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A NEW WRINKLE IN PROCESSING LANDOWNER CCN DECERTIFICATION PETITIONS?

by David J. Klein and Maris M. Chambers

The one constant in life is change, and recent developments at the Public Utility Commission ("PUC") regarding petitions by landowners for decertification from a water and/or wastewater certificate of convenience and necessity ("CCN") call into question whether change is afoot.

CCNs are permits granted by the PUC (and previously, the Texas Commission on Environmental Quality), providing their holders with the exclusive right to provide retail water and/or wastewater service within a specific geographic area. However, CCNs are also subject to decertification. In addition to other means of decertification, Texas Water Code ("TWC") § 13.2451 entitles a landowner of real property of at least 25 acres, and located within certain enumerated counties, to petition the PUC to have its qualifying real property decertified from the boundaries of a CCN on an expedited, streamlined basis. A key fact issue considered by the PUC in responding to such petitions is whether the landowner is "not receiving water or sewer service" from the CCN holder.

Recently, four landowner decertification petitions filed by Clay Road 628 Development, LP ("Clay Road") have caught the attention of the regulated community and the Commissioners of the PUC alike. Specifically, discussion at the April 17, 2020 open meeting of the PUC indicates that there may be a change in the analysis of some of the factors weighed by the PUC in its consideration of these petitions for streamlined, expedited CCN release.

According to the filings at the PUC, Clay Road owns five contiguous tracts of land in Montgomery County, containing approximately 269 acres in total (the "Property"). Portions of the Property lie within the boundaries of water and wastewater CCNs held by four different utilities: UA Holdings 1994-5, LP ("UA"); Stanley Lake Municipal Utility District ("Stanley Lake MUD"); Simply Aquatics, Inc. ("Simply Aquatics"); and T & W Water Service Company ("T & W"). Clay Road's petitions request that the PUC remove its land from the CCNs of each of these four service providers, presumably to obtain service from another provider.

The PUC approved the first of Clay Road's four petitions in early February 2020, granting streamlined expedited release of that portion of the Property from UA's sewer CCN in Docket No. 50258.

Clay Road's remaining three petitions, those in Docket Nos. 50259, 50260, and 50261, were placed on the PUC's agenda for the open meeting held on April 17, 2020. At that meeting, prior to taking any action, Chairman DeAnn Walker discussed her position on those three petitions with Commissioners D'Andrea and Botkin. She expressed discomfort with granting any of the three petitions, citing concerns with their apparent intent to allow Clay Road to create an investor-owned utility to serve the Property following decertification, as opposed to using the existing capable service providers. Chairman Walker indicated that petitions of this sort conflict with the State's policy to encourage and promote the development and use of regional and area-wide water and wastewater systems. She also noted the low success rate of developer-owned utility companies.

Ultimately, Chairman Walker indicated she would vote to deny Clay Road's petition for streamlined expedited release from T & W's water CCN in Docket No. 50261. Because T & W owned a water well and treatment plant on the Property, along with water mains serving an adjacent

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Lloyd Gosselink Rochelle & Townsend, P.C., provides legal services and specialized assistance in the areas of municipal, environmental, regulatory, administrative and utility law, litigation and transactions, and labor and employment law, as well as legislative and other state government relations services.

Based in Austin, the Firm's attorneys represent clients before major utility and environmental agencies, in arbitration proceedings, in all levels of state and federal courts, and before the Legislature. The Firm's clients include private businesses, individuals, associations, municipalities, and other political subdivisions.

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.*

FIRM NEWS

Sheila Gladstone will be a Panelist/Moderator on "Concealed Carry in the Workplace" at the Texas Telephone Association Meeting on August 17 in San Antonio.

Sheila Gladstone will be presenting "COVID-19 Legal Issues" at the Correctional Management Institute of Texas, Chiefs Leadership Conference on September 28 in Galveston.

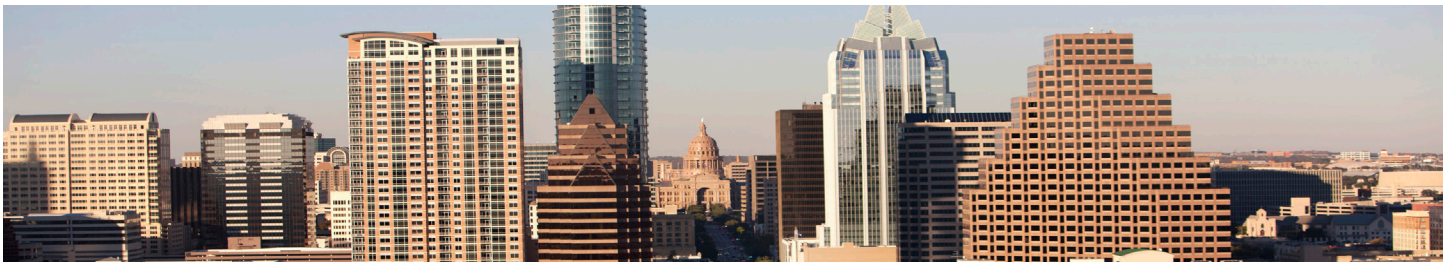
Sheila Gladstone will be discussing "Politics in the Workplace and on Social Media" for the Austin Human Resource Management Association Conference on September 16 virtually.

Sheila Gladstone will be discussing "Religion in the Workplace for the Texas City Attorneys Association on October 15 virtually.

Lloyd Gosselink will be launching *Listen In With Lloyd Gosselink: a Texas Law Firm Podcast*. This podcast aims to inform listeners about interesting developments in our Firm's practice areas. Our expert attorneys will share their knowledge on various topics and trends in a relaxed and conversational setting.

Lloyd Gosselink collected fans and donations for the Austin Family Eldercare Fan Drive again this year. The summer Fan Drive provides new box and oscillating fans to seniors, adults with disabilities, and families with children in Central Texas. These fans offer heat relief from dangerous Texas Summer heat, a service that is critical to vulnerable clients.

MUNICIPAL CORNER



Without evidence in the statutes of the Legislature's clear and unmistakable intent to preempt all local ordinances affecting dams, a court would likely conclude that a local regulation will be invalid only to the extent inconsistent with a state regulation. Tex. Att'y Gen. Op. KP-0309 (2020).

