

Third Memorandum of Understanding between the Texas Commission on Environmental Quality and the Public Utility Commission of Texas

House Bill 1600 (HB 1600) and Senate Bill 567 (SB 567), both enacted during the 83rd Legislature, Regular Session, transferred certain functions relating to the economic regulation of water and sewer retail public utilities from the Texas Commission on Environmental Quality (TCEQ) to the Public Utility Commission of Texas (PUCT) (collectively, the Agencies) and established joint jurisdiction between the Agencies over certain provisions of the Texas Water Code (TWC) and the Texas Government Code. The Legislature directed the Agencies to enter into a Memorandum of Understanding (MOU) to address joint jurisdiction over certain provisions of the TWC and Texas Government Code. The Agencies agreed to an Initial MOU that became effective September 1, 2014, and a Second MOU that became effective on January 7, 2020. The Agencies revisited the terms of the Second MOU and agree that upon the date of the last signatory, this Third MOU shall become effective and supersede and replace the Second MOU between the Agencies.

I. Program Guidelines

The Agencies agree to share relevant information in a timely manner and provide assistance as needed to support each agency's functions in these areas. The Agencies' established inter-agency coordination group will continue to meet and discuss enforcement, specific cases, potential and ongoing financial, managerial, and technical assistance, technical guidance, training, emergency, disaster situations, and other related issues. The Agencies agree to develop additional methods of cooperation as needed to address specific issues within these areas.

II. The Agencies' Powers and Duties

PUCT is authorized to "regulate and supervise the business of each water and sewer utility within its jurisdiction, including ratemaking and other economic regulation," while TCEQ is authorized to "regulate water and sewer utilities within its jurisdiction to ensure safe drinking water and environmental protection." TWC § 13.041.

A. Powers and Duties

a. Transferred to PUCT

The Agencies agree that the duties and functions transferred from TCEQ to the PUCT on September 1, 2014, include:

- Rate-fixing power (TWC § 12.013)
- Water supply corporation investigations (TWC § 13.004)
- Emergency orders (TWC § 13.041(c-1)-(f))
- Municipal appellate jurisdiction (TWC § 13.042)
- Rate appeals (TWC § 13.043)
- District appeals of municipal rate increases (TWC § 13.044) UPDATED effective June 15, 2017
- Temporary rates for non-functioning systems (TWC § 13.046)
- Local utility service (TWC § 13.082)
- Assistance to municipalities (TWC § 13.085)
- Reviewing municipal rates for RV parks (TWC § 13.087)
- Utility records (TWC § 13.131)
- Power to require annual reports from investor-owned utilities (TWC § 13.132)

- Filing of tariffs of rates, rules, and regulations (TWC § 13.136)
- Local office waivers (TWC § 13.137)
- Rules for payment by state (TWC § 13.142)
- Multiple system consolidation (TWC § 13.145) - REPEALED June 2, 2023
- Consolidated billing and collection contracts between water and sewer providers (TWC § 13.147)
- Rate regulation (TWC §§ 13.181 - 13.1872)
- Energy cost adjustments (TWC § 13.188)
- Certificates of convenience and necessity ("CCN") applications (TWC §§ 13.241 - 13.2475)
- Contracts designating service area (TWC § 13.248)
- Continuous and adequate service (TWC § 13.250(b)-(d))
- Sale, assignment, or lease of certificate (TWC § 13.251)
- Cease and desist petitions (TWC § 13.252)
- CCN revocations and releases (TWC § 13.254-13.2541)
- Single certification petitions (TWC § 13.255)
- Completion of decertification (TWC § 13.2551)
- Sales, transfer, merger ("STM") applications (TWC § 13.301)
- Stock or transfers of controlling interest in a utility (TWC § 13.302)
- Loans to stockholder (TWC § 13.303)
- Jurisdiction over affiliated interests (TWC § 13.341)
- Disclosure of substantial interests (TWC § 13.342)
- Wholesale contracts between affiliates (TWC § 13.343)
- Adjustment to consumer charges (TWC § 13.4115)
- Supervision of certain utilities (TWC § 13.4131)
- Emergency rate increases (TWC § 13.4133)
- Utility submetering/allocation (TWC §§ 13.501 - 13.506)

b. Joint Jurisdiction

The following are statutory citations highlighting the joint jurisdiction between TCEQ and PUCT as well as citations in which TCEQ retained jurisdiction that was shared with PUCT.

