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UNDERSTANDING IMMIGRATION ENFORCEMENT ACTIONS AND COMPLIANCE

by Marc Cayabyab

Under the new Administration, a number of executive orders and federal agency actions in accordance with those executive orders suggest an increased focus on compliance with the Immigration and Nationality Act of 1952 (INA). In a February 5, 2025 memo, the U.S. Attorney General indicated that the U.S. Department of Justice will pursue charges against individuals and employers who obstruct federal immigration enforcement efforts.

The U.S. Immigration and Customs Enforcement ("ICE") conducts worksite enforcement actions to ensure employers comply with immigration law. These actions may include:

Form I-9 Inspections. Federal regulations mandate that employers complete an Employment Eligibility Verification Form (Form I-9) for each new or rehired worker. This form serves as official documentation of an employee's identity and legal right to work in the U.S., requiring them to declare their citizenship or immigration status and provide supporting evidence verifying employment eligibility.

Form I-9 Audits. Federal regulations also require employers make Form I-9s available for inspection when properly requested by government officials. Specifically, ICE conducts I-9 audits to verify employer compliance with employee verification requirements. These audits begin with a Notice of Inspection (NOI), requiring employers to provide Form I-9s and related documents within three business days. Beyond audits, ICE retains the authority to conduct unannounced immigration enforcement actions at workplaces as well, which may involve the arrest and removal of individuals lacking legal U.S. status.

Form I-9 Penalties. Employers are responsible for ensuring Form I-9 supporting documentation is authentic, and for maintaining each employee's completed form and materials until either one year after the end of employment or three years after the employee's initial hire, whichever date is later. "E-Verify" is also a federal system which may assist employers in complying with the employment eligibility verification process. The U.S. Department of Homeland Security ("DHS"), which oversees ICE as well as U.S. Citizenship and Immigration Services ("USCIS"), issued an updated fine schedule on January 2, 2025, which includes fines up to $2,821 per offense for Form I-9 paperwork violations, and up to $5,724 per employee for knowingly employing an individual unauthorized to work in the U.S. for a first offense, up to $14,308 for a second offense, and up to $28,619 for a third or subsequent offense.

Best Practices

In light of the new Administration's increased emphasis on immigration enforcement, employers should anticipate the possibility of ICE visits, potentially involving multiple law enforcement agencies, where agents may seek to search the premises or interview employees. ICE's access is limited: agents may freely enter public areas but require a judicial warrant or employer consent for private spaces. Employers should be aware that ICE may present administrative warrants, which, despite their designation, do not carry the same legal weight as judicial warrants. These DHS-issued administrative warrants only permit access to private areas if the employer consents, and do not compel compliance.

Employers must also proactively prepare staff for potential site visits. This

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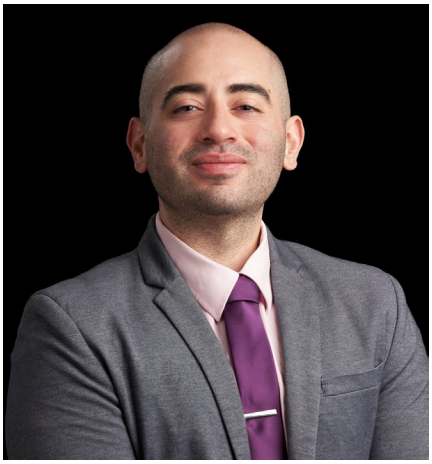
Lloyd Gosselink Rochelle & Townsend, P.C., provides legal services and specialized assistance in the areas of municipal, environmental, regulatory, administrative and utility law, litigation and transactions, and labor and employment law, as well as legislative and other state government relations services.

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



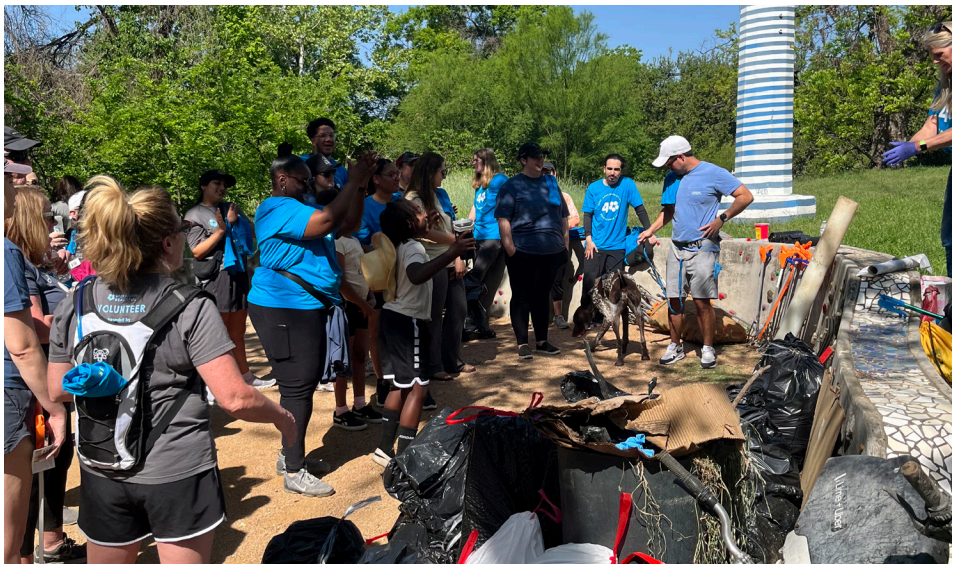
Nathan Marroquin has joined the Firm's Litigation Practice Group. Nathan's practice focuses on both prosecuting and defending clients' interests in a variety of matters, including commercial, constitutional, and regulatory claims. He represents public and private entities in both state and federal courts at all levels. Nathan received his doctor of jurisprudence from the University of Minnesota Law School and his bachelor's from Syracuse University.

Sara Thornton will be discussing "Turning Toilet Water into Tap Water: Permitting Reuse Projects in Texas" at the Austin Bar Association Civil Litigation CLE by the Administrative Law Section on May 8 in Austin.

Jake Steen will be presenting "Texas Groundwater Law and Demystifying GCD Permitting" at the Austin Bar Association Civil Litigation CLE by the Administrative Law Section on May 8 in Austin.

Lauren Kalisek and Kathryn Bibby will be presenting "Using Ethics As A Guide in Challenging Times" at the Texas Water Association Summer Conference on June 13 in The Woodlands.

Gabrielle Smith will be discussing "Water Rate & Tax-Exempt Entities" at the Texas City Attorneys Association Summer Conference on June 19 in Horseshoe Bay.



Again this year, members of the Firm and their families participated in the annual Keep Austin Beautiful Day on April 19, 2025. Each April, Keep Austin Beautiful has hundreds of volunteers for a day of community service throughout Greater Austin to honor Earth Day. Volunteers participated in the cleanup by removing litter and restoring Austin's beloved green spaces and waterways.

MUNICIPAL CORNER

The Attorney General examines whether a County Commissioner can also serve as Fire Chief of the County's Volunteer Fire Department. Tex. Att'y Gen. Op. KP-0487 (2025).

