The members of the Texas Legislature adjourned the Regular Session of the 84th Texas Legislature on June 1 after 140 long days and nights. The Texas Legislature addressed many important issues that are facing the citizens of Texas as the population and economy of Texas continue to increase rapidly. Specifically, the Legislature passed bills to lower franchise and property taxes, to establish standards for pre-kindergarten education, to increase security along the Texas - Mexico border, and to increase funding for the state’s transportation infrastructure.

The Texas Legislature also invested a substantial amount of time and effort during the Regular Session to tackle water, utility, and governmental operations issues. The population and economic growth that Texas is experiencing require the legislators to focus on the stress and demands placed on the natural resources and utility infrastructure of the state and proactively take steps to plan for the future of Texas. The information below highlights the bills that were passed in several different areas that impact the natural resources and utility infrastructure of Texas.

**Groundwater**

There were a significant number of bills passed that addressed a wide-ranging number of subjects within the groundwater context. Many of these bills were the result of the work of the Texas Water Conservation Association ("TWCA") Groundwater Stakeholders Committee during the legislative interim period.

- **HB 30** – imposes requirements on Regional Water Planning Groups ("RWPGs") and the Texas Water Development Board ("TWBD") to study and report on opportunities for the development of brackish groundwater, including desalination projects. In terms of targeted aquifers for brackish development, HB 30 requires the TWDB to focus on the Rustler, Blaine, Gulf Coast, and portions of the Carrizo-Wilcox aquifers in the first report due to the Legislature no later than December 1, 2016.

- **HB 200** – establishes a process in Chapter 36 of the Water Code for “affected persons” to appeal a groundwater conservation district’s ("GCD") adopted desired future conditions ("DFC") under the Joint Planning Process prescribed by Chapter 36. An affected person may file a petition with a GCD for a contested case hearing on the reasonableness of an adopted DFC. The GCD will then contract with the State Office of Administrative Hearings ("SOAH") to conduct a hearing on the petition and issue findings of fact and conclusions of law in its proposal for decision to the GCD; the GCD can accept, amend, or reject the decision from SOAH. The final decision by the GCD is appealable by the affected party to a local state district court that shares jurisdiction with the GCD.

- **HB 655** – signals the full implementation of aquifer storage and recovery ("ASR") projects across Texas, and does so through amendments to Chapters 27 and 36 of the Texas Water Code. The first section of the bill establishes definitions of a few important terms for the overall ASR scheme (specifically defining “ASR,” “ASR injection well,” “ASR recovery well,” and “project operator”). The bill establishes that the Texas Commission...
Brad Castleberry will discuss “Planning and Optimizing Your Reuse Projects: A Legal and Regulatory Overview” at the 2015 Water Reuse in Texas Conference on July 17 in Lubbock.

Melissa Long will be presenting “Distributed Generation: Opportunities and Challenges Faced by Public Power” at the 2015 TPPA Annual Meeting on July 21 in San Antonio.

Sheila Gladstone will present “A Day in the Life - Responding to Employment Law Issues at a Government Workplace” at the Texas Bar CLE - Government Law Boot Camp on July 22 in Austin.

Ty Embrey will be presenting a “Legislative Update: Water Law” during a Texas State Bar Webcast on July 22.

Joe de la Fuente will present “Immunity in Contract Cases - Muddy Water” and Sheila Gladstone will present “Managing Employee Medical Issues & Leave” at the Texas Bar CLE - Advanced Government Law Course on July 23 in Austin.

Martin Rochelle will be discussing “Water for the People in a Time of Drought” at the Texas Bar CLE - Advanced Government Law Course on July 24 in Austin.

Sheila Gladstone will be discussing the “Do’s and Don’t’s of Interviewing and Hiring” at the Texas Business Conference on August 7 in Waco.

Brad Castleberry will present “Water Issues - That’s Water Under the Bridge” at the Texas Environmental Superconference on August 7 in Austin.

Thomas Brocato will present a course on “Witness Preparation” for EUCI on August 10-11 in Denver.

Sheila Gladstone will be presenting “Could Your Tweet Put You on the Street” at the Texas Probation Association Conference on August 11 in Houston.

Ty Embrey will be giving an “84th Texas Legislature Update” at the TAGD’s Texas Groundwater Summit on August 25 in San Marcos.

Brad Castleberry and Ashley Thomas will be discussing “Environmental Audits” at the Texas City Attorneys Association Fall Conference on September 24 in San Antonio.

Members of the Firm collected fans and donations for the Austin Family Eldercare Summer Fan Drive in June.

The Lone Star Current reviews items of interest in the areas of environmental, utility, municipal, construction, and employment law. It should not be construed as legal advice or opinion and is not a substitute for the advice of counsel.

To receive an electronic version of The Lone Star Current via e-mail, please contact Jeanne Rials at 512.322.5833 or jrials@lglawfirm.com. You can also access The Lone Star Current on the Firm’s website at www.lglawfirm.com.
Representative Doug Miller, New Braunfels
Chair, House Special Purpose Districts Committee

**Miller:** The fact that Texas leads our nation in so many ways, and especially in economic development, is not an accident. I’m very proud that the Texas House has addressed many of the challenges of our state -- water, transportation, education -- in a fiscally sound, conservative manner. Our work will allow Texas to stay strong and continue to take advantage of opportunities as they may come. Special purpose districts, which are the focus of our Committee, effectively created over $2 billion in local economic development.

**LSC:** What do you view as the biggest challenges facing the Legislature for the upcoming 85th Legislative Session and over the next few years?

**Miller:** Education, water, and transportation will continue to be major issues for a growing state like ours. I once heard Dr. Norman Vincent Peale say, “Be glad you have problems. The only people who don’t are six foot under.” There are many states that wish they had our challenges. We must continue to keep taxes low, keep regulations in check, and work for greater tort reform.

**LSC:** Can you share with our readers whether there will be interim charges to the Special Purpose Districts Committee?

**Miller:** Special Purpose Districts is a committee that essentially allows billions of dollars of local economic development to be created right here in Texas. Some folks misunderstand and a few abuse the powers of these districts. My expectation is that we will investigate ways to protect the opportunities that special purpose districts afford and find ways to rein in those who would take advantage of the current system.

**LSC:** Mr. Chairman, what do you do during the interim period between legislative sessions to both recover from the past session and to prepare for the next one?

**Miller:** Recovery consists of a family vacation and spending time with Anne at our lake house. Preparation for the 85th Legislative Session has already begun along with implementing my re-election campaign.

**LSC:** The Legislature has faced some major challenges since 2008. In light of the biggest challenges you’ve seen, what would you identify as the major successes since your first election?

**Miller:** I was surprised about the amount of time it takes to properly serve one’s district. Even though ours is a volunteer legislature, it is not unusual to spend 30-40 hours per week working on issues for your constituents when we’re not in session, and well over 50 hours a week when we are.

**LSC:** You have served in the Texas Legislature since 2008. What have been the most important lessons you’ve learned since then?

**Miller:** Texas is very diverse and is served by a very dedicated group of men and women. Those of us who serve in the House may have different ideas about how to make Texas best, but we can disagree without being disagreeable.

