

Renewable Energy Texas Case Law Update

Gary E. Zausmer
Enoch Kever PLLC
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In re Stetson Renewables Holdings, LLC & Ogallala Renewable Project, LLC,

No. 22-1119, 2022 WL 17998213 (Tex. Dec. 30, 2022).

- Economic Development Act (2001): a statutory program permitting Texas school districts to offer ten years of considerable property-tax incentives to renewable energy businesses making eligible investments in their districts. *See generally* TEX. TAX CODE Ch. 313; 34 TEX. ADMIN. CODE §§ 9.1051–.1060.
- Chapter 313 required Texas Comptroller to prepare mandatory “economic impact evaluation” and issue a certificate reflecting completion of such within 90 days of receiving a completed application . TEX. TAX CODE §§ 313.025(b); 313.026.

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- The statutory program was set to expire by its own terms on December 31, 2022, causing a surge in applications that overwhelmed Comptroller Glen Hegar's ability to complete the applications before the program expired.
- In recognition of the timing issues, the Comptroller issued guidance to potential applicants on its website, stating:

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“There is not a formal submission deadline; however to be safe, we recommend that all applications be submitted to the Comptroller's office by June 1, 2022 to ensure there is ample time for processing and approvals. The application and approval process during an average year can take as long as 6 months. However, with the program expiring we're seeing an increase in the volume of applications coming in this year. It would be prudent to get the application in as soon as possible.”



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“We cannot guarantee that an application submitted to the Comptroller's office after June 1, 2022 will receive all approvals and the Texas Economic Development Act Agreement will be signed and executed by the school district and the company before December 31, 2022. Applications that are incomplete or have deficiencies will be delayed, making final approval less likely.”



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- Mere weeks before the end of the year, the Comptroller's Office sent letters to various renewable energy companies awaiting certificates and informed them that it would no longer consider and issue certificates for any applicant—even for those who filed by the recommended June 1st date.
- The Comptroller's wholesale refusal to act on any applications weeks before the statute expired amounted to a denial of the applicants' participation in the program because the Comptroller's merits decision was a statutory prerequisite for local school districts to approve the tax incentives.

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