

2. The Energy Failure occurred at a time when Texans needed electrical power the most, resulting in sub-freezing temperatures within homes and other buildings, and corresponding damage throughout the State of Texas.

3. This Petition alleges that ERCOT and the other named Defendants were at fault for the Energy Failure which caused significant property damage to certain policy holders of the Plaintiffs in the State of Texas.

II. DISCOVERY CONTROL PLAN

4. Discovery in this lawsuit is intended to be conducted under Level 3 of Rule 190.4 of the Texas Rules of Civil Procedure.

III. THE PLAINTIFFS

5. At all relevant times, the Plaintiffs were entities authorized to conduct and transact business as insurance companies in Texas. Specifically,

- (1) All America Insurance Company is an insurance company incorporated in the State of Ohio.
- (2) Allied World Assurance Company (US) Inc. is an insurance company incorporated in the State of Delaware.
- (3) American Casualty Company of Reading Pennsylvania is an insurance company incorporated in the State of Pennsylvania.
- (4) American Economy Insurance Company is an insurance company incorporated in the State of Indiana.
- (5) American Fire & Casualty Company is an insurance company incorporated in the State of New Hampshire.
- (6) American Guarantee and Liability Insurance Company is an insurance company incorporated in the State of New York.
- (7) American Mercury Lloyds Insurance Company is an insurance company incorporated in the State of Texas.

- (8) American Property Insurance Company is an insurance company incorporated in the State of New Jersey.
- (9) American Zurich Insurance Company is an insurance company incorporated in the State of Illinois.
- (10) AmGUARD Insurance is an insurance company incorporated in the State of Pennsylvania.
- (11) AmTrust Financial Services, Inc. is an insurance company incorporated in the State of New York.
- (12) AmTrust Insurance Company is an insurance company incorporated in the State of Delaware.
- (13) Associated Industries Insurance Company, Inc. is an insurance company incorporated in the State of Florida.
- (14) Bristol West Insurance Company is an insurance company incorporated in the State of Ohio.
- (15) Central Mutual Insurance Company is an insurance company incorporated in the State of Ohio.
- (16) Coast National Insurance Company is an insurance company incorporated in the State of California.
- (17) Continental Casualty Company is an insurance company incorporated in the State of Illinois.
- (18) Discover Property and Casualty Insurance Company is an insurance company incorporated in the State of Connecticut.
- (19) EastGUARD Insurance is an insurance company incorporated in the State of Pennsylvania.
- (20) Economy Fire and Casualty Company is an insurance company incorporated in the State of Illinois.
- (21) Economy Premier Assurance Insurance Company is an insurance company incorporated in the State of Illinois.
- (22) Empire Fire and Marine Insurance Company is an insurance company incorporated in the State of Illinois.

- (23) Empire Indemnity Insurance Company is an insurance company incorporated in the State of Oklahoma.
- (24) Employers Ins. Co. of Wausau is an insurance company incorporated in the State of Wisconsin.
- (25) Everest Indemnity Insurance Company is an insurance company incorporated in the State of Delaware.
- (26) Everest National Insurance Company is an insurance company incorporated in the State of Delaware.
- (27) Farmers Casualty Insurance Company is an insurance company incorporated in the State of Rhode Island.
- (28) Farmers Direct Property and Casualty Insurance Company is an insurance company incorporated in the State of Rhode Island.
- (29) Farmers Group Property and Casualty Insurance Company is an insurance company incorporated in the State of Rhode Island.
- (30) Farmers Insurance Company, Inc. is an insurance company incorporated in the State of Kansas.
- (31) Farmers Insurance Company of Arizona is an insurance company incorporated in the State of Arizona.
- (32) Farmers Insurance Company of Idaho is an insurance company incorporated in the State of Idaho.
- (33) Farmers Insurance Company of Oregon is an insurance company incorporated in the State of Oregon.
- (34) Farmers Insurance Company of Washington is an insurance company incorporated in the State of Washington.
- (35) Farmers Insurance Exchange is an insurance company incorporated in the State of California.
- (36) Farmers Lloyds Insurance Company of Texas is an insurance company incorporated in the State of Texas.

- (37) Farmers Property and Casualty Insurance Company is an insurance company incorporated in the State of Rhode Island.
- (38) Farmers Specialty Insurance Company is an insurance company incorporated in the State of Michigan.
- (39) Farmers Texas County Mutual Insurance Company is an insurance company incorporated in the State of Texas.
- (40) Fidelity and Deposit Company of Maryland is an insurance company incorporated in the State of Illinois.
- (41) Fidelity and Guaranty Insurance Company is an insurance company incorporated in the State of Iowa.
- (42) Fire Insurance Exchange is an insurance company incorporated in the State of California.
- (43) Foremost County Mutual Insurance Company is an insurance company incorporated in the State of Texas.
- (44) Foremost Insurance Company Grand Rapids, Michigan is an insurance company incorporated in the State of Michigan.
- (45) Foremost Lloyds of Texas is an insurance company incorporated in the State of Texas.
- (46) Foremost Property and Casualty Insurance Company is an insurance company incorporated in the State of Michigan.
- (47) Garrison Property and Casualty Insurance Company is an insurance company incorporated in the State of Texas.
- (48) General Casualty Company of Wisconsin is an insurance company incorporated in the State of Wisconsin.
- (49) Germania Farm Mutual Insurance Association is an insurance company incorporated in the State of Texas.
- (50) Germania Insurance Company is an insurance company incorporated in the State of Texas.
- (51) Hochheim Prairie Casualty Insurance Company is an insurance company incorporated in the State of Texas.

- (52) Hochheim Prairie Farm Mutual Insurance Association is an insurance company incorporated in the State of Texas.
- (53) Home State County Mutual Insurance Company is an insurance company incorporated in the State of Texas.
- (54) Illinois Farmers Insurance Company is an insurance company incorporated in the State of Illinois.
- (55) Ironshore Specialty Insurance Company is an insurance company incorporated in the State of Arizona.
- (56) Liberty Insurance Corporation is an insurance company incorporated in the State of Illinois.
- (57) Liberty Lloyds of Texas Insurance Company is an insurance company incorporated in the State of Texas.
- (58) Liberty Mutual Fire Insurance Company is an insurance company incorporated in the State of Wisconsin.
- (59) Liberty Mutual Insurance Company is an insurance company incorporated in the State of Massachusetts.
- (60) Liberty Mutual Personal Insurance Company is an insurance company incorporated in the State of New Hampshire.
- (61) Meridian Security Insurance Company is an insurance company incorporated in the State of Indiana.
- (62) Mid-Century Insurance Company is an insurance company incorporated in the State of California.
- (63) Milford Casualty Insurance Company is an insurance company incorporated in the State of Delaware.
- (64) Mt. Hawley Insurance Company is an insurance company incorporated in the State of Illinois.
- (65) National Fire Insurance Company of Hartford is an insurance company incorporated in the State of Illinois.
- (66) National Specialty Insurance Company is an insurance company incorporated in the State of Texas.

- (67) Neighborhood Spirit Property and Casualty Company is an insurance company incorporated in the State of California.
- (68) NorGUARD Insurance is an insurance company incorporated in the State of Pennsylvania.
- (69) Northfield Insurance Company is an insurance company incorporated in the State of Iowa.
- (70) Ohio Security Insurance Company is an insurance company incorporated in the State of New Hampshire.
- (71) Peerless Insurance Company is an insurance company incorporated in the State of Illinois.
- (72) Pharmacists Mutual Insurance Company is an insurance company incorporated in the State of Iowa.
- (73) Praetorian Insurance Company is an insurance company incorporated in the State of Pennsylvania.
- (74) QBE Insurance Corporation is an insurance company incorporated in the State of Pennsylvania.
- (75) QBE Specialty Insurance Company is an insurance company incorporated in the State of North Dakota.
- (76) Regent Insurance Company is an insurance company incorporated in the State of Wisconsin.
- (77) Republic Lloyds is an insurance company incorporated in the State of Texas.
- (78) Republic Underwriters Insurance Company is an insurance company incorporated in the State of Texas.
- (79) RLI Insurance Company is an insurance company incorporated in the State of Illinois.
- (80) Rochdale Insurance Company is an insurance company incorporated in the State of New York.
- (81) SAFECO Insurance Company of Indiana is an insurance company incorporated in the State of Indiana.

- (82) SAFECO Lloyds Insurance Company is an insurance company incorporated in the State of Texas.
- (83) Security National Insurance Company is an insurance company incorporated in the State of Delaware.
- (84) Security National Insurance Company d/b/a Bristol West Specialty Insurance is an insurance company incorporated in the State of Florida.
- (85) Southern Insurance Company is an insurance company incorporated in the State of Texas.
- (86) St Paul Fire and Marine Insurance Co. is an insurance company incorporated in the State of Minnesota.
- (87) St Paul Guardian Insurance Company is an insurance company incorporated in the State of Connecticut.
- (88) State Auto Property & Casualty Company is an insurance company incorporated in the State of Iowa.
- (89) State Automobile Mutual Insurance Company is an insurance company incorporated in the State of Ohio.
- (90) State Farm County Mutual Insurance Company of Texas is an insurance company incorporated in the State of Texas.
- (91) State Farm Fire and Casualty Company is an insurance company incorporated in the State of Illinois.
- (92) State Farm Lloyds is an association of underwriters operating under the Lloyds Plan as provided in Texas law.
- (93) State Farm Mutual Automobile Insurance Company is an insurance company incorporated in the State of Illinois.
- (94) Steadfast Insurance Company is an insurance company incorporated in the State of Illinois.
- (95) Surety Bonding Company of America is an insurance company incorporated in the State of South Dakota.
- (96) Technology Insurance Company is an insurance company incorporated in the State of Delaware.

- (97) Texas Farmers Insurance Company is an insurance company incorporated in the State of Texas.
- (98) Texas Pioneer Farm Mutual Insurance Association, Inc. is an insurance company incorporated in the State of Texas.
- (99) The Charter Oak Fire Insurance Company is an insurance company incorporated in the State of Connecticut.
- (100) The Continental Insurance Company is an insurance company incorporated in the State of Illinois.
- (101) The Ohio Casualty Insurance Company is an insurance company incorporated in the State of New Hampshire.
- (102) The Phoenix Insurance Company is an insurance company incorporated in the State of Connecticut.
- (103) The Standard Fire Insurance Company is an insurance company incorporated in the State of Connecticut.
- (104) The Travelers Home and Marine Insurance Company is an insurance company incorporated in the State of Connecticut.
- (105) The Travelers Indemnity Company is an insurance company incorporated in the State of Connecticut.
- (106) The Travelers Indemnity Company of America is an insurance company incorporated in the State of Connecticut.
- (107) The Travelers Lloyds Insurance Company is an insurance company incorporated in the State of Texas.
- (108) Toggle Insurance Company is an insurance company incorporated in the State of Delaware.
- (109) Transportation Insurance Company is an insurance company incorporated in the State of Illinois.
- (110) Travelers Casualty Insurance Company of America is an insurance company incorporated in the State of Connecticut.
- (111) Travelers Commercial Insurance Company is an insurance company incorporated in the State of Connecticut.

- (112) Travelers Excess and Surplus Lines Company is an insurance company incorporated in the State of Connecticut.
- (113) Travelers Indemnity Company of Connecticut is an insurance company incorporated in the State of Connecticut.
- (114) Travelers Lloyds of Texas Insurance Company is an insurance company incorporated in the State of Texas.
- (115) Travelers Personal Insurance Company is an insurance company incorporated in the State of Connecticut.
- (116) Travelers Personal Security Insurance Company is an insurance company incorporated in the State of Connecticut.
- (117) Travelers Property Casualty Company of America is an insurance company incorporated in the State of Connecticut.
- (118) Truck Insurance Exchange is an insurance company incorporated in the State of California.
- (119) United Services Automobile Association ("USAA") is a reciprocal interinsurance exchange organized under Texas law that is an unincorporated association.
- (120) Universal Surety of America is an insurance company incorporated in the State of South Dakota.
- (121) USAA Casualty Insurance Company is an insurance company incorporated in the State of Texas.
- (122) USAA General Indemnity Company is an insurance company incorporated in the State of Texas.
- (123) Valley Forge Insurance Company is an insurance company incorporated in the State of Pennsylvania.
- (124) Wesco Insurance Company is an insurance company incorporated in the State of Delaware.
- (125) West American Insurance Company is an insurance company incorporated in the State of Indiana.
- (126) Western Surety Company is an insurance company incorporated in the State of South Dakota.

- (127) Zurich American Insurance Company is an insurance company incorporated in the State of New York.
- (128) Zurich American Insurance Company of Illinois is an insurance company incorporated in the State of Illinois.
- (129) 21st Century Assurance Company is an insurance company incorporated in the State of California.
- (130) 21st Century Centennial Insurance Company is an insurance company incorporated in the State of Pennsylvania.
- (131) 21st Century Insurance Company is an insurance company incorporated in the State of California.

At all relevant times, the Plaintiffs insured the property of homeowners and/or businesses within the State of Texas.

6. The Energy Failure damaged property insured by Plaintiffs for certain policy holders.

7. Certain policyholders of Plaintiffs presented claims to the Plaintiffs for damage, injury and loss to their real property, personal property, commercial property, and business arising from the Energy Failure (“Plaintiffs’ Insureds”).

8. Consistent with the Plaintiffs’ policies of insurance, and the Plaintiffs’ obligations under the law, the Plaintiffs investigated, adjusted, and paid, or will pay certain policyholders for covered claims arising from the Energy Failure.

9. Plaintiffs have since paid to or on behalf of their Insureds a sum in excess of the jurisdictional minimum of this Court.

