Viable Utility Committee of the State Water Infrastructure Authority
January 15, 2025 Meeting
Agenda Item E – Discussion of Long-Term Viability Plan Relating to De-Designation Process

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Division of Water Infrastructure Staff Report

Background

Session Law 2020-79, entitled in part "An Act to Improve the Viability of the Water and Wastewater Systems of Certain Units of Local Government…," requires that any local government unit (LGU) designated as distressed by the State Water Infrastructure Authority (Authority) and the Local Government Commission (LGC) complete the requirements of NCGS 159G-45(b)(3), which states:

> *(3) Develop an action plan, taking into consideration all of the following:*
> *a. A short-term and a long-term plan for infrastructure repair, maintenance, and management.*
> *b. Continuing education of the governing board and system operating staff.*
> *c. Long-term financial management to ensure the public water system or wastewater system will generate sufficient revenue to adequately fund management and operations, personnel, appropriate levels of maintenance, and reinvestment that facilitate the provision of reliable water or wastewater services.*
> *d. Any other matters identified by the Authority or the Local Government Commission.*

Upon developing the above action plan, NCGS 159G-45(c) states that:

> *(c) Once an identified distressed unit has completed all of the requirements of subsection (b) of this section, that unit shall no longer be identified as a distressed unit for the remainder of that assessment and review cycle.*

The purpose of this staff report is to:

- Provide an update on Division staff's efforts to develop a concise "Long-Term Viability Plan Guidance Document" to assist LGUs designated as distressed in meeting the requirements in NCGS 159G-45(b)(3), and
- Initiate a discussion with the Authority and LGC about the implications for distressed LGUs when they complete their statutory requirements.

Division staff are not requesting any action by the Authority or LGC at this time. Instead, we are seeking VUC input on the Division's proposed LTVP Outline (below), understanding that a one-size-fits-all approach is not practical for every distressed LGU to be de-designated <u>and</u> to achieve viability, per the current language in NCGS 159G-(45)(c).

Long-Term Viability Plan (LTVP) – Initial Considerations

In order to guide and assist designated distressed LGUs in meeting their statutory requirements, SWIA and LGC, along with the Division, have established the following:

1) Conduct an asset assessment that results in at least a 10-year capital improvement plan (CIP) per NCGS 159G-45(b)(1),
2) Perform a rate study that includes, among other options, a scenario by which the utility achieves full-cost pricing [1] within five years of implementation, per NCGS 159G-45(b)(1),
3) Completion of the Division's *Best Utility Management Practices (BUMP)* training by at least two elected officials, the chief financial officer, and the primary technical manager for the utility, per NCGS 159G-45(b)(2), and
4) Develop a Short-Term Action Plan utilizing the Division's *Status Report for Short-Term Action Plans* to establish a timeline for completing numbers 1 through 3 above, per NCGS 159G-45(b)(3)a.

The final piece, the Long-Term Viability Plan (LTVP), is the culmination of a distressed LGU's progress through the Viable Utility Program. Division staff envision the LTVP as a compilation of the above items into a unified Master Plan-type document that commits the LGU to implementing sound fiscal policies and efficient operation and management.

LTVP – Outline

Each section of the LTVP should relate to the LGU's Level of Service goals across the Technical/Infrastructural, Managerial/Organizational, and Financial aspects of the utility while specifically addressing the reasons the LGU was identified as distressed in the first place, among other considerations. With that in mind, the core pieces of the LTVP are as follows:

1) Define short- and long-term goals for the utility
    a. Level of Service
2) Infrastructure Management
    a. Overview of and reference to the Asset Management Plan, including the CIP
    b. Likely examples include policies and best practices to achieve/maintain compliance with regulatory agencies and adhere to inter-local cooperation agreements
    c. Includes a set of Key Performance Indicators (KPIs) for tracking the efficacy of the utility's assets, including but not limited to the percentage of assets that

[1] Full-cost pricing is a pricing strategy that considers all variable costs and a full share of fixed costs that can be directly attributed to a product or service when setting its selling price. Full cost pricing is considered one of several best practices to promote and maintain long-term financial sustainability for water, sewer and stormwater activities.

were replaced and number of days the system was in 100 percent compliance with their water/wastewater permit requirements