The Honorable Lyle Larson, Chair of the Committee on Natural Resources for the Texas House of Representatives ("Chair"), requested an opinion by the Attorney General ("AG") as to whether state or federal law preempts the application of municipal development ordinances to a water control and improvement district's construction and maintenance of dams within the municipality's city limits or extraterritorial jurisdiction ("ETJ"). Providing further context, the Chair explained that the identified water control and improvement district ("District") is responsible for the operation and maintenance of 23 flood control structures within its jurisdiction, which have evolved from rural, low-hazard dams at the time of construction to now having high-hazard risk classifications in what has become rapidly-developing areas.

The facts giving rise to the issue here stem from a District project to modernize one of its dams. At the urging of the applicable municipality ("City"), the District submitted a development plan application for its dam project with the intention of providing clarity and answering any questions from the City's staff. Notably, the District maintained that the City does not actually have the authority to require a site plan or permit for their project, as those activities are specifically regulated by the Texas Commission on Environmental Quality ("TCEQ"). Conversely, the City maintained it has the authority to require the District to comply with City development regulations to the extent they do not unreasonably interfere with the District's project. The Chair, on behalf of the District, therefore requests clarification as to whether the District's specific dam building activities, including "designing, constructing, reconstructing, modifying, enlarging, rehabilitating, altering, or repairing of a dam" are preemptively controlled by state and federal authorities or whether the District must also comply with the City's development regulations.

The Chair's question requires addressing the effect of potentially differing rules from separate governing bodies that have overlapping jurisdiction and authority. The AG explains the Texas Constitution restricts local authority in this instance wherein it provides that a municipal ordinance may not conflict with state law. See Tex. Const. art. XI, § 5(a)("[N]o… ordinance passed under [a city] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State."). The AG further notes a home-rule municipality acquires its powers from the Texas Constitution and possesses the "full power of local self-government," and looks to state law not for grants of power but only for limitations. *Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 531 (Tex. 2016). The Texas Supreme Court has provided further explanation, as follows:

> "[a] statutory limitation of local laws may be express or implied, but the Legislature's intent to impose the limitation must appear with unmistakable clarity…Absent an express limitation, if the general law and local regulation can coexist peacefully without stepping on each other's toes, both will be given effect or the latter will be invalid only to the extent of any inconsistency." *City of Laredo v. Laredo Merchs. Ass'n*, 550 S.W.3d 586, 593 (Tex. 2018).

A preemption analysis between the City's development regulations and state law on dams would therefore begin with determining whether the state law limits the City's authority "with unmistakable clarity." If it does, a court would then determine whether the City ordinance at issue falls within the scope of the state law regulatory framework on dams. As the applicable state agency, the TCEQ regulatory framework would preempt the City's ordinance if it came within the TCEQ's ambit by attempting to regulate the same activity. Separately, if the court finds no clear and unmistakable legislative intent for state preemption of local laws on dams, then the court would determine the extent to which the state and local provisions can coexist.

What considerations would the court take into account to make such a determination? A court's objective in construing a statute is to give effect to the legislative intent, and the court begins its analysis by focusing on the plain language of the text in light of the statute as a whole. Texas Water Code § 5.013(a)(5) gives the TCEQ "general jurisdiction over…the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams." Pursuant to this legislatively-granted authority, the TCEQ has promulgated rules on dams, including a requirement for owners of certain existing dams

slated for reconstruction, modification, enlargement, rehabilitation, alteration, or repair to "submit final construction plans and specifications, which are sealed, signed, and dated by a professional engineer, to the executive director [of the Commission] for review and approval before commencing" with the project. *Id*.

While state law does therefore explicitly regulate dams, it is unlikely this language rises to the level of restricting local authority. The pertinent provisions in chapters 5 and 12 of the Water Code contain no express limitations on the local regulation of dams. This contrasts with instances of statutes in other contexts where the Legislature has made unmistakably clear its intent to preempt local ordinances; for example, the Texas Solid Waste Disposal Act states, "[a] local government or other political subdivision may not adopt" certain ordinances, which evidences a "clear" intent to preempt local law. *See*, e.g., *Laredo Merchs. Ass'n*, 550 S.W.3d at 593.

Drawing on this comparison, the AG opines that without evidence in the statutes of the Legislature's clear and unmistakable intent to preempt all local ordinances affecting dams, a court would likely conclude that the local regulation will be invalid only to the extent inconsistent with a state regulation.

This opinion serves as a helpful reminder to municipalities that they generally have full governmental authority within their jurisdictions. State law may restrict such authority when doing so with unmistakable clarity, but even then municipal promulgations will likely only be invalid to the extent they are inconsistent with state law.

"Municipal Corner" *is prepared by Reid Barnes. Reid is an Associate in the Firm's Energy and Utility Practice Group. If you would like additional information or have questions related to these or other matters, please contact Reid at 512.322.5811 or rbarnes@lglawfirm.com.*

U.S. SUPREME COURT REACHES DECISION ON NPDES PERMITTING IN *MAUI* CASE

by Nathan E. Vassar

It isn't often that the U.S. Supreme Court addresses water quality permitting, but earlier this spring the High Court issued a ruling on the heavily followed case, *County of Maui v. Hawaii Wildlife Fund, et al*. The ruling effectively extends the scope of the NPDES program (most often delegated to state environmental agencies as is the case in Texas) and creates a new seven-factor test to determine when a discharge permit is needed.

In a 6-3 decision, the Court overruled the 9th Circuit's test of "fairly traceable," (which effectively asked if one can connect-the-dots between a discharge and its ultimate reach to a jurisdictional water body) but also poured out the County of Maui argument that was tied to the intervening groundwater in place (thus, not a "point source" discharge to waters of the United States, but to exempted groundwater). Instead, the Court created a "direct discharge or functional equivalent of a direct discharge" test, as further described below.

The test makes clear that the "conduit theory" of discharge permitting is alive and well, and neither the groundwater exemption to jurisdictional waters nor the existence of the UIC regulatory program are sufficient to stop NPDES coverage if there is a "functional equivalent" to a point-source discharge. An intermittent stop (or step, such as groundwater) in the transit from an outfall/point source to jurisdictional waters doesn't mean that the chain is broken and an NPDES permit is unnecessary – rather, the new test of "functional

equivalent" of a direct discharge asks how similar an actual discharge is to that of a non-disputable direct discharge (looking at both time and distance as effluent migrates to jurisdictional waters, as well as the "material through which the pollutant travels", the extent of dilution, among other factors).

Below are the new seven "functional equivalent" factors established by the Court to be considered in determining the need for a discharge permit:

1. Time (most important, along with distance, in most cases);
2. Distance (most important, along with time, in most cases);
3. Nature of the material through which the pollutant travels;
4. Extent to which the pollutant is diluted or chemically changed as it travels;
5. Amount of pollutant entering the navigable waters relative to the amount of the pollutant that leaves the point source;
6. Manner by or area in which the pollutant enters the navigable waters; and
7. Degree to which the pollution (at that point) has maintained its specific identity.