10. In consideration of these payments by Plaintiffs to their Insureds, the terms of their policies of insurance, equity, and by operation of law, Plaintiffs became actual, bona fide subrogees of Plaintiffs’ Insureds, and became subrogated to the rights and claims against any person or entity that may be liable for causing damage to Plaintiffs’ Insureds.

IV. THE DEFENDANTS

11. At all relevant times, Defendant ERCOT was and is a domestic nonprofit corporation formed and existing under the laws of the State of Texas, with its principal place of business located at 7620 Metro Center Drive, Austin, TX 78744. ERCOT may be served with process through its registered agent: CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201, or wherever found.

12. Defendant LUMINANT GENERATION COMPANY LLC (“Luminant”) is a Delaware limited liability company with its principal place of business at 6555 Sierra Drive, Irving, Texas. Luminant operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Luminant may be served with process by serving its registered agent, Capitol Corporate Services, Inc., at 206 East 9th Street, Suite 1300, Austin, TX 78701, or wherever found.

13. Defendant HAYS ENERGY, LLC (“Hays”) is a Delaware limited liability company with its principal place of business at 6555 Sierra Drive, Irving, Texas. Hays operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Hays may be served with process by serving its registered agent, Capitol Corporate Services, Inc., at 206 East 9th Street, Suite 1300, Austin, TX 78701, or wherever found.

14. Defendant MIDLOTHIAN ENERGY, LLC (“Midlothian”) is a Delaware limited liability company with its principal place of business at 6555 Sierra Drive, Irving, Texas. Midlothian operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas.

Midlothian may be served with process by serving its registered agent, Capitol Corporate Services, Inc., at 206 East 9th Street, Suite 1300, Austin, TX 78701, or wherever found.

15. Defendant OAK GROVE MANAGEMENT COMPANY LLC (“Oak Grove”) is a Delaware limited liability company with its principal place of business at 6555 Sierra Drive, Irving, Texas. Oak Grove operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Oak Grove may be served with process by serving its registered agent, Capitol Corporate Services, Inc., at 206 East 9th Street, Suite 1300, Austin, TX 78701, or wherever found.

16. Defendant NRG TEXAS POWER LLC (“NRG Texas”) is a Delaware limited liability company with its principal place of business at 1005 Congress Ave Suite 950, Austin, TX 78701. NRG Texas operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. NRG Texas may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, TX 75201, or wherever found.

17. Defendant NRG SOUTH TEXAS LP (“NRG South”) is a domestic limited partnership formed and existing under the laws of the State of Texas. NRG South operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. NRG South may be served through its registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever found.

18. Defendant NRG CEDAR BAYOU DEVELOPMENT COMPANY, LLC (“NRG Cedar”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. NRG Cedar operates as a Power Generation Company in the State of Texas, supplying

electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. NRG Cedar may be served through its registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever found.

19. Defendant CALPINE CORPORATION (“Calpine”) is a foreign for-profit corporation formed and existing under the laws of the State of Delaware. Calpine operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Calpine may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever found.

20. Defendant WOLF HOLLOW II POWER, LLC (“Wolf Hollow II”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. Wolf Hollow II operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Wolf Hollow II may be served through its registered agent, Corporate Creations Network Inc., 5444 Westheimer # 1000 Houston, TX, 77056, or wherever found.

21. Defendant COLORADO BEND II POWER, LLC (“Colorado Bend II”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. Colorado Bend II operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Colorado Bend II may be served through its registered agent, Corporate Creations Network Inc., 5444 Westheimer #1000, Houston, Texas 77056, or wherever found.

22. Defendant TENASKA FRONTIER PARTNERS, LTD. (“Tenaska Frontier”) is a domestic limited partnership formed and existing under the laws of the State of Texas. Tenaska

Frontier operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Tenaska Frontier may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever found.

23. Defendant SANDY CREEK ENERGY ASSOCIATES, L.P. (“Sandy Creek”) is a foreign limited partnership formed and existing under the laws of the State of Delaware. Sandy Creek operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Sandy Creek may be served through its registered agent, Corporation Service Company dba CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever found.

24. Defendant FORMOSA UTILITY VENTURE, LTD. (“Formosa”) is a domestic limited partnership formed and existing under the laws of the State of Texas, with its principal office in Texas located at 201 Formosa Drive, Point Comfort, Texas 77978. Formosa operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Formosa may be served through its registered agent, Jay Su, 201 Formosa Drive, Point Comfort, Texas 77978, or wherever found.

25. Defendant TEMPLE GENERATION I, LLC (“Temple Generation”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. Temple Generation operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas.

Temple Generation may be served through its registered agent, C T Corporation System, 1999 Bryan St., STE. 900 Dallas, TX 75201, or wherever found.

26. Defendant PANDA TEMPLE POWER II, LLC (“Panda Temple”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. Panda Temple operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Panda Temple may be served through its registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever found.

27. Defendant MOUNTAIN CREEK POWER, LLC (“Mountain Creek”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. Mountain Creek operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Mountain Creek may be served through its registered agent, Capitol Corporate Services, Inc., 206 E. 9th Street, Suite 1300, Austin, Texas 78701, or wherever found.

28. Defendant SOUTH HOUSTON GREEN POWER, LLC (“South Houston”) is a foreign corporation formed and existing under the laws of the State of Delaware, with its principal office in Texas located at 2401 Fifth Avenue South, Texas City, Texas 77590. South Houston operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. South Houston may be served through its registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever found.

29. Defendant BARNEY DAVIS, LLC (“Barney Davis”) also d/b/a BARNEY M DAVIS LP, is a foreign limited liability company formed and existing under the laws of the State

of Delaware. Barney Davis operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Barney Davis may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever found.

30. Defendant NUECES BAY, LLC (“Nueces Bay”), is a foreign limited liability company formed and existing under the laws of the State of Delaware. Nueces Bay operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Nueces Bay may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever found.

31. Defendant LAREDO, LLC (“Laredo”), is a foreign limited liability company formed and existing under the laws of the State of Delaware. Laredo operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Laredo may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever found.

32. Defendant BASTROP ENERGY PARTNERS, L.P. (“Bastrop Energy”) is a foreign limited partnership formed and existing under the laws of the State of Delaware. Bastrop Energy operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Bastrop Energy may be served through its registered agent, Attorney Service Associates, Inc., 3610-2 North Josey Lane, Carrollton, Texas 75007, or wherever found.

33. Defendant EIF CHANNELVIEW COGENERATION, LLC (“EIF Channelview”) is a foreign limited liability company formed and existing under the laws of the State of Delaware, with a principal place of business located at 8580 Sheldon Rd, Houston, TX 77049. EIF Channelview operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. EIF Channelview may be served through its registered agent, United Agent Group Inc., 5444 Westheimer #1000, Houston, Texas 77056, or wherever found.

34. Defendant INGLESIDE COGENERATION LIMITED PARTNERSHIP (“Ingleside”) is a foreign limited liability partnership formed and existing under the laws of the State of Delaware. Ingleside operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Ingleside may be served through its registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever found.

35. Defendant EXGEN HANDLEY POWER, LLC (“ExGen Handley”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. ExGen Handley operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. ExGen Handley may be served through its registered agent, Corporate Creations Network Inc., 5444 Westheimer #1000, Houston, Texas 77056, or wherever found.

36. Defendant AIR LIQUIDE LARGE INDUSTRIES U.S. LP (“Air Liquide”) is a foreign limited partnership formed and existing under the laws of the State of Delaware, with its principal place of business located at 2700 Post Oak Blvd., Ste 325, Houston, TX, 77056. Air Liquide operates as a Power Generation Company in the State of Texas, supplying electrical

energy into the ERCOT system for transmission and distribution throughout the State of Texas. Air Liquide may be served through its registered agent, Capitol Corporate Services, Inc., 206 E. 9th Street, Suite 1300, Austin, Texas 78701, or wherever found.

37. Defendant HORSE HOLLOW WIND I, LLC (“Horse Hollow I”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. Horse Hollow I operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Horse Hollow I may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever found.

38. Defendant HORSE HOLLOW WIND II, LLC (“Horse Hollow II”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. Horse Hollow II operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Horse Hollow II may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever found.

39. Defendant HORSE HOLLOW WIND III, LLC (“Horse Hollow III”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. Horse Hollow III operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Horse Hollow III may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers

Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever found.

40. Defendant HORSE HOLLOW WIND IV, LLC (“Horse Hollow IV”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. Horse Hollow IV operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Horse Hollow IV may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever found.

41. Defendant CAP RIDGE WIND I, LLC (“Cap Ridge I”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. Cap Ridge I operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Cap Ridge I may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever found.

42. Defendant CAP RIDGE WIND II, LLC (“Cap Ridge II”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. Cap Ridge II operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Cap Ridge II may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever found.

43. Defendant CAP RIDGE WIND III, LLC (“Cap Ridge III”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. Cap Ridge III operates

as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Cap Ridge III may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever found.

44. Defendant AVANGRID TEXAS RENEWABLES, LLC (“Avangrid”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. Avangrid operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Avangrid may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever found.

45. Defendant SAGE DRAW WIND, LLC (“Sage Draw”) is a foreign limited liability company formed and existing under the laws of the State of Delaware. Sage Draw operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Sage Draw may be served through its registered agent, National Registered Agents, Inc., 1999 Bryan St., Ste. 900, Dallas TX, 75201, or wherever found.

46. Defendant OXY VINYLS, LP (“Oxy Vinyls”) is a foreign limited partnership formed and existing under the laws of the State of Delaware. Oxy Vinyls operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Oxy Vinyls may be served through

its registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever found.

47. Defendant PARIS GENERATION LP (“Paris Generation”) is a domestic limited partnership formed and existing under the laws of the State of Texas. Paris Generation operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Paris Generation may be served through its registered agent, Attorney Service Associates, Inc., 3610-2 North Josey Lane, Carrollton, Texas 75007, or wherever found.

48. Defendant BLUE CUBE OPERATIONS LLC (“Blue Cube”) is a foreign limited liability corporation formed and existing under the laws of the State of Delaware. Blue Cube operates as a Power Generation Company in the State of Texas, supplying electrical energy into the ERCOT system for transmission and distribution throughout the State of Texas. Blue Cube may be served through its registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever found.

49. Wherever it is alleged that a Defendant did or failed to do a particular act and/or omission, it is meant that Defendant, acting individually, or by and through agents, officers, directors, servants, and employees, either did or failed to do that particular act and/or omission, in the course and scope of his employment, agency contract with the Defendant, and in furtherance of the Defendant’s business. Therefore, under the doctrine of respondeat superior, each Defendant is vicariously liable for the acts and/or omissions of its agents, officers, directors, subsidiaries, servants, and employees in the course and scope of their employment, further outlined elsewhere in this Petition and incorporated by reference here fully. Pursuant to Texas Rule of Civil Procedure 28, any entity doing business under an assumed name may be sued in its assumed name for the

purpose of enforcing against it a substantive right, and Plaintiffs demand that the Defendants answer in their correct name, if different than that outlined above.

V. JURISDICTION AND VENUE

50. At all times relevant, the Defendants were residents and citizens of the State of Texas and/or are subject to general jurisdiction in the State of Texas by doing continuing and systematic business in the State of Texas pursuant to TEX. CIV. PRAC. & REM. CODE §17.042. There are sufficient minimum contacts between each Defendant and the State of Texas. Each Defendant has purposefully availed itself of the privileges and benefits of conducting business in the State of Texas, and each Defendant is a registered Power Generating Company in Texas for the purpose of generating, supplying, and selling electricity to the ERCOT system for transmission and distribution throughout the State of Texas. Further, Plaintiffs' claims against the Defendants arise out of and relate to their conduct within the State of Texas, and all of the incidents complained of herein occurred within the State of Texas.

51. Venue is proper in Travis County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE §§ 15.002, 15.004, 15.005, and 15.011. Venue is proper in Travis County pursuant to §15.005, because one or more Defendants have their principal office within Travis County, including ERCOT and NRG Texas. Where the plaintiffs have established proper venue against a defendant, venue is also proper as to all other defendants in all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences. TEX. CIV. PRAC. & REM. CODE § 15.005. Venue is proper under § 15.002(a)(1) because a substantial part of the events or omissions giving rise to the claim occurred in Travis County, including: (1) the actions and omissions of ERCOT described herein substantially occurred within Travis County, (2) the planning, coordination, and other joint actions undertaken between the power generating

Defendants and ERCOT substantially occurred in Travis County, (3) all power generating Defendants were in the business of supplying electricity for sale through the ERCOT marketplace and into the ERCOT system, an interconnected electrical system headquartered in Travis County and which extends throughout Travis County, and (4) the acts or omissions committed by the Defendants caused blackouts and damages to occur within Travis County. TEX. CIV. PRAC. & REM. CODE § 15.002. In the alternative, venue is also proper in Travis County under § 15.011 because the conduct of the Defendants described herein caused one or more of the insureds to suffer damage to real property in Travis County, Texas. TEX. CIV. PRAC. & REM. CODE §§ 15.004, 15.011.

VI. GENERAL ALLEGATIONS

52. ERCOT is the independent system operator for all generation and transmission facilities within the boundaries of ERCOT's system, covering approximately two-hundred thousand (200,000) square miles within the State of Texas. While parts of Texas—including portions of East Texas, the Panhandle, and the Trans-Pecos—are outside of ERCOT's system,¹ approximately 90% of the state's electric load is within the ERCOT system, which serves approximately twenty-six (26) million customers.²

53. Plaintiffs' Insureds are all located within the boundaries of the ERCOT system.

54. As the independent system operator and reliability coordinator, ERCOT, *inter alia*, manages, inspects, forecasts, schedules and oversees the generation of power by power generating companies ("PGCs") who supply electrical energy to the ERCOT system.

