Energy Emergencies

Tribal-State Coordination in Planning and Response

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Introduction

Emergency planning and preparation among states, local governments and tribes ensures coordination processes are established and that tribes will have access to the resources and support necessary to respond to and recover from an emergency. Coordination and planning prior to an event can help tribes mitigate or minimize the impact of a disruption and allow for an effective unified response during an energy emergency. Tribal governments play a vital role in preparing for, responding to and recovering from natural disasters and other emergencies. Many tribes carry out disaster response functions, including responding to energy emergencies, through a designated emergency management agency tasked with coordinating responses. “As sovereign nations, tribes have inherent authority to protect the public health and welfare of their citizens.” Tribes must often navigate a complex web of local, state and federal assistance channels during energy emergencies while carrying out their own procedures for emergency response.

During energy disruptions and emergencies, the U.S. Department of Energy (DOE) provides coordination across local, state, tribal, territorial and federal government entities, nongovernmental organizations and the private sector to enhance response and recovery efforts. DOE also provides timely and accurate situational awareness. Separately, federally recognized tribes and Alaska Native villages may request direct assistance from the federal government in responding to certain emergencies. Congress amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 et seq. (Stafford Act) in 2013 to provide a mechanism for federally recognized tribes to request presidential emergency or major disaster declarations independent of a state’s process. The Federal Emergency Management Agency

Energy Emergencies

An energy emergency may be caused by single or multiple events—including natural disasters, cyberattacks, acts of terrorism or pandemics—that result in electric grid outages, oil and gas pipeline disruptions or fuel shortages. Energy disruptions can impact other essential services such as water and wastewater systems, food storage, telecommunications and transportation systems, among others.
Major disaster declarations are reserved for events such as hurricanes, earthquakes, droughts, explosions, floods, fires or other events that exceed the combined responsive capabilities of state and local governments. In contrast, FEMA describes how emergency declarations may be declared for “any occasion or instance when the President determines federal assistance is needed.”

(FEMA) released Tribal Declarations Pilot Guidance in 2017 to facilitate this process. While direct presidential emergency or major disaster declarations are a useful tool for federally recognized tribes, this process is unavailable to state-recognized tribes and tribes in the process of obtaining federal recognition.

Weighing the costs and benefits of seeking direct federal assistance or receiving aid as a state subrecipient can be challenging, especially if such decisions must be made during an emergency when time, resources and capacity are strained.

To effectively respond to energy emergencies, states and local governments may consider regularly consulting with and providing support to tribal authorities and energy providers to mitigate long-term energy service disruptions and ensure timely repair of energy infrastructure.

This primer provides examples of state and tribal protocols that serve as potential models for coordination across jurisdictions prior to, during and after disasters occur.

**Energy Resources and Infrastructure Threatened by Disasters**

Energy infrastructure at risk of damage due to extreme weather events or other disasters varies by region. DOE’s Office of Indian Energy released a 2015 report analyzing tribal energy systems most at risk during extreme weather events. This analysis shows that climate and extreme weather events can damage energy infrastructure, causing power outages and disrupting fuel supply as well as oil and gas production and power generation. Disasters have the potential to damage all components of the energy system and directly impact tribal communities regardless of whether a particular system component is tribally owned. DOE’s Office of Cybersecurity, Energy Security, and Emergency Response also produced energy sector risk profiles examining the causes, frequency, impacts, and history of energy disruptions at a state and regional level. They present both natural and man-made hazards with the potential to disrupt electric, petroleum, and natural gas infrastructure.

Access to backup power is also critical to addressing a tribal energy emergency. Tribal nations are often located in rural and isolated areas, which can make restoring service after energy disruptions challenging and place a strain on limited resources. Utilities and line repair workers, for example, may find it difficult to access and quickly restore service in remote areas.

Microgrids can operate in harmony with or independent of the electric grid, which is why some tribes have looked to microgrids to supply energy and bolster resilience. For example, Blue Lake Rancheria in California installed its first microgrid with solar generated energy storage in 2017. Microgrids with energy storage have the added benefit of providing local power during a grid outage or disruption. Blue Lake Rancheria’s microgrid powers government offices, a hotel, casino, cafes, restaurants and other facilities in normal times, while providing critical backup power during disruptive events—like the 2019 California wildfire power shutoffs. Other tribes rely on traditional fuel-powered generators that are dependent on fuel supply channels remaining stable during and after an emergency event.

