

Exclusive Service Area Procedures – Central WUCC

October 25, 2016

Section I. Introduction.

The WUCC is charged by Connecticut General Statute (CGS) Section 25-33g(b) to establish preliminary exclusive service area boundaries, and to change such boundaries as necessary or warranted. An “exclusive service area” is defined as “an area where public water is supplied by one system.” Functionally, exclusive service areas (ESAs) represent currently unserved areas that may be served in the future. The planning process, as defined in the Regulations of Connecticut State Agencies (RCSA) Section 25-33h-1(c)(2), is to *maximize efficient and effective development of public water supply systems and promote public health, safety, and welfare.*

Section II. Public Notification Requirements.

Per RCSA 25-33h-1(c)(6), the WUCC must provide notification to all eligible WUCC members within the public water supply management area (PWSMA) that preliminary ESA boundaries are being developed and of their ability to participate. This was performed for the Central WUCC by letter dated September 26, 2016.

Meetings

- Per Article IV, Section B of the Bylaws of the Central WUCC, “the notice for any meeting at which an ESA boundary or assignment is to be discussed shall include a map of the proposed boundary and/or assignment”. ESA boundaries may only be established or modified at a properly noticed (agenda and maps published at least 14 days in advance) WUCC meeting. Per Article V, Section D of the Bylaws, at least two Officers must be present for a WUCC meeting to occur.
- Per Article IV, Section D and Article V, Section D of the Bylaws of the Central WUCC, a quorum must be present to conduct business regarding approving or modifying ESA boundaries.
- The WUCC must come to agreement on assignment of ESA boundaries per Section 25-33g(b). Article IV, Section B of the Bylaws of the Central WUCC state that designations or assignments shall be made by consensus, “if possible”. The former Southeastern WUCC Exclusive Service Area Procedures (last modified March 9, 2000) defined agreement to mean a simple majority vote. For purposes of coming to agreement on ESA boundary assignment, the Central WUCC will utilize a similar threshold.
- In the event that the municipality and/or water utility of one of the Officers is involved in an ESA boundary assignment or modification, that Officer must step aside from their duties for the duration of discussion and consideration. This is to prevent conflicts of interest. In such a case, one or more of the following will occur:
 - If one of the Co-chair are unable to perform their duties, the remaining Chair will moderate the meeting.
 - If both Co-Chairs are unable to perform their duties, the Recording Secretary will facilitate the meeting.
 - If the Recording Secretary is unable to perform their duties, an Assistant Secretary or an alternate Secretary will be selected to take notes and serve as timekeeper for the duration of discussion and consideration.

Section III. Assignment of Initial ESA Boundaries.

Factors to Consider for Determining ESAs

Per RCSA 25-33h-1(d)(B), the WUCC shall establish ESAs, first by preparing preliminary and then final ESA boundaries. In establishing ESAs, the WUCC shall:

- aa. Allow utilities to maintain existing service areas;
- bb. Not leave areas as un-served islands, unless it can be demonstrated that there is not and will be no future need for public water service; and
- cc. Not allow new service areas or main extensions which create duplication or overlap of services.

The following factors shall be utilized in determining ESA boundaries:

- aa. Existing water service area;
- bb. Land use plans, zoning regulations, and growth trends;
- cc. Physical limitations to water service;
- dd. Political boundaries;
- ee. Water company rights as established by statute, special act, or administrative decisions;
- ff. System hydraulics, including potential elevations or pressure zones; and
- gg. Ability of a water system to provide a pure and adequate supply of water now and into the future.

Declaration Forms

A declaration form has been developed to assist public water utilities and municipalities in providing information to support an ESA declaration. The declaration form asks questions designed to collect information on the factors described above. As part of the declaration form, entities are asked to contact other potential declarants in an attempt to resolve potential conflicts over particular unserved areas prior to submission of declaration forms. A simple majority vote is the threshold for an ESA assignment. Declarants will be encouraged to meet between WUCC meetings and compromise over conflicted areas.

Meetings

As noted above, assignment of an ESA boundary can only occur at a properly noticed WUCC meeting where at least two officers and a quorum are present. If the quorum is not met, consideration of the assignment will be rescheduled. It is possible that additional meetings beyond the regularly scheduled monthly WUCC meetings may be necessary to meet the regulatory deadlines.

Public Comment

Per CGS 25-33g(b), public comment must be solicited on the ESA boundaries, specifically from municipalities, regional councils of governments, the Commissioners of Energy and Environmental Protection and Public Health, the Public Utilities Regulatory Authority, the Secretary of the Office of Policy and Management, and other interested persons. Per RCSA 25-33h-1(f)(1), the WUCC shall make the preliminary exclusive service areas available for public review and comment.

