



THE LONE STAR CURRENT

A Publication of Lloyd Gosselink Rochelle & Townsend, P.C., for the Benefit of Its Clients & Friends

STREAMLINING CONSUMER COMPLAINTS AT THE PUC

by Danielle Lam

For many years, the complaint process before the Public Utility Commission of Texas (PUC) has often been a long and resource-intensive process for the complainant, the regulated entity, the PUC, and the State Office of Administrative Hearings (SOAH). But that is expected to change after October 21, 2026. After months of rulemaking and public comments from consumers, regulated entities, and the Office of Public Utility Counsel, the PUC recently amended its rules in hopes of creating a simple, inexpensive, and expeditious complaint process for all entities under the PUC's jurisdiction. The changes, reflected in 16 Texas Administrative Code § 22.242 (procedural rules relating to Complaints), § 24.153 (water and sewer substantive rules relating to Customer Relations), § 25.485 (electric substantive rules relating to Customer Access and Complaint Handling), and § 26.30 (telecommunications substantive rules relating to Complaints), are effective on October 21, 2026.¹

The Old Complaint Process

The old complaint process generally started with the filing of an informal complaint which must be resolved by the PUC's Consumer Protection Division (CPD) within 35 days. During this time, the regulated entity would be given an opportunity to respond, then CPD would issue a closing letter that would reflect its findings and notify the complainant that they could file a formal complaint if they were not satisfied.

If the complainant was not satisfied with the CPD's closing letter, they could file a formal complaint at the PUC, obtain a Docket number, and all documents in the proceeding would be filed on the PUC's Interchange (a public database). The parties would include the complainant, the regulated entity, and the PUC Legal Division who represents the public interest. The PUC would establish a list of issues and the matter would be referred to SOAH for a contested case hearing. Following the hearing on the merits, the SOAH Administrative Law Judge (ALJ) would issue a Proposal for Decision (PFD) and remand the case to the PUC for the Commissioners to issue a Final Order by adopting or modifying the PFD. This contested case hearing process could take months, if not years, and could include mediation, discovery, pre-filed written testimony, a hearing, post-hearing briefing, and various motions and pleadings—steps that would cost all participants a lot of time and resources.

The New Complaint Process

The new complaint process is largely the same for informal complaints, but the formal complaint process has been replaced with potential investigation and enforcement action by the PUC's Division of Compliance and Enforcement (DICE). So if the complainant is not satisfied at the conclusion of the informal complaint, the complainant's new recourse is to take action in court since the closing letter shows they have exhausted their administrative remedies. Additionally, if

the Office of Consumer Assistance (OCA) (the new name for the CPD) identifies a violation during the informal complaint process, the OCA can refer the informal complaint to DICE for investigation. DICE may investigate the regulated entity and use its discretion to pursue a separate enforcement action, which will be a contested case and follow similar steps to the old formal complaint process.²

However, there are many important differences between a DICE investigation

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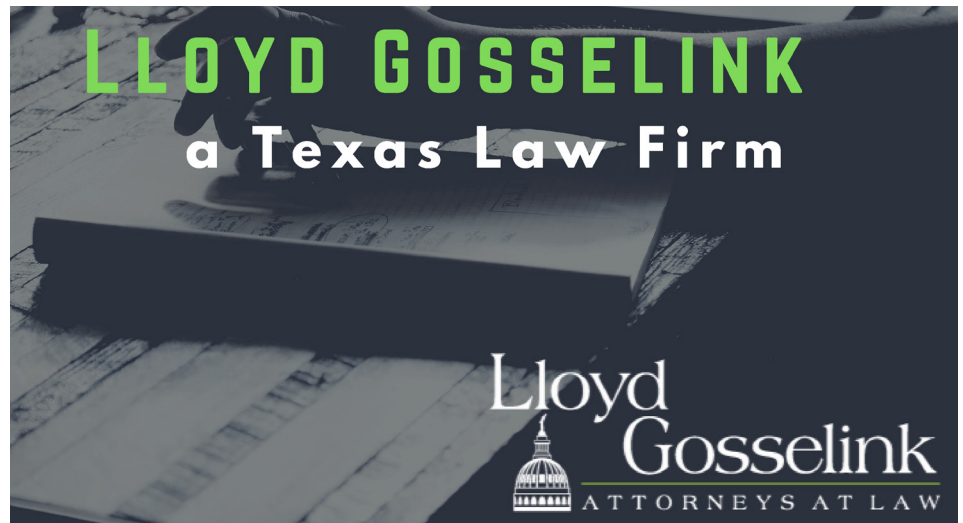
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FIRM NEWS

Nathan Vassar will be discussing "Water Quality Criteria: What are the States and EPA Up To?" at the 2026 National Clean Water Law & Enforcement Seminar on November 12 in Santa Monica.

Toni Rask will be presenting "Cool Clouds, Hot Demands: The Lone Star Standoff..." at the 2027 Association of Water Board Directors Midwinter Conference on January 23 in Austin.



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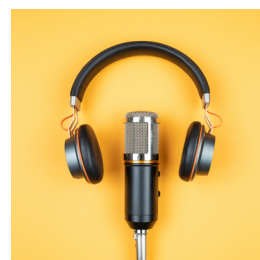
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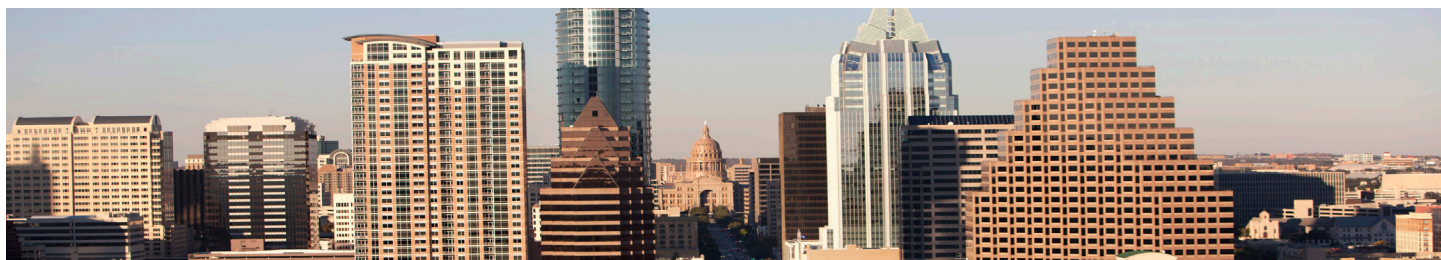
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MUNICIPAL CORNER



Scope of municipalities' authority to enter into intergovernmental support agreements with U.S. military installations. Tex. Att'y Gen. Op. KP-0527 (2026).

The City of Socorro asked the Attorney General to consider whether a home-rule municipality may legally enter into an intergovernmental support agreement (IGSA) with a federal military installation. The City has tentatively agreed to perform custodial services for the United States Army Garrison Fort Bliss, Texas in exchange for payment.

Home-rule municipalities, like the City of Socorro, are unique government entities that derive their power from the Texas Constitution "subject to and may be limited only by their charters or by the Constitution or by general law." However, such cities may choose to take advantage of a statutory framework like IGSA's and become subject to the legislative limitations imposed by that framework. As a result, home-rule municipalities that wish to enter into an IGSA must act consistently with the state statutory framework.

Section 793.002 of the Government Code allows local governments to enter into IGSA's "with a branch of the armed forces of the United States... to provide installation-support services to a military installation located in this state." An IGSA is limited to those "installation-support services" that the providing party "already provides... for its own use." Moreover, article VIII, § 3 of the Texas Constitution limits IGSA's to "public purposes." A "public purpose" includes expenditures that serve "one of the municipality's powers or functions" even if it "incidentally benefits a private person."

The Attorney General concluded that the City's IGSA is likely lawful, because, generally, such an agreement with a military installation can increase "the efficiency and effectiveness of local governments."

Whether a school district trustee must resign upon announcing candidacy for justice of the peace and related compatibility questions. Tex. Att'y Gen. Op. KP-0529 (2026).

The Attorney General examined whether a school district trustee must resign upon announcing candidacy for justice of the peace.

Specifically, the Attorney General reviewed article XVI, §§ 40, 65 of the Texas Constitution, the Code of Judicial Conduct, and the common-law doctrine of incompatibility for language prohibiting an individual from holding both offices. He found that article XVI, §§ 40, 65 and the Code of Judicial Conduct are inapplicable to school board trustees.