The Andrews County Attorney requested an opinion from the Texas Attorney General to resolve whether a county commissioner may simultaneously serve as the fire chief of the county's volunteer fire department. The County Attorney examined whether the common-law doctrine of incompatibility would prohibit this person from holding both positions due to the relationship between the Andrews Volunteer Fire Department ("AVFD") and Andrews County and the fact that the County maintains a trust account where all AVFD funds are deposited, and the County disburses those funds on request of the AVFD. Funds provided by the County are used for expenses, such as training, emergency callout pay, and half of the retirement pension.

While the Texas Constitution does prevent individuals from simultaneously holding dual offices of civil emolument, county commissioners are exempt from this prohibition under Article XVI, Section 40(a) of the Texas Constitution.

Next, the Attorney General analyzed the three elements of the common law doctrine of incompatibility, finding none of the three elements persuasive. The first element, *Self-appointment*, was not at issue here because fire chiefs and county commissioners are both elected positions, thereby ensuring neither position can appoint the other. While the second element, *Self-employment*, includes voluntary positions, the fundamental consideration under the self-employment element is whether there is any supervision of the subordinate by the officer. Merely providing funds and equipment, without any specific authority to approve or disapprove line-item requests like the circumstance in Andrews County, is not enough to create a conflict under the common law doctrine of incompatibility in the Attorney General's view. The third element, *Conflicting-loyalties*, an incompatibility involving the individual serving in two simultaneously held public offices, also fails here according to the Attorney General because past Attorney General opinions have found volunteer firefighters are not public officers. The Attorney General concluded that neither the Texas Constitution nor common law incompatibility doctrine prevented the county commissioner from simultaneously serving as the fire chief of the AVFD.

However, the Attorney General cautioned that other state law provisions, especially those that relate to the financial relationship between certain public offices, may be relevant when inquiring about limitations on simultaneous public service.

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includes developing comprehensive written protocols that clearly designate a primary contact for ICE interactions (ideally from human resources or legal counsel), outline procedures for immediate management and legal counsel notification, and provide guidelines for employee interactions with agents. Employers should invest in thorough employee training and education. Designated contacts must be well-versed in immigration compliance and site visit procedures and be informed about the differences between judicial versus administrative warrants and access rights. All employees should be trained to remain calm and informed of their rights, including the right to remain silent and to seek legal counsel. Regular internal reviews of Form I-9s and other immigration-related documents are also essential. Employers should maintain these documents in an organized and easily accessible manner, storing Form I-9s separately from other personnel files to streamline audits and prevent unnecessary expansion of scope.

Proactive measures by employers to prepare for immigration compliance and enforcement actions are essential to significantly reduce risk of immigration-related violations.

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THE DATA CENTER AND CRYPTO BOOM - WILL IT RAISE YOUR ELECTRICITY PRICES?

by Rick Arnett

Data centers and cryptocurrency miners have officially arrived in Texas. According to the Electric Reliability Council of Texas ("ERCOT"), Texas' electricity demand—or "load"—will almost double from 2025 to 2029. The grid operator's February 13, 2025, Capacity Demand Reserves Report ("CDR") predicts that 90,472 megawatts ("MW") of summer 2025 peak load will balloon to 140,872 MW by summer 2029. Large loads such as data centers and cryptocurrency entities largely drive the spike in energy demand—and will require significant transmission and generation investments for support.

Under ERCOT's "postage stamp" system, ERCOT transmission costs are "socialized" and applied to all ERCOT ratepayer bills. Everyday Texans, thus, will likely foot some of the transmission costs required to accommodate data centers and cryptocurrency miners. As set forth below, the 89th Texas Legislature ("Legislature"), Public Utility Commission of Texas ("PUC" of "Commission"), and ERCOT stakeholders are now grappling with these large loads—and how to mitigate increases to ratepayers' electricity costs.

Legislators and ERCOT Stakeholders Call for More Accurate Load Forecasts

It is critical that ERCOT accurately forecast load. Otherwise, exaggerated forecasts may call for unnecessary transmission and saddle ratepayers with related costs. The Steering Committee of Cities and Texas Coalition for Affordable Power (collectively, "Cities") filed comments in Project No. 55718—a PUC project that, as discussed below, relates to transmission buildout in the Permian Basin—expressing concern regarding these "stranded costs," and urging ERCOT to validate its load forecasts. ERCOT's load forecasts incorporate foreseeable data centers and cryptocurrency mining centers, and thus incorporate load that may never materialize. Notably, this is the first instance that a CDR has forecasted large load without finalized interconnection agreements. Cities argued this may expose ERCOT to exaggerated forecasts—and consumers to stranded costs.

The Legislature has similarly expressed concern regarding ERCOT forecasts. Senator Zaffirini filed Senate Bill 1641 to prohibit transmission operators from including large loads in load forecasts unless the load has provided proof of an intent to interconnect, including a lease or security deposit. Senate Bill 6 ("SB 6") would require the Commission to "establish standards for interconnecting large load customers…in a manner…minimizing the potential for stranded infrastructure costs…." SB 6, moreover, would standardize the large load interconnection process, and thus mitigate large load forecasting errors. This legislation is encouraging for consumers, who benefit from accurate load forecasts and a more efficient transmission buildout—which as set forth below, has already begun.

Commission Pushes Forward with Transmission Buildout, Grapples with High Voltage

Despite the potentially misleading load forecasts, the Commission recently approved the Permian Basin Reliability Plan ("Plan"), a binding document that expedites transmission buildout in the Permian Basin region. Specifically, the Plan preemptively determines that Permian Basin transmission is necessary and cost effective without ERCOT review and approval. The Plan is designed to meet forecasted load—including forecasted data center and cryptocurrency development.

The resulting transmission buildout will be significant. ERCOT is advocating for Texas' first Extra High Voltage ("EHV") transmission in the Permian Basin, a policy proposal that has generated stakeholder and Legislator concern. The grid operator concluded that EHV, compared to more standard 345-kV transmission, results in substantially similar cost—$32.99 and $30.75 billion, respectively—and may produce additional cost savings related to decreased congestion and power losses. But consumer stakeholders argued that a standard 345-kV plan, compared to EHV, may provide greater flexibility and thus greater protection against potentially stranded costs. Indeed, Cities filed comments on ERCOT's EHV recommendation re-urging the Commission to hedge against load uncertainty whenever possible. Certain Legislators may agree. For example, Chairman Schwertner recently filed Senate Bill 1665, which would require the Commission to conduct a second study on EHV before moving forward with ERCOT's recommendation.

Legislature Considers Additional Policy to Address Data Center and Cryptocurrency Transmission Costs

The Legislature is currently considering policy far more foundational than load verification and EHV studies: (1) targeted transmission interconnection cost recovery and (2) backup generator requirements. First, SB 6 would require the Commission to "ensure" that large loads "contribute[] to the recovery of the interconnecting electric utility's costs…." Put differently, an interconnecting data center would pay its own way to connect to the ERCOT grid. To what extent, however, is currently unclear. Second, SB 6 would require some large loads to deploy distributed energy resources—such as backup batteries and natural gas units sited at large load facilities—to the ERCOT grid under certain emergency conditions. This would simultaneously support reliability and reduce energy costs associated with emergency grid conditions.

In conclusion, SB 6 and the other legislation detailed above is an encouraging development for everyday Texas ratepayers. If enacted, SB 6 could directly insulate ratepayer utility bills from data center and cryptocurrency related costs. The other

legislation detailed above would bolster ERCOT load forecasting and transmission planning, ultimately reducing utility costs albeit in a more indirect manner. Despite the proposed legislation, however, the data center and crypto boom will likely increase Texas ratepayer utility bills. The extent of these costs is subject to pending legislation and Commission policy.