¹ ERCOT, Area Map by County, as of June 2021, available at: <https://www.ercot.com/news/mediakit/maps>.

² ERCOT, Fact Sheet, November 2021, available at: <https://www.ercot.com/files/docs/2021/11/23/ERCOT%20Fact%20Sheet.pdf>.

55. Although ERCOT was originally conceived as an “independent” system operator, the governance of ERCOT is not independent of the PGCs, and in fact, many of the largest PGCs have representatives on every major governing committee within ERCOT.³

56. In addition to managing power generation, ERCOT also manages the flow of electric power through transmission and distribution facilities, owned and operated by Transmission and Distribution Utilities (“TDUs”), which transmit the electricity generated by PGCs throughout the ERCOT system.

57. In total, ERCOT oversees power generation on an electric grid that connects more than 46,500 miles of transmission lines and 710+ generation units, including generators fueled by gas, coal, nuclear, wind, and solar power.⁴ The following diagram provides a graphic description of the power system overseen by ERCOT:

³ See ERCOT Committee Rosters available at: <http://www.ercot.com/committees>.

⁴ *Id.*

Electricity generation, transmission, and distribution



5

58. According to its February 25, 2021 report to the Texas legislature, ERCOT “must, at all times (24/7/365), balance all consumer demand in the ERCOT region (load) and the power supplied by companies who generate electricity (generation) while maintaining system frequency of 60 Hz.”⁶

59. In 2013, ERCOT also began conducting site visits to certain PGC facilities to review compliance with weatherization plans. These spot checks included reviewing the PGCs weatherization plan, verifying that plant personnel are following their weatherization plan and

⁵ Source: <https://www.eia.gov/energyexplained/electricity/delivery-to-consumers.php>

⁶ ERCOT (2021) Review of February 2021 Extreme Cold Weather Event – ERCOT Presentation by Bill Magness, President & Chief Executive Officer ERCOT, Texas Legislative Hearings: Senate Business and Commerce Committee, House Joint Committee on State Affairs and Energy Resources, February 25, 2021, p. 4.

https://www.ercot.com/files/docs/2021/03/03/Texas_Legislature_Hearings_2-25-2021.pdf. (“ERCOT’s February 25, 2021 Presentation to the Texas Legislature”).

related Public Utility Commission of Texas (“PUC”) requirements,⁷ and providing recommendations to the PGCs based on lessons learned or best practices.⁸

60. Each year, ERCOT reported to the PGCs the results of the prior year’s weatherization spot checks at PGC facilities. In these reports, ERCOT would inform the PGCs that 25% to 35% of the PGCs which ERCOT inspected were deficient and/or not complying with the PGCs own weatherization plan.⁹

61. ERCOT has represented to the Texas legislature that, although it had been regularly monitoring PGC weatherization plans and performing these inspections of PGC weatherization efforts since 2013, this was a voluntary duty assumed by ERCOT, explaining:

“Generation owners and operators are not required to implement any minimum weatherization standard or perform an exhaustive review of cold weather vulnerability. No entity, including the PUC or ERCOT, has rules to enforce compliance with weatherization plans or enforce minimum weatherization standards.”¹⁰

⁷ 16 Tex. Admin. Code § 25.53, § 25.362; Order Adopting Amendments to § 25.53 and § 25.362 as Approved at the May 30, 2014 Open Meeting, PUC Project 39160 (June 6, 2014), available at https://interchange.puc.texas.gov/Documents/39160_38_794242.PDF.

⁸ ERCOT’s February 25, 2021 Presentation to the Texas Legislature, p. 17; *see* ERCOT, “Checklist for 2020-2021 Plant Winter Weatherization Spot Checks,” attached as Exhibit “A” to ERCOT’s March 11, 2021 correspondence to Representative Eddie Lucio III, https://www.ercot.com/files/docs/2021/03/11/ERCOT_Letter_to_Representative_Lucio_3.11.21_PUBLIC.pdf

⁹ *See* ERCOT, Generator Winter Weatherization Workshop, September 3, 2020, p. 3, https://www.ercot.com/files/docs/2020/09/03/7._ERCOT_Weatherization_Workshop_2020_2021_Final.pdf;

ERCOT, Generator Winter Weatherization Workshop, September 5, 2019, p. 5, https://www.ercot.com/files/docs/2019/09/09/ERCOT_Weatherization_Workshop_2019_2020_Final.pdf;

ERCOT, Generator Winter Weatherization Workshop, September 6, 2018, p. 6, https://www.ercot.com/files/docs/2018/09/06/06.ERCOT_Weatherization_Workshop_2018_2019_FINAL.pptx;

¹⁰ *Id.*

62. Although ERCOT has ostensibly refused to require PGCs to adhere to any minimum weatherization standards, since 2011, both ERCOT and the PGCs have been involved in developing and distributing both national and state-wide industry guidelines related to winterization of PGC equipment and operations.¹¹ In 2012, the PUCT also commissioned a public report by a consultant, Quanta Technology, LLC, to establish cold-weather preparedness standards and best practices for PGCs to follow.¹²

63. ERCOT and the PGCs unwillingness to accept or adopt any minimum weatherization standards runs contrary to the common law of Texas. The Supreme Court of Texas has long held that, separate from any contractual obligations, a common law remedy exists for the tortious failure of an electric company to supply electricity. Sw. Gas & Elec. Co. v. Stanley, 123 Tex. 157, 162, 70 S.W.2d 413, 415 (1934); Bearden v. Lyntegar Elec. Co-op., Inc., 454 S.W.2d 885, 887 (Tex. Civ. App.—Amarillo 1970, no writ). Similarly, the Texas legislature has also affirmed the public policy that the business of generating electricity for the public includes a primary duty to the public to maintain continuous and adequate service, declaring that:

Sec. 186.002. POLICY

¹¹ Christine Hasha of ERCOT is an Executive Committee Member of the Reliability and Security Technical Committee of the North American Reliability Corporation, which has approved national winterization reliability guidelines for power generating companies. See North American Reliability Corporation, RELIABILITY GUIDELINE GENERATING UNIT WINTER WEATHER READINESS – CURRENT INDUSTRY PRACTICES – VERSION 3, December 15, 2020, https://www.nerc.com/comm/OC_Reliability_Guidelines_DL/Reliability_Guideline_Generating_Unit_Winter_Weather_Readiness_v3_Final.pdf. Following the winter of 2011 grid failure, numerous PGCs have developed and disseminated reliability guidelines for winterization of Texas PGCs. See Calpine, CPS Energy, LCRA, Luminant, and NRG Energy, “WINTER WEATHER READINESS FOR TEXAS GENERATORS,” dated April 13, 2011, https://www.ercot.com/files/docs/2011/06/06/winter_weather_readiness_for_texas_generators1.doc.

¹² Quanta Technology, LLC, “Report on Extreme Weather Preparedness Best Practices,” September 27, 2012, https://lrl.texas.gov/scanned/SIRSI/PUC_report_39646.pdf.

- (a) Continuous service by a public utility is essential to the life, health and safety of the public. A person's willful interruption of that service is a public calamity that cannot be endured.
- (b) A public utility is dedicated to public service. The primary duty of a public utility, including its management and employees, is to maintain continuous and adequate service at all times to protect the safety and health of the public against the danger inherent in the interruption of service.
- (c) Each court and administrative agency of this state shall:
 - (1) recognize the policy stated in the section; and
 - (2) interpret and apply this Chapter in accordance with that policy.

Tex. Util. Code Ann. § 186.002.

64. In Texas, generally, “an electric company is liable for injuries caused by defects in its plant or system.” Tex. Utilities Co. v. Dear, 64 S.W.2d 807, 811 (Tex. Civ. App.—Amarillo 1933, writ dismissed). Given the complex nature of the electricity business, Texas Courts apply the doctrine of *res ipsa loquitur* to electric companies, holding that “It is within the power of these companies at all times to show whether they have exercised due care in the erection, and subsequent supervision and maintenance of their wires and appliances....” Id. This burden has been extended to allegations involving the failure of an electric company to supply electricity, on the basis that “[t]he interruption of electrical service is not such an event that occurs without a cause. When a power failure occurs, there is a defect somewhere. Where and what it is is known only to the experts in the use and management of electricity.” Bearden v. Lyntegar Elec. Co-op., Inc., 454 S.W.2d 885, 887 (Tex. Civ. App.—Amarillo 1970, no writ).

65. In 1999, when the Public Utilities Regulatory Act¹³ (“PURA”) was amended by Senate Bill 7,¹⁴ electric utilities operating within the State of Texas were required to “unbundle”

¹³ Tex. Util. Code Ann. § 11.001, et. seq.

¹⁴ Tex. Util. Code Ann. § 39.001, et. seq.

their operations into three separate utilities: one for power generation; one for transmission and distribution; and one for retail electric providers.¹⁵ Although the operations of electric utilities were divided into separate entities, the responsibility to the public to maintain continuous and adequate service at all times remained unchanged.¹⁶ The 1999 amendment to PURA did not eliminate any tort duties owed by electric utilities to Plaintiffs' Insureds and did not abrogate the common law of Texas.¹⁷

VII. Winter Storm Uri

66. On or about February 15, 2021, the State of Texas experienced a cold weather event during which more than 4.5 million Texas households, including Plaintiffs' Insureds, lost power.¹⁸ The cold weather event is commonly referred to as Winter Storm Uri.

67. The resulting crisis from the power outages affected multiple aspects of life in Texas, including commerce, municipal water supply, and medical infrastructure.¹⁹ Homes and businesses throughout ERCOT's system suffered damage from burst water pipes and low water pressure, with more than 14 million people subjected to boil-water notices.²⁰ Hospitals paused non-emergency surgeries, coronavirus disease of 2019 (COVID-19) vaccination sites closed, and at least 57 people died in connection with the extreme weather and resulting blackouts.²¹

¹⁵ Tex. Util. Code Ann. § 39.051. Municipal electric utilities and electric cooperatives were specifically exempted from the unbundling requirement. Tex. Util. Code Ann. § 39.002.

¹⁶ Tex. Util. Code Ann. § 186.002; Tex. Const. art. I, § 13.

¹⁷ See Tex. Util. Code Ann. § 39.001, et. seq.; see also Tex. Util. Code Ann. § 35.0021 (effective June 8, 2021).

¹⁸ Texas House of Representatives Committee on Energy & Commerce Staff, March 19, 2021, Memorandum re: Hearing on "Power Struggle: Examining the 2021 Texas Grid Failure," p. 2, <https://docs.house.gov/meetings/IF/IF02/20210324/111365/HHRG-117-IF02-20210324-SD002.pdf>

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

68. Winter Storm Uri was well-forecasted and anticipated by the electric energy industry. As early as November 5, 2020, ERCOT’s own meteorologist had issued a winter outlook noting a “very good” chance for an extreme cold weather event during winter 2020/2021.²²

69. The specific weather system comprising Winter Storm Uri was predicted as early as January 28, 2021 when ERCOT’s resident meteorologist began daily communication of the mid-February potential for severely cold weather, with temperatures along the lines of the 2011 event.²³ On February 4th, ERCOT’s meteorologist warned all ERCOT market participants, including the PGCs, that February 12th-14th had the potential to be the coldest period of the winter.²⁴ Shortly thereafter, an Operating Condition Notice in anticipation of Winter Storm Uri was posted by ERCOT on February 8, 2021:

ERCOT is issuing an OCN for an extreme cold weather system approaching Thursday, February 11, 2021 through Monday, February 15, 2021 with temperatures anticipated to remain 32°F or below. QSEs are instructed to: Update COPs and HSLs when conditions change as soon practicable, Review fuel supplies, prepare to preserve fuel to best serve peak load, and notify ERCOT of any known or anticipated fuel restrictions, Review Planned Resource outages and consider delaying maintenance or returning from outage early, Review and implement winterization procedures. Notify ERCOT of any changes or conditions that could affect system reliability.²⁵

²² Federal Energy Regulatory Commission and the North American Electric Reliability Corporation, THE FEBRUARY 2021 COLD WEATHER OUTAGES IN TEXAS AND THE SOUTH CENTRAL UNITED STATES, November 2021, p. 52, <https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and>.

²³ ERCOT’s February 25, 2021 Presentation to the Texas Legislature, p. 9.

²⁴ Federal Energy Regulatory Commission and the North American Electric Reliability Corporation, THE FEBRUARY 2021 COLD WEATHER OUTAGES IN TEXAS AND THE SOUTH CENTRAL UNITED STATES, November 2021, p. 53, FN 117, <https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and>.

²⁵ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, p. 20, [https://www.puc.texas.gov/agency/resources/reports/UTAustin_\(2021\)_EventsFebruary2021TexasBlackout_\(002\)FINAL_07_12_21.pdf](https://www.puc.texas.gov/agency/resources/reports/UTAustin_(2021)_EventsFebruary2021TexasBlackout_(002)FINAL_07_12_21.pdf); see ERCOT glossary: <http://www.ercot.com/glossary>. QSE: Qualified Scheduling Entity. COP: Current Operating Plan. HSL: High Sustainable Limit. OCN: Operating Condition Notice.