The common-law doctrine of incompatibility provides that "one person cannot simultaneously hold two incompatible offices." Offices are incompatible "when one position appoints or employs the other" or when "a person holding one office could impose that office's policies on the other or subject it to control in some other way." The Attorney General notes this does not prohibit a person from running for office while still occupying another office. Additionally, he concluded that a person may hold the office of justice of the peace and school board trustee, because they are not incompatible with each other and the justice of the peace may simply recuse himself or herself.

House Bill 4490 and the confidentiality of next of kin information under Article 49.25 of the Texas Code of Criminal Procedure. Tex. Att'y Gen. Op. KP-0530 (2026).

The Bexar County Criminal District Attorney requested that the Attorney General advise on whether House Bill 4490 exempts county medical examiners from releasing "information relating to the next of kin of a decedent."

Article 49.25 of the Code of Criminal Procedure governs medical examiners. House Bill 4490 added subsection 11(d), which exempts next-of-kin information from required public disclosure in accordance with the Public Information Act (PIA). However, the information remains "subject to disclosure under subpoena or authority of other law." Given this, the Attorney General concluded that Article 49.25 exempts next-of-kin information from mandatory disclosure but does not make the information confidential.

Therefore, a government entity can withhold the information from PIA disclosure, though it is not confidential in other matters. Furthermore, the Attorney General concludes that information indirectly identifying next-of-kin constitutes information "relating to" next-of-kin.

Commissioners Court authority to approve and make purchases without approval of the County Auditor. Tex. Att’y Gen. Op. KP-0531 (2026).

The Kinney County Auditor requested that the Attorney General advise on whether the Commissioners Court has authority to approve and make purchases without approval of the County Auditor.

The Commissioners Court “may not authorize the payment of goods and services without the approval of the county auditor, but the [auditor] may not arbitrarily withhold approval.” Moreover, subsection 113.064(a) of the Texas Local Government Code does not preclude a county auditor from auditing a claim for payment of goods or services before the county receives them. Lastly, a county auditor may audit and approve a county’s “purchase of a vehicle without a signed requisition, provided that the purchase otherwise complies with the law governing county finances.”

Eligibility for service as a commissioner on a governing board of an emergency services district under Health & Safety Code § 775.034. Tex. Att’y Gen. Op. KP-0533 (2026).

The Attorney General examined whether Chapter 775 of the Health and Safety Code or any “conflict-of-interest or incompatibility doctrines” prohibit officers or employees of a contracting municipality “from simultaneously serving as an... [emergency services district] commissioner or in another official or advisory capacity.”

Chapter 775’s conflict-of-interest provisions target only private financial conflicts. Therefore, the Attorney General reasoned that a person may serve simultaneously as a municipal officer or employee and as an emergency services district officer or employee without violating Chapter 775’s conflict-of-interest provisions.

Constitutional dual-officeholding restrictions may prohibit an individual from holding a compensated municipal office and a compensated emergency services district office, depending on the nature of the two positions. When the municipal and emergency services district positions both possess the authority to contract with the other government entity, the conflicting loyalties aspect of common law incompatibility generally renders the two offices incompatible.

Municipal authority over certain firefighter positions under the Texas Local Government Code. Tex. Att’y Gen. Op. KP-0536 (2026).

The Attorney General examined whether the Texas Local Government Code grants a municipality authority over certain firefighter positions.

The Fire Fighter and Police Officer Civil Service Act secures “efficient fire and police departments composed of capable personnel who are free from political influence and who have permanent employment tenure as public servants.” The Act

defines “[f]ire fighter” as “a member of a fire department who was appointed in substantial compliance with” Chapter 143 of the Local Government Code. The Act applies to certain municipalities with “a population of 10,000 or more” that “ha[ve] a paid fire department or police department[] and... ha[ve] voted to adopt” the Act.

The Act requires municipalities to establish “classifications” for firefighters by ordinance. In doing so, the municipality’s governing body can “create new positions or, within certain limitations, abolish them.” A municipality abolishing a civil service position must demonstrate that it was in good faith and “would be more satisfactory to the public in general, that it will result in something more than monetary savings, and that the duties of the classified personnel were not merely transferred to others.”

Moreover, a municipality’s civil service commission and department head has “authority... to vacate classified firefighter positions under certain circumstances.” The Act allows department heads to promote firefighters, thus vacating the position previously filled by that firefighter. For municipalities with populations less than 1.5 million people, the department head may also indefinitely suspend or permanently dismiss a firefighter under their supervision or jurisdiction in certain circumstances. In compliance with procedures set forth in the Act, a municipality may also fill vacant classified firefighter positions.

Whether a Type A general law city may accept a donation of property, including money, for municipal purposes. Tex. Att’y Gen. Op. KP-0537 (2026).

Hill County requested that the Attorney General advise on whether a Type A general law city may accept a donation of property, including money, for municipal purposes.

A general-law municipality’s authority to accept donations must be found in, or implied from, state law. Subsection 51.015(a) of the Local Government Code provides that “[t]o carry out a municipal purpose” a Type A general-law municipality “may take, hold, purchase, lease, grant, or convey property located in or outside the municipality.” Subsection 51.011 provides that this subchapter “applies only to a Type A general-law municipality.”

The Attorney General found that “property” in this subsection includes money. In addition, the terms “hold” and “purchase” do not grant the authority to accept property under subsection 51.015(a), but the term “take” grants the authority to accept property. Therefore, subsection 51.015(a) provides Type A general-law municipalities with the authority to accept donations of property, including money, so long as it is done for a municipal purpose.

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and the formal complaint process. DICE's investigation may look into additional violations by the regulated entity and is not restricted to the scope of the informal complaint. DICE is also not restricted to the relief requested by the original complainant, and DICE may seek license revocation, disgorgement, or administrative penalties. DICE may also monitor compliance over time and seek escalating penalties if the regulated entity has recurring violations. Lastly, the original complainant does not participate in the DICE investigation or enforcement action. The parties to this proceeding are just DICE and the regulated entity.

What Happens Next

Any informal complaints that are filed after or still pending as of the effective date of the rule change will fall under the new complaint process, meaning the complainant will no longer be able to file a formal complaint after OCA provides its closing letter. Any formal complaints properly filed before the new rule's effective date will still proceed as a contested case. However, in some Dockets the PUC ALJs have been giving complainants the option to either proceed

with their contested case or withdraw their formal complaint and refer the matter to DICE.³

Potential Impacts

The new streamlined complaint process should help reduce the burden on the PUC and SOAH's resources by giving DICE discretion to pursue an investigation or enforcement action. However, these changes are still very new and there is no clear pattern of how DICE will use its discretion. On the one hand, DICE may choose not to investigate an informal complaint. This may be a boon for the regulated entity, but the consumer complainant could still file a petition in court to pursue its claims against the regulated entity, costing both parties significant time and resources. On the other hand, DICE may decide to investigate and may seek enforcement action. This could lead to the regulated entity expending more resources to defend itself from alleged violations beyond the scope of the informal complaint. The regulated entity may also have to defend itself from the consumer complainant's court action in parallel to DICE's enforcement action. Further, the new rules do not establish any deadlines for DICE to conclude an investigation or enforcement action,

so once initiated, the proceedings may take just as long as formal complaint proceedings. In conclusion, it is still too early to tell whether the new complaint process will be a more simple, inexpensive, or expeditious process for consumers and regulated entities.

¹*Streamlined Complaint Process*, Project No. 59557, Order Adopting Amendments to § 22.242, § 24.153, § 25.485, and § 26.30 (Oct. 1, 2026).

²Records of a DICE investigation are not available on the PUC's Interchange, and a Docket number is not assigned unless DICE files an enforcement action.

³See, e.g., *Complaint of Nachae L. Sylvain Against Green Mountain Energy Company and Oncor Electric Delivery Company LLC*, Docket No. 60326, Order No. 1 (Sept. 25, 2026); *Complaint of Marshia M. Lloyd Against TXU Energy Retail Company, LLC*, Docket No. 60240, Order No. 1 (Sept. 15, 2026); *Complaint of Rogelio Ramirez Against Windmill Water Supply Corporation*, Docket No. 60145, Order No. 2 (Sept. 25, 2026).

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CRIMINAL PENALTIES FOR WATER METER TAMPERING

by Lisa C. Silveira

Retail public water utilities should be aware of their options if a customer tampers with their water utility meter. Not only does water meter tampering violate utility regulations, such action can also result in criminal charges, fines, and penalties.

