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WHAT CAN A CITY COLLECT? A PRIMER ON FEES ALLOWED FOR A UTILITY'S USE OF MUNICIPAL RIGHTS-OF-WAY

by Jamie L. Mauldin

It is longstanding and well-established law that municipalities have the exclusive right to control and manage access for the use of their public rights-of-ways and receive compensation for use of those rights-of-ways.[1] The Texas Constitution explicitly prohibits cities from giving away city property.[2] Municipalities also retain police powers to manage their rights-of-way. Statutes throughout the Local Government, Transportation, and Utilities Codes protect these rights and ensure that municipalities receive compensation for use of their rights-of-ways. A home-rule municipality may "prohibit the use of any street, alley, highway or grounds of the city by any telegraph, telephone, electric light…gas company, or any other character of public utility without first obtaining the consent of the governing authorities expressed by ordinance and upon paying such compensation as may be prescribed and upon such condition as may be provided by any such ordinance."[3] General law cities have "exclusive control over the highways, streets, and alleys of the municipality."[4] So why has determining what fees to collect from telecom and internet providers gotten so confusing? Because the compensation a city receives depends on the type of services being provided.

Municipalities have historically negotiated franchise agreements with electric, gas, water, and telecommunications utilities to operate within the city's rights-of-way and receive a negotiated compensation amount for the use of those rights-of-way. However, changes to state law and deregulation in recent history have changed the applicability and legality of "franchise fees" with respect to telecommunications utilities. As such, city staff are often confronted with different types of agreements to negotiate, laws to follow, and fees to collect with respect to phone/cable/internet/fiber providers. Below is a primer on the types of agreements and fees a city may collect, based on the type of utility service that city is allowing to operate in its rights-of-way.

Franchise Agreements and Franchise Fees: Under Texas law, certain electric, gas, and water utilities operating within a city must do so pursuant to a franchise agreement and compensation is paid to the city under the terms of that agreement. These agreements are negotiated between cities and utilities and address compensation and permitting requirements; and regulate utility behavior in the rights-of-way. The city will collect franchise fees pursuant to the agreement.

Certificated Telecommunications Providers and Access Line Fees: Under the Public Utility Regulatory Act ("PURA"), no one can provide telecommunications service without obtaining a certificate of authority from the Public Utility Commission of Texas ("PUC"). A provider may not provide local exchange telephone service, basic local telecommunications service, or switched access service unless

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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

Mattie Neira will be discussing "Wrestling with Regulation: Solid Waste Developments" at the 2026 TxSWANA Annual Conference on April 28 in El Paso.

Sarah Glaser will be presenting "Substance Use in the Workplace: Legal Risks, Testing Policies, and Safety Considerations" at the 2026 TxSWANA Annual Conference on April 28 in El Paso.

Toni Rask will be discussing "Cool Clouds, Hot Demands: Big Data's Big Thirst in Texas" at the Texas Water 2026 Conference on April 28 in San Antonio.

Sarah Glaser will be presenting the "Dos and Don'ts of Hiring" at the Texas Workforce Commission Texas Conference for Employers on May 1 in Lancaster.

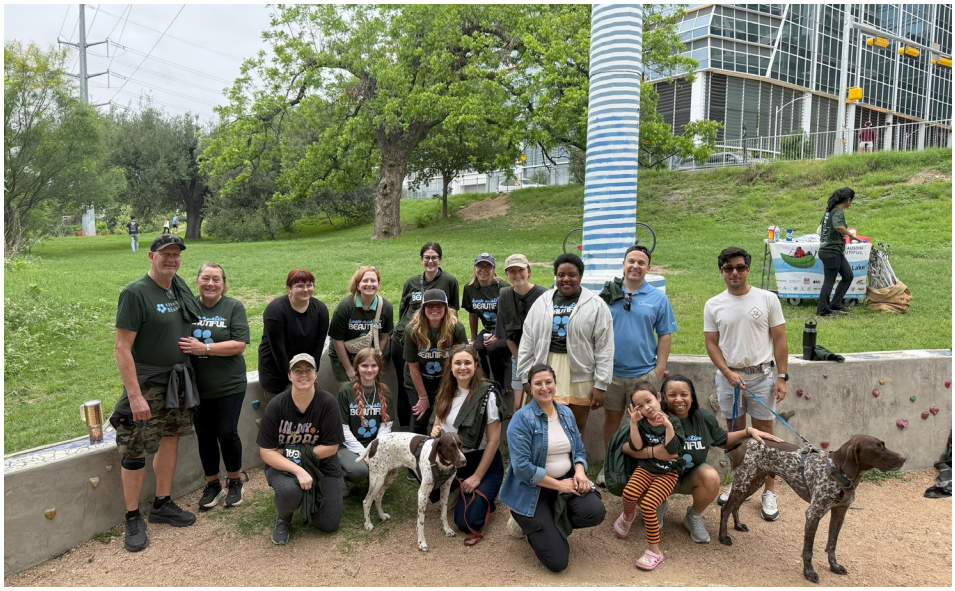
Sarah Glaser will be discussing "Employment Law Essentials for New Chiefs" at the New Chiefs Conference - CJAD on May 6 in Huntsville.

Lora Naismith and Toni Rask will be presenting "We Have Too Much Water: Drainage, Flooding & Floodplain Management" at a CLE for the Austin Bar Association's Real Estate Law Section on May 19 in Austin.

Lora Naismith and Emily Moyes will be discussing "Law and Odor: Drinking Water Unit" at the Texas City Attorneys Association 2026 Summer Conference on June 25 in Galveston.

Sarah Glaser and Laura Ingram will be presenting "Investigations 101" at the Texas City Attorneys Association 2026 Summer Conference on June 25 in Galveston.

Laura Ingram will be discussing "The Absent, Incompetent, and Unwilling: Strategies for Dealing with Difficult Employees to Keep the Good Ones Around" at the Texas Conference for Employers on June 26 in Harlingen.



Again this year, members of the Firm and their families participated in the annual Keep Austin Beautiful Day on April 18, 2026. 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.

Keeping Your Local Option Homestead Exemption Rate Until 2027. Tex. Att'y Gen. Op. KP-0507 (2026[LK1.1]).

The Village of Salado asked the Attorney General about reducing a local option homestead exemption that was adopted and in place in 2022.

The Texas Constitution authorizes municipalities to exempt a percentage of a residence homestead's market value from taxation, commonly known as the local option homestead exemption. The Legislature enacted Tax Code § 11.13(n) to allow taxing units to adopt this exemption. In 2023, the Legislature added subsection (n-1), which provides that the governing body of a school district, municipality, or county that adopted a local option homestead exemption for the 2022 tax year may not reduce or repeal the exemption. This provision expires December 31, 2027.

Accordingly, a municipality that adopted a local option homestead exemption for the 2022 tax year must maintain that exemption at or above the 2022 level through the end of the 2027 tax year. There is no exception if voters approve a reduction in the *ad valorem* tax rate. Therefore, a governing body may not reduce the exemption below the 2022 level for fiscal year 2025–2026, even if voters approve a reduction in the entity's *ad valorem* tax rate.

Understanding Quorums Under the Texas Open Meetings Act. Tex. Att'y Gen. Op. KP-0511 (2026).

The Mayor of the City of Conroe asked the Attorney General whether three council members, excluding the mayor, constitute a quorum under the Open Meetings Act. The Mayor also asked how the Act applied to three councilmembers meeting outside a properly noticed meeting to discuss city business.

The Texas Open Meetings Act (the Act) applies to meetings of a governmental body. The City of Conroe charter defines a quorum for conducting business as two-thirds of the qualified members of the city council, including the mayor and councilmembers. [LK2.1] Because the City has five councilmembers and one mayor, there are six qualified members, and a quorum is four. It is immaterial that the mayor does not always vote, because the City's charter on which the Act relies expressly includes the mayor in determining a quorum.

A gathering of fewer than a quorum of a municipality's governing body does not ordinarily trigger the Act, but it may do so in certain circumstances. A governmental body may not avoid the Act by meeting in groups smaller than a quorum. Additionally, a committee composed of fewer than a quorum may still be subject to the Act if it independently qualifies as a governmental body with rulemaking or quasi-judicial authority. Walking quorums are also prohibited under the Act.

Adopting, Amending, and Filing a Budget. Tex. Att'y Gen. Op. KP-0512 (2026).

Promoted by Zavala County's budget process for the fiscal year 2024-2025, the Zavala County Attorney asked the Attorney General whether a commissioners court can rescind or readopt a different county budget after the annual budget is approved. If the answer to that question is no, the Zavala County Attorney asked whether commissioners subject themselves to legal liability by adopting a new budget. Finally, the Zavala County Attorney asked who has the duty to file the approved budget and whether a county auditor who fails to file the budget commits an offense under Texas Local Government Code Section 111.012.

Chapter 111 of the Texas Local Government Code governs the budget adoption process, while Chapter 152 governs the process for setting the salaries of elected county officers. A commissioners court may amend the budget to authorize an emergency expenditure or to transfer funds from one budgeted item to another. A commissioners court is not authorized to wholly rescind and adopt a different county budget after final approval of the annual budget. A commissioners court's decision to ignore its attorney's legal opinion (in this case, to not adopt a new budget) may potentially be introduced as evidence to support the prosecution of a criminal offense.

A county commissioners court can only change an elected officer's salary at a regular meeting during the regular budget hearing and adoption proceedings. Therefore, once the budget hearing and adoption proceedings are complete and a budget is approved, the commissioners court may not reduce the salary of an elected officer for that budget year.

Under Tex. Loc. Gov't Code Section 111.009(a), the commissioners court, not the county auditor, must file the approved budget with the county clerk, and it is unclear how a county auditor would

run afoul of this chapter by refusing or failing to file the approved budget with the county clerk.

Performance and Payment Bonds. Tex. Att'y Gen. Op. KP-0514 (2026).

Sterling County contracted with a road construction company to build roads in phases and required performance and payment bonds for each phase. When the company became insolvent and failed to complete the project, the County sought another entity to finish both the bonded phase and the remaining phases without requiring additional bonds. The county asked whether it must require each contractor for a road or bridge project to carry a performance or payment bond.