- Emergency orders (TWC § 13.041(a)-(c))
- Standards of service (TWC § 13.139)
- Coordination for emergency operations in certain counties (TWC § 13.1395(m))
- Notice of wholesale water supply contract (TWC § 13.144)
- Notice and hearing; issuance or refusal; factors considered (TWC § 13.246)
- Notice with filing bankruptcy (TWC § 13.250(e))
- Improvements in service; interconnecting service (TWC § 13.253)
- Foreclosure report (TWC § 13.304)
- Right to judicial review; evidence (TWC § 13.381)
- Actions to enjoin or require compliance (TWC § 13.411)
- Receivership (TWC § 13.412)
- Payment of costs of receivership (TWC § 13.413)
- Operation of utility that discontinues operation or is referred for appointment of receiver (TWC § 13.4132)
- Penalty against retail public utility or affiliated interest (TWC § 13.414)

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- Administrative penalty (TWC § 13.4151)
 - Contempt Proceedings (TWC § 13.417)

B. Shared Powers and Duties

The Agencies agree that for many provisions of TWC Chapter 13, the Legislature assigned jurisdiction to both PUCT and TCEQ. For a detailed list of possible situations that may require action from both agencies, refer to Table 1. The list is not exhaustive, and the Agencies should consult on a case-by-case basis to determine the appropriate response from each agency after considering the specific circumstances and available evidence.

As matters arise in these areas of joint jurisdiction, the Agencies agree to consult with each other to determine on a case-by-case basis which agency has primary responsibility, which agency will take the lead for each matter, and which agency will cooperate in a supporting role. Generally, the PUCT will have primary and lead responsibility for matters in which economic regulation of retail water or sewer utility services or business concerns predominate, as well as any customer complaints related to those matters. Correspondingly, TCEQ will generally have primary and lead responsibility for matters in which state and federal drinking water standards, water and wastewater design criteria, environmental protection, and public health concerns predominate, as well as any customer complaints related to those matters.

In situations where a retail public utility is acquired by a person or entity, the PUCT and TCEQ shall collaborate on strategies to bring the acquired utility into compliance with the Agencies' rules. Additionally, the Agencies agree that there is a shared responsibility for keeping data regarding utility and public water system ownership, connection counts, and contact information, including addresses, current. The Agencies also agree to keep district mapping and CCN mapping digital data current so each Agency can conduct its administrative functions. Oversight of a temporary manager ("TM") or receiver shall rest with the agency appointing that TM or receiver in accordance with that agency's statutory authority. For the shared powers and duties list, refer to Table 2.

Table 1: List of possible scenarios that may require action from both TCEQ and PUCT

Scenario	TCEQ	PUC
Water outage due to collapsed well at an Investor Owned Utility (IOU) and IOU unable to fund repair	1, 2, 3a, 4a, 6, 7	2, 3b, 4b, 5, 7
Water is out due to collapsed well at a political subdivision	4a, 6, 10	4b
Water and/or sewer is out due to lack of payment for wholesale water and/or sewer supply from an IOU to a wholesale supplier	3a, 4a, 6, 7, 8	3b, 4b, 5, 7, 8
Water or sewer utility is inoperable due to lack of payment for electricity to run the system's components	3a, 4a, 6, 7, 8	3b, 4b, 5, 7, 8
Water and/or sewer is out due to lack of payment from a water district to a city	4a, 8	4b, 8
IOU owner abandoned the water or sewer system - water is out or raw sewage is spilling or running out	1, 2, 3a, 4a, 6, 7	3b, 4b, 5, 7
Water is contaminated at an IOU	1, 2, 3a, 4a, 6, 7	2, 3b, 4b, 5, 7
Water is contaminated at a political subdivision	2, 3a, 4a, 6	3b, 4b
Water service from an IOU is inadequate due to frequent outages (lack of system capacity and/or line failures)	2, 3a, 4a, 6, 7	2, 3b, 4b, 7
Water service from a political subdivision is inadequate due to outages (lack of system capacity and/or line failures)	2, 3a, 4a, 6	3b, 4b
Water service from an IOU is out due to drought	3a, 4a, 6, 7, 9, 10	2, 3b, 4b, 7
Water service from a political subdivision is out due to drought	3a, 4a, 10	2, 3b, 4b
IOU has an expired sewer discharge permit and is unable to afford/acquire new discharge permit	3a, 6, 7, 10	2, 3b, 7
Possible list of actions each agency can take: 1) Provide temporary emergency services if warranted. 2) Provide financial, technical, and managerial assistance. 3a) Order utility to provide water or sewer service ((TWC § 13.041(h)(1)). 3b) Order utility to provide continuous and adequate service (TWC § 13.041(d)(1)). 4a) Order an emergency interconnect (TWC § 13.041((d)(2)). 4b) Order an emergency interconnect (TWC § 13.041(h)(2)). 5) Approve emergency/temporary rate increase (TWC §§ 13.4133 and 13.046). 6) Enforcement for violations of TCEQ's rules. 7) Appoint temporary manager, Referral for receiver (TWC §§ 13.412 and 13.4132). 8) Assist with negotiations. 9) Review drought contingency plans with utility. 10) Provide technical assistance, help with funding options, expedite emergency approvals for plans and specifications.		