**LSC:** What has been your biggest surprise since being elected to the Texas House of Representatives?

**Miller:** The most important aspect of your membership in the Texas House, and as Chair of the Special Purpose Districts Committee is the most important aspect of your membership in the Texas House, and as Chair of the Special Purpose Districts Committee is being elected to the Texas House of Representatives.

**LSC:** What do you think is the most important aspect of your membership in the Texas House, and as Chair of the Special Purpose Districts Committee?

**Miller:** Having served two sessions on Appropriations gave me great insight into the State budget process. In 2011, we faced a shortfall of $26 billion and we were still about to balance the budget. I think asking the voters to put Rainy Day funds into water and transportation was huge. Another important success was to create more transparency and accountability of government.

The Lone Star Current recently had the opportunity to interview Chairman Miller, who graciously responded to several questions. We appreciate his willingness to take the time to share his unique perspective with our readers.

Doug Miller has served in the Texas House of Representatives since 2009 representing District 73, which encompasses Comal, Gillespie, and Kendall Counties. An insurance agent in his native New Braunfels, Rep. Miller is a former Mayor of New Braunfels and a former Chair of the Edwards Aquifer Authority.

Rep. Miller has been active in water issues since his election to the Texas House in 2008, having served on the House Natural Resource Committee for three legislative sessions prior to the 84th Legislative Session. Rep. Miller is the Chairman of the Special Purpose Districts Committee, which addressed a wide array of legislation related to special purpose districts, including conservation and reclamation districts, and related to their creation, powers, and governance.

Rep. Miller is a graduate of Texas State University in San Marcos. He and his wife, Anne, are the proud parents of two children, Doug Miller II and Amanda Miller.

The Lone Star Current is a monthly political and public affairs magazine for the Texas Legislature. The magazine serves as a source of reliable information for Texas lawmakers, state officials, and political leaders. The magazine covers a wide range of topics, including legislation, politics, and public policy. The magazine is published by Lloyd Gosselink Rochelle & Townsend, P.C., a law firm based in Austin, Texas.
LSC: What life experiences do you think have influenced your actions as a public servant, including your service in the Texas House of Representatives?

Miller: I’ve now been in public office for over 25 years. Being a small business owner and having grown up in District 73, gives me a perspective that helps me tremendously as a legislator.

LSC: Tell us something about yourself that most people would be surprised to know?

Miller: When I was in college, I had a country & western dance band -- Doug Miller and the Rhythm Ryders. I’ve had the honor of playing with notables like Merle Haggard and Ray Benson.
county payment of the member’s criminal defense fees or the fees of other members subject to the same investigation. Tex. Att’y Gen. Op. KP-0016 (2015).

The Open Meetings Act does not prohibit a governmental body from holding meetings at a location that requires the presentation of photo identification for admittance. The Attorney General was asked whether the Open Meetings Act prohibits a governmental body from holding open meetings at a location that requires the presentation of government-issued photo identification for admittance. The Act itself specifically requires that any regular, special, or called meeting of a governmental body shall be open to the public, with limited exceptions articulated in the Act. The Act further defines “open” to mean “open to the public.” There is nothing in the Act that addresses identification requirements at such meetings, nor are there any Texas court cases or AG opinions that directly address the legality of an identification requirement under the Act. The AG notes that a number of facilities open to the public now require photo identification for security purposes, and that most federal courthouses require visitors to produce photo identification before entry. As to the determination of “open to the public,” it is important to distinguish that identification requirements are likely intended as a security measure to provide protection to the general public and not to otherwise limit the public’s access to these venues. In conclusion, absent direct language from the Legislature prohibiting identification requirements, a court is unlikely to conclude as a matter of law that the Act prohibits a governmental body from holding open meetings at a location that requires the presentation of government-issued photo identification for admittance. Tex. Att’y Gen. Op. KP-0020 (2015).

Municipal Corner is prepared by Troupe Brewer. Troupe is an Associate in the Firm’s Water, Litigation, and Districts Practice Groups. If you would like additional information or have questions related to these or other matters, please contact Troupe at 512.322.5858 or tbrewer@lglawfirm.com.

Reap continued from 1

on Environmental Quality (“TCEQ” or the “Commission”) will have jurisdiction over the regulation and permitting of ASR injection wells, which are designated as “Class V” injection wells. The bill prescribes three different authorizations that the TCEQ can grant for Class V injection wells for ASR projects: by rule, by individual permit, or by general permit.

- **HB 930** – makes several additions and amendments to the Texas Occupations Code for the primary purpose of bringing back the water well driller and pump installer apprentice programs. The bill grants statutory authority to the Texas Department of Licensing and Regulation to establish and run its apprentice driller and apprentice pump installer programs.

- **HB 2179** – amends several sections of Water Code Chapter 36, particularly in Subchapter M, as it relates to the contested case hearings process involved with groundwater permit applications. A few of the major changes include allowing a GCD to act on uncontested permit applications at the public meetings, establishing costs by the apportioning protocol for the costs by the applicant and other parties for SOAH’s expenses, and specifying provisions related to a GCD’s final decision following a contested case hearing.

- **HB 2767** – amends Water Code Chapter 36 regarding the authority and various duties of a GCD. The bill makes many non-substantive language changes to clean up different sections of Chapter 36.

- **HB 3163** – amends Chapter 36 of the Water Code to specifically state that any GCD board member is immune from suit and immune from liability for official votes and official actions, to the extent an official vote or official action conforms to laws relating to conflicts of interest, abuse of office, or constitutional obligations.

- **HB 4112** – amends Chapter 36 of the Water Code regarding a landowner’s ownership and rights in groundwater, adding language to state that a landowner is entitled to “any other right recognized under common law.”

- **SB 854** – creates a streamlined permit renewal process for certain permits. Specifically, the bill mandates that a GCD must renew an operating permit without a hearing, provided that the application is timely and the permit holder is not requesting a change to the permit that would normally require a permit amendment under GCD rules.

**Environmental Permitting**

One notable bill from the session will fundamentally change the contested hearing process for environmental permits – matters referred by the TCEQ to the State Office of Administrative Hearings for a contested case proceeding under Texas Water Code § 5.556.

- **SB 709** – provides that: (1) an applicant’s filing with the ALJ of a draft permit, the executive director of the TCEQ’s preliminary decision, and any other supporting documentation in the administrative record establishes a *prima facie* presumption that the permit application meets all state and federal legal and technical requirements and the permit would be protective of the public’s health and physical property and the environment; (2) the burden shifts to the protesting party in the contested case hearing to rebut the established presumption by presenting evidence that the draft permit violates specific state or federal legal or technical requirements; (3) the TCEQ may not find that a group or association is an affected person unless the group or association identifies a member of the group or association who would be an affected person in the person’s own right; (4) that the TCEQ Commissioners may consider various factors for the purpose of determining whether a hearing...
requestor is a person affected, including the administrative record (as it exists to that point); the analysis and opinions of the Executive Director and other expert reports; and affidavits and data, so long as timely submitted; and (5) the TCEQ must provide notice to the state senator and state representative of the area in which a permit for a facility is to be issued.

