

Workshop Minutes
Eastern WUCC ESA Process Subcommittee Workshop
Southeastern Connecticut Water Authority – 1690 Route 12, Gales Ferry, CT
September 28, 2016 1:30 p.m.

The Eastern WUCC Exclusive Service Area (ESA) Process Subcommittee held a workshop on September 28, 2016 at 1:30 p.m. The meeting was held at the Southeastern Connecticut Water Authority (SCWA) office at 1690 Route 12, Gales Ferry, Connecticut. Prior written notice of this meeting was given via mailings from the Department of Public Health (DPH) to Eastern Water Utility Coordinating Committee (WUCC) members and interested parties, and the notice of the meeting was posted on the DPH website at <http://www.ct.gov/dph/wucc> under the Eastern webpage.

The following ESA Process Subcommittee representatives were in attendance:

- Mr. Josh Cansler, SCWA
- Mr. Paul Deveny, Windham Water Works
- Mr. Patrick Bernardo, Town of Putnam/SUEZ

Other attendees included Mr. Chris Clark, Mohegan Tribal Utility Authority; Mr. Louis Burch, Citizens Campaign for the Environment; and Mr. Scott Bighinatti, Milone & MacBroom, Inc. (MMI). ESA Process Subcommittee representative Bob Congdon (Town of Preston) was unable to attend the meeting.

As noted in the August 12, 2016 notice, the ESA Process Subcommittee has two specific tasks:

- A. Reviewing and consolidating the process for establishing new ESAs and modifying existing ESAs as authorized by State Statute, State Regulation, and the Eastern WUCC Bylaws into a straightforward guidance document that will be added to the Work Plan.
- B. Preparation of declaration forms and scoring rubrics which will be used by WUCC members to vet utility and municipal ESA claims.

The workshop began at 1:37 p.m.

Mr. Bighinatti asked Mr. Cansler and Mr. Deveny if the minutes from the previous workshop were acceptable, and indicated that edits were not received. Mr. Cansler and Mr. Deveny indicated that the minutes were acceptable. Mr. Bighinatti will have the minutes finalized and posted to the DPH website.

Mr. Bighinatti passed out copies of the draft Scoring Rubric, draft Declaration Form, draft Process Timeline, and draft Exclusive Service Area (ESA) Procedures.

Discussion began with the scoring rubric. Mr. Deveny recalled that Ms. Denise Ruzicka of the Connecticut Department of Energy and Environmental Protection had suggested at the September 2016 Eastern WUCC meeting that weighting of the factors required to be considered may not be allowed under the regulations.

- Mr. Bernardo stated that if weighting was used, he would assign weight to the factors differently. Mr. Bernardo recalled that during the former Southeastern WUCC process, political boundaries

carried a much heavier weight in some areas than the other factors as municipalities were heavily involved. The result was that many municipalities received ESA boundaries despite having very small or no systems. Mr. Bernardo felt that the weights provided may be misleading. Mr. Bighinatti concurred that not all situations are the same, so the weights may not apply appropriately in all cases.

- Mr. Clark questioned the goal of the rubric. Mr. Bighinatti suggested that the rubric can either be used for guidance for individual members (essentially as notes), or a tally could be collected of scores and presented to the group. Mr. Clark indicated that the latter would essentially be replacing a vote. Mr. Bighinatti indicated that one was needed because presentations by conflicting declarants may not be able to take place at the same meeting. He indicated that rubric should be non-binding and for individual guidance only to general concurrence.
- Mr. Bighinatti reminded the group that the rating scale of 1 to 5 is different than the rating scale used in the former Southeastern WUCC (1 to 3). A 1 to 10 scale was originally proposed in the Southeastern WUCC, but that was considered to be too wide a margin. Mr. Bighinatti felt that a 1 to 5 range would give the opportunity to keep scores as whole numbers rather than using decimal scores. The group concurred that the 1 to 5 range was acceptable for scoring.
- After additional discussion, it was agreed that Mr. Bighinatti would make two rubrics for consideration, one with weights and one without. The WUCC would be able to consider the two documents and choose one at the next meeting. Mr. Bighinatti indicated that the scoring rubric would not need to be finalized until the November meeting.

Mr. Cansler indicated that there is a need to bring the existing ESA boundaries that are digitized up to date. He discussed how during the former Southeastern WUCC process, a buffer (essentially a small, radial ESA) was provided around SCWA's existing service areas to account for future expansion in areas where the larger ESA holder was another entity. However, the scale of the map is not sufficient to see this boundary, and it has resulted in ESA conflicts with a neighboring utility.

- Mr. Bighinatti indicated that he would research the previous approved mapping and attempt to bring the boundaries up to date as part of this process. Updated mapping will be provided in the ESA Document for the entire region and required to be approved as part of the Statements of Confirmation.

Mr. Bighinatti asked the group to review the Declaration Form. He indicated that he had not received any additional questions to add to the form. The initial part of the form is set up to ask where a potential ESA provider is declaring for an ESA, and how that entity intends to serve the ESA area. This information is important as it will tie directly into the planning and impact assessments in the Integrated Report. The remaining sections ask questions specific to the factors required by regulation to be addressed. The final section asks the declarer to identify potential conflicting declarations with other entities and encourages the declarer to reach out and come to an agreement.

