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SIXTH TIME'S A CHARM? ANOTHER CHAPTER IN THE WOTUS SAGA

by Lora K. Naismith and Lauren C. Thomson

If the definition of "waters of the United States" ("WOTUS") under the Clean Water Act ("CWA") were a movie series, we would have far surpassed the original film, the sequel, the threequel, and even the prequel. With the newest addition of the proposed rule released on November 17, 2025 by the Trump Administration's Environmental Protection Agency and U.S. Army Corps of Engineers (collectively, the "Agencies"), the definition of WOTUS has developed into a full-fledged franchise. This is not the first time the agencies have proposed a rule to amend the definition of WOTUS, and, based on the last decade, it is unlikely to be the finale.

At its core, WOTUS is about jurisdiction. If a surface waterbody—be it a stream or a river or a lake—falls under the WOTUS definition, it is subject to regulation under the CWA. This means that any person or entity seeking to discharge into WOTUS or dredge or fill WOTUS must seek permission from state and federal agencies prior to any discharge or dredge or fill work.[1] If a waterbody does not fall under the definition of a WOTUS, then the waterbody is not subject to federal CWA jurisdiction, although it may still be regulated under state law depending on where it is located. This article focuses on solely the proposed updates to the definition of WOTUS.

The agencies are proposing their sixth definition of WOTUS in the last ten years. Prior to 2015, WOTUS was a combination of regulations from 1986, the Migratory Bird Rule, and case law from *Solid Waste Agency of Northern Cook County v. Army Corps of Engineers* and *United States v. Rapanos*.[2] The Supreme Court's decision in *Rapanos* is central to nearly every WOTUS rulemaking over the past ten years. In *Rapanos*, because the Court did not issue a majority opinion, two competing standards emerged. Justice Scalia's plurality opinion limited CWA jurisdiction to "relatively permanent" bodies of water and wetlands with a continuous surface connection to such waters,[3] while Justice Kennedy's concurrence adopted a broad "significant nexus" test, which looked at whether a water or wetland significantly affected downstream navigable waters.[4]

In 2015, the Obama Administration issued the Clean Water Rule, which expanded federal jurisdiction by relying on the concept of a "significant nexus" existing between certain water and traditionally navigable waters (as seen in Justice Kennedy's plurality opinion in *Rapanos*).[5] The Obama Administration's rule was repealed in 2019. In 2020, the first Trump Administration issued the Navigable Waters Protection Rule, which defined WOTUS based on the *Rapanos* plurality's standard of "relatively permanent, standing or continuously flowing bodies of water."[6] This rule was later vacated by a federal court.[7] In January 2023, the Biden Administration issued the Amended 2023 WOTUS Rule, which amended WOTUS to incorporate the two jurisdictional standards from *Rapanos*, called the "relatively permanent standard" and the "significant nexus standard."[8] Later, in May 2023, the Supreme Court decided *Sackett v. EPA*, limiting the reach of WOTUS jurisdiction by rejecting the significant nexus test and holding that wetlands are only subject to CWA jurisdiction when they have a continuous surface connection to relatively permanent waters.[9] In response, the Biden Administration issued a conforming rule to conform with the Supreme Court's ruling in *Sackett v. EPA* (the "Conforming Rule"). This version of the Conforming Rule removed the broad "significant nexus" standard as described in Justice

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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.

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FIRM NEWS

Sarah Glaser has been elected Managing Director of the Firm, effective January 2, 2026. Sarah is Chair of the firm's Employment Law Practice Group and an experienced attorney who advises employers on employment law compliance, workplace risk management, and litigation before courts and administrative agencies. She has played a key role in firm governance in recent years, including serving as the Firm's in-house employment counsel and co-chairing the Firm's Marketing Committee. Sarah has consistently been recognized as a Texas Super Lawyers Rising Star and a Top Austin Attorney in employment law categories. Sarah will continue to proudly serve her employment law clients and lead the Employment Law Practice Group, while also serving as the Firm's Managing Director. Sarah succeeds Lauren J. Kalisek, who has served as Managing Director for nine years and will continue to focus on her general counsel and special counsel practice for water district and authority clients throughout the State of Texas. She will also continue to serve as an officer of the firm's Board of Directors. Lauren remarked on the leadership transition: "It has been a privilege to serve as Managing Director for the last nine years and carry forward the values of taking care of our clients and our people first established by our founders in 1984. I have every confidence in Sarah's leadership in further building on those values and carrying forward the vision for the Firm's future. This transition reflects the strength of our bench and our continued commitment to serving our clients and community at the highest level."

Kathryn Bibby and Mike Gershon will present "Not on My Watch: Pointers on Risk Management from Utility Lawyers" at the Texas Rural Water Association's Emerging Leaders Program on January 27 in San Antonio.

Mike Gershon and Stephen Malish will be discussing "Contract Risk Mitigation: Best Practices for Crafting and Entering Contracts" at the Texas Groundwater Association's Annual Convention on January 28 in San Marcos.

Jake Steen will be presenting "Day Zero: How Cities Run Out of Water" at the Texas A&M University School of Law's Journal of Property Law Symposium on February 6 in Fort Worth.

Sarah Glaser will present "Workplace Law for Governmental Entities: Hiring and Performance Management and an Overview of EEO and Leave Laws" at the Texas State University's Certified Public Manager (CPM) Program on February 12 in Arlington.

Jake Steen will be providing a "Case Law Update" at the Changing Face of Water Rights on February 18 in San Antonio.

Lora Naismith and Toni Rask will be presenting "We Have Too Much Water: Drainage, Flooding, Flood Plain Management" at the 30th Annual Land Use Conference on March 6 in Austin.

Thomas Brocato will give an "Update on PUC Rulemakings" at the TPPA Legal Seminar on March 10 in San Antonio.

Jeff Reed will be discussing "Landfill Gas to Energy Contracts" at the Utah Beehive SWANA Chapter 2026 Symposium on March 12 in Springdale, Utah.

Sarah Glaser will present "Staffing Your Practice" at the Texas Criminal Defense Lawyers Association - New Lawyer Series on April 15 via livestream.

AG Reviews County Permitting Authority and Liability for Buried Telephone Cables. Tex. Att'y Gen. Op. KP-0499 (2025).

The Caldwell County Criminal District Attorney (Caldwell County) requested an opinion from the Texas Attorney General about the scope of county authority when a utility buries cable in county rights-of-way. The questions were prompted by AT&T's interpretation of the Texas Utilities Code, so the Attorney General opinion is limited to the code's impact on corporations. The Attorney General first analyzed Section 181.082 of the Texas Utilities Code and found it grants telegraph and telephone corporations broad powers to install their facilities within public road rights-of-way. Section 181.082 provides that "[a] telephone or telegraph corporation may install a facility of the corporation along, on, or across a public road, a public street, or public water in a manner that does not inconvenience the public in the use of the road, street, or water." Texas courts have interpreted this language to authorize a corporation to install facilities underground. Public policy also encourages the construction of communication systems and using public roads for new telephone lines.

Local governments cannot deny telephone companies broad powers to install their lines, but this is not without limits. Section 181.082 expressly prohibits installing a facility that inconveniences the public to the use of the road. Installation may also be reasonably regulated.

While counties may supervise the installation or designate the location of utility facilities in the rights-of-way for public roads, counties may not impose permitting or minimum-depth requirements on a telephone or telegraph corporation that buries cable in a county road right-of-way. The Attorney General emphasized that municipalities may adopt regulations relating to the location of their facilities, but a county is not authorized to do so.

Caldwell County also asked whether the county or the corporation bears the costs for repair and reburial of a cable disturbed or cut by the county in upgrading and improving county roads. In response, the Attorney General cited the doctrine of governmental immunity, recognizing that, in general, political subdivisions are not liable for negligence of their employees, absent a waiver of immunity. The Texas Torts Claim Act governs this scenario and waives immunity when property damage is proximately caused by the wrongful act, omission, or negligence of a county employee arising from motor-driven vehicles or equipment. A claimant must prove negligence, which the Attorney General does not address since that would be questions of fact beyond the scope of the opinion.

AG Interprets Board Member Recusal Standard. Tex. Att'y Gen. Op. KP-0500 (2025).

The Nueces River Authority (Authority) Board President asked the Attorney General whether a board member should recuse themselves from discussion involving a City of Corpus Christi project when that board member had a close familial relationship with a senior level employee of the City whose position carried a special interest in water development projects. Specifically, a board member's brother-in-law was an executive of Corpus Christi Water, responsible for water supply and service. The Authority sought to construct and operate a seawater desalination plant in the Corpus Christi area to generate a new water supply and ensure present and future water security for the region.