Historically known as the McGregor Act, Tex. Gov't Code § 2253 governs performance and payment bonds for public works contracts. Under § 2253.021(a), a governmental entity must require a prime contractor to execute performance and payment bonds. Although the Act does not specify a statutory penalty for noncompliance, the performance bond requirement is considered mandatory because it serves the public interest by protecting a governmental entity during the execution of a public works contract. A payment bond, by contrast, is solely for the protection and use of payment bond beneficiaries, such as subcontractors, laborers, and materialmen. It helps ensure these individuals are paid for their labor and materials, as they generally do not enjoy the same lien rights on public projects as they do on private projects.

Therefore, Tex. Gov't Code § 2253.021(a) obligates a county to require a prime contractor to execute performance and payment bonds.

Authority of State Inspectors and Poll Watchers in Texas Elections. Tex. Att'y Gen. Op. KP-0519 (2026).

The Honorable Bob Hall, Chairman of the Senate Committee on Administration, asked the Attorney General for clarification on whether state inspectors are prohibited from taking photographs or videos while observing election activities and whether poll watchers are prohibited from observing the counting of mail-in ballots and other activities related to mail-in ballots.

Under the Election Code, the Secretary of State may appoint state inspectors who are responsible to the Secretary and subject to the Secretary's discretion. These state inspectors are permitted to take photographs or videos while observing election activities. The Election Code prohibitions of recording at or near a voting station do not apply to an election officer conducting the officer's official duties. State inspectors are empowered to take reasonable steps to obtain evidence of the way a function or activity is being performed at a variety of election locations. Photographs and videos would be included in this evidence.

Texas law does not prohibit poll watchers from observing activities related to mail-in ballots. Under the Election Code, a watcher is entitled to observe any activity conducted at the location at which the watcher is serving. Watchers have specific grants of authority to observe certain unique activities relating to mail-in ballots. Watchers are generally not allowed to be present in a voting station with a voter, but watchers can observe in this private setting when a voter is being assisted by an election officer.

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the provider obtains: (1) a certificate of convenience and necessity; (2) a certificate of operating authority ("COA"); or (3) a service provider certificate of operating authority ("SPCOA").[5] In 1999, the Legislature stopped municipalities' ability to collect franchise fees for telecommunications providers and enacted Chapter 283 of the Local Government Code ("Chapter 283"). Under Chapter 283, if a provider has one of these certificates and is providing local exchange telephone or voice service, the provider will pay the city access line fees for use of the rights-of-way.[6] These access line fees for each city are set annually by the PUC.[7]

Cable Providers and Gross Revenues: In 2005, the Legislature added Chapter 66 to the Utilities Code, which prevents municipalities from negotiating franchise agreements with cable providers. Under this statute, the PUC is the franchising authority and cable providers must receive a statewide certificate of franchising authority, or SICFA, from the PUC in order to provide service. Cable service providers are required to pay municipalities five percent (5%) of gross revenues in order to access municipal rights-of-way.[8]

However, in some instances, a city may not receive both cable fees under Chapter 66 of the Utilities Code and access line fees paid under Chapter 283. In 2019, the Legislature adopted SB 1152 which lets providers of both cable and telecom services pay only the higher of the two fees.

Network Node and Annual Public Right-of-Way Rate: In 2017, the Legislature adopted S.B. 1004, which created Local Government Code Chapter 284 ("Chapter 284"), and mandates that wireless infrastructure providers and wireless providers have access to public rights-of-way to locate their facilities. Under Chapter 284, the annual public rights-of-way rate may not exceed an amount equal to $250 multiplied by the number of network nodes installed in the public rights-of-way within the municipality's corporate boundaries. If a network provider wants to connect a network node to the network, it may also obtain transport service from a person paying municipal fees to occupy the rights-of-way of not less than $28 per node per month. Chapter 284 provides a complex permitting process and shot clock system for approving network node permit applications. A municipality may also charge an application fee in certain instances, up to a certain amount.[9]

License Agreements and Fees: Cities are seeing a sharp increase in fiber or broadband providers seeking entry into the rights-of-way. Often, these providers do not hold a COA or SPCOA or provide voice services, so they are not CTPs who would pay access line fees under Chapter 283. Nor are these cable providers with a SICFA under Chapter 66 of the Utilities Code, or network node providers required to pay per network node under Chapter 284. As such, some cities are able to negotiate license agreements with these types of providers. These license agreements are similar to franchise agreements in that they dictate fees, permitting, and general permission to use the rights-of-way.

Got it? Great. Now it all may change. The Texas Supreme Court heard oral arguments on March 5, 2026, and will ultimately issue a decision that could impact the implementation and collection of these fees. After enactment of SB 1004 and SB 1152, groups of cities sued the State, arguing that the laws violate the Texas Constitution's "Gifts Clause" barring governments from awarding anything of value to private companies without due consideration of public benefit. Cities further argue that the laws have harmed them by draining away money that otherwise could go to important public services.

The state, meanwhile, argues that public rights-of-way ultimately are state property and so the capped fees cannot constitute an unconstitutional gift from cities. The case, *State v. City of McAllen et al.*, was brought before the high court at the state's request after both a trial court and the Austin-based Third Court of Appeals ruled the laws unconstitutional. In briefing to the Court, the City of Houston told the court that implementation of these two bills has created a windfall of more than $45 million for service providers across the state. Meanwhile, the laws cost Houston between $17 million and $27 million the first year after they were enacted, according to the city. The case is *State v. City of McAllen*, Tex., No. 24-1060, 706 S.W.3d 503 (Tex. App. –Austin 2024), pet. granted (Jan. 16, 2026).

Unless and until the Texas Supreme Court rules otherwise, the statutory landscape for rights-of-way fees remains as stated in this primer. If you have questions about what types of compensation you may receive for the type of services being provided or offered in your city, please reach out.

[1]Tex. Transp. Code §§ 311.001, 311.002; Tex. Util. Code 14.008; Tex. Util. Code 54.205; Tex. Util. Code 103.002; Tex. Water Code 13.081
[2]Tex. Constitution Art. III, § 52; Art. XI, § 3.
[3]Tex. Loc. Govt. Code §590.001.
[4]Transp. Code 311.001(a).
[5]Tex. Util. Code § 54.001.
[6]*See* Tex. Loc. Govt. Code § 283.
[7]*"Issues Related to Establishment of, and Annual Revisions to, Access Line Rates for Texas Municipalities"* Project No. 24640 (Sept. 10, 2001).
[8]*See* Tex. Util. Code Ch. 66.
[9]*See* Tex. Loc. Govt. Code Ch. 284.

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THE ENDANGERED SPECIES ACT PROPOSES TO CHANGE ITS STRIPES YET AGAIN

by Emily E. Moyes and Lauren C. Thomson[1]

On November 21, 2025, the U.S. Fish and Wildlife Service ("FWS") and National Oceanic and Atmospheric Administration ("NOAA") proposed four rules for the implementation of the Endangered Species Act ("ESA").[2] The proposed rules are a return to several changes previously promulgated by the first Trump Administration in 2019, which were largely reversed by the Biden Administration in 2024.[3] The proposed rules repeal the "Blanket Rule," clarify the process for excluding certain areas from designation as critical habitat, and refine key aspects of interagency cooperation and the designation of threatened species and critical habitat.

Repealing the Blanket Rule

The first proposed rule, proposed only by the FWS, repeals the Blanket Rule.[4] The Blanket Rule extends the broad protections afforded to species that are classified as endangered to species that are also classified as threatened.[5] This is the second time the Blanket Rule is set to be repealed, with the first time under the first Trump Administration in 2019.[6] The proposed rule will apply to newly listed species, but will not remove blanket protections afforded to some currently listed species.[7] Species that already have species-specific protections will not automatically require re-evaluation.[8] However, FWS will have the discretion to revise and issue species-specific rules at any time it deems necessary and advisable for a threatened species.[9] As of the date of this article, 148 species are afforded species-specific protections.[10]

Providing for the Exclusion of Critical Habitat

The second proposed rule, also from FWS, clarifies the process for excluding areas from being designated as critical habitat.[11] When designating an area as critical habitat under the ESA, the FWS must consider whether the benefits of excluding a particular area from designation would outweigh the benefits of designating the area as critical habitat.[12] The proposed rule adds triggers to begin the exclusion analysis, parameters for considering evidence that is presented, and additional factors to weigh in the balancing framework.[13]

Under the proposed rule, an exclusion analysis is triggered when the FWS Secretary receives credible information from a proponent of exclusion in support of the request, or at the Secretary's own discretion.[14] A two-factor test applies to determine if information

is "credible": (1) whether the proponents have provided factual information in support of the claimed impacts and (2) whether the claimed impacts are meaningful.[15] When deciding to exclude an area under the proposed rule, FWS will "weigh [these] impacts relative to the conservation value of that particular area."[16]

The proposed rule places new factors in the balance when determining if exclusion of critical habitat is appropriate. The proposed rule includes the consideration of national security impacts, economic impacts, and other relevant impacts.[17] "Economic impacts" are defined as a non-exclusive list that includes considerations such as the economy of an area, jobs, and productivity.[18] "Other relevant impacts" are defined by a non-exclusive list that includes impacts to states, local governments, and Tribes, and public health and safety requirements.[19] Additionally, an exclusion analysis will take into account conservation plans, agreements, and partnerships, whether or not they include Section 10 "takings."[20] Because these plans are designed to protect species, they will now be a factor weighing in favor of exclusion, as the Service asserts these plans appropriately reduce the regulatory burden of establishing critical habitat.[21]

Interagency Cooperation

The third proposed rule, jointly proposed by FWS and NOAA, modifies the consultation process between federal agencies.[22] The consultation process requires agencies to consult with the Secretaries of the Interior and Commerce to ensure that any action authorized, funded, or carried out by such agencies is not likely to jeopardize the continued existence of endangered or threatened species, or result in the destruction or adverse modification of critical habitat of such species.[23] This rule proposes changes to key phrases that measure the impact of a federal action on a listed species and describes the actions taken to mitigate such impacts. These changes affect the following definitions: (1) "effects of the action," (2) "reasonably certain to occur" (this phrase is used in the definition of "effects of an action"), (3) "environmental baseline," and (4) "reasonable and prudent measures."

