

2.2 Defendant, City of San Antonio, acting by and through the City Public Service Board d/b/a CPS Energy is a Texas citizen doing business in the State of Texas. Specifically CPS Energy is a municipally-owned electric and gas utility in San Antonio, Texas. This defendant may be served with process by serving Tina J. Flores, City Clerk, San Antonio City Hall, 14 W. Commerce, San Antonio, TX 78205 under the authority of the Texas Civil Practice & Remedies Code section 17.024(b). Plaintiff requests a citation. Plaintiff additionally asserts all rights and requests all relief under Texas Rule of Civil Procedure 28 and demands that this defendant answer in its true name, if it differs from that outlined above.

III. JURISDICTION & VENUE

3.1 This Court has jurisdiction of the subject matter of this action, and the amount in controversy is above its minimum jurisdictional limits.

3.2 This Court has personal jurisdiction over Defendant because this lawsuit arises out of a tort Defendant committed in the State of Texas. This Court otherwise has personal jurisdiction over Defendant because it is a citizen of Texas, conducts a substantial amount of business in the State of Texas, and has continuous, systematic contacts with the State of Texas.

3.3 All other jurisdictional prerequisites and conditions precedent to suit have been met or waived.

3.4 This case cannot be removed to federal court because no federal question exists. Plaintiff has not alleged any federal causes of action, and expressly and unequivocally disclaims and disavows any reliance on federal law. Plaintiff proceeds herein solely pursuant to the laws of the State of Texas and does not raise any federal question, substantial or otherwise. Removal would otherwise be improper because Defendant, the City of San Antonio, acting by and through the City Public Service Board d/b/a CPS Energy, is a citizen of Texas, and complete diversity does not

exist between the parties. *See* 28 U.S.C. § 1441. Removal would therefore have no basis in law or fact, and an improper removal would subject Defendant to an award of costs, expenses, and fees, including, but not limited to, attorney’s fees under 28 U.S.C. § 1447(c).

3.5 This court has subject matter jurisdiction over Plaintiff’s claims against City of San Antonio, acting by and through the City Public Service Board d/b/a CPS Energy (hereinafter “CPS Energy”) because this action arises out of CPS Energy’s performance of a proprietary function. Specifically, CPS Energy is a municipally-owned electric and gas utility owned by the City of San Antonio. A municipality’s operation of its own public utility is a proprietary function. *Wheelabrator Air Pollution Control, Inc. v. City of San Antonio*, 489 S.W.3d 448, 452 (Tex. 2016); *see also San Antonio Indep. Sch. Dist. v. City of San Antonio*, 550 S.W.2d 262, 264 (Tex. 1976) (“A city which owns and operates its own public utility does so in its proprietary capacity.”). When an action arises “out of a municipality’s performance of a proprietary function, then the case proceeds as if the claim were asserted against a private person.” *Wheelabrator*, 489 S.W.3d at 451. Moreover, the Texas Tort Claims act notes that a municipality does not enjoy immunity from suit for the performance of proprietary functions, which include “the operation and maintenance of a public utility.” TEX. CIV. PRAC. & REM. CODE § 101.0215(b)(1). Because Plaintiff’s claims arise of CPS Energy’s operation and maintenance of a public utility, CPS Energy is not shielded by sovereign immunity.

3.6 Venue is proper in Bexar County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) because it is the county in which all or a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred, and under TEX. CIV. PRAC. & REM. CODE § 15.002(a)(3) because it is the county of Defendant CPS Energy’s principal office in this state.

IV. FACTS

4.1 On or about February 14, 2021, the State of Texas experienced a cold weather event in which more than 4 million Texas households, including Decedent Ann Elizabeth Rodriguez's, lost power.

4.2 As a result of the impending cold weather event, Texas Governor Greg Abbot issued a disaster declaration on February 12, 2021, for all 254 counties in the State of Texas.

4.3 On the following day, February 13, 2021, Governor Abbott requested a federal emergency declaration, which was approved on February 14, 2021.

