

## Werner Powers in Houston Chronicle: Can State's Grid Manager be Held Accountable for its Errors'

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September 13, 2019

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PRACTICES Litigation

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Haynes Boone Partner Werner Powers talked with the *Houston Chronicle* about a Texas Supreme Court case in which Panda Power alleges that Electric Reliability Council of Texas (ERCOT) manipulated power projections to encourage new power plant construction.

Here is an excerpt:

Panda Power built three power plants earlier in this decade, investing billions of dollars based on projections from the state's grid manager that Texas desperately needed more generation to meet growing electricity demand. But those projections turned out to be wildly wrong — Texas, in fact, had plenty of power — and Panda ended up losing billions of dollars and putting one of the plants into bankruptcy, unable to sell electricity at prices sufficient to cover debts.

The Dallas company is now in court, alleging that the Electric Reliability Council of Texas intentionally manipulated the projections to encourage new power plant construction and relieve the political pressure that was building on the grid manager to increase generation in the state... .

The Texas Supreme Court is considering whether ERCOT, a private, nonprofit corporation, is entitled to sovereign immunity, a well-established legal principle that protects governments and their agencies from lawsuits. The high court's decision, expected later this year, could determine whether electricity buyers and sellers can hold the grid manager responsible for pricing errors, mistake-ridden forecasts or life and death consequences of power outages.

Werner A. Powers, a Dallas lawyer representing Panda Power, said it's a dangerous precedent for the government to give sovereign immunity on the actions of a private organization whose board of directors is drawn primarily from profit-making businesses.

"Our case involves alleged fraud causing financial loss," he said, "but the next case might involve loss of life where ERCOT allegedly acted in a grossly negligent or irresponsible way by shedding power needed by a hospital or by a home for the elderly."

To read the full article, click [here](#). (Subscription required)