

Ben Mesches in Texas Lawbook: Two Texas Appeals Courts Wrestle Over ERCOT's Sovereign Immunity

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PRACTICES Litigation, Appellate, Energy Litigation, Oil and Gas, Power and Renewables Litigation

Haynes Boone Partner [Ben Mesches](#) was quoted in a *Texas Lawbook* article about questions over ERCOT's sovereign immunity stemming from Winter Storm Uri in February.

Here is an excerpt:

... Is the Electric Reliability Council of Texas, the legislatively created entity that operates the Texas electric grid, a state governmental agency protected from litigation under the doctrine of sovereign immunity?

ERCOT says it is. Those suing ERCOT say it is not. ...

... [a] Dallas case involves a 2016 complaint against ERCOT by Panda Power Generation Infrastructure Fund, which contends that it needlessly invested \$2.2 billion in building three new power plants, two in Temple and one in Sherman, based on faulty and misleading projections by ERCOT of future electric needs in the state.

The Panda case has already been to the state Supreme Court, which in March sent it back to the Dallas appellate court without deciding the key question of whether ERCOT enjoys sovereign immunity.

Ben Mesches of Haynes Boone in Dallas, representing Panda, argued that the Texas Legislature earlier this year – after Winter Storm Uri – had every opportunity to expressly afford sovereign immunity to ERCOT and did not do so.

“It did not designate ERCOT as a government entity,” Mesches told the appellate court. “It did not supply ERCOT with tax dollars and subject it to the legislative appropriations process, and it did not grant ERCOT immunity. ... The Legislature knows how to do all of these things. It did none.”

He said a judicial finding that ERCOT is immune to suits “would close the courthouse doors to plaintiffs injured by ERCOT's misconduct.”

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