



TO: Board of Trustees

FROM: Christina Murphy, General Manager, WDMWW
Dale Acheson, General Manager, Urbandale Water

DATE: July 11, 2022

RE: Summary of Comments regarding the Draft 28E for Regionalization

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What follows is a summary of items related to the Draft 28E/28F have been grouped loosely into various categories. These reflect questions/concerns brought forth by the West Des Moines Water Works staff and our Planning/Regionalization Subcommittee, Urbandale Water Utility staff as well as items identified by our attorneys reviewing the Draft 28E/28F. WDMWW and Urbandale Water have jointly hired Dorsey and Whitney for a comprehensive legal review of the 28E and have been working together to review the comments brought forth by our legal team.

Legal

- Further clarification and definition of what the regional entity is and is not should be incorporated into the 28E/28F. For example, it should be clear the proposed CIWW is a wholesale provider and not a retail provider of water.
- Further discussion is needed about the timing of the transfer of assets and what reviews, due diligence and public hearings may be required at the time of execution of the 28E/28F. Either asset transfer occurs at inception or there must be a robust and thorough process to ensure it will occur.
- Additional changes may be warranted based on a recent Iowa Supreme Court decision on 28E agreements.
- Further clarification and content need to be developed to ensure the 28E/28F has the full power to bond and secure funding for improvements, source water and water production. Pursuant to Chapter 28F, all Members must approve projects prior to the issuance of indebtedness by the proposed entity. While a Member Agency may provide approval for projects on a forward-looking basis (rather than at the time of each financing), it cannot be a blanket approval for all projects determined by the Board for the entire term of the 28E/28F Agreement. There must be

a reasonable limit on the time, amount, and project scope to constitute approval by the Member Agencies. To that end Ahlers and Cooney and Dorsey and Whitney are working on 28E/28F financing verbiage and bonding language.

- Additional detail and development of provisions regarding security for repayment obligations by the 28E/28F Entity and Member Agencies, parity obligation requirements by the 28E/28F Entity and the Member Agencies, and more specificity - regarding the allocation of debt service liability - should also be included.

Financial/Accounting

- The accounting structure verbiage in the Draft seems to drive the region towards a cash needs basis instead of a utility basis method. The table on Pg 71 shows a totally different model than the FCS model WDMWW and Urbandale used to make respective decisions to proceed with the drafting process. Public Finance Management (PFM) staff were supportive of moving to a cash needs model, but it does change comparison of costs to other alternatives.
- Clarification is needed in the draft document on how budgeting/approvals/emergencies would work prior to asset transfer and after asset transfer.
- Clarification is needed in the draft document on the debt/operating reserve before asset transfer and after asset transfer.
- Clarification is needed on the timing of budgets and the mapping of timelines associated with budget approvals for various entities including the proposed CIWW. This could also include discussing the timing of flow calculations so budgets can be considered, shared and approved in a timely manner.
- A methodology will be needed for producers who do not track some things separately for the whole utility (i.e., electricity, natural gas, shared labor, etc.).
- There are several varying periods of time to pay things, 10 days, 25 days...an effort to be consistent and make sure enough time is possible to get respective boards/councils approvals for payments should be considered, particularly the capital call timeline.
- Further detail is needed on how to incorporate water loss. Staff from Urbandale Water and WDM WW are in the process of working through the methodology of this calculation.
- Will the regional entity need to do a cost-of-service recovery study if those costs are clearly laid out?

Governance

- Items have been added to weighted voting that were not in the outcomes document. Absent clarification and/or mutual agreement, those additional items should be removed.
- The document needs to be clear on who will be selling water to those that don't join/ that are not total service customers (e.g., Warren Rural Water...possibly others). Purchase Capacity agreements should be transferred to the proposed CIWW and those members should simply be direct wholesale customers of the CIWW.
- The Draft does not reflect the need for designating alternates to the CIWW Board.
- The two utilities have heard concerns that small cities will have little or no representation on the Executive Committee.

- In the spirit of creating a collaborative and cooperative regional entity, there is a strong desire Xenia Rural Water bargain, in good faith, to reach reasonable agreement(s) with suburban communities on service territory conflicts. WDMWW, Urbandale and others want to reach mutual agreement(s) with Xenia that address this issue and allows for a fair and reasonable reimbursement of infrastructure costs and current customer lost revenues. WDMWW and Urbandale Water - and other suburbs - are not interested in potential CIWW projects that include Xenia's water expansion needs without incorporating some agreement or understanding that address service territory conflicts.
- Consideration should be given whether a unanimous vote should be required in the first seven (7) years for an amendment to the 28E/28F. Does this create an unrealistic burden? Discussion is needed to determine the appropriate threshold.

Overall

- Is the penalty for going over one's allotted capacity severe enough to ensure member agencies plan appropriately when capacity is expanded?
- The document needs to be updated for Grimes' and Altoona's assets. The 98th Street tower, as WDMWW has discussed, should not be regional asset.
- Further review of the exit parameters/termination language is ongoing.
- Definitions need actual definitions not just references.
- Clarification is needed on how the proposed CIWW would use, in the very short term, the several existing long-range plans and refining language as to contracting for a new, region-wide, long-range plan. Looking out further, what is the anticipated process for approving capital improvement plans?
- Further clarification is needed on how engineering evaluations/studies be funded?
- Confirmation of all numbers in appendices with WDMWW, Urbandale Water and all other member agencies.
- Further review and comments will be forthcoming on the terms of the operating contract (not currently included in the Draft 28E/28F).
- Consideration should be made to have cities, with board governed utilities, entering into Memorandum(s) of Understanding to minimize issues when infrastructure may be needed in City right of way or property.
- The Water Shortage Plan was originally adopted by each entity for use with its customers. The Draft needs to be updated so the proposed CIWW is not dictating the rate or process to ensure member customers meet Water Shortage Stage requirements. This should be left up to the individual members to set rates or consequences for their customers.