Upon disconnection of service, a customer may retaliate by tampering with their water meter to reconnect service. This could be done by using physical tools like removing a lock placed on a water meter, connecting a hose or pipe to the waterline, or by interfering with modern smart meters and electronic devices. Despite administrative warnings and fines for these types of actions, retail public water utilities may consider other options to prevent their waterlines from being harmed. Individuals may face criminal liability if the utility decides to file a criminal complaint.

Local government jurisdictions with criminal enforcement authority, as well as state criminal statutes, may be implicated in these situations. It is important to review city ordinances where the location of the service and meter tampering falls since these may govern criminal penalties for specific actions. If no ordinance

exists, state law for applicable criminal violations may also apply including criminal mischief or theft.

State law defines criminal mischief as intentionally or knowingly damaging or destroying the tangible property of the owner, or intentionally or knowingly tampering with the tangible property of the owner, and causing pecuniary loss or substantial inconvenience to the owner or a third person. Tex. Penal Code § 28.03(a). A person who is receiving the economic benefit of public water has knowingly tampered with the tangible property of the owner if the supply has been (1) diverted from passing through a metering device; (2) prevented from being correctly registered by metering device; or (3) activated by any device installed to obtain public communications, public water, gas, or power supply without a metering device. Tex. Penal Code § 28.03(c). This offense is a Class A misdemeanor if the individual caused impairment or interruption of any public water supply, or caused to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public water supply, regardless of the amount of the pecuniary loss. Tex. Penal Code § 28.03(b).

It is considered theft if a person unlawfully appropriates property with the intent to deprive the owner of property. Tex. Penal Code § 31.03(a). Unlawful appropriation of property includes without the owner's consent or stolen property. Tex. Penal Code § 31.03(b). Under Tex. Penal Code § 31.04, a person commits theft of service if, with intent to avoid payment for a service the person knows is provided only for compensation, the person intentionally or knowingly diverts another's services to the person's own benefit when the person is not entitled to those services. Tex. Penal Code § 31.03(a)(2); *see also Ainsworth v. State*, 2020 Tex. App. LEXIS 8361, *5 (Tex. App.—Waco Oct. 21, 2020, pet. ref'd) (mem. op.). "Service" under these sections includes public utility services, so these statutes are applicable to services by a retail public water utility. Tex. Penal Code § 31.01(6). These offenses are Class B misdemeanors if the value of the property stolen is \$100 or more but less than \$750, or Class A misdemeanors if the value of the property stolen is \$750 or more but less than \$2,500. Tex. Penal Code § 31.03(e).

An individual guilty of a Class A misdemeanor is punished by: (1) a fine not to exceed \$4,000; (2) confinement in jail for a term not to exceed one year; or (3) both such fine and confinement. Tex. Penal Code § 12.21. An individual guilty of a Class B misdemeanor is punished by (1) a fine not to exceed \$2,000; (2) confinement in jail for a term not to exceed 180 days; or (3) both such fine and confinement.

The Texas Appellate Court in Waco has applied these statutes to meter tampering issues. In *Lockwood v. State*, the court affirmed Lockwood's conviction of criminal mischief for damaging a city water meter and punishment of 270 days confinement and a \$1,000 fine. *Lockwood v. State*, 237 S.W.3d 428, 430 (Tex. App.—Waco Sep. 19, 2007, no pet.). Lockwood received water service

from the City but was later cut off due to non-payment. *Id.* The City found someone had bypassed the meter and tapped into the city water supply with a water hose providing water to Lockwood's home, and later through a pipe to connect the water service line to Lockwood's home. *Id.* The court affirmed that Lockwood acted knowingly, including evidence that he controlled the premises, evidence of motive, evidence that the hose unlawfully connected to his water system was plainly visible, and evidence that his house had received public water via unlawful connections on at least two occasions. *Id.* at 434.

Similarly, in *Ainsworth v. State*, Ainsworth illegally tapped into a waterline of the Twin Creek Water Supply Corporation and stole water for a period of time. *Ainsworth v. State*, 2020 Tex. App. LEXIS 8361, *1 (Tex. App.—Waco Oct. 21, 2020, pet. ref'd) (mem. op.). The court affirmed Ainsworth's conviction for theft of services under Tex. Penal Code § 31.04(a)(2) and criminal mischief under Tex. Penal Code § 28.03(a)(1) for intentionally and knowingly damaging and destroying tangible property, including water pipes, by connecting pipes, and intentionally and knowingly causing to be diverted, in whole or in part, public water supply by connecting the water supply to his home. *Id.* at *7.

Individuals can face fines or criminal penalties for meter tampering and unauthorized access to retail public water utility's waterline, including Class A or Class B misdemeanors. It is important for utilities to monitor their services for abnormalities that may be a result of meter tampering.

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THE CHANGING BOUNDARIES OF TEXAS ETJ LAW: SB 2038, RECENT COURT DECISIONS, AND THE ROAD TO 2027

by Gabrielle C. Smith

When Senate Bill 2038 passed and took effect in 2023, it gave Texas landowners a way to leave a city's extraterritorial jurisdiction (ETJ) without having to obtain the city's consent. A petition signed by more than 50 percent of an area's registered voters, or by a majority in value of its landowners, can start the process. If the city does not act within the statutory period, generally 45 days, the area is released by operation of law. Residents and landowners can also petition for a release election.

Three years later, the statute is still being

worked out. The Legislature has narrowed who can use it. The Texas Supreme Court has said a city cannot defeat a compliant petition by denying it. On October 15, 2026, the Fifteenth Court of Appeals affirmed the dismissal of a constitutional challenge to the statutory framework brought by 25 cities and a municipal development district.

For cities, districts, counties, developers, and landowners, the question is no longer whether ETJ release exists. It is how it works, what it leaves untouched, and what may change when the Legislature convenes in January.

SB 2038 changed the rules

Texas cities have regulated land outside their borders for more than a century. Since 1963, shrinking a city's ETJ has generally required its written consent. SB 2038 removed that veto for residents and landowners who use its petition or election procedures, raising new questions for cities and landowners alike.

The Legislature took a second look in 2025

SB 2038 never applied to everyone. It

excluded land near military bases, land that was voluntarily annexed, and land covered by strategic partnership agreements. In 2025, the Legislature broadened those exclusions.

House Bill 2512, effective September 1, 2025, applies only to petitions and election requests filed on or after that date. It amended Section 42.023 to except reductions “necessary to comply with Subchapter D or E,” the release procedures. It also added exclusions based on a city’s size and location, including for some land under Section 212.172 development agreements, and, for release elections, added notice requirements and a landowner opt-out.

The courts weigh in

In *Elliott v. City of College Station*, 717 S.W.3d 888 (Tex. 2025), property owners challenged a city’s regulation of their land on constitutional grounds, and SB 2038 gave them a way out while the case was pending. The Texas Supreme Court vacated the lower-court judgments and remanded with instructions to abate while the owners pursued release. A city’s purported denial of a compliant petition is “legally ineffective” because release happens automatically: “Release is a matter of paperwork, not permission.” And even while the city challenged SB 2038 elsewhere, the statute “is presumed constitutional and remains the law.”

On October 15, 2026, the Fifteenth Court of Appeals decided *City of Aledo v. State*, No. 15-25-00086-CV. The cities argued that SB 2038 conflicts with Section 42.023 and violates the Texas Constitution on a range of theories. The trial court granted the State’s plea to the jurisdiction, and the court of appeals affirmed, holding that no plaintiff pleaded a facially valid claim that would waive sovereign immunity. It followed *Elliott’s* statements about SB 2038 as judicial *dicta* and rejected each theory. The dismissal was without prejudice, and the opinion may be subject to further challenge.

A federal court has also addressed a city’s attempt to reverse completed releases. In *POWER v. City of Austin*, No. 1:26-cv-1518-

RP (W.D. Tex. Aug. 4, 2026), the court enjoined Austin from enforcing its March 2026 decision to void about 170 releases of land near the Bee Caves Armory under the military-base exception, finding the owners likely to succeed on due process and *ultra-vires* claims. The court did not decide whether the exception applies.

What happens after ETJ release?