The Opinion analyzed the meaning of the word "from" ("from a point source") and concluded that Congress did not intend a "fairly traceable" standard as the 9th Circuit broadly stated, but it also isn't as bright-line a rule as Maui argued (Maui's position was that the intervening groundwater between Maui's discharge and the Pacific Ocean meant no discharge permit because the "discharge" was "from" the groundwater, an intervening medium between Maui's infrastructure and the Pacific Ocean). Breyer's Opinion noted the reality that a 9th Circuit standard (the "fairly traceable" approach) could have the result of NPDES permitting on discharges that take years to reach navigable waters ("[t]o interpret the word 'from' in this literal way [referring to the 9th Circuit test] would require a permit in surprising, even bizarre, circumstances, such as for pollutants carried to navigable waters on a bird's feathers or, to mention more mundane instances, the 100-year migration of pollutants through 250 miles of groundwater to a river").

As for the application, although Justice Alito's dissenting opinion argues that the new test will lead to arbitrary and inconsistent application, the majority opinion addresses this by stating that EPA has managed to keep its NPDES program in check over time, and the judicial branch can address any overreach on NPDES permitting at the penalty phase upon expansive enforcement. In addition, Justice Alito's dissent may also strike a chord with some in the wastewater industry (as well as many with UIC authorizations) as he states, "Entities like water treatment authorities that need to know whether they must get a permit are left to guess how this nebulous standard will be applied. Regulators are given the discretion, at least in the first instance, to make of this standard what they will." As a practical matter, this may not significantly impact Texas POTWs, but it could impact those operations that deep-well inject wastes, particularly if there is a known surface water-groundwater connection in the vicinity of the injections.

Nathan Vassar is a Principal in the Firm's Water Practice Group. Nathan assists communities and utilities with environmental permitting and enforcement matters with both state and federal regulators, with a focus on water quality-related enforcement. His involvement includes negotiating settlement terms and counseling clients with respect to compliance strategies. If you would like additional information or have questions related to this article or other matters, please contact Nathan at 512.322.5867 or nvassar@lglawfirm.com.

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subdivision—and despite the fact that Clay Road is not a customer of T & W—the PUC determined that Clay Road could not in good faith seek decertification on the basis that it was "not receiving" water service. Further, because the remaining two petitions were so closely related to that in Docket No. 50261, Chairman Walker suggested that they be remanded to Docket Management so that Clay Road could be ordered to file a statement informing the Commission whether it intended to withdraw, amend, or continue the processing of its petitions in Docket Nos. 50259 and 50260. Commissioners D'Andrea and Botkin agreed with Chairman Walker's assessment, and the Commissioners voted to deny decertification from T & W's CCN and remand the Simply Aquatics and Stanley Lake MUD petitions to Docket Management.

Thus, the decision in the T & W Docket indicates that a new question has arisen as to how the PUC will interpret the meaning of "not receiving water or sewer service" under TWC § 13.2541. Although this decision suggests a sea change in evaluating these petitions for expedited, streamlined release from a CCN, it is not yet final and non-appealable. Rather, in May, Clay Road filed a Motion for Rehearing in the T & W Docket. It is anticipated that the PUC will take action on the Motion for Rehearing in August, and we will provide you with an update on the outcome of that proceeding in a future issue of *The Lone Star Current*.

David Klein is a Principal and Maris Chambers is an Associate in the Firm's Water and Districts Practice Groups. If you would like additional information on CCNs or have questions related to this article, please contact David at 512.322.5818 or dklein@lglawfirm.com, or Maris at 512.322.5804 or mchambers@lglawfirm.com.

ASK SHEILA

Dear Sheila,

We are considering a temporary 20 percent reduction in hours and wages for many of our employees, because of current pandemic-related economic conditions. Will these employees be eligible for unemployment?

Yours truly, Tough Times

Dear Tough Times,

Probably not. In order to be eligible for partial unemployment benefits under Texas law, employees must meet the definition of partially unemployed in each work week. If they receive more income than the maximum for partial unemployment, they will not be eligible for benefits. To be considered "partially unemployed" by the Texas Workforce Commission, and thus eligible for partial benefits, you must reduce the wages enough to bring the employee below 125 percent of what the full benefit would be if they were fully unemployed.

For example, an employee whose full-time weekly wages are $800 would receive $420 per week if fully unemployed. 125% of $420 equals $525. So if you reduce the employee's wages to more than $525 per week, the employee will not be eligible for benefits, because the income is more than the minimum for partial unemployment. If you reduce this employee's wages by 20 percent, the wage would go from $800 to $640, which will be considered full-time employment by the TWC, and thus no benefits. In fact, you could go to 25 percent reduction and still be within the full-time range for unemployment purposes.

To figure out what weekly benefits an employee would receive if full-time unemployed, the TWC looks to reported wages the employee earned from any source during the four quarters preceding the current one (the "base period"). Go to the TWC's benefits calculator at https://apps.twc.state.tx.us/UBS/benefitsEstimator.do. Be aware, however, that the maximum benefits may be higher if the employee had a second or higher-paying job during the base period.

Also, if the employee is currently receiving other reported income, that amount will be combined with what you are paying to reach the 125% threshold. The employee commits fraud if they do not report all wages.

The CARES Act temporary federal unemployment benefit of a flat $600 per week will not come into play unless the employee is first eligible for Texas unemployment. If TWC awards even the minimal benefit, then the employee will receive the full $600, at least until the federal benefit is set to expire on July 31, 2020. It is possible that it will be extended by publication time.

Sincerely,
Sheila

"Ask Sheila" *is prepared by Sheila Gladstone, Chair of the Firm's Employment Law Practice Group. If you would like additional information or have questions related to this article or other employment matters, please contact Sheila at 512.322.5863 or sgladstone@lglawfirm.com.*

IN THE COURTS

Water Cases

Bush v. Lone Oak Club, LLC, 18-0264, 2020 WL 1966931 (Tex. Apr. 24, 2020).

This case is a title dispute between the Commissioner of the General Land Office and the Lone Oak Club—a private landowner—over portions of the submerged bed of Lone Oak Bayou. Members of the public hunt and fish in the shallow water of Lone Oak Bayou. The Lone Oak Club asserts that it owns the bed of a portion of the bayou, and that people trespass when they make contact with the bayou bed.

