

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - TEXAS**

### **AEP Texas Commercial & Indus. Retail Ltd. Partnership v. Public Utility Com'n of Texas**

**Court of Appeals of Texas, Austin - July 17, 2014 - S.W.3d - 2014 WL 3558763**

Retail electric provider (REP) sought judicial review of decision of Public Utility Commission (PUC) finding that proposed sharing of a common name, trademark, brand, or logo by a transmission distribution utility (TDU) and the REP, which was the TDU's competitive retail affiliate, would amount to prohibited preferential joint promotion.

The Court of Appeals held that:

- PUC reasonably construed provision of Public Utility Regulatory Act (PURA) and accompanying rule, prohibiting a utility from conducting joint advertising or promotion with a competitive affiliate in a manner that favors the competitive affiliate, to find that anticipated advertisements or promotions using shared name and logo would be prohibited preferential joint promotion;
- PUC unreasonably construed another provision of PURA, which required PUC to adopt rules to ensure that a utility did not allow a competitive affiliates before particular date to use utility's corporate name, brand, or logo unless a disclaimer was made, to find that the entire statutory provision expired on the particular date at issue; but
- Such error did not require reversal of commission order;
- Even if PURA does not categorically bar all sharing of names, logos, or branding by a utility and its competitive affiliate, such sharing may violate the prohibition of preferential joint advertising or promotion depending on the particular circumstances presented; and
- PUC's construction of PURA did not violate free speech provisions of state or federal constitution.