

NACWA STATEMENT OF PRINCIPLES ON UTILITY GOVERNANCE May 2018

The issue of utility governance has received greater attention over the last few years.¹ In part this is due to political reasons, as the White House and key policymakers in Washington, DC have increasingly discussed opportunities for the private sector to play a more prominent role in the funding and operation of traditional government functions – like providing safe drinking water and reliable clean water services. But it is also related to a series of high profile incidents involving contaminated drinking water and – although less publicized – challenges to wastewater treatment and stormwater management systems as well. These trends taken together are raising questions for both the public and policymakers about whether the current water utility governance structure in the United States is sustainable.

Given these developments, NACWA needs to determine its role – both from a broad water sector perspective and from the DC-based national advocacy context – for engaging in these discussions. NACWA's objective in these policy discussions is to play a constructive role on behalf of our utility members by promoting the potential benefits higher capacity utilities may offer to help address lower capacity utility challenges, and also to recognize the need to balance the strong local connection to water services for many communities with opportunities for greater efficiencies/economies of scale and better public health and environmental protection from a range of governance options.

As the only national association exclusively representing the interests of publicly owned clean water utilities, NACWA has a clear preference for public sector governance models. Additionally, NACWA believes the public utility model – when effectively run – can provide superior service and public health and environmental protection, and better address local community concerns, than other governance models. At the same time, NACWA acknowledges that there are valuable best practices and management strategies across all governance models – including private ownership – that all utilities can learn from. NACWA also acknowledges that, for some communities, private operation and/or ownership of clean water utility assets may be the right solution.

There is already significant work being conducted in the governance space – including research, advocacy, and peer-to-peer relationship building – by a number of water sector organizations and the U.S. Environmental Protection Agency (EPA). NACWA is already engaged as a partner in many of these efforts and is providing helpful tools and leadership in utility peer-to-peer sharing through our online *Engage*© and *Utility Executive Peer-to-Peer* platforms.

NACWA's objective is not to duplicate any of these efforts, but instead to outline a clear set of facts and principles to guide the Association's advocacy – in the legislative, regulatory, legal, and communications arenas – and resource development on this critical topic. These guiding facts and principles are as follows:

¹ NACWA uses the phrase “utility governance” as a broad term to cover the wide spectrum of current approaches to how utilities are owned, managed and interact with each other, including public ownership, special governmental districts, utility partnerships (formal or informal), peer-to-peer relationships, consolidation of existing systems by a private company or into a public regional entity (regionalization), not-for-profit cooperatives that can provide regional services, public-public partnerships, public-private partnerships, and private ownership.

- The United States faces a water infrastructure funding gap of hundreds of billions of dollars, which impacts all utilities – but especially small utilities – and can cause compliance challenges that impact the reputation of the sector as a whole. More innovative models of utility governance, including those that create larger economies of scale through strategic consolidation of existing systems, will be crucial to helping address the infrastructure funding gap.
- The core focus of any utility governance structure must be a well-run utility that meets or exceeds its public health and environmental obligations, provides value to its ratepayers, is a responsible steward of its assets and makes timely investments in those assets, and is financially sustainable.
- The unsupported narrative by some that public utilities – especially small ones – are not capable of being well-run is false, and the public clean water sector must counter this narrative. At the same time, the public clean water sector must acknowledge that there are some lower capacity, lower performing utilities with compliance concerns, and that it is the responsibility of the public clean water utility sector to help assist these lower capacity utilities that may self-select as needing resource assistance or be identified by local, state or federal partners.
- Utility governance structures should enable utilities to set rates that recover the true full cost of service in a manner that better insulates the rate-setting process from local political pressure.
- Discussions around governance must acknowledge the significant diversity of utilities around the nation – in terms of geographic location, size, population served, demographics, financial capability, and environmental and public health concerns – and cannot be focused on “one size fits all” solutions. Governance discussions must also acknowledge that legal constraints may exist that can limit a public clean water utility’s ability to engage in certain governance agreements with other utilities.
- If and when a utility and the community it serves make a decision to re-evaluate – and possibly change – their utility governance structure, there must be an open and transparent process where they can fairly evaluate the full spectrum of governance options – including consolidation/regionalization, public-public partnerships, public-private partnership, not-for-profit cooperatives, and privatization – and make a decision that is in the best interest of the community and not unfairly tilted in favor of any particular solution.
- High capacity/high performing public clean water utilities should look for opportunities to aid lower capacity/lower performing utilities with a focus on those struggling to meet regulatory obligations due to operating challenges.
- Lower capacity/lower performing utilities requiring capital investment could benefit from a new governance model such as utility partnerships, not-for-profit cooperatives, consolidation and/or regionalization via a larger public entity, or other models that address the need for additional capital investment spread across a larger customer base. Regulatory agencies should provide incentives, including potential enforcement safe harbors, for public utilities willing to consolidate with and invest in lower capacity/lower performing utilities.

- When voluntary, compliance-assistance-based approaches, partnerships with other public utilities, or other governance models such as private operation and/or ownership are not practical or fail to address compliance issues with lower capacity utilities, regulatory agencies must pursue more aggressive solutions – in consultation with relevant stakeholders - to bring utilities that are in substantial noncompliance into compliance.
- Protection of public health and the environment must be paramount over any particular governance model.

The issue of utility governance has historically received more attention and study in the drinking water sector than in the clean water sector. This is in part due to the much higher number of drinking water systems in the United States - over 55,000 - than the number of public wastewater treatment facilities, which is around 15,000. But it is also due to a historically greater interest from the private sector in investment in drinking water systems. This has meant that the drinking water sector has had to grapple with the complex issues around both public sector and private sector involvement and ownership much more directly than the clean water sector.

However, as noted above, there are a number of converging factors that require the public clean water sector to take a more serious look at issues of governance. The current national discussion over the role of the private sector in infrastructure investment is one such factor, as is the fact that – in a post-Flint world – there is much greater public and regulatory interest in helping lower capacity utilities avoid public health and environmental crises and ultimately improve their financial and operational health long-term. The current national debate is also being informed by international models around water governance – including from Portugal, Great Britain, Canada, and Australia.

NACWA recognizes that the governance discussion is a complex one and does not presume to have all the answers. NACWA also recognizes there will be complicated governance situations that we have not thought of or that will emerge in the future, and accordingly this statement of principles must be a living document that can change over time as governance discussions evolve.

NACWA looks forward to working with a wide range of policymakers, regulators, water sector organizations, and stakeholders to further conversations around these critical governance issues in a way that improves the water sector, ensures protection of public health and the environment, and better serves the American public.