- Mr. Cansler asked if the Declaration Form could be provided electronically. Mr. Bighinatti indicated that a word document version could be made available for entities to fill out electronically.

- Mr. Cansler indicated that the form was very comprehensive and may take some time to fill out, particularly for entities declaring for more than one area. Mr. Bighinatti stated that the form was set up to allow an entity to only fill out one form, with details provided for all areas. Mr. Bighinatti stated that the goal of having a comprehensive Declaration Form was to ensure that potential declarants had given thought to how they would serve the area that they were declaring for, and to collect information that will be needed for the ESA Document and the Integrated Report.
- Mr. Bernardo asked if a discussion of available water should tie into the forms, as he could think of examples where utilities were contractually promised water on a daily basis that is not necessarily always available. Mr. Bighinatti indicated that is an issue that should be touched on in the Water Supply Assessment.
- After additional review and discussion, the group decided that they did not have any additional questions to add to the form at this time, and that it should be presented at the October Eastern WUCC meeting for approval. Mr. Bighinatti reminded the group that the WUCC could always ask declarants for additional information either before or following their presentations.

Mr. Bighinatti asked the group to proceed through the draft ESA Procedures. This document is meant to be included in the Eastern WUCC Work Plan along with the ESA Process Timeline. It was constructed using the applicable statutes, regulations, bylaws, and precedent from the former Southeastern WUCC ESA Procedures. In the latter case, the Procedures were created after conflicts had been sent to PURA, so the current draft ESA Procedures document is more robust in that it will describe the entire process.

- Mr. Bighinatti asked if anyone had additional thoughts on the ESA Process Timeline. There were no additional thoughts at that time. Mr. Bighinatti indicated that the timeline could be updated as necessary and would be added to the schedule portion of the Work Plan.
- Mr. Bighinatti asked about the layout of the ESA Procedures document. Mr. Cansler suggested adding numbers to each major heading.
- Mr. Bighinatti indicated that a major question for the Eastern WUCC to consider would be the determination of consensus. Given any ESA conflict between declarants, the conflicted parties will, at a minimum, vote for themselves if possible. Therefore, unanimous consensus will be impossible. Mr. Bighinatti indicated that the Southeastern WUCC used a simple majority vote to make ESA boundary decisions. There was some discussion as to whether a supermajority or other higher threshold should be used. Mr. Bighinatti suggested tabling that discussion until the review reached the Declaration Conflicts section.
- Mr. Bighinatti reviewed the Introduction, Public Notification Requirements, and Assignment of Initial ESA Boundaries sections. The latter section has several subsections, including Declaration Conflicts. Mr. Clark suggested making a separate paragraph regarding the scoring rubric to ensure that members understand that it is to be used by that member as guidance, and does not replace the member's vote.
 - The group concurred that 15-minute presentations by each conflicted declarant should be given, particularly regarding the amount of questions and factors to consider. Mr. Bernardo suggested

that each conflicted area should have its own presentation to minimize the need to remember details between meetings, and Mr. Clark concurred.

- The group suggested that the WUCC should perform conflict resolution immediately following the presentation in an attempt to get the parties to come to an agreement. Otherwise, the WUCC would need to vote in favor of one party or the other.
- Mr. Bighinatti pointed out that for a simple majority vote, one party or the other would therefore receive the ESA designation, and PURA would not be consulted. Mr. Bighinatti indicated that therefore, the only way PURA would be consulted for a recommendation would be if there were three or more declarants for a particular area. Mr. Cansler provided an example of a 40/30/30 split, where even if there were three separate motions, none would carry.
- Mr. Bernardo suggested that PURA may not be able to meet the timeline of the WUCC in providing its recommendation, and therefore the WUCC should do as much as possible to resolve conflicts. Mr. Bighinatti agreed that the Chairs should push for conflict resolution, and pointed out the MMI is charged with providing conflict resolution as part of this process between conflicted utilities. Mr. Bighinatti also reminded the group that day-long mediation workshops were held in the former Southeastern WUCC in an attempt to mediate conflicted declarants.
- Mr. Clark asked if the WUCC was required to vote for the PURA recommendation. Mr. Bighinatti indicated that the former Southeastern WUCC required an up or down vote on the PURA recommendation. It is possible that the WUCC could vote down the PURA recommendation and attempt further conflict resolution. Ultimately, the designation would fall to the Commissioner of the Department of Public Health if the WUCC cannot come to consensus.
- Mr. Bighinatti reviewed the Modification of Established ESA Boundaries section. The latter section has several subsections, including Declaration Conflicts. The group suggested that the procedures be the same as the modifications suggested for the Assignment section, where applicable.
- Mr. Bighinatti reviewed the Reporting section, reminding the group of the regulations regarding what needs to be in the ESA document. An additional consideration is the requirement to consider the consistency of the ESA boundaries with local, regional, and state plans of conservation and development.

Mr. Bighinatti will update the documents for review by the group via email, with the goal of presenting them at the October WUCC meeting for approval.

As discussion was concluded, the workshop adjourned at 3:20 p.m.

Respectfully Submitted,

Scott Bighinatti, Milone & MacBroom, Inc.