Rick Arnett is an Associate in the Firm's Energy and Utility Practice Group. If you have questions or would like additional information related to this article or other matters, contact Rick at 512.322.5855 or rarnett@lglawfirm.com.

WATER SUPPLY CHALLENGES FOR THE GROWING DATA SECTOR

by Toni Rask

Data centers can serve a variety of functions, ranging from supporting generative artificial intelligence, economic digitalization, and growing computing needs for data capacity. As the demand for data centers rises, so does the electricity needed to support the growth of the facilities. Electricity is an obvious need, but what about the additional water supplies needed to support these large centers? The facilities are very energy intensive, housing fans and cooling centers, and can consume over 100 MW of power per year.[1] In the current legislative session, Texas lawmakers have taken aim at addressing data centers' impacts on energy by providing real property and personal property tax exemptions to data centers if data centers build and operate their own electric generation.[2] There is no such comparable bill to address water consumption.

Water can be used indirectly by data centers to generate electricity from steam-powered generation like a natural gas, nuclear, or coal power plant or used directly to cool the servers.[3] The exact amount of water the centers use is unclear and can depend on a variety of factors.[4] There is no good "average" number for water consumption per square foot at data centers because some data centers use non-potable water or run a closed loop system to cool their servers; others, like bit-coin mining facilities, need not run in times of resource scarcity.[5] For example, Google states that, in 2021 on average, just one of its data centers used 450,000 gallons of water per day in its operation. That is the equivalent of water use from over 100,000 homes.[6]

Stargate, a joint venture by technology and financial companies, has focused part of its $500 billion infrastructure investment goal on Texas.[7] Ten data centers are already under construction. The first facility aims to be completed in Abilene mid-2025.[8] Each facility will cover half a million square feet—the equivalent to 8.7 football fields. The larger the data center, the more energy efficient they become, but there is not enough data on water consumption to say the same. The Lancium complex in Abilene will purportedly cool its servers using a closed-loop system, meaning that it should use little water directly once operational.[9]

Texans continue to face water management and supply struggles as the state continues to develop and drought conditions persist, so local governments should begin planning for the potential of added water stress especially if localities want to court companies building these data centers, if they have not already. Texas cities will continue to face water management struggles as data centers expand, so cities should consider the interest of companies like Stargate to locate data centers here and begin planning for the potential of added water stress today. Municipal strategies to address increased water usage from data centers could include development agreements, increasing impact fees, CCN decertification[10] or deannexation or reviewing and amending city ordinances addressing non-standard service agreements to include users with high consumptive needs. After all, developments such as these can bring great economic boons to cities through increased tax revenue, jobs, and infrastructure investment.

Negotiating development agreements with tech companies to offset the costs of infrastructure replacement, expansion, or upsizing or with the acquisition of new water rights or sources could be a mutually beneficial way to court tech development—especially in a municipality's extraterritorial jurisdiction.[11] Most municipalities in Texas have the power to enter into economic agreements either by charter or general law. Cities and companies can negotiate for the companies to fund the improvements or expansion to water systems and share or allocate the costs related to the acquisition of new sources of water so long as the projects are directly related to the infrastructure needs for the new data center.[12]

If municipalities or water supply organizations with CCNs cannot provide data centers with the capacity of water that they need, the property owners where the data centers are sited could request decertification from a CCN.[13] This action would thereby require companies within municipalities or CCN areas to be their own water providers. Of course, this may not be legally feasible for some water utilities depending on the location of the data center. If a proposed data center is located within a municipality, the owner of the property where the data center is located could petition a municipality to deannex the property (removing the property from its incorporated area). Deannexation, however, comes with costs to a city, and potentially other local government entities such as school districts, in the form of lost tax revenues.

Municipalities should think critically and creatively about amending or adding special conditions to non-standard service agreements for large water consumers. This is typically already the norm in cities that have large industrial or manufacturing presences while other smaller cities either do not have the statutory authority or the

means to have a planning department.

Overall, the time is now for municipalities to address the potential for added stress to water infrastructure from data center projects and there are options and grand opportunities for communities who rise to meet the challenge.

[1]Kayla Guo, Data Centers are Booming in Texas. What Does That Mean for the Grid?, TEX. TRIB. (Jan. 24, 2025), https://www.texastribune.org/2025/01/24/texas-data-center-boom-grid/.

[2]See Tex. S.B. 2222, 89th Leg., R.S. (2025) (noting that H.B. 5588 provides the same). https://capitol.texas.gov/tlodocs/89R/billtext/html/SB02222I.htm.

[3]Rasheed Ahmad, Engineers Often Need a lot of Water to Keep Data Centers Cool, AM. SOC'Y CIV. ENG'R (Mar. 4, 2024), https://www.asce.org/publications-and-news/civil-engineering-source/civil-engineering-magazine/issues/magazine-issue/article/2024/03/engineers-often-need-a-lot-of-water-to-keep-data-centers-cool.

[4]David Berreby, As Use of A.I. Soars, So Does the Energy and Water It Requires, YALE ENVIR. 360 (Feb. 6, 2024), https://e360.yale.edu/features/artificial-intelligence-climate-energy-emissions.

[5]Jacob Roundy, How to manage data center water usage sustainably, TECHTARGET (Jan. 17, 2024), https://www.techtarget.com/searchdatacenter/tip/How-to-manage-data-center-water-usage-sustainably.

[6]Matthew T. Ziegler, The world's AI generators: rethinking water usage in data centers to build a more sustainable future, LENOVO STORYHUB (Mar. 22, 2024), https://news.lenovo.com/data-centers-worlds-ai-generators-water-usage.

[7]Shelly Brisbin, Stargate's $500 billion bet on AI, TEX. STANDARD (Jan. 23, 2025), https://www.texasstandard.org/stories/stargate-ai-artificial-intelligence-trump-altman-musk/.

[8]Id.

[9]LANCIUM, Abilene, TX Clean Campus, https://lancium.com/abilene-tx-clean-campus/ (last visited Apr. 22, 2025).

[10]"CCN" means a Certificate of Convenience and Necessity as granted by the Public Utility Commission of Texas.

[11]Development agreements for municipal services are common for property in a city's extraterritorial jurisdiction under Tex. Local Gov't Code § 212.172, but it may be more difficult for cities to plan for future residential and commercial development if the water is tied up in data centers.

[12]See generally Tex. Local Gov't Code, Ch. 51.

[13]Tex. Water Code § 13.254(a-1). See also 16 Tex. Admin. Code § 24.245.

Toni Rask is an Associate in the Firm's Water Practice Group. If you have any questions or would like additional information related to this article or other matters, please contact Toni at 512.322.5873 or trask@lglawfirm.com.

WHAT TO EXPECT WHEN YOU'RE EXPECTING... A LAWSUIT

by James Parker

So it's happened. You got a letter from a lawyer demanding money or that you "cease and desist" from doing something.

Or maybe you have a contract that the other side isn't performing.

Or maybe you have a contract that you can no longer perform. You know this is going to court. It's just a matter of time.

What do you do now?

The first and most obvious thing is to call your lawyer.

