

Frequently Asked Questions
WUCC Exclusive Service Areas & Formation of New Public Water Systems
September 20, 2016

1. What is an Exclusive Service Area?

Connecticut General Statute (CGS) 25-33d defines an “Exclusive Service Area” (ESA) as an area where public water is supplied by one system.

2. What is the Water Utility Coordinating Committee’s (WUCC’s) responsibility to establish ESAs?

The WUCC must establish preliminary exclusive service area boundaries, based in part on the information presented in the Final Water Supply Assessment, for each public water system within the management area, and may change such boundaries. In establishing exclusive service area boundaries, the committee must solicit comments on such boundaries from municipalities, regional councils of governments, the Commissioners of Energy and Environmental Protection (DEEP) and Public Health, the Public Utilities Regulatory Authority (PURA), the Secretary of the Office of Policy and Management (OPM) and other interested persons within the management area. Final approval is by the Commissioner of Public Health.

3. Can a water provider lose service rights to an area it currently serves by virtue of ESA designation to another water provider?

No. Existing service areas will automatically convert to coterminous exclusive service areas with no action required on the part of the provider.

4. What factors must be considered when establishing an ESA?

Section 25-33h-1(d)(B) of the regulations requires that in establishing ESAs, the WUCC shall:

- a) Allow utilities to maintain existing service areas;
- b) Not leave areas as unserved islands, unless it can be demonstrated that there is not and will be no future need for public water supply service; and
- c) Not allow new service areas or main extensions that create duplication or overlap of services.

The regulations go on to identify the following factors to be utilized in determining ESA boundaries:

- i. Existing water service area;
- ii. Land use plans, zoning regulations, and growth trends;
- iii. Physical limitations to water service;
- iv. Political boundaries;
- v. Water company rights as established by statute, special act or administrative decisions;
- vi. System hydraulics, including potential elevations or pressure zones; and
- vii. Ability of a water system to provide a pure and adequate supply of water now and into the future.

5. Does assignment of an ESA bring with it water supply development rights?

No. An ESA establishes the service provider but conveys no rights related to development or use of a supply source. Any water provider who wishes to develop a new groundwater or surface water supply and withdraw in excess of 50,000 gallons per day must obtain a Water Diversion Permit through DEEP. The application process is subject to the Water Diversion Statutes (CGS 22a-365 through 22a-379) and Regulations (Sections 22a-372-1 through 22a-377(c)-2), including a rigorous review of potential environmental impacts. The Diversion Permitting process includes an opportunity for public review and comment.

6. Does assignment of an ESA mean that public water supply systems are going to be built in my community?

No. Assignment of an ESA functionally places a utility or municipality on “standby” in the event that public water service is necessary, for example, because of a new development approved via a local approval process, or because of the need to provide water supply to an area suffering from contaminated private water supply wells. Local conditions and needs are the driving force for public water supply system development and/or main extensions, not the ESA.

7. How does a water provider become an ESA provider?

The specific procedures to declaring an interest and a willingness to serve as an ESA provider may be different among WUCCs; however, the process must occur following the convening of the WUCC and in accordance with the requirements contained in the statutes and regulations. Typically, there is a declaration process whereby a provider indicates a geographic area in which it wishes to be the ESA provider and demonstrates the ability to serve, according to the factors outlined in the regulations. The WUCC is encouraged to reach consensus relative to designating the ESA boundaries and, if no consensus can be reached, the procedures outlined in question #8 must be followed. These are made final upon a public review and comment, state agency input, and approval by the Commissioner of Public Health.

8. What happens if the WUCC cannot agree on an ESA designation?

If there is no agreement by the committee on ESA boundaries, or on a change to such boundaries, the committee must consult with PURA. If there is no agreement after such consultation, the Commissioner of Public Health may establish or change such ESA boundaries, taking into consideration any water company rights established by statute, special act or administrative decisions. In establishing such boundaries, the commissioner shall maintain existing service areas and consider the orderly and efficient development of public water supplies.

