

WUCC Exclusive Service Areas

Frequently Asked Questions

February 1, 2017

The Department of Public Health (DPH) has received many questions regarding the expectations of Exclusive Service Area (ESA) holders. Since 1987, ESA holders have had a right and a responsibility to provide potable water to consumers within a designated area. ESA designations have been followed by State, municipal, and private entities for the past three decades, and this valuable statutory requirement has been consistently upheld by the DPH. ESAs have significant meaning for water supply for the State as they are integrated into the Certificate of Public Convenience and Necessity (CPCN) process for new public water systems and existing public water systems that wish to expand. Answers to the most frequently asked ESA questions are provided below. Existing and prospective ESA holders should note that more detailed descriptions of roles and responsibilities will be provided within the upcoming ESA Documents.

1. For a new community water system, is the ESA holder statutorily expected to own and operate the new public water system developed per CGS Section 16-262m(c)? Or are alternative arrangements, such as division of ownership, or non-ownership with contract operation allowed?

For new community public water systems, the ESA holder is statutorily expected to own and provide operation of the new community public water system. In this case contract operation is allowed assuming the ESA holder owns the system. RCSA Section 16-262m-4 provides additional options if this is deemed infeasible:

(a) In the event that the Department of Public Utility Control and Department of Health Services determine that a main extension is not feasible, i.e. that it is too costly to construct a main extension; and that no existing regulated public service or municipal utility or regional water authority is willing to expand or own, operate and maintain the final constructed water supply facilities as a non-connected satellite system, the applicant may pursue the following options:

(1) If an existing regulated public service or municipal utility or regional water authority is willing to provide satellite ownership and management services, but is unable to meet all the criteria described in Sections 16-262m-8 and 16-262m-9 herein, the Department of Public Utility Control and the Department of Health Services may waive specific criteria in writing, if it is deemed to be in the best interest of the public affected.

(2) The applicant may withdraw the application and request the town in which the project is to be constructed to determine if the town's zoning requirements will permit individual wells. If this proposal is acceptable to the town, the developer may change the configuration of the project in order to accommodate individual wells. This option is available to the applicant at any time and may be pursued without obtaining a Certificate of Public Convenience and Necessity.

(3) The applicant may continue forward with the application by sustaining the burden of proof that the entity that will own the water system has the financial, managerial and technical resources to operate the proposed water supply system in a reliable and efficient manner and will provide continuous, adequate service to the proposed consumers to be served by the system. The criteria for meeting this burden of proof is set forth in Section 16-262m-9 of these Regulations.

The above options must be pursued in the order presented, i.e. option three cannot be pursued until options one and two have been exhausted.

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2. For a new non-community water system, the WUCC understands that an ESA holder is allowed to not agree to own and operate such a system as stated in CGS Section 16-262m(e)(1); essentially, an ESA holder has the right of first refusal for such systems in its ESA. Is the ESA holder required to provide notice of such unwillingness to the WUCC under CGS Section 25-33i, or only to DPH? If an ESA holder is unwilling to own and operate a non-community system, but is willing to provide contract operation, is that acceptable to DPH?

For a new non-community public water system, if the ESA holder is unwilling or unable to provide ownership or service, the ESA holder should notify the Department and the WUCC in writing. In the case of a Non-Transient, Non-Community system, where a certified operator is required, the ESA holder can, but is not required to, provide contract operation. In the case of Transient, Non-Community systems, a certified operator is not required. Larger public water systems that are claiming vast ESAs should recognize that towns may be agreeable to these circumstances assuming that a large utility interest in their town will be a mutually beneficial situation. Given that, the DPH encourages the ESA holder to offer informal technical assistance, when requested, to non-community systems within their ESA.

3. For a new non-community water system where the ESA holder is unwilling to provide ownership or service, do the developer's options include the eventual entity either (1) owning and operating the non-community water system itself, or (2) retaining a contract operator other than the ESA holder? Is this determination required to be made by DPH? Also, can the non-community system developer enter into an agreement with another entity other than the ESA holder to own and operate the system?