The Attorney General's opinion explains that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, that is in substantial conflict with the proper discharge of the officer or employee's duties in the public interest. Tex. Gov't Code Section 572.058 requires public, memorialized disclosure by an elected or appointed officer who is a member of a board or commission having policy direction over a state agency if that individual has a personal or private interest in a measure, proposal, or decision pending before the board or commission.

Appointed officers include an officer of a state agency who is appointed for a term of office specified by the Texas Constitution or statute. The Authority is a conservation and reclamation district under the Texas Constitution with board members who are appointed officers. The Attorney General considered the ordinary meaning of "policy direction" and found that a board member has policy direction over the Authority since it makes plans, performs actions, and adopts programs of water conservation.

The Attorney General considered what constitutes a personal or private interest by looking to previous Attorney General Opinions. A personal or private interest can originate from a

familial relationship that has the potential to influence the public official in the exercise of their duties and responsibilities. The Attorney General concluded that the board member in question had a personal or private interest and must publicly disclose the conflict of interest to the board and abstain from voting on or otherwise participating in decisions concerning the plans and negotiations between the two entities.

AG Considers Commissioners Court Authority to Select a Law Firm for Redrawing Precinct Lines. Tex. Att'y Gen. Op. KP-0504 (2025).

The Fort Bend Commissioners Court (Commissioners Court) and County Attorney disagreed on whether the Commissioners Court has the authority to choose the outside law firm that would assist with redrawing the county election precinct lines. The County Attorney asserted her office had exclusive authority to select the law firm to assist with redistricting.

The Opinion looked to the plain meaning and legislative intent of the statutes governing the authority of commissioners courts and county attorneys and concluded that the County Attorney may not unilaterally contract with a law firm of her choice to assist with the Commissioners Court's redistricting duties under the Election Code. A commissioners court is the general business and contracting agency of the county, and it alone has authority to make contracts binding on the county, unless otherwise specifically provided by statute. This includes the authority to contract with experts when necessary, including attorneys. A county official, on the other hand, has no authority to make contracts that are binding on the county, except where he or she is specially so authorized to do so by statute.

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Kennedy's concurring opinion in *Rapanos*, amended the definition of "adjacent," and removed "interstate wetlands."[10] Due to ongoing litigation, the Conforming Rule currently applies in 24 states. Texas is not one of them. In 26 states, including Texas, the pre-2015 version of the WOTUS Rule (described above) is in effect.[11]

This latest installment—the 2025 Proposed Rule—further amends the Conforming Rule. Under the Proposed Rule, the definition of WOTUS would be changed to include: (1) traditional navigable waters and the territorial seas; (2) most impoundments of WOTUS; (3) relatively permanent tributaries of traditional navigable waters, the territorial seas, and impoundments; (4) wetlands adjacent (i.e., having a continuous surface connection) to traditional navigable waters, impoundments, and tributaries; and (5) lakes and ponds that are relatively permanent and have a continuous surface connection to a traditional navigable water, the territorial seas, or a tributary.[12] Notably absent from this definition is the long-standing inclusion of intrastate waters. Under the Proposed Rule, a waterbody that crosses state lines and does NOT fall under any of the definitions in items (1) – (5), above would not be considered WOTUS.[13] In other words, a waterbody that runs between two states does not automatically get WOTUS jurisdiction. However, a waterbody that runs between two states can still be subject to WOTUS, so long as it meets one of the definitions in items (1) – (5), above.

The Proposed Rule also adds definitions for "relatively permanent," "wet season," "tributary," "continuous surface connection," and "waste treatment system." The Agencies are seeking comment from the public on several aspects of these definitions.

- "Relatively permanent," as used in "relativity permanent tributaries of traditional navigable waters" above, would be defined as "standing or continuously flowing bodies of surface water that are standing or continuously flowing year-round or at least during the wet season."[14]
- "Wet season" would be defined as when average monthly precipitation exceeds average monthly evapotranspiration.[15]
- "Tributary" would mean "a body of water with relatively permanent flow, and a bed and bank, that connects to a downstream traditional navigable water or the territorial seas, either directly or through one or more waters or features that convey relatively permanent flow."[16] Notably, a tributary would not include "a body of water that contributes surface water flow to a downstream jurisdictional water through a feature such as a channelized non-jurisdictional surface water feature, subterranean river, culvert, dam, tunnel, or similar artificial feature, or through a debris pile, boulder field, wetland, or similar natural feature, if such feature does not convey relatively permanent flow."[17]
- "Continuous surface connection" as described above would mean a two pronged test of: (1) having surface water at least during the wet season and (2) abutting (i.e., touching) a jurisdictional water.[18] The phrase "having surface water at least during the wet season" is intended to include wetlands that have at least semi-permanent surface hydrology that is persistent surface water hydrology uninterrupted throughout the wet season except in times of extreme drought and would not include wetlands without semi-permanent surface hydrology, including wetlands with only saturated soil conditions supported by groundwater.[19]

For years, the regulated community has asked for regulatory certainty in regards to the CWA's application to discharges into waste treatment systems. A frequent comment received by the agencies was waste treatment lagoons and other waste treatment systems should not be

considered WOTUS.[20] The Proposed Rule will keep the exclusion for waste treatment systems, which has been in effect since 1979,[21] and proposes to add a definition for waste treatment systems to be defined as "all components of a waste treatment system designed to meet the requirements of the Clean Water Act, including lagoons and treatment ponds (such as settling or cooling ponds), designed to either convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge)."[22] However, for stormwater systems and wastewater reuse facilities, "such determinations would depend on the specific attributes of the control and the water feature and thus need to be made on a case-by-case basis."[23]

Although the Agencies describe the Proposed Rule as an effort to provide greater regulatory certainty, predictability, and consistency,[24] past revisions to the WOTUS definition suggest that increased litigation is likely, particularly over the dividing line between federal and state authority and the interpretation of newly adopted terms. The Agencies anticipate that the Proposed Rule will lead to an increase in non-jurisdictional findings in jurisdictional determinations, and fewer waters and wetlands would fall within the scope of the CWA.[25] The Agencies also expect that CWA Section 404 permitting will see reductions in both the number of permits issued and the amount of mitigation required for projects.[26]

The comment period deadline closed January 5, 2025, and the Agencies will have two public comment sessions forthcoming. Comments are available for viewing online at www.regulations.gov to Docket ID No. EPA-HQ-OW-2025-0322. At this rate, the total number of WOTUS installments could one day rival the films in the Marvel Cinematic Universe. As we wait to see how the series unfolds, if you have questions or need assistance in understanding the changes to the Proposed Rule, please reach out.

[1] *See* 33 U.S.C. §§ 1342 and 1344 (Clean Water Act sections regarding discharges into WOTUS and Section 404 dredge and fill permitting).
[2] *See* 84 Fed. Reg. 56626 (Oct. 22, 2019); *Solid Waste Agency of Northern Cook Cnty v. Army Corps of Eng'rs*, 531 U.S. 159 (2001); *United States v. Rapanos*, 547 U.S. 715 (2006).
[3] *Rapanos*, 547 U.S. at 739.
[4] *Id.* at 779.
[5] *See* 80 Fed. Reg. 37054 (Jun. 29, 2015).
[6] *See* 85 Fed. Reg. 22250 (Apr. 21, 2020).
[7] *See* Pasqua Yaqui Tribe v. U.S. Env't Prot. Agency, 557 F.Supp. 3d 949 (D. Ariz. 2021).
[8] *See* 88 Fed. Reg. 3004 (Jan. 18, 2023).
[9] *Sackett v. U.S. Env't Prot. Agency*, 598 U.S. 651 (2023).
[10] *See* 85 Fed. Reg. 61964 (Sept. 8, 2023).
[11] 90 Fed. Reg. 52498, 52512 (Nov. 20, 2025).
[12] *Id.* at 52499.
[13] *Id.* at 52516.
[14] *Id.* at 52517-18.
[15] *Id.*
[16] *Id.* at 52521.
[17] *Id.*
[18] *Id.* at 52527.
[19] *Id.*
[20] *Id.* at 52534.
[21] 44 Fed. Reg. 32854, 32858 (Jun 7, 1979); 90 Fed. Reg. 52499, 52534 (Nov. 20, 2025).
[22] 90 Fed. Reg. 52499, 52534 (Nov. 20, 2025).
[23] *Id.* at 52535.
[24] *Id.* at 52499.
[25] *Id.* at 52500.
[26] *Id.*

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NOW WHAT? IMPLEMENTATION OF ELECTRIC AND UTILITY BILLS FROM THE 89TH LEGISLATIVE SESSION

by Roslyn M. Waner, R.A. "Jake" Dyer, and Jack M. Klug

During the Texas Legislature's 89th regular session, lawmakers filed more than 250 bills relating to electric and gas utility matters. Of the smaller subset of these bills that made it past the finish line, several must now be expanded upon in rulemaking proceedings at state agencies. Meanwhile, other new laws from the 88th session are still undergoing agency implementation. Below we highlight ongoing and recently completed electric and gas utility rulemakings at the Public Utility Commission ("PUC") and the Railroad Commission ("RRC").

