PROPOSED TEXAS SENATE BILLS HAVE POTENTIAL NEGATIVE IMPACTS ON WIND AND SOLAR

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Renewable energy developers should be aware of the proposed legislation in Texas that, if passed, will significantly impact existing wind and solar facilities as well as development-stage projects. Senate Bill 819 (SB 819) was filed on 16 January 2025, and if approved unchanged, would impose additional permitting requirements for Texas wind and solar projects. Also, Senate Bill 714 (SB 714) was filed recently and, if enacted, would require the Electric Reliability Council of Texas (ERCOT) and the Public Utility Commission of Texas (PUCT) to adopt rules, operating procedures, and protocols to eliminate or compensate for any distortion in electricity prices in ERCOT caused by federal tax credits under 26 U.S.C. § 45.

SENATE BILL 819 REPACKAGES FAILED SENATE BILL 624 FROM LAST YEAR'S SESSION

SB 819 appears to be an updated version of Senate Bill 624 (SB 624), which was introduced during the 2023 Texas legislative session, but ultimately failed. SB 624 would have: 1) required all (including existing) renewable facilities in the state to obtain a permit from the Texas Commission on Environmental Quality, which included submitting detailed plans, conducting various studies, and complying with strict regulations, and 2) afforded local governments more authority to approve or deny permits for renewable energy projects.

SB 624 proposed several burdensome requirements that would have been costly to the renewable energy industry, and experts at the time anticipated that a similar bill would be reintroduced potentially in a future legislative session.

AS PROPOSED, SENATE BILL 819 WOULD IMPACT EXISTING AND NEW WIND AND SOLAR PROJECTS

Similar to SB 624, SB 819 proposes several new restrictive requirements on wind and solar (renewable) energy generating facilities. Renewable energy facilities with a capacity of 10 MW or more would have to obtain a previously unrequired permit to interconnect to a transmission facility, unless the PUCT approves the construction by order. A wind or solar facility interconnected prior to 1 September 2025, must apply for a permit if that facility increases its electricity output by 5 MW or more, or if there are any material changes to the placement of the facility.

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The application to obtain this permit would require key information, including the location and type of facility and an environmental impact review prepared by the Parks and Wildlife Department. Details around the scope of the environmental impact review are to be determined by the PUCT, but at a minimum, the format of review must establish certain processes for application, criteria for the PUCT to evaluate the environmental impact, methods to determine an environmental impact score, fees to conduct the review, and guidelines for use of mapping applications.

After receipt of the permit application, SB 819 would require the PUCT to provide public notice of the application to county judges within 25 miles of the boundary of the renewable energy facility, hold a public meeting, and publish two consecutive publications in a newspaper in each county in which the renewable energy facility will be or is located. The proposed bill provides further instructions to the PUCT on information to be provided and other minimum requirements for the public notice and public meeting.

When considering the permit application, the PUCT would assess the applicant's compliance history, whether the issuance of the permit would violate any state or federal law, and whether the permit holder has any vested right in the permit. Permits are to be issued with several conditions prescribed by the PUCT, including boundary lines, the maximum number of renewable energy generation facilities authorized under the permit, and monitoring and reporting requirements.

SB 819 also considers decommissioning and removal of renewable energy generation facilities. Each permit holder would be required to pay an annual environmental impact fee, which would be deposited into a new renewable energy generation facility cleanup fund, assessed by the PUCT based on several factors including the efficiency and the area and size of the renewable energy generation facility, the environmental impact score provided under the environmental impact review, and any expenses necessary to implement the renewable energy generation facility cleanup fund. This bill also allows the PUCT to seek funding from the US Environmental Protection Agency for costs to remove decommissioned facilities.

Finally, SB 819 would prohibit the governing body of a taxing unit to exempt from taxation a portion of the value of real property on which a renewable energy generation facility is located or of tangible personal property located or planned to be located on the real property during the life of the facility.

SENATE BILL 714

Separately, Senate Bill 714 (SB 714) was also recently filed, and if enacted, would require ERCOT and the PUCT to adopt rules, operating procedures, and protocols to eliminate or compensate for any distortion in electricity prices in ERCOT caused by federal tax credits under 26 U.S.C. § 45, which provides tax credits for renewable energy produced. Essentially, the bill would require rules to be adopted to ensure that costs imposed on the ERCOT system by the sale of electricity from facilities eligible for a section 45 federal tax credit are paid by the parties that impose those costs. As an example, the bill cites “costs of maintaining sufficient capacity to serve load at the summer peak caused by the loss of new investment from below-market prices”. SB 714 specifically authorizes the PUCT and ERCOT to eliminate any rules or protocols that “attempt to adjust electricity prices to reflect the value of reserves at different reserve levels based on the probability of reserves falling below the minimum contingency level and value of lost load”. If enacted, SB 714 would take effect on 1 September 2025.

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CONCLUSION

If passed, SB 819 and SB 714 are likely to stifle renewable development at a time when the state cannot keep up with increased energy demands. SB 819 would impose costly regulatory burdens on the renewable energy industry in Texas. If passed in its current form, SB 819 is likely to have a chilling effect on investors' appetites to finance new projects or expand existing facilities and will likely negatively impact renewable projects that are operating within the state. SB 714 would erode the pricing benefits that correspond to the tax credit, including the ability of renewable facilities to offer negative pricing to the ERCOT market. Both bills would slow the growth of the renewable energy industry in Texas.

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