> First, the phrase "effects of the action" is defined, in the proposed rule, as: "all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action."[24]

This is a narrowing and tightening of the scope of the phrase, which is used in the context of determining the lead agency and the formal consultation process.[25] On March 30, 2026, the United States District Court for the Northern District of California vacated the current definition of "effects of the action" and reinstated the definition as it was before the first Trump Administration changed it in 2019.[26] Until a new definition is promulgated, the definition of "effects of the action" is "the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action."[27]

Second, within the definition of "effects of the action," is the phrase "reasonably certain to occur." The proposed rule defines this as well. For an activity to be "reasonably certain to occur" it must rest on "clear and substantial information" using the best scientific and commercial data available.[28] When evaluating whether activities caused by the proposed action or activities reviewed under cumulative effects are reasonably certain to occur, four non-exclusive factors are provided: (1) past experiences with similar activities, (2) existing plans for the activity, (3) legal, economic, and administrative requirements necessary for the activity to occur, and (4) the amount of governmental discretion to be exercised.[29]

Third, the phrase "environmental baseline," which is relevant to the formal consultation process, has been modified in the proposed rule to include a time element.[30] The environmental baseline determines the scope of the consultation by establishing a reference point from which to judge the proposed action. The proposed rule will limit the evaluation of this reference point to the state of the environment "at the time of the proposed action."[31]

Fourth, the phrase "reasonable and prudent measures," which is relevant to the context of the formal consultation process, especially as it relates to the development of incidental take statements, has been modified to more generally refer "to those actions the Director believes necessary or appropriate to minimize the impacts [of a federal action], i.e., the amount or extent, or incidental take."[32]

These changes have the collective effect of narrowing the view of the environment to its present state, limiting the effects of an action to be considered when determining the reasonable and prudent measures to apply, and granting FWS and NOAA greater discretion over what mitigation measures are reasonable and prudent.

Listing Threatened and Endangered Species and Designating Critical Habitat

The fourth rule, also proposed jointly by FWS and NOAA, modifies the process for listing threatened and endangered species and designating critical habitat.[33] Three significant changes have been made to the list of factors that determine whether a species should be listed, delisted, or reclassified.

First, listing, delisting, and reclassifying decisions under this section will now consider "possible economic or other impacts."[34] Previously, these impacts were expressly prohibited from consideration when determining if a species is threatened or endangered.[35]

Second, the phrase "foreseeable future," which is relevant to the definition of "threatened species," defined as those which are "likely to become endangered within the foreseeable future throughout all or a significant portion of their range," has been amended. For over forty years, the Endangered Species Act functioned without a definition of this phrase. The first Trump Administration promulgated a definition for the term in 2019, and its scope was broadened by the Biden Administration in 2024.[36] Under the proposed rule, the foreseeable future will be defined as "only so far into the future as [FWS and NOAA] can reasonably determine that both the future threats and the species' responses to those threats are likely."[37]

Third, the criteria for delisting a species will also revert to its 2019 form. Under the proposed rule, the reasons for delisting or reclassifying a species include: "(1) the species is extinct, (2) the species does not meet the definition of an endangered or a threatened species, and (3) the listed entity does not meet the definition of a species."[38]

Fourth, the rule proposes to change the criteria for designating critical habitat. The proposed rule's designations prioritize areas that are occupied by a species over unoccupied areas.[39] The proposed rule provides additional ways in which the Secretary may determine that a critical habitat designation would not be prudent.[40] These situations, which are enumerated in the proposed rule, include areas that provide negligible conservation value, areas that present or threaten destruction, modification, or curtailment of a species, and more.[41]

Conclusion

Before the comment period closed on December 22, 2025, FWS and NOAA received more than 300,000 comments on each of the four proposed rules. The agencies must now consider and respond to the substance of these comments, before they publish final rules. To follow the rulemaking process, visit regulations.gov and enter the following docket numbers: Repeal of the Blanket Rule (Docket No. FWS-HQ-ES-2025-0044); Revisions to the Process for Excluding Critical Habitat (Docket No. FWS-HQ-ES-2025-0048); Revisions to the Process for Interagency Cooperation (Docket No. FWS-HQ-ES-2025-0044); Revisions to the Criteria for Listing, Delisting, and Reclassifying Species (Docket No. FWS-HQ-ES-2025-0039).

[1]The authors would like to recognize Gabriel Murillo for his assistance with the preparation of this article.
[2]*See generally* 90 Fed. Reg. 52,587 (repeal of the Blanket Rule option for threatened species) (Nov. 21, 2025); 90 Fed. Reg. 52,592 (revisions to the considerations for excluding areas from critical habitat) (Nov. 21, 2025); 90 Fed. Reg. 52,600 (revisions to the interagency cooperation regulations) (Nov. 21, 2025); 90 Fed. Reg. 52,607 (revisions to the procedures and criteria for listing, reclassifying, and delisting species on the Lists of Endangered and Threatened Wildlife and Plants and designating critical habitat) (Nov. 21, 2025).
[3]*E.g.*, 90 Fed. Reg. 52,607, 52,608.
[4]*See generally* 90 Fed. Reg. 52,587.
[5]50 C.F.R. §§ 17.31, 17.71 (2024).
[6]90 Fed. Reg. 52,587 (second Trump Administration, proposed repeal of the Blanket Rule); 84 Fed. Reg. 44,753 (Aug. 27, 2019) (first Trump Administration, repeal of the Blanket Rule); *see* 89 Fed. Reg. 23,919 (Apr. 5, 2024) (Biden Administration, reinstatement of the Blanket Rule).
[7]90 Fed. Reg. at 52,588-89.
[8]*Id*. at 52,589.
[9]*Id*.
[10]FWS, *Species with 4d Rules*, Environmental Conservation Online System (last visited March 22, 2026) https://ecos.fws.gov/ecp/report/species-fourd.
[11]*See generally* 90 Fed. Reg. 52,592.
[12]16 U.S.C. § 1533(b)(2) (2022).
[13]90 Fed. Reg. 52,592, 52,594 (to be codified at 50 C.F.R. § 17.90(a)).
[14]*Id*. at 52,595 (to be codified at 50 C.F.R. § 17.90(c)).
[15]*Id*.
[16]*Id*. at 52,599 (to be codified at 50 C.F.R. § 17.90(d)(2)).
[17]*Id*. (to be codified at 50 C.F.R. § 17.90(a)).
[18]*Id*.
[19]*Id*.
[20]*Id*. (to be codified at 50 C.F.R. § 17.90(d)(3)-(4)).
[21]*Id*. at 52,596.
[22]*See generally* 90 Fed. Reg. 52,600.
[23]16 U.S.C. § 1536(a)(2) (1988).
[24]90 Fed. Reg. at 52,606 (to be codified at 50 C.F.R. § 402.02 (effects of the action)).
[25]50 C.F.R. § 402.07 (1986) (designation of lead agency); 50 C.F.R. § 402.14 (2024) (formal consultation process).
[26]*Ctr. for Biological Diversity v. U.S. Dep't of the Interior*, No. 24-cv-04651-JST, at *1, 417 (N.D. Cal. Mar. 30, 2026) (available at https://biologicaldiversity.org/programs/biodiversity/pdfs/62_Order-on-Cross-MSJs-and-Motion-for-Stay-on-Remand-3.30.26.pdf).
[27]Id. at *41 (reinstating the previous definition of "effects of the action," found at 50 C.F.R. § 402.02 (2018)).
[28]*Id*. at 52,607 (to be codified at 50 C.F.R. § 402.17(a)).
[29]*Id*.
[30]*Id*. at 52,606 (to be codified at 50 C.F.R. § 402.02 (environmental baseline)); 50 C.F.R. § 402.14 (formal consultation process).
[31]*Id*.
[32]*Id*. (to be codified at 50 C.F.R. § 402.02 (reasonable and prudent measures)); 50 C.F.R. § 402.14 (formal consultation process).
[33]*See generally* 90 Fed. Reg. 52,607.
[34]*Id*. at 52,609 (to be codified at 50 C.F.R. § 424.11(b)).
[35]50 C.F.R. § 424.11(b) (2024) (a listing determination must be made "without reference to possible economic or other impacts").
[36]84 Fed. Reg. 45,020 (Aug. 27, 2019); 89 Fed. Reg. 24,300 (Apr. 5, 2024) ("The foreseeable future extends as far into the future as [FWS and NOAA] can make reasonable reliable predictions about the threats to the species and species' responses to those threats.").
[37]90 Fed. Reg. at 52,614 (to be codified at 50 C.F.R. § 424.11(d)).
[38]*Id*. at 52,610.
[39]*Id*. at 52,612, 52,615 (to be codified at 50 C.F.R. § 424.12(b)(2)).
[40]*Id*.
[41]*Id*.

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DEADLINE UNDER THE PIA SCOTX CLARIFIES THE CLOCK

by Gabrielle C. Smith

Almost seven years of litigation over a supposedly missed Public Information Act deadline ended with the Supreme Court of Texas holding the deadline wasn't missed at all. In *Texas Commission on Environmental Quality v. Paxton*, the Court found Texas Commission on Environmental Quality ("TCEQ") timely sought a ruling from the Open Records division of the Office of the Attorney General.

The case is about how strictly courts should enforce the Act's 10-business-day deadline for requesting an Attorney General opinion. The Court approached the issue as a "best of three": if TCEQ prevailed on two of its three timeliness arguments, its request was timely. The Court found TCEQ timely on two independent grounds, reversing a judgment that would have required disclosure of more than 6,000 pages of documents to the Sierra Club.

Case Background

The dispute arose from a July 1, 2019 Public Information Act request in which the Sierra Club sought a broad set of records from TCEQ relating to "Ethylene Oxid Carcinogenic Dose-Response Assessment." The following day, TCEQ sent an email asking whether the request encompassed information TCEQ believed to be confidential and noting that, if so, it would seek an Attorney General ruling. Sierra Club promptly responded that it sought all responsive information, including materials TCEQ might contend were confidential but subject to disclosure under the Act.

TCEQ submitted a request for an Attorney General opinion asserting the deliberative-process exception. The Office of the Attorney General concluded the request was untimely and that the information was therefore presumed public. TCEQ challenged that determination in a declaratory action in district court, and Sierra Club intervened to compel production. Although the Attorney General later determined its initial timeliness determination was incorrect based on subsequent evidence provided by TCEQ, the trial court and court of appeals agreed with the Sierra Club. The Supreme Court granted review to resolve the timeliness dispute.

The Court's Two Paths to Timeliness

First, the Court held that TCEQ's July 2 email asking whether Sierra Club sought confidential information qualified as a good-faith narrowing inquiry under Section 52.222(b) of the Government Code. Under *City of Dallas v. Abbott*, such an inquiry resets the ten-business-day clock. Because Sierra Club responded the same day, the clock began running on July 3.