Surface Water/Water and Wastewater Utilities

In addition to the many pieces of groundwater legislation passed, there were several bills affecting surface water, the Texas Water Development Board and its State Water Implementation Fund for Texas (“SWIFT”), and water utility service that will also have significant impacts on water and water management in Texas.

- **HB 280** – amends Chapter 15 of the Water Code, specifically Subchapter G, which relates to the SWIFT. The bill makes substantial changes related to reporting and transparency requirements of SWIFT implementation. The bill greatly increases the information that TWDB must make available on its website regarding the use of SWIFT. The bill lists several specific pieces of regularly-updated information that TWDB is now required to provide on its website.

- **HB 685** – amends Texas Utilities Code § 182.052 to provide that a government-operated utility may withhold information prohibited from being disclosed under this section without the necessity of requesting a decision from the Attorney General. Information that may be so withheld is the personal information in a customer’s account record, any information related to the volume or units of utility usage, and the amounts billed to or collected from the individual for utility usage, if the customer has requested that such information be kept confidential in accordance with this section.

- **HB 1016** – classifies segments of the Nueces River, Frio River, Sabinal River, San Marcos River, and Comal River within the South Central Texas Regional Water Planning Area, Region L, as being of unique ecological value. This designation prohibits any political subdivision or state agency from financing the construction of a reservoir within the area, but it does not prohibit the permitting, financing, construction, operation, maintenance, or replacement of any water management strategy to meet projected water supply needs recommended, or designated as an alternative, in the 2011 or 2016 Regional Water Plans for Region L.

- **HB 1042** – designates the site of the proposed Ringgold Reservoir on the Little Wichita River in Clay County as having unique value for the construction of a dam and reservoir, pursuant to Texas Water Code § 16.051(g), and finds the reservoir is necessary to meet water supply needs. Hereafter, a state agency or political subdivision of the state may not obtain a fee title or an easement that would significantly prevent the construction of a reservoir.

- **HB 1902** – amends Health and Safety Code § 341.039 as it relates to the regulation and use of graywater. The main substantive change to the Code is the addition of subsection 341.039(c-1), which provides instances where the Commission may adopt minimum standards for additional uses and reuses of graywater. Specifically, these rules must prevent contamination of potable water supply, protect human health, and may require the use of backflow prevention devices (and subsequent annual inspection and testing of that device).

- **HB 1919** – amends the Parks and Wildlife Code, §§ 66.007 and 66.0072, to provide that a municipally owned utility is not required to obtain a permit from the Texas Parks and Wildlife Department for the following water transfers: (1) through a water supply system; (2) from a water body with no known exotic harmful or potentially harmful fish or shellfish to a water body with no known exotic harmful or potentially harmful fish or shellfish; (3) directly to a water treatment facility; (4) treated prior to the transfer into a water body; and (5) from a reservoir or through a dam to address flood control or to meet water supply requirements or environmental flow purposes.

- **HB 2230** – creates a new subsection in Water Code Chapter 27, § 27.026, entitled “Authorization of Injection Wells to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals.” Essentially, the bill establishes a program whereby currently-permitted Class II injection wells, permitted by the Railroad Commission under Water Code Chapter 27, Subchapter C, could be used for the disposal of nonhazardous brine from desalination operations and/or nonhazardous drinking water treatment residuals. Such activity would be permitted by individual or general permit, or by rule, by the TCEQ. The bill also calls for both the Railroad Commission and the TCEQ to enter into a Memorandum of Understanding to effectuate the provisions of § 27.026.

- **SB 523** – subjects several river authorities in Texas to a limited review by the Sunset Advisory Commission, but without the option that they be abolished. The Sunset Advisory Commission would assess each river authority’s governance, management, operating structure, and compliance with legislative requirements. The costs of the review would be paid for by the applicable river authority.

- **SB 912** – amends Chapter 26 of the Water Code to exempt certain accidental spills from wastewater collection and treatment facilities from TCEQ reporting requirements, if the spills occur at facilities owned by local governments, are 1,000 gallons or less in volume, are not associated with larger volume spills, and are controlled such that they do not enter state streams, adversely impact public or private water supply sources, and are not a danger to the public or environment. Notwithstanding this exemption, monthly reporting of such spills to TCEQ is required.
• **SB 1148** – amends several sections of Texas Water Code, Chapters 5 and 13, to address issues that have arisen due to the transfer of the rate and CCN programs from the TCEQ to the PUC. Specifically, the bill grants exclusive jurisdiction to the TCEQ to authorize a person to temporarily operate a utility that discontinues operation or is referred for appointment of receiver under Water Code § 13.4132. The bill adds provisions that require a municipally owned utility to provide, upon request, the number of ratepayers who live outside the corporate limits of the municipality and the names and addresses of those ratepayers. If a ratepayer has requested to keep their personal information confidential under Utilities Code § 182.052, then the utility may not provide that ratepayer’s address. Under the bill, if the PUC is required to give notice of a hearing on a Class A or Class B utility’s intent to change rates, the PUC may delegate this duty to a SOAH administrative law judge. The bill also extends the period for which the PUC may suspend the effective date of a Class B utility’s rate change from 205 days to 265 days beyond the proposed effective date. The bill provides that the TCEQ and PUC shall coordinate, as needed, to authorize an emergency rate increase under Water Code § 13.4133. Finally, the bill adds Water Code Chapter 13, Subchapter K-1, establishing the PUC’s procedures and rule-making authority for the issuance of emergency orders.

**Electric Utilities**

Approximately 120 electric utility-related bills were filed during the session. The following are some of the more notable bills that made it through the process.

- **HB 939** – prohibits property owners’ associations from adopting or enforcing restrictive covenants against the installation or maintenance of permanently-installed standby electric generators; authorizes regulation of same.

- **HB 1101** – provides more than $200 million in assistance to low-income ratepayers by extending the life of the System Benefit Fund (created as part of the 1999 electric deregulation law) until such time that all money in the fund has been expended (by September 2017). Money for the System Benefit Fund comes not from tax dollars, but from fees Texans already have paid on their electric bills.

- **HB 1535** – modifies the way in which electric rates are determined through the PUC rate-setting process for electric utilities that operate outside of the ERCOT grid. Rates may be changed through accelerated rate increases that correspond to transmission system investments.

- **SB 774** – requires the PUC to: (1) conduct a study and make a report to the legislature not later than January 15, 2017, analyzing alternative ratemaking mechanisms adopted by other states; (2) make recommendations regarding appropriate reforms to the ratemaking process in this state; and (3) include in the report an analysis that demonstrates how the commission’s recommended reforms would improve the efficiency and effectiveness of the oversight of electric utilities and ensure that electric rates are just and reasonable.

- **SB 776** – requires that municipally-owned utilities obtain certificates of convenience and necessity when extending transmission facilities outside their home service territories.

- **SB 933** – provides: (1) that a person, including an investor owned electric utility or a municipally owned utility, may not interconnect a facility to the ERCOT transmission grid that enables additional power to be imported into, or exported out of, the ERCOT power grid unless the person obtains a certificate from the PUC stating that public convenience and necessity requires or will require the interconnection; and (2) for procedures and deadlines to implement the bill’s requirements.