70. ERCOT subsequently issued an extreme cold weather event advisory on February 10th, and an extreme cold weather watch on February 11, 2021.²⁶ A “Watch” being the third level of communication issued by the ERCOT control room in anticipation of potential tight grid conditions.²⁷

71. On February 11, 2021, ERCOT issued a press release describing what it believed would occur:

“The Electric Reliability Council of Texas (ERCOT) is expecting record electric use as a result of the extreme cold temperatures that have already reached much of the ERCOT region. “This statewide weather system is expected to bring Texas the coldest weather we’ve experienced in decades,” said ERCOT President and CEO Bill Magness. “With temperatures rapidly declining, we are already seeing high electric use and anticipating record-breaking demand in the ERCOT region.” [...] Based on the current load forecast, and if temperatures continue to decline, ERCOT could set a new all-time winter peak demand record Monday morning, Feb. 15.”²⁸

72. As a result of the impending cold weather event, Texas Governor Greg Abbott preemptively issued a disaster declaration on February 12, 2021 for all 254 counties in the State of Texas.²⁹ On the following day, February 13, 2021, Governor Abbott requested a federal emergency declaration, which was approved on February 14, 2021.³⁰

²⁶ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, p. 20.

²⁷ ERCOT News Release, “Extreme cold weather expected to result in record electric use in ERCOT region,” February 11, 2021, <https://www.ercot.com/news/release?id=1f851612-b1c6-3806-ba84-f192b23083c9>.

²⁸ *Id.*

²⁹ https://gov.texas.gov/uploads/files/press/DISASTER_severe_weather_FINAL_02-12-2021.pdf

³⁰ <https://gov.texas.gov/news/post/governor-abbott-announces-approval-of-federal-emergency-declaration-for-severe-winter-weather>

73. On February 13, ERCOT issued an Emergency Notice for an “extreme cold weather event impacting the ERCOT Region.”³¹

74. According to the National Weather Service, by February 14, 2021, “every square inch of Texas was in a Winter Storm Warning.”



75. By the morning of February 15, 2021, when ERCOT first began ordering load shed throughout the ERCOT system, it was clear that ERCOT and the PGCs had failed to plan and prepare for the winter storm event.

76. The cold weather event predictably caused increased energy demands across the state as Texans tried to keep their homes and businesses warm, with a total ERCOT actual energy demand peaking at 69,692 megawatts during Winter Storm Uri.³³

77. A peak demand load of 69,692 megawatts was by no means unforeseeable within the ERCOT system because the ERCOT system had already experienced similar load levels during

³¹ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, p. 25.

³² Source: National Weather Service, <https://www.weather.gov/hgx/2021ValentineStorm>

³³ ERCOT Monthly Operational Overview (February 2021), p. 2, March 23, 2021, https://www.ercot.com/files/docs/2021/03/23/ERCOT_Monthly_Operational_Overview_202102.pdf.

periods of peak demand. The previous winter demand peak of 65,915 had been set three years earlier, in January of 2018,³⁴ and since that time, ERCOT forecasted peak load demand growth to increase by approximately 1,000 to 3,000 megawatts each year.³⁵ During the summer months, when demand was historically at its highest, the ERCOT energy grid regularly met demand peaks in excess of 70,000 megawatts, reaching 74,820 megawatts on August 12, 2019³⁶ and 74,328 megawatts on August 13, 2020.³⁷

78. Although ERCOT and the PGCs could have been prepared to meet the peak levels of demand experienced during Winter Storm Uri, ERCOT and the PGC's failed to adequately prepare for the 2020/2021 winter season, and in fact, planned to fail. According to ERCOT's own issued projections for the 2020/2021 winter season, if an extreme weather event occurred in Texas, ERCOT's projections anticipated that the State of Texas would be thrown into the highest state of emergency.³⁸

79. According to ERCOT's internal procedures, if operating reserves for the ERCOT system were to drop below 2,300 megawatts, ERCOT would declare a "Level 1" Energy

³⁴ *Id.*

³⁵ See Report on the Capacity, Demand and Reserves (CDR) in the ERCOT Region, 2019-2028, p. 22, (December 4, 2018), <https://www.ercot.com/files/docs/2018/12/04/CapacityDemandandReservesReport-Dec2018.pdf>; Report on the Capacity, Demand and Reserves (CDR) in the ERCOT Region, 2021-2030, p. 22, (December 16, 2020), https://www.ercot.com/files/docs/2020/12/16/CapacityDemandandReservesReport_Dec2020.pdf

³⁶ ERCOT, October 2021 Fact Sheet, https://www.ercot.com/files/docs/2021/10/13/ERCOT_Fact_Sheet_10.13.21.pdf.

³⁷ ERCOT Monthly Operational Overview (August 2020), September 16, 2020, https://www.ercot.com/files/docs/2020/09/16/ERCOT_Monthly_Operational_Overview_202008.pdf, at p. 2.

³⁸ ERCOT, Seasonal Assessment of Resource Adequacy for the ERCOT Region (SARA) Winter 2020/2021, November 5, 2020, <https://www.ercot.com/files/docs/2020/11/05/SARA-FinalWinter2020-2021.pdf>, at p. 2.

Emergency, and ERCOT would call on “all available power supplies, including from other grids.”³⁹ If the ERCOT system operating reserves were to drop below 1,750 megawatts, it would be considered a “Level 2” Energy Emergency, allowing ERCOT to terminate power to certain large industrial customers.⁴⁰ In the event operating reserves fell below 1,375 megawatts, it was considered a “Level 3” Energy Emergency, ERCOT’s highest state of emergency, authorizing system-wide blackouts throughout the State of Texas.⁴¹ Prior to February 15, 2021, ERCOT had initiated system-wide rotating outages only three times in the history of ERCOT (Dec. 22, 1989, April 17, 2006 and Feb. 2, 2011).⁴²

80. In ERCOT’s 2020/2021 SARA report (Seasonal Assessment of Resource Adequacy report), a system-wide resource adequacy plan which was reviewed and approved by various PGC members, ERCOT and the PGCs planned to have 82,513 megawatts of total energy resources available to meet the peak demand load for the 2021 winter season.⁴³ In that report, ERCOT and the PGCs anticipated that “extreme” winter conditions could result in a combined total of 13,953 megawatts of outages⁴⁴ and an elevated demand load of up to 67,208 megawatts,

³⁹ ERCOT, ERCOT’s use of Energy Emergency Alerts, September 2020, https://www.ercot.com/files/docs/2020/09/08/EEA_OnePager_updated_9-4-20.pdf (“ERCOT has a progressive series of emergency procedures that may be used when operating reserves drop below specified levels. These procedures are designed to protect the reliability of the electric system as a whole and prevent an uncontrolled system-wide outage. Per ERCOT Protocols and NERC requirements, the grid operator is required to declare an Energy Emergency Alert (EEA) when operating reserves drop below 2,300 MW or system frequency cannot be maintained above certain levels and durations. There are three levels of EEA, depending on the amount of operating reserves that are available to meet the electric demand on the system.”).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ ERCOT’s 2020/2021 SARA Report anticipated “typical maintenance outages” of 4,074 megawatts and total forced outages during an extreme weather event to be an additional 9,879 megawatts, for a total projected outage of 13,953 megawatts. ERCOT, Seasonal Assessment of

conditions which would leave the ERCOT system with an operating reserve margin of 1,352 megawatts.⁴⁵

81. In the event that these “extreme” winter conditions occurred, therefore, ERCOT and the PGCs *planned* to have a total operating reserve capacity of just 1,352 megawatts—an operating reserve so low that it would necessitate a Level 3 Energy Emergency and system-wide blackouts.⁴⁶

82. ERCOT and the PGCs anticipated operating reserve of 1,352 megawatts was not only creating a Level 3 Energy Emergency condition, however, it was also much too optimistic, as it failed to consider *any* loss of wind energy due to low wind output in its “extreme” condition scenario.⁴⁷ Assuming the report’s “extreme low wind output” projection of a loss of 5,279 megawatts of wind output was reasonable, it would have resulted in a *negative* operating reserve of -3,927 megawatts.⁴⁸ Further, the report’s “extreme” forced outages plan failed to even consider prior extreme weather events, such as what transpired in the winter of 2011.⁴⁹ In formulating its “extreme” conditions plan for forced outages, ERCOT and the PGCs did not consider past “extreme” events, but rather, considered conditions from only the last three Texas winters (2017-

Resource Adequacy for the ERCOT Region (SARA) Winter 2020/2021, November 5, 2020, <https://www.ercot.com/files/docs/2020/11/05/SARA-FinalWinter2020-2021.pdf>, at p. 2.

⁴⁵ *Id.*

⁴⁶ *Id.*; See University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, p. 16, [https://www.puc.texas.gov/agency/resources/reports/UTAustin_\(2021\)_EventsFebruary2021TexasBlackout_\(002\)FINAL_07_12_21.pdf](https://www.puc.texas.gov/agency/resources/reports/UTAustin_(2021)_EventsFebruary2021TexasBlackout_(002)FINAL_07_12_21.pdf).

⁴⁷ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, p. 16.

⁴⁸ *Id.*

⁴⁹ Federal Energy Regulatory Commission (“FERC”), Report on Outages and Curtailments During the Southwest Cold Weather Event of February 1-5, 2011, Causes and Recommendations, pp. 78-79, (August 2011), <https://www.ferc.gov/sites/default/files/2020-04/08-16-11-report.pdf>.

2018, 2018-2019, 2019-2020).⁵⁰ Even worse, ERCOT and the PGCs' failure to consider prior extreme weather events was a calculated decision, given that the ERCOT and the PGCs did choose to consider the winter of 2011 in projecting for increased demand load, but then chose to consider only the last three winters in projecting forced outages.⁵¹

83. Thus, ERCOT and the PGCs “plan” for extreme weather during the 2021 winter season was to implement system-wide blackouts at a time when temperatures were coldest and Texans were most vulnerable. System-wide blackouts were not merely foreseeable, they were ERCOT and the PGCs' designed consequence in the event extreme weather occurred during the winter of 2021, as documented in ERCOT's official SARA report for the 2021 winter season.⁵²

84. The Defendants' plan for the 2021 winter season shows that ERCOT and the PGCs were acutely aware of the risks to Plaintiffs' Insureds should the projected extreme weather event occur, yet they persisted in conscious indifference to the rights of Plaintiffs' Insureds. Rather than warning the public that they were effectively planning on a Level 3 Energy Emergency, ERCOT informed the public that its PGCs were prepared, concluding, “ERCOT anticipates there will be sufficient installed generating capacity available to serve system-wide forecasted peak demand this winter season, December 2020– February 2021.”⁵³

⁵⁰ Resource Adequacy for the ERCOT Region (SARA) Winter 2020/2021, November 5, 2020, at p. 2.

⁵¹ *Id.*; ERCOT and the PGC's anticipated reserve margin calculations were so clearly deficient that, following the event, federal regulators directed them to “reconsider” the inputs into their report, “so that the reported reserve margins will better predict the reserve levels that the Balancing Authorities could experience during winter peak conditions.” Federal Energy Regulatory Commission and the North American Electric Reliability Corporation, FEBRUARY 2021 COLD WEATHER GRID OPERATIONS: PRELIMINARY FINDINGS AND RECOMMENDATIONS, p. 28, <https://www.ferc.gov/media/february-2021-cold-weather-grid-operations-preliminary-findings-and-recommendations-full> (2021 Preliminary FERC Report).

⁵² *Id.*

⁵³ *Id.* at p. 1.

VIII. Texas Power Grid Failure

85. As energy demand rose in February 2021, the supply of energy fell as unprepared and unprotected power generators failed, depriving the Texas power grid of approximately 26,280 megawatts of electricity due to forced outages⁵⁴—more than 2.5 times the number of forced outages anticipated by ERCOT’s winter 2021 SARA report.⁵⁵

86. At the same time, PGC operators with additional available capacity were unprepared, unable, and/or unwilling to bring online 52,277 megawatts of the total available energy capacity.⁵⁶ During the height of the outage, approximately 48.6% of all potential capacity of PGCs to generate electrical power went offline, leaving 51.4% of the system to address the winter season’s peak demand, a number far below that which was necessary to satisfy the load.⁵⁷

87. Between 12:17 am and 1:25 am on February 15, 2021, ERCOT had escalated the event from a Level 1 Energy Emergency to a Level 3 Energy Emergency, culminating in the issuance of a “Load Shed” order at 1:25 am in an attempt to “maintain frequency” across the ERCOT system.⁵⁸ According to ERCOT, its load shed order resulted in approximately 20,000 megawatts of load shed across the State of Texas.⁵⁹

⁵⁴ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, pp. 17-18.

⁵⁵ *see* Resource Adequacy for the ERCOT Region (SARA) Winter 2020/2021, November 5, 2020, at p. 2., wherein ERCOT predicted 9,879 in forced outages during extreme winter weather; *see also* University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, pp. 17-18.

⁵⁶ ERCOT’s February 25, 2021 Presentation to the Texas Legislature, p. 16.

⁵⁷ *Id.* at p. 10.

⁵⁸ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, pp. 37.

⁵⁹ ERCOT’s February 25, 2021 Presentation to the Texas Legislature, p. 16.

88. As the magnitude of power generation unavailability increased, many local TDUs did not rotate outages, resulting in extended blackouts to Plaintiffs' Insureds.⁶⁰ Recognizing the extreme danger of these extended blackouts, ERCOT issued an order on February 17, 2021, demanding that outages be rotated:

“...many customers that were subjected to load shed have remained in an outage status for days. The expectation is that customers will be rotated through outages so that the burden is shared: that no customer's outage will last so long as to precipitate endangerment and so that all customers shared this burden in as equitable a manner as circumstances will allow.”⁶¹

89. From February 15 through February 16, 2021 the ERCOT system failed to achieve any net gain in generation—as some PGCs were restored, others went offline, in whole or in part, perpetuating the crisis.⁶²

90. The ERCOT system remained under Level 3 emergency operations from 1:20 am on February 15th until 9:00am in the morning on February 19, 2021.⁶³

91. ERCOT, along with the PGCs, should 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.

92. Similarly, ERCOT, along with the PGCs themselves, should have required that PGCs winterize and update their generation facilities, consistent with standard PGC business practices, to prevent cold weather failures like those experienced in February 2021, but they consciously chose not to do so.