The court of appeals had rejected this argument on two grounds, both of which the Supreme Court found unpersuasive. It did not matter that the request itself was clear; the statute permits both clarification and narrowing, and the breadth of the request—ultimately encompassing thousands of pages—made a narrowing inquiry appropriate. Likewise, TCEQ's failure to include the statutory warning required by Section 552.222(e) did not negate the inquiry. The Court declined to impose a consequence the statute does not specify, reasoning that the omission affects whether a request may later be deemed withdrawn, not whether the inquiry resets the clock.

The Court also rejected the dissent's premise that TCEQ's inquiry was logically incoherent. TCEQ was not asking whether Sierra Club wanted information that was in fact confidential. It was asking whether Sierra Club would agree to exclude documents TCEQ believed were confidential or instead require an Attorney General ruling. That distinction was enough to make the inquiry a legitimate effort to narrow the scope of the request. The Court resolved the first point in favor of TCEQ finding that the 10-day clock started July 3.

On the second point, the Court held that the mailbox rule under Section 552.308(b) applied and that TCEQ could rely on evidence submitted after the Attorney General's initial decision to establish timeliness in the ensuing declaratory judgment action. Affidavits showed that TCEQ deposited its request in interagency mail on July 17, which satisfied the statutory deadline.

Sierra Club argued that TCEQ could not supplement the record after the Attorney General's ruling. The Court disagreed. Section 552.301(f), it explained, functions more like a collateral estoppel provision, preventing relitigation of prior determinations on the same information, not the correction or supplementation of evidence regarding timeliness. And because PIA declaratory judgment actions proceed like ordinary civil cases, the summary judgment record may include evidence not presented to the Attorney General.

Having resolved the first two issues in TCEQ's favor, the Court declined to address the third and final issue: whether July 5, a day when TCEQ was closed but not a legislated holiday, qualified as a "business day." That issue, the Court noted, would require navigating statutory amendments and retroactivity concerns that did not affect the outcome.

The Dissent

Justice Busby, joined by Justice Lehrmann, disagreed with the majority's narrowing analysis (while agreeing that the mailbox rule applies).

In the dissent's view, TCEQ's July 2 email could not narrow the request as a matter of law. Confidential information is not subject to disclosure regardless of a requestor's preferences, so asking whether the requestor seeks such information does not reduce the scope of responsive material or the agency's obligations. The dissent would have limited *City of Dallas*

v. Abbott to situations where a request is genuinely unclear or so overbroad that the agency cannot identify responsive documents.

Because the dissent would not have allowed the clarification email to reset the clock, it would have held that the mailbox rule alone was insufficient to render TCEQ's request timely. It also raised a broader concern: allowing agencies to reset deadlines through follow-up inquiries risks diluting the Act's emphasis on prompt disclosure.

Practical implications for governmental bodies

For governmental bodies navigating PIA compliance, the decision provides useful guidance along with some cautionary notes.

The opinion confirms that a good-faith clarification or narrowing inquiry under Section 552.222(b) can reset the ten-business-day clock. But that tool is not without limits. The inquiry must be tied to the scope of what the governmental body may need to produce or contest, and it should be clearly framed as such. Governmental bodies should also include the statutory warning required by Section 552.222(e) that failure to respond may result in withdrawal of the request. Although the Court declined to penalize TCEQ for omitting that warning here, it expressly identified the omission as a defect.

The decision also underscores the importance of documenting timeliness. Governmental bodies should maintain clear records, e-filing records, affidavits, logs, or other proof, establishing when a request was submitted online or deposited in the mail. The Court made clear that such evidence is properly considered in a declaratory judgment action, even if it was not included in the initial submission to the Attorney General.

At the same time, the close division in the Court and the dissent's textual critique counsel against overreliance on these doctrines as a fallback. The safest course remains straightforward: submit a complete and timely request for an Attorney General opinion within the statutory deadline and make the basis for timeliness clear on the face of the submission.

Conclusion

The Court did not resolve whether the documents at issue are protected by the deliberative-process privilege. That question returns to the lower courts on remand. What the decision does resolve is the framework for evaluating timeliness under the Public Information Act, and, in doing so, it affords governmental bodies some additional flexibility in navigating the statute's deadlines.

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PUC OVERTURNS TCEQ INTERPRETATION OF STATUTORY DEFERENCE TO WATER DISTRICTS IN RATE APPEALS

by Lauren J. Kalisek and Lisa C. Silveira

Texas water districts should be aware of an emerging shift in how the Public Utility Commission ("PUC") interprets Texas Water Code ("TWC") § 49.2122 which permits a district to establish different charges, fees, rentals, or deposits among classes of customers that are based on any factor the district considers appropriate. Departing from prior Texas Commission on Environmental Quality ("TCEQ") precedent, the PUC has recently determined in a series of water district rate appeals that the statute's presumption applies not only to the creation of customer **classes**, but also to the rates and fees set by a district. While this interpretation benefits districts, it does not allow for early dismissal of rate appeals or avoid the opportunity for petitioners to request interim rates.

Understanding TCEQ's Prior Interpretation of Texas Water Code § 49.2122

For many years, TCEQ interpreted TWC § 49.2122 as applying narrowly to the *establishment of customer classes*, rather than to the *rates* charged within those classes. TCEQ looked to the plain language of the statute to conclude that TWC § 49.2122(b) refers to "charges, fees, rentals, and deposits," but does not reference "rates." The TCEQ pointed to the section's title and structure emphasizing customer *classes*, suggesting that the Legislature intended the provision to govern how districts classify customers, not the specific rates established for those classes.

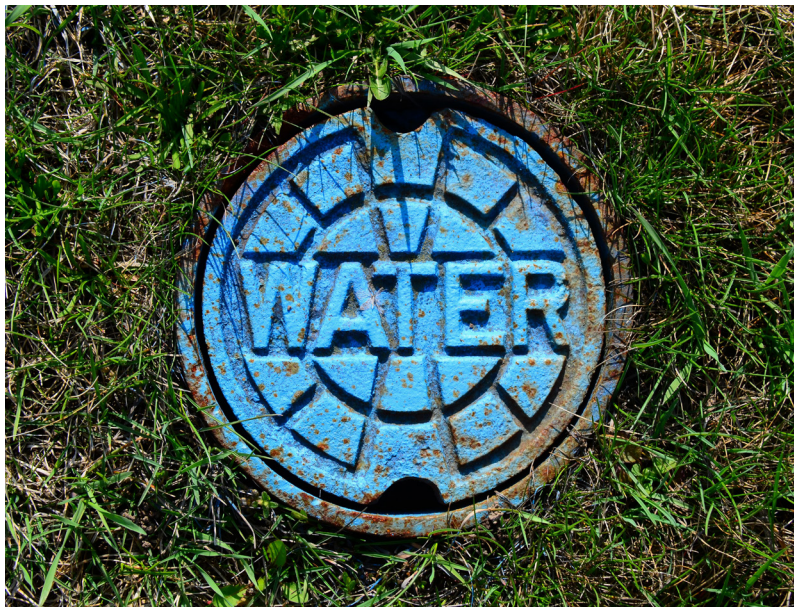
TCEQ's interpretation of TWC § 49.2122 was articulated in a series of administrative proceedings. In 2009,[1] TCEQ concluded that TWC § 49.2122(b) does not create a presumption that a district's rates are valid absent a showing that the district acted arbitrarily and capriciously. Instead, TCEQ observed that the district must still demonstrate that its rates are just and reasonable when challenged on appeal. In 2011, TCEQ also concluded that TWC § 49.2122(b) "only creates a presumption that *customer classes*, as opposed to rates, established by a district are properly established absent a showing that the district action establishing the classes was arbitrary and capricious."[2]

Under this framework, the burden of proof remained on the water district to justify the reasonableness of its rates, even if the classification structure, itself, was afforded some deference.

Shifting Interpretations of TWC § 49.2122: From TCEQ to Recent PUC Decisions

In recent cases before the PUC, the PUC has adjusted its interpretation of TWC § 49.2122, particularly regarding whether the statute creates a presumption favoring district decisions on rates. The PUC has reversed prior TCEQ precedent and confirmed that TWC § 49.2122(b) creates a presumption that rates set by a municipal utility district are properly established, and a petitioner may rebut this presumption by showing that the district acted arbitrarily and capriciously.[3]

In 2023, property owner Ariza Gosling Owner LLC challenged rates imposed by Northampton MUD as being unjust and unreasonable after being placed into a new customer class due to its tax-exempt status.[4] PUC staff looked to the plain text of TWC § 49.2122(b), which referenced "charges, fees, rentals, and deposits," and made no mention of rates at all, indicating that this provision was inapplicable to any rates a district established. Staff echoed the TCEQ precedent that the plain text of the section title unambiguously indicated TWC § 49.2122 related to classes, not the specific rates that are charged to ratepayers. PUC staff argued that under TCEQ precedent, TWC § 49.2122 applied only to the process of creating a class, and not the application of that particular class's rates to a particular group of ratepayers.[5] The Administrative Law Judges ("ALJs") agreed with PUC staff and concluded that: (1) the TWC § 49.2122(b) reasonableness presumption applies only to the establishment of the District's customer classes, not the District's rates; (2) Ariza Gosling is not required to first demonstrate that the District acted arbitrarily and capriciously in establishing the appealed rate pursuant to TWC § 49.2122(b) before a just and reasonable determination regarding the appealed rate can be made under TWC § 13.043(j); and (3) the district bears the burden to prove its appealed rate is just and reasonable.[6] Before the Proposal for Decision came back to the PUC, the parties reached a settlement and filed a joint motion to remand and dismiss the case.[7]



More recent cases before the PUC, however, have declined to follow TCEQ's long-standing interpretation. In PUC Docket No. 57445[8] and PUC Docket No. 57765,[9] both petitioners are multifamily property owners challenging municipal utility districts' water and sewer rate decisions affecting their properties after they became tax-exempt. One of the central issues in both dockets has been whether TWC § 49.2122 creates a presumption that rates set by municipal utility districts are proper.

