

Client Alert

June 2019

Texas Legislature Reforms Regulatory Reviews of Power Generation Investment

Summer is just starting in Texas and, as the temperature begins to rise, the attention of those in the utility and power industry turns to just how hot it will really get and whether the lights will stay on. While Governor Greg Abbott's June 4th signing of Senate Bill 1211 into law won't answer those questions, the legislation does pave the way for fewer required regulatory reviews and approvals for certain corporate transactions, including tax equity investment and other mergers and acquisitions (M&A) involving power generation in Texas. S.B. 1211 revises the Utilities Code, specifically Section 39.158 of the Public Utility Regulatory Act (PURA), to provide regulatory relief to those involved with power generation M&A in terms of whether approval from the Public Utility Commission of Texas (PUCT) must be sought before closing a transaction. Since Section 39.158 made its debut in the 1999 landmark "deregulation" reform known as Senate Bill 7, owners of generation facilities in Texas have been required to seek PUCT approval before closing a merger or acquisition if the electricity offered for sale in the power region by the merged, consolidated or affiliated entity would exceed 1 percent of the total electricity offered for sale in the power region.

In its *Scope of Competition in Electric Markets in Texas* report, the PUCT asked the legislature to: (1) determine if the 1 percent threshold for review of mergers was overly stringent; and (2) clarify that the phrase "total electricity for sale" is synonymous with "installed generation capacity" in the context of Section 39.158. S.B. 1211 has addressed both issues. The bill raises the PURA threshold for getting PUCT approval from 1 to 10 percent of ownership capacity. The legislation further clarifies that Section 39.158 addresses "installed generation capacity," removing the reference to "electricity offered for sale." Finally, the legislation provides for automatic approval of the regulatory filing if the proposed transaction will not exceed 20 percent of the installed generation capacity in the power region and the PUCT fails to approve the application within 120 days.

With renewable energy in Texas continuing to be active, and tax equity and other investors looking to Texas to invest capital, S.B. 1211 should provide some relief for many who are involved in these M&A transactions. Time will tell, however, whether the PUCT interprets and implements the legislation as some are hoping, including whether passive investors who may be interested in a transaction involving more than 10 percent of installed generation capacity in Texas are required to seek PUCT approval under Section 39.158. The bill takes effect September 1, 2019.

Contacts

Tab R. Urbantke
turbantke@HuntonAK.com

Myles F. Reynolds
mreynolds@HuntonAK.com

Charles T. Baker
cbaker@HuntonAK.com