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All-Women Slate of Appellate Advocates to Argue Historic Winter Storm Uri Case

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Clockwise from upper left: Anna Rotman, Allyson Ho, Chrysta Castañeda, Marcey Reasoner Stokes, Melissa Lorber

Lawyers for some of Texas' largest energy companies and their government regulators are scheduled to argue one of the most important cases resulting from Winter Storm Uri last year — and the lineup includes some of the most prominent women appellate experts in Texas.

Dallas-based Luminant Energy, a subsidiary of Vistra Corporation, and several other power suppliers are asking the Texas Third Court of Appeals in Austin to rule that the Texas Public Utility Commission illegally adopted two rules during the historic storm that allowed the Electric Reliability Council of Texas to increase the price of electricity 650 percent for four days.

But lawyers for the PUC and two major energy

companies, Calpine Corporation and Talen Energy, argue that companies like Luminant are using the litigation to “improperly shift resulting market losses to other parties.”

Beyond the billions of dollars at stake in this litigation, the case also features some of the highest profile women lawyers practicing in Texas. For example, Vistra General Counsel Stephanie Zapata Moore has hired Gibson, Dunn & Crutcher appellate partner Allyson Ho and Enoch Keever partner Melissa Lorber to lead the arguments Wednesday.

Calpine and Talen turned to Baker Botts appellate partner Macey Reasoner Stokes to handle its oral arguments. DGSP2, a Spring-based power generator, has hired Dallas trial lawyer Chrysta Castañeda to lead its

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argument. And TexGen Power has Kirkland & Ellis partner Anna Rotman leading its team.

Luminant, a power generator and supplier, argues that the then-three members of the PUC violated the Texas Administrative Procedure Act when they met for six minutes in an emergency session Feb. 15, 2021, to amend existing ERCOT price rules allowing electricity prices to spike from \$1,200 per megawatt per hour to \$9,000.

The price difference, which lasted for four days, cost several power companies billions of dollars and drove some, including Brazos Electric Cooperative, into bankruptcy.

“The PUC ... rushed to interfere with the market and raise electricity prices during the winter storm by amending the preexisting rules, while ignoring and failing to follow the APA’s procedures for doing so — either the normal procedures, or the emergency ones,” Ho wrote in Luminant’s brief to the appeals court. “Making matters worse, the resulting rule violated the statutory limits on the PUC’s authority by disrupting ‘the normal forces of competition.’

“Given all that Texans endured during the winter storm, it isn’t too much to ask the PUC to follow the APA’s bare-minimum requirements for reasoned agency decision making,” Ho wrote. “The PUC failed to do so, violated the APA, and exceeded its statutory limits.”

By contrast, Reasoner Stokes argues that the PUC was required to act because ERCOT’s systems “failed to recognize that customers deprived of power by mandatory blackouts still constituted critical demand that needed to be supplied.”

“The system improperly kept energy prices below the level required by the extreme scarcity experienced in the market,” Reasoner Stokes wrote in the briefs.

“No market participant sought to stay the PUC’s orders or obtain any other judicial relief from them during the storm,” she argued in the briefs. “When the emergency passed, however, market participants assessed the financial outcomes of the complex actions they and others had taken in the market during the storm, and some suffered staggering losses. In hindsight, some market participants now blame the PUC for their losses and argue that the Orders were illegal all along.”

The oral arguments are scheduled for Wednesday at 9 a.m.