Table 2: Temporary Manager Appointment and Referral for Appointment of a Receiver

The TCEQ and the PUCT each have the authority to appoint a temporary manager (TM) through issuance of an order to manage and operate a utility under TWC § 13.4132 and to request that the Office of the Attorney General (“OAG”) bring a suit to appoint a receiver under TWC § 13.412. The Agencies agree that a TM appointed by either agency has the powers and duties necessary to ensure continuous and adequate services to customers, as specified by TWC § 13.4132(c).

The Agencies agree that oversight of a TM shall rest with the agency appointing that TM in accordance with that agency’s statutory authority. If a matter arises concerning a TM that is outside of the appointing agency’s authority, the appointing agency shall request assistance from the other agency. Upon request for assistance, the other agency shall promptly assist in its area of expertise and authority to resolve the matter.

The Agencies agree to:

Item	Timeframe
Discuss which agency will issue an order appointing or reappointing a TM.	On a case-by-case basis pursuant to TWC § 13.4132
Discuss bringing suit to appoint a receiver for a water or sewer retail public utility.	On a case-by-case basis under TWC § 13.412
Discuss each TM's compensation when either agency issues an order appointing or reappointing a TM.	No later than 1 business day prior to the appointment of a TM
Meet jointly with prospective TMs or receivers to explain each agency’s authority and specific administrative functions.	When necessary, as determined by the impacted party*
Provide a copy of each order appointing or reappointing a TM to the other agency.	1 business day after issuance of the order
Inform the other agency of developments regarding a TM appointment or reappointment, in the event each agency may need to be present.	When necessary, as determined by the impacted party*
Inform the other agency of any hearings or mediation processes related to a TM or receivership of a retail public water or sewer utility.	When necessary, as determined by the impacted party*
If a matter arises concerning a TM that is within the other agency’s authority, the appointing agency shall request assistance from the other agency.	When necessary, as determined by the impacted party*
The other agency shall assist in its area of expertise and authority to resolve the matter.	If requested
Each agency may provide witnesses on matters concerning the other agency and the authority held by that agency that are anticipated to be discussed at a hearing.	If requested

Coordinate in providing financial, managerial, and technical (FMT) assistance for retail public water and sewer utilities under the management of a TM or receiver.	If requested
Provide access to FMT assistance reports through each agency's web content center (WCC).	Continuous access to TCEQ WCC and PUCT Interchange
Coordinate with the OAG on receivership matters.	When necessary
Notify the other agency of a retail public water or sewer utility outage.	Within 24 hours of obtaining knowledge
Notify the other agency of an unauthorized retail public water or sewer utility, sewer system, or PWS.	Within 2 business days of obtaining knowledge
Notify the other agency of changes to an agency form, website address, proposed rule, or publication that affects the Agencies' shared jurisdiction.	At least 30 business days before making any changes
Inform the other agency if notification is received that a retail public utility has filed for bankruptcy protection or has received notice of foreclosure.	When necessary, as determined by the impacted party*
Notify the other agency if: (1) a petition is filed under TWC §§11.041, 12.013, or 13.043; (2) if a petition filed under one of these provisions is referred to the State Office of Administrative Hearings (SOAH); and (3) if a preliminary hearing is scheduled on one of these petitions. The Agencies will copy each other on any correspondence sent to a petitioner notifying them that their wholesale petition must be filed with the other agency.	Within 5 business days
Refer any complaints that relate to the other agency's area of responsibility to the other agency.	Within 2 business days from the date that the complaint was received or the date the referring agency determines that it is the other agency's responsibility
Coordinate on reviewing Business Plans and Financial and Managerial reviews submitted by the same entity to the Agencies.	When necessary, as determined by the impacted party*
Inform of a change in an email address, File Transfer Protocol (FTP) site address, content center or other electronic communication item change that impacts business processes for the other agency.	When necessary, as determined by the impacted party*
Inform on rule and/or policy changes that may impact functions and responsibilities of each agency.	When necessary, as determined by the impacted party*
Enter data in the Databases in a font and format that will easily transfer to the other agency. The Agencies will each transfer data with each other.	Monthly or as needed to keep water utility data current.

