

LEGAL UPDATES

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# "Essential Services" under Executive Order GA-14

## ASSESSING THE IMPACT ON TEXAS' RENEWABLE ENERGY INDUSTRY

Texas Governor Greg Abbott issued Executive Order GA-14 on March 31, 2020, in response to the COVID-19 pandemic, directing all individuals and businesses performing services in Texas to minimize in-person contact except where necessary to provide or obtain essential services. In defining "essential services," the executive order adopts recommendations set forth in the advisory memorandum issued by the U.S. Department of Homeland Security (DHS) on March 28, 2020.

The DHS Memo, which is not a binding directive on its own, outlines the services and industries that should continue performing in-person work despite government-mandated social distancing and restricted mobility measures (i.e., the Essential Critical Infrastructure Workforce or ECIW).

### Energy industry activities within the ECIW framework

Energy-related activities included within the ECIW are broad in scope. In general, the ECIW allows companies to continue developing and constructing new renewable energy infrastructure, and continue constructing, operating, maintaining and repairing existing renewable energy infrastructure; however, the DHS Memo cautions that all services capable of being performed remotely should be performed as such.

The list below sets forth the energy-industry workers who are specifically included in the ECIW and are therefore authorized to perform their work in person (unless the work can be performed remotely). If a service or activity is

not included within the ECIW, interested parties may request an “essential services” determination by the Texas Division of Emergency Management.

1. Workers supporting renewable energy infrastructure, including, but not limited to wind, solar, biomass, hydrogen, ocean, geothermal and/or hydroelectric energy infrastructure. This includes workers involved in construction, manufacturing, transportation, permitting, operation, maintenance, monitoring, and logistics for renewable energy infrastructure.
2. Workers who are involved in the development, expansion or operation of the generation, transmission and distribution of electric power.
3. Workers supporting generation, transmission and electric black start facilities<sup>[1]</sup> (e.g., battery storage facilities).
4. Workers supporting reliability entities, balancing authorities and control centers, including independent system operators, regional transmission organizations and local distribution control centers.
5. Workers supporting information technology or operations technology, including customer service operations, energy management systems, supervisory control and data acquisition (SCADA) systems and cybersecurity systems.
6. Workers supporting the manufacturing and distribution of equipment, supplies and parts necessary to maintain production and service of renewable energy infrastructure.
7. Workers performing commodity trading, scheduling or marketing functions.
8. Workers performing vegetation management and traffic control for energy infrastructure.
9. Technicians performing critically necessary environmental monitoring or remediation services.
10. Technicians performing services related to instrumentation, protection or control.
11. Essential support personnel for electricity operations.

As mentioned above, the ECIW’s broad scope should provide some comfort to renewable energy companies as they navigate the complex business environment created by the COVID-19 crisis. However, any person doing business in Texas should keep in mind that the Executive Order GA-14 requires all services and activities to be performed remotely to the extent feasible. We recommend taking extra precaution even if your activities appear to be included within the ECIW. For example, while the services of a land agent are arguably included within the ECIW, door-to-door visits by land agents are likely to be unwelcome by community members and law enforcement officials alike. Every

business should therefore find remote means of accomplishing in-person tasks to the extent possible. Further, while the Executive Order GA-14 supersedes any conflicting orders from local governments in Texas, all businesses operating within Texas should carefully review local orders that may be unaffected by the statewide order.

## Contact us

Husch Blackwell attorneys are monitoring local government orders and are available to advise clients regarding any restrictions applicable to their businesses. Additionally, our attorneys are available to provide certification letters for clients who would like to present a detailed analysis to government officials or business partners regarding compliance with any COVID-19-related orders in the applicable jurisdiction(s). If you have questions about the information contained in this article, please contact Donna Pryor, Ben Kass, Diego Atencio or your Husch Blackwell attorney to plan a way through and beyond the pandemic.

## Comprehensive CARES Act and COVID-19 guidance

Husch Blackwell's CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis.

*Disclaimer: Please note that the information contained in this article is not intended to constitute legal advice from Husch Blackwell. Further, this article is not intended to be a precise or comprehensive description of the information contained in the Statewide Order or the DHS Memo. Please reference the text of the Statewide Order and the DHS Memo or consult with an attorney before acting on any information contained in this article.*

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[1] The Electric Reliability Council of Texas (ERCOT) defines "black start" facilities as those providing black start service (BSS). BSS is defined as an "ancillary service provided by a resource able to start without support of the ERCOT transmission grid."