HB 145 by Rep. Ken King relates to wildfire mitigation plans for electric utilities. On November 14, 2025, the PUC adopted new 16 Tex. Admin. Code § 25.60 and amended existing 16 Tex. Admin. Code § 25.231 to implement this new legislation.

The new rules will require each electric utility, municipally owned utility, and electric cooperative that owns a transmission or distribution facility in a wildfire risk area to seek PUC approval of a wildfire mitigation plan and subsequently implement the plan. The PUC additionally modified criteria and conditions related to electric utilities' use of self-insurance reserve funds for damages from a wildfire event. The new rule took effect on December 4, 2025. More information is available on the PUC Interchange under Project No. 56789.

HB 4384 by Rep. Drew Darby relates to a gas utility's recovery of certain costs for plant, facilities, or equipment placed in service. In late September 2025, RRC Staff proposed new 16 Tex. Admin. Code § 7.7102 to implement the new law. Stakeholders filed comments with RRC Staff in mid-November. HB 4384 will reduce the lag time between when a gas utility spends money on capital projects and when the utility profits on such expenditures by recovering them in rates. RRC Staff's draft rule largely tracked the statutory language in laying out the process for utilities to seek recovery of these expenses in a regulatory asset. City and utility stakeholders filed comments on the proposed rule. The final rule has not yet been published.

SB 6 by Sen. Phil King and Sen. Charles Schwertner was a significant multi-faceted piece of utility legislation from the 89th session. The PUC divided the necessary rulemakings into different projects based on sections of the bill.

Under Section 4 of SB 6, large loads (75 megawatts ("MW") or greater) co-locating behind the meter with new generation resources are required to file a net-metering plan with ERCOT. The PUC approved a Proposal for Publication relating to net metering arrangements on September 18, 2025, and stakeholders filed comments throughout October. Proposed 16 Tex. Admin. Code § 25.205 will apply to net metering arrangements involving a large load and an existing generation resource. The rule will also establish criteria for ERCOT's study of a proposed net metering arrangement and prescribe certain procedural steps. More information is available on the PUC Interchange under Project No. 58479.

Section 2 of SB 6 calls for the establishment of criteria for ERCOT to forecast peak demand for large loads. The ERCOT forecast would then be used for transmission planning and evaluation of resource adequacy. The PUC approved a Proposal for Publication relating to large load forecasting criteria on September 18, 2025, and stakeholders filed comments throughout October. Proposed 16 Tex. Admin. Code § 25.370 will identify the criteria a large load customer must satisfy to be included in the load data submitted to ERCOT for developing the load forecasts contemplated under the new law. More information is available on the PUC Interchange under Project No. 58480.

A third SB 6 rulemaking focuses on reevaluation of the Four Coincident Peak ("4CP") methodology of transmission cost allocation. The 4CP methodology was intended to equitably allocate transmission costs to those who impact system-wide peak demand the most. Any changes to the 4CP methodology could shift transmission cost responsibility among classes of market participants. Since August 2025, PUC Staff has issued multiple sets of questions for stakeholder input under Project No. 58484. While many respondents recognize a need to modify the 4CP methodology, there appears to be little consensus on the most appropriate method for the PUC to adopt.

Another SB 6 rulemaking focuses on establishing standards for interconnecting large load customers in the ERCOT power region in a manner designed to support business development in this state while minimizing the potential for stranded infrastructure costs and maintaining system reliability. The rule will also ensure that a large load customer who is subject to the standards adopted under PURA § 37.0561 contributes to the recovery of the interconnecting electric utility's costs to interconnect the large load to the utility's system. This rule is anticipated to be in place by July 2026. More information is available on the PUC Interchange under Project No. 58481.

A final SB 6 rulemaking relates to the PUC requiring ERCOT to develop a reliability service to competitively procure demand reductions from large load customers with a demand of at least 75 MWs to be deployed in the event of an anticipated emergency condition. No filings have been made yet related to this rulemaking, but more information will be available on the PUC Interchange under Project No. 58482.

SB 231 by Sen. Phil King reforms a pre-existing statute related to Temporary Emergency Electric Energy Facilities, known as "TEEEF" or colloquially referred to as "mobile generation." Throughout September 2025, PUC Staff elicited initial and reply comments on proposed amendments to 16 Tex. Admin. Code § 25.56 under Project No. 58392. The draft rule focused on incorporating new guardrails from the amended law, including the process for PUC approval and parameters around mobility, boot-up time, and maximum generating capacity. As of the end of 2025, no final Proposal for Adoption had been published, but we can expect PUC consideration of a final draft rule in the coming months.

In addition to the above rulemakings arising out of the 89th session, the PUC used the latter half of 2025 to continue implementing new and modified laws from the 88th session. Of note is implementation of HB 1500 filed by several authors and known as the 2023 Sunset bill. One key feature of HB 1500 was the requirement for renewable resources interconnected after January 1, 2027, to be available during certain high risk and emergency intervals. On December 18, 2025, the PUC adopted Firming Program Requirements for Electric Generation Facilities in the ERCOT Region under new 16 Tex. Admin. Code § 25.65. In addition to establishing electric generation performance requirements, the rule establishes a framework for ERCOT to impose financial penalties and incentives depending on a generation facility's failure to comply or success in exceeding requirements. There continues to be discussion on how these requirements may interact with other legislative direction on electric market changes. The rule took effect on January 8, 2026. More information is available on the PUC Interchange under Project No. 58198.

HB 1500 additionally teed up a rulemaking on PUC verbal directives requiring ERCOT to take an official action. Proposed new 16 Tex. Admin. Code § 25.368 is meant to codify a statute that prohibits the PUC from verbally directing ERCOT to take an official action – except under limited circumstances. By law, the PUC may direct ERCOT to take an official action only through (1) a contested case; (2) a rulemaking; or (3) a memorandum or written order adopted by a majority vote. The PUC approved a Proposal for Publication relating to Commission directives to ERCOT on November 14, 2025, and stakeholders filed comments in December. More information can be found on the PUC Interchange under Project No. 57883.

The PUC also continues implementing provisions from SB 3, a broad-based law adopted in 2021 in response to that year's winter emergency that led to statewide power outages. A proposed rule from that 2021 law that remains under consideration relates to implementation of ERCOT's Firm Fuel Supply Service, an ERCOT reliability service intended to address reliability during extreme heat and cold weather conditions. The FFSS provides market rewards to generators with on-site fuel. Resources eligible

for the service under the authorizing statute, PURA § 39.159, include "on-site fuel storage, dual fuel capability, or fuel supply arrangements to ensure winter performance for several days." PUC Staff have reviewed rulemaking recommendations filed in the spring by cities and other stakeholders, and then on October 23, 2025, proposed new 16 Tex. Admin. Code §25.520. Under the proposed rule, FFSS eligibility would be expanded to include generators with off-site natural gas storage arrangement. More information can be found on the PUC Interchange under Docket No. 58434.

Roslyn Warner is a Principal in the Firm's Energy and Utility Practice Group, Jake Dyer is an Analyst in the Firm's Energy and Utility Practice Group, and Jack Klug is an Associate in the Firm's Energy and Utility Practice Group. If you would like additional information related to this article or other matters, please contact Roslyn at 512.322.5802 or rwarner@lglawfirm.com, Jake at 512.322.5898 or jdyer@lglawfirm.com, or Jack at 512.322.5837 or jklug@lglawfirm.com.

PFAS ROAD MAP 2026: WHERE THINGS STAND; WHERE POLICYMAKERS ARE GOING

by Nathan E. Vassar

Following the rush of the holidays and the jump back into a normal pace in 2026, one would be forgiven for losing track of where things stand in the world of PFAS regulation, proposed legislation, and anticipated changes to existing law. Amidst rules, proposed rules, and policy announcements that span drinking water, wastewater, CERCLA, and biosolids, there are plenty of moving parts; however, below is an attempt to start 2026 with a snapshot of where legislators, regulators, and policymakers are—at present—on the PFAS regulatory front.

In simplest terms, and as often described with clients and fellow consultants, there are four PFAS categories or "buckets" to consider and understand: 1-drinking water; 2-wastewater; 3-biosolids; and 4-CERCLA (or more commonly known as "Superfund"). Also at a high level, most regulation on PFAS has been at the federal level (so far) and tied to drinking water limits and CERCLA designations. However, as described further below, there are, and will continue to be, state-led proposals for PFAS spanning different environmental media.