**Government Transparency**

Governmental transparency was a major focus going into the session, and the legislative advocates thereof were successful in passing several bills aimed to increase that transparency. Bills amended the Texas Public Information Act, the Texas Open Meetings Act, and Texas statutes related to conflicts of interest and their required disclosure.

- **HB 23** – amends several sections of the Local Government Code as they relate to local governmental entities and “vendors,” defined by the bill to be a person who “enters or seeks to enter into a contract with a local government entity,” and the required conflicts of interest disclosures for certain relationships between local governmental entities and vendors. The bill also amends the definition of “local governmental entity” to include a water district created under Chapter 49 of the Water Code.

- **HB 685** – allows a public information officer for a political subdivision to comply with a public information request by referring the requestor to a publicly accessible website maintained by the political subdivision, so long as the information is identifiable and readily available.

- **HB 1295** – increases transparency in governmental contracts with certain “business entities” by amending the Government Code to specifically state that a governmental entity or state agency may not enter into a contract with a business entity unless the business entity, in accordance with the Government Code and rules adopted after passage of the bill, submits a “disclosure of interested parties” to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The Texas Ethics Commission is required to draft a form for such disclosure of interested parties.

- **HB 3357** – allows notice of each meeting held by the governing body of a water district or other district or...
political subdivision to be provided to the county clerk or posted on the district’s or subdivision’s internet website.

- **SB 1760** – amends several provisions of the Tax Code for purposes of increased transparency. For example, this bill requires at least 60% of the members of a district’s governing body to vote in favor of the order setting a tax rate that exceeds the effective tax rate. Also added is a requirement that in its Notice of Tax Rate Increase a district must describe the purpose for which the proposed tax increase will be used.

### Elections

Three bills amending the Texas Election Code are worth noting. These bills will have significant impacts on elections of various municipalities, political subdivisions, and local governmental entities.

- **HB 484** – makes several changes to the Election Code relating to the eligibility criteria of a person running for office. In particular, the bill amends § 140.001(a) that sets forth the eligibility requirements for running for and holding public office in the state, and adds an additional requirement that a person running for office must be registered to vote in the territory from which the office is elected.

- **HB 2354** – amends the Election Code by changing the May uniform election date from the second Saturday in May to the first Saturday in May.

- **SB 733** – allows a political subdivision, other than a county or a municipal utility district, to change its election date to the November uniform election date, so long as it does so by December 31, 2016.

### Municipal Regulation – Oil & Gas Operations

The most significant legislation to come out of the session with regard to municipal authority includes HB 40, an intensely-negotiated bill on an issue that pitted oil and gas industry interests against municipal home-rule authority, and HB 1794, a bill that drastically limits the level of civil penalties that local governments can recover in environmental enforcement suits.

- **HB 40** – makes various findings related to the benefits of oil and gas operations in the state. The bill adds § 81.0523, “Exclusive Jurisdiction and Express Preemption,” to the Natural Resources Code. This section provides that oil and gas operations are subject to the exclusive jurisdiction of the state, and except as provided in the statute, municipalities or other political subdivisions may not enact or enforce an ordinance or other measure that bans, limits, or otherwise regulates an oil and gas operation within the boundaries or the extraterritorial jurisdiction of the municipality or political subdivision. Municipalities may enact measures that regulate only above-ground activities related to an oil and gas operation, including regulations governing fire and emergency response, traffic, lights, or noise, or impose notice or reasonable setback requirements, so long as such measures are commercially reasonable, do not effectively prohibit oil and gas operations conducted by a reasonably prudent operator, and are not otherwise preempted by state or federal law. A measure is considered *prima facie* to be commercially reasonable if it has been in effect for at least five years and has allowed the oil and gas operations to continue during that period.

- **HB 1794** – amends provisions in Chapter 7, Texas Water Code to provide that, in relation to civil penalties recovered in an environmental enforcement action under the Texas Water Code, the first $4.3 million of the amount recovered shall be divided equally between the city or county that brought the suit, and the State of Texas. Any amount recovered in excess of $4.3 million shall be awarded to the state. In determining the amount of an administrative penalty sought by a city or county, the trier of fact (a judge or jury) shall consider factors that the TCEQ must consider under current law, and a suit for a civil penalty that is brought by a city or county must be brought not later than the fifth anniversary of the earlier of the date the person who committed the violation: (a) notifies the TCEQ in writing of the violation; or (b) receives a notice of enforcement from the TCEQ with respect to the alleged violation.

The Texas Legislature took substantial steps during the Regular Session to address the myriad issues that exist in Texas. The bills that we have highlighted were some of the bills that survived the legislative process to become law. Many other bills filed did not, as demonstrated by the bill filing / bill passage statistics that came out of the Regular Session. Beginning with the start of the bill-filing period in November 2014, 6,276 bills were filed in the House or Senate. Of that number, only 1,322, or 21% of the bills filed, were passed by the Texas Legislature.

Legislators now shift the focus of their efforts to campaigns and interim legislative work. The party primaries for all House members and many Senate members will be held in March 2016, with the general elections for those positions scheduled for November 2016. With no special Called Session anticipated, the legislators will also spend significant time working on and studying issues during the legislative interim in preparation for the next Regular Session that begins in January 2017.

Ty Embrey is a Principal in the Firm’s Water and Districts Practice Groups, Troupe Brewer is an Associate in the Firm’s Water, Litigation, and Districts Practice Groups, and Georgia Crump is a Principal in the Firm’s Energy and Utility Practice Group. If you have any questions concerning legislative issues or would like additional information concerning the Firm’s legislative tracking and monitoring services or legislative consulting services, please contact Ty at 512.322.5829 or tembrey@lglawfirm.com, or Troupe at 512.322.5858 or tbrewer@lglawfirm.com, or Georgia at 512.322.5832 or gcrump@lglawfirm.com.
**UNEMPLOYMENT INSURANCE - POSITIVE CHANGES FOR PUBLIC SECTOR EMPLOYEES**

by Sheila Gladstone and Elizabeth Hernandez

As with most legislative sessions, the majority of employment-related bills filed during the 2015 Texas Legislature failed to pass. However, one bill that passed and was signed by the Governor will be helpful to public sector “reimbursing” employers that win disputed claims for unemployment, only to find later that they are still required to pay because the former employee left a subsequent job quickly.

The loophole under current law works this way: Employer A terminates a worker and proves the reason was misconduct, making the worker ineligible for unemployment insurance. The employer then gets another job at Employer B, but leaves again quickly. When the employee files for unemployment a second time with the Texas Workforce Commission (“TWC”), this time receiving benefits, Employer A is on the hook and charged for unemployment because the employee worked there recently enough to be covered in the look-back period. Unlike most private employers that pay unemployment insurance to a pool through tax rates, public sector employers are “reimbursing” employers, meaning they pay out-of-pocket the cost of the unemployment claim dollar-for-dollar. The loophole can be a costly problem for public sector entities that spend money fighting a claim and win, only to pay in the end for a later employer’s termination decision.

