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By Opinion Committee at 11:54 am, Aug 18, 2021

August 18, 2021

The Honorable Ken Paxton
Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0425-KP
FILE# ML-48991-21
I.D.# 48991

RE: Expedited request for legal opinion regarding the Lone Star Infrastructure Protection Act.

Attorney General Paxton,

I respectfully request your opinion regarding whether the Lone Star Infrastructure Protection Act (“the Act”) prohibits a Texas transmission service provider (“TSP”) from entering into an interconnection agreement with (1) an entity that is owned or controlled by citizens of China or headquartered in China, (2) an entity that leases generation assets from an entity that is owned or controlled by citizens of China or headquartered in China, or (3) an entity that leases land to construct generation assets from an entity that is owned or controlled by citizens of China or headquartered in China.

Additionally, I request your opinion on whether the Act prohibits an entity from entering into a land lease or easement agreement to construct a generation resource or transmission line with a landowner-company that is owned or controlled by citizens of China or headquartered in China.

Background

I. Lone Star Infrastructure Protection Act (Senate Bill 2116)

In 2021, the Texas Legislature passed Senate Bill 2116 (“S.B. 2116”), which “prohibit[s] business and governmental entities from entering into agreements that grant access to critical infrastructure to companies that have specified ties to [China, Iran, North Korea, Russia, and any other country designated by the governor].”¹ Specific to this request, S.B. 2116 adds the following section to the Texas Business & Commerce Code relating to prohibited contracts between a business entity and companies with certain ties to China, Iran, North Korea, or Russia:

Sec. 113.002. PROHIBITED ACCESS TO CRITICAL INFRASTRUCTURE. (a) A business entity may not enter into an agreement relating to critical infrastructure in this state with a company:

¹ House Comm. on State Affs., Bill Analysis, Tex. S.B. 2116, 87th Leg., R.S. (2021), <https://capitol.texas.gov/tlodocs/87R/analysis/pdf/SB02116H.pdf#navpanes=0>.

(1) if, under the agreement, the company would be granted direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by the business entity for product warranty and support purposes; and

(2) if the business entity knows that the company is:

(A) owned by or the majority of stock or other ownership interest of the company is held or controlled by:

(i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or

(ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or

(B) headquartered in China, Iran, North Korea, Russia, or a designated country.

(b) The prohibition described by Subsection (a) applies regardless of whether:

(1) the company's or its parent company's securities are publicly traded; or

(2) the company or its parent company is listed on a public stock exchange as:

(A) a Chinese, Iranian, North Korean, or Russian company;

or

(B) a company of a designated country.²

S.B. 2116 provides two definitions that clarify Section 113.002 for the purpose of this request:

(1) "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or *limited liability company, including a wholly owned subsidiary*, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

(2) "Critical infrastructure" means a communication infrastructure system, cybersecurity system, *electric grid*, hazardous waste treatment system, or water treatment facility.³

II. ERCOT Generation Interconnection Process

A generation resource that wants to interconnect to the Electric Reliability Council of Texas ("ERCOT") grid must complete multiple requirements, including submitting a generation interconnection request ("GINR"), allowing ERCOT to conduct a security screening study, and

² Lone Star Infrastructure Protection Act, 87th Leg., R.S., S.B. 2116, § 2 (to be codified at Tex. Bus. & Com. Code § 113.002).

³ *Id.* (to be codified at Tex. Bus. & Com. Code § 113.001) (emphasis added).

signing an interconnection agreement with a TSP.⁴ To obtain transmission service, an entity “that owns electrical facilities in the [ERCOT] regions shall execute interconnection agreements with the [TSP] to which it is physically connected.”⁵ Although ERCOT provides a standard generation interconnection agreement (“SGIA”), “ERCOT does not participate in the [interconnecting entity’s] and TSP’s negotiation of the SGIA.”⁶

S.B. 2116 defines “critical infrastructure” to include an “electric grid” like the ERCOT grid. Further, an interconnection agreement is an agreement that provides electrical generation entities with direct access to the ERCOT grid. Thus, an interconnection agreement is likely “an agreement relating to critical infrastructure” that grants a company “direct or remote access to or control of critical infrastructure in this state” under Section 113.002(a)(1).

III. Blue Hills Wind Project

According to ERCOT’s June 2021 Generator Interconnection Status (“GIS”) Report, ERCOT has a pending interconnection request for Blue Hills Wind, a proposed 276-megawatt wind generation project in Val Verde County.⁷ The GIS Report notes that ERCOT completed a security screening study for Blue Hills Wind on July 26, 2019, and Blue Hills Wind requested a full interconnection study on November 21, 2019.⁸ Blue Hills Wind plans to begin commercial operations by October 1, 2023.⁹ However, as of July 1, 2021, Blue Hills Wind has not signed an interconnection agreement.¹⁰

Notably, the interconnecting entity responsible for the Blue Hills Wind project is GH America Energy LLC.¹¹ GH America Energy LLC’s board of directors consists of Lingyun Sun, Faxian Lin, Xiaoyan Ma, Jun Kuang, and Mingyu Tang, and it is solely owned by Luxembourg Irtysh Petroleum Sarl.¹² In turn, Luxembourg Irtysh Petroleum Sarl is solely owned by Xinjiang Guanghui Petroleum Co. Ltd., a Chinese corporation.¹³ Both Xinjiang Guanghui Petroleum Co. Ltd. and Luxembourg Irtysh Petroleum Sarl are 100% owned subsidiaries of Guanghui Energy

⁴ 16 Tex. Admin. Code § 25.198 (2020) (Pub. Util. Comm’n of Tex., Initiating Transmission Service).