Drinking Water and PFAS: The fastest-arriving PFAS regulations are in the drinking water space, as EPA in 2024 announced six Maximum Contaminant Limits ("MCLs") with monitoring requirements set to commence in 2027, and numeric compliance by 2029. ***However***, in Spring 2025, the new Administration announced a ***planned rollback*** (not yet implemented by rulemaking at the time of publication) of four of those six MCLs. The chart **(Figure 1)** below reveals what the current EPA has stated it intends to implement on PFAS MCLs, maintaining a four parts per trillion MCL for PFOA and PFOS, while ditching the balance of the earlier-proposed MCLs. Furthermore, EPA has announced a plan to keep the 2027 initial monitoring for PFOA and PFOS, but to delay compliance from 2029 to 2031. It was anticipated that a rulemaking to this effect would commence in fall 2025, but such plans were delayed as a result of the federal government shutdown.

Wastewater and PFAS: Most of the wastewater-related PFAS attention has been in the realm of biosolids, discussed below, but with regard to wastewater and PFAS regulation, there is no immediate threat of adopting NPDES/TPDES limits. Although NGOs and other environmental advocates have pressed for PFAS-in-

PFAS Compound	MCLG	MCL
PFOA (perfluorooctanoic acid)	0 ppt	4.0 ppt (ng/L)
PFOS (perfluorooctane sulfonic acid)	0 ppt	4.0 ppt
~~PFHxS (Perfluorohexanesulfonic Acid)~~	~~10 ppt~~	~~10 ppt~~
~~PFNA (perfluorononanoic acid)~~	~~10 ppt~~	~~10 ppt~~
~~HFPO-DA (GenX) (hexafluoropropylene oxide dimer acid)~~	~~10 ppt~~	~~10 ppt~~
~~Mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS~~	~~1 (unitless) Hazard Index~~	~~1 (unitless) Hazard Index~~

Figure 1: Current slate of existing (non-crossed out) PFAS MCLS and previously planned but unlikely to move forward PFAS MCLs (crossed out)

wastewater oversight, as of early 2026, neither EPA nor the TCEQ have announced any intentions to move in the direction of wastewater PFAS permit limits at any time now or in the future (although some states outside of Texas are initiating monitoring).

Biosolids and PFAS: Across the country, and here in our backyard, there has been considerable attention given to the presence of PFAS in biosolids, which is, of course, frequently used and sold as fertilizer. In Texas, there are no on-the-books regulations tied to PFAS and biosolids; however, there have been at least three attempts in the last couple of years to curtail or outright ban the land application of biosolids containing PFAS (some even attaching criminal liability for knowing or intentional violations). There was an Office of the State Chemist rulemaking that spanned late 2024 and into 2025 (ultimately it did not move forward) as well as several bills/companions introduced during the 89th Regular and 89th Second Special Session addressing the land application of biosolids containing PFAS. Although the legislation did not pass, if the proverbial cat has nine lives, PFAS biosolids bills still have at least six remaining, as the issue has become one of public and political interest, including with prospective regulation pushed by members of both major political parties. The primary concern for wastewater utilities is disposal options and costs, as according to TCEQ and as stated in legislative testimony, there are only 2-3 landfills in Texas that would be capable of receiving biosolids if a ban on land application were ever enacted (a ban was enacted in Maine a few years ago, and other states have seen similar momentum).

CERCLA and PFAS: Last but not least, two PFAS substances (PFOA and PFOS) have been classified under the federal CERCLA Superfund law as "hazardous substances," and the Trump EPA has stated that while these designations took place under the Biden Administration, there is no planned recission of PFOA/PFOS' categorization as hazardous substances. What this means in practice is that in the event a utility/city is pursued as a potentially responsible party with obligations for environmental clean-up costs, to the extent that such clean-up involves the presence of PFOA/PFOS (tied to an action of the utility – and other requirements under CERCLA), then a utility could conceivably be on the hook for payments in such a Superfund action. At present, national industry groups, including both the Water Environment Federation and the National Association of Clean Water Agencies, are working with Congress to seek a "passive receiver" exception under CERCLA, as water and wastewater industries are not the manufacturers of PFAS chemicals. Many expect that legislation to get some traction in Congress, but there are no guarantees, of course.

In the months ahead in this new year, we anticipate additional developments across multiple fronts and in these four different areas. Consequently, it remains as important as ever to remain engaged with your teams, including both technical and legal, as well as core industry groups that are both tracking and advocating for utilities. There are many ways to engage with regulators and legislators, in order to better understand implementation of existing rules, as well as to push for PFAS paths that are attainable and affordable. Each individual utility can benefit from the collective knowledge from others similarly situated across the state as we all navigate the new frontiers of PFAS rules and compliance challenges.

Nathan E. Vassar is a Principal in the Firm's Water, Compliance and Enforcement, Litigation, and Appellate Practice Groups. If you have any questions or would like additional information related to this article or other matters, please contact Nathan at 512.322.5867 or nvassar@lglawfirm.com.

ASK SARAH

Dear Sarah,

I read recently that there is a provision in the recent One Big Beautiful Bill Act changing how overtime payments are taxed. What do we need to do to comply with this new law?

Is This Really A Thing?
Signed, Reader

Dear Reader,

Yes! The much discussed "no tax on overtime" rule really is a thing, but it isn't quite what the headlines might imply. As part of the One Big Beautiful Bill Act (OBBBA), which was enacted in July 2025, Congress added a new federal income-tax deduction for qualified overtime pay effective for tax years 2025 through 2028. It's designed to reduce federal taxable income for employees who work overtime, but it doesn't literally make all overtime pay tax-free. Instead, employees may deduct the premium portion of their overtime (for example, the "half" in time-and-a-half pay required under the Fair Labor Standards Act) up to a maximum of $12,500 for single filers or $25,000 for married filing jointly. This deduction phases out for higher earners beginning around $150,000 (single) and $300,000 (joint).

For employers, the provision has reporting and payroll implications rather than changing how overtime is calculated or withheld in the ordinary course. Overtime wages continue to be reported on W-2s and are still subject to Social Security and Medicare taxes during the year; the deduction applies when the employee files their federal tax return.

For Tax Year 2025, with W-2s issued in January 2026, there is no requirement for employers to include separate detail for overtime. However, it is encouraged that employers provide employees with the proper calculation of their overtime premium for 2025 to help them when calculating and taking this new deduction. It's probably easiest to run a report to give employees a printout of

that calculation, but the IRS is also saying employers could enter the qualified overtime compensation amount into Box 14 on the W2 (used for informational purposes).

In late January 2026, the IRS released Fact Sheet 2026-01 to address frequently asked questions about the deduction. You can reference the Fact Sheet here.

For Tax Year 2026, there will be a new code (TT) for qualified overtime in Box 12 of the W2. So, in preparation for this, you should make sure that your system accurately tracks and can report qualified overtime.

"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.*

IN THE COURTS

Water Cases

San Jacinto River Auth. v. Ross, No. 14-23-00923-CV, 2025 LX 476204 (Tex. App.—Houston [14th Dist.] Oct. 16, 2025, no pet. h.).

The Fourteenth Court of Appeals reversed the trial court's denial of the San Jacinto River Authority's ("SJRA") plea to the jurisdiction and dismissed statutory takings claims arising from emergency reservoir releases during Hurricane Harvey. Homeowners downstream of Lake Conroe alleged that SJRA's emergency releases caused flooding of their properties and those releases constituted a taking under Chapter 2007 of the Texas Government Code. SJRA argued that its actions were exempt from takings liability under Chapter 2007's emergency-action exclusion, which applies when a governmental entity acts under a reasonable good faith belief that the action is necessary to prevent a grave and immediate threat to life or property.

The court agreed with SJRA, concluding that Hurricane Harvey presented an undisputed grave and immediate threat and that SJRA released water in accordance with its established gate operations policy to reduce the risk of dam failure and catastrophic flooding. The record showed that SJRA's releases were designed to mitigate downstream flooding compared to natural conditions and were consistent with professional engineering standards. The court held that SJRA's actions were objectively reasonable and taken in good faith, satisfying the statutory exclusion as a matter of law. Because the emergency action exclusion applied, the court concluded that the trial court lacked subject matter jurisdiction over the homeowners' Chapter 2007 statutory takings claims. The court emphasized that its ruling was limited to statutory takings claims and did not resolve any separate constitutional takings claims that may remain pending.

Wayne-Sanderson Farms, LLC v. Neches & Trinity Valleys Groundwater Conservation District, Cause No. DCCV25-5642-369.

