requirements to substantiate the applicant’s claim.”* (emphasis added) This statement demonstrates explicitly that the Project Specialist is attempting to impose *additional criteria* beyond those listed at p. 4 of DAP 9580.6. That is a clear violation of the policy. In addition, because it represents a change in FEMA’s policy relating to conductor replacement, pursuant to section 325 of the Stafford Act FEMA should have solicited public comment before revising the policy. Because the Agency did not do so, it cannot now impose the new policy.

There is no dispute that determinations when conductors must be replaced after disasters can be challenging. This was the reason why DAP 9580.6 was developed by FEMA - with public input. FEMA’s policy – as reflected in DAP 9580.6 – was to base its determinations on certifications of engineers to demonstrate pre-disaster condition of conductors and the criteria for post-disaster replacement of conductors. This policy was implemented by FEMA previously (see para. 13 and 14 of the Edwards Affidavit, as well as para. 13 of the Lowry Affidavit), and the Agency must implement the policy the same way in this disaster as it has in the past.

Tim Edwards (Professional Engineer), Jim Sundermeyer (Regulation Engineer), Don Stursma (Safety and Engineering Section Manager for the IUB), and Regi Goodale (Director of Regulatory Affairs at the Iowa Association of Electric Cooperatives), each address the physical testing of conductor by electric utilities in their attached affidavits. The physical testing of distribution conductor is not now and has never been required by any federal or state regulatory agency, and is not required or recommended as an industry standard. Regi Goodale and Tim Edwards aver as to the practicality and costs of such testing. See para. 17 of the Goodale Affidavit and para. 18 of the Edwards Affidavit.

#### **4. Temporary Repair vs. Conductor Replacement**

The Project Specialist also states in the PWs that the applicants failed to document that their emergency repairs were insufficient to return the conductors to pre-disaster condition. He notes in each of the PWs that “the system has been totally energized (by the emergency repairs) and in operation for more than three months.” Based on this statement the Project Specialist determined that the applicants’ emergency repairs returned the facilities to their pre-disaster condition and that therefore the applicants are not eligible for assistance to replace their damaged conductors. The Project Specialist also states in the PWs that “The purpose of (DAP 9580.6) is to assist the electric utility engineers or others during the period of power restoration to make an immediate decision on whether to simply reinstall repaired downed/damaged conductors or to replace them with new conductors.”

Although the distinction between emergency work and permanent repairs is briefly discussed in DAP 9580.6, this is not why the policy was developed. It was developed



to address a number of issues, including procurement procedures and hazard mitigation criteria. However, it is clear that the most basic reason for FEMA's development of the guidance was to clarify the Agency's policy relating to conductor replacement after major disasters. The intent of DAP 9580.6 was to define objective criteria for replacement determinations. See para. 12 of Edwards Affidavit.

Consistent with FEMA policy, each of the applicants have provided documentation to demonstrate the pre-disaster condition of their facilities. That is what is required by DAP 9580.6, and that is how FEMA applied the policy in previous disasters. See para.13-14 of the Edwards Affidavit and para. 13 of the Lowry Affidavit. The applicants have already submitted Iowa Utilities Board annual inspections reports, annual Reliability Reports, pole inspection reports, and Construction Work Plans or long range Maintenance Plans relating to the pre-disaster condition of their facilities and Evaluation Forms relating to the post-disaster condition of their conductors. There is no need for the applicants to submit additional documentation in the form of test results or other documentation to qualify for conductor replacement.<sup>7</sup> Therefore, the request for documentation in addition to what is required by DAP 9580.6 violates the FEMA policy.

### **5. Section 325 of the Stafford Act**

Section 325 of the Stafford Act, 42 U.S.C. 5165c, was added to the statute in 2000 pursuant to section 203 of P.L. 106-390. Subsection (a) states in pertinent part:

(a)(1) The President shall provide for public notice and opportunity for comment before adopting any new or modified policy that – (A) governs implementation of the public assistance program administered by the Federal Emergency Management Agency; and (B) could result in a significant reduction of assistance under the program.

The consultation mandate imposed by this provision is clear. That is why FEMA solicited public input when it developed DAP 9580.6. Yet it is also clear that FEMA did not solicit public comments relating to its change to 9580.6 before it attempted to impose the additional documentation requirements and policy implementation rules. See para. 7 of the Duggan Affidavit and para. 14 of the Lowry Affidavit. Because FEMA did not solicit comments from the public before the Project Specialist's attempt to impose the new requirements in this disaster, it cannot impose the new policy in this disaster.