House Bill 3373 closes this loophole so that reimbursing employers that terminate an employee for misconduct are not liable for paying benefits resulting from the employee’s separation from a subsequent employer. Employers who are charged under the previous loopholes can dispute the bills to the TWC. Bottom line: if you rightfully win an unemployment claim, you should not later have to pay that employee’s unemployment benefits.

The bill comes with some uncertainty for private employers. The reimbursements formerly charged to prior reimbursing employers will somehow have to be paid, presumably through a TWC chargeback pool. It remains to be seen whether the shortfall will be made up by future increases to tax rates of private sector employers.

Sheila Gladstone is the Chair of the Employment Law Practice Group, and Elizabeth Hernandez is an Associate in the practice group. If you would like additional information or have questions related to this article or other matters, please contact Sheila at 512.322.5863 or sgladstone@lglawfirm.com, or Liz at 512.322.5808 or e hernandez@lglawfirm.com.

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**FINAL “WATERS OF THE UNITED STATES” RULE RELEASED**

by Nathan E. Vassar

The U.S. Environmental Protection Agency (“EPA”) and the Army Corps of Engineers (“Corps”) recently released their final rule regarding jurisdiction over “waters of the United States” (the “Rule”), intended to clarify the scope of the agencies’ jurisdiction under the federal Clean Water Act. The Rule is the product of significant stakeholder input stretching over a year through more than 400 public meetings and over a million filed comments.

The Rule includes three categories of waters: (1) waters that are jurisdictional by rule; (2) waters that are excluded from EPA/Corps jurisdiction by rule; and (3) waters that will undergo a case-by-case “significant nexus” analysis. Among the most significant provisions in the first category is the inclusion of “tributaries” and “adjacent waters,” new terms of art intended to address water bodies that have been the source of uncertainty since a pair of U.S. Supreme Court decisions in 2001 and 2006. The “tributary” definition captures waters that flow directly or indirectly to traditional navigable streams, as well as the bed and banks of streams that exhibit physical indicators of flow to such streams. Further, the “adjacent waters” definition includes nexus waters that are bordering, contiguous, or neighboring. EPA and the Corps have included bright-line distance parameters from the highwater mark of traditional navigable waters for waters in this category.

The regulated public works community pressed EPA and the Corps for the second category of waters (those that are excluded from EPA/Corps jurisdiction by rule), in order to avoid permitting and enforcement concerns over portions of wastewater and stormwater infrastructure. Accordingly, among other exceptions, the Rule retains the waste treatment exclusion (included since 1972), and also builds in exclusions for wastewater recycling structures and retention basins (for reuse purposes), as well as dry land stormwater control features. The Rule also continues to carve out groundwater, although groundwater could serve as the hydrological connection between other jurisdictional water bodies.

The Rule’s final category of waters establishes two sets of water bodies that are subject to a significant nexus analysis, which examines whether such waters exhibit a “chemical, physical, or biological” connection to traditional categories of jurisdictional waters. The first set within
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this category identifies the following five types of waters that EPA and the Corps consider appropriate for case-by-case analysis. These include: (1) Texas coastal prairie wetlands; (2) prairie potholes; (3) Carolina/Delmarva bays; (4) pocosins (a type of palustrine wetland with deep, acidic, sandy, peat soils); and (5) western vernal pools in California. The second set of waters within this category includes waters within the 100-year floodplains of traditional jurisdictional waters and those waters within 4,000 feet of the ordinary high water mark or high tide line of traditional jurisdictional waters.

Although the Rule addresses many questions that had been raised in the past 14 years (since the U.S. Supreme Court struck down the former jurisdictional rule), its application to specific circumstances will depend upon a variety of factors and details, including the application of the Rule’s new definitions and exclusions. Further, the regulators’ application of the “significant nexus” test will reveal the extent of EPA/Corps domain over waters in the subject category. The regulated public works community should consider the Rule’s implications upon potential permitting requirements and enforcement, while also recognizing the overlap and extent of Texas’ own water quality jurisdiction under Chapter 26 of the Texas Water Code.

The Rule was published in the Federal Register on June 29, 2015, and thus becomes effective on August 28, 2015 (60 days after publication). Several interested persons, including the State of Texas, immediately filed suit, claiming violations of the federal Administrative Procedures Act and the U.S. Constitution’s Commerce Clause and Tenth Amendment. Other challenges are anticipated before the 14-day filing deadline.

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THE TEXAS CEMENT APOCALYPSE
by Paul Gosselink and Jeff Reed

Industry projections reveal the demand for cement in Texas will exceed the supply for the first time by 2018. At about the same time, the EPA is expected to reduce the ozone standard from 75 ppb to 65 or 70 ppb. As a result, portions, if not all, of Central Texas are expected to be designated as “non-attainment areas” for ozone, making construction of additional production capacity significantly more expensive. This article suggests a strategy for cement producers who want to expand their facilities or build new cement plants in this imminent new regulatory environment.

There are three primary factors that will dictate when and how this apocalyptic confluence of events could materialize: (1) demand; (2) production and import capacity; and (3) the extent of the reduction in the proposed ozone non-attainment standard and whether it withstands legal challenge (and if so, when it becomes effective).

Texas’ population and economic growth are showing no signs of slowing down. Population is expected to increase to 30 million by 2020, up from 25 million according to the 2010 Census. Consequently, the demand for roads, buildings, oil rigs/well cement, and other infrastructure is booming and is predicted to continue.

A cover story in the TACA Conveyor recently projected that demand for cement in Texas will exceed its in-state production capacity in 2016, and its combined production and import capacity by 2018. These projected dates are not “set in concrete,” but are reliable indicators that this situation will occur soon. Normal market response by the industry would be to expand production. However, adding capacity or building a new cement plant is expensive and time-consuming. Moreover, the normal permit process gauntlet can become more demanding depending on several potential regulatory changes, including the EPA’s Commercial/Industrial Solid Waste Incinerator rules, Nonhazardous Secondary Material rules, Greenhouse Gas regulations, and changes to the National Ambient Air Quality Standards (“NAAQS”) for ozone.

While any of these changes could be significant to the cement industry, the most important is the impending reduction in the ozone standard. It is the third leg of the “cement apocalypse” triangle. The reduction of the standard will send many central Texas counties into non-attainment status, as shown on the following map prepared by Element Markets, a leading broker of offsets for NOx and VOCs (the precursors that form ozone or smog). There are other projections by other experts and agencies, but these maps depict the risks to the Texas cement industry.

OZONE NAAQS NONATTAINMENT AREAS

Ozone Nonattainment Areas under 2008 Ozone Standard (75 ppb)

The Supreme Court of the United States ruled that the EPA must consider costs in setting emission limitations of mercury and other pollutants from coal-fired power plants. The EPA estimated that the proposed rule would cost $9.6 billion annually, with only $4 million to $6 million in benefits. The Court found that, considering the Clean Air Act requirement in the DFW area is much less because the demand is lower. The price ERCs may reach in Central Texas is unknown, since Central Texas has narrowly stayed in attainment.

Why do we raise this issue now and call the situation an “apocalypse”? The timing is crucial - the revised ozone standard will arrive at approximately the same time that the demand for cement is expected to exceed supply. The EPA is set to issue its final rule revising the ozone standard in October 2015. Within two years, the EPA must designate non-attainment areas. Texas then has three years to adopt and submit a State Implementation Plan (“SIP”) implementing offset requirements.

