88R2852 JXC-F

By:  Kolkhorst, Middleton S.B. No. 624

A BILL TO BE ENTITLED

AN ACT

relating to the permitting of renewable energy generation facilities by the Public Utility Commission of Texas; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Chapter 35, Utilities Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. RENEWABLE ENERGY GENERATION FACILITY PERMIT

Sec. 35.201.  DEFINITIONS; APPLICABILITY. (a) In this subchapter:

(1)  "Permit holder" means a person who holds a permit issued under this subchapter.

(2)  "Person" includes an electric cooperative and a municipally owned utility.

(3)  "Renewable energy generation facility" means:

(A)  a wind power facility as defined by Section 301.0001; or

(B)  a solar power facility as defined by Section 302.0001.

(b)  This subchapter applies to a renewable energy generation facility regardless of whether the facility is the subject of a wind power facility agreement or solar power facility agreement entered into under Chapter 301 or 302.

Sec. 35.202.  LEGISLATIVE POLICY AND PURPOSE. The conservation and development of all the natural resources of this state are declared to be public rights and duties. It is also declared that the protection of the wildlife, water, and land of this state against the impacts of renewable energy generation facilities is in the public interest. In the exercise of the police power of this state, it is necessary and desirable to provide additional means so that the installation and removal of renewable energy generation facilities is placed under the authority and direction of the commission.

Sec. 35.203.  PERMIT REQUIRED; APPLICATION. (a) A person may not operate a renewable energy generation facility in this state unless the person holds a permit issued by the commission under this subchapter. A person may not construct a renewable energy generation facility in this state unless:

(1)  the person holds a permit to operate a renewable energy generation facility issued by the commission under this subchapter; or

(2)  the commission by order approves the construction.

(b)  A person may apply for a permit to operate a renewable energy generation facility by filing with the commission:

(1)  a description of the location of the facility;

(2)  a description of the type of facility;

(3)  a copy of any information filed with the Federal Energy Regulatory Commission in connection with registration with that commission;

(4)  any assumed business or professional name of the applicant filed under Chapter 71, Business & Commerce Code;

(5)  an environmental impact statement produced by the Parks and Wildlife Department under Section 11.006, Parks and Wildlife Code;

(6)  any wind power facility agreement or solar power facility agreement applicable to the facility entered into under Chapter 301 or 302 by the applicant;

(7)  the address of an Internet website that provides information about the proposed facility;

(8)  an affidavit that lists the names and addresses of the persons who may be affected by the application and includes the source of the list; and

(9)  any other information required by commission rule, provided that in requiring that information the commission shall protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information.

Sec. 35.204.  NOTICE AND HEARING ON APPLICATION. (a) When an application for a permit is filed under Section 35.203, or when an application for a permit amendment is filed, the commission shall:

(1)  give notice of the application to affected parties, including any property owner within 25 miles of the boundary of the facility; and

(2)  if requested:

(A)  set a time and place for a hearing; and

(B)  give notice of the hearing to affected parties, including any property owner within 25 miles of the boundary of the facility.

(b)  For any application involving a capacity of 15 megawatts or more, the notice must be given to the county judge of each county located within 25 miles of the boundary of the facility who has requested in writing that the commission give that notice.

(c)  The commission may not act on an application before the 30th day after the date the commission gives notice of the application under Subsections (a) and (b), as applicable, regardless of whether a hearing is requested.

(d)  Notwithstanding any other provision of this subchapter, the commission may approve an application to amend a permit without holding a hearing if:

(1)  the applicant is not applying to:

(A)  significantly increase the amount of electricity generated under the permit; or

(B)  materially change the placement of the renewable energy generation facility;

(2)  the commission determines that the applicant's compliance history raises no issues regarding the applicant's ability to comply with a material term of the permit; and

(3)  the commission:

(A)  gives notice of the application to the county judge of each county and the governing body of each municipality in which the facility is located at least 30 days before the date of the commission's approval of the application; and

(B)  allows the county judges and governing bodies to present information to the commission on the application.

Sec. 35.205.  APPROVAL OR DENIAL OF APPLICATION. (a) The commission may approve an application only if the commission finds that issuance or amendment of the permit would not violate state or federal law or rule and would not interfere with the purpose of this subchapter.

