

## **Can state's grid manager be held accountable for its errors?**

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

The Dallas company is now in court, alleging that the Electric Reliability Council of Texas intentionally manipulated the projections to encourage new power plant construction and relieve the political pressure that was building on the grid manager to increase generation in the state. The case has implications that reach beyond whether Panda gets its money back to issues as profound as the reliability of power grid, the integrity of the wholesale electricity market and the accountability of an organization whose decisions affect thousands of businesses, millions of people and billions of dollars.

The Texas Supreme Court is considering whether ERCOT, a private, nonprofit corporation, is entitled to sovereign immunity, a well-established legal principle that protects governments and their agencies from lawsuits. The high court's decision, expected later this year, could determine whether electricity buyers and sellers can hold the grid manager responsible for pricing errors, mistake-ridden forecasts or life and death consequences of power outages. These problems aren't just hypothetical. After a data error this spring forced electricity buyers to pay millions of dollars more than they should have, ERCOT declined to reprice the power, arguing that such errors are so frequent that continual repricing would disrupt the electricity market.

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