

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	CASE NO. 21-30725
BRAZOS ELECTRIC POWER	§	
COOPERATIVE, INC.,	§	Chapter 11
	§	
Debtor. ¹	§	

**DECLARATION OF CLIFTON KARNEI IN SUPPORT OF
CHAPTER 11 PETITION AND EMERGENCY FIRST-DAY MOTIONS**

I, Clifton Karnei, state as follows:

1. I am the Executive Vice President and General Manager of Brazos Electric Power Cooperative, Inc. (“Brazos Electric” or the “Debtor”) and have served in this role since September 1997. Brazos Electric is a non-profit electric cooperative corporation organized under the laws of the state of Texas pursuant to Section 161.059 of the Texas Utilities Code and is the debtor and debtor in possession in this case.

2. I have over 35 years of experience in the energy industry, including extensive experience in the public-power sector, and since joining Brazos Electric in 1997. I am a former member of the Electric Reliability Council of Texas (“ERCOT”) Board of Directors and previously served as the Chair and Vice Chair of the ERCOT Finance & Audit Committee for over 10 years. In addition, I serve on the boards of directors for ACES, an energy-management company that helps electric cooperatives manage energy-market risks, and National Renewable Cooperative Organization, an organization that helps its members develop and use renewable energy sources. Before joining Brazos Electric, I worked as the General Manager at the San Miguel Electric

¹ The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number is: Brazos Electric Power Cooperative, Inc. (4729). Additional information regarding this case may be obtained on the website of the Debtor’s proposed claims and noticing agent at <http://cases.stretto.com/Brazos>. The Debtor’s address is 7616 Bagby Avenue, Waco, TX 76712.

Cooperative, a 440-megawatt lignite-fired electric generation facility, in Jourdanton, Texas and as a Senior Auditor at the accounting firm Deloitte. I earned a Bachelor of Business Administration in Accounting, *summa cum laude*, from the University of Texas at San Antonio and am a Certified Public Accountant in the State of Texas.

3. I am familiar with Brazos Electric's day-to-day operations, business and financial affairs, and books and records. I submit this declaration (the "Declaration") to assist the Court and other parties-in-interest in better understanding the catastrophic and unprecedented circumstances necessitating this chapter 11 case and in support of (i) the Debtor's voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") filed on March 1, 2021 (the "Petition Date") and (ii) the relief, in the form of motions, that Brazos Electric has requested of the Court (the "First Day Motions").²

4. Except as otherwise indicated, all facts set forth in this Declaration are either based on my personal knowledge, information obtained from Brazos Electric's management team and advisors, my review of documents and information concerning Brazos Electric's operations, financial affairs, and restructuring initiatives, or my opinions based upon my experience and knowledge. If called upon to testify, I could and would testify competently to the facts set forth herein. I am duly authorized to submit this Declaration.

INTRODUCTION

5. Brazos Electric has been a model of financial stability for 80 years. By aggregating the distribution needs of its electric cooperative members to obtain best-in-class generation and transmission facilities through low-cost financing, Brazos Electric has maintained an "A+" and

² Any capitalized term not expressly defined herein shall have the meaning ascribed to that term in the relevant First Day Motion.

“A” issuer credit ratings from Fitch and S&P, respectively. A product of the Rural Electrification Act of 1936, which provided federal loans for the installation of electrical transmission and distribution systems to serve isolated rural areas of the United States, the funding was channeled through electric cooperatives such as Brazos Electric and its member cooperatives. For eight decades, Brazos Electric has consistently met the generation and transmission needs of its members and maintained an impeccable financial record as Texas has seen its population explode during this period.

6. As the month of February 2021 began, the notion that a financially stable cooperative such as Brazos Electric would end the month preparing for bankruptcy was unfathomable. Yet that changed as a direct result of the catastrophic failures that accompanied the winter storm that blanketed the state of Texas on or about February 13, 2021 and maintained its grip of historically sub-freezing temperatures for days. Electric generation equipment and natural gas pipeline equipment have been reported to have frozen, causing the available generation within ERCOT to dramatically decline.

7. “If we hadn’t taken action, it was seconds and minutes (away from a total system failure)” said ERCOT’s CEO Bill Magness after almost losing power across the entire ERCOT grid early the morning of February 15, 2021 and forced rotating outages across Texas. In the wake of the crisis, the Public Utility Commission of Texas (“PUCT”) instructed ERCOT to set record-high prices for electricity, as described by the Wall Street Journal article “*Amid Blackouts, Texas Scrapped Its Power Market and Raised Prices. It Didn’t Work.*” attached hereto as **Exhibit A**. The price for wholesale electricity was set at the maximum price of \$9,000 per megawatt hour (or MWh) for more than four straight days. In addition, ERCOT also imposed other ancillary fees totaling more than \$25,000 per MWh. The consequences of these prices were devastating.

8. As will be described in more detail below, Brazos Electric was presented with invoices for the seven-day Black Swan Winter Event (defined below) by ERCOT, which, when combined, amounted to over \$2.1 billion, payment of which was required within days. Brazos Electric responded to this demand for payment with a Force Majeure Event letter, a copy of which is attached hereto as **Exhibit B**, and informed ERCOT that it was abating payment pending resolution of the Force Majeure Event. Notably, while issuing invoices, ERCOT and PUCT members were called to testify before the Texas legislature as to the catastrophic events of the prior week.

9. As will be discussed further below, Brazos Electric is the wholesale provider for its member cooperatives. Brazos Electric recovers its costs from its members, which, ultimately, are borne by the Texas retail consumers that the members serve. Simply put, Brazos Electric suddenly finds itself caught in a liquidity trap that it cannot solve with its current balance sheet. Brazos Electric will not foist this catastrophic “black swan” financial event onto its members and their consumers, and commenced this bankruptcy to maintain the stability and integrity of its entire electric cooperative system.

HISTORICAL BACKGROUND AND OVERVIEW

A. Background and Mission

10. Headquartered in Waco, Texas and founded in 1941, Brazos Electric is Texas’s largest and oldest generation and transmission electric cooperative (“G&T Co-Op”). Brazos Electric is a 4,000 megawatt G&T Co-Op and has over 370 employees in Waco, at Brazos Electric’s power plants, and at transmission field offices. Brazos Electric has more than 2,682 miles of transmission line and 385 substations/delivery points and is Texas’s sixth largest transmission provider. Brazos Electric constructs, owns, and operates many of the transmission lines that move electric power to its members’ distribution systems.

11. All of Brazos Electric's owned generation facilities are natural gas-fired and it has long-term power purchase agreements ("PPAs") for coal-fired generation from Sandy Creek Generating Station (defined herein), renewable energy from a solar-generation facility, and has a short-term PPA for renewable energy from a hydroelectric facility, as well as other bilateral purchases of various terms from other wholesale market energy suppliers. Brazos Electric is heavily dependent on natural gas for generating power and power prices in ERCOT are highly dependent on the price and availability of natural gas. Brazos Electric has gas transportation agreements with major Texas intrastate pipelines and purchases its natural gas through industry standardized NAESB contracts.

12. Brazos Electric's mission is to consistently provide reliable and affordable power to its member-consumers; affordability is especially important in rural communities that have a disproportionate number of customers below the poverty level. As a G&T Co-Op owned by its members, Brazos Electric's mission also includes being responsive to the needs of our member distribution cooperatives. Brazos Electric operates as a wholesale provider of power to its member cooperatives, who then supply that power to Texas residential and business consumers.

13. Prior to the Black Swan Winter Event the week of February 13, Brazos Electric held "A+" and "A" issuer credit ratings from Fitch and S&P, respectively, which is higher than most electric co-ops.