Provide notice of the TCEQ's Commission Agenda or the PUCT's Open Meeting Agenda to one another so each agency can be present, when necessary, for actions regarding a TM appointment or reappointment	Once an item is scheduled to be heard involving the appointment or reappointment of a TM
Notify one another of the referral of a water or sewer retail public utility to the OAG for the appointment of a receiver	At time of referral

The TCEQ agrees to:

Item	Timeframe
Provide PUCT a copy of documentation received from a district holding a CCN demonstrating that a successful confirmation election was held, and votes were canvassed, thereby confirming, and approving a district conversion.	Within 5 business days of receipt
Maintain a Water Districts mapping data layer with data available for download by the PUCT.	Earliest convenience, minimum semi-annual basis if new data
Provide PUCT a copy of any TCEQ-approved Drought Contingency Plans ("DCPs") for investor-owned utilities.	Within 5 business days from the date the DCP is approved by TCEQ
TCEQ shall provide a report to the PUCT with a list of all Notices of Enforcement (NOEs) that have been sent to affected utilities, as defined in TCEQ rules, since the previous report.	No later than the 5 th day of each month to DUO@puc.texas.gov
On receiving notice that a utility has violated an order described by TWC § 13.150(b), TCEQ shall provide an email notice of the violation to PUCT.	When necessary, as determined by the impacted party*
Provide the PUCT with a report of all entities delinquent on the Regulatory Assessment Fees (RAF).	Monthly data upload
Notify the PUCT of changes in status to a PWS or WQ permit associated with a retail public utility. Changes in status include, but are not limited to, changes in address or contact information, activation changes, and changes in the responsible party.	Within thirty (30) business days after TCEQ is notified of the change
Coordinate and notify the PUCT of federal rule changes that may impact PUCT functions and responsibilities.	When the TCEQ becomes aware of a rule's proposal
Provide a list of entities that have received a financial waiver for the emergency preparedness plan (EPP) requirements. This information will be kept confidential as permitted by law.	At least every six months

Provide a list of retail public utilities that possess a CCN and are required to file a planning report with the TCEQ per 30 TAC Chapter 291, Subchapter F (Quality of Service) of requests waiver of this requirement.	At least every six months
Consult with the PUCT prior to changing ownership or responsible party status of a utility required to have a CCN.	Prior to changing ownership or responsible party status

PUCT Agrees to:

Item	Timeframe
Utilize TCEQ's monthly RAF report and consult with TCEQ to verify that applicants are not delinquent.	When necessary, but prior to issuing a final order in accordance with PUCT rules
Provide relevant data needed by TCEQ through PUCT Interchange website. PUCT will provide TCEQ with the control number(s). TCEQ may also access PUCT filings by subscribing to the Interchange Filings Notification System.	When necessary, as determined by the impacted party*
PUCT will require that an entity submit required plans and specifications to TCEQ for approval of a PWS, if applicable, for an entity that requests registration as an exempt water utility and that meets the definition of a PWS.	When necessary, as determined by the impacted party*
Provide TCEQ with advanced notice of terminating a water or sewer retail public utility's CCN.	10 business days prior
Notify TCEQ after a CCN or STM application is approved that involves an addition, change, or inactivation of a PWS, district, or WQ permit.	Within 30 business days from the date a final order was issued by the PUCT
Provide electronic access for TCEQ to review business plan correspondence and memos through the PUCT Interchange website.	When necessary, as determined by the impacted party*

*If the impacted agency determines action is necessary, it will work with the other agency in good faith to develop a timeline for delivery of the relevant material(s).

III. Enforcement

TCEQ agrees to:

- Pursue appropriate enforcement actions for violations of TCEQ rules, the TWC, and the Texas Government Code, excluding violations related to the areas of responsibility exclusively transferred to the PUCT, as follows: 16 TAC § 24.25 (Form and Filing of Tariffs), § 24.157 (Refusal of Service), § 24.161 (Response to Requests for Service by a Retail Public Utility Within its Certificated Area), § 24.165 (Billing), § 24.167 (Discontinuance of Service), and § 24.225 (Certificate of Convenience and Necessity Required).
- Pursue appropriate enforcement actions for violations under joint jurisdiction that are determined to be the primary responsibility of TCEQ, as discussed in Section I.B. in this agreement.