While TCEQ found that TWC § 49.2122 applied only to the establishment of customer classes, the PUC declined to follow TCEQ legal and policy precedent in the PUC's Supplemental Preliminary Order in PUC Docket Nos. 57445 and 57765 issued on August 21, 2025.[10] The PUC concluded that the presumption in TWC § 49.2122(b) applies not only to the establishment of customer classes but also to rates set by the district among customer classes. The statute governs the establishment of rates among customer classes, not merely the creation of those classes as the title suggests and as TCEQ previously concluded. The PUC concluded that TWC § 49.2122 is intended to authorize a district to impose different charges and fees across its customer classes. These terms are broad and encompass what the water and sewer utility industry commonly refers to as rates, including minimum monthly charges, volumetric charges, and other similar assessments. Therefore, *charges* and *fees* are types of rates under the PUC's most recent statutory interpretation.

In at least one recent case the PUC has dismissed a rate appeal on the basis of its interpretation of TWC § 49.2122. In PUC Docket No. 54713,[11] ratepayers of Westwood Shores MUD appealed the water rates established by Westwood Shores MUD that affected the rates charged for water utility service, tap fees, late charges, and reconnect fees. Westwood Shores MUD based its decision to adjust water rates on its budget, and the rates recovered only reasonable and necessary expenses. The PUC interpreted and applied TWC § 49.2122 consistent with recent PUC decisions in Docket Nos. 57445 and 57765, where the PUC "determined that prior administrative decisions interpreting TWC § 49.2122 to the contrary were incorrect."[12] The PUC concluded that "[u]nder TWC § 49.2122(b), Westwood Shores MUD is presumed to have properly established its rates" and "[t]he ratepayers bear the burden of proof to overcome the presumption that the appealed rates were properly established under TWC § 49.2122(b)."[13] "A petitioner may overcome the presumption under TWC § 49.2122(b) by showing that a district's ratemaking decision was arbitrary and capricious."[14] The PUC did not follow the recommendations from the SOAH ALJ who applied the previous interpretation that the plain text and the title unambiguously indicate that TWC § 49.2122 relates to classes, not the specific rates charged to ratepayers.[15]

In PUC Docket No. 57765 the State Office of Administrative Hearings ("SOAH") ALJ certified five issues to the PUC related to how the PUC's updated interpretation of TWC § 49.2122 should be implemented in a rate appeal.[16] In response, the PUC provided the following guidance:

> A petition for a rate appeal does not need to specifically allege the district acted arbitrarily and capriciously. 16 Tex. Admin. Code §§ 22.73 and 24.103 set forth the requirements for an application to appeal rates under TWC § 13.043(b)(4) and no additional requirements exist in statute or rule.
>
> The ALJ does not need to find that a petitioner met its burden of proof in showing the district acted arbitrarily and capriciously before the ALJ considers whether to set interim rates. There is no requirement for a bifurcated trial or new procedures because the petitioner, rather than the district, holds the initial burden of proof.
>
> The PUC's interpretation of TWC § 49.2122 only shifted the burden of proof and did not change the process of considering an appeal. Therefore, no bifurcation of the hearing is required and the ALJ does not need to first find a petitioner met its burden of proof in showing the district acted arbitrarily and capriciously before an evidentiary hearing is held. This interpretation results in a district still being subject to discovery requests and hearings on interim rates before the initial issue of whether a district acted arbitrarily and capriciously has been addressed.
>
> The PUC declined to answer the question on whether initial discovery should be limited to the allegations in the petition if an initial finding of arbitrary and capricious action by the district is required.
>
> The PUC may consider a request from a district to recover rate-case expenses, regardless of whether a district is found to have acted arbitrarily and capriciously.

The interpretation of TWC § 49.2122 has evolved and continues to be addressed before the PUC. While TCEQ historically limited the statute to customer classifications, recent PUC cases suggest a broader reading that significantly affects how district rates are reviewed. Ultimately, the PUC's revised interpretation of TWC § 49.2122 benefits water districts, but it does not create a bifurcated process that would allow districts to avoid the time and expense of a hearing before issues such as arbitrariness and capriciousness are considered. Water districts should monitor these developments closely, as the outcome may alter both the standard of review and the allocation of the burden of proof in future rate disputes.

[1]Tex. Comm'n on Env. Quality - State of Texas, TCEQ Docket Nos. 2008-0091-UCR, 2008-0093-UCR, and 2008-1645-UCR, 2009 WL 2612226 (Aug. 19, 2009).

[2]*An Order Regarding the Appeal of the Retail Water and Wastewater Rates of the Lower Colorado River Authority*, TCEQ Docket No. 2008-0093-UCR, 2011 WL 577101 at *12 (Feb. 8, 2011).

[3]*Petition of Queenston LLC, Appealing the Decision of Langham Creek Utility District to Change Rates*, PUC Docket No. 57891, Supplemental Preliminary Order at 2 (Sep. 11, 2025); *Petition by Ratepayers Appealing the Water Rates Established by Westwood Shores Municipal Utility District*, PUC Docket No. 54713, Order at 1 (Sep. 11, 2025); *Petition of Heritage Cardiff SPE, LLC Appealing the Decision of Northwest Harris County Municipal Utility District No. 36 to Change Rates*, PUC Docket No. 57445, Supplemental Preliminary Order at 2 (Aug. 21, 2025); *Petition of Premier at Katy, LLC Appealing the Decision of the Harris-Fort Bend Counties Municipal Utility District No. 3 to Change Rates*, PUC Docket No. 57765, Supplemental Preliminary Order at 2 (Aug. 21, 2025).

[4]*Petitioner of Ariza Gosling Owner LLC Appealing the Water Rates Established by Northampton Municipal Utility District*, PUC Docket No. 54966.

[5]*Petitioner of Ariza Gosling Owner LLC Appealing the Water Rates Established by Northampton Municipal Utility District*, Commission Staff's Brief Regarding Burden of Proof, PUC Docket No. 54966 (Aug. 7, 2024).

[6]*Petitioner of Ariza Gosling Owner LLC Appealing the Water Rates Established by Northampton Municipal Utility District*, SOAH Order No. 9, PUC Docket No. 54966 (Sep. 11, 2024).

[7]*Petitioner of Ariza Gosling Owner LLC Appealing the Water Rates Established by Northampton Municipal Utility District*, Notice of Settlement and Statement of Confidentiality, Joint Motion to Remand, and Motion to Withdraw and Dismiss Appeal, PUC Docket No. 54966 (Nov. 12, 2024).

[8]*Petition of Heritage Cardiff Spe, LLC Appealing the Decision of Northwest Harris County Municipal Utility District No. 36 to Change Rates*, Docket No. 57445.

[9]*Petition of Premier at Katy, LLC Appealing the Decision of the Northwest Harris-Fort Bend Counties Municipal Utility District No. 3 to Change Rates*, Docket No. 57765.

[10]*Petition of Heritage Cardiff Spe, LLC Appealing the Decision of Northwest Harris County Municipal Utility District No. 36 to Change Rates*, Supplemental Preliminary Order, Docket No. 57445 (Aug. 21, 2025); Petition of Premier at Katy, LLC Appealing the Decision of the Northwest Harris-Fort Bend Counties Municipal Utility District No. 3 to Change Rates, Supplemental Preliminary Order, Docket No. 57765(Aug. 21, 2025).

[11]*Petition by Ratepayers Appealing the Water Rates Established by Westwood Shores Municipal Utility District*, Docket No. 54713.

[12]*Petition by Ratepayers Appealing the Water Rates Established by Westwood Shores Municipal Utility District*, Order, Docket No. 54713 (Sep. 11, 2025).

[13]*Id*.

[14]*Id*.

[15]*Petition by Ratepayers Appealing the Water Rates Established by Westwood Shores Municipal Utility District*, SOAH Proposal for Decision with Memorandum, Docket No. 54713 (May 30, 2025).

[16]*Petition of Premier at Katy, LLC Appealing the Decision of the Northwest Harris-Fort Bend Counties Municipal Utility District No. 3 to Change Rates*, Order on Certified Issues, Docket No. 57765 (Dec. 18, 2025).

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ERCOT DEVELOPS NEW BATCH STUDY PROCESS FOR LARGE LOAD INTERCONNECTIONS

by Jack M. Klug

ERCOT continues to navigate how to meet unprecedented energy demand currently projected in the State of Texas. In particular, ERCOT has projected that by 2031 forecasted energy demand may reach 145 gigawatts ("GW"), which is almost double the all-time peak demand of approximately 85.5 GW. Large Load customers, such as cryptocurrency miners and data centers, are being added in abundance to the ERCOT system and are responsible for much of this unprecedented load growth since they require a significant amount of power – at least 75 megawatts.

One of ERCOT's primary responsibilities is the examination of all new interconnection requests from Large Load industries to ensure the grid will have sufficient transmission capacity to serve them. However, because of the influx of new data centers and other Large Loads seeking grid connections, ERCOT now has a hard time keeping up. While ERCOT previously studied these Large Loads on an individual basis, it is now transitioning to studying these Large Load interconnections in "batches." According to ERCOT Vice President of System Planning and Weatherization Kristi Hobbs, ERCOT rules were developed to consider 40-50 Large Loads at a time, but ERCOT received 225 new Large Load interconnection requests last year.

In contrast to the current Large Load interconnection study process, the batch study process will allow ERCOT to conduct a single interconnection study for all loads across the system included in the batch. Many Large Loads under the current system have found themselves locked in a "doom-loop" — that is, a situation wherein their potential impacts on the grid face repeated reevaluations from ERCOT because of potential offsetting impacts from nearby loads also seeking interconnections. ERCOT CEO Pablo Vegas has said the proposed batch system will address these problems and likewise give developers a clearer indication as to when they can connect. More specifically — after a batch study is complete, each proposed load will be required to make certain financial commitments. If the proposed load satisfies the financial commitments by the specified deadline, a corresponding amount of grid capacity will be "reserved" for the project in future studies.

ERCOT is planning to conduct the batch study process in multiple phases. The first phase, or Batch Zero, will include loads already in the study process. ERCOT officials have said guidelines to determine Batch Zero project eligibility will be sorted out during the upcoming stakeholder workshops. Because the final criteria will determine winners and losers, stakeholder participation remains high. Stakeholders range from residential, industrial, and commercial consumers to investor-owned utilities and independent generators.

ERCOT presented a framework for the batch study process during the February 20, 2026 PUC Open Meeting. While ERCOT initially planned to obtain approval of the batch study process from the ERCOT Board at its February meeting, the Commissioners directed ERCOT and stakeholders to defer implementation of the batch approach pending adoption of Revision Requests in the stakeholder process, with a deadline for ERCOT Board of Directors approval of June 2026.