B. Corporate Structure

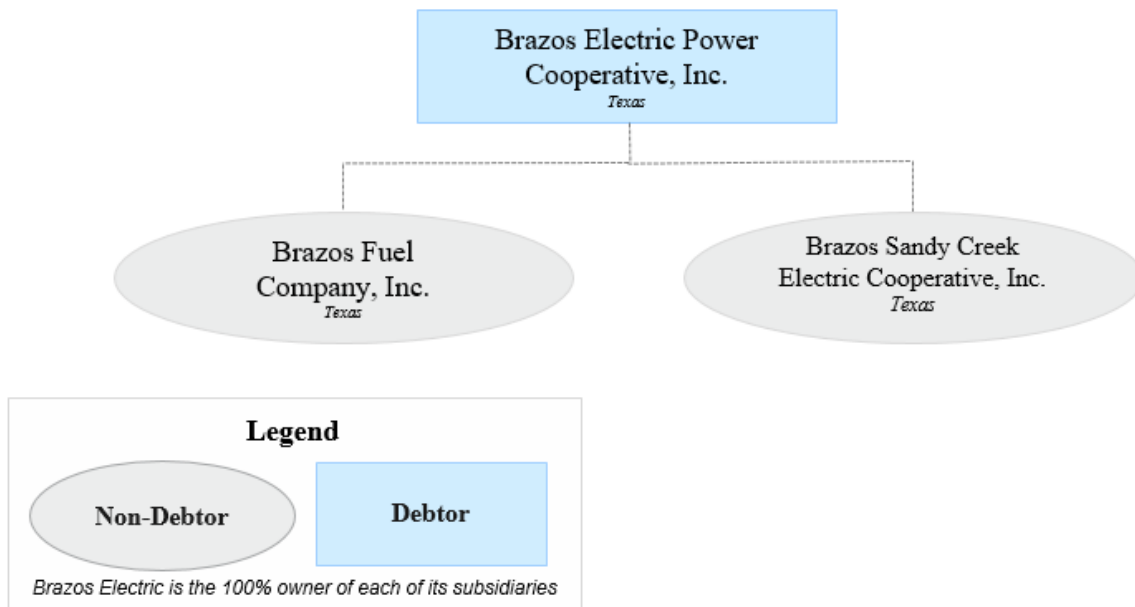
14. Brazos Electric's corporate structure is relatively straightforward. Brazos Electric is a Texas non-profit electric cooperative corporation pursuant to Section 161.059 of the Texas Utilities Code. All of the Debtor's employees are employed by Brazos Electric.

15. Brazos Sandy Creek Electric Cooperative, Inc. ("Brazos Sandy Creek"), a Texas non-profit electric cooperative corporation, is a wholly owned subsidiary of Brazos Electric, and

was formed to acquire an undivided tenant-in-common (“TIC”) ownership interest in Sandy Creek Energy Station (the “Sandy Creek Generating Station”), an approximate 940-megawatt coal-fired generation facility located near Riesel, Texas. Brazos Sandy Creek is not a debtor in this chapter 11 case.

16. Brazos Fuel Company, Inc. (“Brazos Fuel”), a Texas consuming assets corporation, is a wholly owned subsidiary of Brazos Electric, and was formed for the purpose of the procurement of natural gas for the benefit of Brazos Electric. Brazos Fuel, however, is no longer an operating entity and is not a debtor in this chapter 11 case.

17. The Debtor’s organizational chart is shown below:



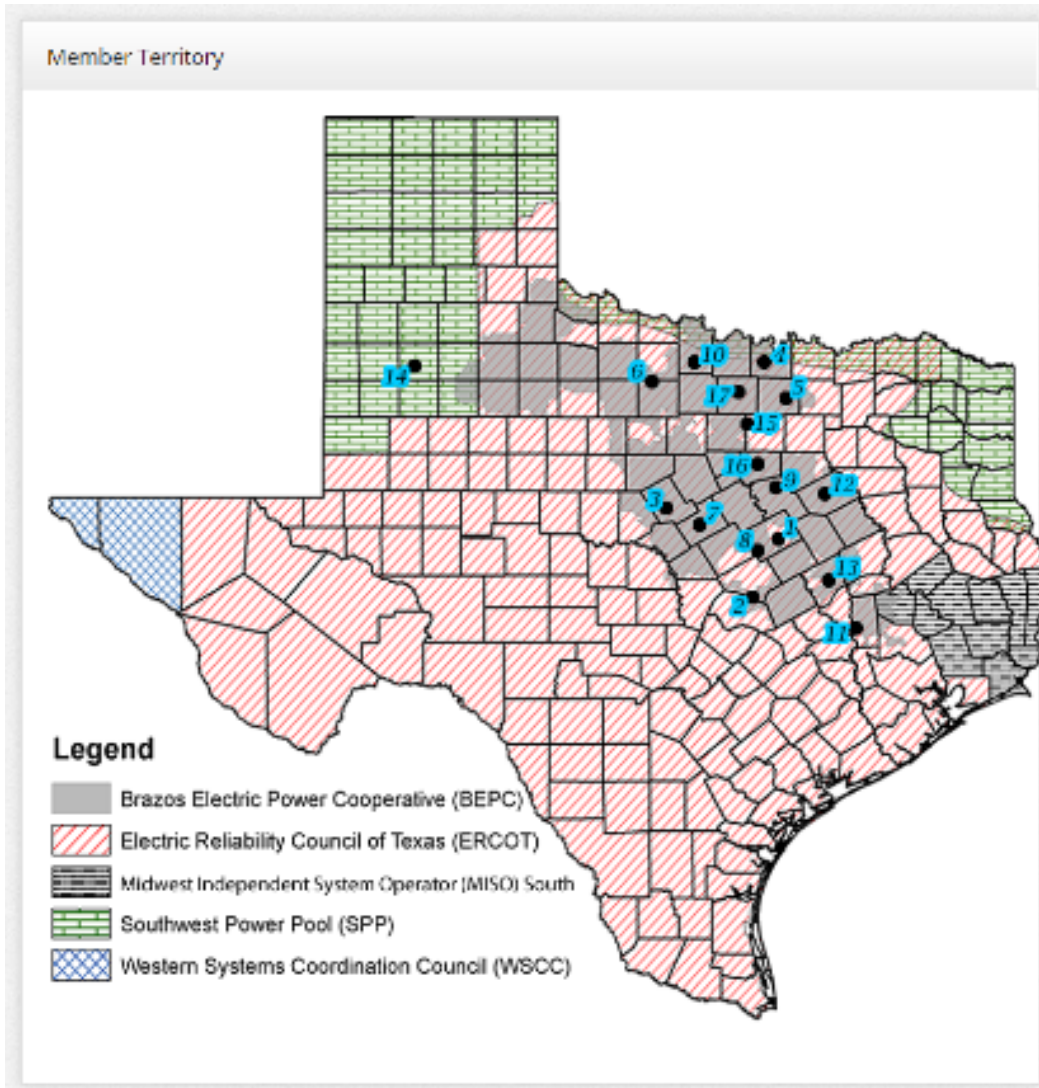
C. Co-Op Member-Owner Distribution Cooperatives

18. Brazos Electric generates and procures through short-term and long-term PPAs, power and energy to sell at wholesale to its 16 member-owner distribution cooperatives (collectively, the “Co-Op Members”). Brazos Electric’s Co-Op Members are: (1) Mid-South Electric Cooperative Association; (2) Wise Electric Cooperative, Inc.; (3) Denton County Electric

Cooperative, Inc., d/b/a CoServ Electric (“CoServ Electric”); (4) United Electric Cooperative Services, Inc., d/b/a United Cooperative Services (“UCS”); (5) Comanche County Electric Cooperative Association; (6) Hamilton County Electric Cooperative Association; (7) J-A-C Electric Cooperative, Inc.; (8) South Plans Electric Cooperative, Inc.; (9) Heart of Texas Electric Cooperative, Inc.; (10) Cooke County Electric Cooperative Association, d/b/a PenTex Energy; (11) Navarro County Electric Cooperative, Inc.; (12) Bartlett Electric Cooperative, Inc.; (13) Fort Belknap Electric Cooperative, Inc.; (14) HILCO Electric Cooperative, Inc.; (15) Navasota Valley Electric Cooperative, Inc.; and (16) Tri-County Electric Cooperative, Inc. (“Tri-County”). Brazos Electric’s Board of Directors is comprised of one director and one alternate (for those Co-Op Members that designate an alternate director)³ nominated from each of its 16 Co-Op Members.

19. Three Co-Op Members (CoServ Electric, UCS, and Tri-County) serve a robust and growing retail customer base that surrounds three sides of the Dallas/Fort Worth metropolitan area and other Co-Op Members serve Texas consumers in areas spanning across 68 counties from just north of Houston, Central Texas and near the Texas panhandle, as depicted below:

³ The alternate director nominated by a Co-Op Member serves on the board only in the absence of the director nominated by that Co-Op Member.



