

**State Water Infrastructure Authority
Viable Utility Committee
October 12, 2022 Meeting**

Agenda Item D – Consideration of D1 Units in Relation to VUR Priority Rating Systems

Division of Water Infrastructure Staff Report

Background

General Statute 159G-35(c) directs the State Water Infrastructure Authority (Authority) and Local Government Commission (LGC) to develop evaluation criteria for grants from the Viable Utility Reserve (VUR), among other responsibilities.

The Chair of the LGC, State Treasurer Dale R. Folwell, sent a letter (dated September 7, 2022) to the Authority by way of Chair, Shadi Eskaf, Division of Water Infrastructure Director, requesting that the Authority consider prioritizing funding for construction projects for local government units (LGU) under the financial control of the LGC per their authority under NCGS 159-181(C). These units are designated distressed under Identification Criterion 1 of the Identification Criteria (“D1 units”):

A unit whose fiscal affairs are under the control of the Commission pursuant to its authority granted by G.S. 159-181 (“under Commission fiscal control”)

The letter was discussed during the Authority’s September 14, 2022 meeting. Authority members expressed a desire to continue to operate consistent with the existing Priority Rating System (PRS) for VUR-funded construction projects, which is the same as that used for prioritizing projects for the State Revolving Fund (SRF) and State Reserve Program (SRP). Furthermore, the Authority referred a more detailed discussion and consideration of the State Treasurer’s request to the Viable Utility Committee.

Discussion

SWIA and the LGC clearly have broad authority in terms of evaluating and prioritizing applications for funding programs under its authority, including the VUR. NCGS 159G provides at least two clear avenues for SWIA to establish project prioritization criteria:

- Under NCGS 159G-35(c), *“The Local Government Commission and the Authority shall jointly develop evaluation criteria for grants from the Viable Utility Reserve. These evaluation criteria shall be used to review applications and award grants as provided in G.S. 159G-39.”*
- Under NCGS 159G-71,
 - 1) *After reviewing the recommendations for grants and loans submitted to it by the Division, to determine the rank of applications and to select the applications that are eligible to receive grants and loans, consistent with federal law.*

- 2) *To establish priorities for making loans and grants under this Chapter, consistent with federal law.*
- 3) *To review the criteria for making loans and grants under G.S. 159G-23 and make recommendations, if any, to the Department for additional criteria or changes to the criteria, consistent with federal law.*

In essence, the Authority has the discretion to both set the criteria for prioritization, as well as to establish the final prioritized list of funding awards. In general, the Authority has prioritized awards based on pre-established (i.e., PRS-based) criteria, as implemented by Division staff, and reflected in recommendations at Authority meetings during which funding awards are considered. Nevertheless, the Authority has at times exercised their discretion to establish prioritization different than recommended by staff, strictly based on the PRS and associated application review and scoring protocols.

Accordingly, the Authority could consider three options to address the State Treasurer's request and increase prioritization of so-called D1 units:

- 1) Adjust PRS to increase prioritization of distressed/D1 units
- 2) Exercise discretionary authority to "override" the PRSs
- 3) Take no action (i.e., rely on current PRSs and Authority protocol)

The choice of pathway should consider the following:

- D1 LGUs are prioritized for VUR study grant awards, and prioritization among other distressed LGUs is based largely on assessment score. Does the Viable Utility Committee want to consider changes to the VUR and/or State Reserve study grant PRS?
- Priority points could be added to the current, unified PRSs for construction projects to increase the likelihood that projects applications from distressed units or subsets of distressed units (e.g., D1) are funded. This could, however, been seen as incentivizing poor management in an effort to be designated under D1.
 - Prioritization could also be linked to completion of certain Viable Utility Program elements, including short- and long-term action plans.
- Is automatic designation of LGUs whose finances are under LGC control warranted? Should there be some additional assessment of D1 units (e.g., statutory moratorium versus 90% flow moratorium)?