Texas may, and probably will, challenge the ozone standard rule in court. The rule could be stayed during the appeal process, but if not, it could reasonably be expected to be effective in 2018. So, anyone planning to expand production to take advantage of the market opportunity created by the continued demand for cement should consider acting promptly before the new ozone standard is in effect. Alternatively, possible emission reductions could be identified at an existing facility, or other sources in Central Texas could be identified that could reduce their emissions, and from which one could purchase offsets if/when they are needed. If this is your plan, you should consider whether it is worth the investment risk to sign option contracts to tie up those offsets either before the price gets too steep or, worse yet, there are no offsets to buy because your competitors purchased them. Your other option is to bet that the more stringent ozone standard is eventually overturned.

The potential impact on the cement industry is significant because, once a county is designated non-attainment for ozone, any significant increase in NOx or VOC emissions must be offset by corresponding, or even greater, reductions. Offsetting can be accomplished by either reducing existing emissions at the same plant or buying emission reduction credits (“ERC”) for reductions at other facilities. The purchase and sale of ERCs occurs in an open market and prices are dictated by supply and demand; they are not set by the government. The system flourishes in the Houston-Galveston region where the sales price of VOCs has peaked at more than $300,000 per ton of emissions. The price Time is not a friend to cement producers in Texas. The specter of a “cement apocalypse” raises many important and complicated issues in addition to those identified here, that merit consideration and proactive planning.

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that the EPA conclude the “regulation is appropriate and necessary,” the EPA needed to consider these costs before promulgating a rule.

**Mississippi Commission on Environmental Quality v. EPA, No. 12-1309, 2015 WL 3461262 (D.C. Cir. June 2, 2015).**

The D.C. Court of Appeals denied in their entirety all challenges and consolidated petitions to review the EPA’s 2008 ozone nonattainment area designations. Environmental groups, industry groups, and states challenged the designations on various grounds, including the common complaint that the EPA was not using updated air quality data. The court ruled that the EPA, by accepting qualified data up until 2011, used adequately updated data and made an overall reasonable decision within its discretion. The groups also challenged the constitutionality of the designations and the EPA’s authority under the Clean Air Act to supersede states’ recommended designations. For instance, in Wise County, Texas, the court upheld the EPA’s designation, despite the state’s challenge that using the state’s resources violated the 10th Amendment.

**Eco Services Operations v. EPA, No. 11-1189 (D.C. Cir. June 3, 2015).**

The D.C. Court of Appeals rejected all challenges from environmental groups and industry petitioners alike, and upheld the EPA’s final non-hazardous secondary materials (“NHSM”) rule. The NHSM rule provides procedures for classifying certain materials as either “solid wastes” or “fuels” under the Clean Air Act. Solid wastes and fuels are subject to more or less strict emission standards, respectively. Environmental groups took issue with several categorical exemptions to the rule, while industry groups disputed the EPA’s regulation of firm-to-firm transfers and asked the court to vacate the agency’s classification of sewage sludge. In a four-page, unpublished decision, the court held that the agency acted within its discretion.


Six states, including Texas, have filed a notice in the Ninth Circuit Court of Appeals to review a consent decree between the EPA, the Sierra Club, and the Natural Resource’s Defense Council for the 2010 national ambient air quality standard (“NAAQS”) for sulfur dioxide. The decree requires that the EPA designate remaining parts of the country in three phases from July 2016 to December 2020. The complaining states allege that the consented-to phased approach violates the EPA’s Clean Air Act authority because it exceeds the three-year deadline the agency has to make area designations after a standard has been revised.

**Edwards Aquifer Authority v. Bragg, No. 13-1023 (Tex. 2015).**

On May 1, 2015, the Texas Supreme Court denied a petition for review filed by the Edwards Aquifer Authority (“EAA”) seeking to overturn the decision of the Fourth Court of Appeals holding that the EAA’s denial of a permit authorizing use of groundwater was a compensable taking of property. The appellate court had determined that: (1) because the Edwards Aquifer Authority Act provided that the Legislature intended that just compensation be paid if implementation of the Act causes a taking of property, and (2) because the Bragg’s property value was diminished as a result of the EAA’s denial of an application for a groundwater permit, the EAA owed compensation to the Braggs. The Court partially based its opinion on its earlier reasoning in Edwards Aquifer Authority v. Day. By denying the petition, the Court has allowed the appellate decision to become final and good law, which could have significant impacts on groundwater permitting. Specifically, because groundwater permit applicants could use the case to argue that a denial of a permit application constitutes a regulatory taking of property, groundwater permitting authorities may bear a costlier burden when denying permit applications.

An additional issue in the case was whether the general 10-year statute of limitations for regulatory takings claims had run. The Braggs argued that because they timely filed their permit application before the December 30, 1996 deadline for historical use permits, the EAA’s application review process tolled the statute of limitations. EAA argued that enactment of the Edwards Aquifer Authority Act itself was the catalyst for the regulatory taking claimed by the Braggs, and because the Act was enacted in 1993 (or, at the latest, in June of 1996 after all legal challenges to the Act had been resolved), and the Braggs’s appeal of EAA’s denial of their application was not filed until November 2006, the statute of limitations barred the action. The Court disagreed with EAA and held that claims of regulatory takings only begin to accrue upon a final decision of a regulatory authority that affects the value of property. Thus, even though the permit process required applicants to demonstrate historic usage of Edwards Aquifer water prior to 1993, a claim will still be ripe well over 10 years after the date of enactment of the Act.

**Texas Commission on Environmental Quality v. City of Aledo, No. 03-13-00113-CV (Tex. App. – Austin, 2015).**

On July 8, 2015, the Third Court of Appeals issued its decision in a case involving a suit by two municipalities that were denied party status at a TCEQ contested case hearing concerning an application for a permit to construct and operate a solid waste transfer station. The TCEQ had granted the permit, a decision that was vacated and remanded by the Travis County district court. The district court determined that the TCEQ’s denial of party status constituted a denial of due process to the two municipalities. However, the appellate court held that the municipalities failed to demonstrate any legally protected interest that would be affected by the TCEQ’s issuance of the permit. The court’s straightforward opinion relied on the applicable statutory and administrative rule authority outlining the interests that must be demonstrated by a person seeking party status to a hearing. The court noted that it is the burden of the person or entity seeking party status to show that there is a legally protected interest, and because the cities failed to do so, the court reversed the district court.

**GG Ranch, Ltd. v. Edwards Aquifer Authority, No. SA-14-CV-00848 (W.D. Tex.).**

On June 2, 2015, the federal district court in San Antonio provided some guidance
on how the Bragg case (noted above) should be applied. This case involved landowners who filed applications for Edwards Aquifer groundwater use permits after the December 30, 1996 deadline. Relying on Bragg, the plaintiffs argued that their takings claim accrued upon the EAA’s denial of their historical use application. The court distinguished Bragg, however, because the Braggs had filed their historical use application before the established deadline for doing so. The court held that the law established in Bragg does not extend to applications filed after the December 30, 1996 deadline. Although not binding precedent on Texas law, the opinion will likely prove persuasive in limiting the scope of Bragg, at least where Edwards Aquifer permits are concerned. It remains to be seen whether Texas courts will apply Bragg outside of the Edwards Aquifer.