### **6. Repair Activities Are Not Contingent Upon Federal Funding**

In paragraph 4 of the Summary and Conclusion section of each PW it is stated that

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<sup>7</sup> The cost of the testing contemplated by the Project Specialist is almost 5 times what it would cost to purchase and install replacement conductors. See para. 18 of the Edwards Affidavit and para. 17 of the Lowry Affidavit.

no information has been provided by the applicants to verify their plans moving forward and that repair activities appear to be contingent upon Federal funding. Contrary to FEMA's assertion, the applicants have submitted plans for "moving forward." They intend to comply with their obligations under their loan agreements, Iowa law and IUB's rules as they have in the past, which require that they rebuild the damaged portions of their systems to current codes and standards.

Iowa Code section 478.19, "*Manner of construction*," dictates that electric lines be built of strong and proper wires attached to strong and sufficient supports properly insulated at all points of attachment. Pursuant to that section, "...all wires, poles, and other devices which by ordinary wear or other causes are no longer safe shall be removed and replaced by new wires, poles, or other devices, as the case may be, and all abandoned wires, poles, or other devices shall be at once removed." The operative word in Iowa Code section 478.19 is "shall". The applicants have no discretion regarding the faulty wires and poles that were identified to exist following the storm. Wires and poles which were damaged or which are no longer safe MUST be removed or replaced. The IUB also requires that the electric plant of the applicants be "constructed, installed, maintained and operated in accordance with accepted good engineering practice in the electric industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property." [199 IAC 20.5(1)]

In addition, the applicants are required to make reasonable efforts to reduce the risk of interruptions by taking into account the age, condition, design, and performance of their distribution facilities and to provide adequate investment in the maintenance, repair, replacement, and upgrade of facilities and equipment. [199 IAC 20.18(3)"a" and "f"] IUB rule "199—25.4(476,478), "Correction of problems found during inspections", requires corrective action to be taken within a reasonable period of time on all potentially hazardous conditions, instances of safety code noncompliance, maintenance needs, potential threats to safety and reliability, or other concerns identified during inspections. As a result, under Iowa law and the rules of the IUB, the applicants have absolutely no discretion. They must rebuild the damaged portions of their systems.

In addition to these regulatory obligations, the day-to-day construction, maintenance and restoration activities of the applicants and most of Iowa's electric cooperatives are funded primarily through a loan and guarantee program of the federal government, administered by the U.S. Department of Agriculture's Rural Utilities Services and by the private non-profit cooperative. The National Rural Utilities Cooperative Finance Corporation (CFC), RUS and CFC also have a say on the actions the applicants must take in response to the storm damage, which is described in more detail in Exhibit 20, a memorandum that summarizes the history of RECs in Iowa and describes the applicability of RUS codes and standards mandate.

RUS and CFC require that these cooperatives pledge the entirety of their systems -

all poles and wires and equipment - as collateral for their loans and require, under their loan agreements, that these systems be maintained. Damage must be repaired and faulty equipment must be replaced as a condition of this financing. Based on these mandates with which the applicants must comply, it is clear that the applicants are required to repair any damaged facilities to remain compliant with these mandates. Therefore, there is no basis for FEMA to deny the applicants' requests based on the Project Specialist's concern that the applicants will not repair their damaged conductors unless they are provided assistance by FEMA.

### **Conclusion**

The Project Specialist's comments in PWs 81-84 demonstrate that he is attempting to impose new testing and documentation requirements beyond those described in DAP 9580.6. The applicants have provided all of the documentation which is necessary pursuant to DAP 9580.6 to establish their eligibility for conductor replacement assistance. In addition, the Iowa Electrical Safety Code establishes the applicable codes and standards which apply to the applicants, and there is no basis to deny the assistance requested in the PWs based on a determination that there is no code or standard which applies to the applicants' facilities. By attempting to unilaterally revise the guidance contained in DAP 9580.6, the Project Specialist violated the terms of section 325 of the Stafford Act. Finally, FEMA cannot deny the requested assistance based on the Project Specialist's concern about the alleged lack of independence of the applicants' engineers or based on a concern that the applicants will not replace their damaged conductors unless they are approved for FEMA assistance. Therefore, this appeal should be approved.