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TEXAS SUPREME COURT DECISION CREATES TRAP FOR THE UNWARY

by James F. Parker

On April 10, the Texas Supreme Court issued its decision in *Spectrum Gulf Coast, LLC v. City of San Antonio*—a case involving Spectrum's contract with the City allowing Spectrum to attach telecommunications equipment to the City's public utility's electric poles. Under the parties' 1984 contract, Spectrum agreed initially to pay $3.75 per pole attachment with annual rate increases. The contract further stated that the parties would "at all times observe and comply with . . . all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties hereto."

Three years later, the City entered into a similar contract with AT&T. But whereas the City's contract with Spectrum included an annual escalator clause, the AT&T contract did not. The result was that AT&T continued paying the 1984 rate of $3.75 per pole attachment while Spectrum's rate had increased each year.

That became important when the Legislature amended the Public Utility Regulatory Act ("PURA") in 2005 to prohibit municipalities from discriminating for or against telecommunications providers, including as to terms and pole-attachment rates. On the basis of the PURA amendment, Spectrum sued for breach of the contract, alleging that the contract's language by which the parties agreed that they would comply with all laws incorporated PURA's 2005 anti-discrimination requirement and thus required the City to charge Spectrum the same, lower rate that it charged AT&T under its contract.

The Supreme Court agreed with Spectrum's argument. The contract "usefully and sensibly facilitate[d]" the parties' "long-term relationship[] by accounting for—not seeking to evade—future regulatory changes." "[T]he parties' mutual commitment to 'at all times observe and comply with . . . all laws'" reflected the parties' expectation of future legal changes that, in the absence of such language, would require that the contract be terminated and renegotiated every time the Legislature passed a new law affecting a party's substantive rights.

Particularly in regulated industries, parties in long-term contracts should be aware of this new rule, particularly if their contracts similarly include an agreement to observe and comply with all laws and regulations (as public entity-contracts often do). The Supreme Court observed that language incorporating all laws and regulations has the benefit of ensuring that long-term contracts do not have to be frequently renegotiated. But that also creates the risk that a party may be bound by a contract term imposed by subsequent legislation that it neither anticipated nor would have agreed to.

To limit such risk, a long-term contract that incorporates and/or makes itself subject to subsequent changes to the law should be made readily terminable if a subsequent change to the law materially impacts certain essential terms of the contract, including the price to be paid under the contract. Alternatively, the parties could agree that in the event of such a future change in the law, the parties will agree to renegotiate the contract's terms within a certain period of time for the contract to continue. In any event, parties to such existing contracts should be aware that the provisions set out in the document—including fundamental terms like the contract price—may be changed by the Legislature or an administrative agency without their consent or knowledge. *Spectrum Gulf Coast, LLC v. City of San Antonio*, No. 24-0794 (Tex. Apr. 10, 2026) is accessible on the Texas Supreme Court website here.

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ASK SARAH

Dear Sarah,

We're facing budget pressure and may need to eliminate several positions. I keep hearing about "60 days' notice" in layoffs. Does that apply to us?

Signed, Trying to Plan Ahead

Dear Trying,

You're thinking of the Worker Adjustment and Retraining Notification Act ("WARN"), and yes, sometimes employers really do have to give 60 days' advance notice before certain layoffs. But not always and not everyone. Here's a quick summary:

First, WARN only covers commercial businesses with 100 or more employees. If you're smaller than that, WARN doesn't apply to you, with the caveat that if you have operations outside Texas, you need to check state law as well, as some states have separate requirements.

Second, WARN only applies to certain events. If you're eliminating only a handful of positions, you're probably outside WARN territory because WARN is triggered by a "plant closing" or "mass layoff," which usually means:

- 50 or more employees lose their jobs at a single site, or
- A large percentage of your workforce is impacted.

If you're not a covered employer, due to size, or even if you are, if WARN is not triggered by the size of the layoff, you do not need to comply with WARN notice provisions. On the other hand, if you are a covered employer and WARN is triggered, you must give written notice 60 days in advance to affected employees (and in some cases, to government entities like the Texas Workforce Commission).

Employers sometimes rely on exceptions like "unforeseeable business circumstances" or sudden funding loss. These can apply but they are not a free pass, and they're often questioned after the fact, so if you plan to rely on one of these exceptions, you should consult counsel first.

Many of our Firm's clients are governmental entities. WARN generally does not apply to federal, state, or local governments providing public services, but it can apply to separately organized public or quasi-public entities that operate in a commercial or business-like manner.

So, what should you do? If you're even close to the thresholds, pause before announcing anything and consult counsel. WARN issues are much easier to manage on the front end than to defend later.

And remember that even if WARN doesn't apply, layoffs come with other decisions that can create risk if you're not thinking them through, including:

- Ensuring the employees selected for the layoff are selected for clear, job-related reasons (performance, skills, business need) that were consistently applied. If it starts to feel subjective, it probably is.
- Considering whether to offer severance in exchange for a release of claims. Severance is not required by law, but many employers choose to offer it to reduce risk and help their employees land on their feet.
- Planning the conversations. You will need to decide who's delivering the message, what they're going to say, and when they're going to say it. If many employees are impacted, you'll want to time the conversations to happen close in time.
- And don't forget all the other logistical details, such as final pay, benefits, access to systems—these things tend to get rushed, and that's when mistakes happen. Slow down just enough to get it right.

Keep in mind that this is a high-level summary of a complicated federal law and doesn't cover all its nuances. Employment counsel can help you walk through each of these concerns and can share practical guidance that helps make a challenging situation a bit easier. This is certainly one of those situations where you don't want to go it alone.

"Ask Sarah" *is prepared by Sarah Glaser, Managing Director and Chair of the Firm's Employment Law Practice Group. If you would like additional information, please contact Sarah at 512.322.5881 or sglaser@lglawfirm.com.*

Water Cases

Cockrell Inv. Partners, L.P. v. Middle Pecos Groundwater Conservation District (No. 23-0593, No. 23-0742) (Tex. Mar. 13, 2026).

The Texas Supreme Court held that the Texas Water Code's 90-day exhaustion period only applies to a party of administrative proceedings before a groundwater conservation district. This decision consolidated two cases, *Cockrell I* and *Cockrell II*, which argued over which deadline applied for exhaustion of administrative remedies prior to appeal of a groundwater district's permitting decision.

In 2017, after Cockrell's neighbor leased its groundwater rights to Republic Water Company of Texas, LLC ("Republic"), Republic settled its permit application with the District. The court did not grant Cockrell party status because it treated the 2017 amendment as a continuation of the 2009 permit proceeding, a proceeding that Cockrell chose not to participate in. This continuation of the 2009 proceeding meant Cockrell's deadline to become a party passed years earlier and seeking party status in the 2017 proceeding was ineffective. In 2020, when renewing the permit, Cockrell sought party status again, and the District denied the request.

Reversing the court of appeals decision, the Texas Supreme Court held that Cockrell's challenge centered on Cockrell's party status. Outlining the elements of waiving government immunity, Cockrell met the first element because it counts as a "person" under the Government Code's definition and was dissatisfied with the District's refusal to grant it party status. The second element did not bar Cockrell's suit because subsection (b) only limits challenges for decisions on permit applications. Third, because Cockrell was not a "party," Texas Water Code Section 36.412's 90-day exhaustion window did not apply.

Cockrell requested reconsideration within 20 days of the District's decision and waited 45 days before filing suit; the District's inaction within those 45 days effectively denied Cockrell's requests. Because Cockrell waited until after this denial to sue, the Court held that Cockrell properly exhausted its administrative remedies and the Court remanded both cases to the Eighth Court of Appeals. This case focused on a narrow issue related to administrative exhaustion under Section 36.412 and therefore leaves other issues like standing and failure to timely request party status under Chapter 36 for the Court of Appeals to address.

TCEQ v. National Wildlife Federation, No. 15-24-00050-CV, 2026 LX 105649 (Tex. App.—Austin [15th Dist.] Mar. 10, 2026, no pet. h.).

In 2008, the Guadalupe-Blanco River Authority ("GBRA") applied for a water rights permit to divert up to 75,000 acre-feet of water per year along a 37-mile segment of the Guadalupe River[LK1.1] for municipal and industrial uses and with the option to store some of that water in off-channel reservoirs. The Texas Commission on Environmental Quality ("TCEQ") granted the permit in 2020. Following a State Office of Administrative Hearings contested case hearing where the National Wildlife Federation ("NWF") was a party, the TCEQ did not require GBRA to conduct additional site-specific assessments of fish and wildlife habitats under Texas Water Code Section 11.152. NWF sought judicial review, and the district court reversed.

The central dispute on appeal was whether TCEQ could rely on the environmental flow standards adopted for the Guadalupe River Basin under Section 11.1471 to satisfy and displace the otherwise applicable standards under Section 11.152 to assess the effects of the proposed diversion on fish and wildlife habitats. GBRA argued that once environmental flow standards exist for a basin, a site-specific Section 11.152 assessment is no longer required. NWF argued that the environmental flow standards replace Section 11.152 only to a limited extent.

After confirming that NWF had standing to sue because a member of NWF operated a seafood business on San Antonio Bay that depends on freshwater inflows from the Guadalupe River, the Court turned to the statutory interpretation question. Under Section 11.147(e-3), the adoption of an environmental flow standard relieves TCEQ of its duty under Section 11.152 only for the purpose of determining the environmental flow conditions necessary to maintain certain conditions, including "fish and aquatic wildlife habitats." The Court held that TCEQ's broader reading, that environmental flow standards categorically replace Section 11.152, would render much of subsection (e-3) superfluous and ignore the Legislature's deliberate distinction

between "fish and aquatic wildlife habitats" in subsection (e-3) and "fish and wildlife habitats" in Section 11.152. A site-specific Section 11.152 assessment is required where a proposed diversion could impact aquatic habitats for reasons unrelated to environmental flow or could impact non-aquatic wildlife habitats. Under Section 11.152, assessing effects includes the proposed appropriation site and potentially impacted habitats upstream, downstream, and adjoining the site. However, because the off-channel reservoirs were not themselves an appropriation and were not located at or adjacent to the diversion site, TCEQ did not err in concluding that a separate assessment of the reservoirs was not required.