20. The economic and practical realities of member-ownership in a non-profit Texas electric cooperative are unique and different than holding an equity interest in a for-profit company, in part because an electric cooperative is owned by the members it serves, unlike for-profit companies. Brazos Electric does not earn “profits,” rather, any revenue received over and above its operating expenses is called “margin,” a portion of which is allocated to the members as “patronage capital.” Patronage capital is allocated to the Co-Op Members annually based upon their individual power purchases during that year. Each Co-Op Member has a patronage capital account. While the Co-Op Members’ patronage accounts are retired over time and benefit from a

liquidation preference, the majority of Brazos Electric patronage is re-invested in Brazos Electric to maintain financial stability and fund capital projects. Although the size of the Co-Op Members' respective ownership interests varies, each Co-Op Member has the same voting power (each Co-Op Member has only one vote and each of the 16 directors on the Board of Directors has but one vote).

21. As of December 31, 2020, the estimated patronage capital allocations per Co-Op Member were as follows:

<i>Co-Op Member</i>	<i>Patronage Allocation</i>
Bartlett Electric Cooperative	1.5%
Comanche Electric Cooperative	2.0%
CoServ Electric	30.8%
Fort Belknap Electric Cooperative	1.1%
Hamilton County Electric Cooperative	1.8%
Heart of Texas Electric Cooperative	3.2%
HILCO Electric Cooperative	4.0%
J-A-C Electric Cooperative	0.9%
Mid-South Synergy	4.5%
Navarro County Electric Cooperative	3.5%
Navasota Valley Electric Cooperative	3.2%
PenTexEnergy	3.6%
South Plains Electric Cooperative	3.4%
Tri-County Electric Cooperative	17.6%
United Electric Cooperative Services	14.6%
Wise Electric Cooperative	4.3%
<i>Total Patronage Capital</i>	100%

D. Revenues, Assets, and Financial Performance

22. Brazos Electric services its Co-Op Members through substantially identical and inter-dependent "all-requirements" wholesale power contracts (the "All Requirements

Contracts”), pursuant to which Brazos Electric is obligated to supply each of its Co-Op Members with 100% of their requirements for electricity, transmission, substation, and ancillary services needed for the Co-Op Members to supply their respective member retail consumers (approximately 700,000 retail meters, each meter may serve multiple consumers). The All Requirements Contracts expire in December 2045. Brazos Electric’s revenues are derived primarily from the sale of electric energy to its Co-Op Members through the All Requirements Contracts. The end users of power provided by Brazos Electric through its Co-Op Members are predominately residential (accounting for approximately 58% of all revenues), which, historically, has contributed to the stability of Brazos Electric’s overall revenue base. Indeed, Brazos Electric’s wholesale power, transmission and distribution substation revenues were \$1.042 billion, \$1.038 billion, and \$1.041 billion in 2018, 2019, and 2020, respectively.

23. Brazos Electric’s Board of Directors establishes the rates charged for power and distribution services provided to Brazos Electric’s Co-Op Members, and the transmission rates charged by Brazos Electric are regulated by the PUCT.

24. As mentioned above, all of Brazos Electric’s owned generation facilities are natural gas-fired, but Brazos Electric has long-term PPAs for the coal-fired generation from the Sandy Creek Generating Station, renewable energy from a solar-generation facility, and has a short-term PPA for renewable energy from a hydroelectric facility, as well as other bilateral purchases of various terms from other wholesale market energy suppliers. Brazos Electric’s generation facilities, and other generation facilities in ERCOT, are heavily dependent upon natural gas for generating power, and, as a result, power prices in ERCOT are highly dependent upon the price and availability of natural gas (only approximately 41% of Brazos Electric’s natural gas-fired plants have the ability to burn oil as a backup fuel source).

i. Owned and Contracted Generation

25. Brazos Electric sources electricity through a combination of purchased power, owned generation, and forward-energy purchases from a number of different counterparties. Brazos Electric's energy mix in recent years has predominantly been purchased power, followed by Brazos Electric's owned natural-gas-fired generation, coal-fired generation, dual fuel and renewables. Currently, Brazos Electric's three gas-fired plants provide approximately 2,075 megawatts of power.

26. Jack County Plant. The Jack County Plant is a 1,210-megawatt, natural gas-fired, combined-cycle power plant located near Jacksboro, Texas. The Jack County Plant consists of four natural gas-fired combustion turbine generators, four heat recovery steam generators, two steam turbine generators, and other assorted equipment. Brazos Electric began providing power from the first phase of the Jack County Plant to cooperative members in 2005. The plant was expanded with a second phase that was completed in 2011. The Jack County Plant is Brazos Electric's newest gas plant.



27. The Randle W. Miller Plant. The Randle W. Miller County Plant is a 596-megawatt, gas-fired facility consisting of three steam generators and two gas turbines, located in Palo Pinto County. Four of the units at this plant have backup oil supply that can fuel generation.



28. The Johnson County Plant. The Johnson County Plant is a 269-megawatt gas-fired, combined-cycle plant located in Cleburne, Texas. The plant entered commercial operation in 1997 and Brazos Electric purchased the power through a long-term PPA. However, the plant was severely damaged in 2005, and was later acquired by Brazos Electric. In 2006, the plant was repaired and restarted. This plant has backup oil supply that can fuel generation.



29. Power Purchase Agreements and Other Contracted Assets. Brazos Electric is party to a number of PPAs as well as forward-energy contracts and heat-rate call options (which give Brazos Electric the right to call electricity above a specified market heat rate) for physical settlement. Brazos Electric's contracted power purchases account for more than 1900 megawatts of its total electric capacity. Brazos Electric's mix of owned generation and contracted resources has helped it lower electric rates to members, limit operational risks through diversification of supply and provide a hedge against potentially higher prices in the ERCOT market under normal circumstances.

ii. Transmission

30. Brazos Electric owns and operates 2,682 miles of transmission lines and over 490 transformation substations. Transmission service is provided under rates regulated by the PUCT. Brazos Electric' approved Transmission Cost of Service recovered from approximately 26 million Texas end use consumers. Brazos Electric's PUCT-approved Transmission Cost of Service provided revenues totaling more than \$134 million in 2020.

E. Certain Other Creditors

iii. Critical Trade Vendors

31. Brazos Electric relies heavily on numerous trade vendors to operate its businesses. These vendors include certain suppliers and services providers that Brazos Electric relies upon in the operation of its business. These vendors are critical to Brazos Electric's businesses because they (i) possess unique technical knowledge regarding, and have familiarity with, Brazos Electric's business, (ii) provide specialized materials and/or services to Brazos Electric that are vital to Brazos Electric's operations going forward, (iii) are located near Brazos Electric's operations, or (iv) provide some combination of the foregoing. Specifically, Brazos Electric relies on critical trade vendors that include transportation, storage, and other essential goods and services. Finally, certain other critical vendors provide equipment, parts, materials and labor for various plants that are necessary to operate Brazos Electric's business and maintain the safety of Brazos Electric's employees, as well as the execution of ongoing construction projects to expand Brazos Electric's transmission system.

32. As of the Petition Date, Brazos Electric estimates that there is approximately \$340 million in outstanding trade debt.

iv. Financial Derivatives and Hedging Obligations

33. Brazos Electric maintains a robust hedging program designed to, among other things, mitigate risk related to wholesale electricity prices and interest-rate exposure for a portion of its expected debt levels through 2045. Brazos Electric contracts with a number of financial institutions that require the placement of initial collateral deposits and potential subsequent margin calls. Posting of margin is usually triggered by changes in the market values of the positions and/or changes in hedging activity. The amount of credit support that must be provided under these arrangements typically is based on the difference between the price of the commodity in a given

contract and the market price of the commodity. Significant movements in market prices can result in a requirement to provide cash collateral and letters of credit in very large amounts. As of December 31, 2019 and 2018, \$8.1 million and \$29.3 million, respectively, was posted as collateral by Brazos Electric under its hedging arrangements. As discussed further below, Brazos Electric also is required to post collateral with ERCOT to support hedging activity in the Day-Ahead Market (or DAM) and participation in Congestion Revenue Rights (or CRR) auctions.

34. As of the Petition Date, \$345.9 million of cash collateral was provided to various counterparties (most of which was posted with ERCOT and may have been swept) as margin collateral.

