

Locke Lord QuickStudy: Texas Supreme Court Issues Electric Opinion on PUC Orders During Winter Storm Uri

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On June 14, 2024, the Supreme Court of Texas issued a pivotal opinion concerning the actions of the Public Utility Commission of Texas (Commission) during 2021's Winter Storm Uri. In *Public Utility Commission of Texas v. Luminant Energy Company LLC*, Cause No. 23-0231, the Court held that the Commission (1) did **not** exceed its authority under Chapter 39 of the Public Utility Regulatory Act (PURA) by issuing two emergency orders (the Orders) that effectively raised the market price of electricity to its regulatory ceiling of \$9,000/MWh; and (2) substantially complied with the Administrative Procedure Act's (APA) procedural rulemaking requirements in issuing the Orders. The Court then reversed the court of appeals and rendered judgment on behalf of the Commission.

During Winter Storm Uri, the Commission issued the Orders and required ERCOT to adjust its scarcity-pricing mechanism to account for customer load that was being shed. In response, ERCOT manually changed the scarcity-pricing mechanism, which effectively raised the price of electricity to \$9,000/MWh.

Luminant Energy Company LLC later sought judicial review of the Orders. In a direct appeal at the Third Court of Appeals of Texas, the appellate court determined that the Commission exceeded its statutory authority under PURA. Chief Justice Hecht, in delivering the opinion for the Texas Supreme Court, disagreed with the appellate court.

Before reaching the issues of statutory authority and the APA, the Court first concluded that the Third Court of Appeals had jurisdiction to hear Luminant's challenge to the Orders. Specifically, the Court concluded that (1) Luminant had standing to seek judicial review of the Orders; (2) the issue was not moot; (3) the Orders met the APA's definition of a "Rule" under Texas Government Code § 2001.003(6); and (4) the Orders qualified as "competition rules" under PURA and could be challenged directly to the Third Court of Appeals.

Next, the Court analyzed the over-arching policies guiding PURA Chapter 39. First, while the Court acknowledged that PURA Section 39.001 stated a legislative policy that electricity price should be determined by competition, subsection (c) reflected the understanding that some regulatory authority may be necessary. And subsection (d) granted regulatory authorities the power "to authorize or order competitive rather than regulatory methods to achieve the goals of [PURA] *to the greatest extent feasible* and shall adopt rules and issue orders . . . so as to

impose the least impact on competition.”

The Court then noted that PURA Section 39.151 directed ERCOT to ensure the reliability and adequacy of the electric network, and gives the Commission complete authority to make sure ERCOT performs its duties and responsibilities. Relying on the “whole-text” canon of statutory construction, which requires the judiciary to look at the entirety of a text and each statute’s connection to the rest, the Court held that PURA Section 39.151 authorized the Commission to enter the Orders.

Next, the Court addressed Luminant’s complaints that the Commission (1) did not fully comply with the Texas Government Code Section 2001.034(b)’s requirement that a state agency set forth in an emergency rule’s preamble a finding of imminent peril; and (2) failed to publish the Orders in the Texas Register. Under Texas Government Code Section 2001.034(a), a state agency may adopt an emergency rule without prior notice or hearing if, among other requirements, there is imminent peril to public health, safety, or welfare. As the Orders achieved the goal of the Section 2001.034(a)’s imminent peril requirement, the Court rejected Luminant’s first argument and found that there was substantial compliance with the statute.

The Court then determined that publication in the Texas Register was not required under the circumstances. By posting the Orders immediately on its own website, the Commission provided better notice to the necessary parties. Thus, the Court held that the Commission substantially complied with the APA’s emergency rulemaking procedures and rendered judgment for the Commission.

The State of Texas is still dealing with the ramifications of Winter Storm Uri. In issuing this opinion, the Supreme Court of Texas has ruled on the actions of the Commission during that time. Not only will the opinion impact the Texas electricity market, but its ramifications on agency authority and emergency rulemaking will be felt by all state agencies.

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