Energy systems are essential for powering, heating, and cooling homes and businesses. They also fuel the transportation sector, provide communications services, and supply critical energy to hospitals and public health and safety institutions. It is important to note that even disasters that occur outside tribal lands can affect a tribe’s access to electric power, natural gas and fuel. For example, wildfires that affect large areas of the U.S. may disrupt electric supply, heat waves can cause energy infrastructure to operate less efficiently, and hurricanes can impact fuel delivery by damaging fuel infrastructure and disrupting fuel supply chains.
Tribal Government Emergency Agencies and Planning Processes

Many tribes have emergency management agencies to prepare for and respond to emergencies. The Oneida Nation, for example, has an Emergency Management Department focused on preparing for, mitigating, responding to and facilitating recovery from disasters or emergencies impacting the Oneida Reservation. Some tribes also have policies and agreements in place to facilitate engagement with state and local government leaders and private entities, including local utilities, in order to obtain support and resources needed to recover more quickly.

Several tribes have come together to form planning committees designed to support emergency response. For example, in Nevada, 27 federally recognized tribes formed a Nevada Tribal Emergency Coordinating Council to provide support for all hazards emergency management and advise the Nevada Division of Emergency Management in responding to emergencies on tribal lands. Oklahoma also formed an Inter-Tribal Emergency Management Coalition. The coalition includes tribal emergency management agencies and representatives from more than 22 tribes with lands in Oklahoma as well as state officials.

To help tribes facilitate the emergency planning process, FEMA provides resources that are specific to tribal government preparation and planning processes. The U.S. Department of the Interior’s Bureau of Indian Affairs also manages a National Emergency Management Tribal Assistance Coordination Group that supports tribes in responding to and recovering from emergencies. Additionally, the Northwest Tribal Emergency Management Council offers all hazards emergency management guidance to Northwest member tribes and the Tribal Emergency Management Association offers trainings and support to establish partnerships between tribes and local, state and federal entities to advance emergency management. Some tribes also use FEMA’s National Incident Management System to guide their emergency response efforts.

FEMA’s National Response Framework (NRF) is a comprehensive federal approach to emergency response, which aims to unify responses across levels of government and guide how the country responds to emergencies and disasters. The NRF includes 15 Emergency Support Functions (ESFs) that provide the structure for coordinating response efforts. ESF-12 is focused on energy. DOE is the lead ESF-12 agency and is responsible for facilitating the restoration of damaged energy systems, coordinating with FEMA, states and the private sector. If damage to energy infrastructure leads to an oil or hazardous materials spill, the U.S. Environmental Protection Agency leads efforts to coordinate cleanup under its role as ESF-10 coordinator. Engagement between tribes and lead federal agencies under the relevant energy ESFs is critical to ensuring a timely response. While the focus on repairing energy infrastructure and delivering energy resources remains largely the same across state and tribal emergency planning, the extent to which a tribe adopts ESFs or assigns coordinating agencies responsible for delivering resources varies across jurisdictions.

PLANNING AGENCIES

Some tribal governments have enacted laws creating agencies to help coordinate disaster services with state and federal offices.

The Navajo Nation, with lands in the Southwestern U.S., enacted tribal code provisions establishing a Commission on Emergency Management to work with the Navajo Department of Emergency Management to coordinate the delivery of services during emergencies and disasters (2 NAVAJO CODE § 883). The commission also has the power to coordinate goods and services, equipment, vehicles and personnel during a declared emergency (2 NAVAJO CODE § 884).

The Eastern Band of the Cherokee Nation, with lands in the Southeastern U.S., enacted tribal code provisions establishing an Office of Emergency Management as the coordinating agency for emergencies and tasking a program manager with planning and coordinating activities regarding emergency management. The program manager is required to “maintain liaison” with local, state and federal authorities (Eastern Band Cherokee Indians Code §§ 166-1; 166-3; 166-4).
In addition to designating specific agencies or commissions to help coordinate efforts during emergencies, some tribes have developed requirements around comprehensive emergency management plans to aid in coordinating with state and federal officials during disasters.

The Eastern Band of the Cherokee Nation’s tribal code requires development and maintenance of Comprehensive Emergency Management plans. It requires the program manager (described above) to develop and implement plans for facility use that protect and restore public utilities and other services during times of emergency. The manager must broadly coordinate with federal, state, local and private entities to ensure emergency management plans are carried out effectively (Eastern Band Cherokee Indians Code § 166-5; 166-4). The Emergency Management Office develops plans to reduce community hazard vulnerabilities and focuses on decreasing potential impacts of disasters in addition to response and recovery.

The Confederated Tribes of the Colville Reservation, with lands in the Northwestern U.S., implement a comprehensive emergency management plan during disasters. The plan prioritizes coordination with local government authorities and notes the Confederated Colville Tribes should have the capacity and infrastructure to manage the disaster impacts on the reservation “with little or no outside help for at least three days.” The plan identifies “energy infrastructure repair and restoration” as priorities under its energy-related ESF-12 annex in the event of widespread power outages. Specifically, the plan identifies accessing emergency generators, staff to connect generators to critical infrastructure and necessary fuel as priority areas. Fuel deliveries are particularly vital for powering generators and fueling vehicles. The plan also identifies utilities, electric co-ops and utility districts as resources for response.