Wayne-Sanderson Farms, individual plaintiffs, and Consolidated Water Supply Corporation filed suit against the Neches & Trinity Valleys Groundwater Conservation District ("NTVGCD") challenging the District's handling of applications for large-capacity groundwater wells proposed to pump significant volumes of groundwater from the Carrizo-Wilcox Aquifer for commercial export. The permit applications were filed by entities affiliated with investor Kyle Bass, including Redtown Ranch Holdings LLC and Pine Bliss LLC. The suit focused on the District's board action deeming the applications administratively complete, a determination that allowed the permitting process to proceed toward contested case hearings and potential approval.

Among other allegations, plaintiffs asserted that the administrative-completeness determination was invalid because it was taken by an improperly constituted board. The petition alleged that one director participated in the vote despite having an impermissible conflict of interest arising from his company's alleged involvement in drilling the proposed wells. Plaintiffs further alleged that another director was ineligible to serve at the time of the vote due to dual office holding, based on his simultaneous service as a member of a municipal governing body. According to the plaintiffs, these conflicts and eligibility defects rendered the administrative-completeness determination void or voidable and tainted subsequent permitting actions taken in reliance on that determination.

Following the filing of suit, the plaintiffs and the District negotiated an agreed resolution. In October 2025, the district court approved an agreed final judgment and entered a permanent injunction

that voided the District's prior actions related to the applications, including the administrative-completeness determination, and suspended further consideration of the high-capacity permits pending completion of specified scientific studies. The Bass-affiliated applicant entities were not parties to the settlement and have sought to intervene after judgment, asserting interests in the suspended permit applications. As of late 2025, the final judgment and permanent injunction remain in effect, and disputes regarding post-judgment intervention and appellate proceedings are ongoing.

Litigation Cases

4 Fams. of Hobby, LLC v. City of Hous., No. 24-0796, 2026 LX 91195, at *1 (Jan. 9, 2026).

In *4 Fams of Hobby, LLC*, the City of Houston decided to contract with a new party to oversee concessions at Hobby Airport after the existing contract with the previous contractor expired. *Id*. at *2. The previous contractor sued, contending that the new contract was void because it required expenditures of more than $50,000 and therefore triggered Section 252.021(a) of the Texas Local Government Code, which waives immunity to suits for violation of that chapter. *Id*. at *2–3. After some expedited jurisdictional discovery, the City filed a Plea to the Jurisdiction, which the trial court denied. *Id*. at *3–4. The Court of Appeals reversed, citing the contract's language: "nothing in this Agreement shall be construed to require that the City make any expenditure of its funds by, through or under this Agreement" (the "Expenditure Clause"). *Id*. at *4.

The Texas Supreme Court reversed, ruling that the court of appeals erred by not allowing further jurisdictional discovery to parse the inconsistent language within the contract and evidence. *Id*. at *6. Although the Expenditure Clause was some evidence that the City had not trigged Section 252.021(a), the court noted the contract also stated the "City shall provide and maintain all utilities" and the "City shall . . . maintain all public areas and facilities." *Id*. at *6–7. The court ruled that the latter two clauses could "reasonably be read to require city expenditures of more than $50,000," and the court of appeals erred by not remanding for further jurisdictional discovery. *Id*. at *10.

On a practical note, for governmental entities entering into quasi-expenditure-revenue contracts, the court held that an Expenditure Clause that contains "language indicating it overrides any other provisions potentially requiring city expenditures [] would be sufficient to resolve the analysis without jurisdictional discovery." *Id*. at *8. Accordingly, adding an overriding clause would likely be sufficient to circumvent Section 252.021 and avoid a corresponding waiver to sovereign immunity.

1 Coventry Court, LLC v. Downs of Hillcrest Residential Ass'n, Inc., No. 24-1047, 2026 LX 36727, at *1 (Jan. 9, 2026).

In this opinion, the Texas Supreme Court's holding is very narrow: when a party challenges the validity of an agreement that waives its appellate rights, Courts of Appeals are required to determine the validity of that waiver. *Id*. at *1–2, 8–9. However, the Court provided important dicta that indicates contracting parties should tread carefully when drafting, agreeing to, or intending to agree to any purported settlement agreement that is less than a fully-materialized, final agreement.

In this case, the parties effectively signed a preliminary agreement that required the parties to "execute a full and final settlement agreement and release of all claims and defenses asserted in the lawsuit." *Id*. at *3. However, one party viewed this as a final, enforceable agreement whereas the other party as a tentative settlement agreement. *Id*. at *3–4. Ultimately, the trial court sided with the party asserting it as a final, enforceable agreement, and required the other party to execute a (contested) proposed final agreement, under the pain of possible criminal contempt and incarceration. The other party did so, and appealed—but the appeal was dismissed by the appellate court based on the waiver contained in the final contested agreement

The Supreme Court specified that it was not ruling on the validity of waiver, but only that the Court of Appeals was required to review and make that determination. *Id*. at *8–9. However, it noted that the Parties' disagreement of material terms and one of the parties' judicially coerced assent could have invalidated the waiver. *Id*. at *7.

Parties should be cautious assenting to anything less than a final settlement agreement, and if they choose to do so, appropriate clauses and disclaimers should be included that make it clear that the instrument is not a final, enforceable contract, but only preliminary and that it reflects the parties' intention to negotiate and *possibly* reach a final agreement.

Mesquite Asset Recovery Grp., L.L.C. v. City of Mesquite, 154 F.4th 313, 314 (5th Cir. 2025).

In 2008, development groups (the "Contractors") purchased several acres of land from the City of Mesquite (the "City") and subsequently entered into a public-improvement contract ("Original Contract") with the City. *Id*. at 314. During this period of time, the City exempted the Contractors from the requirement to obtain a standard advisory opinion from the Federal Emergency Management Agency ("FEMA").

In the following years, the Contractors spent millions of dollars developing the area for the City, and in 2018 the Parties entered into two updated contracts, one being the Master Development Agreement ("MDA"). *Id*. at 315. The MDA automatically terminated after 5 years, which would also contractually terminate the City's reimbursement obligations to the Contractor. *Id*. The MDA also had a provision that the contract could only be extended if the Contractors obtained all permits and passed certain inspections. *Id*. Nearing the 5-year mark, the City informed the Contractors it would not renew the MDA, because the Contractors had not received FEMA clearance under the MDA. The Contractors sued alleging an unconstitutional taking under the United States and Texas Constitutions.

The Contractors claimed that the City acted as a government entity—rather than in a commercial capacity—primarily because it changed the rules (previous FEMA-clearance exemption) during the MDA's period. *Id*. at 317–18. The Fifth Circuit noted that although only a governmental entity can change the regulatory landscape, that in of itself is insufficient to establish governmental or sovereign capacity. *Id*. The Fifth Circuit held that refusing to renegotiate a contract, even by a governmental entity, results in a contractual dispute rather than a taking. *Id*.

The Fifth Circuit's ruling is important because it explains that governmental action that affects private property or a financial interest is, by itself, insufficient to constitute a taking. More is necessary, such as affirmative regulatory action that effectively prohibits a property from being developed when there is no contractual relationship between the developer and the city. *Id*. (citing *Kopplow Dev., Inc. v. City of San Antonio*, 399 S.W.3d 532, 534 (Tex. 2013)).

DM Arbor Court, Ltd. v. City of Houston, 150 F.4th 418, 420 (5th Cir. 2025).

In contrast to *City of Mesquite*, the Fifth Circuit ruled that a City's denial of a permit amounted to an unconstitutional taking under the Fifth Amendment of the United States Constitution. *Id*. at 420–21.

In 2016, DM Arbor Court Ltd. ("DMAC") purchased a multifamily apartment complex ("Arbor Court") in Houston, Texas. DMAC operated Arbor Court under a contract with the U.S. Department of Housing and Urban Development ("HUD") to provide subsidized housing to low-income residents. *Id*. at 421. Arbor Court lies in a 100-year floodplain and an ordinance by the City of Houston (the "City") requires that existing structures, such as Arbor Court, undergo "substantial improvement" to be elevated above the minimum flood protection elevation. *Id*. In 2016, after flooding, DMAC sought and received permits to make repairs to Arbor Court without elevating any building. In 2017, after Hurricane Harvey, DMAC again sought permits to repair damages to Arbor Court—this time the City denied the permits, stating that since Arbor Court had substantial damage, no permits would be issued until all buildings were elevated.

The Fifth Circuit held that by denying the permits on a rarely used (the Court noted the scarcity several times) section of the flood ordinance, the City deprived DMAC of all economically beneficial use of Arbor Court, constituting a categorical taking under *Lucas*, notwithstanding the trial court's ruling that a different property owner could have used the property for some other economically beneficial use. *Id*. at 422–23. (citing *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992)).