The court also considered the plaintiffs’ equal protection and due process claims and found that neither was persuasive. The plaintiffs claimed that the Act’s distinction between historical users and future groundwater users violated the Constitution’s equal protection clause. The court held that the plaintiffs were not treated differently from any other applicant that filed for a historical use permit after the deadline to do so. The plaintiffs also claimed that denial of the application violated the Constitution’s due process clause because the EAA’s denial was irrational in light of similar regulation of oil, gas, and other mineral interests. The court held that the State has a “uniquely compelling” interest in managing its water resources and EAA’s denial of the application was a rational means of advancing that interest. Therefore, the court held that the plaintiffs did not present a legitimate due process claim that could be reviewed by the court.

In the Courts is prepared by attorneys from the Firm’s different practice areas. If you have questions or need any additional information, please contact our Editor at editor@lglawfirm.com.

AGENCY HIGHLIGHTS

Environmental Protection Agency

Rule Recalling SIPs for Affirmative Defenses. In response to a Sierra Club petition for rulemaking questioning the EPA’s interpretation of the Clean Air Act, the EPA issued a final rule recalling the State Implementation Plans (“SIP”) for 36 states, including Texas. By November 22, 2016, the affected states must revise their SIP plans to no longer include affirmative defense provisions that stop industry from being fined for excess emissions during startup, shutdown, or malfunction periods.

Emissions Factors Revised. On April 20, 2015, the EPA finalized new and updated refinery and chemical manufacturing plant emissions factors, which included updating how operators estimate emissions of volatile organic compounds (“VOC”) from flaring gas. The new VOC emissions factor is about 4 times greater than before for estimating volatile organic compounds. Permittees will have the option to monitor actual emissions rather than rely on the EPA’s published emission factors.

Guidance Issued on Extending Post-Closure Period for Hazardous Waste Disposal Sites. The EPA issued a draft guidance on April 29, 2015, to assist regulators in determining and extending the length of post-closure care for hazardous waste disposal facilities under Subtitle C of the Resource Conservation and Recovery Act. Generally, post-closure care continues for 30 years after a site closes, but the statute provides the discretion to adjust that period to the state permitting authority.

National Coal Ash Rule Published. On April 17, 2015, the EPA published a final rule creating the first national coal ash management and disposal standards under Subtitle D of the Resource Conservation and Recovery Act. The rule will be effective October 14, 2015, and will regulate the disposal of coal combustion residuals as solid waste, but not as hazardous waste.

Texas Commission on Environmental Quality

Lower Brazos Watermaster Program Effective June 1. The TCEQ has fully implemented the Lower Brazos Watermaster Program, which will have jurisdiction over the Lower Brazos River Basin including, and below, Possum Kingdom Lake. All water rights holders within the new watermaster area must comply with 30 Texas Administrative Code Chapter 304 requirements, including installation of a measuring device, filing “Intent to Divert” declarations, and submitting reports. Molly Mohler, previously a Watermaster Specialist in the Concho River Watermaster Program, is the Brazos Watermaster.

Rules Adopted Authorizing Certain Injection Wells into the Edwards Aquifer. On June 3, 2015, the TCEQ adopted rules implementing S.B. 1532 of the 83rd Texas Legislature in 2013. The rules modify the current prohibition of certain injection activities in the Edwards Aquifer by allowing TCEQ to authorize such
activities by rule or general permit. The rules limit authorization to injection wells within the boundaries of the Barton-Springs Edwards Aquifer Conservation District, but not in the District’s or the Edwards Aquifer Authority’s territory. Under the rules, the TCEQ may authorize the injection of freshwater previously withdrawn from the Edwards Aquifer for the purpose of providing additional recharge. The TCEQ may also authorize the injection of rainwater, stormwater, floodwater, or groundwater through an improved natural recharge feature. Additionally, the rules allow the TCEQ to authorize, by general permit, injections of concentrate from a desalination facility or injection of wastewater as part of an engineered aquifer storage and recovery facility. The rules became effective June 25, 2015.

**Changes Proposed to 30 TAC Chapters 217 and 317 Design Criteria Rules.** On May 29, 2015, the TCEQ published proposed rules to update the design criteria for domestic wastewater treatment systems. The Chapter 217 proposed rule will add new and clarify existing definitions, add design criteria and approval processes for the rehabilitation of existing infrastructure, add design criteria for new technologies, and generally modify rule language to improve clarity. As part of the rulemaking, the TCEQ reinstated Chapter 317 to bring facilities constructed prior to 2008 back under TCEQ regulation to resolve the regulatory uncertainty created from the adoption in 2008 of the Chapter 217 rules. A public hearing was held on June 23, 2015.

**Texas Water Development Board**

**Bech K. Bruun Appointed Chair.** On June 11, 2015, Governor Abbott appointed Bech Bruun as Chairman of the Texas Water Development Board. Bruun has served as a TWDB board member since September 2013, and replaces former Chairman Carlos Rubinstein, who will remain on the board until his retirement is effective on August 31. Prior to joining the TWDB, Bruun held several positions in Governor Perry’s administration, including Appointments Director. Bruun has also served as the Government and Customer Relations Manager for the Brazos River Authority, Chief of Staff to State Representative Todd Hunter, and General Counsel to the House Committee on Judiciary and Civil Jurisprudence. Bruun holds a bachelor’s degree in business administration from the University of Texas at Austin and a law degree from the University of Texas School of Law. Bruun will serve at the pleasure of the Governor until his term expires on February 1, 2019.

**Public Utility Commission of Texas**

**Project No. 42740 - Rulemaking to Amend Substantive Rule 25.101, Relating to Certification Criteria.** The Commission opened this rulemaking in August 2014 to address two issues related to routing transmission lines: (a) route deviations to accommodate engineering constraints after a route has been approved; and (b) elimination of the preference for transmission routes to parallel pipelines. The new rule was adopted on April 22, 2015. The new rule intentionally omits pipelines from a list of types of rights-of-way that generally may be compatible with transmission lines. This change is intended to remove any preference for paralleling or utilizing pipeline rights-of-way, while not prohibiting such consideration. The PUC decided to not make any rule changes regarding route modifications due to engineering constraints.

**Docket No. 43950 - Application of Cross Texas Transmission, LLC for Authority to Change Rates and Tariffs.** On December 23, 2014, Cross Texas Transmission, LLC (“CTT”), a transmission-only company, filed an application for authority to change rates. CTT requested a revenue increase in the amount of $3.1 million, or 4.5% over current rates, for a total revenue requirement of almost $72.7 million. The Office of Public Utility Counsel, the Steering Committee of Cities Served by Oncor, and Texas Industrial Energy Consumers intervened in this proceeding, and reached a settlement with CTT. On May 1, the Commission approved the agreement filed by the parties, which settled the case at about $70.4 million for CTT’s total base rate revenue requirement.