F. Intercompany Transactions.

35. In the ordinary course of business, Brazos Electric maintains a business relationship with its wholly owned subsidiary Brazos Sandy Creek, conducting intercompany transactions (collectively, the “Intercompany Transactions”) from time to time that result in intercompany receivables and payables (“Intercompany Claims”). Brazos Electric tracks all fund transfers in its accounting system and can ascertain, trace, and account for all Intercompany Transactions and will continue to do so postpetition. Substantially all of Brazos Electric’s Intercompany Transactions are dictated by the Brazos Sandy Creek PPA. Payments from Brazos Electric to Brazos Sandy Creek for power generated by the Sandy Creek Station incorporate the cost of generating the power, *less* the value of the services provided by Brazos Electric to Brazos Sandy Creek, which, for the most part, take the form of employee resources and other administrative functions. Intercompany activity beyond the scope of the Brazos Sandy Creek PPA generally consists of payment of invoices related to shared vendors and other smaller items. These invoice amounts are not typically material and are settled in cash by Brazos Electric on a regular basis.

BRAZOS ELECTRIC'S CAPITAL STRUCTURE

36. As of the Petition Date, the principal amount of Brazos Electric's funded debt obligations total approximately \$2.04 billion (excluding interest, obligations under various hedging arrangements, letters of credit, and other charges), as summarized on a consolidated basis below:

<i>Debt Obligations</i>	<i>Maturity</i>	<i>Principal Amount (000)</i>
Federal Financing Bank (FFB) Secured Notes		
<i>Various rates from 0.912% to 5.291%</i>	Various dates through December 2045	\$1,809,613
<i>Less Current Cash Cushion and RUS Cushion of Credit</i>		(\$245,004)
Total Secured Debt		\$1,564,609
Unsecured Revolving Credit Agreement		
<i>Revolving Facility</i>	September 2023	\$479,975
Total Unsecured Financed Debt		\$479,975
Total Debt Obligations (in thousands)		\$2,044,584

A. Rural Utilities Service Obligations and Federal Financing Bank Secured Notes

37. Brazos Electric's long-term secured indebtedness (approximately \$1.81 billion) is financed through the Federal Financing Bank ("FFB"), a government corporation that provides financings at favorable, below-market rates, which indebtedness is guaranteed by the Rural Utilities Service ("RUS"), a Rural Development agency of the United States Department of Agriculture ("USDA"). The notes issued to Brazos Electric by the FFB (the "FFB Secured Notes"), as well as related reimbursement notes to RUS (should RUS pay FFB under its guarantee of the FFB Secured Notes), are secured by that certain Indenture of Deed of Trust, Security Agreement, and Financing Statement dated as of June 1, 2010 (as amended, restated, modified, and supplemented from time to time, the "Trust Indenture") by and between Brazos Electric, as grantor, and Regions Bank, as Trustee (the "Indenture Trustee"). FFB has, from time to time,

made various loans to Brazos Electric to fund capital projects. The terms and conditions governing the FFB loans are set forth in the FFB Secured Notes and in a loan contract with RUS. Most recently, in November 2020, Brazos Electric entered into that certain Sixth Supplemental Indenture with the Indenture Trustee for the purpose of securing an additional loan from FFB in a principal amount of up to \$128,990,000 (the "AU8 FFB Note"), and terms and conditions governing the AU8 FFB Note are set forth in that certain Fifth Amended and Restated Loan Contract, dated as of December 15, 2020 (as amended, restated, modified, and supplemented from time to time, the "RUS Loan Contract") between Brazos Electric and the United States of America, acting through the Administrator of RUS. The AU8 FBB Note will be used to fund capital expenditures, primarily for upgrades to transmission systems, but, as of the Petition Date, there have been no borrowings under the AU8 FFB Note. The AU8 FFB Note and the rest of the FFB Secured Notes (and related RUS reimbursement Notes) are secured under the Trust Indenture by liens on substantially all of Brazos Electric's assets, including the All Requirements Contracts.

38. As of the Petition Date, there is approximately \$1.81 billion in principal amount outstanding under the FFB Secured Notes.

39. Brazos Electric participates in the "Cushion of Credit" program offered by RUS pursuant to 7 C.F.R. § 1785.68 for direct and guaranteed RUS or FFB loans and obligations. Under the Cushion of Credit program, RUS established and maintains an interest-bearing account (the "CoC Account")⁴ with the United States Treasury for Brazos Electric. The CoC Account is administered by RUS and funded on a voluntary basis by Brazos Electric, with amounts RUS receives from Brazos Electric that *exceed* the required payments under the applicable financing documents. The CoC Account, once funded, is fully restricted for application to debt service for

⁴ The Cushion of Credit Account currently bears interest at a rate of 4 percent per annum.

the FFB Secured Notes. Although Brazos Electric has some ability to direct which FFB/RUS obligations the funds are applied to, the deposited funds cannot be applied funds for any other purpose.

40. As of the Petition Date, Brazos Electric's CoC Account contains approximately \$245.04 million, which amount is sufficient to pay Brazos Electric's debt service on its current FFB/RUS secured debt for the next 18 months.⁵

B. The Unsecured Revolving Credit Agreement

41. Brazos Electric maintains a long-term (maturing in 2023) unsecured line of credit under that certain Second Amended and Restated Credit Agreement, dated as of September 28, 2018 (as amended, restated, modified, and supplemented from time to time, the "Revolving Credit Agreement," and together with all other documentation executed in connection with any of the foregoing, the "Prepetition Revolving Credit Documents"), by and among Bank of America N.A., as Administrative Agent, Swing Line Lender, and L/C Issuer ("Bank of America" or "Agent"), and certain lenders party thereto (collectively, the "Revolving Lenders").⁶ The Revolving Credit Agreement provides Brazos Electric with a \$500 million revolving line of credit (the "Revolving Facility"), which bears an interest rate of 1.11% (as of February 26, 2021). As part of Revolving Facility, the Revolving Credit Agreement provides Brazos Electric's letter of credit and swing-line-loan facilities. Historically, Brazos Electric has used the liquidity available under the Revolving Credit Agreement to fund Brazos Electric's working capital needs, contribute to the

⁵ Due to rule changes implemented during the Trump administration, effective December 20, 2018, future deposits into the CoC Account have been prohibited.

⁶ As of the Petition Date, the Debtor believes that the Lenders include Bank of America, N.A.; CoBank; ACB; National Rural Utilities Cooperative Finance Corporation; Wells Fargo Bank, National Association; Comerica Bank; MUFG Bank, Ltd.; Regions Bank; and Truist Bank f/k/a Branch Banking and Trust Company.

financing of various other capital projects pending long-term financings, and for various collateral postings required in the ERCOT wholesale market, including various bilateral counterparties.

42. Brazos Electric has fully drawn the Revolving Facility in order to access additional liquidity in the wake of the Black Swan Winter Event, as discussed in greater detail in Paragraphs 49 through 61 of this Declaration. As of the Petition Date, there is approximately \$479.98 million in principal amount outstanding under the Revolving Facility (excluding issued but undrawn letters of credit, which use the remaining approximately \$20 million in commitments under the Revolving Facility; Brazos Electric is required to reimburse the applicable issuers under the Revolving Facility for amounts drawn on such letters of credit).

C. The MUFG Letter of Credit Agreement

43. Brazos Electric is party to that certain unsecured Continuing Letter of Credit Agreement (For Standby Letters of Credit) dated as of June 18, 2019 (as amended, restated, modified, and supplemented from time to time, the “MUFG L/C Agreement”) with MUFG Bank, Ltd. (“MUFG”). The MUFG L/C Agreement, provides for MUFG to issue, in its sole discretion from time to time, irrevocable letters of credit in favor of counterparties or obligees of Brazos Electric in connection with its business. As of the Petition Date, there are \$99.2 million in letters of credit issued under the MUFG L/C Agreement. Brazos Electric is required to reimburse MUFG for amounts drawn on any letters of credit issued under the MUFG L/C Agreement.

THE TEXAS ELECTRICITY MARKET AND ERCOT

44. Texas is one of the largest electricity markets in the United States. Texas’s grid is one of the three main grids in the United States known as the Eastern Interconnection, Western Interconnection and Texas Interconnection. Several regional reliability coordinating organizations are responsible for ensuring the reliability of the Texas electricity system and ERCOT is one of

the larger such organizations. ERCOT is an independent system operator (“ISO”)⁷ that is solely responsible for managing the Texas Interconnection, which covers 213 of the 254 Texas counties. Generally, reliability regions within the Eastern and Western Interconnections are subject to regulation by the Federal Energy Regulatory Commission (“FERC”) and various regional reliability agencies. The ERCOT reliability region, by contrast, is its own standalone interconnection, and it has very limited export and import capability. Texas is the only one of the contiguous 48 states with its own standalone electricity grid. ERCOT effectively serves as a clearinghouse; it is responsible for procuring energy on behalf of its members while maintaining the reliable operation of the electricity supply system in the market. ERCOT also performs financial settlements for the competitive wholesale electricity market and enforces certain credit requirements, including collateral-posting requirements, to ensure market participants’ creditworthiness for ERCOT-facilitated transactions. ERCOT schedules power for more than 26 million customers on an electric grid that connects more than 46,500 miles of transmission lines and more than 680 generation units, comprising approximately 84,500 MW of installed generation capacity. Of the total installed capacity, approximately 51% is natural gas-fueled generation, 24.8% is fueled by wind and other renewable resources, and 24.2% is lignite/coal and nuclear-fueled generation.