The Court reversed the trial court because it found, based on both Parties' experts, that there was no viable economic use of Arbor Court without repairs and the necessitating permits to conduct them. *Id*. at 425. Notably, in *dicta*, the Court explained that the application of a flood ordinance can result in a taking. *Id*. at 426–27.

Taken together, these Fifth Circuit cases reiterate the fact-intensive nature of takings claims under the United States and Texas Constitutions, and that the overall relationship, including past practices, may impact whether a governmental entity's actions may rise to the level of an unconstitutional taking.

"In the Courts" *is prepared by Stephen Malish in the Firm's Districts, Water, and Litigation Practice Groups and Nathan Marroquin in the Firm's Litigation Practice Group. If you would like additional information or have questions related to these cases or other matters, please contact Stephen at 512.322.5875 or smalish@lglawfirm.com, or Nathan at 512.322.5886 or nmarroquin@lglawfirm.com.*

AGENCY HIGHLIGHTS

United States Environmental Protection Agency ("EPA")

EPA Issues "Compliance First" Enforcement Directive. On December 5, 2025, the EPA's Office of Enforcement and Compliance Assurance ("OECA") issued a memorandum establishing a "compliance first" framework for civil enforcement activities. The memorandum directs enforcement staff to prioritize achieving timely compliance through the most efficient and economical means available, over lengthy enforcement negotiations. The memorandum also requires that enforcement actions align with the "clearest, most defensible interpretations" of statutory and regulatory requirements.

While the memorandum does not create legally binding rights, it signals a shift

in enforcement philosophy toward clarity, efficiency, and cooperation over adversarial investigations.

EPA Announces Plans to Propose a Rule Revising the Definition of "Begin Actual Construction" Under the Clean Air Act ("CAA") New Source Review ("NSR") Regulations. In September 2025 EPA announced its plans to propose a rule redefining what construction may be completed for a new or modified major stationary source before the final issuance of a new source review ("NSR").

The CAA prohibits new or modified major stationary sources of air emissions from "begin[ing] actual construction" without first obtaining an NSR permit. Currently, "begin actual construction" is defined by regulation as "the initiation of physical on-site construction activities on an emissions unit which are of a permanent nature," including ancillary construction such as installing building supports and foundations or laying underground piping.

Historically, EPA has interpreted this definition broadly, leading to a near prohibition on most preparatory actions until the issuance of an NSR permit. However, this definition was rolled back via guidance published in 2020, which recommended the allowance of certain construction, only prohibiting *direct* work on emissions units prior to NSR issuance. Based on EPA's announcement, it is anticipated that EPA's proposed rule will codify this position. The proposed rule is expected early 2026, with a goal of final rule publication before the end of the year.

Plaintiffs Appeal in Private Suit Against EPA for Failure to Regulate Per-and Polyfluoroalkyl Substances ("PFAS"). In June 2024, a group of property owners in Johnson County, Texas ("Plaintiffs") filed suit against the EPA under the citizen suit provision of the Clean Water Act ("CWA"), alleging that the EPA has a non-discretionary duty to regulate per- and polyfluoroalkyl substances ("PFAS") in biosolids, which it failed to fulfill. The Plaintiffs further argued that the CWA directs the EPA to produce a biennial (every two years) report reviewing and discovering new toxins and to promulgate regulations on identified toxins within nine months.

After briefing on the claims, a federal judge dismissed the lawsuit against the EPA in its entirety in late September 2025, finding that the two-year timeline applies only to completing the review itself, and does not extend to identifying or regulating newly identified pollutants. The court therefore found that it did not have subject matter jurisdiction over the case.

In November 2025, the Plaintiffs appealed the decision to the United States Court of Appeals for the D.C. Circuit. *Farmer et al v. United States Environmental Protection Agency et al.*, No. 1:24-cv-01654 (D.C. Cir. filed Nov. 25, 2025).

Texas Commission on Environmental Quality ("TCEQ")

TCEQ Proposed Rules Clarifying Groundwater District Petition for Inquiry Process. TCEQ has proposed amendments to 30 TAC Chapter 293 implementing HB 2080, which clarifies the petition for inquiry process for groundwater conservation districts. The proposed rules establish that the review panel serves as an advisory board rather than a governmental body, require the recording secretary to be a TCEQ employee, and specify that all panel records are public documents.

Key provisions include requirements for TCEQ to reimburse review panel members for actual expenses, extension of the petition process timeline by 120 days when technical assistance from the Texas Water Development Board ("TWDB") is sought, and authorization for the panel to request legal assistance from the Office of Public Interest Council ("OPIC"). The amendments also clarify that panel members may seek technical assistance and legal advice from entities beyond TWDB and OPIC.

Proposed rulemaking schedule:

- Anticipated proposal date: January 14, 2026
- Anticipated *Texas Register* publication date: January 30, 2026
- Anticipated public hearing date: February 24, 2026
- Anticipated public comment period: January 30, 2026 to March 3, 2026
- Anticipated adoption date: June 17, 2026

TCEQ Publishes New "Exiting Post Closure Care" Guidance for Municipal Solid Waste ("MSW") Facilities. In November 2025, after significant time working with industry leaders and stakeholder groups, TCEQ published Guidance Document No. RG-658 outlining methods for MSW facilities that have closed and met all post closure requirements to exit post closure care ("PCC"). While various requirements exist in rule, this guidance expands on certain provisions and provides additional insight into TCEQ's processes. Among other details, this guidance provides: (1) detailed information on when a facility may exit PCC; (2) step-by-step instructions for applying for PCC; and (3) information on assessing conditions of the facility. With a regulatory minimum of thirty (30) years of PCC for most MSW facilities, absent evidence supporting an exception, the publication of this guidance is timely given the rising age of many MSW facilities throughout Texas.

Public Utility Commission of Texas ("PUC")

PUC Implements TCEQ Design Standards for Utility CCNs in Municipal ETJs. The PUC adopted amendments to 16 TAC §24.233 implementing HB 3476 (87th Leg.), clarifying design standards for water and sewer facilities within the extraterritorial jurisdiction of a municipality. The rule, adopted October 2, 2025, requires utilities seeking CCNs within ETJs to design facilities according to applicable TCEQ standards.

Specifically, the amendments establish that for systems serving greater than 250 connections, facilities must meet the applicable TCEQ standards. For systems serving fewer than 250 connections, the utility must meet the applicable TCEQ standards only if the Commission determines (1) TCEQ standards are appropriate for the service area; and

(2) regionalization or consolidation of the utility with another utility is not economically feasible under TWC §13.241(d).

Parties to Oncor Rate Case Reach Settlement in Principle. In June 2025, Oncor Electric Delivery Company LLC ("Oncor" or "Company") filed an application with the PUC seeking to increase its transmission and distribution rates by $834 million, or approximately 13% over the company's present revenues of $6.4 billion. As filed, the application would have resulted in a $7.90/month increase on an average residential customer bill.

Oncor's application came ahead of schedule as the company was expected to file its next base-rate proceeding in 2027. Company officials attributed the earlier filing date to "hyper-growth" in Oncor's service territory and large investments resulting from that growth.

In mid-November, parties to the pending rate case, including municipal and industry intervenors, notified the Administrative Law Judge of a settlement in principle. As of January 26, no formal settlement agreement has been filed. Once filed, the agreement will be set for PUC consideration and approval. More information can be found under Docket No. 58306.

AEP Texas, Inc. ("AEP Texas") Files Inaugural Unified Tracking Mechanism Application. On October 6, 2025, AEP Texas filed an application with the PUC for approval of a single unified tracking mechanism ("UTM"). AEP Texas' application is the first proceeding of its kind following the passage of House Bill ("HB") 5247 by the 89th Texas Legislature. Public Utility Regulatory Act (PURA) § 36.216 allows an eligible utility to file a single annual proceeding to adjust nonfuel rates on a system-wide basis to reflect changes in transmission and distribution invested capital in lieu of adjustments to retail and wholesale transmission and distribution rates otherwise authorized in Distribution Cost Recovery Factor ("DCRF"), Transmission Cost Recovery Factor ("TCRF"), Transmission Cost of Service ("TCOS"), and System Resiliency Plan ("SRP") proceedings.

In its UTM Application, AEP Texas requested, among other updates, (1) a DCRF revenue requirement of $95,333,674, which is an increase of $37,035,500 compared to its previously-approved DCRF revenue requirement; (2) a revised Rider TCRF, resulting in a $3.80 decrease compared to the current residential TCRF factor of approximately $17.58 per 1,000 kWh; and (3) a TCOS revenue requirement of $912,022,627, which is an increase of $71,816,138 compared to the Company's previously-approved TCOS revenue requirement. Cities Served by AEP Texas ("Cities") and other parties intervened and reviewed AEP Texas' request. Cities filed direct testimony recommending in part decreases of $23,164,282 and $17,456,958 to the Company's proposed TCOS and DCRF revenue requirements, respectively. On December 15, 2025, the State Office of Administrative Hearings Administrative Law Judge cancelled the hearing on the merits and granted the parties' agreed motion for a paper hearing. More information on this proceeding can be found in Docket No. 58315.