Release changes the reach of a city’s statutory authority. It does not automatically undo what the parties have agreed to. In *Aledo*, three cities argued that SB 2038 impaired their development agreements with landowners. The court disagreed: SB 2038 releases land from the ETJ, not from a Section 212.172 agreement. Such an agreement can give a city regulatory authority that “equals or even exceeds” what the ETJ statutes allow, binds the parties and their successors for its term, and is enforceable in court. The court did not decide the enforceability of any particular agreement, so the language of each one still matters. Deciding whether land has left a city’s ETJ and deciding what that means for other agreements and governmental arrangements are separate questions.

The court also questioned whether release is permanent, noting that a city may extend its ETJ over contiguous land, or annex land, at the owner’s request.

Special districts raise a related question. A municipal utility district’s boundaries come from its own statutes, so release does not automatically change them. But land that is or may be released can sit inside or near a district being created, served, or financed, and those questions turn on the district’s enabling statute and agreements.

Regulation of released land, meanwhile, returns to the county, which generally has narrower tools than a city. For some public entities, uncertainty about governmental boundaries can raise related questions about financing obligations. The practical effect is that released land may be governed by different rules and different agencies than before. Cities, counties, districts, and landowners

may each need to revisit what authority they have and which agreements they rely on.

Looking toward the 2027 session

The 90th Texas Legislature convenes in January 2027. Whether lawmakers pursue additional ETJ legislation remains to be seen, but several issues may warrant attention.

- **Procedure.** *Aledo* noted that SB 2038 provides no mechanism for resolving disputes between owners over whether a petition is compliant, though none was alleged. HB 2512 added notice and an opt-out for release elections, and SB 2523, as filed in 2025, would have extended them to release petitions. Whether similar ideas return is unknown.
- **Completed releases and exceptions.** The federal case turned on the exception for land near a military base. Lawmakers could clarify how that exception applies, and whether and how a completed release can be revisited.
- **Agreements, districts, and enclaves.** The 2025 changes responded to concerns about development agreements and isolated pockets of land. How release interacts with existing contracts, special districts, and infrastructure is a natural next topic.

These are issues to watch, and whether any of these produces legislation in 2027 remains to be seen. If your project, district, or financing depends on ETJ status, remain attentive for further changes and check which version of the statute applies.

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ERCOT'S BATCH ZERO PROCESS ON HOLD DUE TO DATA CENTER AUDIT

by Samantha N. Miller

As previously reported, the Public Utility Commission of Texas (PUC) on June 18, 2026 approved Electric Reliability Council of Texas (ERCOT) Batch Zero revision requests – [PGRR145 Batch Zero Process for Large Load Interconnections](#) and [NPRR1325 Related to PGRR145, Batch Zero Process for Large Load Interconnections](#). The new batch framework groups large projects of 75 megawatts and greater into a single interconnection study, which will allow ERCOT to better determine how much power the system can handle and identify needed transmission upgrades. ERCOT previously assessed large loads on an individual basis, but this prior process triggered restudies of large load requests due to offsetting impacts from nearby loads also seeking interconnections. Batch Zero was designed to reduce these study inefficiencies, which is increasingly important given the growing volume of large load interconnection requests in Texas.

Although ERCOT anticipated notifying Batch Zero applicants of their project classification this August, Governor Greg Abbott's August 3rd directive requiring a complete verification and audit of all data centers advancing through ERCOT's interconnection process has forced ERCOT to shift course. In his directive, Governor Abbot asked that the audit be completed before any additional data centers are approved to move forward. ERCOT thus filed requests for good cause exceptions, which were granted on August 20, 2026, to temporarily pause the Batch Zero interconnection process. Reports indicate that the audit will take

several months, so ERCOT was unable to meet the September 2nd deadline to begin the Batch Zero study itself.

During the pause, ERCOT will verify the accuracy of information large load developers submitted in support of their interconnection requests. ERCOT recently issued Requests for Information (RFIs) pursuant to Governor Abbott's letter and signaled that it may issue more RFIs once it is able to analyze the information. ERCOT plans to confirm which projects qualify for Batch Zero inclusion and release a report on the broader grid impacts of data centers on December 10, 2026.

It is unclear yet what impact the delay on Batch Zero will have on transmission planning and other ERCOT-driven studies which require results from the interconnection study. And even though Batch Zero has been paused, ERCOT and stakeholders are beginning to develop a framework for Batch 1+, the next phase of the data center integration process. Depending on the outcome of the audit and delay in Batch Zero, future batch applications are expected to open in Summer 2027.

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BIOSOLIDS REGULATORY HORIZON: FEDERAL AND STATE UPDATES

by Nathan E. Vassar

Biosolids regulations have become a focal point across the wastewater industry in recent years, both on the state level with a 2025 legislative push for a potential ban of land application of biosolids, as well as at a national level, where EPA has conducted various risk assessments and guidance updates, evaluating the issue of biosolids, human health, and the ubiquity of PFAS within biosolids. This article highlights the status of both federal and state biosolids regulatory frameworks as of late fall 2026, including as we approach the 90th Legislative Session in Texas in January 2027.

By way of background, and stating the obvious for many-a-wastewater professional, biosolids are commonly

hailed and used for land application as fertilizer, and sometimes sold to third party entities that package and market such materials to the agricultural industry as a useful product for soil improvement for crops. This option, as opposed to landfilling or incinerating, is a cost-effective and mutually beneficial solution for one of the byproducts of wastewater treatment in Texas, and indeed, across the United States. Recent attention on biosolids land application is driven by certain particular spotlighted cases, including in Johnson County, Texas, where alleged land application of biosolids held a connection to certain cattle deaths, even as such alleged correlation has largely been debunked. Nonetheless, other states have banned land application of biosolids,

including Maine, and state/national industry groups are carefully watching the development of potential regulatory updates from EPA and at the state level.

That brings us to the status of federal regulatory action on biosolids and PFAS, where earlier this year, EPA released draft guidance for comment on "Reducing Risk from PFAS in Biosolids." That publication received numerous comments, including from locally regulated entities as well as state and national interest groups that represent wastewater utilities. It deemed the earlier Biosolids draft risk assessment as "flawed" and lacking context, and noted some of the practical realities of land application of biosolids. Notably, EPA stated, in relevant part, that "[w]

hile the EPA estimates that biosolids are applied to less than 1% of America's farmland annually, the agency recognizes that nearly 60% of sewage sludge is land applied as biosolids." As a result, one key takeaway is that EPA acknowledges the regular and ongoing practice of utilities' use of land application as the primary disposal method for biosolids.

Comments on the federal draft guidance ranged from push back against any ban to an acknowledgment of the source of such PFAS-contained biosolids (which is to say, biosolids). Utilities are passive receivers of the forever chemicals, as manufacturers produce them, they are incorporated

into products across the country, and ultimately—through the water cycle—end up at wastewater treatment plants. There is no set date on when the guidance will be updated and eventually finalized.

On the state front, Texas is just weeks away from the 90th Legislative Session where the topic will be a lively one again, most anticipate. The residue of the 89th Legislative Session on the issue remains in the minds of many legislative offices, many of whom have heard from constituents **outside** of the water and wastewater industry, who do not have an understanding of the widespread nature of PFAS chemicals, the limitations

of wastewater treatment at the present time, as well as the still-developing science on impacts from biosolids application to public health and safety. To that end, many are working toward a path for education and advocacy in the 90th session, and in the months and weeks in advance of same.

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ASK SARAH

Dear Sarah,

One of our employees recently posted something political on their personal social media account. The post does not mention our organization, but it is getting attention, and now we are receiving complaints from employees and members of the public. Some people are demanding that we fire the employee. Others are saying we cannot do anything because of "free speech." Can we discipline an employee for what they post online?

Signed, Log Me Out Immediately

Dear Log Me Out,

Maybe! Employee social media issues are difficult because they usually arrive in chaotic ways: screenshots, angry emails, coworkers taking sides, and someone asking whether the organization has "seen this yet." The goal is not to decide whether you personally agree with the post but whether the post creates a legally and operationally appropriate basis for employer action.

The first question is whether you are a public employer or a private employer. That distinction is important because the First Amendment limits government employers, but it does not restrict private employers. So, if you are a private employer, an employee usually does not have a constitutional right to post whatever they want online without workplace consequences. That does not mean private employers have unlimited freedom to discipline.

Other laws may still protect certain types of employee speech. For example, employees may have protection under the National Labor Relations Act when they discuss wages, hours, benefits, staffing, safety concerns, or other terms and conditions of employment, especially when they are acting with or on behalf of other employees. That protection can apply to conversations on social media and in a non-union workplace.