The Club's predecessor owners purchased 160 acres of land, including a portion of the bayou's bed, from the State. The Legislature later passed the Small Bill, which validated such conveyances that included the "the beds… of watercourses or navigable streams." The Commissioner claims that the Small Bill does not validate a landowner's title to the bayou's submerged bed, because "navigable streams" refers only to those portions

of the streambed not subject to ebb and flow of the tide, and that the Lone Oak Bayou is not a navigable stream within the scope of a statutory conveyance.

In its opinion, the Texas Supreme Court contemplated the Small Bill's effect on validating the conveyance of certain state-owned submerged streambeds. Citing the Navigable Stream Statute's definition of navigable streams, the Court clarified the definition of "navigable streams" within the meaning of the Small Bill as including portions of the stream both above and below the tide line, and held that the Small Bill expressly authorized the State to convey those beds to private owners.

In determining whether Lone Star Bayou is a navigable stream, the Court concluded that there are factual disputes that need to be resolved regarding whether the bayou is a navigable stream within the scope of statutory conveyance, and remanded the case for further proceedings.

Pape Partners, Ltd. v. DRR Family Properties LP, 10-17-00180-CV, 2020 WL 499639 (Tex. App.—Waco Jan. 29, 2020, no pet.).

The Waco Court of Appeals recently considered the nature of the Texas Commission on Environmental Quality's ("TCEQ") jurisdiction, ultimately holding that the Legislature has vested the TCEQ with the exclusive jurisdiction to determine surface water rights, and the parties must exhaust their administrative remedies before resorting to the courts.

Pape Partners, Ltd. purchased a tract of land, which included irrigation (surface) water rights. When the Papes tried to record their purchase of the water rights with TCEQ in 2015, TCEQ notified DRR Family Properties LP ("DRR"), and ultimately concluded that DRR owned a portion of the surface water rights. Rather than filing administrative appeal, Pape Partners moved to reverse TCEQ's decision by filing suit in District Court. The District Court granted DRR's motion to dismiss for lack of subject matter jurisdiction, and Pape appealed.

On appeal, the Papes asserted that the trial court erred in granting DRR's motion, because 1) the question of property ownership is within the sole jurisdiction of the courts, 2) the legislature did not vest TCEQ with exclusive jurisdiction over the Papes' claims, and 3) the ruling violates the separation of powers in the Texas Constitution. The Papes cited four opinions to establish that water rights ownership disputes are excepted from TCEQ's jurisdiction under Tex. Water Code §5.013(a)(1).

The Waco Court of Appeals held that 1) the district court properly dismissed the case for lack of subject matter jurisdiction, because the Tex. Water Code Ann. §26.023 implies TCEQ's exclusive jurisdiction over the subject, and 2) the legislative scheme giving TCEQ jurisdiction did not violate separation of powers, because art. 16 §59 of the Texas Constitution specifically establishes the authority given to TCEQ.

Litigation Cases

SCOTX (sort of) takes up derivative sovereign immunity for private lottery contractor in Nettles v. GTECH Corp., No. 17-1010, 2020 WL 3116609 (Tex. June 12, 2020).

GTECH contracted to provide instant-ticket manufacturing and other services to the Texas Lottery Commission. Several ticket-purchasers filed two suits against GTECH alleging the instructions on a scratch-off lottery ticket were misleading, causing them to believe they had winning tickets when they did not. Plaintiffs brought claims for fraud, fraud by nondisclosure, aiding and abetting the Commission's fraud, tortious interference with the plaintiffs' contracts with the Texas Lottery, and conspiracy with the Commission.

GTECH asserted in its plea to the jurisdiction in each case that derivative sovereign immunity barred all the claims against it because the suits were premised on alleged conduct directed and controlled by the Commission, an entity with sovereign immunity. One trial court granted GTECH's plea to the jurisdiction, but the other court denied the plea. On appeal, the Dallas Court of Appeals affirmed the trial court's grant of the plea to the jurisdiction and the Austin Court of Appeals affirmed in part and reversed in part the trial court's denial of the plea.

The Supreme Court held that as to the fraud claims, GTECH would not qualify for derivative sovereign immunity "even if we recognized that doctrine," reasoning the Commission did not control GTECH's choices in writing the game instructions (thereby affirming the Austin Court of Appeals' judgment holding that GTECH is not entitled to immunity from the fraud claims, and reversing the portion of the Dallas Court of Appeals' judgment holding otherwise). Further, the Court held that GTECH is entitled to immunity from the allegations of aiding and abetting the Commission's fraud and of conspiracy with the Commission.

The Court reasoned that "because the plaintiffs necessarily must override the substance of the Commission's underlying decisions in order to impose derivative liability on GTECH, these allegations implicate the purposes of sovereign immunity" (thereby affirming the Dallas Court of Appeals' judgment in part as to these allegations). The Court did not reach the question of whether Texas should recognize the doctrine of derivative sovereign immunity for contractors or what standard should be adopted for determining the scope of that immunity. Because GTECH exercised discretion in choosing the game instructions, it would not be entitled to derivative immunity from fraud claims based on those instructions.

SCOTX rules Arbitration clauses enforceable against local governmental entities in San Antonio River Auth. v. Austin Bridge & Rd., L.P., 581 S.W.3d 245 (Tex. App. 2017), aff'd, No. 17-0905, 2020 WL 2097347 (Tex. May 1, 2020).

In *San Antonio River Authority v. Austin Bridge & Road, L.P.* and

Hayward Baker, Inc., a divided SCOTX held that local governmental entities that have agreed to arbitration clauses can be required to arbitrate. The San Antonio River Authority ("SARA") hired Austin Bridge & Road, L.P. to help make repairs on the Medina Lake Dam. The parties singed a written agreement including a provision requiring disputes arising under the contract to be decided by binding arbitration.

When costs of the project exceeded initial expectations, a dispute arose as to who was obligated to pay the additional costs and Austin Bridge invoked the contract's arbitration provisions. SARA sought dismissal of the claims, citing governmental immunity in a plea to the jurisdiction submitted to the arbitrator. After the arbitrator denied SARA's motion, SARA filed suit in district court to enjoin the arbitration and sought a determination of whether governmental immunity barred the claims against it.

The Supreme Court took up three questions: (1) whether the agreement to arbitrate is enforceable, (2) if so, whether the courts must decide matters of governmental immunity, notwithstanding the agreement of the parties, and (3) whether immunity bars the breach-of-contract claim against SARA. Citing local governmental entities' authority to enter into contracts and waive immunity to suit under Chapter 271 of the Local Government Code, the Court reasoned that Chapter 271 authorized SARA to agree to arbitrate disputes arising from its construction contract with Austin Bridge.