- Notify PUCT regarding any potential violations of PUCT requirements identified by TCEQ.
- Provide available information to PUCT as requested to assist with enforcement actions. The information provided may include technical information and data regarding the status of a PWS or WQ permit, water availability information, chemical data and analysis, information on fees, mapping information, water quality data, receivership and TM data, FMT information, compliance data, DCP information, EPP information, boil water notice information, etc.
- Investigate complaints received concerning matters under the jurisdiction of TCEQ.
- Refer to the PUCT, as appropriate, those complaints under the jurisdiction of the PUCT.

PUCT agrees to:

- Pursue appropriate enforcement actions for violations of PUCT rules, the TWC, and the Texas Government Code for violations related to the areas of responsibility under the jurisdiction of the PUCT.
- Pursue appropriate enforcement actions for violations under joint jurisdiction that are determined to be the primary responsibility of PUCT as discussed in Section I.B. in this agreement.
- Notify TCEQ regarding any potential violations of TCEQ requirements identified by PUCT.
- Provide available information to TCEQ as requested to assist with enforcement actions. The information provided may include financial and managerial analysis and data, updates on the status of a retail public water or sewer utility, rate/tariff information, compliance information, utility data information, CCN status, mapping information, FMT information, and receivership and TM data, etc.
- Investigate complaints received concerning matters under the jurisdiction of PUCT.
- Refer to TCEQ, as appropriate, those complaints under the jurisdiction of the TCEQ.

The Agencies agree to:

- Communicate and coordinate directly with each other on matters relating to enforcement, as appropriate.
- Work to institute an effective system by which coordination and collaboration can be achieved to efficiently address enforcement actions relating to each agency's respective jurisdiction.
- Coordinate with each other on matters of joint jurisdiction as discussed in Section I.B of this agreement and refer to the appropriate agency for those complaints under the jurisdiction of each agency.

IV. Information Technology

Business Processes-IT Requirements

- TCEQ will ensure that TCEQ's Water Districts and Groundwater Conservation Districts GIS mapping data is available for download through TCEQ's website and that it is updated at least on a semi-annual basis if new data is available.
- TCEQ will ensure that Public Water System information is accessible through TCEQ's public portal.
- TCEQ will provide access to view the status of plans and specifications reviews or preliminary engineering reports on TCEQ's website.

- PUCT will provide relevant data needed by TCEQ through processes defined by the Agencies' inter-agency workgroup monthly.
- PUCT will provide relevant retail public utility data to TCEQ as agreed upon by the Agencies so that RAF billing and collections can be completed within a maximum timeframe of 30 business days.

V. Funding

TCEQ shall transfer funds from the Water Resource Management Account #153 in each Fiscal Year (FY) to support the activities and operational costs associated with the PUCT's regulation and oversight of water and wastewater utilities. The amount transferred is based on the amount appropriated to PUCT per the current General Appropriations Act and/or the most recent omnibus bill from the Texas State Legislature. TCEQ will authorize a cash transfer to the PUCT in two payments in September and December of each year.

In addition, TCEQ will ensure that there are sufficient funds in the Water Resource Management Account to support each fiscal year's Statewide Cost Allocation Plan (SWCAP), health insurance, Social Security/Medicare, and retirement benefits costs associated with the FTEs funded by the Account as well as retiree health insurance costs.

VI. General Provisions

This Third MOU shall be effective upon the date of the last signatory below and it shall continue in effect thereafter until it is terminated by operation of law or by a written agreement signed by authorized representatives of both Agencies. The Second MOU, effective January 7, 2020, will be terminated as of the Effective Date of this Third MOU.

The Agencies agree to revisit this Third MOU at least every five years after its Effective Date or following any statutory change that may affect the responsibilities of the Agencies related to this MOU, whichever occurs first, to determine if any amendments or termination of this Agreement are needed.

It is the intention of the Agencies that the details relating to the provisions of this Third MOU shall be worked out, in good faith, by both Agencies. This Third MOU only describes obligations between the Agencies, and does not create any right, benefit, cause of action, or defense in favor of any third party.

Each agency has and reserves the right to take whatever actions are necessary to pursue or preserve any legal remedies available to that agency, and nothing in this Third MOU is intended to waive or foreclose any such right.

If any provision in this MOU conflicts with any Texas law or regulation, that specific provision will be considered invalid but will have no effect on the rest of the MOU. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

K Keel

Kelly Keel
Executive Director
TCEQ

2/21/2025

Date

Connie Corona

Connie Corona
Executive Director
PUCT

2/25/25

Date