45. The delivery of electricity in the ERCOT market operates similarly to other electricity markets in the United States. Market participants buy and sell electricity using both the Real-Time Market (*i.e.*, electricity for current transmission/distribution and use by consumers) and the Day-Ahead Market, both of which are facilitated by ERCOT in its role as the ISO, and through bilateral contracts that indirectly facilitate the majority of wholesale electricity sales in the ERCOT

⁷ An ISO is a non-profit entity that manages the wholesale electric power market in its assigned geography.

market. These markets allow ERCOT, in conjunction with the qualified scheduling entities (“QSEs”) that transact directly in the day-ahead and spot markets (facilitated by the bilateral contracts entered into between electricity generators/wholesalers, retailers, and the qualified scheduling entities), to ensure that electricity is reliably delivered to all market participants. ERCOT and its operations are overseen by the PUCT, which also enforces compliance with Texas utility laws and regulates electric utility rates. Thus, PUCT is ultimately responsible for ERCOT’s operations and overall electricity regulation in Texas. While PUCT has jurisdiction to oversee ERCOT, PUCT does not have jurisdiction over the generation and power supply of Texas electric cooperatives, such as Brazos Electric, the exclusive jurisdiction of which is by law vested in the electric cooperative’s board of directors.

EVENTS LEADING UP TO THE COMMENCEMENT OF THE CHAPTER 11 CASE

A. Brazos Electric’s Strategy for Financial Stability and Consistent Growth

46. Just a few weeks ago, Brazos Electric was in all respects a financially robust, stable company with a clear vision for its future and a strong “A” to “A+” credit rating. *See* S&P Global Ratings, Brazos Electric Power Cooperative Inc., Texas Brazos Sandy Creek Electric Cooperative Inc.; Rural Electric Coop, Jan. 26, 2021; FitchRatings, Fitch Affirms Brazos Electric Power Cooperative, Inc. TX IDR at ‘A+’ – Outlook Positive, dated June 18, 2020. Brazos Electric’s generation and transmission revenues were \$1.038 billion and \$1.041 billion in 2019 and 2020, respectively. Brazos Electric’s consistently strong, reliable revenue base is primarily a function of Brazos Electric’s All Requirements Contracts with the Co-Op Members, none of whom have opted into retail competition as permitted in the Texas Utilities Code. Brazos Electric’s Co-Op Members also have strong credit profiles, particularly the three largest Co-Op Members (CoServ Electric, Tri-County, and UCS account for 36%, 18% and 14%, respectively, of Brazos Electric’s 2019 revenues), with strong, growing customer bases. Brazos Electric’s rate flexibility contributed

to its otherwise positive outlook as Brazos Electric's Board of Directors can independently raise rates without regulatory approval to recover increases in power costs, while PUCT, which regulates transmission rates and allows Brazos Electric timely and adequate cost recovery and a guaranteed rate of return in its transmission business.

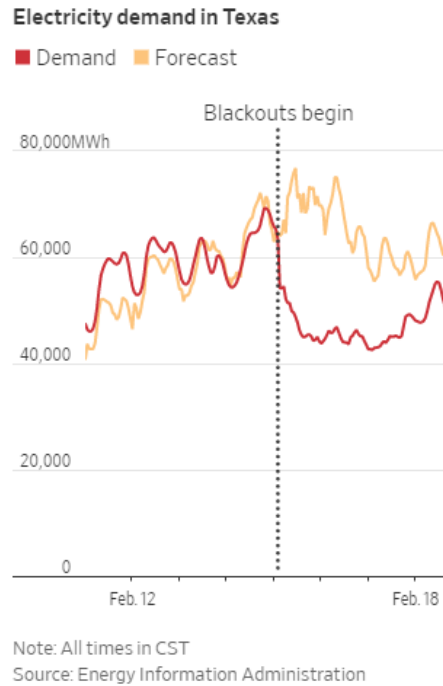
47. In the past, Brazos Electric's supply strategy focused on the acquisition of additional energy resources (either through owned generation plants or long-term power purchase agreements), but, more recently, in response to Co-Op Members' desire for competitive rates, Brazos Electric has sought to take advantage of low energy prices in the ERCOT wholesale market to serve a portion of its load. Brazos Electric has a fuel mix that is natural-gas dependent, which—until very recently—has consistently provided a favorable price environment, due to low gas prices (averaging \$1.77 per MMBtu in 2020). In addition, Brazos Electric has been implementing a \$610 million capital plan through 2025 (primarily funded through RUS-backed debt under the Trust Indenture) to bolster its transmission business and fund critical Co-Op Member-line substation needs. The development of areas surrounding Dallas, Fort Worth, and north of Houston have multiplied the Co-Op Members' customer bases, boosting the Co-Op Members' supply requirements, which generated stronger revenues for Brazos Electric.

48. Those highly favorable financial and operational characteristics have even enabled Brazos Electric to withstand pervasive market uncertainty caused by the COVID-19 pandemic. The pandemic undoubtedly did take its toll on the public power sector (and nearly every other industry), but Brazos Electric's energy sales were not significantly affected and Brazos Electric has been able to maintain its favorable financial profile. At the start of February 2021, Brazos Electric was very much "on plan" and ideally positioned to emerge from the pandemic largely unscathed and primed for continued growth.

B. The “Black Swan Winter Event” in Texas

49. Beginning on February 13, 2021, the state of Texas experienced an unprecedented and catastrophic energy crisis when a powerful winter storm moved over and blanketed the entire state, resulting in temperatures well below 20°F in a state where many homes (which are not sufficiently insulated for extreme cold weather) and businesses rely on electricity for heating. Texas’s generating plants, pipelines, and wind turbines are constructed to operate in extreme summer temperatures and are not winterized in the manner and to the degree that is common in more traditionally cold-weather states.

50. Price shocks in Texas were felt as early as February 12 when natural-gas prices jumped from \$3 to over \$150/MMBtu in anticipation of short gas supply. Beginning on February 13 and throughout the day on February 14, customer demand for power grew, pushing Texas’s power grid to a new winter peak demand record, topping 69 gigawatts between 6:00 p.m. and 7:00 p.m., more than 3,200 megawatts higher than the previous winter peak set in January 2018. At the same time, demand for gas for heating grew. Brazos Electric’s instantaneous power demand rose to 4,250 megawatts, exceeding its previous all-time record of 3,914 megawatts (an increase of 8.6%).



51. In the early hours of February 15, ERCOT declared an Emergency Alert “Level 1,” urging consumers to conserve power. Within an hour, ERCOT elevated to an Emergency Alert “Level 2,” and only 13 minutes later, at 1:25 a.m., ERCOT elevated to an Emergency Alert “Level 3.” With the grid stressed to within minutes of a catastrophic failure, ERCOT ordered Transmission operators to implement deep cuts in load in the form of rotating outages to reduce the strain and avoid a complete collapse. **Experts have opined that Texas was 4 minutes and 37 seconds away from a blackout that could have lasted for months.**⁸ The Emergency Alert Level 3 remained in effect until February 19, 2021, leaving over 4.1 million homes and businesses without power, some for more than four consecutive days.

⁸ Dallas Morning News, February 25, 2021.

Energy Emergency Alert levels

EEA Level 1

When operating reserves drop below 2,300 MW and are not expected to recover within 30 minutes, grid operators can call on all available power supplies, including power from other grids, if available.

EEA Level 2

When operating reserves are less than 1,750 MW and are not expected to recover within 30 minutes, ERCOT can reduce demand on the system by interrupting power from large industrial customers who have contractually agreed to have their electricity turned off during an emergency. ERCOT can also use demand response resources that have been procured to address tight operating conditions.