**Docket No. 44435 - Appeal of CenterPoint Energy Houston Electric, LLC from an Ordinance of the City of Pearland.** On February 10, 2015, CenterPoint filed an appeal of the City of Pearland’s ordinance requiring utility facilities to be located underground, alleging that the ordinance conflicts with CenterPoint’s authorized tariff. According to the tariff, CenterPoint’s general policy for new construction is to install aboveground facilities. CenterPoint claims that new facilities are required in Pearland in order to continue providing safe and reliable service. CenterPoint and the City have reached an agreement in principle, and the case has been abated to allow the parties to work out the details of the settlement.

**Docket No. 44572 - Application of CenterPoint Energy Houston Electric, LLC for Approval of a Distribution Cost Recovery Factor Pursuant to PUC SUBST. R. 25.243.** On April 6, 2015, CenterPoint Energy Houston Electric, LLC filed its first application for a Distribution Cost Recovery Factor (“DCRF”) with the PUC and cities. The DCRF would increase rates by $16.7 million annually, beginning on September 1, 2015. The DCRF is an interim rate adjustment that permits an electric utility to implement new rates to account for changes in distribution invested capital since its last rate case, such as transformers, poles, wires, and similar facilities. Several parties, including the Gulf Coast Coalition of Cities, intervened and successfully negotiated a settlement agreement reducing CenterPoint’s DCRF revenue requirement to $13 million. The case has been remanded to the PUC for final disposition.

**Electric Utilities File to Adjust Energy Efficiency Cost Recovery Factors.** Pursuant to the Commission’s energy efficiency rules, electric utilities made their annual filings at the end of May 2015 to adjust their Energy Efficiency Cost Recovery Factors (“EECRF”)...
to be charged in 2016 to recover energy efficiency program costs and performance bonuses. The filings also true-up any over- or under-collection of energy efficiency costs resulting from the use of the EECRF. The amounts sought to be recovered by these utilities during 2016 are: (1) Oncor -- $66.8 million; (2) CenterPoint -- $37.7 million; (3) TNMP -- $6.0 million; (4) AEP TNC -- $1.7 million; and (5) AEP TCC -- $8.9 million. City groups are participating in these proceedings to ensure that the amounts requested by the utilities comply with applicable laws and Commission rules. Cities will review the utilities’ demand and energy goals, the program incentive costs, the evaluation, management, and verification expenses, and the performance bonuses, in addition to other issues. Each of the cases will proceed along an accelerated schedule to have final Commission orders late this summer.

Docket No. 44746 - Application of Wind Energy Transmission Texas, LLC for Authority to Change Rates and Tariffs. On May 29, Wind Energy Transmission Texas, LLC (“WETT”), a transmission-only company, filed an application for authority to change rates and tariffs. WETT is seeking a total annual revenue requirement of $124 million, which represents an increase of $11.5 million, or 10.22%, over existing rates. The Steering Committee of Cities Served by Oncor has intervened in the case to review the filing. If necessary, a hearing will be held in September 2015.

Railroad Commission of Texas

Leadership Changes. At the Commission’s June 9 Open Meeting, Commissioner David Porter was unanimously elected Chairman of the Railroad Commission. Chairman Porter has served as a commissioner since 2011 and is responsible for creating the Eagle Ford Shale Task Force, a group comprised of local community leaders, elected officials, industry representatives, environmental groups, and landowners with the goal of working together on how to best develop the Eagle Ford Shale and promote local and statewide economic benefits. Porter also founded the Texas Natural Gas Initiative in 2013, which brings stakeholders together to discuss business opportunities, challenges, and regulatory barriers and solutions for natural gas conversion and infrastructure. Also recently announced is the retirement of the Commission’s executive director Milton Rister. After overseeing the agency’s day-to-day operations for the past three years, Rister’s last day with the Commission will be August 31. His replacement has not been determined. The Commission is undergoing a nationwide search for a new executive director, which Chairman Porter explained, “will focus on a candidate with strong leadership capabilities and technical expertise.”

Commission Response to Earthquakes. In June 2015, the Commission for the first time exercised its authority under its recently adopted seismic rules. The rules, adopted in response to the frequent earthquakes in North Texas over the last several years, allow the Commission to require companies to conduct seismic tests before applying for permits and to shut down wells linked to earthquakes. On May 7, North Texas experienced its largest earthquake yet, a 4.0 magnitude quake in Johnson County. Shortly thereafter, the Commission directed five disposal wells, located within 100 square miles of the temblor’s epicenter and operated by four different companies, to temporarily shut down for testing. The Commission’s seismologist, hired in March 2014, announced that the testing found no conclusive evidence that the disposal wells caused the earthquake, and the wells were authorized to restart operations. Commission spokesman Rich Parsons said there are no immediate plans for more testing but that Southern Methodist University continues to monitor seismic activity in the area. There is bound to be more news forthcoming about earthquakes in Texas, as HB 2, recently passed by the legislature, appropriates over $4.7 million for UT Austin to purchase and deploy seismic equipment throughout the state. This money will buy and install 22 permanent and 36 portable seismograph stations, as well as pay for the analysis of the data acquired from the stations. The Bureau of Economic Geology at UT Austin will operate and maintain the equipment and conduct the study, and will collaborate with Texas A&M University to model reservoir behavior exhibited by systems of wells in the vicinity of faults. A report of findings is to be made to the governor by December 1, 2016.

GUD 10432 - Statement of Intent Filed by CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas to Increase the Rates in the Unincorporated Areas of the Texas Coast Division. On March 27, 2015, CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas, filed a statement of intent with the Railroad Commission to increase its rates on a division-wide basis in its Texas Coast Division by about $6.77 million. This represents an increase of about 4.5% including gas costs, or 11.3% excluding gas costs, and would increase the average residential bill by about $1.19 per month. CenterPoint’s last full rate case in the Texas Coast Division was in 2008 when it proposed a revenue requirement increase of about $49 million, or 6.35%, and received an increase of 2.62%. The Gulf Coast Coalition of Cities and the Texas Coast Utilities Coalition of Cities intervened in this proceeding. After extensive discovery, the parties reached a settlement in principle. On June 30, the Hearings Examiner abated the case to allow the parties to finalize settlement documents.

Atmos Mid-Tex Division 2014 and 2015 Rate Review Mechanisms. The Proposal for Decision in the 2014 Atmos Energy Corporation Mid-Tex Division Rate Review Mechanism ("RRM") case was issued on April 29, 2015, over a year after the initial filing. While the 2014 RRM case was still pending, Atmos filed for its 2015 RRM increase in February 2015. Cities served by Atmos Mid-Tex have approved a settlement resolving both the 2014 and 2015 RRM filings. The RRM mechanism is an alternative to the automatic increases available to gas utilities under provisions of the Gas Utility Regulatory Act (known as “GRIP”). In 2015, the RRM mechanism saved ratepayers about $15 million, as compared to the rates that would have been implemented under the GRIP mechanism. New rates resulting from the settlement became effective June 1.

Agency Highlights is prepared by attorneys from the Firm’s different practice areas. If you have questions or need any additional information, please contact our Editor at editor@lglawfirm.com.