

State Water Infrastructure Authority
North Carolina Department of Environmental Quality

November 18, 2020

Note: This meeting was held via WebEx due to the COVID-19 pandemic

Meeting Minutes

State Water Infrastructure Authority Members Attending Meeting via WebEx or by Phone

- Kim Colson, Chair; Director, Division of Water Infrastructure
- Melody Adams, Director, Rural Grants/Programs, Rural Development Division, NC Dept. of Commerce
- Greg Gaskins, Deputy Treasurer, State & Local Finance Division; Secretary, Local Government Commission
- Leila Goodwin, Water Resources Engineer
- Ed Goscicki
- Maria Hunnicutt, Manager, Broad River Water Authority
- Dr. Bernadette Pelissier
- Juhann Waller, Principal, JC Waller & Associates, PC

Division of Water Infrastructure Staff Attending Meeting via WebEx or by Phone

- Cathy Akroyd, Public Information Officer
- Linda Culpepper, Viable Utility Reserve Support
- Francine Durso, Senior Project Manager
- Susan Kubacki, Environmental Program Manager
- Jon Risgaard, State Revolving Fund Section Chief
- Amy Simes, Senior Program Manager

Department of Justice Staff Attending Meeting via WebEx

- Jill Weese, NC Department of Justice; Assistant Attorney General, Environmental Division

Department of State Treasurer Staff Attending Meeting via WebEx

- Sharon Edmundson, Deputy Treasurer; Director, State & Local Finance Division

Item A. Call to Order

Chair Colson opened the meeting and reminded the members of the State Water Infrastructure Authority (SWIA) of General Statute 138A which states that any member who is aware of a known conflict of interest or potential conflict of interest with respect to any matters before the Authority today is required to identify the conflict or potential conflict at the time the conflict becomes apparent.

Chair Colson noted that this meeting is being held via WebEx. All attendees except the members of the State Water Infrastructure Authority are muted to reduce background noise. The PowerPoint slides for the meeting are visible via WebEx; video is not being used.

Item B. Approval of Meeting Minutes

Mr. Colson presented the draft meeting minutes from the Sept. 17 and Oct. 14, 2020 Authority meetings, and the Oct. 14, 2020 Special Joint Meeting of the Local Government Commission and Authority meeting for approval.

Action Item B:

- Mr. Goscicki made a motion to approve the meeting minutes listed above. Ms. Goodwin seconded the motion. The motion passed unanimously.

Item C. Attorney General's Office Report

Ms. Weese reported that Attorney General Josh Stein's lawsuit against Juul for designing, marketing, and selling e-cigarettes to attract young people and for misrepresenting the potency and danger of nicotine in its products in violation of North Carolina's Unfair and Deceptive Trade Practices Act will continue. The Attorney General's Office is preparing for a trial in this case in May 2021.

Item D. Chair's Remarks

Chair Colson stated that today's meeting will be focused on four distinct items: Distressed Unit Assessment Criteria, Identification Criteria, identification of initial distressed units, and the allocation of Viable Utility Reserve funds; he noted that these processes and procedures will likely be refined over time as more progress is made to implement the Viable Utility Reserve (VUR) legislation.

Chair Colson asked Mr. Gaskins to speak to the overall financial situation of local government units in North Carolina. Mr. Gaskins stated that when the Local Government Commission (LGC) was created after the Great Depression, its primary work was to meet with the creditors of local governments units to develop payment plans. Since the late 1940's until about two years ago, there had been only two instances in which the LGC had been involved. In just the past six months, the LGC has been involved in 5 incidents. When the initial Unit Assistance List was prepared, approximately 66 of the 150 units on the list had water and sewer utility issues. These issues still exist but the VUR legislation now provides for a process to work with units that have water and sewer utility issues. The crisis with local government units is here and the VUR process is timely.

Chair Colson asked the members of the Viable Utility Reserve Committee for their comments. Ms. Goodwin stated that the VUR implementation process is new and will likely need to be fine-tuned, similar to the way in which the affordability criteria and priority criteria were implemented and adjusted over time. Ms. Hunnicutt stated that the data about the units presented for today's meeting does not tell the whole story and it will be important for the Authority to hear from staff about circumstances in the units.