⁶⁰ *Id.* at p. 10.

⁶¹ ERCOT, PUC Project No. 51812, ORDER DIRECTING ROTATION OF CUSTOMER SUBJECT TO CURTAILMENT OF SERVICE UNDER EEA3, February 17, 2021.

⁶² *Id.* at p. 16.

⁶³ *Id.* at pp. 11-16.

93. The PGCs should have winterized their equipment, forestalled maintenance, increased availability, ensured a reliable supply of fuel, secured alternative fuel sources, employed sufficient staffing, and otherwise prepared their generation facilities to prevent cold weather failures like those experienced in February 2021, but they consciously chose not to do so.

94. In response to ERCOT's failure to address anticipated increased energy demands in February 2021, as well as the failure of PGCs to winterize, update and staff their generation facilities, ERCOT ordered the TDUs that make up the Texas energy grid to initiate rolling blackouts that eventually left millions in the State of Texas, including Plaintiffs' Insureds, without electrical power for several days.

95. This cold weather event and its effects on the Texas energy grid were neither unexpected nor unforeseen. In fact, the February 2021 event was the fourth such event in the region within the last 10 years. According to federal regulators:

“The February 2021 event is the fourth in the past 10 years which jeopardized bulk-power system reliability. In February 2011, an arctic cold front impacted the southwest U.S. and resulted in numerous generation outages, natural gas facility outages and emergency power grid conditions with need for firm customer load shed. In January 2014, a polar vortex affected Texas, central and eastern U.S.. This 2014 event also triggered many generation outages, natural gas availability issues and resulted in emergency conditions including voluntary load shed. And in January 2018, an arctic high-pressure system and below average temperatures in the south-central U.S. resulted in many generation outages and the need for voluntary load shed emergency measures.”⁶⁴

As further noted by regulators, Texas and the Southwest has experienced multiple other disruptive cold weather events, including 1983, 1989, 2003, 2006, 2008, 2010, and 2011.⁶⁵ Similar cold

⁶⁴ Federal Energy Regulatory Commission and the North American Electric Reliability Corporation, FEBRUARY 2021 COLD WEATHER GRID OPERATIONS: PRELIMINARY FINDINGS AND RECOMMENDATIONS, p. 4, <https://www.ferc.gov/media/february-2021-cold-weather-grid-operations-preliminary-findings-and-recommendations-full>.

⁶⁵ North American Electric Reliability Corporation, Assessment of Previous Severe Winter Weather Reports 1983-2011, July 2013,

weather events in 1989 and 2011 led to exactly the same type of rolling blackouts that adversely affected Texas residents and businesses in 2021.

96. During December 21-23, 1989, the weather was similarly cold as compared to mid-February of 2021. The low temperature in Austin was the same during both events. The low in Dallas was just 1° F colder in 2021 than in 1989. Houston reached a low temperature of 7° F during the 1989 winter event, or 6° F lower than the low temperature reached in Houston in 2021.⁶⁶

97. After investigating the Texas power grid failures in the wake of the 1989 cold weather event, the PUCT 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 preventive maintenance program.
- Additional training programs for plant personnel on the emergency cold weather procedures, including periodic drills, should be implemented by each responsible utility.”⁶⁷

https://www.nerc.com/pa/rrm/ea/February%202011%20Southwest%20Cold%20Weather%20Event/Final_Draft_Assessment_of_Previous_Severe_Winter_Weather_Report.pdf.

⁶⁶ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, p. 70.

⁶⁷ Public Utility Commission of Texas, ELECTRIC UTILITY RESPONSE TO THE WINTER FREEZE OF DECEMBER 21 TO DECEMBER 23, 1989, at p. 7 (Nov. 1990), <https://lrl.texas.gov/scanned/archive/1990/15303.pdf>

98. The 1989 PUCT Report concluded, “the near complete loss of the ERCOT grid brings an awareness that, even in Texas, plant operators must prepare for cold weather emergencies...this awareness of and attention to cold weather problems must be continued.”⁶⁸

99. During the February 2011 winter storm event, the ERCOT system lost 29,729 megawatts of generating capacity and approximately one-third of ERCOT’s total generation units failed or derated, resulting in blackouts to over 3.2 million Texans.⁶⁹

100. Following the event, ERCOT issued a press release summarizing the 2011 grid failure:

“ERCOT’s load forecast was on target, but more than 50 power generating units that ERCOT had expected to be available failed to come online or stay online, and others were unable to produce at their full capacity because of complications from the weather. In most cases, extremely cold ambient temperatures, along with windy conditions, combined to cause problems with instrumentation and control systems used, such as plant transmitters, transducers, or valves that compromised larger power plant operational capability.”⁷⁰

101. After the 2011 event, the Federal Energy Regulatory Commission (“FERC”) and the North American Electric Reliability Corporation (“NERC”) investigated the Texas power grid and issued a lengthy joint report.⁷¹ The 2011 FERC Report issued numerous recommendations, which if followed could have avoided entirely or substantially minimized the dire consequences of another and foreseeable winter event.⁷²

⁶⁸ *Id.*

⁶⁹ Federal Energy Regulatory Commission and the North American Electric Reliability Corporation, REPORT ON OUTAGES AND CURTAILMENTS DURING THE SOUTHWEST COLD WEATHER EVENT OF FEBRUARY 1—5, 2011, at pp. 1, 7 (Aug. 2011) (“2011 FERC Report”), <https://www.ferc.gov/sites/default/files/2020-05/ReportontheSouthwestColdWeatherEventfromFebruary2011Report.pdf>; University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, p. 71.

⁷⁰ ERCOT, Operators Secure Grid Security in Severe Weather Events, February 2011, https://www.ercot.com/files/docs/2011/02/08/severe_weather_events_one_page_2_8_11.pdf.

⁷¹ 2011 FERC Report, at p. 10.

⁷² *Id.* at 197-207.

102. The 2011 FERC Report found that “[m]any of the generators that experienced outages in 1989 failed again in 2011.”⁷³ 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. And 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 direct 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.⁷⁴

103. The 2011 FERC Report also recognized that the operating reserves within ERCOT were slim, and that increasing operating reserves going into the winter weather event could have exposed the PGCs lack of winterization before it was too late, concluding:

“This action would have brought more units online earlier, might have prevented some of the freezing problems the generators experienced, and could have exposed operational problems in time to implement corrections before the units were needed to meet customer demand.”⁷⁵

104. The same warnings to winterize PGCs were issued again by both NERC and FERC in connection with extreme winter weather events in 2014 and 2018, including the 2014 Polar Vortex report⁷⁶ and the South Central United States Cold Weather Bulk Electric System Event of January 17, 2018 report.⁷⁷ Nonetheless, Defendants once again ignored these recommendations.

⁷³ *Id.* at 10.

⁷⁴ (emphasis added) *Id.* at pp. 178–79.

⁷⁵ *Id.* at 8.

⁷⁶ NERC, POLAR VORTEX REVIEW iii-iv, pp. 19-20 (September 2014), https://www.nerc.com/pa/rrm/January%202014%20Polar%20Vortex%20Review/Polar_Vortex_Review_29_Sept_2014_Final.pdf.

⁷⁷ NERC and FERC, THE SOUTH CENTRAL UNITED STATES COLD WEATHER BULK ELECTRIC SYSTEM EVENT OF JANUARY 17, 2018, at pp. 80-102 (July 2019),

105. Since 2011, ERCOT and the PGCs created multiple “working groups” comprised, in part, of PGC representatives expressly tasked with ensuring that the ERCOT system was meeting national standards of reliability, including NERC Reliability Standards.⁷⁸ Similarly, ERCOT and the PGCs developed a “Gas Electric Working Group” which was commissioned, *inter alia*, to identify natural gas infrastructure critical to PGC operations during winter peaks.⁷⁹ Yet, PGC participation in these ERCOT groups was always voluntary and winterization standards were neither required nor enforced by ERCOT.

106. During Winter Storm Uri, many of the same PGCs which failed during prior winter weather events have failed once again to maintain a continuous supply of electricity to Texas due to their refusal to implement the reasonable economical remedies recommended by state and federal agencies, *inter alia*, in 1989, 2011, 2014, & 2018. At least ninety-six PGCs (16.4%) in ERCOT’s system that reported outages or deratings during the winter event in February 2021 also experienced problems during the February 2011 event,⁸⁰ while at least eight PGCs experienced outages or de-ratings during each of the three winter emergencies of 1989, 2011, and 2021.⁸¹ Some of the largest power producers in Texas are among the PGCs whose equipment repeatedly failed during these cold weather events, including Luminant and NRG Texas Power LLC.⁸²

https://www.nerc.com/pa/rrm/ea/Documents/South_Central_Cold_Weather_Event_FERC-NEERC-Report_20190718.pdf.

⁷⁸ See e.g. “Operations Working Group,” <http://www.ercot.com/committees/ros/owg>, the “Planning Working Group,” <http://www.ercot.com/committees/ros/plwg>.

⁷⁹ ERCOT, Gas Electric Coordination Working Scope 03292019, April 1, 2019, https://www.ercot.com/files/docs/2019/03/27/Gas-Electric_Coordination_Working_Group_Scope_03292019.docx.

⁸⁰ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, p. 75.

⁸¹ *Id.*

⁸² *Id.*

107. Although Winter Storm Uri was a state-wide event, the storm divided the PGCs into two categories: those who were adequately prepared and those who were not. During Texas' hour of greatest need, approximately 51.4% of the power generation in ERCOT was online despite the weather event,⁸³ while the rest of the PGCs failed, with many PGCs unable to reliably generate electricity for days.⁸⁴ In sum, ERCOT reported that, out of approximately six hundred and eighty (680) generation units in service,⁸⁵ three hundred and fifty-six (356) failed during Winter Storm Uri.⁸⁶

108. According to the preliminary data released by ERCOT, 53% of the PGC failures were caused by cold weather conditions experienced during Winter Storm Uri.⁸⁷ An investigative report issued by the University of Texas at Austin observed: “Beyond wind turbine icing, outages between February 14 and 15 were mainly the result of frozen water intakes and sensing lines and the freezing of other general equipment. As freezing persisted further, other problems arose—for example there were issues around control and condensate systems that caused more capacity to go offline.”⁸⁸ In total, 167 generating units listed their outages as weather-related during the event.⁸⁹

⁸³ ERCOT's February 25, 2021 Presentation to the Texas Legislature, p. 10.

⁸⁴ See ERCOT, Generation Resource and Energy Storage Resource Outages and Derates, February 10-19, 2021, https://www.ercot.com/files/docs/2021/03/12/Unit_Outage_Data_20210312.pdf.

⁸⁵ ERCOT's February 25, 2021 Presentation to the Texas Legislature, p. 4.

⁸⁶ *Id.* at 19.

⁸⁷ ERCOT, Update to April 6, 2021 Preliminary Report on Causes of Generator Outages and Derates During the February 2021 Extreme Cold Weather Event, April 27, 2021, at p. 8. https://www.ercot.com/files/docs/2021/04/28/ERCOT_Winter_Storm_Generator_Outages_By_Cause_Updated_Report_4.27.21.pdf.

⁸⁸ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, p. 31.

⁸⁹ *Id.*

109. An additional 26% of the PGC failures were classified as “fuel limitations” and “equipment issues” experienced during Winter Storm Uri.⁹⁰ Considering that another 15% of the generation outages during Winter Storm Uri had already been anticipated by both ERCOT and the PGCs as “existing” outages (meaning they were either planned outages or outages which pre-dated February 8, 2021),⁹¹ a total of 93% of all new outages occurring during Winter Storm Uri were caused either by weather-related failures of PGC equipment or inadequate fuel procurement in advance of the winter storm.⁹²

110. The “equipment issues” being cited by PGCs included “*clogged* sensing lines and *stuck* valves,”⁹³ ordinary maintenance issues which could have been prevented prior to the onset of a widely-forecasted and foreseeable weather event. Notably, the same component failures (sensing lines and valves) were identified by the 2011 FERC Report as widespread among failed PGC generation units during the 2011 event, except that following FERC’s investigation of the 2011 event, these component failures were characterized by FERC as “*frozen* sensing lines” and “*frozen* valves.”⁹⁴ Following the February 2021 event, a joint report issued by FERC and NERC confirmed that the outages which the PGCs had classified as equipment-related outages, as opposed to “weather-related” outages, were in fact weather-related outages.⁹⁵ According to

⁹⁰ ERCOT, Update to April 6, 2021 Preliminary Report on Causes of Generator Outages and Derates During the February 2021 Extreme Cold Weather Event, April 27, 2021, at p. 8.

⁹¹ *Id.* at 9.

⁹² *Id.* at 8.

⁹³ *Id.*

⁹⁴ 2011 FERC Report, at p. 8.

⁹⁵ 2021 Preliminary FERC Report at p. 11.