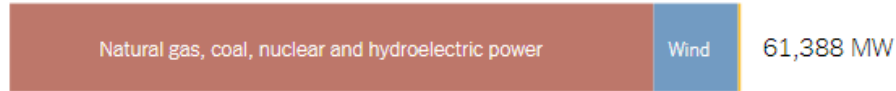
EEA Level 3

An EEA3 is declared if operating reserves cannot be maintained above 1,375 MW. If conditions do not improve, continue to deteriorate or operating reserves drop below 1,000 MW and are not expected to recover within 30 minutes, ERCOT will order transmission companies to implement rotating outages.

52. While demand soared, supply plummeted as power plants tripped offline and demand threatened to exceed supply. Around 5:30 a.m. on Monday, February 15, 2021, one of the two units of the South Texas Project, a nuclear-power plant, tripped off line and this trip offline caused a frequency drop in the transmission grid. That frequency drop caused more power plants (including the Sandy Creek Generating Station) to trip offline. In addition, some natural gas wells froze at the wellheads, leaving much of Texas's large fleet of gas-fired power plants without fuel. Wind turbines built for the heat of West Texas froze under coats of ice, and solar energy panels covered with snow and ice did not generate, resulting in the loss of 52 out of 107 gigawatts (48.6%) of power. ERCOT called for more rotating outages of retail load, leaving millions of homes without power. ERCOT ordered the electricity providers to shed as much as 20 gigawatts of retail load, enough to serve about 4 million households. ERCOT reports that about 46 gigawatts of natural gas, coal, and wind generation was not available—roughly 40% of what it had expected to be available under worst-case scenarios:

How Power Generation Compared to Worst-Case Plans

This was ERCOT's worst-case plan for peak demand and extreme outages.



On the evening of Feb. 14, power generation briefly surpassed ERCOT's worst-case estimate.



But power generation dipped much lower from Feb. 14 through 17.

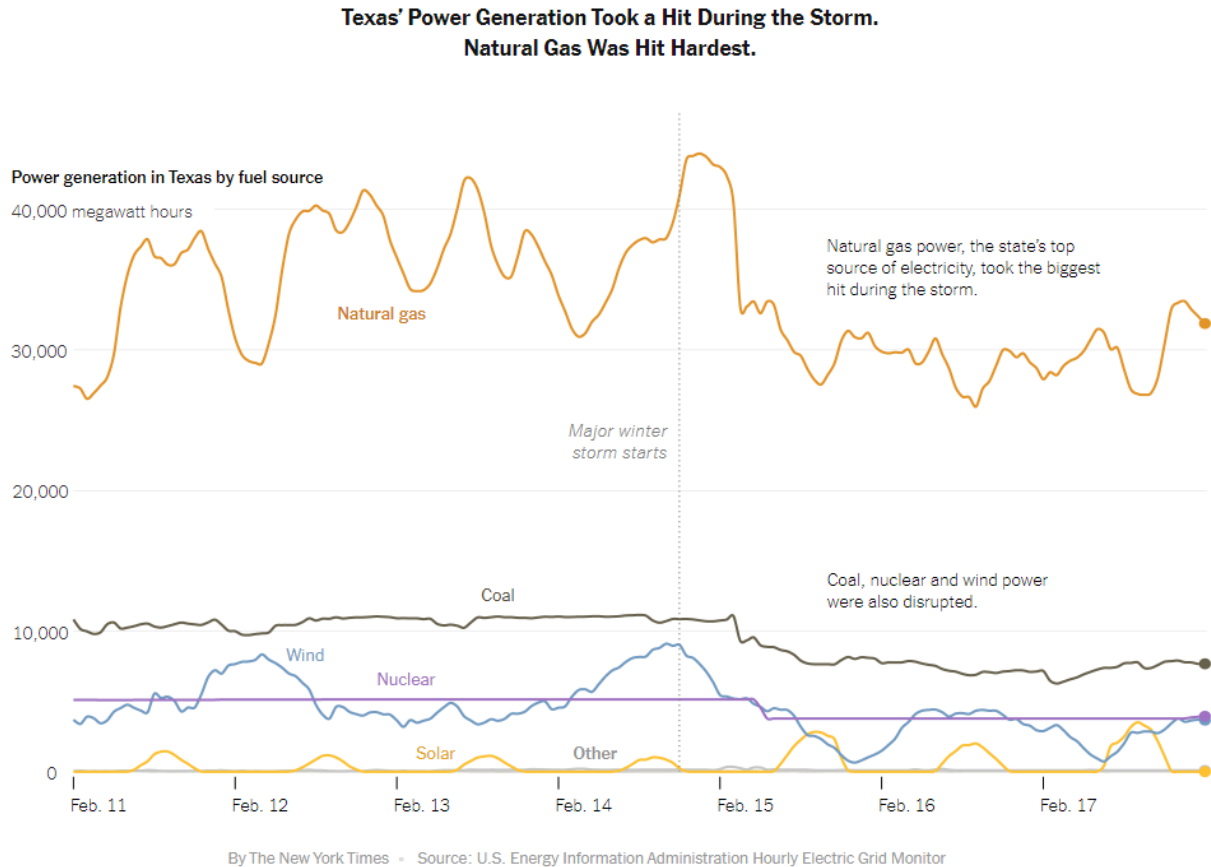


By The New York Times - Source: U.S. Energy Information Administration Hourly Electric Grid Monitor; Seasonal Assessment of Resource Adequacy for the ERCOT Region, Winter 2020-21 | Note: This graphic accounts for ERCOT's thermal, wind and solar generation. It does not include auxiliary and backup power supplies used during peak demand.

53. As natural gas prices spiked in response to falling supply as lines froze up, the cost to produce electricity from gas-fueled power plants increased dramatically. On February 16, after noting that, “[i]f customer load is being shed, scarcity is at its maximum, and the market price to serve that load should also be at its highest,” PUCT directed ERCOT to adjust prices “to ensure that firm load that is being shed in [Energy Emergency Alert 3] is accounted for in ERCOT’s scarcity pricing signals.”⁹ Based on this order, ERCOT set prices at the System Wide Offer Cap (**\$9,000 per MWh**) for the duration of the time load was being shed. ERCOT continued this practice until 9:00 a.m. on February 19. By way of comparison, ERCOT’s monthly round-the-

⁹ *Oversight of the Electric Reliability Council of Texas, Docket No. 51617, Second Order Directing ERCOT to Take Action and Granting Exception to Commission Rules (Feb. 16, 2021).*

clock prices for wholesale electricity during the three months of November and December 2020, and January 2021 were in the range of **\$21 to \$29 per MWh**. In August 2020, during a Texas heat wave, monthly round-the-clock prices for wholesale electricity peaked at **\$128.88 per MWh**.



54. The polar vortex storm not only produced power outages and extreme price spikes, but had numerous other consequences: water-plant failures and depleting reserves of water resulting in boil-water notices for 14 million Texans; dozens of deaths related to hypothermia, carbon monoxide poisoning, car accidents, and fires; and damages to homes and businesses resulting from burst pipes that are estimated to be on par with damages from Category 5 hurricane.

55. In the aftermath of the storm, urgent calls for legislative action have been widespread, including Texas Governor Greg Abbot declaring the reform of ERCOT as an

emergency item for the legislative session. Texas Attorney General, Ken Paxton, has initiated investigations regarding the cause of the power failures and exceedingly high prices. As of the filing of this case, around eight board members of ERCOT have resigned, and Texas House and Senate hearings about the failure of the Texas power infrastructure and related investigations are ongoing.