9. If a provider has an established ESA from a prior WUCC, does that automatically transfer to the new Public Water Supply Management Area (PWSMA) and WUCC?

Previous boundaries were established by four WUCCs in accordance with Section 25-33g. There is no statute or regulation that rescinds established ESAs when PWSMAs are altered. If an existing ESA holder wishes to modify an ESA boundary, or a party is aggrieved regarding an ESA, such parties may approach the WUCC for resolution.

10. What are the roles and responsibilities of an ESA provider?

The regulations state that water utilities are responsible for providing adequate service as requested by consumers and under terms otherwise provided by statute, regulation and ordinance within their exclusive service area boundaries within a reasonable time frame. This may include but is not limited to development of supply sources, main extensions, or satellite management.

In the Southeastern Connecticut WUCC, the most recent plan of the prior seven PWSMAs, the ESA plan recognized that the responsibility implied by the regulation is broad and dedicated a significant effort to defining the degree of commitment and procedures for servicing a new customer within an exclusive service. The following is a direct excerpt from the Southeast Connecticut ESA Plan:

“The manner in which a public water supplier can serve new customers in its exclusive service area can be simply via main extension or through satellite management (ownership or operation), either on an interim basis until a main extension is provided or on a permanent basis. In all situations, the capital facilities installed must meet the design criteria set forth by the appropriate minimum design standards, including pipe sizing and materials, quality, system storage, fire hydrants, and other pertinent factors.

“The satellite management approach does offer some degree of latitude in that the designated public water supplier may install, own, operate, and maintain the facilities required to service the new customer; or the new customer may actually install and own the facilities, with the designated public water supplier providing operation and maintenance services and/or fiscal management. Regardless of the satellite management approach taken, overall responsibility for water supply in its exclusive service area rests with the designated exclusive service area public water supplier.

“The Department of Public Health expects that each public water supplier designating an exclusive service area beyond the bounds of its existing system will set forth the manner in which it plans to service this area in its individual plan. The plan will identify those areas in which service by main extension is anticipated during the planning period, as well as those areas in which satellite management is envisioned. A clearly delineated plan that has been approved by the Department of Public Health not only helps potential customers assess the water supply contingencies of its proposed building project, but also serves to protect the public water supplier from unreasonable demands in responding to the legislative criterion of serving new customers in its exclusive service area "within a reasonable timeframe."

“In summary, a public water supplier's exclusive service area gives it the right to provide service to new customers within its designated area; however, an exclusive service area also includes a responsibility to serve future customers in its exclusive service area and to clearly define in the public water supplier's individual water supply plan, prepared pursuant to section 25-32d of the general statutes, the manner in which the public water supplier intends to serve these future customers. Service may be provided by either main extension or some form of satellite management. Until such time as exclusive service areas are revised by an update of the coordinated water system plan or an amendment approved by the WUCC, each public water supplier assumes the responsibility for providing adequate service within a reasonable timeframe in its respective boundaries as requested by consumers.”

The Southeastern WUCC also required each potential ESA provider to sign a statement of confirmation accepting the responsibility for the service area; however, the specific responsibilities are not delineated and there is no specified recourse if they are not met. However, if not upheld, the ESA designation can be reviewed by the Department of Public Health (DPH) for alteration.

11. Who has the authority to enforce ESA provider responsibilities and/or strip them of their area if the designated ESA provider does not fulfill its responsibilities?

Per Regulations of Connecticut State Agencies (RCSA) 22-33h-1(k)(2), water utilities are responsible for providing adequate service as requested by consumers and under terms otherwise provided by statute, regulation and ordinance within their exclusive service area boundaries within a reasonable time frame. In the event that an ESA provider has been remiss in providing adequate service, Section 25-33g(b) states that the WUCC may change ESA boundaries by consensus. The implication is that the aggrieved party would petition DPH and the WUCC for the change. If consensus by the WUCC is not reached, PURA can provide a recommendation. If still no consensus is reached, the Commissioner of DPH can change an ESA.