Talking to your lawyer before a lawsuit begins will enable your lawyer to identify ways that litigation may be avoided altogether. Is there a possibility of a negotiated resolution? Might pre-suit mediation be productive? Ideally these options could be explored before the parties incur the cost of even the beginning of litigation.

But if a lawsuit cannot be avoided, involving your lawyer well before suit is filed can be critical in determining the lawsuit's ultimate success. Your lawyer may be able to identify ways to act preemptively to (1) set the venue for the lawsuit, (2) obtain recovery of attorney fees where recovery might not otherwise be possible, and (3) seek a speedier determination of some issues (perhaps even preparing the ground so those issues are more favorable for your case as well).

But aside from contacting your lawyer, there are a few things you can do yourself to get ready for a lawsuit:

Note in the file that you anticipate litigation: This step is important in preserving the confidentiality of your communications going forward. Once you and your lawyer anticipate litigation, the work you do to prepare for that lawsuit will generally be protected from disclosure in that litigation.

Preserve documents: This starts with suspending your record-retention schedules under which you may routinely destroy documents. But it doesn't end there. To adequately preserve documents, you should start by taking the following steps:

1. Identify who may have relevant documents. Employees who have relevant documents should be specifically told not to destroy any documents, delete emails or text messages, or cancel accounts with third-party services where relevant information may reside (e.g., Skype).
2. Identify computers and accounts on which relevant documents may be stored. It may be desirable and cost-effective to have those computers/phones/tablets imaged by a third-party vendor to preserve the data contained on them.
3. Identify third parties who may have relevant documents. If there are third parties who keep documents on your behalf or hold relevant documents as part of an ongoing relationship, they should be identified so that your lawyer can contact them and have them implement their own document-retention protocol.
4. Remember that "communications" doesn't just mean emails anymore. Workplace communications now frequently include text messages, WhatsApp and other messaging applications, instant messenger applications,

and video conferencing platforms (e.g., Microsoft Teams, Zoom). Communications on those platforms need to be preserved just the same as emails.

Identify witnesses: The exercise of identifying who has relevant documents will also tell you who is likely to have relevant information and may be a witness. These people should be promptly identified for your lawyer.

Public comments: It's up to you. But remember—anything you say can and will be used against you in a court of law. While public comment may sometimes be unavoidable and even necessary from an operational standpoint, you ought to consult with your lawyer before making a public statement when a lawsuit is expected.

Look—we know that litigation's not fun. But sometimes it can't be avoided. And when it is unavoidable, a little work at the beginning—or even before the beginning—can save you a lot of work during the litigation, and even set you up to win the fight you never wanted to have.

James Parker is a Principal in the Firm's Litigation and Appellate Practice Groups. If you have any questions or would like additional information related to this article or other matters, please contact James at 512.322.5878 or jparker@lglawfirm.com.

ASK SARAH

Dear Sarah,

Our office is sending several employees to Austin for a multi-day conference. We are about two hours away, so there is a bit of travel time in the car, and they will be staying overnight in a hotel. They are leaving on Wednesday and returning Saturday afternoon. Some of the attendees are non-exempt employees, and we want to make sure we handle their pay correctly during this trip! Do we need to pay them for their travel time? What about their time at dinner or sleeping?

Signed,
Employee Travel

Dear Employee Travel,

Great question! Paying non-exempt employees for travel time can be tricky, but the Fair Labor Standards Act ("FLSA") provides guidance. Here's what you need to know (and a little more you didn't ask!):

Commuting Time: Normal commuting from home to work and back is not compensable, even if the employee is driving a company vehicle.

Travel During the Workday: If an employee travels as part of their regular work duties (e.g., traveling between job sites), that time is compensable.

One-Day, Out-of-Town Travel: If an employee travels to another city and returns the same day, all the time spent traveling is compensable, regardless of the employee's regular work hours. However, meal breaks are not paid, and the employer may deduct the time the employee would have spent commuting to his or her regular work location.

Overnight Travel: When travel keeps an employee away overnight, the rules get a little trickier! You first must determine whether the employee is traveling as a "driver" or a "passenger." The employee is a driver if they are driving themselves or others at the employer's direction. The employee is a passenger in all other instances—if they are riding in a car someone else is driving, if they choose to drive themselves instead of riding as a passenger, or if they are traveling another way, such as by plane or train.

- For passengers, any travel time that occurs during the employee's normal working hours is compensable—regardless of whether it's a weekday or weekend. Travel outside of regular hours as a passenger generally isn't paid, unless the employee is working while traveling. (For some, this raises the question of what their "regular hours" are—for most, this means their typical set schedule, but employees who work shifts or other irregular hours may find this more complicated.)
- For drivers, all the time spent driving is compensable work time, regardless of the employee's normal work hours.

Time Outside Normal Working Hours: Generally, time spent sleeping, eating, or engaging in personal activities outside of regular working hours is not compensable during travel. For example, if an employee is free to use their evening time as they wish while traveling overnight, that time is not paid. However, if they are required to attend a work-related event, training, or dinner with clients or supervisors, that time may be compensable.

These rules can be tricky, and if employees don't have a clear understanding of how to report their time, it can cause problems for you. Take care to clearly communicate the expectations before travel so employees know how to report their time and understand what is paid and what is not.

Need more guidance? Feel free to reach out!

"Ask Sarah" *is prepared by Sarah Glaser, 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 Sarah at 512.322.5881 or sglaser@lglawfirm.com.*

Water Cases

Save Our Springs All., Inc. v. Tex. Comm'n on Env't Quality, No. 23-0282, 2025 Tex. LEXIS 306, (Tex. April 11, 2025).

The Supreme Court of Texas issued its Opinion earlier today on an important discharge permitting case that affirms TCEQ's approach to implementing antidegradation requirements. In *Save Our Springs Alliance v. TCEQ and City of Dripping Springs*, the Court affirmed TCEQ's permitting decision on the City of Dripping Springs' discharge permit, over objections that increased nutrient loadings allowed under the permit would violate antidegradation rules because of decreases in dissolved oxygen levels (and increases in total phosphorus and total nitrogen).

The Supreme Court found that TCEQ correctly followed its own Implementation Procedures (approved by EPA) under the existing Texas Surface Water Quality Standards, and declined to adopt Save Our Springs' argument that a 10% lowering of dissolved oxygen would amount to degradation *per se* of water quality. The Court looked at the underlying rules' requirements that look at whether ***overall water quality*** is degraded, rather than isolating particular parameters impacted by a permitting decision, and ultimately held that TCEQ did not violate applicable antidegradation rules.

Cactus Water Servs., LLC v. COG Operating, LLC, No. 23-0676, 2025 Tex. LEXIS 79 (Jan. 31, 2025).

On March 18, 2025, the Texas Supreme Court heard oral arguments for *Cactus Water Servs., LLC v. COG Operating, LLC.* "Produced water," once considered a liability because of its status as a waste byproduct, is finding a new life – and value – through water treatment technologies and state policies that allow produced water to be treated and recycled for other uses. The dispute before the Court is whether the owner of the surface estate or the lessee of mineral rights owns the produced water created as a result of oil and gas operations.