Employers should also be careful if the post in question involves discrimination, harassment, or retaliation. Employees who complain online about discrimination or harassment may be engaging in protected activity. On the other hand, if an employee uses social media to harass, threaten, or discriminate against a member of the public, the employer may have an obligation to investigate and take appropriate action.

For government employers, the First Amendment analysis adds another layer. Public employees do not lose all constitutional rights when they accept public employment, but those rights are balanced against the government employer's need to effectively and efficiently provide public services. The key considerations are whether the employee spoke as a private citizen, whether the post involved a matter of public concern, and whether the employer's operational interests justify discipline.

The employee's role matters too. A post by a back-office employee on a personal account may present a different issue than a post by a department head, police officer, spokesperson, or an employee whose role depends heavily on public trust, safety, discipline, or close working relationships. The more closely the employee's job is tied to public confidence, authority, safety, or the employer's mission, the more important the operational impact may become.

Before disciplining, gather the facts. What exactly did the employee post? Was it public? Did they identify themselves as an employee? Did they use your organization's logo, uniform, equipment, title, or email? Was the post made during work time? Did it mention coworkers, supervisors, clients, residents, students, patients, vendors, or the organization itself? Did it involve threats, harassment, discriminatory language, confidential information, or workplace complaints?

Next, look at your policies and past practice. A good social media policy can prohibit employees from speaking on behalf of the organization without authorization, misusing logos or resources, disclosing confidential information, engaging in harassment or threats, or violating workplace conduct rules online.

Consistency is also important. If one employee is disciplined for an inflammatory political post but similar posts from employees with different viewpoints are ignored, that can create risk. Focus on the conduct, the policy violation, and the workplace impact, not simply the political viewpoint. If discipline is appropriate, tailor it to the issue.

“Free speech” does not always mean “free from workplace consequences.” On the other hand, “we got complaints” does not automatically mean “fire them by lunch.” Gather the facts, apply your policies consistently, and make sure the response is based on the employee’s role, the post’s impact, and the law that applies to your workplace. And this is one of those areas where calling your employment counsel *before* you do anything is the right move. We can help apply these parameters to your workplace.

“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.



IN THE COURTS



Water Cases

Aqua Texas, Inc. v. Hays Trinity Groundwater Conservation Dist., No. 1:23-CV-1576-DAE (W.D. Tex. Aug. 24, 2026).

On August 24, 2026, Senior U.S. District Judge David Ezra of the Western District of Texas ruled on cross-motions for summary judgment in the lawsuit filed by Aqua Texas, Inc. (Aqua Texas), a for-profit retail public utility, against the Hays Trinity Groundwater Conservation District (District). Aqua Texas sued the District in December 2023, challenging its overpumping penalties, permitting moratorium, and enforcement of its waste and line loss rules, and the District counterclaimed to enforce its rules against Aqua Texas for overpumping groundwater during times of extreme drought in violation of the District’s Rules, among other violations. The court granted in part and denied in part both the District’s Motion for Summary Judgment and Aqua Texas’s Partial Motion for Summary Judgment, dismissing the majority of Aqua Texas’s claims and leaving pending most of the District’s counterclaims.

The court dismissed Aqua Texas’s claims that the District acted *ultra vires*, or outside of its legal authority, by imposing overpumping “fines” in excess of a statutory cap and by enforcing its waste and line loss rules. The court also rejected Aqua Texas’s federal Equal Protection claims based on the District’s settlement efforts, its permitting moratorium, and its enforcement of its waste rules, as well as Aqua Texas’s takings claims based on the moratorium and the District’s decision not to grandfather Aqua Texas’s test wells under Chapter 245 of the Texas Local Government Code. The court further dismissed Aqua Texas’s claim that the District violated the Texas Open Meetings Act’s (TOMA) notice requirements. As to the District’s counterclaims, the court held that the Texas Water Code did not require the District to issue a Notice of Alleged Violation before bringing its late reporting counterclaims, and that a genuine issue of material fact remains for trial on whether Aqua Texas violated capping and plugging requirements for abandoned and deteriorated wells.

The court did agree with Aqua Texas on two points, holding that the District

acted *ultra vires* by enforcing its waste rules against Aqua Texas’s wastewater and sewage spills and dismissing the District’s counterclaims for pumping under expired permits, but not its counterclaims for overpumping permitted amounts. The court also allowed Aqua Texas’s claim under TOMA’s open meeting requirements, and the associated claim for attorney’s fees and costs, to proceed to trial, though Aqua Texas has not provided any evidence of a TOMA violation to date. In sum, the District maintains virtually all of its counterclaims, including those related to overpumping, late reporting, and well capping and plugging, while Aqua Texas maintains only its TOMA open meetings claim. While the litigation is ongoing, the ruling represents a significant victory for the District.

Lower Colo. River Auth. v. Lost Pines Groundwater Conservation Dist., No. 24-0958 (Tex. argued Oct. 6, 2026).

On October 6, 2026, the Texas Supreme Court heard oral argument in a dispute between the Lower Colorado River Authority (LCRA) and the Lost Pines Groundwater Conservation District (District) over whether LCRA timely

sought judicial review of the District's decision on its groundwater operating and transport permits. In 2018, LCRA applied for permits to produce up to 25,000 acre-feet of groundwater per year from the Simsboro Formation of the Carrizo-Wilcox Aquifer beneath the Griffith League Ranch in Bastrop County. Following a contested case hearing at the State Office of Administrative Hearings (SOAH), the District granted the permits with modifications, including a reduction in LCRA's annual production, on November 15, 2021. LCRA moved for rehearing, the District granted rehearing in February 2022 and issued a modified decision in May 2022, and LCRA filed a second motion for rehearing and then sued in July 2022 while that motion was still pending.

The Third Court of Appeals dismissed LCRA's suit as untimely.¹ Under the Administrative Procedure Act (APA), a motion for rehearing that is not acted on within 55 days is overruled by operation of law, while the Water Code gives a district's board until the 91st day to act. Bound by its earlier decision in *End Op, L.P. v. Meyer*, which applied the APA's 55-day deadline to a groundwater district's rehearing decision following a SOAH hearing, the court held that LCRA's first motion for rehearing was overruled on January 9, 2022, that the District's later grant of rehearing could not extend that deadline, and that LCRA therefore missed the Water Code's 60-day deadline to file suit.² Notably, two of the three justices on the panel concurred, writing that *End Op* was wrongly decided and that the Water Code's 90-day deadline should govern.

The Texas Supreme Court granted LCRA's petition for review on September 4, 2026, and will decide (1) whether the Water Code or the APA controls when a groundwater district's permit decision becomes final after a SOAH hearing; (2) if the Water Code controls, whether LCRA timely filed suit or cured any jurisdictional defect; and (3) whether the court of appeals had jurisdiction over the intervenors' interlocutory appeal. The Court has not yet issued its decision, but its ruling should provide important guidance to groundwater conservation districts, permit applicants, and protestants on the rehearing and judicial review deadlines

that apply to permitting decisions following a SOAH contested case hearing.

¹*Lost Pines Groundwater Conservation Dist. v. Lower Colo. River Auth.*, No. 03-23-00303-CV (Tex. App.—Austin June 28, 2024, pet. granted) (mem. op.).

²*End Op, L.P. v. Meyer*, No. 03-18-00049-CV, 2018 WL 4102013 (Tex. App.—Austin Aug. 29, 2018, no pet.) (mem. op.).

Litigation Cases

In re Rose et al., No. 26-0916. (Original Mandamus proceeding.).

A county's attempt to redraw its precinct map before this year's upcoming general election, but after the primary election, was halted by the Texas Supreme Court's recent decision in *In re Rose et al.* The Galveston County Commissioners Court redrew precinct maps after the March 2026 primary election and planned to apply the new maps to the upcoming November 2026 election.

Voters in Galveston County brought a mandamus proceeding to the Supreme Court seeking to prevent the County's implementation of the newly drawn precinct maps.

The Supreme Court held that the County's attempt to institute a new precinct map was inconsistent with the Legislature's instruction that "the conduct of elections be uniform and consistent throughout this state" and that precinct boundaries are fixed at the time of the primary election for the general election. Tex. Elec. Code § 1.0015.