Two public comment periods are currently included in the ESA schedule: One for review and comment on declarations and a second requesting comment on the preliminary ESA Document. Public comment periods and notifications will be provided for as per the Statutes, Regulations, and Bylaws of the Central WUCC.

Voting

In order to determine agreement (consensus) on assignment of an ESA, a vote must be held. If the vote carries, the assignment is confirmed by the WUCC and the assignment becomes part of the Exclusive Service Area document. Areas where there is only one declarant should come to consensus relatively quickly, although the WUCC is entitled to request additional information from any declarant prior to voting.

Declaration Conflicts

In the case of multiple declarants proposing the same ESA, presentations will be scheduled during regular or special WUCC meetings. Per Article V, Section B of the Bylaws of the Central WUCC, a map of the proposed area must be submitted with the agenda for said meeting. A schedule of presenters will be determined during or following the December 2016 meeting.

It is possible that presentations on the same conflicted area may span multiple meetings. A scoring rubric will be provided to assist WUCC members with scoring presentations, such that their thoughts may be written down and available to them at subsequent meetings. The scoring rubric is for guidance purposes and for use by individual WUCC members and will not be collected by the WUCC.

For each area in conflict between one or more declarants, each conflicted declarant will have 15 minutes to defend their declaration, followed by a 15 minute question and answer period. It is encouraged that written documentation be submitted by each declarant (for distribution to WUCC members) to support the oral presentation. Presentations by conflicted declarants will begin at the January 2017 meeting. Following the presentations and question and answer periods, the WUCC will enter a 15-minute discussion period to consider potential alternatives to mediate the conflict. More time for presentations and questions may be allotted by the WUCC if deemed necessary by the Officers.

Following the discussion period, the WUCC has two pathways for coming to an ESA determination:

1. Motions can be made to accept one of the proposals presented by a conflicted declarant, or on an alternative proposal proposed by other WUCC members that would resolve the conflict. In the latter case, it is suggested that any alternative proposal be amenable to at least one of the conflicted declarants. Conflicted declarants may not make a motion, but are allowed to vote. Should the motion carry, the ESA designation in question is considered confirmed by the WUCC and added to the ESA Document.
2. Alternatively, the WUCC may move to send the conflicted declarants to a mediation session with (or without) the WUCC consultant in an attempt to resolve the conflict prior to the next WUCC meeting. The WUCC may similarly move in the event that a motion is made under #1 above but does not carry. The results of any mediation would be discussed at the next WUCC meeting.

Following the discussion of the results of the mediation at the subsequent WUCC meeting, the WUCC will again move on a proposal as stated in #1 above. If the WUCC cannot come to consensus on any proposal, CGS 25-33g(b) requires that a recommendation be sought from the Public Utility Regulatory Authority (PURA). This will most likely occur in the case of three or more conflicted declarants where it may not be possible to achieve a simple majority for any one proposal. PURA has indicated that it will open a docket for such cases to facilitate its administrative duty under the statute. Following the receipt of the recommendation by PURA, the following will occur:

- Each conflicted declarant will have 10 additional minutes at a subsequent meeting to address the issues raised by PURA in coming to their recommendation, followed by a 10 minute question and answer period. More time for presentations and questions may be allotted by the WUCC if deemed necessary by the Chairs.

- Following the question and answer period, the WUCC will vote specifically on whether to adopt the PURA recommendation for the ESA assignment. Should the motion carry, the ESA conflict is considered resolved and the ESA designation per the PURA recommendation is considered confirmed and added to the ESA Document.
- If the vote does not carry following the PURA recommendation, the WUCC members may enter a discussion period to consider additional alternative recommendations, such as a division of the conflicted area. Following the discussion period, additional voting will occur as per #1 or #2 above.

If a vote on alternative awards does not carry or following additional mediation between declarants to arrive at a solution, the assignment will be provided to the Commissioner of DPH for a decision. Per RCSA 25-33h-1(f)(1)(D), the WUCC is required to provide to DPH the following:

- Documentation that the WUCC consulted with PURA;
- The PURA recommendation;
- A summary discussion of unresolved issues;
- Identification of persons affected by the conflict;
- Any considered alternatives; and
- Additional information as necessary.

The Commissioner of DPH is required to consider the following in assigning ESA boundaries:

- Any water company rights established by statute, special act, or administrative decisions.
- Maintaining existing service areas.
- The orderly and efficient development of public water supplies.

Per RCSA 25-33h-1(f)(1)(D), and at the discretion of the Commissioner of DPH, a hearing may be held to receive comment on the ESA boundaries in conflict. DPH shall then establish ESA boundaries in the disputed area and provide notice of such boundaries to the WUCC.

