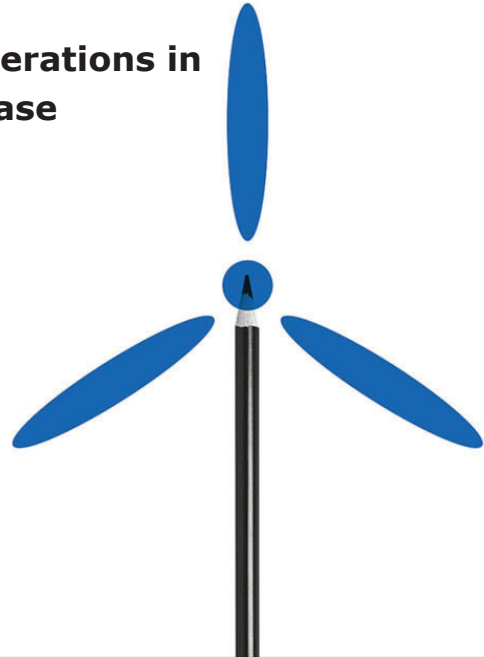


**Texas Regulatory Considerations in
Renewable Power Purchase
Agreements**

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Stephanie Kroger
Eversheds Sutherland US, LLP



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Overview

Key Components of PPA Impacted by Regulatory Considerations

- Transaction Structure
 - Wholesale or Retail Sale
 - In Front or Behind of the Meter
- Development and Operation of the Project
 - Interconnection
 - Permitting and Reporting
 - Scheduling
- Pricing
 - Fixed Price
 - Floating Price for VPPAs
 - Future Attributes
 - Change in Law



Overview

Applicable Laws

- Texas Public Utility Regulatory Act (“PURA”):
 - Title II, Texas Utilities Code §§ 11.001 – 66.017 (last amended in 2021)
- Public Utility Commission of Texas (“PUCT”) Substantive Rules
 - 16 Tex. Admin. Code (“TAC”) Chapter 25
- ERCOT Nodal Protocols, Guides and Other Binding Documents
 - Published on ERCOT website: www.ercot.com/mktrules

- Also note the new Lone Star Infrastructure Protection Act
 - SB 2116, codified in Tex. Bus. & Comm. Code § 113.001 - 113.003 and Tex. Gov’t Code 2274.0101- 2274.0103
 - See also TX. Atty Gen Opinion KP-0388 and Opinion Request RQ-0443-KP

PPA Transaction Structure

Who is selling to whom and where is the power generated and delivered?

Transaction Structure

Wholesale or Retail Sale?

As a general matter, PURA requires that generators sell energy only at wholesale. Entities that sell to retail, end-use customers must be certified as Retail Electric Providers (REPs) and REPs cannot own generation in ERCOT. (See PURA § 31.002(10),(17); § 39.351(a))

- There are a few, limited exceptions that typically would not apply in a renewable PPA

— Questions to Ask

- Is the Buyer a Retail Customer? If yes:
 - Is the energy financially settled (i.e. VPPA)? If yes, then no sale and delivery of energy at retail and complies with PURA
 - If the energy is physically delivered, what is the delivery point? If delivered to a trading hub, the energy must be scheduled to the Buyer's Wholesale Market Participant.
 - If the Buyer wants the energy delivered to its consuming facility, then need a retail sleeve.

Transaction Structure

Retail Sleeve Transaction

— Because of PURA restrictions, if Buyer wants the energy delivered to its consuming facility, there will be both a wholesale and a retail transaction:

- Sale at wholesale from Generator to REP, energy delivered to defined Node or Hub
- Sale at retail from REP to Buyer, energy delivered from Node or Hub to Buyer's Meter

— Contract Structures

- Back-to-Back Agreements
- Three-party Agreement with Generator, REP and Buyer for purchase of the Generated Quantity and separate Retail Agreement between REP and Buyer for full requirements retail service
- Hybrid of both

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