FERC’s investigation, 82 percent of the ERCOT entities that submitted a declaration of preparation for winter had at least one generating unit outaged or derated due to freezing issues...”⁹⁶

111. In its final report on the February 2021 outage, FERC concluded that the PGCs did not heed its prior warnings to winterize equipment and facilities in preparation for winter.⁹⁷ The 2021 FERC report states:

“Despite multiple prior recommendations by FERC and NERC, as well as annual reminders via Regional Entity workshops, that generating units take actions to prepare for the winter (and providing detailed suggestions for winterization) [...] 81 percent of the freeze-related generating unit outages occurred at temperatures above the unit’s stated ambient design temperature. Generating units that experienced freeze-related outages above the unit’s stated ambient design temperature represented about 63,000 MW of nameplate capacity.”⁹⁸

The 2021 FERC Report indicates that the problem was likely worse than it could report, stating that, in fact, many PGCs “did not know the design temperature of their facilities.”⁹⁹ As it had done in 2011, FERC once again implored the PGCs to design or retrofit their generating equipment to prepare for winter, stating “Preventing another event like this begins with ensuring enough generating units will be available during the next cold weather event, and that means generating units need to be modified/retrofitted to perform under the adverse winter weather conditions that have been experienced at its location.”¹⁰⁰

⁹⁶ Federal Energy Regulatory Commission and the North American Electric Reliability Corporation, THE FEBRUARY 2021 COLD WEATHER OUTAGES IN TEXAS AND THE SOUTH CENTRAL UNITED STATES, November 2021, p. 167, <https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and>. (“2021 FERC Report”).

⁹⁷ *Id.*

⁹⁸ *Id.* at p. 17.

⁹⁹ *Id.* at p. 40.

¹⁰⁰ *Id.* at p. 188.

112. According to the University of Texas investigation, the “fuel limitations” being cited by some PGCs included a “lack of fuel” and “low fuel pressure.”¹⁰¹ However, a review of detailed, unit-specific, power plant outage information revealed that some of the PGCs reporting “fuel limitations” simply did not have “firm” fuel supply contracts in place during the winter storm event.¹⁰² According to the 2021 FERC Report, “the *majority* of natural gas-fired generating units experiencing outages and derates had a mixture of firm and non-firm commodity and pipeline transportation contracts or had interruptible transportation for their contracted volumes.”¹⁰³ As a result, when they attempted to secure additional fuel during the event, they were “unable to secure additional volumes above their contracted volumes to operate at their expected capacity.”¹⁰⁴

113. Although extensive winterization standards and industry guidance existed,¹⁰⁵ the PGCs failed to winterize by procuring adequate and reliable fuel supply or alternative fuel sources. The failure of PGCs to secure reliable fuel supply during a winter storm is a fundamental element of winterization for electricity generators, as confirmed by ERCOT and the PGCs themselves following the winter outages in 2011.¹⁰⁶ Yet, some PGCs operating natural gas-fueled generators

¹⁰¹ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, p. 31.

¹⁰² *Id.*

¹⁰³ 2021 FERC Report, at p. 204 (emphasis in original).

¹⁰⁴ *Id.*

¹⁰⁵ See *infra* FN’s 11, 12; NERC, Reliability Guideline, Fuel Assurance and Fuel-Related Reliability Risk Analysis for the Bulk Power System, March 2020, https://www.nerc.com/comm/PC_Reliability_Guidelines_DL/Fuel_Assurance_and_Fuel-Related_Reliability_Risk_Analysis_for_the_Bulk_Power_System.pdf.

¹⁰⁶ Following the 2011 event, a contingent of the largest PGCs within ERCOT issued basic winterization guidelines, recommending that PGC plants develop a “[p]rocess for ensuring adequate quantities of winter weather commodities [...] are available during winter weather events (e.g., heat lamps, heaters, fuel supply, etc).” Calpine, CPS Energy, LCRA, Luminant, and NRG Energy, “WINTER WEATHER READINESS FOR TEXAS GENERATORS,” April 13, 2011, https://www.ercot.com/files/docs/2011/06/06/winter_weather_readiness_for_texas_generators1.doc.

failed to hedge existing natural gas positions or failed to enter reliable long-term contracts for natural gas supply, exposing their business and their customers to short-term market volatility during a well-predicted winter storm and resulting in a failure to adequately procure natural gas during the storm event.¹⁰⁷ Similarly, other PGCs simply failed to source and secure fuel supplies from reliable suppliers in advance of the winter season,¹⁰⁸ and/or failed to secure and store alternative fuel sources, such as fuel oil.

114. Numerous PGCs chose to source critical natural gas supplies from distributors who failed to designate their businesses as “critical load,” resulting in near certainty that the flow of natural gas would be interrupted if load shedding became necessary and compounding the danger of an energy emergency.¹⁰⁹ A federal investigation has revealed that the failure to designate natural gas suppliers as “critical load” was dangerously widespread, finding that “*most* of the natural gas production and processing facilities surveyed by the inquiry team were not identified as critical loads or otherwise protected from manual load shedding.”¹¹⁰

115. ERCOT and the PGCs were well-aware of the need to identify and remove natural gas facilities within their supply chains from rotating outage plans. Long before Winter Storm Uri, ERCOT and the PGCs had organized a special working group within ERCOT for the purpose of increasing the coordination of natural gas suppliers and PGCs.¹¹¹ One of the express purposes of this working group was to accomplish the goal of “Excluding certain gas facilities needed for

¹⁰⁷ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, p. 10.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 32.

¹¹⁰ 2021 Preliminary FERC Report at p. 15.

¹¹¹ ERCOT, Gas Electric Coordination Working Scope 03292019, April 1, 2019, https://www.ercot.com/files/docs/2019/03/27/Gas-Electric_Coordination_Working_Group_Scope_03292019.docx.

electric generation in rotating outage plans.”¹¹² Yet, PGC participation and compliance remained voluntary, and the task of identifying and excluding natural gas suppliers from rotating outage plans was never performed by the PGCs.

116. As reported by numerous media outlets, the task of designating natural gas suppliers as “critical load,” not to be shut-off during a load-shedding event, was as simple as filling out a two-page form and submitting it to the local TDU and ERCOT.¹¹³ The magnitude of the oversight was illustrated by Oncor’s CEO, Allen Nye, in his testimony before the Texas legislature, wherein he explained that Oncor began the week of February 14th, 2021, with 35 natural gas facilities that deliver fuel to PGCs designated as “critical load,” and ended the week with 168 new natural gas facilities added to its “critical load” list.¹¹⁴ In a statement to the media, Woody Rickerson, vice president of grid planning and operations at ERCOT, candidly expressed surprise at the belated rush to designate critical load during Winter Storm Uri, stating “I was surprised at the amount of [critical] infrastructure that hadn’t been identified. There were phone calls every day.”¹¹⁵ Clearly, the effort to protect the PGCs fuel supply chain was too late, as 131 of the PGC’s generating units

¹¹² ERCOT, Gas-Electric Coordination Working Group Meeting, February 15, 2019, at p. 12, https://www.ercot.com/files/docs/2019/02/19/GEWG_021519.pdf.

¹¹³ See ERCOT, Application for Critical Load Serving Natural Gas-Fired Electric Generation (v020320), *previously available at*: http://www.ercot.com/content/wcm/key_documents_lists/174326/Final_-_Word_-_App_for_gas_pipeline_load_v020320.docx, *March 2021 update available at*: https://www.ercot.com/files/docs/2021/03/15/Final_-_pdf_-_App_for_gas_pipeline_load_v020320.pdf.

¹¹⁴ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, p. 32; Texas Tribune, Paperwork failures worsened Texas blackouts, sparking mid-storm scramble to restore critical fuel supply, March 18, 2021, <https://www.texastribune.org/2021/03/18/texas-winter-storm-blackouts-paperwork/>.

¹¹⁵ See Texas Tribune, Paperwork failures worsened Texas blackouts, sparking mid-storm scramble to restore critical fuel supply, March 18, 2021, <https://www.texastribune.org/2021/03/18/texas-winter-storm-blackouts-paperwork/>.

listed “fuel limitations” as the cause of their outages, including five black-start-rated generating units.¹¹⁶

117. Similarly, other PGCs sourced natural gas from suppliers who, prior to Winter Storm Uri, voluntarily enrolled in ERCOT’s emergency response program (“ERS”), a program which was designed to incentivize and prioritize the cutting of power to these natural gas suppliers.¹¹⁷ In essence, the ERS program provides that ERCOT pays large industrial users to shut down when electricity supplies are short.¹¹⁸ To participate in the ERS program, industrial users enter into “demand response” contracts with ERCOT, requiring them to install an automatic circuit switch or manually shut down operations when power demand threatens to exceed supply on the grid.¹¹⁹ Under ERCOT protocols, ERCOT can order the shut-down of participants in the ERS program well before it orders load shedding to the rest of the ERCOT system, specifically allowing ERCOT to shut-down ERS participants at the EEA Level 1 emergency level, whereas the general

¹¹⁶ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, pp. 31-32. ERCOT contracts biannually with certain generators to provide “Black Start” services. These generators are able to start generation without support from the ERCOT transmission grid. See <http://www.ercot.com/glossary/b>, “Black Start Resource” and “Black Start Service.” These generators are paid to provide layers of protection and reserves to the ERCOT system in the event of transmission or frequency problems, and they maintain a coordinated “black start” plan to restart the ERCOT system in the event the ERCOT system collapses. ERCOT, “Black Start Overview,” p. 2, https://www.ercot.com/files/docs/2016/10/19/ERCOT_Black_Start_Overview_GRWG_Public_2_016.pptx.

¹¹⁷ *Id.* at 9.

¹¹⁸ See, ERCOT, 2020 Annual Report of Demand Response in the ERCOT Region, at pp. 6-10, (December 2020), http://mis.ercot.com/misdownload/servlets/mirDownload?mimic_duns=000000000&doclookupId=748667142.

¹¹⁹ *Id.*

load-shedding may be ordered at EEA Level 3.¹²⁰ The ERS program was activated by ERCOT during the winter event to reduce demand on the system.¹²¹

118. According to a Wall Street Journal investigation, the estimated total value of the ERS program to participants for the five days of the blackout associated with the Winter Storm Uri was approximately \$2 billion—and natural gas companies that should have supplied natural gas to PGCs, were paid a portion of that amount by ERCOT for shedding load pursuant to these “demand response” contracts.¹²² According to the University of Texas report, approximately 67 locations (electrical meters) that were in ERCOT’s ERS program were also in the fuel supply chain for generation resources, including gas refining and pipeline infrastructure.¹²³ The same report also found that five of the natural gas facilities which had enrolled in the ERS program had also self-identified as “critical load.”¹²⁴

119. Prior to the February 2021 winter storm, ERCOT and the PGCs were well aware that shutting off certain industrial users who operated critical infrastructure for the PGCs fuel supply could cause the loss of generation capacity. For example, the 2011 FERC Report found that Occidental Petroleum Corp.’s oil and gas production facilities were shut down during the winter weather event because it had signed up to be part of the load-shedding program, and observed that “[t]his interruption resulted in significant production losses,” even though the Occidental facilities

¹²⁰ *Id.*

¹²¹ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, pp. 36.

¹²² Russell Gold and Katherine Blunt, As Texas Went Dark, the State Paid Natural-Gas Companies to Go Offline, WALL STREET JOURNAL ONLINE, May 7, 2021, available at <https://www.wsj.com/articles/as-texas-wentdark-the-state-paid-natural-gas-companies-to-go-offline-11620385201>.

¹²³ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, p. 56.

¹²⁴ *Id.*

were shut off for just 90 minutes.¹²⁵ ERCOT and the PGCs ignored this warning and the ERS program expanded over the decade leading up to Winter Storm Uri, resulting in at least 67 critical locations within the PGC fuel supply chain which were paid by ERCOT to shut down operations during Winter Storm Uri.¹²⁶

120. In the 2021 FERC Report, regulators highlighted the PGC’s failure to secure reliable fuel supply in their most urgent recommendation out of twenty-eight (28) separate recommendations.¹²⁷ The Report reveals that the PGC’s actions in failing to secure reliable fuel supplies endangered the reliability of the entire energy grid when the PGCs failed to inform ERCOT of the fuel-supply risks they were taking. According to FERC, at the very least, PGCs who choose to operate with elevated fuel risks must inform ERCOT that their output “may be close to zero.”¹²⁸ However, failing to communicate the risks to ERCOT should not be an option. “*Before this winter,*” the FERC report concludes, “Generator Owners/Generator Operators should identify and communicate reliability risks of their natural gas fuel contracts to Balancing Authorities.”¹²⁹

121. Ensuring the availability of adequate fuel supply during winter storm events has always been a critical responsibility of PGCs under all applicable industry winterization guidelines, standards, and best practices, including those voluntarily promulgated by the PGCs themselves.¹³⁰ By relying upon suppliers enrolled in the ERS program and/or who failed to

¹²⁵ 2011 FERC Report, at p. 164.

¹²⁶ University of Texas, Timeline and Events of the February 2021 Texas Electric Grid Blackouts, p. 56.

¹²⁷ 2021 Preliminary FERC Report at p. 28; 2021 FERC Report, at pp.190, 203.

¹²⁸ 2021 FERC Report, at pp.190.

¹²⁹ 2021 Preliminary FERC Report at p. 28;

¹³⁰ See Calpine, CPS Energy, LCRA, Luminant, and NRG Energy, “WINTER WEATHER READINESS FOR TEXAS GENERATORS,” at p. 5, #9, dated April 13, 2011,

https://www.ercot.com/files/docs/2011/06/06/winter_weather_readiness_for_texas_generators1.doc.

designate their businesses as “critical load” with their local TDU, the PGCs knew or should have known that the flow of natural gas to their generation units would be interrupted if load shedding became necessary. By failing to identify and communicate the fuel-supply risks they were taking to ERCOT, the PGCs endangered the reliability of the entire energy grid, compounding the danger of a weather-related energy emergency.