12. What happens when a new public water system is proposed by a developer?

Section 16-262m(c) of the Connecticut General Statutes describes the process by which developers of systems serving twenty-five or more residents must apply for a certificate of public convenience and necessity. When such systems serving twenty-five or more residents are proposed where an exclusive service area provider has been determined, a copy of a signed ownership agreement between the applicant and provider for the exclusive service area detailing the terms and conditions under which the system will be constructed or expanded and for which the provider will assume service and ownership responsibilities is required. The application must also be accompanied by a written confirmation from the exclusive service area provider, as the person that will own the water supply system, that such exclusive service area provider has received the application and is prepared to assume responsibility for the water supply system subject to the terms and conditions of the ownership agreement.

A certificate will only be issued upon determination that:

- (1) no interconnection is feasible with a water system owned by, or made available through arrangement with, the provider for the exclusive service area or with another existing water system where no exclusive service area has been assigned;
- (2) the applicant will complete the construction or expansion in accordance with engineering standards established by regulation by the Public Utilities Regulatory Authority for water supply systems;
- (3) ownership of the system will be assigned to the provider for the exclusive service area, when an exclusive service area provider has been determined pursuant to section 25-33g;
- (4) the proposed construction or expansion will not result in a duplication of water service in the applicable service area;

- (5) the applicant meets all federal and state standards for water supply systems;
- (6) the person that will own the water supply system has the financial, managerial and technical resources to (A) operate the proposed water supply system in a reliable and efficient manner, and (B) provide continuous adequate service to consumers served by the water supply system;
- (7) the proposed water supply system will not adversely affect the adequacy of nearby water supply systems; and
- (8) any existing or potential threat of pollution that the Department of Public Health deems to be adverse to public health will not affect any new source of water supply.

Typically, when a community development occurs that is physically disconnected or remote from an existing water distribution system, the supply system must be designed and constructed to meet minimum design standards and acceptable to DPH and the ESA provider, who takes the system over as the legal owner and/or operator.

When a new water system is proposed by a developer, the local health director directs the applicant to contact DPH regarding potential permitting requirements once the design population of the development is known. DPH instructs applicants to fill out a “*Public Water System Screening Form*” as a precursor to the Certificate of Public Convenience and Necessity (CPCN) process. If the proposed development will result in the creation of a new water system, DPH advises the applicant of the ESA holder (if any) and instructs the applicant to begin the CPCN process as follows:

- Phase IA of the CPCN process reviews the location of proposed sources of supply. Approval of the Phase IA allows development and evaluation of supply sources to proceed. Coordination with the ESA holder or the eventual owner and/or operator of the system is required.
- Phase IB reviews the water quantity and quality of the proposed sources. Approval of Phase IB authorizes the developer to begin clearing the site and constructing foundations. An agreement in principle with the ESA holder or the eventual owner and/or operator of the system is required.
- Phase II reviews the design of the proposed water system. Approval of Phase II allows for final construction documents to be prepared and the system to be bid and built along with the remainder of the development.
- Following completion of Phase II, the water system must be approved by DPH. A final agreement with the ESA provider or the eventual owner/operator of the system is typically necessary. The system cannot be operated until approved by DPH, and Certificates of Occupancy are not granted until water supply is approved.

Section 16-262m (e)(1) of the CGS describes the CPCN requirements for non-community systems, i.e., water service to twenty-five or more persons, but not twenty-five or more residents at least sixty days per year. While such systems follow similar requirements as community systems, ownership of the system by the ESA holder is not required. Ownership will be assigned to the

provider for the exclusive service area if agreeable to the exclusive service area provider and the Department of Public Health, or may remain with the applicant, if agreeable to the Department of Public Health. In either case, such systems will remain as satellites only until such time as a water system has been extended to the site, after which service must be obtained from the provider for the exclusive service area.

