

Haynes and Boone in Law360: Texas Justices Question Grid Operator's Immunity Status

September 17, 2020 Ben Mesches, Leslie Thorne, Andrew Guthrie, Chris Knight

PRACTICES Appellate, Energy, Power and Natural Resources, Traditional Power

Law360 mentioned Haynes Boone in an article about a Texas Supreme Court case involving firm client Panda Power that will determine whether the state's electric grid operator, a private corporation, can claim governmental immunity from fraud and negligent misrepresentation claims brought by a bankrupt power plant owner.

The Haynes Boone team included [Ben Mesches](#), Werner Powers, [Leslie Thorne](#), [Andrew Guthrie](#), and [Christopher Knight](#).

Here is an excerpt:

The justices posed questions about the Electric Reliability Council of Texas Inc.'s (ERCOT's) rulemaking powers, governmental oversight, jurisdiction and whether they could interpret that statutes outlining its duties convey governmental immunity. ERCOT controls and maintains most of the Lone Star State's power grid.

The high court has been asked to determine whether ERCOT has immunity or must face Panda Power Generation Infrastructure Fund LLC's claims that its misrepresentations about power scarcity in Texas led Panda Power to invest \$2.2 billion in a new plant in the state, only to face difficulty recouping its expenses as power prices remained low.

Panda Power's attorney, Ben Mesches of Haynes Boone, told the high court that nowhere in the Legislature's statute establishing ERCOT as the power grid operator does it say that the corporation is a governmental entity.

"ERCOT is asking this court to do what the Legislature decided not to and blanket it in governmental immunity," he said.

Justice Debra Lehrmann jumped in quickly after Mesches started his argument, asking, "But didn't the Legislature give the entity governmental powers?"

Mesches argued that it didn't. He said the Public Utility Commission, a government agency, has the final say in rulemaking and has oversight over ERCOT.

To read the full article, click [here](#). (Subscription required)