The Supreme Court rejected the County's arguments that the Texas Constitution allows its commissioners court to redraw precinct lines "from time to time for the convenience of the people" and that the Supreme Court's prior holding in *Williams v. Castlemann*, 247 S.W.263 (Tex. 1922) allowed redistricting of county precincts "at any time." See Tex. Const. art. V, §18(a)-(b). Neither the Constitution nor the *Williams* case explicitly allow redistricting after a primary election but before a general election. The Supreme Court distinguished the *Williams* case as allowing redistricting "at any time" to allow new precincts to be drawn in response to

population growth rather than counties having to wait to do so until each decennial census. This authority does not broadly empower commissioners courts to redraw precincts in the midst of elections.

Instead, the Supreme Court reasoned that a primary election and general election operate together to facilitate *one* election. The primary election identifies candidates for positions within specific constituencies, who will then be voted on in the general election. The County's suggested redrawing would create substantial, inconsistent changes in the general election. Candidates would be facing a different race, seeking the votes of different constituents. Voters would be presented with new candidates on their ballots for whom they did not have the opportunity to vote in the March primary.

The Supreme Court explained that its holding in the *In re Rose* case did not impact a commissioners court's authority to redraw precinct lines *before* a primary election or *after* a general election or prohibit redrawing pursuant to a federal law or court order. But none of those scenarios were present in this case. Therefore, the County was directed to use the prior precinct maps in the upcoming general election. The Supreme Court withheld issuing the writ until and unless the County refuses to comply.

Spectrum Gulf Coast, LLC v. City of San Antonio, No. 24-0794. (Opinion of Court of Appeals 727 S.W.3d 206.).

Public utilities and utility providers should be aware that their long-term contracts are likely subject to statutory requirements that arise *after* the contract is executed, leading to new and unanticipated regulations.

The Texas Supreme Court recently reviewed such a long-term contract in *Spectrum Gulf Coast, LLC v. City of San Antonio*. No. 24-0794. (Opinion of Court of Appeals 727 S.W.3d 206.).

The underlying issue started with a 1984 agreement between Spectrum Gulf Coast, LLC (Spectrum) and CPS Energy, a public utility owed by the City of San Antonio. Under the agreement, CPS Energy permitted Spectrum to attach

equipment to CPS Energy's pre-existing power poles for Spectrum's provision of telecommunication services. In exchange, Spectrum initially paid \$3.75 per pole used for the first year and then, going forward, Spectrum paid a higher rate as set forth in an agreed-upon escalator clause. Notably, the agreement also stated that the parties would "at all times observe and comply with ... all laws ... which in any manner may affect the rights and obligations of the parties ... so long as such laws... remain in effect."

Three years later, CPS Energy entered into a similar agreement with AT&T, but this agreement did not include an escalator clause. This resulted in AT&T paying a flat \$3.75 per pole rate each year while Spectrum paid an increasing pole rate each year.

In 2007, CPS Energy began invoicing both Spectrum and AT&T what it believed to be the maximum allowable rate. Spectrum paid the invoiced amount, but AT&T continued to pay \$3.75 per pole.

Spectrum later learned of the rate disparity and, in 2008, filed suit against CPS Energy seeking damages and declaratory relief based on breach of contract and violations of pricing requirements under the Public Utility Regulatory Act (PURA). In 2005, PURA was amended to prohibit municipalities and municipally owned utilities from discriminating for or against telecommunications providers. See Tex. Util. Code § 54.204(b)-(c). Such prohibited

discrimination extended to setting pole rates. *Id.*

After abating the matter for a determination by the Public Utility Commission, and subsequent appeals and a remand, the trial court found that CPS Energy had breached the agreement. CPS Energy then brought a permissive appeal asking whether it breached the agreement by unlawfully imposing discriminatory rates on Spectrum.

The Thirteenth Court of Appeals said no, holding that the new statutes were not incorporated into the agreement each year and thus PURA's Sections 54.204(b) and (c) were not brought within the parties' contract rights.

The Texas Supreme Court reversed, finding that the CPS Energy's rate setting violated PURA, which was incorporated into the agreement and such violation constituted a breach of contract. The Supreme Court first determined that the relevant PURA provisions applied to Spectrum and CPS Energy and then analyzed the agreement's language.

The Court acknowledged that contracts between a public utility and utility provider are often "premised on an anticipated relationship enduring for decades." Therefore, such contracts typically incorporate future legal changes to avoid termination or continual renegotiation when those legal changes arise. By specifically referring to "all laws" and "all

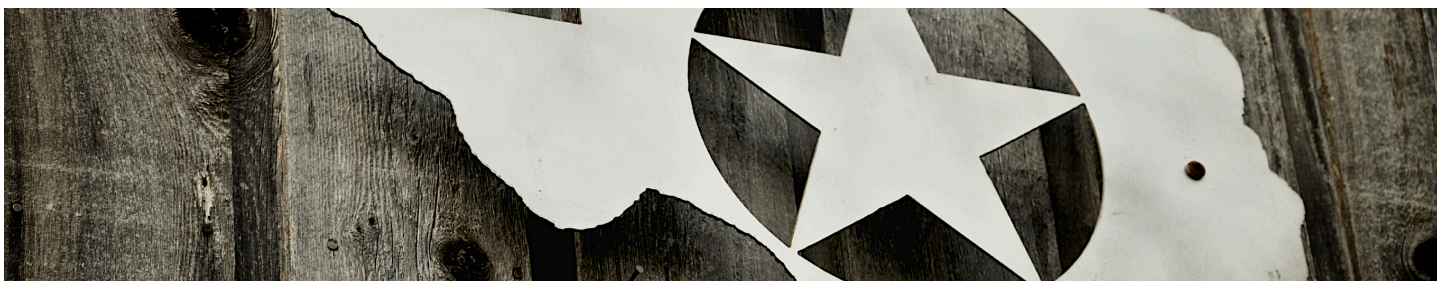
times," the agreement acknowledged that future laws would apply to the parties during the agreement's term. Similarly, the agreement stated that such laws would apply "so long as" they "remain[ed] in effect," meaning old laws were to be disregarded in favor of any new laws. The 2005 PURA amendments therefore were considered to be incorporated into CPS Energy and Spectrum's agreement.

The Court emphasized that utilities are heavily regulated to protect consumer welfare and police monopolies, and that it "is doubtful that a monopolistic utility could use contracts to evade utilities laws imposed by the legislature." Most utility agreements include a provision regarding applicable laws and regulations such that all parties are complying with the relevant laws and regulations during the agreement's term. However, even if a public utility's agreement does not include similar provisions acknowledging future legal changes, public utilities should expect that their agreements will be subject to new applicable laws imposed by the Legislature.

"In the Courts" is prepared by Stephen Malish in the Firm's Districts, Water, and Litigation Practice Groups and Sydney Sadler in the Firm's Litigation Practice Group. If you would like additional information or have questions related to these cases, please contact Stephen at 512.322.5875 or smalish@lglawfirm.com, or Sydney at 512.322.5856 or ssadler@lglawfirm.com.



AGENCY HIGHLIGHTS



United States Environmental Protection Agency (EPA)

EPA and U.S. Army Corps of Engineers Issue Supplemental WOTUS Proposal. On September 9, 2026, EPA and the U.S. Army Corps of Engineers (the Agencies) published a supplemental notice of proposed rulemaking (SNPRM) to offer revised definitions for "waters of the United States" (WOTUS) under the

Clean Water Act (CWA). The SNPRM builds upon the Agencies' November 2025 proposed rule to revise CWA regulations in light of the Supreme Court's 2023 ruling in *Sackett v. EPA*, 598 U.S. 651 (2023), which held that wetlands are subject to CWA jurisdiction only when they have a continuous surface connection to relatively permanent waters. In response to public comments on the November 2025 proposal concerning the legal vulnerability and

practical difficulty of applying a “wet season” test, the SNPRM seeks to create bright-line definitions for “relatively permanent,” “perennial,” and “continuous surface connection.”

The November 2025 proposal defined “relatively permanent” to mean “standing or continuously flowing bodies of surface water that are standing or continuously flowing year-round or at least during the wet season.” However, this “wet season” test received public pushback as legally vulnerable and impractical for the average landowner to implement. Now, the SNPRM revises “relatively permanent” to mean “perennial bodies of water” and introduces a definition of “perennial” as “having standing or continuously flowing water every day of the year during ordinary conditions.” Importantly, a body of water does not lose its “relatively permanent” status if it dries up as the result of anomalous events such as drought or a dry spell or dries up for no more than a single period of up to 30 consecutive days in any given year due to non-anomalous events such as low tide or a regularly occurring dry spell. This revised definition is meant to provide transparency and establish a clear rule that excludes most intermittent and ephemeral features from the CWA.