(b)  In considering an application for the issuance or amendment of a permit, the commission shall consider the compliance history of the applicant.

(c)  A permit holder does not have a vested right in a permit.

Sec. 35.206.  CONDITIONS OF PERMIT. (a) For each permit, the commission shall prescribe the conditions under which it is issued, including:

(1)  the boundary of the permitted facility location;

(2)  the maximum number of renewable energy generation facilities authorized by the permit; and

(3)  any monitoring and reporting requirements prescribed by the commission for the permit holder.

(b)  The commission, on its own motion after reasonable notice and hearing, may require a permit holder to conform to new or additional conditions to comply with this subchapter or rules adopted under this subchapter.

(c)  A permit holder shall:

(1)  ensure that the permitted facility is located at least:

(A)  500 feet from any property line, unless the permit holder has obtained a written waiver from each owner of property located less than 500 feet from the permitted facility; and

(B)  1,000 feet from any habitable structure, unless the permit holder has obtained a written waiver from each owner of the habitable structure;

(2)  provide a publicly accessible Internet website that displays:

(A)  a map of the boundaries of the permitted facility;

(B)  any interconnection request numbers assigned to the permitted facility;

(C)  the name of the owner of the permitted facility; and

(D)  any other information required by the commission; and

(3)  post at each entrance to the permitted facility a sign that:

(A)  includes:

(i)  the name of the facility;

(ii)  the name of the owner of the facility;

(iii)  the name, business address, and telephone number of the operator of the facility;

(iv)  a general description of the property on which the facility is located, including the boundaries of the property; and

(v)  emergency contact information for the facility; and

(B)  uses contrasting colors with block letters at least one inch in height; and

(C)  is displayed in a conspicuous manner clearly visible to the public.

Sec. 35.207.  MONITORING AND REPORTING. The commission by rule may, in coordination with the Parks and Wildlife Department, require a permit holder to:

(1)  monitor, record, and report on environmental impacts created by the permitted facility;

(2)  conduct wildlife assessments around the permitted facility; and

(3)  provide to the commission other information about the operation of the permitted facility.

Sec. 35.208.  FACILITY REMOVAL BY COMMISSION. (a) The commission may determine after reasonable notice and hearing that a permit holder has not removed a renewable energy generation facility according to the requirements of an applicable wind power facility agreement or solar power facility agreement entered into under Chapter 301 or 302 and that the permit holder has not delivered financial assurance required under Chapter 301 or 302, as applicable. After making the determination, the commission may:

(1)  order the permit holder to comply with the wind power facility agreement or solar power facility agreement; or

(2)  fulfill the requirements of the wind power facility agreement or solar power facility agreement if the permit holder cannot be found or does not have assets with which to comply with the wind power facility agreement or solar power facility agreement.

(b)  The commission or its employees or agents, on proper identification, may enter the land of another for the purpose of implementing Subsection (a)(2).

(c)  Removal of a renewable energy generation facility by the commission under this section does not prevent the commission from seeking penalties or other relief provided by law from the permit holder.

(d)  The commission and its employees and agents are not liable for any damages arising from an act or omission if the act or omission is part of a good-faith effort to carry out this section.

(e)  If the commission removes a renewable energy generation facility under this section, the commission may recover all costs incurred by the commission from the permit holder. The commission by order may require the permit holder to reimburse the commission for those costs or may request the attorney general to file suit against the permit holder to recover those costs. At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under this subsection. A suit under this subsection may be filed in Travis County. Costs recovered under this subsection shall be deposited to the renewable energy generation facility cleanup fund.

Sec. 35.209.  RENEWABLE ENERGY GENERATION FACILITY CLEANUP FUND. (a) The renewable energy generation facility cleanup fund is a dedicated account in the general revenue fund.

(b)  The fund consists of:

(1)  environmental impact fees collected under Section 35.210;

(2)  private contributions; and

(3)  legislative appropriations.

(c)  Money in the fund may be used only by the commission to implement this subchapter.

Sec. 35.210.  ENVIRONMENTAL IMPACT FEE. (a) An annual environmental impact fee is imposed on each permit holder.

(b)  Except as provided by Subsection (c), environmental impact fees must be deposited in the renewable energy generation facility cleanup fund.

