

## Mesches, Thorne and Jordan in Law360: Texas Utility Wrongly Granted Arbitration Before Dispute

---

June 1, 2017 Ben Mesches, Leslie Thorne, Jason Jordan

---

**PRACTICES** Litigation, Appellate

---

*Law360*, New York (June 1, 2017, 2:18 PM EDT) -- A Fifth Circuit panel on Wednesday vacated a district court's granting of a Texas utility's request to compel arbitration on its liability if it stopped purchasing power from a wind power supplier, deciding that because there was not yet a sufficient dispute, the lower court should not have mandated arbitration.

U.S. Circuit Court Judge Carolyn Dineen King, writing for a unanimous, three-judge panel, said the district court should not have forced arbitration between wind power supplier Papalote Creek II LLC and the Lower Colorado River Authority, which had agreed to purchase Papalote's wind energy, over whether there was a \$60 million liability cap for ending power purchases. In a published opinion, the panel said there was not a sufficient dispute that made the issue ripe when the district court was asked by the LCRA to enforce the power purchase agreement's arbitration clause.

But the case, which Judge King said might be a matter of first impression, presented a complicated set of timing issues. The LCRA wanted to know if the power purchase agreement capped its liability at \$60 million, but it said there was only a possibility it would stop purchasing power if it found the arbitrator's decision to be favorable. As a result, the panel said there was not a sufficient dispute and the issue was not ripe for arbitration. But after arbitration came down in favor of the LCRA, the utility said it would stop purchasing power, which initiated a dispute that would have been ripe for arbitration.

The panel said that this post-arbitration action was not a good enough reason to retroactively allow the decision to force arbitration to stand....

Papalote is represented by [Benjamin L. Mesches](#), [Leslie C. Thorne](#) and [Jason N. Jordan](#) of Haynes Boone LLP.

*Excerpted from Law360. To view the full article click [here](#) (subscription required).*