4.4 By February 15, 2021, the National Weather Service had issued a winter storm warning for the entire State of Texas.

4.5 The cold weather event increased energy demands across the state as Texans tried to keep their homes and businesses warm, with total state energy demand peaking around 69,000 megawatts.

4.6 A peak winter demand of 69,000 megawatts is by no means unusual. As recently as the 2018 winter season, the Texas energy grid experienced demand in excess of 65,000 megawatts.

4.7 The Texas energy grid regularly meets summer demands of 125,000 megawatts—almost twice the peak demand experienced in February 2021.

4.8 As energy demand rose in February 2021, the supply of energy fell as outdated power generators failed, depriving the Texas power grid of 45,000 megawatts of energy.

4.9 Defendant CPS Energy serves over 840,00 electricity customers, including Plaintiff and Decedent at the time of this incident.

4.10 Defendant CPS Energy and others could have increased electric production capacity in Texas in the days and weeks leading up to the February 2021 cold weather event, but consciously chose not to do so.

4.11 Similarly, CPS Energy and others could have weatherized and updated its generation, transmission, and distribution facilities in order to prevent cold-weather failures like those experienced in February 2021, but consciously chose not to do so.

4.12 In response to Defendant's failure to the failure of Defendant CPS Energy and others to weatherize and updated their generation, transmission, and distribution facilities, the transmission and distribution utilities—including Defendant CPS Energy—that make up the Texas energy grid were ordered to initiate rolling blackouts. These rolling blackouts left millions in the State of Texas without power for days.

4.13 The cold weather event and its effects on the Texas energy grid were neither unprecedented, nor expected, nor unforeseen.

4.14 In fact, similar cold weather events in 1989 and 2011 led exactly to the same type of rolling blackouts that affected Texas residents and business in February 2021.

4.15 Texas also experienced disruptive cold weather events in 1983, 2003, 2006, 2008, and 2010.

4.16 After investigating the Texas power grid in the wake of the cold weather event of 1980, the Public Utilities Commission of Texas made the following recommendations:

- “All utilities should ensure that they incorporate the lessons learned during December of 1989 into the design of new facilities in order to ensure their reliability in extreme weather conditions.
- All utilities should implement procedures requiring a timely annual (each Fall) review of unit equipment and procedures to ensure readiness for cold weather operations.

- All utilities should ensure that procedures are implemented to correct defective freeze protection equipment prior to the onset of cold weather.
- All utilities should maintain insulation integrity and heat tracing systems in proper working order. Generating unit control systems and equipment essential to cold weather operations should be included in a correctly managed preventative maintenance program.
- Additional training programs for plan personnel on the emergency cold weather procedures, including periodic drills, should be implemented by each responsible utility.”

PUCT 1989 Report at 7

4.17 The Federal Regulatory Commission and a nonprofit regulatory authority investigated the Texas power grid after rolling blackouts were again required during a cold weather event in 2011. The FERC report concluded:

Despite the recommendations issued by the PUCT in its report on the 1989 event, the majority of the problems generators experienced in 2011 resulted from failures of the very same type of equipment that failed in the earlier event. An in many cases, these failures were experienced by the same generators . . . In its 1989 report, the PUCT commented that “whether the corrective actions being implemented [by the generators in the wake of the event] are sufficient to prevent future freeze-off related power plant failures, only experience with another deep freeze will ascertain.” **Texas has now had that second event, and the answer is clearly that the corrective actions were not adequate, or were not maintained.** Generators were not required to institute cold weather preparedness, and efforts in that regard lapsed with the passage of time.

FERC 2011 Report at 178–79 (footnote omitted) (emphasis added)

4.18 The FERC report further noted:

the massive amount of generator failures that were experienced raises the question whether it would have been helpful to increase reserve levels going into the event. This action would have brought more units online earlier, might have prevented some of the freezing problems the generators experienced, and could have exposed operations problems in time to implement corrections before the units were needed to meet customer demand.

FERC 2011 Report at 8.

4.19 As the FERC report observed, “[m]any of the generators that experienced outages in 1989 failed again in 2011.” FERC Report at 8.