122. On February 24, 2021, five ERCOT board members resigned in the aftermath of ERCOT’s role in the massive Texas power outage. This was first announced in a notice that was filed with the PUCT on February 23, 2021.¹³¹

123. Upon hearing of the ERCOT board members resignations, Governor Abbott released the following public statement:

“When Texans were in desperate need of electricity, ERCOT failed to do its job and Texans were left shivering in their homes without power. ERCOT leadership made assurances that Texas’ power infrastructure was prepared for the winter storm, but those assurances proved unacceptable, and I welcome these resignations. The State of Texas will continue to investigate ERCOT and uncover the full picture of what went wrong, and we will ensure that the disastrous events of last week are never repeated.”¹³²

124. FERC Chairman, Rich Glick, echoed the same resolve that ERCOT and the PGCs no longer ignore their responsibility to winterize and finally heed the clear warnings they have been given, stating:

“This time, we must take these recommendations seriously, and act decisively, to ensure the bulk power system doesn’t fail the next time extreme weather hits. I cannot, and will not, allow this to become yet another report that serves no purpose other than to gather dust on the shelf.”¹³³

¹³¹ See http://interchange.puc.texas.gov/Documents/51604_11_1112238.PDF.

¹³² Governor Abbott Statement On Resignation Of ERCOT Leadership, February 23, 2021, <https://gov.texas.gov/news/post/governor-abbott-statement-on-resignation-of-ercot-leadership>.

¹³³ FERC Press Release, FERC, NERC Staff Review 2021 Winter Freeze, Recommend Standards Improvements, September 23, 2021, <https://www.ferc.gov/news-events/news/ferc-nerc-staff-review-2021-winter-freeze-recommend-standards-improvements>

125. Upon information and belief, the Texas Office of the Attorney General, Consumer Protection Division issued a civil investigative demand to ERCOT. Pursuant to the Texas Attorney General's specific authority under article IV, section 22 of the Texas Constitution and the Texas Deceptive Trade Practices - Consumer Protection Act, and the Texas Business and Commerce Code ("DTPA"), ERCOT was directed to produce documents pertaining to the February 2021 cold weather event.

126. Upon information and belief, the Texas Reliability Entity, Inc. issued a Notice to Preserve Documentation – Data Hold Regarding Extreme Cold Weather Event During February 2021 to ERCOT. On February 17, 2021, The Texas Reliability Entity, Inc. ("Texas RE") sent a confidential Notice to Preserve Documentation related to Winter Storm Uri, including: Operational communication, operator logs, recorded voice communications, and e-mails and other forms of communication to or from operations staff that may be directly or indirectly related or relevant to the event; system operational data, outage reporting and scheduling, fuel surveys, entity operating plans and related material and; study cases and results from on-line or off-line contingency analysis or stability analysis.

IX. Plaintiffs' Damages

127. On and before February 15, 2021, Plaintiffs' Insureds owned property throughout the State of Texas, including property located in Travis County, Texas.

128. Prior to February 15, 2021, Defendants failed to adequately prepare for foreseeable and forewarned weather events, including Winter Storm Uri. As a result, on or about the week of February 15, 2021, the power went out at the properties of Plaintiffs' Insureds, which prevented them from heating their homes and businesses, causing pipes to freeze and burst and water to infiltrate and flood the subject properties. This water intrusion caused extensive damage to both

real and personal property owned by Plaintiffs' Insureds, business interruptions, additional living expenses, as well as other expenses related to their respective losses.

129. Thousands of Plaintiffs' Insureds incurred freeze damage during the freeze event. In general terms, the extended power outages left insureds without heat, causing frozen water lines in homes, offices, retail stores, manufacturing facilities, and other businesses across Texas. The freeze event also affected and damaged piping and sprinkler heads in fire suppression systems in commercial buildings and apartment complexes. The frozen water caused the pipes to break and when the pipes thawed, leaks from the damaged pipe systems caused significant water damage. In homes, domestic water lines (many running through the attic and/or connecting water heaters) froze, causing water losses. Damages include water mitigation costs, remediation, fire suppression repairs, building repairs, and personal property repairs or replacement. Business interruption or alternative living expenses escalated because of the delays in finding and retaining repair contractors.

130. The independent negligence and gross negligence committed by each of the Defendants resulted in an indivisible injury to the Plaintiffs' Insureds because Defendants' individual responsibility for the injury cannot be apportioned with reasonable certainty. The injury suffered by Plaintiffs' Insureds was due to a power grid failure event caused by the negligence of multiple Defendants in failing to prepare for Winter Storm Uri and to supply sufficient electrical energy to the ERCOT system during Winter Storm Uri, an injury which from its nature, cannot be apportioned with reasonable certainty to the individual wrongdoers. The malfeasance and nonfeasance of the Defendants cannot be apportioned with reasonable certainty because the ERCOT electrical power grid is interconnected and indivisible, with power supply shortages in

any part of the system causing dangerous power frequency drops, power supply shortages, and necessitating rolling blackouts throughout all other parts of the system.

131. Because separate and independent acts of the negligence of two or more Defendants inflicted a single indivisible injury on Plaintiffs' Insureds, and it is impossible to determine in what proportion each Defendant contributed to the injury, or there is no rational or logical basis for an apportionment of liability or damages between the acts, all Defendants are responsible for the whole injury even though its act alone might not have caused the entire injury, or even though the same damage might have resulted from the act of another Defendant. *Lakes of Rosehill Homeowners Association, Inc. v. Jones*, 552 S.W.3d 414 (Tex. App.-- Houston [14th dist.] 2018, no pet); *Amstadt v. United States Brass Corp.*, 919 S.W.2d 644 (Tex. 1996) (holding that multiple defendants were jointly liable for the plumbing failure in plaintiff's home); *Kramer v. Lewisville Memorial Hospital*, 858 S.W.2d 397, 405-06 (Tex. 1993) (declaring exception to longstanding causation principles where inextricable combination of joint tortfeasors combines to cause harm in manner where individual responsibility cannot be fixed and proof of that responsibility is impossible); *Landers v. E. Tex. Salt Water Disposal Co.*, 151 Tex. 251, 256 (1952); 57A Am. Jur. 2d Negligence § 550.

COUNT I – NEGLIGENCE
(ERCOT)

132. Plaintiffs repeat and re-allege Paragraphs 1 through 131 of this Petition, inclusive, as though fully set forth herein as Paragraphs 1 through 131 of this Count I.

133. At all relevant times, ERCOT was the sole manager and independent system operator of an electric power grid which provided electricity to more than 26 million electric customers in Texas.

134. At all relevant times, ERCOT was under a duty to use the degree of care that electricity and grid managers of ordinary knowledge and skill would use under the same or similar circumstances to provide for the safety of the Plaintiffs' Insured's property.

135. At all relevant times, ERCOT was under a duty to ensure that PGCs were reasonably prudent and competent to reliably provide electricity to the ERCOT system, including that PGCs properly discharged their continuing duties to adequately winterize and/or maintain their facilities and equipment, to ensure they had adequate and properly qualified staff during their operations, including, foreseeable weather events, to provide necessary reserve energy to the ERCOT power grid, and to otherwise conduct their operations as a reasonably prudent electricity and grid manager so as to ensure the reliability of the ERCOT power grid.

136. At all relevant times, ERCOT knew or should have known of the unreasonably dangerous condition created by the lack of preparedness and readiness to confront the winter storm, and it neither eliminated the danger, nor warned Plaintiffs' Insureds and others of the unreasonably dangerous circumstances, which were foreseeable prior to the complained of events.

137. At all relevant times, ERCOT had control of operational planning, load forecasting, securing enough generating capacity to maintain system reliability, assessing the reliability of the generating units within its region—in both normal and abnormal operating conditions, contingency planning, planning for system reserves in the event of higher than anticipated demand and/or lower than anticipated generating supply, and ensuring that adequate supply would be capable of meeting demand during reasonably anticipated conditions.

138. At all relevant times, ERCOT was negligent and breached the duties owed to the Plaintiffs' Insureds. The negligent acts, inactions and/or omissions of this Defendant include, but are not limited to:

- a. failing to prepare for the electric needs of Texans during Winter Storm Uri;
- b. failing to adequately plan and prepare the ERCOT grid for an “extreme” weather scenario;
- c. failing to perform adequate operational planning and commit resources needed to maintain reliability;
- d. failing to forecast load and resources needed for anticipated conditions in the seven days preceding the week of February 14, 2021;
- e. failing to obtain forecasts of real output capability in advance of the anticipated February 2021 cold weather event;
- f. failing to ensure the thermal capabilities of the ERCOT system components, including the PGC’s generating units, were capable of withstanding anticipated conditions;
- g. failing to perform fault studies capable of adequately planning or designing system capacities;
- h. failing to maintain adequate contingency reserves for anticipated conditions;
- i. failing to properly model assumptions for emergency operation procedures and make adequate reserves available;
- j. failing to account for potential natural gas curtailments in planning and forecasting;
- k. failing to ensure that reserves were useable and deliverable during weather contingencies;
- l. failing to consider environmental limitations of available resources;
- m. failing to identify within ERCOT natural gas infrastructure and suppliers critical for PGC operations and classify these locations as “critical load” exempt from load shedding;
- n. failing to adequately inspect PGC facilities, PGC equipment, PGC staffing, and PGC winterization plans to ensure adequate winterization and/or compliance with winterization plans;
- o. failing to require PGCs to adopt adequate winterization plans;

- p. failing to adequately assess the electric needs of Texans during Winter Storm Uri;
- q. failing to adequately assess the magnitude of PGC outages and derates likely to occur in the event of an “extreme” winter event based upon prior extreme winter events and the PGCs lack of winterization and preparedness for a winter storm;
- r. failing to maintain the power grid system reliability prior to and during Winter Storm Uri;
- s. failing to properly maintain and winterize the power grid system prior to and during Winter Storm Uri;
- t. failing to facilitate a competitive wholesale marketplace that would have provided for enough electricity for Texans during Winter Storm Uri;
- u. failing to warn Texans prior to Winter Storm Uri about the likelihood of blackouts in the event of an “extreme” winter weather event in Texas;
- v. failing to warn Texans about the likelihood of blackouts during Winter Storm Uri after the length and magnitude of the storm had been forecasted by ERCOT;
- w. failing to warn Texans once it became obvious that it had failed to adequately assess the electric needs of Texans;
- x. failing to update, repair and modernize the power grid prior to Winter Storm Uri; and/or
- y. was otherwise negligent in ways to be shown at trial.

139. ERCOT’s behavior was egregious, unreasonable, and in no way guided by good utility practice. ERCOT’s loss of system reliability, and the resulting damages to plaintiffs, were avoidable and would have been prevented had ERCOT acted reasonably or employed good utility practice.

140. At all relevant times, the conditions during the February 2021 winter storm were both reasonably foreseeable and actually anticipated by ERCOT. Days before the onset of the

storm, and when ERCOT still had the ability to take reasonable measures that would have prevented a loss of system reliability, ERCOT was warned that such measures were necessary.

141. As a direct result of ERCOT's negligence, as described above, Plaintiffs suffered damages in a sum in excess of the jurisdictional minimum of this Court. ERCOT is jointly and severally liable to Plaintiffs for these indivisible damages.

COUNT II - NEGLIGENCE
(PGC Defendants)

142. Plaintiffs repeat and re-allege Paragraphs 1 through 141 of this Petition, inclusive, as though fully set forth herein as Paragraphs 1 through 141 of this Count II.

143. At all relevant times, Luminant, Hays, Midlothian, Oak Grove, NRG Texas, NRG South, NRG Cedar, Calpine, Wolf Hollow II, Colorado Bend II, Tenaska Frontier, Sandy Creek, Formosa, Temple Generation, Panda Temple, Mountain Creek, South Houston, Barney Davis, Nueces Bay, Laredo, Bastrop Energy, EIF Channelview, Ingleside, ExGen Handley, Air Liquide, Horse Hollow I, Horse Hollow II, Horse Hollow III, Horse Hollow IV, Cap Ridge I, Cap Ridge II, Cap Ridge III, Avangrid, Sage Draw, Oxy Vinyls, Paris Generation, and Blue Cube (the "PGC Defendants") were under a duty to use the degree of care that power generating companies of ordinary knowledge and skill would use under the same or similar circumstances to provide for the safety of the citizens of Texas and their property, including Plaintiffs' Insureds.

144. At all relevant times, the PGC Defendants were under a duty to adequately winterize and/or maintain their facilities and equipment, to ensure they had adequate and properly qualified staff during their operations, including, foreseeable weather events, to provide necessary reserve energy to the ERCOT power grid, and to otherwise conduct their operations as a reasonably

prudent power generating company in order to supply steady, continuous, and adequate, electricity to the ERCOT power grid

145. At all relevant times, the PGC Defendants were under a duty to conform their operations to good utility practice.

146. Upon information and belief, prior to February 15, 2021, the PGC Defendants failed to properly prepare for a widely predicted, forewarned, and entirely foreseeable event, and even despite multiple warnings by state and federal agencies failed to winterize their facilities and equipment, so as to cause the power generating equipment to stop working, all of which proximately caused the aforementioned water infiltration and subsequent property damage.