Because SARA properly entered into a contract under Chapter 271 that contained an enforceable arbitration provision, it waived its immunity to suit and could not later assert that it did not have the power to bind itself to resolving a dispute under the contract through arbitration. However, the Court emphasized that a court must decide a local government's immunity from suit and liability, notwithstanding a contractual agreement to the contrary. Therefore, SARA could not agree to permit an arbitrator to decide questions of governmental immunity. Governmental entities should therefore be aware when contracting under Chapter 271 with third parties that the entity may be bound by an arbitration provision should there be a dispute under the contract.

Air and Waste Cases

States and Interest Groups Challenge EPA's COVID-19 Enforcement Discretion Guidance: Natural Resources Defense Council, et al. v. EPA, et al., No. 1:20-cv-03058-CM (S.D. N.Y, pet. filed Apr. 16, 2020) and New York, et al. v. EPA, et al., No. 1:20-cv-03714 (S.D. N.Y., pet. Filed May 13, 2020.

In the April 2020 edition of *The Lone Star Current*, we reported on both the TCEQ and EPA COVID-19 enforcement discretion guidance, which allows regulated entities to seek enforcement discretion from the respective agencies for non-compliance issues caused by COVID-19. EPA released its guidance document on March 26, 2020 and recently, 15 public interest groups and nine states (New York, California, Illinois, Maryland, Michigan, Minnesota, Oregon, Vermont, and Virginia) have filed lawsuits against the agency, all claiming that the guidance promotes non-compliance. The lawsuits also demand that the EPA immediately release all enforcement discretion requests to the public.

The EPA recently responded to the lawsuit brought by the collective public interest groups, which is currently styled as *Natural Resources Defense Council, et al. v. EPA, et al*. and pending in the U.S. District Court for the Southern District of New York. In its response, the EPA argues that the plaintiffs do not challenge the actual enforcement discretion policy, but have instead wrongly demanded that the agency undertake a multi-state rulemaking imposing an enforceable requirement that all regulated entities unable to comply with EPA's monitoring and reporting requirements because of COVID-19 file a public justification for their reasons. The EPA points out in its response that such a disclosure is not required by any existing statute or regulation. The EPA also responded to the plaintiffs' allegations that the enforcement discretion policy encourages non-compliance and emphasized that the agency is afforded deference in determining its own priorities, especially those related to enforcement discretion. The EPA must also defend against the states' lawsuit, which is also currently pending in the same court, but styled *New York, et al. v. EPA, et al*.

The EPA has not published a list of entities requesting enforcement discretion under the new policy at this time. Under the TCEQ's similar enforcement discretion guidance, TCEQ recently published a spreadsheet showing the status of requests received by TCEQ for

enforcement discretion, but does not list the requesting entity.

U.S. Supreme Court Holds Parties Cannot Use State Law to Expand EPA Superfund Remedies: Atlantic Richfield Co. v. Christian, No. 17-1498 (U.S. 2020).

In a recent U.S. Supreme Court case involving cleanup liability under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), *Atlantic Richfield Co. v. Christian*, the Court held that: (1) CERCLA "does not deprive state courts of jurisdiction over state-law claims related to Superfund sites," and (2) property owners who are potentially responsible parties under CERCLA must obtain EPA permission "before undertaking remedial activities that diverge from the remedy selected for the site by EPA."

The Supreme Court clarified several existing CERCLA issues in its Opinion. First, without EPA's approval, a Potentially Responsible Party ("PRP") cannot use state law to force another PRP to conduct remediation beyond what EPA has selected as an appropriate remedy. Second, CERCLA does not bar an impacted party from bringing suit for damages under state law, so long as that party does not also seek damages for remedial actions beyond what EPA has directed. Third, a party's PRP status and its ultimate CERCLA liability are two distinct concepts, and "even where a party may not be required to share in the costs of remediation, its status as a PRP has implications." Fourth, the term "facility" under CERCLA should be interpreted broadly and may extend beyond property lines to wherever contamination is located.

Fifth Circuit Court Stays Lawsuit Regarding Texas' State Implementation Plan: Sierra Club, et al. v. EPA, et al., No. 20-60303 (5th Cir., pet. filed Apr. 16, 2020).

The U.S. Court of Appeals for the Fifth Circuit recently stayed a lawsuit, *Sierra Club v. EPA*, pursued by environmental groups concerning the EPA's decision to approve revisions to Texas' State Implementation Plan ("SIP") with respect to ozone standards. The stay allows the D.C. Circuit Court to decide whether it is the proper venue over the Fifth Circuit for this suit, as a similar lawsuit was filed in the D.C. Circuit Court, as well. The petitioners (Sierra Club) brought suit in both court systems, but argued that venue belongs in the D.C. Circuit Court because the EPA decision at issue concerns federal air standards. EPA and the State of Texas argue the lawsuit is only of regional significance because the suit pertains to EPA actions on plans for Houston and Dallas specifically, and therefore the case belongs in the Fifth Circuit.

On April 6, 2020, the EPA approved the Texas SIP revisions, determining Houston and Dallas had sufficiently demonstrated that they met the resignation criteria for ozone NAAQS. The approval went into effect May 6, 2020.

Utilities Cases

Supreme Court to Review ERCOT's Immunity from Lawsuits.
The Texas Supreme Court has granted the review of a lower court's ruling that the Electric Reliability Council of Texas (ERCOT)—the state's power grid manager—is entitled to sovereign immunity. Sovereign immunity is the legal principle that protects governments and agencies from lawsuits.

The test of ERCOT's sovereign immunity is led by an electricity generator, Panda Power. The Dallas company sued ERCOT four years ago, alleging that ERCOT manipulated the state's power needs to encourage new power plant construction and to relieve the political pressure building in Texas at that time. Following ERCOT's projections that Texas desperately needed more generation, Panda invested $2.2 billion to build three power plants, including one in Sherman and two in Temple. Panda argues that ERCOT reinforced its message in press releases and presentations, which Panda asserts were used by rating agencies to provide favorable bond ratings for power companies taking on debt to build generation facilities. The Public Utility Commission even thanked Panda Power in 2012 for helping to relieve pressure on the Texas grid.

However, by the next year, Texas had more than enough capacity, with new generation coming online, including wind projects. The capacity being more adequate than ERCOT projected resulted in lower power prices than Panda expected.

Panda sued ERCOT in 2016, alleging fraud, negligent misrepresentation and breach of fiduciary duty, seeking $2.7 billion in damages. Panda argues that ERCOT did not correct errors in its generation forecast because it wanted to encourage the construction of power plants.