Appeals

The WUCC and/or DPH will only consider an appeal of an ESA boundary if there is a significant change that would support modification. While the process is designed to promote consensus by declarants and the WUCC, it is possible that an aggrieved party could pursue legal action to appeal the WUCC and/or DPH decision. Modification of established ESA boundaries within an ESA, or between two ESA holders will follow the procedures below.

Section IV. Modification of Established ESA Boundaries.

In most cases, modification of an ESA boundary will be presented to the WUCC by contiguous ESA holders who have come to agreement on how an area should be served, and wish to modify the boundary to allow service. A second case would be when a new public water system is proposed within an ESA as per CGS 25-33i(b), and either (1) an existing public water system cannot provide service, or (2) the WUCC recommends the creation of a new public water system.

Furthermore, it is possible that an aggrieved party could appeal to DPH and the WUCC as noted above, demonstrating that a significant change has occurred since the time of the previous ESA assignment that would support modification. In this latter case, the aggrieved party should appeal by letter to the WUCC with a copy to DPH. The Chairs will work with DPH to determine if sufficient evidence has been presented to support adding the potential modification to the agenda of a regular or special WUCC meeting.

In summary, four types of ESA modifications have been identified:

- A. Modification between two ESA holders;
- B. Modification due to creation of new public water system that will not be owned by ESA holder;
- C. Modification due to appeal;
- D. Modification due to other reasons.

Meetings

As defined in the Bylaws of the Central WUCC, modification of an ESA boundary can only occur at a properly noticed WUCC meeting where at least two officers and a quorum are present. If a quorum is not met, consideration of the modification will be rescheduled.

Information Required

Article IV, Section B, paragraph 2 of the Bylaws of the Central WUCC requires documentation of the proposed modification to be submitted to the WUCC. The WUCC should request details regarding the modification to inform the understanding of the WUCC membership. Information similar to that on the Declaration Form may be required, and a map detailing the proposed ESA boundary modification must be submitted. The parties involved should be prepared to make a 15-minute oral presentation (together, or two separate presentations depending on the circumstances).

Opportunity for Comment

Article IV, Section B, paragraph 2 of the Bylaws of the Central WUCC requires an opportunity for comment on the modification by the WUCC and any affected municipality. Per the suggestion of RCSA Section 25-33h-1(c)(7), the minimum comment period for any WUCC member and any affected municipality shall be 30 days. The WUCC shall provide written notification to each affected municipality of the opportunity to comment, and a description and map of the proposed modification. A notification to WUCC members will be sent by DPH to WUCC members and interested parties, and a copy of the notifications will be posted on the WUCC website.

Functionally, if a modification is brought to the WUCC's attention, they should have a WUCC meeting to collect preliminary data, followed by a 30-day comment period, and then a vote on the proposed modification at a second WUCC meeting. The meetings must be either regular or special meetings. The parties involved will have the opportunity (together, or separately depending on the circumstances) to respond to any comments received.

Type A (ESA Boundary Adjustment between Two Contiguous ESA Holders) Modification Procedures

For Type A modifications (as defined above), Article IV, Section B, paragraph 2 of the Bylaws of the Central WUCC states that modification of ESA boundaries between two members may occur without a vote of the WUCC. The parties are still required to provide documentation acceptable to the WUCC and allow for comments from WUCC members and affected municipalities as described under "Opportunity for Comment" above.

Type B (New Public Water System) Modification Procedures

For Type B modifications (as defined above), the DPH will provide notice to the WUCC that a new system has been approved and that an ESA boundary modification is necessary. Modification of the ESA boundary will only occur once the new system is approved by DPH for use. In some Type B cases, the WUCC will already be aware of the system in question as it may have been asked by DPH to provide a recommendation on such a system in accordance with CGS 25-33i(b). No motion by the WUCC is necessary for Type B modifications. The new system, once approved by DPH, will automatically be assigned an ESA that is contiguous with its identified service area. The WUCC must work with DPH to

ensure that the ESA boundary maps are properly updated to reflect the ESA boundary assigned to the new system, and keep appropriate records of the change (including a posting on the DPH website).

Type C (Appeals) and Type D (Other) Modification Procedures

In order to determine agreement (consensus) on the modification of an ESA in other modification cases, such as the result of an appeal by an aggrieved party (Type C), or for another reason (Type D - e.g. due to a boundary modification between three or more parties), a vote must be held at a regular or special WUCC meeting with at least two Officers and a quorum present, and following an appropriate opportunity for comment (see Opportunity for Comment). The proposed modification must be an agenda item for both meetings. In the case of a conflict, the WUCC will remind the parties involved that a simple majority vote is the threshold for an ESA modification. The conflicted parties will be encouraged to meet between WUCC meetings and compromise over conflicted areas.