Ongoing Texas-New Mexico Power Company ("TNMP") Rate Case. On November 14, 2025, TNMP filed an Application for Authority to Change Rates. This is TNMP's first comprehensive rate case in over seven years. TNMP has requested a net increase in transmission and distribution rates of approximately $34 million over adjusted test-year revenues, or an approximately 5% increase over adjusted test-year revenues of $673 million. If approved, an average residential customer will see a monthly increase of $5.20 to their electric bill. As a class, residential rates will increase 6.4% if TNMP's application is approved. TNMP has also requested recovery of $20.5 million for Hurricane Beryl restoration costs to be collected over 5 years with carrying charges.

Cites Served by Texas-New Mexico Power Company and other parties have intervened and requested discovery regarding TNMP's application. More information on this proceeding can be found in Docket No. 58964.

Texas-New Mexico Power Company and Troy Parentco, LLC Seek Regulatory Approval with the PUC for Proposed Merger. Earlier this year, on August 25, 2025, TNMP and Troy Parentco, LLC ("Troy") filed a Joint Application for Regulatory Approvals with the PUC for a proposed merger. Under the proposed merger agreement, TXNM Energy, Inc. (TNMP's parent company) will become a wholly-owned subsidiary of Troy. TNMP and Public Service Company of New Mexico would continue to be subsidiaries of TXNM Energy, Inc. and indirect subsidiaries of Troy and Blackstone Infrastructure. The merger agreement, if approved, would provide a $35 million rate credit to wholesale and retail customers over 48 months.

PUC Staff and other intervening parties (including Cities Served by Texas-New Mexico Power Company) reviewed the Joint Application and participated in settlement discussions with TNMP and Troy. After multiple weeks of settlement discussions, parties entered into a Settlement Agreement. The Settlement Agreement included: TNMP's agreement to provide a rate credit of $45.5 million to be paid over 48 months; composition of TNMP's board of directors to include seven members, and at least three members are disinterested directors, and two members include the President and CEO of TNMP; terms relating to dividend restrictions including limitations based on TNMP's credit rating, and a limitation on TNMP's ability to make any dividends during the first five years after the close of the acquisition reliant upon a vote of the majority of the disinterested directors, and majority vote of TNMP board of directors to amend, waiver, or modify any of TNMP's dividend policy; if TNMP's proposed capital and operations and maintenance budget(s) increase or decrease more than 10% relative to the prior fiscal year, then this change must be approved by a majority of TNMP directors and a majority of the disinterested directors; and ring-fencing provisions to

protect the subsidiaries from the parent company's liabilities including disallowing TNMP's assets, stock, or revenues from being pledged for the benefit of any entity other than TNMP, TNMP and other subsidiaries will not take on any new debt in conjunction with the Acquisition, and terms related to no cross-defaults, no affiliate asset transfers, maintaining separate books and records, etc. The PUC has not made a final decision. The Settlement Agreement can be found on the PUC Interchange in Docket No. 58536.

AEP Texas Application to Amend Mobile Temporary Emergency Electric Energy Facilities ("TEEEF") Rider. As previously reported, AEP Texas filed an Application to Amend its Rider Mobile TEEEF. AEP Texas sought a total Rider Mobile TEEEF revenue requirement of $36.3 million. AEP Texas, intervening parties (including AEP Cities), and PUC Staff participated in settlement discussions, and a Settlement was achieved. The Settlement Agreement reduced AEP's requested Rider Mobile TEEEF revenue requirement to $24.2 million. On November 14, 2025, the PUC filed a Final Order approving the Settlement Agreement. The Final Order can be found on the PUC's Interchange in Docket No. 58076.

CenterPoint Energy Houston Electric, LLC ("CenterPoint") Application to Reduce its TEEEF Capacity and Rider and Application for Authorization to Lease TEEEF. In mid-2025, CenterPoint filed two TEEEF related applications with the PUC – an Application to Reduce its TEEEF Capacity and Rates ("Reduction Application") in PUC Docket No. 57980 and an Application for Authorization to Lease TEEEF ("Lease Authorization Application") in PUC Docket No. 58107.

The Reduction Application, filed in May 2025, included the request for approval of (1) a solution to make fifteen 32 MW TEEEF units available to ERCOT and CPS Energy beginning on or around May 1, 2025; (2) a corresponding reduction to the capacity of CenterPoint's TEEEF fleet; and (3) a TEEEF Rider rate reduction to reflect the removal of the fifteen 32 MW TEEEF units. CenterPoint sought a decrease of $24,022,583 from its TEEEF revenue requirement, resulting in a revenue requirement of $129,180,464. On November 21, 2025, CenterPoint filed supplemental documents, additionally requesting (1) to remove its 5.7 MW TEEEF units; (2) a corresponding reduction to its capacity of TEEEF fleet; and (3) a TEEEF Rider rate reduction to reflect the removal of the 5.7 MW in additional to the 32 MW TEEEF units. This supplemental reduction would further decrease CenterPoint's TEEEF revenue requirement by $62.1 million, resulting in a revenue requirement of $91,055,627. CenterPoint made the decision to further remove the 5.7MW units due to the Legislature amending the Public Utility Regulatory Act § 39.918 (which placed a limit on the maximum generation capacity of TEEEF units to not more than 5 MW) and CenterPoint's pending Lease Authorization Application. Varying stakeholders, including the Gulf Coast Coalition of Cities, have intervened and are evaluating the request and supplemental request to ensure customers are made whole for the removal of the fifteen units from CenterPoint's TEEEF fleet.

While these discussions are ongoing, CenterPoint and many of the same stakeholders found a resolution in CenterPoint's Lease Authorization Application – requesting authorization to enter into a new TEEEF lease for approximately 20 MW of TEEEF capacity consisting of 36 small (1.5 MW or less) units for a period of 36 months. Filed on December 3, 2025, the Settlement Agreement's terms relate to CenterPoint's agreement to maintain records identifying locations suitable for TEEEF deployment; CenterPoint's agreement to provide information to Gulf Coast Coalition of Cities, PUC Staff, and the Office of Public Utility Counsel ("OPUC") regarding a TEEEF deployment event; communication between CenterPoint and city, county officials, and Critical Load customers when a potential TEEEF deployment becomes reasonably foreseeable; CenterPoint's lease agreement will include a term allowing it to exit the lease agreement if ordered by the PUC or if otherwise required to be in compliance with applicable law or PUC rules; and CenterPoint's agreement to continue to assess potential improvements in communication with customers and retail electric providers related to the deployment of TEEEF. The Administrative Law Judge presiding over the proceeding has remanded the proceeding back to the PUC but has not yet made any recommendations on the Settlement Agreement.

CenterPoint System Resiliency Plan Settlement is Approved with Modifications. On November 19, 2025, a Final Order was filed approving the Settlement Agreement between CenterPoint, PUC Staff, and other intervening parties (including Gulf Coast Coalition of Cities) with modifications pursuant to Commissioner Courtney Hjaltman's memorandum. Initially, CenterPoint requested authorization

to spend $5.75 billion over a three-year period on 39 resiliency projects (also referred to as measures). After weeks of discussions, parties finalized a Settlement Agreement which resulted in a reduction to the Resiliency Plan by $2.576 billion. Under the settlement agreement, CenterPoint agreed to spend an estimated $3.178 billion over three years on 30 resiliency projects, and would defer $242 million to a fourth year in order to decrease the impact on ratepayers.

The Administrative Law Judge recommended the PUC approve the Settlement Agreement. However, upon review, Commissioner Hjaltman had concerns related to CenterPoint's proposed vegetation management resiliency measures, and three proposed measures that involve the replacement or extension of the useful life of legacy cables or degrading structures. Although CenterPoint provided additional evidence in support of its vegetation management measures, Commissioner Hjaltman ultimately recommended a reduction to the vegetation management measures which included the removal of projects with a benefit to cost ratio that indicated the benefit of the project does not outweigh the cost. Commissioner Hjaltman additionally maintained her recommendation for the removal of the three measures involving the replacement or extension of the useful life of legacy cables or degrading structures because those measures were not sufficiently distinct from CenterPoint's existing responsibilities to make reasonable upgrades or replacements. At the PUC Open Meeting held on November 14, 2025, all PUC Commissioners agreed with Commissioner Hjaltman's recommendations, and a Final Order approving the Settlement with the modifications proposed by Commissioner Hjaltman was passed. Commissioner Hjaltman's memorandums and the Final Order can be found on the PUC Interchange in Docket No. 57579.