Item E. Distressed Unit Assessment Criteria and Identification Criteria

Staff presented the Viable Utility Reserve Assessment Criteria and Identification Criteria; these criteria mirror those adopted by Resolution by the LGC on Nov. 10, 2020. Details of the criteria were presented in the staff report for Agenda Item E.

Viable Utility Reserve Assessment Criteria

The Viable Utility Reserve Assessment Criteria contain 21 parameters that are based on readily available data; staff recognizes that the data may not capture unique situations within a utility. The criteria are comprised of those required under the VUR legislation, along with infrastructure, organizational and financial criteria; staff noted that some criteria overlap several focus areas.

Identification Criteria

Details of the following four Identification Criteria that are proposed to be used to identify distressed units were provided in the staff report. In summary, the criteria are:

1. A unit whose fiscal affairs are under the control of the LGC, or
2. A unit that has not submitted its annual audits for the last two fiscal years to the LGC, or
3. A unit with a total Assessment Criteria score that:
 - a) Equals or exceeds 9 for units providing water and wastewater services, or
 - b) Equals or exceeds 8 for units providing only one utility service, or
4. A unit for which other information is available to or known by the Authority or Commission that where this information is not part of the readily available data set.

Staff noted that Identification Criteria 4 is included to allow for information that can help better tell the story of circumstances within a unit, when not reflected by the readily available data. Information

presented for Identification Criteria 4 may be used by the Authority and the LGC to determine whether a unit should be included or excluded as a distressed unit. Dr. Pelissier commented that qualitative information will always be important in complex situations, in addition to quantitative information.

Discussion

To address questions from the Authority, staff clarified two points:

- If a unit meets any one of the four criteria, the staffs of the Authority and the LGC will provide a recommendation to the Authority and LGC for the bodies to take action to identify a unit as distressed.
- Per the VUR legislation, both the Authority and the LGC must identify a unit as distressed. The VUR legislation is unique in that it requires joint actions to be taken by both the Authority and the LGC regarding the assessment and identification of distressed units, and also the award of VUR grant funds.

Mr. Gaskins addressed Identification Criteria 2 regarding the failure to submit an audit for two fiscal years as follows: the goal is to identify units that are struggling and also to ensure that taxpayer's money is being properly spent.

The Viable Utility Reserve Committee recommended that the Authority approve the Viable Utility Reserve Assessment Criteria and the Identification Criteria presented in the staff report for Agenda Item E, noting that this action would parallel the action taken by the LGC on Nov. 10, 2020.

Action Item E:

- Mr. Gaskins made a motion to approve the Viable Utility Reserve Assessment Criteria and the Identification Criteria as presented. Mr. Goscicki seconded the motion. The motion passed unanimously.

Item F. Distressed Unit Identification and Allocation of Viable Utility Reserve Funds

Staff noted that the LGC, at its meeting on Nov. 10, 2020, identified the four (4) units listed below as Distressed Units, adopted the initial evaluation criterion, and adopted the allocation of Viable Utility Reserve funds. Details were presented in the staff report for Agenda Item F.

Distressed Unit Identification

Staff reviewed the Attachment in the staff report for Agenda Item F that summarized the Assessment Criteria and additional information that support the identification of each of the following units as a Distressed Unit:

1. The Town of Eureka (meeting Identification Criteria 1: 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")).
2. Cliffside Sanitary District (meeting Identification Criteria 1: 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")).
3. The Town of Bethel (meeting Identification Criteria 3: A unit with a total Assessment Criteria score that equals or exceeds 9 for units providing both drinking water and wastewater services). Staff noted that only two units score higher than Bethel; the town is clearly in the distressed range and in the town's last funding application, the town acknowledged that it was distressed.
4. The Town of Kingstown (meeting Identification Criteria 3: A unit with a total Assessment Criteria score that equals or exceeds 8 for units providing only one service, either drinking water or wastewater).

Staff presented additional information as follows:

- The situation in each of the four units is different and each will have a unique solution. This is likely to be the case with any unit identified as distressed since there is no "one size fits all" solution.

