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Houston, TX**Winter Strom Uri and *Force Majeure*
Under Gas Purchase and Sale Agreements****David W. Jones**

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I. Introduction

Force majeure, a French phrase meaning “superior force,” is generally defined in the law as “[a]n event or effect that can be neither anticipated nor controlled.”¹ The idea such events may excuse performance under a contract dates back centuries. Today it is a common feature in many contracts, including agreements for the purchase and sale of natural gas.

Although *force majeure* provisions have appeared in gas contracts for decades, there is currently surprisingly little case law construing those provisions. That may be about to change.

Winter Storm Uri in February 2021 caused widespread damage and inflicted misery across the State of Texas. But few industries were hit harder than those in the energy sector, and the natural gas business in particular. Widespread loss of production across the state, coupled with record demand, caused prices to reach levels never before seen. Sellers did not deliver, purchasers demanded damages, and litigation ensued. Across Texas and in other states, many lawsuits have now been filed to resolve the question of whether Uri was an event of *force majeure* that excused sellers’ failure to deliver gas.

II. Winter Storm Uri Comes to Texas

February 2021 came in like a lamb. For the first ten days of the month, temperatures across the state were near or above normal. In fact, Midland International Airport set a daily record high of 83 degrees on February 3. The entire Southwest United States was under a strong upper-level ridge that helped to create a warm, temperate environment across the region.²

By the end of the first week of February, however, computer models began to hint at a dramatic change in the weather pattern across the country. The models forecasted a trough of high pressure across the northern plains, extending down into areas east of the Rocky Mountains. The high pressure stretched back to Canada with temperatures as low as -50°F in the Yukon Territory. As explained by the National Weather Service office in Midland/Odessa, “Forecast temperatures at range were really impressive on computer models with some gaudy numbers being printed out for our area of Texas.”³

¹ FORCE MAJEURE, Black’s Law Dictionary (11th ed. 2019).

² National Weather Service Midland/Odessa, *The Arctic Plunges South: The Meteorology Behind the Historical Event*, available at https://www.weather.gov/media/maf/events/2021/February_Arctic_Outbreak.pdf.

³ *Id.*

The first push of cold air arrived in Texas on February 10, bringing freezing rain and sleet across much of the state.⁴ Winter weather advisories for a prolonged winter event were issued on February 11 as a stronger arctic cold front pushed south through the plains. On February 12, 2021, Texas Governor Greg Abbott, for the first time ever, issued a State of Disaster in all 254 counties due to severe weather posing “an imminent threat of widespread and severe property damage, injury, and loss of life due to prolonged freezing temperatures, heavy snow, and freezing rain statewide.”⁵ By the next day, much of West Texas was in the teens. On the other side of the State, winter storm warnings were being issued for Southeast Texas.

On Valentine’s Day, Sunday, February 14, every square inch of Texas, along with all of Oklahoma and Arkansas and parts of at least 16 other states, were under a winter storm warning.⁶ Snow, sleet, and freezing rain fell across Texas, increasing in coverage and intensity throughout the day. Thunder snow was reported in Burleson County, and thunder sleet occurred near the coast in Brazoria and Galveston Counties.⁷ Temperatures crashed Sunday night behind the cold front, falling into the teens or single digits over much of the state with wind chills into the single digits or even below zero. Frigid temperatures (20 or more degrees below average) remained in place for the next five days.

The February 2021 winter storm (unofficially named “Uri” by the Weather Channel⁸) was unprecedented. Austin Bergstrom International Airport saw a record 164 consecutive hours of temperatures below freezing and its second highest snowfall event total since 1948.⁹ San Antonio International Airport was below freezing for 108 consecutive hours, one hour shy of the record set in 1951.¹⁰ Midland saw a record eight days below freezing.¹¹ Houston had its coldest average temperature for February 11-17 in

⁴ National Weather Service Houston/Galveston, *Valentine’s Week Winter Outbreak 2021: Snow, Ice, & Record Cold*, available at <https://www.weather.gov/hgx/2021ValentineStorm>.
<https://storymaps.arcgis.com/stories/e7c8b2f1b9e54f2c8808665a5ca3b4df> (south Texas)

⁵ Proclamation, Governor Abbott Issues Disaster Declaration In Response To Severe Winter Weather In Texas (Feb. 12, 2021), available at <https://gov.texas.gov/news/post/governor-abbott-issues-disaster-declaration-in-response-to-severe-winter-weather-in-texas>.

⁶ National Weather Service Austin/San Antonio, *February 2021 Historical Winter Storm Event South-Central Texas*, at available at <https://www.weather.gov/media/ewx/wxevents/ewx-20210218.pdf>.

⁷ National Weather Service Houston/Galveston, *supra*, n. 4

⁸ The Weather Channel, *Winter Storm Names for 2020-21 Revealed* (Dec. 30, 2020), available at <https://weather.com/storms/winter/news/2020-09-30-winter-storm-names-2020-2021>.

⁹ National Weather Service Austin/San Antonio, *supra*, n. 6.

¹⁰ *Id.*

¹¹ National Weather Service Midland/Odessa, *supra*, n. 2.

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"Lessons Learned from the Past Year: *Force Majeure* in the Wake of Uri"