For a new non-community public water system where the ESA holder is unwilling or unable to provide ownership or service, the developer can own and operate the system or retain a contract operator who does not have to be the ESA holder. In this case, the Department does not dictate who must operate the system. Regardless of what scenario occurs, the DPH would like the ESA holder to be available for assistance to area water systems should the need arise.

4. For a new non-community water system where the ESA holder is unwilling to provide service, is a vote of the WUCC required to approve the new system, or can DPH approve the new system under CGS 25-33i without a vote of the WUCC?

CGS 25-33i(b) states 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.

For a new non-community public water system where the ESA holder is unwilling or unable to provide ownership or service, the DPH approves the new system, but will notify the WUCC of such action and request a boundary change.

5. For a new non-community water system where the ESA holder is unwilling to provide service and DPH authorizes the system, how is CGS Section 16-262m(e)(3) enforced once the ESA holder extends a water main to the area of the non-community system, which could occur after the system had been in operation for several years?

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*During the 2007 legislative session, CGS 16-262m was modified to include the following language with an effective date of October 1, 2007: CGS 16-262m(e)(3) states that ownership of the system will be assigned to the provider (holder) for the exclusive service area, as determined pursuant to section 25-33g, if agreeable to the exclusive service area provider and said department, or may remain with the applicant, if agreeable to said department, **until such time as the water system for the exclusive service area, as determined by section 25-33g, has made an extension of the water main, after which the applicant shall obtain service from the provider for the exclusive service area.***

Given the language and effective date, a non-community public water system where the ESA holder is unwilling or unable to provide service, but then extends a water supply main after the system is built, is required to connect to the water supply main if the system was constructed after October 1, 2007. Systems constructed prior to October 1, 2007 would not be required to connect; however, if a system has experienced water quality or quantity issues or if the system components are deficient, that may necessitate enforcement actions to ensure problematic systems achieve compliance. These actions may include connection to an available public water supply main.

During the water main extension planning process, utilities are encouraged to consult with the Department regarding existing public water systems along the proposed route. The Department has also been including a review of nearby water mains into the sanitary survey process to ensure this statute is enforced and will continue to do so.

6. If an ESA holder is providing contract operation services, what recourse does the water system owner have if the owner feels that the contract operation is inadequate or too expensive? Are there any other statutes that provide protection to small water system owners from being forced to work with a singular contract operator?

As previously stated, for non-community public water systems, the DPH does not dictate who must be hired as a contract operator, other than the requirement that they are actively certified by the department. A system would only be bound by their own contract with an operator.

7. What recourse does a developer have if an ESA holder is failing to provide water service in an adequate timeframe by causing unreasonable delays in the CPCN process, such as by failing to provide the agreements required by DPH specific to phases of the process?

If a developer feels that an ESA holder is failing to provide water service within an adequate timeframe by causing unreasonable delays, the developer should petition the WUCC, with a copy to the DPH, to be put on the agenda for the next meeting. The developer and ESA holder should be present at the meeting to discuss the project. The WUCC will be expected to look at the adequacy of the ESA holder's response. The WUCC work plan and/or ESA Procedures should address what actions will be taken to resolve such issues (i.e. mediation, reassignment of ESAs, etc.).

8. Similarly, what recourse does a developer have if an ESA holder is requiring water system components beyond those required to provide a pure and adequate water supply as defined by the minimum design standards required by state law, state regulation, and adopted utility standards, is unwilling to provide compensation for components which exceed the minimum required, and the standoff is causing unreasonable delays in the process?

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CGS 16-262m states that “the applicant will complete the construction or expansion in accordance with engineering standards established by said department's regulations for water supply systems.” If a developer feels that an ESA holder is requiring components beyond those required by the State, the developer should contact the Department and/or the WUCC. Minimum design standards can be found in RCSA 16-262m, and will be discussed in the Integrated Report.