ERCOT halted the case three years ago when it filed an emergency petition with the appeals court in Dallas asserting that it was protected from lawsuits by sovereign immunity. *Elec. Reliability Council of Tex., Inc. v. Panda Power Generation Infrastructure Fund, LLC*, 552 S.W.3d 297 (Tex. App.—Dallas 2018, pet. granted). The appeals court sided with ERCOT. ERCOT argues that it needs immunity from lawsuits because it is funded by fees paid by the power industry. Therefore, a verdict ordering ERCOT to pay damages would result in spreading the costs among providers, which ultimately will be passed on to customers in the form of higher electricity prices.

The Supreme Court has not yet set a date for a hearing, but we will provide updates as this case progresses.

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AGENCY HIGHLIGHTS

Environmental Protection Agency ("EPA")

EPA Shifts Policy on Construction Prior to Issuance of an Air Permit and TCEQ Follows Suit. On March 25, 2020, EPA proposed new guidance on interpreting the Clean Air Act's ("CAA") construction regulations. In a change from the 40-year understanding of the regulation, the EPA clarified that the only construction prohibited prior to issuance of an air permit is construction on the emitting unit itself. If adopted by state permitting authorities, this guidance would provide permittees with more flexibility to perform construction activities before receiving a permit.

The EPA has described the new guidance as a "revised interpretation" of the original CAA statute. Prior to the release of this guidance, the EPA interpreted the CAA to prohibit the construction of non-emitting sources, such as footings, foundations, storage structures, and retaining walls until the emitting units were permitted. According to the EPA, this interpretation tends to preclude source owners/operators from engaging in a wide range of preparatory activities they might otherwise desire to undertake before obtaining an NSR permit.

In response to the new EPA guidance, the TCEQ submitted a request to the EPA to modify its State Implementation Plan ("SIP") in order to allow minor source applicants to commence construction before issuance of a final permit. This SIP change would allow project developers to begin construction after the TCEQ Executive Director completes a technical review and has issued a draft permit for public comment.

EPA Proposes Rule to Formalize the Guidance Document Process. On May 22, the EPA published a proposed rule to revise the agency's practice of organizing, evaluating, and issuing guidance documents subject to an Executive Order titled, Promoting the Rule of Law Through Improved Agency Guidance Documents. The proposed rule seeks to formalize how EPA will manage the issuance of guidance documents subject to the requirements outlined in the Executive Order. The purpose of the rule is to ensure EPA guidance documents:

- Are developed with appropriate review;
- Are accessible and transparent to the public;
- Are subject to public participation;
- Meet standards established for guidance documents and "significant guidance
- documents"; and
- Contain procedures allowing public petition to modify or withdraw an active document.

In order to meet this stated purpose, the rulemaking lays out internal EPA policies and procedures for the issuance of future guidance documents pursuant to the directives in the related Executive Order (E.O. 13891), including the following:

- Include the term "guidance" and identify the component office issuing the document;
- Provide the title of the guidance and the document identification dumber, along with the date of issuance;
- Identify the general activities to which and the persons to whom the document applies, including a summary of the subject matter covered in the guidance document;
- Identify the citation to the statutory provision or regulation to which the guidance document applies;
- If the guidance modifies or replaces a previous guidance document, identify the previous document; and
- Include a disclaimer that the guidance document does not have the force and effect of law.

The comment period closed on June 22, 2020.

Environmentalists and Industry Groups Battle Over EPA Particulate Matter Limits. On April 14, the EPA proposed a rulemaking related to National Ambient Air Quality Standards ("NAAQS") for particulate matter limits, including both the PM10 and PM2.5 standards. Specifically, EPA is proposing to retain the particulate limits at existing levels.

On May 20, 2020, the EPA held a virtual public stakeholder meeting on the proposed rulemaking and both environmental and industry groups raised issues and competing claims. Environmental Groups advocated for stricter air quality limits, citing to studies by the Harvard School of Public Health linking adverse health outcomes to prolonged exposure to particulates. Opposing industry groups warned of severe economic damage if the limits are tightened.

The comment period closed on June 29,

2020 for the proposed rulemaking.

EPA Plans to Add New Chemical to Air Pollutant List. The EPA has agreed to grant rulemaking petitions dating back to 2010, seeking to add a commonly used degreaser to the list of regulated hazardous air pollutants. The rulemaking petitions seek to add 1-bromopropane to the list of regulated pollutants, which will trigger further requirements under the CAA to set emission limits for the chemical. In granting the rulemaking petitions, the EPA indicated that it would issue a rulemaking to formally add 1-bromopropane to the list.

The chemical is most often used for degreasing metal parts, increasing adhesive effectiveness, and removing stains from clothes, and is a key ingredient in mold killers. The latest Toxic Release Inventory reported that 1-bromopropane emissions totaled 746,562 pounds. Concurrent with the rulemaking, the EPA is expected to release general information on the potential health risks associated with the substance.

Please refer to future editions of *The Lone Star Current* to learn about EPA's eventual rulemaking on this issue and the ensuing notice and comment period.

Texas Commission on Environmental Quality ("TCEQ")

Update on TCEQ Petroleum Storage Tank Rules. The TCEQ's Petroleum Storage Tank rules that became effective in May 2018 included different timelines for compliance. Some of these rules become enforceable after January 1, 2021, so facilities should review these rules and verify compliance before this deadline. TCEQ adopted rules incorporating changes from EPA's 2015 revisions to the federal underground storage tank ("UST") regulations. The TCEQ rules are codified in Title 30, Texas Administrative Code, Chapter 334. Among others, the following requirements go into effect on January 1, 2021:

- Annually test release detection equipment;
- Perform periodic testing and inspection of spill prevention equipment and containment sumps used for interstitial monitoring (the frequency depends on the equipment type);
- Perform walk-through inspections of spill prevention equipment (spill buckets) and release detection equipment every 30 days;
- Complete annual walk-through inspections for all containment sumps regardless of installation date; and
- Conduct annual walk-through inspections of handheld release detection equipment, such as tank gauge sticks or groundwater bailers (if applicable).

TCEQ Adopts Changes to 30 Texas Administrative Code (TAC) Chapters 305 and 335, concerning waste management regulations. On May 20, the TCEQ adopted amendments and repealed certain sections of Title 30, Texas Administrative Code Chapter 335 regarding Consolidated Permits, and adopted new and amended sections in 30 TAC 335 regarding Industrial Solid Waste ("MSW") and Municipal Hazardous Waste. The adopted rulemaking revises state industrial solid waste and hazardous waste management regulations to maintain equivalency with the Resource Conservation and Recovery Act revisions promulgated by the EPA, and implements changes required by statute.