4.20 Now, many of these same power generators, transmitters, and distributors, including Defendant CPS Energy and others, have failed once again due to their refusal to implement the reasonable economical remedies recommended in 1989 and 2011.

4.21 The power in Decedent’s home went out on or about Tuesday morning, February 16, 2021. As a direct result, Decedent’s home had no heat. The temperature never rose above freezing in San Antonio on Tuesday, February 16, 2021, which caused the temperature to plummet inside the house.

4.22 On or about Wednesday, February 17, 2021 Jesus Rodriguez found his wife Ann Elizabeth Rodriguez had passed away in their bed.

4.23 On information and belief, Ann Elizabeth Rodriguez died as a result of the extreme cold inside her home, which was caused as a direct result of the power outage.

V.

COUNT 1: NEGLIGENT AND GROSS NEGLIGENCE – CPS ENERGY

5.1 Plaintiff incorporates all other paragraphs by reference here fully.

5.2 Defendant CPS Energy had a duty to Plaintiff and Decedent to exercise reasonable care in maintaining and updating its generation, transmission, and distribution facilities in order to prevent cold-weather failures like those experienced in February 2021

5.3 Defendant CPS Energy failed to take reasonable corrective actions to prevent cold-weather failures in its generation, transmission and distribution facilities.

5.4 In addition, Defendant CPS Energy had a duty to “make all reasonable efforts to prevent interruptions of service” as required by 16 Tex. Admin Code § 25.52.

5.5 Defendant CPS Energy failed “to make all reasonable efforts to prevent interruptions of service” as required by 16 Tex. Admin. Code § 25.52.

5.6 In addition, Defendant CPS Energy had a duty under 16 Tex. Admin Code § 25.52 to “make reasonable provisions to manage emergencies resulting from failure of service.”

5.7. Defendant CPS Energy failed to “make reasonable provisions to manage emergencies resulting from failure of service” as required by 16 Tex. Admin. Code § 25.52.

5.8. Defendant CPS Energy’s violations of 16 Tex. Admin. Code § 25.52 constituted negligence per se.

5.9 Defendant CPS Energy’s negligent acts and omissions, as described above, caused Decedent to lose power at her home and proximately caused Decedent and Plaintiff’s injuries and damages.

5.10 In addition, Defendant CPS Energy’s negligent acts and omissions described herein involved an extreme degree of risk of harm to others, including Decedent.

5.11 Despite knowledge of this extreme risk of harm, Defendant CPS Energy persisted in performing the acts and omission described herein with a conscious indifference and reckless disregard of the rights, safety, or welfare of others.

5.12 Defendant’s relevant conduct resulting in the death of Decedent reflected such an entire want of care as to establish that the acts and omission in question were the result of action conscious indifference to the rights, welfare, or safety of the persons affected by it, including without limitation Decedent. Defendant’s conduct constituted more than momentary thoughtlessness, inadvertence or error of judgment.

5.13 Such gross negligence was a proximate cause of Plaintiff’s and Decedent’s injuries and damages. Accordingly, Defendant CPS Energy was grossly negligent, and Plaintiff is entitled

to recover exemplary damages in an amount sufficient to punish Defendant CPS Energy and deter others from engaging in similar conduct.

VI. WRONGFUL DEATH

6.1 Plaintiff incorporates all other paragraphs by reference here fully.

6.2 Plaintiff, Jesus Rodriguez, is the surviving husband of the deceased, Ann Elizabeth Rodriguez, and is thus a statutory beneficiary under section 71.004 of the Texas Civil Practice and Remedies Code, the Wrongful Death Act.

6.3 The negligence and gross negligence of Defendant, outlined elsewhere herein more fully, caused the untimely death of Ann Elizabeth Rodriguez.

6.4 Plaintiff therefore brings this wrongful death action, individually and on behalf of all other statutory wrongful death beneficiaries and all other parties entitled to recover.