COG Operating, LLC ("COG") is the mineral lessee under four oil and gas leases with two surface owners, covering approximately 37,000 acres in Reeves County, Texas. COG's oil and gas operations in this area, the Delaware Basin (located within the greater Permian Basin), focus on the drilling and operation of horizontal wells, which extend horizontally into shale formations with low permeability and enable the extraction of oil and gas that would otherwise be inaccessible through hydraulic fracturing or "fracking." Fracking consists of "shooting" large quantities of water, chemicals, and sand into shale formations at high pressure to create cracks in the rock to allow oil and gas to flow to the wellbore and up to the surface. Though an efficient technique for bringing hydrocarbons out of tight formations, the fluid that comes to the surface contains a host of other substances in addition to hydrocarbons, and once the oil and gas have been separated, the remaining fluid, referred to as produced water, often contains chloride, sodium, calcium, potassium, strontium, barium, iron, hydrogen sulfide, carbon dioxide, and trace amounts of oil, in addition to water.

COG routinely disposed of produced water with other oil and gas waste. However, in 2019 and 2020, the surface owners transferred to Cactus Water Services, LLC ("Cactus") the right to sell all water "produced from oil and gas wells and formations on or under the [covered properties]." After Cactus notified COG of its right to the produced water, COG initiated suit, claiming that COG has the exclusive right to the produced water under its mineral leases. The trial court granted summary judgment in COG's favor, finding that COG owned the produced water as part of COG's "product stream." The 8th Court of Appeals affirmed and concluded based on an analysis of applicable Texas statutes and regulations that produced water is oil and gas "waste" as a matter of law, and COG has the exclusive right to the oil and gas product stream, including produced water. Cactus petitioned the Court for review, arguing that the 8th Court of Appeals erred because the surface estate owns all subsurface water absent an express conveyance. Such is the question before the Court.

As the potential reuses for produced water grow and public opinion regarding the status of produced water as "waste" shifts, ownership of produced water, whether determined through explicit lease terms or decision by the Court, will likely be at the forefront of lessor/lessee discussions right down to the molecule. Those with an interest in the confluence of water and oil and gas operations are encouraged to keep an eye out for an opinion from the Court on this topic.

This case, as it was decided in the 8th Court of Appeals, was covered in the October 2023 edition of The Lone Star Current.

In re Bexar Medina Atascosa Ctys. Water Control & Improvement Dist. No. One, No. 04-24-00538-CV, 2025 Tex. App. LEXIS 787 (Tex. App.—San Antonio Feb. 12, 2025, no pet. h.).

San Antonio Water System ("SAWS") filed a declaratory judgment suit against Bexar Medina Atascosa Counties Water Control and Improvement District Number One ("BMA") and certain directors and employees, seeking a declaration that a water supply agreement between the parties is void. SAWS alleges that the water supply agreement violates the "gift clause" of the Texas Constitution, which prohibits the state and its subdivisions from giving, granting, or appropriating public money unless for a public purpose, because the agreement requires SAWS to expend ratepayer funds for water it is not receiving, even during times when BMA does not have sufficient quality water to comply with the agreement. BMA filed a plea to the jurisdiction alleging that (1) BMA has governmental immunity; (2) SAWS has not properly pled any *ultra vires* claims; and (3) the Public Utility Commission has exclusive jurisdiction over SAWS' claims.

Before the scheduled hearing date for BMA's plea to the jurisdiction, SAWS served BMA twenty-six requests for production and four interrogatories. BMA objected to the discovery on the grounds that such discovery was merits-based and not relevant to determining BMA's preliminary jurisdictional question. After SAWS filed a motion to continue the case and compel BMA's responses, the trial court held a hearing on the issue. Despite BMA's argument that SAWS was not entitled to any discovery at this stage of the proceeding, the trial court verbally granted the continuance and limited discovery on "the availability of water; the methods of calculation; [and] the quality of water." Immediately thereafter, BMA filed a petition for a writ of mandamus, alleging that the trial court abused its discretion and BMA's appellate remedy is inadequate.

The 4th Court of Appeals found that the trial court abused its discretion by continuing the hearing on BMA's plea to the jurisdiction and ordering discovery on a jurisdictional challenge that was based on the sufficiency of the pleading and did not rely on the existence of any jurisdictional facts. In doing so, the 4th Court of Appeals reasoned that the trial court impaired BMA's right to have its jurisdictional claim decided at "the earliest opportunity" and to an accelerated appeal on the plea to the jurisdiction. Further, the 4th Court of Appeals held that BMA lacked an adequate remedy on appeal because the trial court's order subjected BMA to the burden and expense of litigation through pre-trial discovery before determining BMA's claim of immunity. Based on the foregoing, the 4th Court of Appeals conditionally granted BMA's petition for a writ of mandamus and ordered the trial court to withdraw its oral rulings within fourteen days.

Litigation Cases

In this quarter's installment of *In the Courts*, we look at a couple of constitutional takings cases—one a classic condemnation and another a regulatory taking. In both instances, we see the Texas courts' continued tendency to protect private-property rights at the possible expense of governments' condemnation and regulatory authority.

City of Killeen v. Oncor Elec. Delivery Co. LLC, No. 03-23-00063-CV, 2025 Tex. App. LEXIS 1355, *1 (Tex. App.—Austin Feb. 28, 2025, no pet. h.).

In a recent decision, the Third Court of Appeals reiterated that the "[Texas] Constitution precludes a city from initiating a condemnation proceeding against a utility if the condemnation would take not only the utility's real property but also the 'going concern' value of its property." *Id*. at 25. However, for the first time, the Third Court has held that an electric transmission and distribution utility cannot have the streetlights that it operates condemned under a city's eminent-domain authority. *Id*. at 37.

Oncor Electric Delivery Company owns and operates streetlights throughout the City of Killeen. Oncor was formed to "own [the former conglomerate utility's] wires and deliver power [to] others . . . but is restricted from owning generation assets or buying or selling electricity themselves." *Id*. at 2. In other words, it owns the light posts and wires but does not directly provide consumers with electricity.

When the city attempted to purchase the streetlight system, Oncor preemptively sued, and won, before the city's governing body could even vote to begin condemnation proceedings. The Third Court concluded that because the City would take the entirety of Oncor's streetlight system within the City, Oncor was entitled to the "going-concern" value of its streetlight system if it were condemned. But Texas law provides no mechanism for awarding a condemnee going-concern value. Hence the court concluded that the hypothetical condemnation was not constitutionally permitted.

The potential impact and consequences may be meaningful within the Third Court—many operations, such as privately-owned electric car charging stations, are theoretically analogous and may be preempted from a government's *eminent domain* powers.

Commons of Lake Hous., Ltd. v. City of Hous., No. 23-0474, 2025 Tex. LEXIS 203 (Mar. 21, 2025).

In March, in a similar, but ultimately unrelated case, the Texas Supreme Court ruled on a matter alleging that the City of Houston had inversely condemned a development in a floodplain. In this case, Houston amended its city ordinances to increase the elevation requirements for construction in a floodplain. *Id*. After long-lasting development and construction cooperation over the decades between the two parties, Hurricane Harvey changed the relationship. *Id*. at 2.

In the aftermath, Houston doubled its requirement for how high foundation slabs must be built in one of the Plaintiff's most lucrative sites—from one foot in elevation, to two. *Id*. at 3. This

seemingly small change purportedly cost the Plaintiff over $7M. *Id*.

In the ensuing regulatory takings suit, Houston argued that it was protected from suit by sovereign immunity. *Id*. at 4. In reversing the court of appeals, the Supreme Court held that a city that validly exercises its police power may still violate the Takings Clause of the Texas Constitution. *Id*. at 14–16. That is to say, in Texas, properly utilizing a government's police power is not a bulletproof defense to a compensable takings allegation.