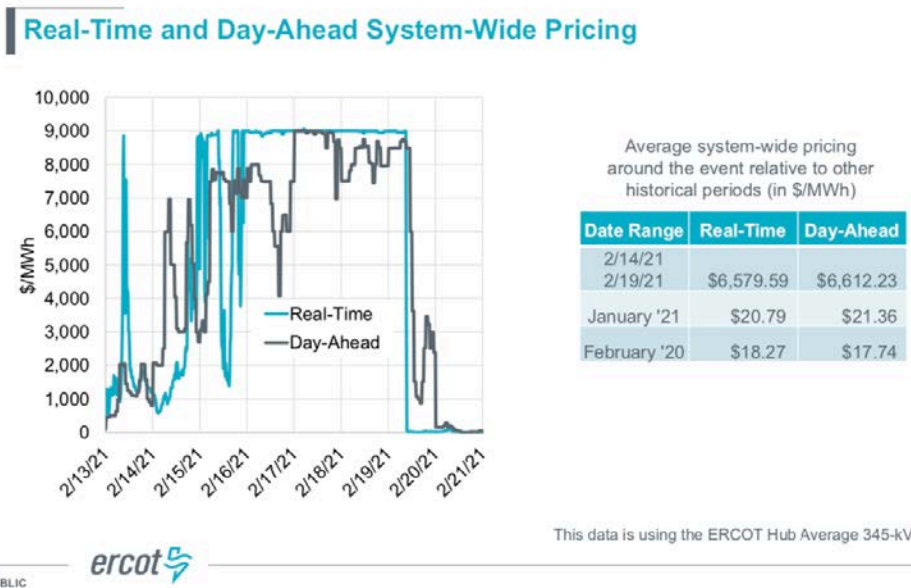
C. The Black Swan Winter Event Caused the ERCOT Wholesale Market to Incur Charges for Wholesale Power of \$55 Billion Over a Seven-Day Period, an Amount Equal to What it Ordinary Incurs over Four Years

56. The Black Swan Winter Event caused ERCOT wholesale market to incur charges of \$55 billion over a seven-day period, an amount equal to what it ordinarily incurs over four years. Notwithstanding Brazos Electric's efforts to leverage low prices available in ERCOT through various markets, including real-time energy market and the Day-Ahead Market, Brazos' share of those charges are estimated at \$2.1 billion for the seven-day Black Swan Winter Event, whereas Brazos Electric's total power cost to its Co-Op Members in 2020 was \$774 million. The \$2.1 billion for seven days is more than the amount of Brazos Electric's total outstanding secured debt to FFB/RUS.

57. Parties that wish to participate in ERCOT's Day-Ahead Market are required to have sufficient available credit (established by ERCOT as the sum of an unsecured credit limit based on a percentage of tangible net worth, plus any additional posted collateral in the form of cash or letters of credit) to support a calculated total potential exposure (or TPEA) metric, and since 2018, ERCOT determines market participants' collateral requirements on the basis of forward prices calculated by using the previous 14 day prices to forecast such forward process. Prior to the winter storm, Brazos Electric's typical ERCOT credit requirement for participating in the Real-Time or Day-Ahead Market ranged from \$40 million to \$83 million, depending on Brazos Electric's load and recent generation output and ERCOT's assessment of market-price volatility. Using the

previous 14 day prices which included 4 days of \$9,000 per MWh, calculation resulted in collateral calls for Brazos Electric after the Black Swan Winter Event of up to \$1.6 billion.

58. In addition to meeting ERCOT collateral requirements, Brazos Electric is required to make “settlement payments” to ERCOT for, among other things, energy purchases, ancillary-service obligations (*i.e.*, reserve generation capacity to insure grid reliability), and congestion charges (*i.e.*, allocation of generation re-dispatch charges to maintain grid reliability). Just before the winter event, Brazos Electric posted a total of \$350 million in additional collateral to ERCOT to raise its available credit to \$374 million. When PUCT determined to raise the wholesale electricity price cap to \$9,000 per MWh to spur generation, the resulting market prices were dramatically higher than historical averages:



59. On February 16, 17, and 18, ERCOT requested additional collateral from Brazos Electric of more than \$174.54 million, \$351.54 million, and \$432.22 million, respectively. And on February 19, 2021, ERCOT made another collateral call to Brazos Electric, this time, seeking more than \$638.2 million in financial assurance. ERCOT Invoices for settlement charges followed quickly after the requests for collateral. During the week of February 22, 2021, \$2.1 billion in

ERCOT settlement-charge invoices came due. These demands far exceed Brazos Electric's highest liquidity levels in recent years and could not have been reasonably anticipated or modeled. Brazos Electric quickly engaged Norton Rose Fulbright US LLP as its legal advisor and Berkeley Research Group, LLC as its financial advisor to assist Brazos Electric analyze Brazos Electric's liquidity and financing needs and begin exploring solutions and alternatives.

60. On February 25, Brazos Electric filed a "notice of force majeure" with ERCOT pursuant to section 8(C) of the Standard Form Market Participant Agreement found in section 22 of the ERCOT Nodal Protocols and informed ERCOT that Brazos Electric would not satisfy ERCOT's pending requests for financial assurance and payment of invoices, a copy of which is attached to this Declaration as **Exhibit B**. Immediately thereafter, I resigned from ERCOT's Board of Directors. By that time, six other ERCOT directors had already resigned, and as of the Petition Date, a total of eight ERCOT directors have resigned.

61. Brazos Electric and its Board of Directors then determined that the commencement of chapter 11 proceedings was inevitable. Notwithstanding the catastrophic financial fallout from the Black Swan Winter Event, Brazos Electric and the Board of Directors firmly believe in its business model, its strong management team, its dedicated, hardworking employees, and its strong, faithful cooperative base and fully intend to use the bankruptcy process to preserve its business and maximize value for all stakeholders, including the Co-Op Members and, most importantly, the millions of Texans who, now more than ever, rely on the cooperative to meet its energy needs every day.

D. Brazos Electric Seeks Chapter 11 Bankruptcy Relief to Protect the Co-Op Structure

62. In light of the above economic and financial events that have impaired Brazos Electric's liquidity and ability to perform in the future, on March 1, 2021 (the "Petition Date"), the above-captioned Debtor filed a petition for relief under chapter 11 of title 11 of the United States

Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

63. Brazos Electric has undertaken extensive efforts prepetition to reach out to its employees, its cooperative member-owners, and other parties-in-interest in order to minimize the disruption of its operations and cash flow. Brazos Electric is also in communications with its lenders regarding financing options and an efficient chapter 11 process.

64. The circumstances described above left Brazos Electric with no choice but to file a petition under chapter 11 of the Bankruptcy Code to: (i) prevent immediate and irreparable harm to its business; (ii) preserve and protect its operations and assets; and (iii) provide necessary time to formulate and pursue an appropriate plan to satisfy the claims of its creditors.

**EVIDENTIARY SUPPORT FOR CERTAIN FIRST-DAY EMERGENCY
MOTIONS AND APPLICATIONS**

65. Prior to and contemporaneously with the filing of this Declaration, Brazos Electric filed various emergency First Day Motions, which Brazos Electric believes are necessary to effectively continue its operations with a minimum of disruption in order to protect the value of its assets until completion of a plan of reorganization, thereby maximizing the recovery for Brazos Electric’s estate and stakeholders.

66. The First Day Motions include:

A. Administrative Motions.

- “Schedules Motion”: *Debtor’s Emergency Motion for Entry of an Order Extending Time to File Schedules of Assets and Liabilities and Statements of Financial Affairs*
- “Noticing Motion”: *Debtor’s Emergency Motion for Entry of an Order (I) Authorizing the Debtor to Redact Certain Personal Identification Information, (II) Approving the Form and Manner of Notifying Creditors of the Commencement of the Chapter 11 Case and Other Information, and (III) Granting Related Relief*

B. Finance Motions.

- “Cash Management Motion”: *Debtor’s Emergency Motion for Entry of an Order Authorizing Continued Use of Cash Management System, Bank Accounts, Business Forms, and Company Credit Cards Pursuant to Bankruptcy Code Sections 105(a), 345(b) and 363(c)*

C. Operational Motions.

- “Wages Motion”: *Debtor’s Emergency Motion for Entry of an Order Authorizing Payment of Certain Prepetition (I) Wages, Salaries, and Other Compensation; (II) Reimbursable Employee Expenses; (III) Employee Benefits; and (IV) Related Costs*
- “Critical Vendor Motion”: *Debtor’s Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to Pay Prepetition Claims of Critical Vendors and (II) Granting Related Relief*
- “Utilities Motion”: *Debtor’s Emergency Motion for Entry of an Order (I) Prohibiting Utilities From Altering, Refusing, or Discontinuing Utility Services; (II) Deeming Utilities Adequately Assured of Future Performance; (III) Establishing Procedures for Determining Adequate Assurance of Payment; and (IV) Granting Related Relief*

67. I have consulted with advisors regarding the First Day Motions and understand each of the First Day Motions and the relief requested therein. To the best of my knowledge and belief, the factual statements contained in each of the First Day Motions are true and accurate, and each such factual statement is incorporated herein by reference. I believe that the relief requested in the First Day Motions is necessary, in the best interests of the Debtor’s estate, its creditors, and all other parties in interest, and will allow the Debtor to operate with minimal disruption and maximum value preservation during the pendency of this chapter 11 case. I also understand that failure to grant the relief requested in any of the First Day Motions may result in immediate and irreparable harm to the Debtor, its business, and its estate. Accordingly, for the reasons set forth herein and in each of the respective First Day Motion, the Court should grant the relief requested in each of the First Day Motions.