6.5 As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff has suffered severe injuries and damages. At the time of his death, Ann Elizabeth Rodriguez's family depended on her for love, companionship, and affection. Plaintiff accordingly prays for the following damages:

- a. Mental anguish in the past;
- b. Mental anguish which, in all reasonable probability, will be suffered in the future;
- c. Pecuniary losses, including, but not limited to, the loss of care, maintenance, support, services, advice, counsel that would have been received from the Decedent, had Decedent lived;
- d. Loss of companionship and society from the date of the incident to the time of trial, including, but not limited to, the loss of positive benefits flowing from the love, comfort, companionship and society that would have been received from the Deceased, had Decedent lived;
- e. Funeral expenses;

- h. Exemplary damages;
- i. Any and all other damages to which Plaintiff is justly entitled as shown through the course of this proceeding.

VII. SURVIVAL

7.1 Plaintiff incorporates all other paragraphs by reference here fully.

7.2 Plaintiff Jesus Rodriguez is the proposed representative of the Estate of Decedent Ann Elizabeth Rodriguez. Decedent had a legal cause of action for personal injuries to his health and person before he died. While alive, Ann Elizabeth Rodriguez was forced to endure physical pain, suffering and mental anguish described elsewhere herein that ultimately resulted in his tragic death. Ann Elizabeth Rodriguez would have been entitled to bring an action for these injuries if she had lived, including for negligence and gross negligence.

7.3 Defendant's wrongful, negligent and grossly negligent acts and omissions caused Decedent's injuries and death, as further outlined herein.

7.4 Accordingly, Jesus Rodriguez, as the proposed representative of the Estate of Ann Elizabeth Rodriguez, maintains this survival action against Defendant on behalf of the estate and all legal heirs. Plaintiff seeks recovery of the following damages, where were a direct and proximate result of the occurrence made the basis of this lawsuit:

- a. Reasonable medical care and expenses sustained by the deceased in the past;
- b. Physical pain and suffering sustained by the deceased in the past;
- c. Mental anguish sustained by the deceased in the past;
- d. Funeral expenses;
- e. Exemplary damages;
- f. Any and all other damages to which Plaintiff is justly entitled as shown through the course of this proceeding.

XIII.
RULE 47 STATEMENT OF MONETARY RELIEF SOUGHT

8.1 Plaintiff prefers that the jury determine the fair amount of compensation for Plaintiff and Decedent's damages. It is too early in this case to be assessing the full nature and scope of damages, and Plaintiff places the decision regarding the amount of compensation to be awarded in the jury's hands. Rule 47 of the Texas Rules of Civil Procedure, however, requires Plaintiff to provide a statement regarding the amount of monetary relief sought. Accordingly, Plaintiff states that monetary relief of over \$1,000,000, in an amount to be determined by the jury, is being sought.

IX.
RULE 193.7 NOTICE

9.1 Pursuant to Texas Rule of Civil Procedure 193.7, Plaintiff hereby gives notice that Plaintiff intends to use all discovery instruments produced in this case at trial. Such discovery documents include, but are not limited to, all documents Defendant has produced in response to Plaintiff's written discovery requests.

X.
DUTY TO DISCLOSE

10.1 Pursuant to Texas Rule of Civil Procedure 194.1, Defendant is required to provide the information or material described in Rule 194.2, 194.3 and 194.4 without awaiting a discovery request from Plaintiff.

XI.
DEMAND FOR JURY TRIAL

11.1 Plaintiff hereby demands a jury trial on this matter and tender the appropriate jury fee.

XII.

RESERVATION OF RIGHTS

12.1 The above allegations against Defendant is made acknowledging that investigation and discovery, although undertaken, are continuing in this matter. As further investigation and discovery are conducted, additional facts may be uncovered that necessitate further, additional, and/or different allegations, including the potential of adding additional parties to the case or dismissing parties from the case. The right to do so, under Texas law, is expressly reserved.

XIII. PRAYER

13.1 For these reasons, Plaintiff prays that Defendant be cited to appear and answer herein, and, upon a final hearing of the cause, judgment be entered for the Plaintiff and against Defendant for:

- a. Actual damages above the jurisdictional minimum of the Court, further outlined above;
- b. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
- c. All costs of court;
- d. Exemplary damages; *and*
- e. All other relief to which Plaintiff is justly entitled.

Respectfully submitted,

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