More specifically, the adopted amendments increase the MSW application fee from $150 to $2,050. The increase would only apply to new applications, not those already submitted, and applies to new applications and amendment, but does not include modifications. In addition, the rulemaking requires the TCEQ to perform a "site assessment" before issuing a MSW permit. Next, the rulemaking excludes gasification and pyrolysis from regulation as an MSW facility, but requires a showing that the product is valuable. And finally, the rulemaking repeals Chapter 330, Subchapter F, Analytical Quality Assurance and Quality Control. The TCEQ found the chapter to be obsolete as a result of the Quadrennial Rules Review, which found that the rules "expired on January 1, 2009 and the agency uses other guidance documents to implement data quality controls and sampling guidelines."

Public Utility Commission ("PUC")

Utilities File EECRFs. Pursuant to the PUC's energy efficiency rules, electric utilities made their annual Energy Efficiency Cost Recovery Factor ("EECRF") filings around June 1, 2020, to adjust their rates during the following year to reflect changes in program costs and performance bonuses. The EECRF filings also true-up any prior energy efficiency costs over- or under-collected, pursuant to the Public Utility Regulatory Act ("PURA") and PUC rules. Because EECRF proceedings are limited in scope and review, they proceed on an expedited schedule.

For 2021, AEP Texas, Inc. ("AEP Texas") is seeking to adjust its EECRF to collect $58,223,059 (Docket No. 50892); CenterPoint Energy Houston, LLC ("CenterPoint") is seeking to collect $49,696,013(Docket No. 50908); Texas-New Mexico Power Company ("TNMP") is seeking to collect $5,921,913 (Docket No. 50894); and Oncor Electric Delivery Company, LLC ("Oncor") is seeking to collect $64,782,106 (Docket No. 50886).

As in past years, City groups intervened in these EECRF proceedings to review the utilities' demand and energy goals, program incentive costs, evaluation, management, and verification expenses, and performance bonuses. City groups are still reviewing the applications and will propose adjustments in testimony. In each EECRF proceeding, parties have each recently filed their lists of issues to be addressed. Parties anticipate entering settlement discussions soon, as these proceedings often settle without going to hearing.

Distribution Cost Recovery Factors ("DCRF") Update. In early April 2020, electric utilities filed applications with PUC to amend their DCRFs. Utilities file a DCRF proceedings to update the DCRF Rider and Wholesale DCRF (WDCRF) Rider in their tariff to include additional distribution invested capital placed in service since their last full base rate case.

Oncor filed an Application to Amend its DCRF on April 3, 2020 (Docket No. 50734), seeking to increase Oncor's total distribution rates by $75,889,531 annually (an approximately $0.88 increase to the average residential customer's bill). The parties have filed settlement documents, resolving all issues in the docket. Under the settlement, Oncor reduced its request by $6 million to a total DCRF annual revenue requirement increase of $69.9 million. The agreed rates will be effective September 1, 2020.

TNMP filed its Application for Approval of a DCRF on April 6, 2020 (Docket No. 50731), seeking to increase distribution rates by $14,673,176 annually (an approximately $2.79 increase to the average residential customer's bill). Following negotiations, the parties have filed settlement documents resolving all issues in the docket. Under the agreement, TNMP reduced its request by $385,000 to a total DCRF annual revenue requirement of $14.3 million. Pending approval by the Commission at an open meeting, the agreed rates will be effective September 1, 2020.

AEP filed an Application to Amend its DCRF on April 3, 2020 (Docket No. 50733), seeking to increase distribution rates by $39.87 million annually (an approximately $1.83 increase to the average residential customer's bill). The parties have filed settlement documents, resolving all issues in the docket. Under the settlement, AEP reduced its request by $765,000 to a total DCRF annual revenue requirement of $39.1 million. The agreed rates will be effective September 1, 2020.

We will provide updates as these cases proceed.

PUC Begins to Wind Down COVID-19 Relief Measures. At the June 12, 2020 Open Meeting, the PUC announced its intent to begin winding down measures it adopted in March and April to address the unprecedented threat presented by the coronavirus disease 2019 ("COVID-19").

In March and April, the Commission established a moratorium on utilities disconnecting customers or assessing late-payment fees for six months, into September. The PUC also established the COVID-19 Electricity Relief Program (ERP), which is a mechanism that will protect Texas citizens impacted by the COVID 19 emergency, and provide certainty to the electric utilities and retail electric providers for recovery of unpaid utility bills. The ERP pays a substantial part of the power bills of residents who have lost their jobs as a result of the COVID-19 pandemic. Later, in April and May, the Commission altered the deadlines for some of its measures.

The deadline has passed for several of the protections put into place by the PUC. The prohibition on late-payment fees for residential customers of retail electric providers in areas open to customer choice ended on May 15, 2020. Additionally, the prohibition on disconnections for non-payment for customers of water utilities and non-ERCOT utilities ended on June 13, 2020.

The ERP's suspension of disconnections for non-payment (for customers of ERCOT utilities), and the addition of eligible residential customers, will end on July 17, 2020. Commission Staff filed a memorandum for the Commissioners' consideration at the June 12 Open Meeting, recommending the establishment of a timeline to wind down the ERP. The timeline recommends separate dates to allow all eligible customers a meaningful opportunity to benefit from the program. Additionally, Staff recommended holding a workshop for utilities and retail electric providers on June 16.

At the June 12, 2020 Open Meeting, the Commissioners agreed with Staff's recommendations for winding down the ERP. Commission Staff will prepare something for the Commissioners to consider at the Open Meetings in July.

We will provide updates as the PUC navigates the implementation of its COVID-19 measures.

PUC Will Look to Legislature to Address Texas Universal Service Fund ("TUSF") Shortfall. On April 29, the PUC opened Project No. 50796 in order to review the TUSF rate. The purpose of the TUSF is to enable all residents of Texas to obtain basic local telecommunications services needed to communicate with other residents, businesses, and governmental entities. The TUSF accomplishes this by assisting telecommunications providers in providing baseline services at reasonable rates to customers in high-cost, rural areas, and to qualifying low income and disabled customers. The TUSF is funded by a state-wide uniform charge, payable by each telecommunications provider, based on a percentage of each provider's actual intrastate telecommunications services receipts. Since 2015, the TUSF has been funded by a 3.3% charge on the Texas intrastate taxable telecommunications receipts. This is particularly low, compared to previous rates as high as 5.65%.