The process for proceeding with Type C and Type D modifications is similar to those under “Declaration Conflicts” in Section III of these procedures. At the first meeting, the WUCC would collect preliminary data regarding the proposed modification. The parties involved will have time (either together, or separately depending on the circumstances) to present the proposed modification and/or defend their position, followed by a question and answer period. The amount of time available for presentations and questions and answers is at the discretion of the Chairs. It is encouraged that written documentation be submitted by each declarant to support their oral presentation. The WUCC may elect to distribute the scoring rubric to provide guidance for WUCC members hearing the presentations as noted above in Section III.

Following the “Opportunity for Comment”, and at the next regular or special WUCC meeting, the parties will each have time (together or separately, depending on the circumstances) to address the comments received, including any public comment provided at the regular or special meeting. This presentation period will be followed by a question and answer period. The amount of time available for presentations and questions and answers is at the discretion of the Chairs.

Following the discussion period, the WUCC has two pathways for coming to a determination on the ESA modification:

1. Motions can be made to accept one of the proposals presented by one or more of the parties, or on an alternative proposal proposed by other WUCC members that would resolve a conflict. Conflicted parties may not make a motion, but are allowed to vote. Should the motion carry, the ESA designation is considered modified, and appropriate documentation must be provided to DPH for posting.
2. Alternatively, the WUCC may move to send the conflicted parties to a mediation session in an attempt to resolve the conflict prior to the next WUCC meeting. The WUCC may similarly move in the event that a motion is made under #1 above but does not carry. The results of any mediation would be discussed at the next WUCC meeting.

Following the discussion of the results of the mediation at the subsequent WUCC meeting, the WUCC will again move as stated in #1 above. If the WUCC cannot come to consensus on any proposal, CGS 25-33g(b) requires that a recommendation be sought from PURA. PURA has indicated that it will open a docket for such cases to facilitate its administrative duty under the statute. Each conflicted party will have additional time at a later meeting to address issues raised by PURA in coming to their recommendation, followed by a question and answer period. The amount of time available for presentations and questions and answers is at the discretion of the Chairs.

Following the question and answer period, the WUCC will vote specifically on whether to adopt the PURA recommendation for the ESA modification. Should the motion carry, the ESA designation is considered confirmed per the PURA recommendation and appropriate documentation must be provided to DPH.

If the vote does not carry following the PURA recommendation, the WUCC members may enter a discussion period to consider additional alternative recommendations, such as a division of the declared area. Following the discussion period, additional voting will occur as per #1 or #2 above. The parties are welcome to pursue additional discussion of alternatives that will be satisfactory to the WUCC prior to the next WUCC meeting.

If a vote on an alternative modification does not carry or following the failure of additional mediation between parties to arrive at a solution, the modification will be provided to the Commissioner of DPH for a decision. Per RCSA 25-33h-1(f)(1)(D), the WUCC is required to provide to DPH the following:

- Documentation that the WUCC consulted with PURA;
- The PURA recommendation;
- A summary discussion of unresolved issues;
- Identification of persons affected by the conflict;
- Any considered alternatives; and
- Additional information as necessary.

The Commissioner of DPH is required to consider the following in modifying ESA boundaries:

- Any water company rights established by statute, special act, or administrative decisions.
- Maintaining existing service areas.
- The orderly and efficient development of public water supplies.
- Established exclusive service areas.

Per RCSA 25-33h-1(f)(1)(D), and at the discretion of the commissioner, a hearing may be held to receive comment on the ESA boundaries in conflict. DPH shall then modify ESA boundaries in the disputed area.

Appeals

The WUCC and/or DPH will only consider an appeal of an ESA boundary if there is a significant change that would support modification. While the process is setup to promote consensus, it is possible that an aggrieved party could pursue legal action to appeal the DPH decision.

Section V. Reporting.

Per RCSA 25-33h-1(d)(B)(iii), a plan for exclusive service areas within the public water supply management area shall be developed, including:

- aa. A map or maps at a scale of 1:50,000 depicting existing and future service areas within the exclusive service area boundaries.
- bb. A reference list of exclusive service area or supply agreements between public water systems or localities, including charter or enabling act revisions as applicable and a brief description of terms of agreement including dates and length of agreement.
- cc. Description of future service area boundaries.

The WUCC must provide the necessary documentation regarding any ESA boundary assignment or modification to DPH in a timely manner. Any map submitted with any agenda or for acknowledgement by DPH must be at a scale of, at a minimum, 1:50,000.