13. What is the WUCC's responsibility relative to the CPCN process?

Section 25-33i of the Connecticut General Statutes state that no public water supply system may be approved within a public water supply management area after the Commissioner of Public Health has convened a water utility coordinating committee unless: (1) an existing public water supply system is unable to provide water service or (2) the committee recommends such approval. The Department of Public Health has been forwarding ongoing and new CPCN applications to the WUCC regions for review and potential action. The statutes and regulations are silent as to the specific procedures of WUCC approval, leaving it up to the individual WUCCs as to how to process, review, and act on an application, including when in the CPCN process the WUCC takes action.

14. What happens if an ESA provider can't or won't provide water supply to a new development located within their ESA boundary?

Statute 25-33i states that DPH cannot approve a new water system unless the WUCC recommends such approval, or an existing public water supply system is unable to provide water service. The same requirement is contained in the Regulations.

In the event that the WUCC recommends approval of a new system within an established ESA, by definition the ESA boundary of the established ESA must be modified to allow for a coterminous ESA for the new system. If another utility other than the ESA provider will provide water service, the same must apply. Otherwise, the ESA would be invalid by the definition (see #1).

15. Can an ESA boundary be modified?

Yes. Modification of assigned ESA boundaries between two members can be made without the vote of the WUCC, provided such modification is documented by the affected members and following an opportunity for comment by the WUCC and any affected municipality. Modification becomes effective upon acknowledgement of receipt of the notification by the WUCC Chairs to DPH and DPH review and approval.

16. Can a municipality be an ESA provider in their town if they are not currently a WUCC member?

CGS 7-234 passed in 1967 reaffirmed the authority of municipalities to provide water service and further established that any town, city, borough, or district organized for municipal purposes may acquire, construct, and operate a water system where there are no existing private waterworks systems or where private owners of existing systems are willing to sell. There is no statutory or regulatory requirement that an ESA holder must be a WUCC member. In fact, there are current ESA holders who do not own public water systems, and therefore they are not WUCC members. However, given the factors that the WUCC must consider in determining ESAs, municipalities without public water systems may be at a disadvantage regarding certain elements.

17. Can more than one public water system provide water within the same ESA boundary?

No. The statutes and regulations are clear that there may only be one provider within an ESA boundary. When ESAs are established in unserved areas, existing systems maintain their service area and, by extension, have an ESA coincident with their current system boundary. The maps of ESA boundaries depict currently unserved areas assigned to an ESA holder.

18. What is the timeline for determining exclusive service areas?

Preliminary ESAs must be established within nine months of the convening of the WUCC and the final ESAs must be established within one year. All three WUCC regions convened in June of 2016 and therefore preliminary and final ESAs are due in March and June 2017 respectively. Prior to beginning work on the exclusive service area boundaries, the WUCC must provide notice to all eligible WUCC members within the PWSMA that preliminary exclusive service area boundaries are being developed and of their ability to participate.

19. How are municipalities represented in the WUCC process?

If a municipality has a public water system with a source of water supply or a service area within the PWSMA, then they have direct involvement as a WUCC member. Remaining municipalities have representation through their regional Council of Governments (COG). Each COG has one elected WUCC member. Additionally, any municipal representative may attend any WUCC meeting, as they are noticed and open to the public. In an effort to encourage municipal involvement, a number of COGs administered a survey to its constituent towns requesting direct input relative to water supply in their community. This is particularly important for those municipalities who do not have public water systems and are therefore not WUCC members.

20. Is the WUCC process a public process?

Yes. Each regional WUCC meets monthly and all meetings are open to the public. The meetings are noticed two weeks prior, both on the DPH website and with direct email notification to all WUCC members and interested parties. Any person or organization may request to be added to the notification list. Additionally, major documents published by the WUCCs will be publicly noticed and open to public comment. Any member of the public may provide input to the WUCC process and comment on any of the documents through the Chair and/or Recording Secretaries outside of public meetings.

21. How can I find out more information and/or access WUCC publications?

The Department of Public Health is providing web-based information at the following website link: <http://www.ct.gov/dph/wucc>. Additionally, any person, group, or agency can contact DPH with a request to be added to the “interested persons” list and receive direct notifications.