

PUBLICATION

CBCA Panel Denies Florida Utility's Arbitration Request

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A Panel consisting of Judges Vergilio, Goodman, and Kullberg has denied a request for arbitration filed by St. John's River Utility, Inc. of Florida regarding its claim for assistance following Hurricane Irma in 2017. The Panel determined that the grantee, the Florida Division of Emergency Management (FDEM), untimely submitted St. John's Request for Public Assistance (RPA) and that neither the grantee nor applicant had submitted documentation of sufficient extenuating circumstances to justify a time extension.

FEMA had initially filed a motion to dismiss the case based on FEMA's position that, because the RPA was determined to be untimely, FEMA had not made a substantive eligibility determination that was reviewable by the Civilian Board of Contract Appeals (CBCA) pursuant to the jurisdictional parameters applicable to these arbitrations. FEMA argued that its determination was instead within its discretionary grants administration authority and the dispute was therefore outside of the CBCA's authority to determine disputes regarding "the eligibility for assistance or repayment of assistance." The Panel rejected FEMA's arguments and determined that FEMA's determination regarding the timeliness of the RPA submission and the related extenuating circumstances (or lack thereof) constituted an eligibility decision that is indeed reviewable by the CBCA.

The Panel next discusses the substantive dispute. Here, the Decision indicates that FEMA had approved an extension for the RPA submission and St. John's had submitted its request within the deadline. The grantee, however, had not forwarded the RPA until over one year later and therefore FEMA received the RPA after the extended deadline had passed. Information presented during the hearing indicated that the grantee had submitted the RPA shortly following receipt, but there appears to have been miscommunications between FEMA and the grantee regarding whether the RPA was accepted.

The Panel quotes from the regulations governing submission of RPAs and extension of the applicable deadlines. The Panel ultimately determined that, "Even if FEMA never formally notified the grantee that the applicant's RPA had been removed from the system, as the grantee asserts, that does not explain satisfactorily the grantee's inaction." While St. John's may have been justified in submitting the RPA beyond the original deadline, the Panel ultimately applied "FEMA's reasonable interpretation that may require extenuating circumstances for late action by either or both the applicant and grantee/recipient." The Panel concluded that "the grantee untimely submitted the RPA and supporting documentation, and that extenuating circumstances do not exist to justify a time extension."

The denial of this applicant's arbitration request underscores the importance of meeting all applicable deadlines when applying for aid under FEMA's Public Assistance Program. A "clean hands" defense is not likely to be enough and applicants must not only ensure they are meeting all administrative hurdles but also follow up with their respective grantees to assure that all requirements are met – or risk losing any claim to otherwise eligible funding.

For more information, please contact [Wendy Huff Ellard](#) or any member of [Baker Donelson's Disaster Recovery and Government Services Team](#).