147. At all relevant times, the PGC Defendants were negligent and breached the duties owed to the Plaintiffs' Insureds. The negligent acts, inactions and/or omissions of the PGC Defendants include but are not limited to:

- a. failing to comply with applicable safety standards, customs, and good utility and plant management practices to adequately winterize their facilities and equipment;
- b. failing to properly supervise its employees, agents, and or subcontractors to ensure they adequately winterized the facilities and equipment;
- c. failing to hire and/or staff an adequate amount of workers before and during Winter Storm Uri to ensure against power outages and derates, as well as to ensure the power generating facility and equipment was operating at maximum generation capacity;
- d. failing to ensure the thermal capability of their equipment was capable of withstanding anticipated and foreseeable weather conditions;
- e. failing to adequately protect and winterize their generating equipment and facilities to ensure their generating units would not fail during temperatures which exceeded the lowest rated (design) temperature rating;
- f. failing to ensure new or existing generating units were designed or retrofitted to ambient temperatures and weather conditions for the

generating unit's location, accounting for the foreseeable effects of precipitation and accelerated cooling effect of wind;

- g. failing to adequately protect and winterize their generating equipment and facilities through preventative measures, including but not limited to, heat tracing, insulation, wind breaks, temporary heating, and other weather protection measures;
- h. failing to properly train their agents and/or employees to ensure they adequately winterized their facilities and equipment;
- i. failing to protect Texans from a loss of power during an extreme winter storm such as the one complained of herein by ensuring that their facilities and equipment were winterized and prepared;
- j. failing to secure adequate and reliable sources of fuel to power generating equipment and generating facilities during Winter Storm Uri;
- k. failing to secure and store an adequate supply of fuel oil to power generating equipment and generating facilities during Winter Storm Uri;
- l. failing to ensure their natural gas supply chain was secured, protected and winterized;
- m. failing to ensure that their facilities and equipment, and their natural gas suppliers facilities and equipment, was exempted from ordered blackouts by filing appropriate forms and/or taking other necessary or reasonable actions;
- n. failing to ensure that their facilities and equipment, and their natural gas suppliers facilities and equipment, was designated as "critical" load with ERCOT and local TDUs so that their fuel supply was not terminated by load shed orders;
- o. failing to ensure that they, and their natural gas suppliers, were not participating in ERCOT's "ERS" program so that their fuel supply was not terminated by load shed orders;
- p. failing to adequately protect, insulate, or heat their generation equipment and facilities to ensure continued operation during freezing temperatures;
- q. failing to adequately winterize wind turbines to ensure continued operation during freezing temperatures;

- r. failing to adequately winterize their generation equipment to prevent frozen instrumentation and other equipment malfunctions due to cold weather, such as frozen sensing lines and transmitters;
- s. failing to warn Texans and/or ERCOT prior to Winter Storm Uri about the likelihood of outages and derates in their equipment;
- t. failing to warn Texans and/or ERCOT prior to Winter Storm Uri of the reliability risks of their natural gas contracts;
- u. failing to obtain additional or alternative fuel sources to power equipment once it became obvious that their generators and/or generating equipment were unprepared and could not generate adequate electricity during Winter Storm Uri;
- v. failing to adequately coordinate with suppliers of natural gas which was necessary to fuel power generating facilities so as to avoid outages during Winter Storm Uri;
- w. failing to maintain, repair and modernize their power generating equipment prior to Winter Storm Uri; and/or
- x. were otherwise negligent in ways to be shown at trial.

148. As a direct result of the PGC Defendants' negligence, as described above, Plaintiffs suffered damages in a sum in excess of the jurisdictional minimum of this Court. The PGC Defendants are jointly and severally liable to Plaintiffs for these indivisible damages.

COUNT III - GROSS NEGLIGENCE
(ERCOT and PGC Defendants)

149. Plaintiffs repeat and re-allege Paragraphs 1 through 148 of this Petition, inclusive, as though fully set forth herein as Paragraphs 1 through 148 of this Count III.

150. Defendants' acts and/or omissions rose to the level of gross negligence. The Defendants' conduct as described herein, when viewed objectively from the standpoint of the Defendants, at the time of its occurrence, involved an extreme degree of risk, considering the extreme degree of risk and probability and magnitude of the potential harm to others and of which the Defendants had actual, subjective awareness of the risk involved. Defendants were aware of

the risk of harm to Plaintiffs' Insureds yet exhibited conscious indifference to the rights of Plaintiffs' Insureds, which proximately caused the damages complained of herein.

X. JURY TRIAL DEMANDED

151. Plaintiffs hereby demand a trial by jury of all claims so triable.

XI. PRAYER

WHEREFORE, PREMISES CONSIDERED, ALL AMERICA INSURANCE COMPANY, ALLIED WORLD ASSURANCE COMPANY (US) INC., AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA, AMERICAN ECONOMY INSURANCE COMPANY, AMERICAN FIRE & CASUALTY COMPANY, AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY, AMERICAN MERCURY LLOYDS INSURANCE COMPANY, AMERICAN PROPERTY INSURANCE COMPANY, AMERICAN ZURICH INSURANCE COMPANY, AMGUARD INSURANCE, AMTRUST FINANCIAL SERVICES, INC., AMTRUST INSURANCE COMPANY, ASSOCIATED INDUSTRIES INSURANCE COMPANY, INC., BRISTOL WEST INSURANCE COMPANY, CENTRAL MUTUAL INSURANCE COMPANY, COAST NATIONAL INSURANCE COMPANY, CONTINENTAL CASUALTY COMPANY, DISCOVER PROPERTY AND CASUALTY INSURANCE COMPANY, EASTGUARD INSURANCE, ECONOMY FIRE AND CASUALTY COMPANY, ECONOMY PREMIER ASSURANCE INSURANCE COMPANY, EMPIRE FIRE AND MARINE INSURANCE COMPANY, EMPIRE INDEMNITY INSURANCE COMPANY, EMPLOYERS INS. CO. OF WAUSAU, EVEREST INDEMNITY INSURANCE COMPANY, EVEREST NATIONAL INSURANCE COMPANY, FARMERS CASUALTY INSURANCE COMPANY, FARMERS DIRECT PROPERTY AND CASUALTY INSURANCE COMPANY, FARMERS GROUP PROPERTY AND CASUALTY

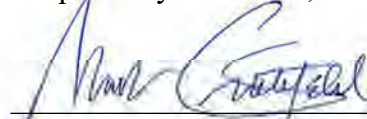
INSURANCE COMPANY, FARMERS INSURANCE COMPANY OF ARIZONA, FARMERS INSURANCE COMPANY, INC., FARMERS INSURANCE COMPANY OF IDAHO, FARMERS INSURANCE COMPANY OF OREGON, FARMERS INSURANCE COMPANY OF WASHINGTON, FARMERS INSURANCE EXCHANGE, FARMERS LLOYDS INSURANCE COMPANY OF TEXAS, FARMERS PROPERTY AND CASUALTY INSURANCE COMPANY, FARMERS SPECIALTY INSURANCE COMPANY, FARMERS TEXAS COUNTY MUTUAL INSURANCE COMPANY, FIDELITY AND DEPOSIT COMPANY OF MARYLAND, FIDELITY AND GUARANTY INSURANCE COMPANY, FIRE INSURANCE EXCHANGE, FOREMOST COUNTY MUTUAL INSURANCE COMPANY, FOREMOST INSURANCE COMPANY GRAND RAPIDS, MICHIGAN, FOREMOST LLOYDS OF TEXAS, FOREMOST PROPERTY AND CASUALTY INSURANCE COMPANY, GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY, GENERAL CASUALTY COMPANY OF WISCONSIN, GERMANIA FARM MUTUAL INSURANCE ASSOCIATION, GERMANIA INSURANCE COMPANY, HOCHHEIM PRAIRIE CASUALTY INSURANCE COMPANY, HOCHHEIM PRAIRIE FARM MUTUAL INSURANCE ASSOCIATION, HOME STATE COUNTY MUTUAL INSURANCE COMPANY, ILLINOIS FARMERS INSURANCE COMPANY, IRONSHORE SPECIALTY INSURANCE COMPANY, LIBERTY INSURANCE CORPORATION, LIBERTY LLOYDS OF TEXAS INSURANCE COMPANY, LIBERTY MUTUAL FIRE INSURANCE COMPANY, LIBERTY MUTUAL INSURANCE COMPANY, LIBERTY MUTUAL PERSONAL INSURANCE COMPANY, MERIDIAN SECURITY INSURANCE COMPANY, MID-CENTURY INSURANCE COMPANY, MILFORD CASUALTY INSURANCE COMPANY, MT. HAWLEY INSURANCE COMPANY, NATIONAL FIRE

INSURANCE COMPANY OF HARTFORD, NATIONAL SPECIALTY INSURANCE COMPANY, NEIGHBORHOOD SPIRIT PROPERTY AND CASUALTY COMPANY, NORGUARD INSURANCE, NORTHFIELD INSURANCE COMPANY, OHIO SECURITY INSURANCE COMPANY, PEERLESS INSURANCE COMPANY, PHARMACISTS MUTUAL INSURANCE COMPANY, PRAETORIAN INSURANCE COMPANY, QBE INSURANCE CORPORATION, QBE SPECIALTY INSURANCE COMPANY, REGENT INSURANCE COMPANY, REPUBLIC LLOYDS, REPUBLIC UNDERWRITERS INSURANCE COMPANY, RLI INSURANCE COMPANY, ROCHDALE INSURANCE COMPANY, SAFECO INSURANCE COMPANY OF INDIANA, SAFECO LLOYDS INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY D/B/A BRISTOL WEST SPECIALTY INSURANCE, SOUTHERN INSURANCE COMPANY, ST PAUL FIRE AND MARINE INSURANCE CO., ST PAUL GUARDIAN INSURANCE COMPANY, STATE AUTO PROPERTY & CASUALTY COMPANY, STATE AUTOMOBILE MUTUAL INSURANCE COMPANY, STATE FARM COUNTY MUTUAL INSURANCE COMPANY OF TEXAS, STATE FARM FIRE AND CASUALTY COMPANY, STATE FARM LLOYDS, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, STEADFAST INSURANCE COMPANY, SURETY BONDING COMPANY OF AMERICA, TECHNOLOGY INSURANCE COMPANY, TEXAS FARMERS INSURANCE COMPANY, TEXAS PIONEER FARM MUTUAL INSURANCE ASSOCIATION, INC., THE CHARTER OAK FIRE INSURANCE COMPANY, THE CONTINENTAL INSURANCE COMPANY, THE OHIO CASUALTY INSURANCE COMPANY, THE PHOENIX INSURANCE COMPANY, THE STANDARD FIRE INSURANCE COMPANY, THE TRAVELERS HOME AND MARINE INSURANCE

COMPANY, THE TRAVELERS INDEMNITY COMPANY, THE TRAVELERS INDEMNITY COMPANY OF AMERICA, THE TRAVELERS LLOYDS INSURANCE COMPANY, TRANSPORTATION INSURANCE COMPANY, TOGGLE INSURANCE COMPANY, TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA, TRAVELERS COMMERCIAL INSURANCE COMPANY, TRAVELERS EXCESS AND SURPLUS LINES COMPANY, TRAVELERS INDEMNITY COMPANY OF CONNECTICUT, TRAVELERS LLOYDS OF TEXAS INSURANCE COMPANY, TRAVELERS PERSONAL INSURANCE COMPANY, TRAVELERS PERSONAL SECURITY INSURANCE COMPANY, TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, TRUCK INSURANCE EXCHANGE, UNITED SERVICES AUTOMOBILE ASSOCIATION (“USAA”), UNIVERSAL SURETY OF AMERICA, USAA CASUALTY INSURANCE COMPANY, USAA GENERAL INDEMNITY COMPANY, VALLEY FORGE INSURANCE COMPANY, WESCO INSURANCE COMPANY, WEST AMERICAN INSURANCE COMPANY, WESTERN SURETY COMPANY, ZURICH AMERICAN INSURANCE COMPANY, ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS, 21ST CENTURY ASSURANCE COMPANY, 21ST CENTURY CENTENNIAL INSURANCE COMPANY, and 21ST CENTURY INSURANCE COMPANY, request judgment against Defendants ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.; LUMINANT GENERATION COMPANY LLC; HAYS ENERGY, LLC; MIDLOTHIAN ENERGY, LLC; OAK GROVE MANAGEMENT COMPANY LLC; NRG TEXAS POWER LLC; NRG SOUTH TEXAS LP; NRG CEDAR BAYOU DEVELOPMENT COMPANY, LLC; CALPINE CORPORATION; WOLF HOLLOW II POWER, LLC; COLORADO BEND II POWER, LLC; TENASKA FRONTIER PARTNERS, LTD.; SANDY CREEK ENERGY ASSOCIATES, L.P.; FORMOSA UTILITY VENTURE, LTD.; TEMPLE

GENERATION I, LLC; PANDA TEMPLE POWER II, LLC; MOUNTAIN CREEK POWER, LLC; SOUTH HOUSTON GREEN POWER, LLC; BARNEY DAVIS, LLC; NUECES BAY, LLC; LAREDO, LLC; BASTROP ENERGY PARTNERS, L.P.; EIF CHANNELVIEW COGENERATION, LLC; INGLESIDE COGENERATION LIMITED PARTNERSHIP; EXGEN HANDLEY POWER, LLC; AIR LIQUIDE LARGE INDUSTRIES U.S. LP; HORSE HOLLOW WIND I, LLC; HORSE HOLLOW WIND II, LLC; HORSE HOLLOW WIND III, LLC; HORSE HOLLOW WIND IV, LLC; CAP RIDGE WIND I, LLC; CAP RIDGE WIND II, LLC; CAP RIDGE WIND III, LLC; AVANGRID TEXAS RENEWABLES, LLC; SAGE DRAW WIND, LLC; OXY VINYLS, LP; PARIS GENERATION LP; and BLUE CUBE OPERATIONS LLC, in an amount in excess of the minimum jurisdictional requirements of this Court, together with pre-judgment interest until the date of judgment, at the highest interest rate allowed by law; interest from the date of judgment until paid, at the highest interest rate allowed by law; reasonable and necessary attorneys' fees; costs of court; and all other relief, both special and general, at law and in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,



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Respectfully submitted,

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