Energy Efficiency Cost Recovery Factor ("EECRF") Updates. As previously reported, AEP Texas, Inc. ("AEP Texas"); Oncor Electric Delivery Company LLC ("Oncor"); and CenterPoint Energy Houston Electric, LLC ("CenterPoint") filed their EECRF applications on May 30, 2025, and Texas-New Mexico Power Company ("TNMP") filed its EECRF application on June 27, 2025. Under the Public Utility Regulatory Act and the PUC Rules, a utility must file an application annually with the PUC to adjust its EECRF in order to recover the utility's forecasted annual energy efficiency program expenditures, the preceding year's over- or under-recovery including interest and municipal and utility EECRF proceeding expenses, any performance bonus earned, and evaluation, measurement, and verification ("EM&V") contractor costs allocated to the utility by the PUC in the preceding year.

In AEP Texas's EECRF application proceeding, AEP Texas, PUC Staff, and intervening parties have come to a settlement which results in a reduction of $435. This reduction stems from a reduction to AEP Texas' adjustment of $391,167 for its net under-recovery of program year 2024 energy-efficiency costs, and a reduction to the requested $20,556 for rate case expenses incurred in the previous EECRF proceeding. In total, the Settlement Agreement allows AEP Texas to recover $29,572,074 during the program year 2026. The $29,572,074 includes (1) AEP Texas's forecasted energy efficiency cost of $18,859,458; (2) EM&V expenses in the amount of $254,234 for the evaluation of program year 2025; (3) an adjustment of $391,167 for AEP Texas' net under-recovery of program year 2024 energy-efficiency costs; (4) an adjustment of $40,792 for the interest on the net under-recovery of program year 2024 energy-efficiency costs; (5) a performance bonus of $10,006,302 for program year 2024 achievements; and (6) rate-case expenses incurred in the previous EECRF proceeding in the amount of $20,121 for AEP Texas. The Administrative Law Judge recommended approval of the Settlement Agreement and has remanded the proceeding back to the PUC for approval. More information can be found on the PUC's Interchange in Docket No. 58156.

The PUC filed a Final Order on December 12, 2025 approving the Settlement Agreement between CenterPoint, PUC Staff and intervening parties in CenterPoint's EECRF application proceeding. The Settlement Agreement did not change CenterPoint's requested recovery of $96,837,175 for (1) an estimated 2026 energy efficiency program cost of $50,155,355; (2) a performance bonus for 2024 program achievements of $40,313,445; (3) $576,924 in certain EM&V costs for evaluation of program year 2025; (4) a charge of $4,298,232 related to the under-recovery of 2024 program costs (including a charge of $448,229 for interest related to the under-recovery); (5) $44,990 in 2024 EECRF proceeding rate case expenses. However, under the approved Settlement Agreement, CenterPoint agreed to terms including (1) complete its planned market potential study, a portion of which will seek to gauge CenterPoint's ability to increase program spending for hard-to-reach and low-income standard offer programs, or other programs that help CenterPoint customers reduce their electric consumption; (2) meet with Sierra Club (one of the intervening parties) to discuss any recommendations in advance of the PUC's Energy Efficiency Implementation Project meetings for potential inclusion in CenterPoint's Energy Efficiency Portfolio; (3) meet with Sierra Club to discuss opportunities to educate residents within CenterPoint's service area about existing energy efficiency programs offered; (4) participate in an educational workshop in cooperation with the Sierra Club to present residents within the CenterPoint service area with pre-approved educations information about existing energy efficiency programs; and (5) provide information about how customers may access monies available through the Home Energy Performance-Based, Whole House (HOMES) and Home Electrification and Application Rebate (HEAR) program administered by the State Energy Conservation Office, assuming those programs become available in 2026. The Final Order and Settlement Agreement can be found on the PUC's Interchange in Docket No. 58185.

On December 12, 2025, the PUC filed a Final Order in Oncor's EECRF application proceeding, approving the EECRF application. After participating

in settlement discussions, PUC Staff ultimately agreed with and supported Oncor's application as filed, and the Steering Committee of Cities Served by Oncor did not oppose the application. The Final Order approved Oncor's requested recovery of $104,807,363, consisting of: (1) $63,800,000 in energy efficiency expenses forecasted for the 2026 program year; (2) allocation of $7,622,221 for the total under-recovery of 2024 energy efficiency costs that includes the required interest payment; (3) inclusion of a $32,560,930 energy efficiency performance bonus based on Oncor's energy efficiency achievements in 2024; and (4) $816,517 for the estimated EM&V costs for the evaluation of program year 2025. The Final Order can be found on the PUC's Interchange in Docket No. 58182.

On November 14, 2025, the PUC filed a Final Order in TNMP's EECRF application proceeding approving the Settlement Agreement between TNMP and PUC Staff. In the Settlement Agreement, TNMP agreed to forgo recovery of $1,238 of inadvertently included administrative expenses. Under the approved Settlement Agreement, TNMP's requested recovery of $833,213 was reduced to $831,975, consisting of: (1) $6,656,727 in forecasted energy efficiency costs for TNMP's 2026 energy efficiency programs; (2) $2,518,347 representing a performance bonus for TNMP having achieved demand savings that exceeded its goal for achievements in program year 2024; (3) $57,178 in forecasted EM&V expenses; (4) a refund of $993,247 for the net over-collection of 2024 energy efficiency costs, which accounts for $50,693 in rate-case expenses incurred by TNMP in the previous EECRF proceeding; and (5) interest to be refunded on the over-collection in the amount of $103,578. The Final Order can be found on the PUC's Interchange in Docket No. 58140.

Railroad Commission ("RRC")

Texas Gas Service Company, a Division of One Gas, Inc. ("Texas Gas") Request to Change Gas Utility Rates Settles. As previously reported, on June 30, 2025, Texas Gas filed its Statement of Intent to Change Gas Utility Rates with the cities in Texas Gas' Central-Gulf, West North, and Rio Grande Valley Service Areas, as well as with the RRC. In its Application, Texas Gas sought approval to consolidate all service areas into a single statewide jurisdiction. Texas Gas' proposed rates for its customers are based on a system-wide cost of providing service to customers throughout the entirety of Texas. Texas Gas further proposed to increase revenues by $41.1 million.

After participating in settlement discussions, RRC Staff, Texas Gas, and multiple intervening city coalitions (including Cities Served by Texas Gas Service Company representing cities in both the Central-Gulf and Rio Grande Valley Service Areas) executed a Settlement Agreement. The Settlement Agreement included a $15 million rate increase (compared to $41.1 million initially proposed by Texas Gas, a return on equity of 9.8% (compared to 10.4% initial proposed by Texas Gas), and the expansion of the Customer Assistance Program, including a shareholder contribution. The Settlement Agreement, however, did not include the issue of whether to consolidate all of Texas Gas' service areas. A Hearing on the Merits was held in early November and was limited to only the issue of consolidation. On December 23, the Administrative Law Judge filed a Proposal for Decision recommending the RRC partially approve the Settlement Agreement and approve consolidation. The Proposal for Decision did not recommend approval of the expansion of the Customer Assistance Program which would result in a further reduction of $574,000 to reflect the disallowance of the program funding through base rates. The Administrative Law Judge reasoned that recovery of funds for the Program through rates would fall under the RRC Rule § 7.5414 prohibition of "funds expended for contributions and donations to charitable, religious, or other nonprofit organizations or institutions" from being included in a utilities' cost of service. Texas Gas, RRC Staff, and intervening parties have the ability to file exceptions to the Proposal for the Decision before the RRC takes the Proposal for Decision up for consideration. More information can be found on the RRC's website in GUD Case No. OS-25-00028202.

Electric Reliability Council of Texas ("ERCOT")

Record Number of Cities Join ERCOT for 2026. For 2026, 177 cities and political subdivisions registered as ERCOT members. This number exceeds last year's total of 166 sign-ups as well as the number of city signups during any prior year. In addition, 26 members this year are new as compared to last year's membership.

As ERCOT members, consumers have a voice in ERCOT's decision-making process. Cities and political subdivisions are represented under one of two stakeholder groups – the Large Commercial Consumer or Small Commercial Consumer segments. Because cities and political subdivision members comprise an overwhelming majority of the members in both segments, they are able to vote and select their segment's representatives to the Technical Advisory Committee ("TAC"). As such, those representatives can vote on important technical issues that affect the affordability and reliability of power. The strong contingency of city members will help advance cities' interests in 2026.

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