The Blackfeet Nation, with lands in the Northwestern U.S., has an Emergency Operations Plan that includes an Energy Annex for ESF-12, which identifies potential impacts when energy infrastructure is damaged by severe disasters, including prolonged power failure affecting communications and other lifeline services. The Energy Annex outlines preparedness directives, including maintaining a directory of utility services and energy products, creating priorities surrounding “damaged energy services” and backup portable generators, and promoting agreements for mutual assistance, among other initiatives. It also outlines directives for response, including, but not limited to, prioritizing utility rebuilding, and applying federal, state and local resources to restore services.

The Suquamish Tribe, with lands in the Pacific Northwestern U.S., has a Comprehensive Emergency Management Plan for “coordinating its emergency management responsibilities.” The plan describes the role and responsibilities of the Tribal Emergency Response Commission and Emergency Management Coordinator and how the tribe’s emergency management staff interface with the tribe’s ESF structure. The plan also highlights the tribe’s local partners and the role of “mutual-aid and inter-local agreements” in providing resources to support the tribe’s emergency response capabilities. For example, the plan lists Puget Sound Energy, a utility that supplies natural gas and electricity, as a local partner. Additionally, the plan notes that in restoring critical infrastructure, the “Tribe’s emergency management staff will maintain active communication with [utilities and other critical service providers] in an effort to assure their restoration of these critical services are appropriately prioritized and coordinated.”
There are also mandatory planning documents tribes must submit to access certain types of direct federal assistance from FEMA during and after a disaster.

- Tribal Mitigation Plans—Tribes are required to have a FEMA-approved mitigation plan in order to receive certain types of disaster funding directly. Note that for a number of programs, including public assistance funds that support repairs to damaged utility infrastructure, no mitigation plan is required by FEMA if the tribe receives funds as a subrecipient through the state in which it is located.

- Public Assistance Administrative Plans—Tribes must also submit a disaster-specific administrative plan that meets minimum requirements before FEMA will release funding following a Major Disaster Declaration or Emergency Declaration.

- Hazard Mitigation Grant Program (HMGP) Administrative Plans—Tribes must submit hazard mitigation administrative plans for FEMA review and approval prior to receiving HMGP funds allocated for reducing the risk of repeated damage from future events. **Example: Samish Indian Nation’s Hazard Mitigation Plan Draft.**

- Other Needs Assistance (ONA) Administrative Planning—If a tribe elects to be the sole or joint administrator of ONA, then the tribe must submit a Tribal Administrative Plan every three years describing how the tribe will use ONA funds.
Mutual Aid Agreements

Mutual aid agreements broadly “establish the terms under which one party provides resources—personnel, teams, facilities, equipment, and supplies—to another party.” Intergovernmental mutual aid agreements between tribes and states or local governments can also facilitate sharing of resources across jurisdictions in responding to and recovering from emergencies and disasters. Such mutual aid agreements have been deployed across local and tribal jurisdictions to address public health disasters and the same types of agreements could be used to better facilitate a coordinated response to energy emergencies. Arizona, California and Washington all highlight the ability of tribes to engage in mutual aid agreements in their emergency response plans. While NCSL was not able to identify any examples of mutual aid agreements between tribes and states or local governments directly relating to energy emergencies, the Umatilla Indian Reservation agreement example to the right could serve as an example of an agreement that outlines roles, responsibilities and sharing of resources during an energy emergency impacting tribal communities. Additionally, states use the Emergency Management Assistance Compact to share resources during emergencies and may include tribes in that process.

Distinct from this government-to-government mutual aid process is the electric power industry’s voluntary mutual assistance agreement process used by investor-owned utilities, municipally owned utilities, and rural electric cooperatives. These agreements allow a utility to request resources from other unaffected participating utilities in the event its own resources are depleted during an emergency.

Entering into government-to-government mutual aid agreements and utility mutual assistance agreements can improve emergency response by clearly identifying roles, responsibilities and available resources across jurisdictions in advance of an event.

State Planning and Coordination With Tribes

States take varied approaches to handling emergency response. They also take a varied approach to engaging with tribes in planning for and responding to energy emergencies. For a review of how states plan for and respond to an energy emergency—specifically the role and authorities of state legislatures—see NCSL’s primer, “Energy Emergencies | The State Legislative Role in Planning and Response.”

Some states have requirements around coordination with tribal governments to facilitate a more comprehensive disaster response. Others engage with tribes through emergency response training and exercise planning. For example, Wisconsin collected data regarding training and exercise needs from tribal emergency managers in addition to local and private stakeholders in formulating its 2016-2018 and 2018-2020 Multi-Year Training Exercise Plans for emergency management and response.

