

CAUSE NO. _____

MARIA PINEDA, on behalf of herself
and the Estate of C [REDACTED] P [REDACTED]
Plaintiffs,

VS.

ELECTRIC RELIABILITY COUNCIL OF
TEXAS, INC. and
ENTERGY TEXAS, INC.
Defendants.

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IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

_____ DISTRICT COURT

JURY TRIAL DEMANDED

PLAINTIFFS' ORIGINAL PETITION

TO THIS HONORABLE COURT:

Plaintiffs complain of the Electric Reliability Council of Texas, Inc. and Entergy Texas, and for cause of action respectfully show this Honorable Court the following:

I.

Discovery in this matter will be conducted pursuant to Level 2.

II.

Plaintiffs were residents of Montgomery County, Texas at the time this cause of action arose.

III.

Defendant Electric Reliability Council of Texas, Inc. is a domestic nonprofit corporation headquartered in the State of Texas. It may be served via certified mail through its registered agent for service in this State, Bill Magness, via registered mail, at 7620 Metro Center Drive, Austin, TX 78744-1613 USA.

Defendant Entergy Texas, Inc. is a Domestic For-Profit Corporation headquartered in the State of Texas. It may be served via certified mail through its registered agent for service in this State, Paul A. Scheurich, via registered mail, at 350 Pine Street, Beaumont, TX 77701 USA.

IV.

Venue is proper in this matter pursuant to CPRC §15.002, in that one of the Defendants resides here.

V.

The Electric Reliability Council of Texas, Inc. (“ERCOT”) manages the flow of electrical power on the Texas Interconnection that supplies power to more than twenty-five million Texas customers – representing ninety percent of the state's electric load. ERCOT was the first independent system operator (ISO) in the United States and one of nine ISOs in North America. ERCOT works with the Texas Reliability Entity (TRE), one of eight regional entities within the North American Electric Reliability Corporation (NERC) that are supposed to coordinate and improve reliability of the bulk power grid. As the ISO for the Texas region, ERCOT dispatches power on an electrical grid that connects more than 46,500 miles of transmission lines and more than 550 generation units. ERCOT also performs financial settlements for the competitive wholesale bulk-power market and administers retail switching for seven million premises in competitive choice areas. Because the ERCOT system does not cross state lines, it is not subject to federal regulation or oversight. And, because it is not subject to federal regulation, ERCOT is not legally required to meet the basic standards found in other electrical grids around the United States – including standards for “winterizing” the system and having sufficient energy generation. Of course, just because it is not legally required to do so, does not mean that failing to do so is reasonable behavior. ERCOT failed all Texans, and allowed providers to fail Texans.

After a severe winter storm in 2011, a report by the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation demonstrated to ERCOT and all Texas power providers that additional winterizing of the power infrastructure in Texas was

necessary. According to the reports, the large number of units that tripped offline or could not start during that storm “demonstrates that the generators did not adequately anticipate the full impact of the extended cold weather and high winds.” More thorough preparation for cold weather could have prevented the outages, the report said. Unfortunately, those recommendations were ignored and not implemented. Rather than invest in infrastructure to prepare for the known winter storms that would most certainly come and potentially leave people vulnerable without power, the providers instead chose to put profits over the welfare of people, and ERCOT allowed them to do so.

The decision to not require equipment upgrades to better withstand extreme winter temperatures, and instead choosing to operate mostly isolated from other grids in the U.S., left the majority of the Texas power system unprepared for severe winter weather, and unable to deal effectively when Texas experienced severe weather. It is possible to properly winterize natural gas power plants, natural gas production, wind turbines and other energy infrastructure, but providers refused to spend the money to do so, and ERCOT did not require such. It is also possible to link the Texas power grid with others across the nation. Again, the providers objected to such, and ERCOT did not require it—despite the advice of experts. These decisions were failures of ERCOT and the providers to act reasonably and prudently. Such failures were completely unreasonable, negligent, and extremely dangerous, especially in light of the known risks. Such upgrades would have helped prevent major interruptions power outages, and injuries and deaths known to be associated with power outages.

Through the week of February 15, 2021, as anticipated and as known by ERCOT and all providers, Texas suffered an historic cold weather event. Millions of Texans were left without power as a deep freeze swept throughout the State of Texas. Such occurred as a direct result of the

decision of ERCOT and the providers, like Entergy, to fail to winterize its system and provide for sufficient energy generation. Worse, when faced with an energy shortage, rather than prioritize those areas where residents were most vulnerable, Defendant Entergy instead chose to turn off power to those who were most vulnerable to the cold, including turning off the power to the Plaintiffs' home. Power cuts during blackouts came at the circuit level, with many local providers choosing which circuits to shut down and when. Hence, there were images of empty downtown Houston office buildings with power, but the Pineda's mobile home park was left without power. Despite having knowledge of the dire weather forecast for at least a week in advance, and the knowledge that the system was not prepared for more than a decade, ERCOT and Entergy failed to take any preemptory action that could have averted the crisis and were wholly unprepared to deal with the crisis at hand. As local sources of energy went offline, demand for the energy that they produced went up as people across the state turned on heat-producing devices to stay warm. ERCOT responded by directing providers to cut power to millions of homes, and Entergy responded by cutting the power to the most vulnerable areas. If Defendants had acted reasonably, and been adequately prepared, the loss of life and associated injuries would not have occurred.

