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

(In the Senate - Filed January 26, 2023; February 17, 2023, read first time and referred to Committee on Business & Commerce; April 18, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 7, Nays 3; April 18, 2023, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Schwertner           X

King                           X

Birdwell             X

Campbell             X

Creighton            X

Johnson                  X

Kolkhorst            X

Menéndez                 X

Middleton            X

Nichols              X

Zaffirini                X

COMMITTEE SUBSTITUTE FOR S.B. No. 624 By:  Kolkhorst

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 interconnect a renewable energy generation facility with a capacity of 10 megawatts or more to a transmission facility 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 review conducted by the Parks and Wildlife Department under Section 12.0012, 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; and

(8)  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.

(c)  Notwithstanding Subsection (a), a person who interconnected a renewable energy generation facility to a transmission facility before September 1, 2023, must apply for a permit under this subchapter only if the person:

(1)  increases the amount of electricity generated by the facility by five megawatts or more; or

(2)  materially changes the placement of the renewable energy generation facility.

Sec. 35.204.  NOTICE AND MEETING. (a) The commission by rule shall require an applicant for a permit or a permit amendment to:

(1)  provide notice of the application to the county judge of each county located within 25 miles of the boundary of the renewable energy generation facility that is the subject of the permit;

(2)  hold a public meeting to obtain public input on the proposed permit or permit amendment; and

(3)  after applying for the permit or permit amendment, publish for at least two consecutive publications in a newspaper of general circulation in each county in which the renewable energy generation facility that is the subject of the permit will be or is located a notice that includes:

(A)  the time and place of the public meeting; and

(B)  a link to a publicly accessible Internet website that provides information about the facility and information regarding the public meeting.

(b)  A public meeting held under this section must be held in a location that is:

(1)  not more than 25 miles from the boundary of the renewable energy generation facility that is the subject of the permit; or

(2)  if a suitable meeting place is not available in a location described by Subdivision (1), in the nearest suitable meeting location.

(c)  The commission may not approve or deny an application for a permit or permit amendment before the 30th day after the date the applicant conducts the public meeting required by this section.

(d)  Notwithstanding any other provision of this subchapter, the commission may approve an application to amend a permit without requiring a public meeting 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 all permitted facility equipment is located at least:

(A)  100 feet from any property line, unless the permit holder has obtained a written waiver from each owner of property located less than 100 feet from the permitted facility; and

(B)  200 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)  provide evidence to the commission that the permit holder has complied with Chapter 301 or 302, as applicable, by providing financial assurance in the form of a bond.

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 provide assessment results to the Parks and Wildlife Department in a form and according to deadlines required by the department;

(3)  adapt operations based on information obtained under Subdivisions (1) and (2) to minimize facility effects on bats, birds, and other wildlife; and

(4)  provide to the commission and the Parks and Wildlife Department other information about the operation of the permitted facility.

Sec. 35.208.  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 35.209;

(2)  gifts, grants, and donations; and

(3)  legislative appropriations.

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

Sec. 35.209.  ENVIRONMENTAL IMPACT FEE. (a) An annual environmental impact fee is imposed on each permit holder.

(b)  Environmental impact fees must be deposited in the renewable energy generation facility cleanup fund.

(c)  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.

(d)  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 12.0012, Parks and Wildlife Code; and

(4)  expenses necessary to implement this subchapter.

Sec. 35.210.  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. 35.211.  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. 35.212.  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 12, Parks and Wildlife Code, is amended by adding Section 12.0012 to read as follows:

Sec. 12.0012.  ENVIRONMENTAL IMPACT REVIEW FOR RENEWABLE ENERGY GENERATION FACILITIES. The commission by rule shall adopt a system for providing an environmental impact review in a format established by the commission to an applicant for a renewable energy generation facility permit under Section 35.203, Utilities Code, based on materials provided by the applicant. The system must establish:

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

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

(A)  the facility's prioritization of conservation of natural resources;

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

(C)  the applicant's commitment to and planned implementation of avoidance and minimization measures to conserve natural resources; and

(D)   agricultural best practices developed by the department in coordination with the Texas A&M AgriLife Extension Service;

(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 reviews, 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, including the applicant's mapping of specific areas and other aspects required by the department to produce an effective and timely review.

SECTION 3.  This Act takes effect September 1, 2023.

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