- The Town of Eureka has some of the highest rates in the state and regionalization opportunities appear to exist.
- The Cliffside Sanitary District has very few customers but has a large wastewater treatment plant and many miles of sewer lines. Most of the infrastructure has not been maintained and it will be important to investigate its condition. In addition, alternatives must be considered in order to develop a permanent solution.
- The Town of Bethel Assessment Criteria score is 17 points which is above the threshold of 9 points for units that provide both water and wastewater services. Only two units score more than 17 points. Bethel is much further along than the other units in moving toward a permanent solution by merging its utilities with the Greenville Utilities Commission. Work that is still needed includes a review of the merger agreement and potential rate impacts. The Town has limited staff and will require assistance for this work.
- The Town of Kingstown Assessment Criteria score is 11 points which is above the threshold of 8 points for units that provide only one utility service; the Town provides only wastewater service. Mr. Gaskins noted that the LGC sent a notice of warning to Kingstown in October and is working to avoid placing the Town's fiscal affairs under the control of the LGC, however, this is likely to happen in December 2020. Regionalization opportunities appear to exist for Kingstown.

Evaluation Criterion

The VUR legislation requires that the Authority and the LGC adopt evaluation criteria. This is required in order to move forward with providing VUR grant funds. For the four initial units listed above, staff presented the initial evaluation criterion for grants from the VUR as: units that have been identified as Distressed Units.

Allocation of VUR funds

Staff presented cost estimates for initial work tasks and the recommended allocation of VUR funds that would be needed for the four units listed above noting that the cost estimates include funds for only these four units, not other units that may be part of a permanent solution. The total proposed allocation of VUR funds is \$1.1 million out of the \$9 million provided by the VUR legislation. The Authority will consider award of funds after staff has reviewed funding applications for the units and provides recommendations to the Authority.

Staff Recommendations

Staff recommended that the Authority approve the action items as presented in the staff report for Agenda Item F, noting that this action would parallel the action taken by the LGC on Nov. 10, 2020.

Action Item F.1:

- Mr. Goswicki made a motion to identify and designate the Town of Eureka, the Cliffside Sanitary District, the Town of Bethel, and the Town of Kingstown as Distressed Units. Dr. Pelissier seconded the motion. The motion passed unanimously.

Action Item F.2:

- Ms. Goodwin made a motion to approve the initial evaluation criterion for grants from the Viable Utility Reserve. Dr. Pelissier seconded the motion. The motion passed unanimously.

Action Item F.3:

- Mr. Gaskins made a motion to approve the allocation of Viable Utility Reserve funds for rate studies, asset inventories and assessments, alternatives analyses, and merger and regionalization studies. Dr. Pelissier seconded the motion. The motion passed unanimously.

Chair Colson outlined the next steps in the VUR implementation process as follows:

- Based on the Assessment Criteria approved by the Authority and the LGC, staff will present a draft list of units to the Authority at its December 9, 2020 meeting. This will not be an action item but will allow units to review the draft list and, if they choose, to provide additional data to staff to clarify their situation.
- Staff proposes to present the final list of units to the Authority at its February 10, 2021 meeting; at that time, the Authority may choose to take action to identify units as Distressed Units.
- At future meetings, staff will present additional evaluation criteria that will be needed to establish when VUR grant funds are appropriate for units and to establish the funding priority.

Item G. Concluding Remarks by Authority Members, Chair and Counsel

Chair Colson stated that this has been Mr. Gaskins' last Authority meeting because he is retiring at the end of November. He thanked Mr. Gaskins for his outstanding leadership on the VUR, his work with the legislature, and for developing the close working relationship that now exists between the Department of State Treasurer and the Division of Water Infrastructure. He noted that at the Authority's December meeting, Ms. Sharon Edmundson would join the Authority as the Ex-Officio member designated as the Director of the Local Government Commission.

Authority members thanked Mr. Gaskins for his service, noting that he is a stellar public servant, always helped explain complex situations in ways that are easy to understand, and that they appreciate all he has done in his years on the Authority.

Mr. Gaskins remarked that the comments from the Authority members mean so much and that he is proud to have served with all the members and to have accomplished many things that are desperately needed. He recognized Representative Chuck McGrady for developing the unique VUR legislation that has led to both the Authority and LGC boards being actively involved in the implementation. Mr. Gaskins left the Authority with these words: "Nothing hard is ever easy."

Item H. Adjourn – The meeting was adjourned.