

Case Law Updates in the Energy Industry

Cailleen "Kat" Gamache (Houston, TX)

Justin S. Davenport (San Antonio, TX)

Norton Rose Fulbright US LLP



1

Introduction

- Over the past year, Texas courts have issued decisions on a wide variety of topics in the gas and power space
- Many of these cases stem from the aftermath of Winter Storm Uri
- These cases implicate
 - The Public Utility Commission's (PUC) exclusive jurisdiction over party disputes with ERCOT
 - ERCOT's protection under sovereign immunity
 - PUC/ERCOT's ability to set non-competitive rates during emergency load-shedding events
 - The constitutionality of state rights of first refusal laws
 - Interpreting Force Majeure clauses in NAESB base contracts

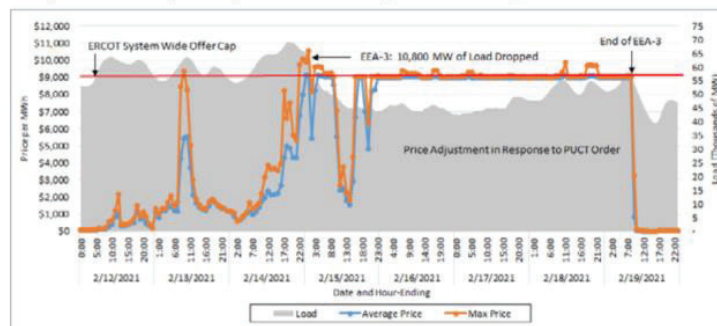
2

Background: Winter Storm Uri and ERCOT

- Feb. 2021–Winter Storm Uri brought freezing temperatures and precipitation to Texas, which greatly stressed the ERCOT transmission grid
- Feb. 15th–ERCOT declared its highest state of emergency and directed transmission operators to shed load to maintain grid stability
 - PUC directed ERCOT to set electricity prices at the market cap of \$9,000/MWh
- Feb. 17th–ERCOT recalled load shedding, but kept high prices for 32 more hours
- Nearly half of all possible generation failed and energy companies had to spend billions to supply power to their users
- Hundreds of Texans died amid the blackouts, which lasted four days straight for some. Losses from the storm are estimated to be over \$100 billion

Background: Winter Storm Uri and ERCOT

Figure 3: Electricity Prices (8 ERCOT Load Zones) and Load during the Cold Weather Event¹⁷



Source: NRR report, "Regulatory Questions Engendered by the Texas Energy Crisis of 2021." Credit: National Regulatory Research Institute (NRR)

Winter Storm Uri Related Cases

- *CPS Energy v. ERCOT* (Tex. 2023)
- *Luminant Energy Co. LLC v. PUC* (Tex. App.–Austin 2023)
- *RWE Renewables Americas, LLC v. PUC* (Tex. App.–Austin 2023)
- *MIECO LLC v. Pioneer Nat. Res. USA, Inc.* (N.D. Tex. Feb. 15, 2023)



5

 NORTON ROSE FULBRIGHT

Case 1

CPS Energy v. ERCOT (Tex. 2023)

Norton Rose Fulbright US LLP



6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Case Law Updates in the Energy Industry

Also available as part of the eCourse

[2023 Gas and Power eConference](#)

First appeared as part of the conference materials for the
2023 Gas and Power Institute session

"Case Law Updates in the Energy Industry "