The Court of Appeals held that while TCEQ did not commit an error of law in not requiring an assessment, it did prejudice NWF's substantial rights. This is because none of TCEQ's findings established that the impact of the diversions on aquatic habitat solely related to environmental flow conditions or that they would not impact non-aquatic habitat. The court affirmed the lower court's reversal of the TCEQ Order and sent it back to TCEQ to show through fact and law whether site specific assessments of a proposed diversion's effects on fish and wildlife habitats are required.

AIRW L.P. v. City of Georgetown, No. 15-24-00132-CV, 2025 LX 678341 (Tex. App.—Austin [15th Dist.] Dec. 30, 2025, no pet.).

A group of affiliated developers sought wastewater services for a 128-acre residential development just outside of the City of Georgetown's city limits, but within its extraterritorial jurisdiction. After the City conditioned providing wastewater service on annexation of the developers' properties within the City, AIRW applied to the TCEQ for a permit to build and operate its own wastewater treatment plant. TCEQ issued a draft permit and later granted the wastewater permit following a SOAH contested case hearing. The trial court reversed on regionalization grounds. On appeal, the Fifteenth Court of Appeals considered whether there was substantial evidence for TCEQ's decision under its regionalization policy.

The TCEQ's regionalization policy encourages the use of regional wastewater systems but allows exceptions where the applicant shows that an exception should be granted based on cost or other relevant factors. The central dispute was whether conditioning service on annexation constituted a denial and whether the projected cost of annexation justified a cost-based exception. The Court upheld the TCEQ's determination that the permit complied with the regionalization policy, affirming TCEQ's view that a city's annexation-as-a-condition-of-service effectively operated as a denial of service, and holding that the cost exception independently supported the permit. The developers submitted reports and assessments from their engineering consultant and an independent appraiser showing that the City's annexation requirement would reduce the residential properties' value by approximately $20 million, while constructing their own facility would cost about $5 million. The Court held that the $20 million diminution was an opportunity cost the Commission could reasonably consider in applying the cost-based regionalization exception. The Court rejected the City's argument that property values and zoning fell outside TCEQ's authority when conducting regionalization policy analysis.

The Court also held that substantial evidence supported TCEQ's determinations that the permit protected water quality, complied with antidegradation procedures for Tier 1 and Tier 2 waterways, protected human health, met applicable nuisance odor requirements, and was administratively complete. The Court reversed the trial court's judgment and rendered judgment affirming the Commission's order.

Alexander v. Woodlands Land Dev. Co. L.P., No. 01-22-00827-CV, 2025 LX 582656 (Tex. App.—Houston [1st Dist.] Dec. 16, 2025, no pet.).

In a negligence and gross negligence claim against Woodlands following the flooding of several homes, the court declined to create a new common-law duty. While foreseeability of negligence claims is an important factor, foreseeability alone does not create a duty. Thus, the fact that it may have been foreseeable that the homes could flood is not enough to impose a duty on the home builders. Further, the Woodlands also properly exercised reasonable care by hiring an engineering firm to record past flood levels and building their homes based on that plan. The trial court's summary judgment in favor of Woodlands was proper.

Equinor Energy LP v. Lindale Pipeline, LLC, No. 24-0425, ___ S.W.3d ___, 2026 LX 16331 (Tex. Mar. 13, 2026).

A hydraulic fracking company did not breach its water supply contract with its water supplier by purchasing water from another supplier for use in its oil wells. Equinor Energy's predecessor contracted with Lindale to finance the construction of a water pipeline in exchange for Lindale serving as the exclusive water supplier "on the Pipeline." The contract specified that Lindale would be the sole provider and pumper of water "on the Pipeline," but if Lindale was unable to provide water, then Equinor could use other sources. After Equinor acquired the predecessor company, it began purchasing water for its wells from other suppliers that used lay-flat hoses, rather than pipelines. Lindale sued Equinor for breach of contract arguing it had an "exclusive" right to supply all of Equinor's water under the contract.

Reversing the court of appeals, the Court rejected Lindale's argument that the purpose of the contract should be expanded to include providing water to the wells and held that the exclusivity clause unambiguously applies only to pumping operations "on the Pipeline." The Court reasoned that the prepositional phrase "on the Pipeline" modified the nouns "provider" and "pumper," not the wells themselves, and that the contract's definition of "Pipeline" enumerated specific components like lateral lines and well-site appurtenances that did not include the oil wells. Although an attached map depicted the wells, the contract's incorporation language limited the map's role to describing the enumerated components rather than expanding them. Because the wells fell outside the scope of the exclusivity clause, Equinor

was free to purchase water for the wells from third parties without breaching the contract.

Litigation Cases

United States v. Heppner, Cause No. 25 CR.503 (JSR), 2026 LX 51521, at *1 (S.D.N.Y. Feb. 17, 2026).

The Court summarized the issue in this opinion cogently: "whether, when a user communicates with a publicly available AI platform in connection with a pending criminal investigation, are the AI user's communications protected by attorney-client privilege or the work product doctrine?" *United States v. Heppner*, Cause No. 25 CR.503 (JSR), 2026 LX 51521, at *2 (S.D.N.Y. Feb. 17, 2026).

The Court answered "no." *Id*. Although this case specifically concerns criminal law, it noted two general truths: (1) generative AI is becoming more and more prevalent and common place across all human activity, and (2) case law surrounding the implication of such use is almost entirely absent across the nation. *Id*. Inevitably, federal and state Texas courts will need to rule on the discoverability and admissibility of user inputs into a generative AI program; and *Heppner* is at least one strong data point on how they will answer, and how clients may need to be advised moving forward.

The *Heppner* Court answered "no" for three reasons. First, the generative-AI tool—although used by Heppner purportedly to generate legal strategy—is not an attorney, does not owe fiduciary duties to the user, and is not subject to discipline. *Id*. at *7. Therefore, the user's communications with it could not implicate attorney-client privilege nor the work-product doctrine. *Id*. Second, the user-AI communications were not confidential, based on the AI program's own terms of use (i.e. "uses such data to 'train' Claude, and authorities"). *Id*. at *7–8. Lastly, the AI program itself disclaims it cannot provide legal advice when prompted. *Id*. at *10.

Heppner provides important guidance for practitioners and clients, although not binding on Texas courts. Should a client use AI to generate legal strategy or to input data, the client should ask several questions: what are the specific terms of use for this program? Am I doing this at the behest, knowledge, and request of counsel? These two questions may provide helpful insight to determine whether or not the client should proceed. But see *Morgan v. V2X, Inc.*, Civil Action No. 25-cv-01991-SKC-MDB, 2026 LX 135629, at *10 (D. Colo. March 30, 2026) (holding—and explicitly distinguishing *Heppner*—the Federal Rules of Civil Procedure protected AI-generated results in preparation for litigation is protected under the work-product doctrine); *Warner v. Gilbarco, Inc.*, No. 2:24-cv-12333, 2026 LX 61387, at *12 (E.D. Mich. Feb. 10, 2026) (ruling work product using AI-generated tools are protected because the information is not shared with an adversary, i.e. opposing party).

Olivier v. City of Brandon, 146 S. Ct. 916, 916 (2026).

In *Olivier*, a public preacher sought to challenge a city ordinance that prohibited him from preaching outside of a designated area at certain times near a local amphitheater. *Id*. at 922–24. He was previously convicted of violating the ordinance and filed federal suit challenging the constitutionality of the ordinance. *Id*. Critically for the Court, in his federal suit, Olivier only sought prospective relief and did not seek to overturn his previous conviction. *Id*. at 925. By doing so, he argued, and the Court agreed, he did not run afoul of the *Heck* bar, which prohibits a § 1983 claim to directly attack a previous conviction. *Id*. at 926. As such, "Olivier asked for only a forward-looking remedy— an injunction stopping officials from enforcing the city ordinance in the future—that his suit can proceed, notwithstanding his prior conviction." *Id*.

The Court noted that the *Heck* opinion did have sufficiently broad-enough language, "where a judgment in favor of the plaintiff would necessarily [challenge the validity] of [the] conviction or sentence," that could implicate Olivier's suit. *Id*. at 934–35. Yet, the Court found the complaint's language dispositive: "[b]oth the allegations made, and in the relief sought (injunctive), the suit is all future-oriented." *Id*. at 935–36.

The *Olivier* Court is a critical reminder of the importance of strategy and language placed into a petition or complaint: by minimizing the focus and requesting narrower relief, a suit may proceed; otherwise it can prove fatal.

Galette v. N.J. Transit Corp., 146 S. Ct. 854 (2026).

The Court evaluated whether part of a transit system "is an arm of [a State] and thus entitled to the State's sovereign immunity." *Id*. at 864. The Court's analysis is very fact intensive regarding the New Jersey Transit Corporation ("NJ Transit"). *Id*. at 865. However, the Court's opinion does two important things: (1) it settled a split between two States' highest courts and (2) sidesteps both States' several-factor tests. *Id*. 865, 880–81. Instead, the Court applied its own analysis, and looked at how the state Legislature created the body (organizationally) and what powers it delegated to that body (i.e., sue and be sued, enter into contract, purchase property, etc.), whether the State was liable to the body's debts and liabilities, and whether the state "meaningfully" controls the body. *Id*. at 880–82.

The main takeaway for state Legislatures, political subdivisions, and their created bodies is that the more independence and power that is granted, authorized, and delegated to a quasi-public body, the more that body risks losing sovereign immunity.

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AGENCY HIGHLIGHTS

United States Environmental Protection Agency ("EPA")

EPA Initiative to Study and Measure Microplastics. The EPA announced its intent to study and measure the presence of microplastics and pharmaceuticals in drinking water. This marks the first step for the agency to potentially regulate the presence of microplastics and pharmaceuticals as drinking water contaminants and measure the contaminants' impacts to human health. The study will evaluate the presence of these contaminants in drinking water and the human body, and whether such presence is indicative of negative health outcomes.

The EPA's sixth Contaminant Candidate List identifies contaminants in drinking water not regulated under the Safe Drinking Water Act, including microplastics, pharmaceuticals, disinfection byproducts, PFAS "forever chemicals," and microbes. The list is currently open for a 60-day public comment period.