(c)  The commission shall designate 20 percent of the revenue collected from environmental impact fees to be deposited in the renewable energy generation facility cleanup fund and used only for the removal of renewable energy generation facilities under Section 35.208. If the commission determines that the renewable energy generation facility cleanup fund has a sufficient amount of money to fund removal of renewable energy generation facilities under Section 35.208, the commission may instead deposit 20 percent of the revenue from environmental impact fees in the county and road district highway fund.

(d)  The fee for each year is imposed on each permit in effect during any part of the year. The commission may establish reduced fees for inactive permits.

(e)  The commission by rule shall adopt a fee schedule for determining the amount of the fee to be charged. In determining the amount of a fee under this section, the commission may consider:

(1)  the efficiency of the renewable energy generation facility;

(2)  the area and size of the renewable energy generation facility;

(3)  the renewable energy generation facility's environmental impact score provided under Section 11.006, Parks and Wildlife Code; and

(4)  expenses necessary to implement this subchapter.

Sec. 35.211.  FEDERAL FUNDS. The commission may execute agreements with the United States Environmental Protection Agency or any other federal agency that administers programs providing federal cooperation, assistance, grants, or loans for research, development, investigation, training, planning, studies, programming, or construction related to methods, procedures, mitigation, and facilities for the removal of renewable energy generation facilities. The commission may accept federal funds for these purposes and for other purposes consistent with the objectives of this subchapter and may use the funds as prescribed by law or as provided by agreement.

Sec. 35.212.  POWER TO REGULATE AND SUPERVISE. (a) For purposes of this subchapter, a provision of Subchapter B or E, Chapter 14, that authorizes the commission to regulate a public utility also applies to a person required to obtain a permit under this subchapter, including an electric cooperative and a municipally owned utility.

(b)  The commission may adopt and enforce rules reasonably required in the exercise of its powers under this subchapter.

Sec. 35.213.  ENFORCEMENT AND PENALTIES. For the purposes of enforcing this subchapter, a reference in Chapter 15 to a person includes any person required to obtain a permit under this subchapter, including an electric cooperative and a municipally owned utility.

SECTION 2.  Subchapter A, Chapter 11, Parks and Wildlife Code, is amended by adding Section 11.006 to read as follows:

Sec. 11.006.  ENVIRONMENTAL IMPACT STATEMENTS FOR RENEWABLE ENERGY GENERATION FACILITIES. The commission by rule shall adopt a system for providing an environmental impact statement to an applicant for a renewable energy generation facility permit under Section 35.203, Utilities Code. The system must establish:

(1)  a process for a person to apply for and receive from the department an environmental impact statement;

(2)  criteria for the department to evaluate the environmental impact of a proposed renewable energy generation facility, including:

(A)  conservation of natural resources;

(B)  continuous use of the land on which a facility is located for agricultural and wildlife purposes; and

(C)  in coordination with the Texas A&M AgriLife Extension Service, agricultural best practices;

(3)  a method for the department to provide an environmental impact score for a renewable energy generation facility, based on the criteria described by Subdivision (2);

(4)  fees for providing the environmental impact statements, in an amount sufficient to cover the department's costs of implementing this section; and

(5)  guidelines for the department's use of any map applications necessary for the implementation of this section.

SECTION 3.  (a) Except as otherwise provided by rules adopted by the Public Utility Commission of Texas under Subsection (b) of this section, Subchapter F, Chapter 35, Utilities Code, as added by this Act, applies to all renewable energy generation facilities in this state, including:

(1)  renewable energy generation facilities that:

(A)  generate renewable energy before the effective date of this Act; or

(B)  are interconnected to a transmission facility before the effective date of this Act; and

(2)  renewable energy generation facilities the construction of which began before the effective date of this Act.

(b)  The Public Utility Commission of Texas by rule shall authorize a person who operates or constructs a facility described by Subsection (a)(1) or (2) of this section to continue to operate or construct the facility after the effective date of this Act while the person applies for a permit for the facility as required under Subchapter F, Chapter 35, Utilities Code, as added by this Act. The rules may require a person who operates or constructs a facility described by Subsection (a)(1) or (2) of this section to apply for a permit for the facility as required under Subchapter F, Chapter 35, Utilities Code, as added by this Act, by a certain date.

SECTION 4.  This Act takes effect September 1, 2023.