Yet there is some hope: the Court indicated that an exercise of police power that is "substantially related to the people's general welfare and was reasonable and not arbitrary" would not be a compensable taking. *Id*. at 17–18. In practice, governments that exercise their police powers may still commit a regulatory taking, and perhaps should be prepared for intensive fact-finding and research to ensure their government action is "substantially" beneficial and not unreasonable.

Palliative Plus LLC v. A Assure Hospice, Inc., No. 03-23-00770-CV, 2025 Tex. App. LEXIS 314 (Tex. App.—Austin Jan. 24, 2025, no pet. h.).

When evaluating whether former employees, who have left to form a competitor, breached a noncompete agreement, the Third Court of Appeals ruled against the former employer. *Id*. Although the former employees arguably poached other employees and clients—a claim the opinion does not dispute—the Court found there was insufficient evidence to conclude a breach of non-competition. When the Plaintiff, Palliative Plus LLC, presented *some* evidence, namely an affidavit from a member stating that the former employees orally agreed to an employee handbook containing noncompete provisions, the Court relied on the deficiency that the Plaintiff could not provide a single, let alone one for each employee, signed agreement with a noncompete provision. *Id*. at 7. The trial court, which the appeals court affirmed, granted motions for summary judgment in favor of the Defendant. A summary judgment motion, colloquially expressed, evaluates whether no *reasonable* trier of fact, judge or jury, could find for the nonmoving party—in this case, the Plaintiff. *See id*. at 6. This opinion should, at the very least, illustrate the need for companies to ensure (i) effective record keeping of employee-related documents and (ii) systematic onboarding processes to ensure that each employee executes, or signs, the same documents that the company deems necessary. Realistically, this precedent creates a larger evidentiary threshold in order to succeed in a noncompete claim.

Note that the Plaintiff argued, unsuccessfully, that it believed the former employees impermissibly accessed and destroyed their files that allegedly contained the noncompete agreement. *Id*. at 9. The trial and appellate courts were unmoved "because [Plaintiffs did not establish that the former employee[s] intentionally or negligently destroyed documents [with sufficient evidence]]." *Id*.

Air and Waste Cases

60-Day Stay Granted in CERCLA PFAS Listing Challenge - Rule Remains in Effect.

On February 11, 2025, the Environmental Protection Agency ("EPA") filed a motion to place a 60-day hold on the consolidated case in which industry leaders are protesting the designation of PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") (the "Final Rule"). EPA argued that the Agency's new leadership following the change in administration needs time to familiarize itself with the Final Rule and the case proceedings. Petitioners did not oppose the hold. The court granted the motion on February 24, 2025, effectively pausing all proceedings in the matter until the schedule resumes on April 25, 2025. The underlying rule designating PFOA and PFOS as hazardous substances under CERCLA remains in effect during the stay.

Port Arthur Community Action Network v. Texas Commission on Environmental Quality, No. 24-0116, 2025 WL 492750 (Texas 2025).

When issuing a Prevention of Significant Deterioration ("PSD") permit, the Texas Commission on Environmental Quality ("TCEQ") must determine the best available control technology ("BACT") and find that the proposed facility's controls meet BACT. In determining BACT, TCEQ relies on currently available technology and does not include speculative control methods from other permitted facilities that are not yet in operation. Further, previously issued BACTs may be relevant but do not necessarily impose the control technology for a new facility.

After issuing a permit to construct a new liquid natural gas facility in Port Arthur ("Port Arthur LNG"), an environmental non-profit argued in court that TCEQ should issue the same restrictions on Port Arthur LNG that TCEQ issued on another planned facility, Rio Grande LNG. On February 16, 2024, the Fifth Circuit sent a certified question to the Texas Supreme Court asking whether TCEQ could impose the same limitations on the new liquid natural gas facility. The Supreme Court of Texas ("SCOTX") answered the question almost one year later on February 14, 2025.

First, SCOTX held that BACT relates to currently available technology that is proven to be technically practicable and economically reasonable. This means the method is already proven to reduce or eliminate emissions through research and experience. The level of operational experience should relate to real-world experience, not solely rely on its future expectations in previously approved permit applications. Thus, SCOTX rejected the question's suggestion that BACT might include methods the TCEQ "deems to be capable of operating in the future."
Second, SCOTX cautioned against automatically assuming the selected BACT for one facility applies to all other similar facilities.

Instead, TCEQ looks individually at each facility to determine the BACT. While similarly issued permits can have great relevance for similar facilities, they are not necessarily determinative for selecting a BACT for another facility.

"In the Courts" *is prepared by Samantha Tweet in the Firm's Districts Practice Group; Nathan Marroquin in the Firm's Litigation Practice Group; and Mattie Neira in the Firm's Air and Waste Practice Group. If you would like additional information or have questions related to these cases or other matters, please contact Samantha at 512.322.5894 or stweet@lglawfirm.com, or Nathan at 512.322.5886 or nmarroquin@lglawfirm.com, or Mattie at 512.322.5804 or mneira@lglawfirm.com.*

AGENCY HIGHLIGHTS

United States Environmental Protection Agency ("EPA")

Lee Zeldin Confirmed as EPA Administrator; Scott Mason IV to lead EPA Region 6.

Former U.S. Representative from New York, Lee Zeldin, was confirmed as EPA Administrator on January 29, 2025.

Scott Mason IV has been nominated to replace Dr. Earthea Nance as Regional Administrator of Region 6 of the EPA, headquartered in Dallas, Texas. Mr. Mason previously served as a Deputy Secretary of Energy for Oklahoma and served as the Director of the EPA's American Indian Environmental Office under President Trump's first Administration. Region 6 implements federal programs in five states, including Texas, and 66 Tribal nations.

EPA Takes Aim at Biden-Harris Era, Older Water Rules.

In an announcement on March 12, 2025, the EPA Administrator took aim at rules promulgated under the Biden Administration and looks to dismantle regulations in some areas that have been regulated for much longer. At this time, these are policy positions and only limited actions have been taken, but these will be important areas to watch in the coming months and years:

- Proposed revision of 2024 Rules on Effluent Limitations Guidelines ("ELGs") for steam electric power generators. The ELG rule for steam electric power plants, finalized in May 2024, will likely be revisited. These rules include lower effluent limits on wastewater discharges of toxic metals from coal-fired power plants.
- Administrator Zeldin also discussed revisiting ELGs for oil and gas extraction industries to allow for produced water (wastewater) from oil and gas extraction activities to be treated and used for agriculture irrigation and wildlife promulgation.
- The Administration's pledge to redirect enforcement resources to "relieve the economy of unnecessary bureaucratic burdens" could lead to an increased burden on states to enforce federal environmental laws through state implementation plans.
- The presidential Administration has vowed to cut grants to state and local projects awarded by the EPA under the Bipartisan Infrastructure Law of 2021 that could also have a significant impact on state water revolving funds. (The state revolving funds provide money for drinking water and clean water infrastructure improvement and development.)

EPA to Revise Waters of the U.S. ("WOTUS") Definition.