EPA Repeals Endangerment Finding for Greenhouse Gases. In February 2026, the EPA revoked its 2009 endangerment finding, which found that greenhouse gas emissions, including carbon dioxide, threaten public health and welfare. The endangerment finding historically provided the basis for many recent regulations under the Clean Air Act. Most notably, this change eliminates all greenhouse gas emissions standards for cars and trucks. While this may positively impact the solid waste industry by potentially lowering costs of heavy-duty trucks and equipment, effects to the industry are generally anticipated to be nominal. This is in part due to the fact that programs such as New Source Performance Standards set threshold triggers based on non-methane organic compounds rather than greenhouse gas emissions.

After finalizing this rule, several lawsuits challenging it were quickly filed. Specifically, two dozen states, several cities and counties, and a broad coalition of public health and environmental groups filed suit. The suits claim that the rescission of endangerment abandons one of the EPA's core responsibilities to protect public health. The suits also claim that since the endangerment finding in 2009, the evidence for greenhouse gas emissions being a danger to public health and safety has only grown. *See Massachusetts v. EPA*, No. 26-1061 (D.C. Cir. filed Mar. 19, 2026); *see also Env't Def. Fund v. EPA*, No. 26-1038 (D.C. Cir. filed Feb. 18, 2026).

National Environmental Policy Act ("NEPA")

Changes to NEPA Review at All Federal Agencies. In January 2026, the White House Council on Environmental Quality ("CEQ") finalized its interim final rule which formally rescinded the CEQ's authority to require federal agencies follow its NEPA regulations. Moving forward, each federal agency will be tasked with formulating their own NEPA regulations and implementation procedures. Many agencies, like the Department of Energy and Department of Agriculture, have published interim final rules amending their own NEPA rules. For example, the Department of Interior ("DOI") recently published its final rule overhauling how the agency implements NEPA, rescinding approximately 80% of the DOI's prior regulations and implementing procedures designed to shorten permitting timelines and reduce unnecessary paperwork. To be clear, NEPA still applies to federal agencies and is still federal law. Federal agencies must still analyze the environmental impacts of proposed federal projects, consider alternatives, and document their decision-making. However, as more agencies finalize their rules in light of the CEQ's January 2026 rule, there will be slight differences in how NEPA reviews are interpreted and implemented at each agency, something the regulated community will need to keep a close eye on.

United States Department of War ("DoW")

DOW Provides Revised Recommendations on Destruction and Disposal of PFAS. In February 2026, the DOW, as a large consumer of PFAS materials (particularly Aqueous Film-Forming Foam ("AFFF") to fight fuel fires), published an analysis revising EPA's guidance on the destruction and disposal of certain PFAS materials. The DOW previously prohibited incineration due to concerns that incineration might not fully destroy the PFAS contaminants and potentially spread them through the air via the smoke by-product. The DOW has now revised its guidance to allow for incineration at permitted hazardous waste facilities if certain temperature and environmental requirements are met. The DOW also now discourages disposal in municipal solid waste landfills for AFFF concentrate and liquids (but solid materials may be disposed of in this method if the landfill meets certain requirements). Cost was not considered as a factor for these recommendations.

United States Department of Agriculture and United States Department of State

U.S. & Mexico Water Deliveries. On January 31st, the USDA and the U.S. Department of State came to an agreement with Mexico to strengthen the 1944 Water Treaty between the United States and Mexico. This new commitment states that Mexico will provide more frequent and predictable releases of water for South Texas farmers and ranchers. Mexico will deliver a minimum of 350,000 acre-feet of water per year to the United States as well as repaying outstanding water debt and establishing early delivery incentives. Monthly meetings will ensure consistent deliveries and hopefully prevent future deficits. The USDA also committed to technical and financial support to modernize irrigation infrastructure throughout the Chihuahua region of Mexico to ensure greater water conservation.

The Attorney General of Texas ("AG")

Texas Attorney General Lawsuit against DOW Chemical. The AG's Office filed a lawsuit against Dow Chemical Company, Dow Chemical's subsidiary Union Carbide, and the Brazilian petrochemical manufacturer Braskem, alleging violations of the Texas Water Code and the Texas Solid Waste Disposal Act at Dow Chemical's manufacturing complex in Seadrift, Texas. The complaint stems from the alleged unauthorized production and discharge of industrial solid waste (plastic pellets) into the nearby waterbodies and the alleged failure to follow best management practices. The AG is seeking civil penalties as well as temporary and injunctive relief to cease all unauthorized discharges. The litigation was triggered by the issuance of a 60-day citizen suit notice issued by a local resident, as authorized by the Clean Water Act.

Public Utility Commission of Texas ("PUC")

PUC to Study Data Center Water Usage. During the PUC's Commissioners meeting on February 6th, the Commission approved a new initiative to study water usage by data centers and crypto-mining facilities. The plan includes issuing a survey to data center developers and cryptocurrency mining operators which will require disclosure of their water consumption, including both direct and indirect water use. This survey will launch in the spring of 2026 and selected facilities will have 6 weeks to respond. The PUC is actively working with the Texas Water Development Board to develop the survey questions that can ultimately inform state-wide planning. Questions will focus on direct water use by the facilities for cooling activities, and indirect water use related to the facilities' power sources. The PUC anticipates to release the results of its survey to the Texas Water Development Board and the Texas Commission on Environmental Quality at the end of the year before the 2027 Legislative Session begins.

Oncor Rate Case Settlement Agreement. As previously reported, 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. As filed, the application would have resulted in a $7.90/month increase on the average residential customer bill. In November 2025, parties to the pending rate case notified the Administrative Law Judge of a settlement in principle.

On January 29, 2026, Oncor filed an unopposed Settlement Agreement ("Agreement") for PUC consideration and approval. The Agreement establishes an annual revenue requirement of nearly $7 billion. This represents an 8.8% increase over present adjusted revenues, or $565 million in annualized revenue. For residential customers, this will result in an increase of $4.64/month on the average electric bill.

The Agreement proposes a revised regulatory capital structure of 56.5% debt to 43.5% equity. Further, the Agreement proposes an authorized return of equity increase from 9.7% to 9.75%, while the authorized cost of debt will decrease from 4.94% to 4.39%. The Agreement includes a higher annual storm and self-insurance reserve in rates of $200 million and a five-year amortization for certain regulatory assets and liabilities.

As of March 18, 2026, a Proposed Order has been filed for PUC consideration. After the PUC issues the Final Order, the new rates will go into effect with a temporary adjustment in costs, or a surcharge, from January 1, 2026, to when the new rates begin. More information can be found under Docket No. 58306.

Ongoing Texas-New Mexico Power Company (TNMP") Rate Case. In In November 2025, TNMP filed an Application for Authority to Change Rates. TNMP requested a net increase in transmission and distribution rates of approximately $34 million over adjusted test-year revenues, or an approximately 5% increase over the adjusted test-year revenues of $673 million. If TNMP's original request is approved unchanged, residential customers would see a monthly increase of $5.20 to their average electric bill.

On March 6, 2026, Parties filed an Agreed Motion to Abate as the parties continue their efforts to reach a full resolution. The ALJ approved the Motion to Abate and required a status report from the parties every two weeks until the parties reach a resolution. As of April 20, 2026, the parties continue to confer regarding settlement in this proceeding. More information can be found under Docket No. 58964.

Texas-New Mexico Power Company and Troy Parentco, LLC Merger Approved. As previously reported, TNMP and Troy Parentco, LLC filed for PUC merger approval and the parties were waiting for PUC consideration. On February 6, 2026, the Commission approved the merger, and a Final Order was filed approving the Settlement Agreement. TXNM, Energy, Inc. (TNMP's parent company) is now a wholly owned subsidiary and TNMP an indirect subsidiary of Troy and Blackstone Infrastructure.

The Settlement Agreement outlines governance protections and financial safeguards, ensures local control and workplace protections, and provides customer and regulatory protections. Key Settlement Agreement terms include: TNMP's agreement to provide a $45.5 million rate credit to wholesale and retail customers, distributed over 48 months; composition of a seven-member TNMP Board of Directors with three disinterested directors and representation from TNMP leaders; Board authority over key matters, such as the dividend policy and officer appointment; terms prohibiting acquisition-related debt and intercompany financial arrangements; limits on dividend payments, which will be subject to credit ratings and financial health requirements; TNMP's agreement that headquarters will remain in its Texas service territory with day-to-day operations continuing under TNMP's management team; agreement to refrain from involuntary workforce reduction or cuts to wages and benefits for at least three years, except for cause; terms that bar recovery of transaction-related goodwill or acquisition costs in customer rates; and TNMP's agreement to maintain its current five-year capital spending plan through 2029.

The full Final Order and other materials can be found in Docket No. 58536.

PUC Rulemaking. In January 2026, PUC Staff updated its calendar to reflect projected rulemaking timelines for the 2026 year. The calendar is a robust list of projects covering changes to the PUC's electric and water rules. The 2026 calendar can be found on the PUC's Interchange under Docket No. 59212.

As of April 28, 2026, the following calendar rulemakings are in progress:

- Project No. 58481 – Rulemaking to Implement Large Load Interconnection Standards Under PURA 37.0561
- Project No. 58479 – Rulemaking for Net Metering Arrangements Involving a Large Load Co-Located with an Existing Generation Resource under PURA 39.169
- Project No. 58482 – Rulemaking to Develop Reliability Service to Competitively Procure Demand Reductions from Large Load under PURA 39.170
- Project No. 57883 – Commission Directives to ERCOT
- Project No. 59024 – Texas Energy Fund – Texas Backup Power Package Program
- Project No. 59432 – Transmission and Distribution Pole Structural Integrity and Service Quality Standards
- Project No. 59431 – Distribution Pole Management and Inspection Plans
- Project No. 59086 – Implementation of HB 2712 (89R) – Future and Combined Test Years (Water and Sewer)
- Project No. 58391 – Implementation of SB 740 (89R) – System Improvement Charge

The following rulemakings since the publication of the 2026 rulemaking calendar have been completed and new rules are in effect:

- Project No. 58480 – Rulemaking to Establish Large Load Criteria Forecasting Criteria PURA 37.0561
- Project No. 58434 – Rulemaking for Firm Fuel Supply
- Project No. 58400 – CY2025 Updates to Chapter 22 – Procedural Rules, Subchapters A-F
- Project No. 58401 – CY2025 Updates to Chapter 22 – Procedural Rules, Subchapters G-J
- Project No. 58402 – CY2025 Updates to Chapter 22 – Procedural Rules, Subchapters K-O
- Project No. 58392 - Implementation of SB 231 (89R) – Temporary Emergency Electric Energy Facilities

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