Ensuring that tribal and local communities recover quickly is essential to carrying out an equitable emergency response on the broader community level. To effectively engage and coordinate with tribes during the energy emergency planning and response process, some states have designated tribal liaisons within state offices to carry out primary or secondary response functions.

Some states also have statutory tribal consultation requirements and highlight within their emergency response plans the authority tribes have as sovereign nations. Specifically, Arizona, California and Washington, highlighted below, have crafted their emergency planning documents to be supportive of tribal authority and facilitate engagement with tribal governments on a number of energy emergency support functions.

Arizona’s State Emergency Response and Recovery Plan (SERRP) makes clear that tribes, as sovereigns, have the authority to “declare an emergency independently or jointly” with other jurisdictions in the state. The plan also identifies the role of the Tribal Chief Executive Officer as “responsible for coordinating tribal resources” and entering into mutual aid agreements, among other roles and responsibilities.

The Umatilla County Health Department and the Confederated Tribes of the Umatilla Indian Reservation entered into a mutual aid agreement to ensure that the Confederated Tribes of the Umatilla Indian Reservation had capacity and resources necessary to fully respond to certain health threats.
Arizona’s ESF-12 annex is designed to coordinate and support restoring energy infrastructure damaged by an event. The Department of Emergency and Military Affairs is the primary ESF-12 agency and is responsible for coordinating and sharing energy information between “the energy private sector and ... local, county, tribal, and state authorities.” DEMA also assists tribal authorities with energy emergency response support requests. The Arizona Department of Transportation acts in a supporting role to provide government authorities, including tribal authorities, with “transportation infrastructure situational awareness and planning and recovery information,” as well as assistance with waivers, special permits and approvals needed to transport energy materials.

Arizona’s Energy Assurance Plan helps guide specific policies in an energy emergency. The plan relies on coordination between private entities and governments, including tribal governments, and serves as the foundation for tribes and state and local government in forming plans and procedures during energy emergencies and prolonged power outages or “black sky” events. It also details the electric generation, transmission and distribution in the state. This includes identifying tribal utilities and electricity service providers that serve customers on tribal lands.

California’s Executive Order B-10-11 directs state agencies to consult with the state’s tribes. In following the executive order, the California Energy Commission, which is responsible for planning and coordinating the state’s energy emergency response, developed a tribal consultation policy. The policy designates a tribal liaison as the point of contact for the Energy Commission’s tribal engagement and authorizes the commission to convene task forces, host summits and exchange information to “foster long-term positive relations” with tribes. The policy also requires the Energy Commission to consult with tribes “early and often” and in ways that are “meaningful, respectful, and inclusive.”

The state’s Emergency Plan emphasizes the role of cooperative agreements among tribes and state and local governments to “maximize capabilities” during an emergency. It also commits state and local government resources to supporting tribal communities in disaster response and recovery.

Additionally, California lawmakers passed legislation in 2018 directing the Office of Emergency Services to establish the California Cybersecurity Integration Center to manage and reduce cyberthreats to critical infrastructure and computer networks. The center is charged with organizing and coordinating information among federal, state, local and tribal governments, utilities and service providers.

Washington lawmakers enacted statutory requirements to create a strong foundation for coordination between state agencies and tribes in the state’s emergency management planning process (Wash. Rev. Code §§ 43.376.020; 43.376.030; 43.376.040). The law requires state agencies to establish a government-to-government relationship with tribes by collaborating on policies and programs directly affecting tribes and by designating tribal liaisons trained in cultural competency and effective communication.

Washington’s Comprehensive Emergency Management Plan (CEMP) designates the state Department of Commerce, which houses the State Energy Office, as the primary coordinating agency for energy emergencies under ESF-12. The plan requires all primary agencies to coordinate with support agencies and government officials, including tribal officials. The plan identifies a number of actions tribes may take in responding to an emergency, including entering into mutual aid agreements, requesting state assistance when tribal resources have been exhausted, participating in the Washington Mutual Aid System, inspecting tribal facilities and infrastructure, and establishing community points of contact for delivering emergency supplies, among other measures.
Conclusion

Federal, state and local government agencies that engage early and often with tribal governments throughout the emergency planning process are better positioned to work with tribes during an actual energy emergency. States may find that consulting and coordinating with tribes will result in a better distribution of resources. Mutual aid and other types of cooperative agreements between tribes, states and local governments, along with designating specific offices and liaisons to operate as points of contact for specific support functions, can improve the capability of all levels of government to respond and recover from an energy emergency.

Resources

- U.S. Department of Energy Waiver Library: https://www.energy.gov/ceser/energy-waiver-library
- Federal Emergency Management Agency, Pre-Disaster Recovery
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