Importantly, ERCOT and Entergy informed their customers that any blackouts would be "rolling" or temporary. The blackouts instead lasted days. The failure to adequately inform Plaintiffs of the length of the black outs prevented them from properly preparing for the lack of power, or leaving the area. Accurate information might have saved C [REDACTED] P [REDACTED]'s young life. Indeed, just a day before the freeze began, instead of providing life saving information to families like the Pineda's, ERCOT provided "information" such as the following tweet:



Additionally, instead of informing at-risk customers that they might be without power for days, rather than hours, while temperatures dropped to as low as 10 degrees, ERCOT determined information such as what was in the following tweet was more important:



Defendants clearly had the ability to warn customers of the impending, historic winter storm – and the fact they would be without power for days – ERCOT and Entergy just chose not to.

VI.

After temperatures plummeted and snow blanketed large parts of the Texas on February 15, 2021, ERCOT warned increased demand might lead to short-term, rolling blackouts. On Tuesday, February 16, 2021, nearly 60% of Houston households were without power. Of the total installed capacity to the electric grid, about 40% went offline during the storm. This includes the power to the Pineda family’s mobile home. As the storm worsened on Tuesday, the temperatures

reached historic lows - as low as 10 degrees in the Pineda's area. To stay warm, the entire family of five huddled in a single room. C [REDACTED] P [REDACTED] shared a bed and tried to warm his younger brother, while his mother and stepfather comforted his baby brother nearby. C [REDACTED] was only 11. He suffered the frigid temperatures for the entire night, suffering until his family found him unresponsive the next day. The family immediately called 911. The family attempted CPR, but it was too late. C [REDACTED] died because grid wasn't a priority, and the energy provider made decisions based on profits

VII.

CAUSES OF ACTION – Both Defendants

Negligence/Gross Negligence

Plaintiffs incorporate the above paragraphs as if set forth in full below.

Defendants owed Plaintiffs the duty of ordinary care. On the occasion in question, Defendant, by and through its officers, employees, agents and representatives, committed acts of omission and commission, which breached that duty, and which collectively and severally, constituted negligence and gross negligence.

Defendants' imprudent acts and omissions included, but were not limited to:

- 1) Failing to warn of a known hazard;
- 2) Failing to provide adequate notice of a known hazard;
- 3) Failing to maintain procedures and policies to protect against a known hazard;
- 4) Failing to properly guard against winter storms;
- 5) Providing inaccurate and incomplete advice and information to customers;
- 6) Failing to recognize and remediate hazards;
- 7) Participating in and contributing to acts that caused the incident in question;

- 8) Failing to provide timely assistance, or to ensure other protections were in place;
- 9) Failing to read, understand, and follow published industry practices, policies and procedures;
- 10) Promulgating and following unsafe policies and procedures for winter storms;
- 11) Creating latent dangers, but failing to warn of same;
- 12) Failing to provide adequate equipment and competent personnel to operate that equipment; and,
- 13) Failing to ensure customers were informed that they would be without power and warmth for several days.

Defendants' actions constitute negligence.

Defendants committed acts that amount to gross negligence. Not winterizing the electrical grid, and then once aware that the grid was not adequate to survive a winter storm, failing to upgrade the system, involved an extreme degree of risk when considering the probability and magnitude of harm that might be caused to others. Additionally, once Defendants became aware that the system was at risk once the storm began, failing to warn users that there would be blackouts that were not rolling but permanent and would last several days involved an extreme degree of risk.

Said acts of negligence and gross negligence were the proximate cause of the injuries sustained by the Plaintiffs.

As a result of Defendants' negligent and grossly negligent conduct, C [REDACTED] P [REDACTED] died of hypothermia. Such would not have occurred had Defendants acted reasonably, or had Defendants not purposely misled Plaintiffs and the general public. Defendants' conduct was not only negligent, it was grossly negligent. As such, Defendants are not only liable for all damages

resulting from their conduct, but are also liable for punitive damages. Plaintiff seeks all damages allowed for a beneficiary in a wrongful death action and survival action. Further, Plaintiffs seek all damages allowed in a survivor or survival action by bringing this action pursuant to §§ 71.021 - 71.022 of the Texas Civil Practice and Remedies Code. Plaintiff seeks loss of consortium, loss of companionship and society, pain and suffering, medical expenses, and mental anguish in the past and future. Plaintiffs seek exemplary damages under the Survival Statute and as part of the wrongful death action. Plaintiffs seek funeral expenses under the Survival Statute and as part of the wrongful death action. Plaintiffs seeks any estate fees it is entitled to.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for judgment against Defendants in the amount of over one hundred million (\$100,000,000.00) DOLLARS, plus pre- and post-judgment interest at the legal rate, for all costs of court, and all such other and further relief, at law and in equity, to which he may be justly entitled.

PLAINTIFFS RESPECTFULLY REQUESTS A TRIAL BY JURY.

Respectfully submitted,

THE BUZBEE LAW FIRM

By: /s/ Anthony G. Buzbee

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