On March 12, 2025, the EPA Administrator announced the Agency's renewed focus to clarify what falls within Waters of the U.S. EPA's review will be guided by the Supreme Court's decision in *Sackett v. Environmental Protection Agency*, which stated that the Clean Water Act's use of "waters" encompasses only those relatively permanent, standing, or

continuously flowing bodies of water forming streams, oceans, rivers, and lakes. The *Sackett* decision also clarified that wetlands would only be covered when having a continuous surface connection to waterbodies that are "waters of the United States" in their own right. The revision is intended to reduce red tape, permitting costs, and cost of business while still protecting navigable waterways from pollution. EPA established a Public Docket in 90 FR 13428, in which it announced it will hold at least six listening sessions, with two open to all stakeholders, and requests comments by April 23, 2025.

Nine More PFAS Added to the Toxic Release Inventory ("TRI").

On January 3, 2025, the EPA added nine additional per- and polyfluoroalkyl substances to the TRI. TRI requires certain manufacturing and industrial facilities to track and report releases of certain chemicals that may cause a threat to human health and the environment into the environment. The newly added PFAS substances are not a part of Reporting Year 2024 but will take effect for Reporting Year 2025. The total number of listed PFAS is now 205. Because EPA classifies all TRI-listed PFAS as chemicals of special concern, there is no reporting exemption for facilities using any of the newly listed PFAS substances. This means that PFAS-using facilities must report PFAS information, even when used in small concentrations. Additionally, there are separate PFAS reporting requirements starting July 11, 2025, that require any person that manufactured or imported PFAS articles between January 1, 2011 and December 31, 2022, to report the PFAS's use, volumes, disposal, exposure, and hazards. The final rule and specific PFAS added can be viewed at 90 FR 573.

Potential Cut to EPA's Office of Research and Development ("ORD").

While no changes have been finalized, as many as 75% of the ORD employees could be fired, with the remaining staff reassigned to other areas of the Agency. The Office of Research and Development is the main scientific research section of the EPA. The ORD is tasked with developing knowledge, assessment, and scientific tools to meet EPA's protective standards and guidance. The program is split among six research programs: Air, Climate, and Energy, Chemical Safety and Sustainability, Health and Environment Risk Assessment, Homeland Security, Safe and Sustainable Water Resources, and Sustainable and Healthy Communities.

ORD research helps establish baseline chemical levels that federal statutes, like the Clean Water Act, rely upon. ORD also helps mobilize emergency response for national security events like hurricanes, train wrecks, or mining accidents for the Office of Land and Emergency Management. ORD's research guides regulation for safe drinking water and understanding the impacts of toxins like arsenic, lead, and PFAS. Overall, the research helps determine national standards for regulatory compliance and enforcement. Losing the ORD could hinder the Agency's ability to provide technical expertise to various EPA departments and potentially open the door to external industry influence.

Department of Interior ("DOI")

Sustainable Water for Agriculture Plots Program to Research Water Saving Farming Practices.

The Bureau of Reclamation's newest Sustainable Water for Agriculture Plots ("SWAP") Program is aimed at determining if specific crops or agriculture practices are practical for their region. The overall goal of the study is keeping farmland in production while conserving water. Thus, the Bureau is looking for innovative crops and practices to reduce agricultural water use while keeping costs low, particularly for already water-stressed areas.

If successful, the crops and practices could reduce agricultural water demand by 25-75% while only costing farmers $250-500 per acre-foot of water saved. Ideally, program participants will create post-project agreements with their water districts that help cover implementation of water-saving crops and practices. The project is currently limited to water districts, Tribes, or acequias eligible for the Water-Saving Commodities Program under the Department of Agriculture. Programs will be evaluated based on the magnitude of projected water savings, estimate cost per foot of water saved, and whether it involves innovative crops or practices.

Texas Commission on Environmental Quality ("TCEQ")

TCEQ Proposes Renewal and Revision of Certain Oil & Gas General Operating Permits.

On February 28, 2025, TCEQ proposed renewals of and revisions to Oil & Gas General Operating Permit ("GOP") Numbers 511, 512, 512, and 514, each related air emissions under the Texas Clean Air Act. The revisions are based on changes to federal and state rules and include changes to: (1) the statement of basis; (2) Periodic Monitoring; (3) the requirements tables, including new tables; and (4) the terms. A public meeting will be held on March 31, 2025, which interested parties may attend virtually or in person. Those wishing to speak must register before March 28, 2025. Comments close on March 31, 2025. Once finalized, if any emission units, applicability determinations, or the basis for applicability determinations at a facility operated under any of the revised GOPs change, the permit holder must submit an application for a new authorization to operate ("ATO") within 90 days of the GOP renewal date. No ATO is required if the revisions do not affect your site.

Texas Water Development Board ("TWDB")

TWDB Approves over $120 Million for Water Projects.

On February 13, 2025 the TWDB approved over $52 million for projects related to water loss and water system improvements. The financial assistance allows construction of water infrastructure like wastewater treatment plants and flood mitigation projects. Over $35 million in grants was given to the Rural Water Assistance Fund for water loss projects. For most of these rural projects, grant funding covers between 90-100% of the total cost. These projects support small entities with populations of

less than 1,000 and often include water main replacement, water lines/system improvements, and water storage tanks. Smaller assistance amounts went to cities in Dickens, Dallas, San Saba, and Nueces Counties for various water system improvements, like line replacements and additional fire hydrants. Again, in March, TWDB approved an additional $75 million in water and wastewater system improvements for rural communities including lead service line inventory and replacement projects.

Public Utility Commission of Texas ("PUC")

Three Transmission-Only Electric Utilities File Comprehensive Base-Rate Cases.

On December 3, 2024, Wind Energy Transmission Texas, LLC ("WETT") filed a statement of intent to change rates and tariffs, where it seeks a revenue requirement for the provision of electric transmission service in Texas of $136,602,978. This request represents an increase of $15,949,204, or 13.2%, over the adjusted test year revenues of $120,653,774. WETT also has requested a return on equity of 10.5%, cost of debt of 4.33%, capital structure consisting of no more than 55% debt and 45% equity, and overall rate of return of 7.11%. WETT's requested rate increase is due in part to the $340.6 million of transmission investment, for which WETT asks the PUC to enter a finding of prudence, that it has placed into service since its last fully litigated rate case filed in 2015. The Steering Committee of Cities Served by Oncor ("OCSC" or "Cities") and other stakeholders conducted discovery and filed direct testimony. More information can be found under PUC Docket No. 57299.

On January 14, 2025, Cross Texas Transmission, LLC ("Cross Texas") filed a statement of intent to change rates and tariffs, where it seeks a revenue requirement of $76,506,194. This requested revenue requirement represents an increase of $5,037,282, or 7.05%, over its currently approved revenue requirement. Cross Texas is also asking for a return on equity of 10.60%, cost of debt of 3.94%, and its actual capital structure of 55.07% debt and 44.93% equity, which results in a weighted average cost of capital of 6.93%. Like WETT, Cross Texas bases its rate increase on the fact that it has invested over $190 million in capital in Texas since its last base-rate case filed in 2014. Additionally, Cross Texas is requesting approval of an hourly export rate of $0.000108 per kW pursuant to 16 Tex. Admin. Code § 25.192(e) for charges to power marketers exporting power from the Electric Reliability Council of Texas ("ERCOT") for use of the ERCOT system. OCSC and other stakeholders are currently conducting discovery. More information can be found under PUC Docket No. 57467.