⁵ *Id.* § 25.195 (2020) (Pub. Util. Comm’n of Tex., Terms and Conditions for Transmission Service).

⁶ Elec. Reliability Council of Tex., ERCOT Planning Guide 5-45 (Jan. 1, 2021), http://www.ercot.com/content/wcm/libraries/219750/January_1_2021_Planning_Guide.pdf.

⁷ Elec. Reliability Council of Tex., Generator Interconnection Status Report: June 2021 (2021), http://mis.ercot.com/misdownload/servlets/mirDownload?mimic_duns=000000000&doclookupId=781956094 (choose the “Project Details” tab; then filter the “INR” column for “20INR0271”).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² GH Am. Energy LLC, 2020 Texas Franchise Tax Public Information Report 1–2 (2020).

¹³ Service central de législation [Cent. Legis. Serv.], *Luxembourg Irtysh Petroleum Sarl, Société à responsabilité limitée unipersonnelle [Private Limited Liability Company]*, N° 1317 RECUEIL ELECTRONIQUE DES SOCIÉTÉS ET ASSOCIATIONS [J. OF COS. & ASS’NS] 63,175, 63,178 (June 3, 2009), <https://www.etat.lu/memorial/2009/C/Pdf/c1317087.pdf>.

Co., Ltd., another Chinese corporation.¹⁴ Guanghui Energy lists Luxembourg Irtys Petroleum Sarl and GH America Energy LLC as two of its overseas operating entities.¹⁵

Additionally, the landowner of the lands proposed for the Blue Hills Wind project is Brazos Highland Properties, LP. Brazos Highland Properties, LP is a foreign limited partnership 99% owned by Brazos Highland GP, LLC.¹⁶ Brazos Highland GP, LLC is a subsidiary of Brazos Highland Holding, LLC, a wholly-owned subsidiary of Chinese corporation Xinjiang Guanghui Industry Investment Group Co., Ltd.¹⁷

Therefore, GH America Energy LLC; Brazos Highland Properties, LP; and their subsidiaries appear to be companies with which a business entity cannot enter into an agreement relating to critical infrastructure under Section 113.002(a)(2) of the Business & Commerce Code.

Request

1. Is an interconnection agreement an “agreement relating to critical infrastructure” that grants a company “direct or remote access to or control of critical infrastructure in this state”?
2. Would an interconnection agreement between a TSP and a company that is a wholly or majority-owned subsidiary of a Chinese-headquartered corporation violate the Lone Star Infrastructure Protection Act?
3. If a company that is a wholly or majority-owned subsidiary of a Chinese-headquartered corporation constructed a power generation facility itself but subsequently leased the generation assets to a business entity without any ties to China, would an interconnection agreement between that entity and a TSP violate the Lone Star Infrastructure Protection Act?
4. Is a land lease or easement agreement between a generation resource developer or TSP and a landowner an “agreement relating to critical infrastructure” that grants a company “direct or remote access to or control of critical infrastructure in this state”?
5. Would a land lease or easement agreement between a generation resource developer or TSP and a company that is a wholly or majority-owned subsidiary of a Chinese-headquartered corporation violate the Lone Star Infrastructure Protection Act?

I respectfully ask that you treat this opinion request as an expedited request. As I noted above, an interconnection request that this opinion could impact is already pending before ERCOT. If a TSP enters an interconnection agreement in response to that request, the agreements could violate the Lone Star Infrastructure Protection Act. Therefore, TSPs and ERCOT need immediate

¹⁴ Guǎng huì néngyuán gǔfēn yǒuxiàn gōngsī (广汇能源股份有限公司) [Guanghui Energy Co., Ltd.], 2020 Nián niándù bàogào (年年度报告) [Annual Report] 149 (2020), <http://www.xjguanghui.com/ckfinder/userfiles/files/%e5%b9%bf%e6%b1%87%e8%83%bd%e6%ba%90%e8%82%a1%e4%bb%bd%e6%9c%89%e9%99%90%e5%85%ac%e5%8f%b82020%e5%b9%b4%e5%b9%b4%e5%ba%a6%e6%8a%a5%e5%91%8a.pdf>.

¹⁵ *Id.* at 261.

¹⁶ Brazos Highland GP, LLC, 2020 Texas Franchise Tax Public Information Report 1 (2020).

¹⁷ Guǎng huì néngyuán gǔfēn yǒuxiàn gōngsī (广汇能源股份有限公司) [Guanghui Energy Co., Ltd.], 2020 Nián niándù bàogào (年年度报告) [Annual Report] 303 (2020).

guidance on this issue to ensure the TSPs do not enter into agreements that violate the Act and put our critical infrastructure at risk of hostile foreign government interference.

Further, power generation facility developers and TSPs need guidance to ensure they do not violate the Act when securing an easement or leasing land to develop critical infrastructure.

Thank you for reviewing this request and providing your legal opinion. Please let me know if I can provide you with any additional information.

Thank you,

A handwritten signature in cursive script that reads "Donna Campbell".

Donna Campbell
Chair, Senate Committee on Nominations