3) Organizational Management
    a. Staff policies and standard operating procedures, including but not limited to employee development via continuing education and succession planning
    b. Includes a set of KPIs to ensure staff are meeting their day-to-day obligations, including but not limited to days between required and recommended monitoring activities, days the utility was fully staffed, and time to respond to emergencies
4) Financial Management
    a. Policies and schedules for maintaining full-cost pricing per the adopted rate plan
    b. Includes a set of KPIs to ensure sound financial management to support regular operations and maintenance, sufficient and qualified personnel, and adequate reinvestment of utility revenues
5) Customer/Stakeholder Management
    a. Policies and ordinances for customer support, engagement, and assistance
    b. Includes a set of KPIs to ensure customers' and stakeholders' needs are being met
6) Additional efforts
    a. Specifically, merger and/or regionalization efforts and other items as directed by the Authority and/or LGC

As part of the Division's LTVP guidance, staff intend to provide a suite of required and/or recommended KPIs pertaining to each aspect of the utility (Technical, Managerial, and Financial) for each LGU to incorporate into their LTVP. Beyond the specific metrics used by the Division during the annual assessment process per NCGS 159G-45(a), all potential KPIs will be based on industry standards and may include LGU-specific metrics as recommended by the Authority and LGC.

After receiving guidance from the Authority and LGC, Division staff will develop the necessary documentation and internal policies that will allow the Division to effectively advise the Authority and LGC on an LGU's efforts to fulfill their distressed system requirements.

Therefore, Division staff seek input from the VUC on the following aspects of the LTVP currently not addressed by NCGS 159G:

1) Defining a minimum set of KPIs that all LGUs designated as distressed must incorporate into their LTVP.

2) Determining whether to establish a timeframe that is acceptable to the Authority and LGC during which an LGU may implement necessary measures to achieve viability if/when, for example, a full-cost pricing plan by the fifth year is not obtainable, significant subsidized investments are required, or a myriad of other situations that result in an undesired status quo, which is perpetual and recurring designation after fulfilling the requirements in NCGS 159G-45(b).

De-Designation – Initial Considerations

Division staff are aware that a majority of the 151 LGUs currently designated as distressed simply need to know what they must do to fulfill the requirements in NCGS 159G-45(b). For these LGUs, one pass through the VU program should enable them to achieve and maintain viability such that they can avoid being re-designated in subsequent review and assessment cycles. The above LTVP concept pertains specifically to these LGUs.

Conversely, a subset of distressed LGUs will not be able to achieve viability without significant assistance beyond what is currently prescribed in NCGS 159G. These LGUs will require more extensive effort, time, and subsidized investments to achieve and subsequently maintain viability.

Based on the current language in NCGS 159G, Division staff are primarily concerned about the availability of Viable Utility Reserve (VUR) funding for LGUs that, per NCGS 159G-45(c), are no longer considered distressed as they implement the planning and construction projects necessary to achieve and maintain viability.

Beyond the availability of VUR funds for the LGUs that have completed their statutory requirements as a distressed LGU, Division staff have additional observations for VUC to consider. They are:

- The requirements in 159G are effectively unfunded mandates. Specifically, distressed LGUs are not compelled to utilize DWI funding to address their reasons for designation nor are all of the requirements of a distressed LGU eligible for DWI funding.
- VUR funding is currently non-recurring and insufficient to address the needs of all 151 distressed LGUs.
- North Carolina has no statewide water/wastewater utility which, in theory, would allow an LGU to enter into a receivership-type agreement.
- NCGS 159G does not stipulate “what is next” when an LGU completes their plans yet will be identified as distressed during the next assessment and review cycle.
- A majority of LGUs are not going to become viable immediately after developing their LTVP. In other words, being de-designated does not mean they are automatically viable. It is obvious to Division staff that many LGUs will require significant resources, time, and investments to avoid being designated as distressed again.

Based on the above observations of the explicit and implicit limitations in NCGS 159G, Division staff seek guidance from VUC on the following questions:

1) Is the “assessment and review cycle” the same as what was created in 2021 alongside the assessment criteria, or are these separate efforts?
2) Are designated distressed LGUs that complete their statutory requirements in NCGS 159G-45(b), and thus invoke NCGS 159G-45(c), eligible for VUR funds?
3) Can an LGU request de-designation at any point, particularly if they identify their means to achieve and maintain viability prior to completing all the requirements in 159G-45(b)?
4) Similarly, can SWIA and/or the LGC request an LGU be de-designated at any point even if they have not completed all of their requirements in 159G-45(b)?
5) What is the State’s role in providing resources (specifically, funding and time) to LGUs that cannot address their reasons for being designated distressed due to external factors outside of their control and ability?
6) Similar to number 5 above, what is the State’s role in providing resources (specifically, funding and time) to LGUs that will not address their reasons for being designated distressed due to internal reluctance?