On January 31, 2025, Electric Transmission Texas, LLC ("ETT") filed an application to change its rates and tariffs. ETT is a transmission-only utility that owns over 2,000 miles of transmission throughout the ERCOT region, including the Lower Rio Grande Valley and Texas Panhandle. In its application, ETT seeks a revenue requirement of approximately $426.3 million—a 15.3% increase over its currently approved revenue requirement. Additionally, ETT seeks a return on equity of 10.6% and a capital structure of 55% debt and 45% equity. This would result in a 7.13% weighted average cost of capital. ETT's rate increase largely relies on $3.9 billion of invested capital since ETT's last base rate case filed in 2007. Cities and other stakeholders are currently conducting discovery. More information can be found under PUC Docket No. 57518.

Commission Approves $44 Million Decrease in CenterPoint Electric Rate Case.

On March 13, 2025, the PUC approved a settlement in CenterPoint Energy Houston Electric, LLC's ("CenterPoint" or "CenterPoint Electric") pending rate case providing for CenterPoint's present revenues to be decreased by $44 million. The final order additionally approves a $2.4 million reduction to CEO compensation expense and a one-time $5.2 million refund to retail and wholesale customers. Parties to the approved settlement agreed to a 9.65% return on equity.

CenterPoint filed its application in March 2024 seeking a nearly $60 million increase and a 10.4% return on equity. The case was nearing an evidentiary hearing when CenterPoint withdrew its application in August 2024. An Administrative Law Judge with the State Office of Administrative Hearings denied CenterPoint's withdrawal and CenterPoint appealed that decision to the PUC. While the PUC was considering the decision over multiple months, CenterPoint withdrew its appeal and the parties continued settlement discussions. The Commission's March 13th order is the result of several months of negotiations among PUC Staff, CenterPoint, the Office of Public Utility Counsel, and other affected parties.

The reduction to CenterPoint's revenues will be allocated such that all rate classes receive a rate decrease. The residential rate class will receive an approximately $17 million decrease in rates. Additional information on this case is available on the PUC Interchange under PUC Docket No. 56211.

Commissioner Courtney Hjaltman Modifies Texas-New Mexico Power Company's System Resiliency Plan Settlement.

As previously reported, after review of Texas-New Mexico Power Company's ("TNMP") proposed System Resiliency Plan ("SRP") and identification of several projects and investments that were ineligible for SRP recovery or were not the most beneficial to ratepayers at this time, intervening parties, PUC Staff, and TNMP reached an agreement that reduced the proposed SRP by $57.1 million, and implemented several additional metrics that would allow stakeholders and PUC Staff to accurately monitor the implementation of TNMP's SRP. This $57.1 million reduction results in an SRP that is estimated to cost $649 million over three years.

After PUC Commissioners evaluated TNMP's proposed SRP and the Settlement Agreement, Commissioner Courtney Hjaltman filed a memorandum calling for the removal of two pilot programs relating to underground lines, a further reduction to TNMP's requested Vegetation Management Program, and for clarification of metrics used to evaluate the SRP's success. Commissioner Hjaltman

reasoned that the pilot programs should be handled in TNMP's normal course of business, and the Vegetation Management Program should be set at a lower amount based on a consultant's report provided by TNMP itself. TNMP and Commissioners discussed Commissioner Hjaltman's memorandum during the February 20, 2025 Open Meeting, and the Commissioners ultimately approved the reductions proposed by Commissioner Hjaltman at the March 13, 2025 Open Meeting.

Commissioner Hjaltman's modifications are estimated to reduce the SRP by an additional $62.1 million. This reduction reduces ratepayers' bill increase to $8.51 per month – as opposed to the $13.51 per month impact based on TNMP's proposed SRP. More information can be found under PUC Docket No. 56954.

Oncor and Texas-New Mexico Power Company File Distribution Cost Recovery Factor ("DRCF") Applications.

On February 14, 2025, Oncor Electric Delivery Company LLC ("Oncor") filed an Application to Amend its Distribution Cost Recovery Factor ("DCRF"). In the filing, Oncor is seeking an increase in distribution revenues of $107.6 million. Notably, Oncor's DCRF is the first DCRF filing in which a transmission and distribution utility ("TDU") has sought recovery of SRP related costs. As previously reported, the Legislature recently created SRPs as an alternative mechanism for TDUs to recover "system resiliency" related costs. Cities and other stakeholders have intervened and requested discovery regarding the SRP costs and other aspects of Oncor's DCRF. More information can be found under PUC Docket No. 57707.

TNMP has also filed an Application to Amend its DCRF. Filed on March 14, 2025, TNMP's Application requests an increase in distribution revenues of $24.9 million. Unlike Oncor's DCRF, TNMP's request does not include the recovery of its SRP related costs. This is due to the fact that, as discussed above, the Commissioners did not make a decision on TNMP's SRP until March 13, 2025, the day before TNMP filed its DCRF. More information can be found under PUC Docket No. 57816.

CenterPoint Files its Second System Resiliency Plan.

As previously reported, CenterPoint Electric filed a SRP in early May 2024, requesting to spend $2.28 billion over a three-year period in order to improve the resiliency of its system. After Hurricane Beryl, CenterPoint withdrew its application on August 16, 2024.

CenterPoint has now filed a second, updated proposed SRP. On January 31, 2025, CenterPoint filed its second SRP, which requests to spend $5.75 billion over a three-year period. This is a $3.47 billion increase over its first SRP that was withdrawn. CenterPoint's second SRP also includes 39 resiliency projects, many of which were not included in its first SRP. Intervening parties and PUC Staff have begun reviewing CenterPoint's SRP. More information can be found under PUC Docket No. 57579.

Mobile Generation Failures During Hurricane Beryl Remain in the Spotlight.

In September 2024, the Texas Consumer Association filed a complaint under PUC Docket No. 57061 asking the PUC to modify its previous rulings approving CenterPoint Electric's leased mobile generation units and end all related cost recovery and return on investment. The complaint is in response to CenterPoint's failure to deploy certain larger units during Hurricane Beryl last summer. Discovery and other procedural steps are ongoing in the docket.

It remains to be seen how the issue of mobile generation deployment failures may be addressed. The Legislature has at least two bills under consideration related to the issue – SB 231 by Senator Phil King and HB 4581 by Representative Ryan Guillen. One of the questions raised in the proposed bills is whether the PUC should be directed to modify a utility's return if it finds evidence of unreasonable mobile generation leases or failure to deploy units.

Texas Railroad Commission ("RRC")

Atmos Energy West Texas Rate Case Settles.

On October 25, 2024, Atmos Energy Corp., West Texas Division ("Atmos West Texas") filed a rate application for its West Texas Division with the RRC and cities retaining original jurisdiction. In its application, Atmos West Texas requested to increase its revenues by $66.1 million, which will increase the annual revenues received from the incorporated areas by approximately $26.9 million. After evaluation of the rate application, and multiple settlement discussions, Atmos West Texas, RRC Staff and city intervenors came to a settlement agreement.

The settlement agreement results in a reduction to Atmos West Texas' initial request of $66.1 million to $30.2 million, lowering of the requested residential customers charge of $25.00 per month to $16.75 per month, and reduction to the requested return on equity from 10.85% to 9.8%. The RRC has not made a final decision on the agreement. More information can be found on the RRC website, under Case No. OS-24-00018879.

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