The November 2025 proposal defined “continuous surface connection” to mean “having surface water at least during the wet season and abutting (i.e., touching) a jurisdictional water.” The SNPRM replaces this wet-season standard with a requirement for “perennial surface water in a wetland that is continuously connected with the surface water in the jurisdictional water such that it is difficult to determine where the jurisdictional water ends and the wetland begins.” The Agencies noted that only the portion of the wetland that is indistinguishably part of the jurisdictional water would be itself jurisdictional. The anomalous and non-anomalous event exceptions described above for “relatively permanent” would also apply here. This simplification allows landowners to evaluate jurisdiction independently through simple on-site observation, while significantly narrowing the scope of adjacent wetlands subject to CWA Section 404 permitting. Comments on the SNPRM closed on October 9, 2026.

EPA Rescinds Five Guidance Documents, Including 2022 NPDES PFAS Guidance. Following a systematic internal review, the EPA rescinded five guidance documents, including its 2022 NPDES wastewater guidance. The document provided state permitting authorities with model language to limit, monitor, and reduce per- and polyfluoroalkyl substances (PFAS) in industrial discharge permits. According to an August 11, 2026 rescission memorandum, the agency took this action as part of a broader deregulation initiative to eliminate confusion ahead of its plans to address PFAS contamination. While state-delegated CWA permitting authority remains intact, direct federal endorsement of state NPDES permit conditions has ended.

EPA Finalizes Rule to Repeal the 2024 Carbon Pollution Phase 2 Standards for Greenhouse Gas Emissions from Fossil Fuel-Fired Electric Generating Units. On September 14, 2026, the EPA issued a final rule to repeal several provisions of the 2024 Carbon Pollution Standards (2024 CPS) for greenhouse gas (GHG) emissions from fossil fuel-fired electric generating units (EGUs) based on the EPA’s reassessment of the best system of emission

reduction (BSER) determinations under section 111 of the Clean Air Act (CAA) for subcategories of weighing cost, energy requirements, and other impacts. This final rule is to become effective on November 16, 2026.

This final rule repeals only the emission guidelines for existing fossil fuel-fired steam generating units, the carbon capture and sequestration/storage (CCS)-based standards for coal-fired steam generating units undertaking a large modification, and the CCS-based standards for new base load stationary combustion turbines (Phase 2 standards). The EPA concluded that CCS at a 90 percent level has not been adequately demonstrated, brings unreasonable costs, and provides a degree of emission limitation that is not achievable. The Agency also found that natural gas co-firing at a 40 percent level does not qualify as the BSER for existing medium-term coal-fired steam generating units, as this level gives rise to impermissible generation shifting under past results of the 2024 CPS. EPA’s consideration of BSER factors in CAA section 111(a)(1) found that natural gas co-firing in a steam generating unit is an inefficient use of natural gas, and it is unlikely that the necessary pipeline infrastructure can be deployed by the January 1, 2030 compliance date, and the EPA is finalizing the determination that the degree of emission limitation is not achievable. As a result, the EPA is repealing the requirements in the emission guidelines related to existing long-term and medium-term coal-fired steam generating units only.

The EPA in the final rule is seeking to address much of the regulatory uncertainty brought by the Agency’s prior attempts to regulate GHG emissions from fossil fuel-fired power plants under CAA section 111. The EPA first attempted to restrict GHG emissions from power plants in 2015, when the Agency issued both new source performance standards (NSPS) for new power plants (2015 NSPS) and emission guidelines for existing power plants (the Clean Power Plan (2015 CPP)). The U.S. Supreme court largely struck down these attempts in *West Virginia v. EPA*, ruling that CAA section 111 does not authorize the EPA to adopt a regulatory scheme that “cap[s] carbon dioxide emissions at a level that will force a nationwide transition away from the use of coal to generate electricity.” The EPA promulgated a new rule in 2024, expanding restrictions on certain new sources and regulating existing sources in a similar manner. The 2024 rule to regulate GHG emissions from the power sector included standards of performance for new and reconstructed fossil fuel-fired combustion turbines and for certain modified fossil fuel-fired steam generating power plants, as well as rules directing States to set standards of performance for existing fossil fuel-fired steam generating power plants. As a result, numerous States, regulated entities, and other stakeholders commented that the requirements are based on technologies that have not been adequately demonstrated, are unachievable, threaten to impose massive costs on the power sector, and do not adequately ensure the national interest in affordable, reliable electricity.

In the present final rule, the EPA has not repealed or otherwise revised the 2024 efficiency-based standards (Phase 1 standards) for new stationary combustion turbines. However, the EPA acknowledged prior comments and, to address those concerns, supplemented this final rule with a separate action published

concurrently, issuing a Notice of Proposed Rulemaking (NPRM) to solicit additional public comment on whether the EPA lacks statutory authority to regulate GHG emissions from fossil fuel-fired power plants under CAA section 111. Whereas the primary proposal in the NPRM sought public comment on whether fossil fuel-fired EGUs “contribute significantly” to air pollution, the supplemental notice now seeks public comment on the distinct question whether global climate change concerns satisfy the threshold requirement in CAA section 111(b)(1)(A) that fossil fuel-fired power plant emissions contribute significantly to “air pollution which may reasonably be anticipated to endanger public health or welfare” as a predicate to regulating GHG emissions from those plants.

If the present supplemental action is finalized, it would effectively repeal all GHG standards for the fossil fuel-fired EGU source category under CAA section 111, including the 2024 efficiency-based standards in question. EPA believes this change will ensure affordable and reliable energy supplies and drive down the costs of transportation, heating, utilities, farming, and manufacturing while boosting national security.

Fifth Circuit Vacates EPA Rule Banning Nearly All Uses of Methylene Chloride Citing Agency Overreach of Authority.

On September 15, 2026, a three-judge panel of the Fifth Circuit issued an opinion finding for Industry Petitioners in their challenge to vacate EPA’s 2024 final rule based on a 2022 revised risk evaluation to characterize methylene chloride (MC) as posing “unreasonable risk to human health” “as a whole chemical substance,” and prohibiting nearly all uses of the chemical. MC is a liquid chemical with carcinogenic qualities used as a solvent in consumer and commercial applications, and overexposure can cause injury and death.

The Fifth Circuit found that the EPA exceeded its authority under the Toxic Substances Control Act (TSCA) by aiming to remove any risk of exposure to MC, rather than curbing each “unreasonable risk” based on individual uses and economic impacts. In the holding, the court determined that the EPA erred when it considered MC “as a whole chemical substance,” rather than evaluating individual conditions of use for unreasonable risk, an interpretation the EPA itself had adopted in other regulations. The court also found that EPA published the rule on the assumption that workers who handle MC do not use personal protective equipment, a reversal from its previous assumptions and contrary to the available evidence. The court further stated that even if the EPA’s findings on unreasonable risk were sound, the Agency did not regulate only “to the extent necessary” as required by TSCA but sought to nearly ban the substance without considering whether there were available alternatives, or the economic feasibility and impact of the rule.

EPA Proposal on Minor Source Air Permits Draws Scrutiny Amid Data Center Debate. The EPA proposed changes to public participation requirements for Clean Air Act (CAA) permits issued to “minor” sources of air emissions. The proposal, signed by

the EPA Administrator on July 1, concludes that the CAA does not require public notice and comment for minor new source review permits. EPA contends the focus is to let states exercise greater flexibility in simplifying their permitting processes. Those opposed to the rule changes (including Sierra Club and Public Citizen) argue that the changes would make it easier for data center developers to use diesel backup generators.

Texas Commission on Environmental Quality (TCEQ)

TCEQ Adopts Amendments and Rules for Renewable Energy Component Recycling Facilities.

On September 9, 2026, the TCEQ approved adoption of amendments and rule changes to two chapters of Title 30 of the Texas Administrative Code (TAC). The action amended Section 37.931 of 30 TAC Chapter 37, concerning Financial Assurance, and added six new sections to 30 TAC Chapter 328, covering Waste Minimalization and Recycling.

These rules implement House Bill 3229 (89th Texas Legislature), setting forth reporting, recordkeeping, and financial assurance requirements for renewable energy component recycling facilities. The new requirements focus on the renewable energy component of recycling facilities that accept, process, and repurpose such components to recover valuable materials from a wind turbine generator, a solar energy device, or a battery energy storage system. The financial assurance requirements are intended to address situations in which a facility’s owner and operator fail to comply with proper disposal requirements.