As a result of revenues declining faster than disbursements, the TUSF is headed to a position in which it cannot collect enough revenues to support its statutory obligations, potentially within a year, unless mitigation measures are taken. Without TUSF support, small and rural Incumbent Local Exchange Carriers (ILECs) will not be able to serve all of their customers, or meet Provider of Last Resort obligations, among others.

The PUC received comments in Docket No. 50796. Telecommunications providers – AT&T, Comcast, Windstream, CenturyLink, and AMA TechTel Communications – provided comments essentially agreeing that the assessment could be increased and the fund could be broadened to include services such as Voice Over Internet Protocol ("VoIP"), but that the legislature needs to address legal and policy issues before the Commission can take action. Interest groups – Office of Public Utility Counsel ("OPUC"), CTIA – The Wireless Association ("CTIA"), Texas Cable Association ("TCA"), Texas Telephone Association ("TTA"), and the Texas Statewide Telephone Cooperative ("TSTCI") – also filed comments that offered various proposals for short-term and long-term solutions to the shortfall in the fund. But these groups were split over whether TUSF should be extended to include VoIP, and whether the legislature needs to address legal and policy issues before the Commission can take meaningful action.

The Commission Staff presented a proposed order to the Commission that would increase the TUSF assessment rate from 3.3% to 6.4%. On June 12, 2020, the Commission declined to take any action on Staff's proposed order, and instead, recommended that the Legislature address the issue regarding TUSF funding. Chairman Walker was not satisfied with any of the options for Commission action. She explained that there are underlying policy issues and questions regarding the funding of TUSF, and that she could not in good conscience double the TUSF rate. The Commissioners decided to leave the TUSF as-is, but to limit TUSF funding to lifeline projects, which are a small percentage of the TUSF fund. The Commissioners directed Staff to provide a proposal at a future open meeting on how to proceed.

We will provide updates on the Commission's actions, and any further measures taken to address the TUSF fund shortfall, in a future edition of *The Lone Star Current*.

WETT STM Update. On February 24, 2020, Wind Energy Transmission Texas, LLC (WETT), AxInfra US LP (AxInfra), Hotspur HoldCo 1 LLC (Hotspur 1), Hotspur HoldCo 2 LLC (Hotspur 2), and 730 Hotspur, LLC (730 Hotspur) (together Joint Applicants) filed an application with the PUC for approval of a sales transaction (STM) that would result in the transfer of ownership and control of WETT to AxInfra, an investment fund managed by Axium Infrastructure US, Inc. (Axium US).

Under the application, AxInfra will ultimately control WETT. 730 Hotspur will acquire a non-controlling minority interest in Hotspur SPC, an Axium subsidiary that will have an upstream, indirect ownership interest in WETT.

On June 22, 2020, the participating parties filed a Unanimous Stipulation and Agreement, resolving all issues in the docket. The agreement sets out proposed ring-fencing provisions and other regulatory commitments to be considered for adoption by the PUC. These regulatory commitments are meant to ensure that WETT's STM is in the public interest and in accordance with PURA.

The Commission has yet to approve the agreement and STM at an Open Meeting. We will provide updates as this case progresses.

Commission Directs Staff to Open Rulemaking to Streamline SPCOA Relinquishments.

Several telecommunications companies have filed applications at the PUC to relinquish their Service Provider Certificate of Operating Authority ("SPCOA"). However, the relinquishment process is more complicated than simply informing the Commission of the company's intent to discontinue providing services in Texas. Companies often fail to provide notice to required entities such as the Texas Universal Service Fund and the Office of Public Utility Counsel ("OPUC").

At its open meeting on May 29, 2020, the Commission discussed Docket No. 50272, concerning Advanced Integrated Technologies' ("AIT") SPCOA relinquishment application. In the AIT case, the Administrative Law Judge ("ALJ") recommended dismissal of the relinquishment application. The Commissioners disagreed, reasoning that AIT had already provided enough information to allow the Commission to relinquish its certificate. Chairman Walker said that she was frustrated that the current rule and process makes it too hard for companies to relinquish their SPCOA, when they have expressed that they are not interested in conducting business in Texas. She asked the PUC staff to open a rulemaking to establish a more streamlined process so that companies can more easily relinquish their certificate.

Railroad Commission of Texas ("RRC")

RRC Approves TGS Rate Case Settlement. On December 20, 2019, Texas Gas Service Company ("TGS" or "Company"), a Division of ONE Gas, Inc. (ONE Gas), filed its Statement of Intent to change gas rates at the RRC and in all municipalities exercising original jurisdiction within the City of Beaumont and the incorporated areas of the Central Texas Service Area ("CTSA") and Gulf Coast Service Area ("GCSA"), effective February 6, 2020. The RRC suspended the effective date of the rate request for 150 days, until July 5, 2020.

In its filing, TGS sought to: (1) increase its gas rates on a system-wide basis by $15.7 million per year; (2) consolidate the CTSA, GCSA, and the City of Beaumont into a new service area called the Central-Gulf Service Area (CGSA); and (3) implement new CGSA tariffs and withdraw the CTSA and GCSA incorporated and environs tariffs.

After filing direct and rebuttal testimony, the parties entered into a unanimous settlement agreement on May 29, 2020, disposing of all issues in the docket other than TGS's proposed consolidation of service areas. Under the settlement agreement: (1) Beaumont will be consolidated with the GCSA even if the GCSA and CTSA are not consolidated; (2) there will be a $5.4 million "black box" reduction to the Company's requested revenue requirement increase, now totaling $10.3 million; (3) there will be a $16 customer charge; and (4) there will be a 9.5% return on equity (ROE).

On June 16, 2020, the RRC approved the settlement agreement, as recommended by the Examiners. The parties filed briefs on the remaining consolidation issue on May 22, 2020 and reply briefs on June 1, 2020; however, the ALJ and Examiners have not yet rendered a Proposal for Decision on this issue.

We will provide updates as this case progresses.

"Agency Highlights" *is prepared by Lauren Thomas in the Firm's Water Practice Group; Sam Ballard in the Firm's Air and Waste Practice Group; and Patrick Dinnin in the Firm's Energy and Utility, Litigation, and Compliance and Enforcement Practice Groups. If you would like additional information or have questions related to these cases or other matters, please contact Lauren at 512.322.5850 or lthomas@lglawfirm.com, Sam at 512.322.5825 or sballard@lglawfirm.com, or Patrick at 512.322.5848 or pdinnin@lglawfirm.com.*

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