Public Utility Commission of Texas (PUC)

CenterPoint Energy Houston Electric, LLC (CenterPoint) Files Application to Amend its Distribution Cost Recovery Factor (DCRF) Rider.

On July 17, 2026, CenterPoint Energy Houston Electric, LLC (CenterPoint) filed an Application to Amend its Distribution Cost Recovery Factor (DCRF). This is CenterPoint’s second DCRF Application in 2026. In this filing, CenterPoint sought a DCRF revenue requirement, adjusted for load growth, of \$352,318,850, which is an increase of \$72,852,538 over what was approved in CenterPoint’s most recent DCRF proceeding. Gulf Coast Coalition of Cities (GCCC) and other stakeholders intervened and have actively participated in the review and discovery process. Multiple parties filed recommendations related to CenterPoint’s deferred costs for its System Resiliency Plan. The Administrative Law Judge issued a Proposal for Decision on September 14. More information can be found on the PUC’s Interchange in Docket No. 59981.

Oncor Electric Delivery Company LLC (Oncor) Unified Tracker Mechanism Application.

On April 20, 2026, Oncor filed an application with the PUC for Approval of a Single Unified Tracker Mechanism (UTM)—the second annual proceeding of its kind under Public Utility Regulatory Act (PURA) § 36.216 following the passage of House Bill 5247. The UTM authorizes eligible utilities to file a single annual proceeding to adjust nonfuel rates on a system-wide basis to reflect changes in transmission and distribution

invested capital. Oncor's UTM consolidates and includes updates to its DCRF, interim transmission cost of service (TCOS), and transmission cost recovery factor (TCRF). Additionally, the DCRF portion of the filing includes deferred distribution costs related to Oncor's implementation of its Commission-approved System Resiliency Plan. Overall, Oncor's UTM seeks a cumulative revenue requirement increase of approximately \$1 billion across its DCRF, TCOS, and TCRF.

The Steering Committee of Cities Served by Oncor (OCSC) and other stakeholders conducted discovery and filed direct testimony recommending adjustments to Oncor's UTM. The parties thereafter convened for the hearing on the merits on August 20, 2026, and filed Initial and Reply Briefs. The Proposal for Decision is expected to be filed in November. More information can be found in Docket No. 59249.

Lone Star Transmission, LLC (Lone Star) Rate Case. On February 6, 2026, Lone Star filed a Statement of Intent and Application for Authority to Change Rates. In the Application, Lone Star sought approval of a total revenue requirement of \$115,900,133, which represented a \$5,785,530, or a 5.25%, increase over its current revenues. Lone Star also requested a 10.55% return on equity and a capital structure of 55% long-term debt and 45% equity.

OCSC and other stakeholders conducted discovery and filed direct testimony. The parties eventually reached a settlement agreement, which was filed on July 29, 2026. Under the settlement, the parties agreed that Lone Star would receive a total revenue requirement of \$111,060,565, which will be reduced in the amount of \$3.5 million in this case and in each of Lone Star's interim TCOS proceedings filed after the effective date of this proceeding and prior to Lone Star's next base rate case. Lone Star would also receive a 9.60% return on equity and capital structure of 55% long-term debt and 45% equity. The PUC has not approved the settlement yet but will be considering it at an upcoming Open Meeting. More information can be found in Docket No. 59245.

TNMP Files Unified Tracker Mechanism Application. On September 1, 2026, Texas-New Mexico Power Company (TNMP or Company) filed an application with the PUC for Approval of a Single Unified Tracker Mechanism (UTM). The UTM, which is authorized under PURA § 36.216, authorizes eligible utilities to file a single annual proceeding to adjust nonfuel rates on a system-wide basis to reflect changes in transmission and distribution invested capital. The UTM consolidates TNMP's distribution cost recovery factor (DCRF), interim transmission cost of service, and transmission cost recovery factor. Additionally, the DCRF portion of the filing includes deferred distribution costs related to TNMP's implementation of its Commission-approved System Resiliency Plan.

Overall, TNMP's UTM seeks a cumulative increase in its transmission and distribution revenue requirements of at least \$600 million on the heels of the utility receiving in August a net

\$4.5 million increase in its total base rate revenue requirement. Cities Served by TNMP (Cities) and stakeholders have intervened and are conducting discovery while preparing their direct testimony. More information can be found in Docket No. 59944.

Electric Transmission Texas, LLC (ETT or Company) Rate Case.

On April 20, 2026, ETT filed a Statement of Intent and Application for Authority to Change Rates. ETT requested a total revenue requirement of approximately \$439.9 million, or a 10.6% increase over its current revenues. ETT also requested a 10.5% return on equity and a capital structure of 55% long-term debt and 45% equity. OCSC and other stakeholders reviewed the application and conducted discovery.

On August 25, 2026, parties filed an Unopposed Stipulation and Settlement Agreement (Agreement). The parties agreed that ETT's total revenue requirement be set at \$404.8 million, which is a decrease of approximately \$34.5 million when compared to Company's request. Additionally, the Agreement proposes maintaining a regulatory capital structure of 59% debt and 41% equity and authorized return of equity of 9.6%. The PUC has not approved the settlement yet. The settlement agreement can be found in Docket No. 59642.

PUC Rulemaking Update. 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 September 21, 2026, the following rulemakings are in progress:

- Project No. 58482 – Rulemaking to Develop Reliability Service to Competitively Procure Demand Reductions from Large Load under PURA 39.170
- Project No. 59086 – Implementation of HB 2712 (89R) – Future and Combined Test Years (Water and Sewer)
- Project No. 59523 – Implementation of PURA 35.153 – TDU and PGC Contracts for Electric Energy Storage Facility Capacity
- Project No. 59557 – Streamlined Complaint Process
- Project No. 54233 – Technical Requirements and Interconnection Processes for Distributed Energy Resources (DERS)
- Project No. 59432 – Transmission and Distribution Pole Structural Integrity and Service Quality Standards
- Project No. 59288 – Review of §25.107
- Project No. 53981 – Review of Wholesale Water and Sewer Rate Appeals

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
- Project No. 58391 – Implementation of SB 740 (89R) – System Improvement Charge
- Project No. 57883 – Commission Directives to ERCOT
- 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. 59042 – Texas Energy Fund – Texas Backup Power Package Program
- Project No. 59332 – Review of §§ 24.245 and 24.259
- Project No. 59431 – Distribution Pole Management and Inspection Plans
- Project No. 58481 – Rulemaking to Implement Large Load Interconnection Standards Under PURA 37.0561

Railroad Commission of Texas (RRC)

SiEnergy Gas, LLC (SiEnergy or Company) Rate Case. On May 4, 2026, SiEnergy filed a Statement of Intent to change gas rates within the incorporated areas served by SiEnergy and a notice of intent to consolidate its operations and assets with the other members of SiEnergy Holding, LLC, otherwise known as Pines Gas Development, Inc. and Pines Gas, Inc. (collectively, the “Pines Entities”). Contemporaneous with this filing, SiEnergy filed a similar Statement of Intent with the RRC for the unincorporated areas of its service areas.

In the filing, SiEnergy sought approval of a total revenue requirement on a system-wide basis of \$61.9 million, representing a \$12 million increase in SiEnergy’s aggregate revenues or a

16.1% increase including gas costs and 24.0% excluding gas costs. The Company also requested a 10.75% return on equity and a capital structure of 40% long-term debt and 60% equity. Current SiEnergy customers would also see an increase in the existing Residential customer charge from \$19.25 to \$24.75 and the existing General Service Small customer charge from \$42.50 to \$70.00.

The Cities Served by SiEnergy and other stakeholders conducted discovery and filed direct testimony. The parties eventually reached a settlement agreement, which was filed on September 22, 2026. The parties agreed that SiEnergy’s revenue requirement be set at \$58,579,292, which is a reduction of approximately \$3.3 million from the Company’s initial request. The parties also agreed that SiEnergy should receive a capital structure of 40.25% debt and 59.75% equity and a return on equity of 9.8% and that the Commission should approve the consolidation of SiEnergy with the Pines Entities. The parties also agreed that SiEnergy will maintain its Residential and General Service Small customer charges at \$19.25 and \$42.50. The RRC has not approved the settlement yet. More information can be found in Docket No. OS-26-00031317.

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