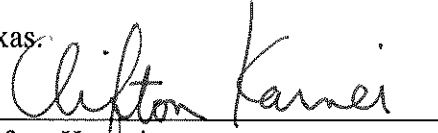
CONCLUSION

68. The Debtor's immediate objectives in commencing this chapter 11 case are to minimize any loss in the value of its assets, preserve on-going business operations thereby maximizing value, and propose a plan of reorganization to maximize the recovery to creditors and ensure a successful conclusion to this case. I believe that if this Court grants the relief requested in each First Day Motion, the prospect for achieving these objectives will be substantially enhanced.

[Signature on following page]

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated this 1st Day of March, 2021 at Waco, Texas.

A handwritten signature in black ink that reads "Clifton Karnei". The signature is written in a cursive style and is positioned above a horizontal line.

Clifton Karnei
Executive Vice President and General Manager
Brazos Electric Power Cooperative, Inc.

EXHIBIT A

Wall Street Journal Article

Amid Blackouts, Texas Scrapped Its Power Market and Raised Prices. It Didn't Work.

The Texas Public Utility Commission hoped its move would spur generation. Retail providers say all it did was generate billions in added bills.



Millions of Texans were without power last week during a deep freeze. An electrical substation in Houston on Sunday.

PHOTO: JUSTIN SULLIVAN/GETTY IMAGES

By

Russell Gold

Updated Feb. 25, 2021 2:49 pm ET

Hours into [widespread blackouts in Texas](#) last week, the state's power regulator took an unusual step: It stopped relying on [the deregulated market](#) to set electricity prices and did so itself.

The Texas Public Utility Commission said it raised prices to a market cap of \$9,000 per megawatt hour during a six-minute emergency meeting Feb. 15, up from recent prices as

low as \$1,200 a megawatt hour, because the computer that was supposed to help match supply and demand on the power grid wasn't working properly, and it needed to intervene to relieve a growing crisis.

But the higher prices didn't result in additional power production, because many generators were dealing with [frozen equipment or fuel shortages](#), and were unable to deliver more megawatts, no matter the price. Some electric-market participants now say the commission's action turned an energy crisis into a financial catastrophe for many electricity buyers, [who were left paying billions of dollars more](#) for the same limited supply of electricity as before.



Texas Gov. Greg Abbott has promised to find answers to the state's recent power crisis.

PHOTO: BOB DAEMMRICH/ZUMA PRESS

The role of the PUC, a three-member panel appointed by Texas Gov. Greg Abbott, in last week's power fiasco is poised to garner more attention as state [lawmakers review what went wrong](#). Up to now, most attention has focused on the Electric Reliability Council of Texas, or Ercot, the state's nonprofit grid operator, but the PUC is the state's chief electric regulator, and took key actions during the crisis.

State hearings examining the causes of the power collapse began Thursday.

PUC officials told The Wall Street Journal that, while [Ercot had begun ordering blackouts](#) as power supplies fell short last week, its computer that ran the market was apparently confused by what was happening. Ercot was trying to stabilize the grid by building up reserves of available generation. The computer was “misinterpreting those reserves as abundance and turning off the more expensive natural gas plants,” exacerbating power supply problems, said PUC spokesman Andrew Barlow. Ercot didn’t immediately respond to a request for comment about the computer issue.

At the time, the situation left the PUC members dumbfounded. Chairman DeAnn Walker described herself during the Feb. 15 meeting as surprised by the market’s prices, which were hovering around \$1,200 a megawatt hour at the time. Commissioner Arthur D’Andrea added: “We are not calculating prices correctly.”

The commission moved to set prices at the \$9,000 cap, concluding that the prices at that time were “inconsistent with the fundamental design of the Ercot market. Energy prices should reflect scarcity of the supply.” That was intended to encourage power generation to come back online and allow Ercot to end the blackouts, which had plunged millions of homes into the dark in subfreezing temperatures, [triggering a humanitarian crisis](#) in the nation’s second-largest state.

But the Monday order didn’t immediately have the intended effect. At the time of the order, there was about 50,000 megawatts offline—out of 107,500 megawatts. This would remain the case through midday last Wednesday, according to a presentation by Ercot this week.

While the Ercot computer glitch may have turned off some plants, many more were shut down because of [freezing conditions, fluctuations on the power grid](#) and natural gas shortages.



Millions of Texans face empty grocery shelves and a lack of safe drinking water following a power and utility crisis caused by winter storms. President Biden said he would speed up federal aid for the state. Photo: Joe Raedle/Getty Images

The heads of two of Texas' largest power generation companies, [Vistra Corp.](#) and [NRG Energy Inc.](#), told members of the Texas House of Representatives on Thursday that the promise of high prices couldn't help resurrect power plants that had difficulty operating in extreme cold or securing gas supplies.

Vistra Chief Executive Curt Morgan said gas supply constraints were one of the company's biggest challenges, forcing it to take plants offline or run them at lower capacity levels.

"We had power plants ready to produce power that could not produce any," he said. "The gas system, in my opinion, did not work in tandem with the electric system."

As a result of the PUC's decision, power prices remained at elevated levels until Friday morning, when the PUC rescinded its order, after Ercot said the grid was again stable. Typically, the Ercot grid hits peak prices for a few hours, at most.

Many residential, commercial and industrial customers as well as retail providers and municipal power companies had to pay extraordinary prices for several days, and some wrote the PUC to complain that its action had raised prices without improving the supply situation, with devastating financial consequences.

“Generation could not magically appear, and the price signals did not stabilize the situation,” wrote Patrick Woodson, chief executive of Green Energy Exchange, a retail electricity provider in Texas. “Quite the opposite, the imposition of price caps during these extraordinary times is creating instability in the markets.”



A worker repaired a power line in Austin, Texas, last week.

PHOTO: THOMAS RYAN ALLISON/BLOOMBERG NEWS

In an interview, Mr. Woodson added that retail providers were hurt by the PUC’s decision to keep prices high all week, which essentially transferred money from consumers to power generators and gas providers.

“You want to penalize people? Great. But don’t penalize the people who didn’t cause the crisis,” he said.

NRG Chief Executive Mauricio Gutierrez told lawmakers that his company, which offers fixed-price retail contracts, would have to eat the higher wholesale costs. He advocated for eliminating contracts tied to wholesale prices because it may be difficult for customers to understand the risk of extreme market swings.

“We don’t offer any of those products,” he said. “We believe they shouldn’t be available to customers in our market.”

The Texas governor promised in a statewide address on Wednesday to find answers to what went wrong and ensure state lawmakers enact fixes. “You deserve answers. You will get those answers,” said Mr. Abbott, a Republican.

Rob Cantrell, the chief executive of retail electricity provider Pulse Power LLC, said that while generators unable to deliver were the cause of the crisis, it is retailers and customers who are set to pay the price. He estimates Pulse will lose up to \$2,000 for each of its 100,000 customers, even though many of them were without power.

In a filing to the PUC, Mr. Cantrell suggested replacing the \$9,000 pricing with fines “for generators that a post-mortem reveals...were not following the minimum reliability protocols.” Those fines could be used to help cover exorbitant power bills, he added.

Power generators “should not benefit as an industry from their failure, to the detriment of Texas retail choice and consumers alike,” he wrote.



Millions of Americans entered a third day without power as more snow and freezing rain moves toward the East Coast, prolonging icy conditions in some areas hit earlier this week. Photo: Thomas Ryan Allison/Bloomberg News

—*Katherine Blunt contributed to this article.*

EXHIBIT B

Force Majeure Letter

TRANSMISSION VERIFICATION REPORT

TIME : 02/25/2021 16:44
NAME :
FAX : 5124781664
TEL : 5124781665
SER.# : BROD6J453517

DATE, TIME	02/25 16:42
FAX NO./NAME	5122257079
DURATION	00:01:58
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM



BRAZOS ELECTRIC POWER COOPERATIVE, INC.
P.O. Box 2585, Waco, Texas 76702-2585
7616 Bagby Ave., Waco, Texas 76712
(254) 750-6500

February 25, 2021

Electric Reliability Council of Texas, Inc.
Attn: Legal Department
7620 Metro Center Drive
Austin, Texas 78744-1654
Telephone: (512) 225-7000
Facsimile: (512) 225-7079

Via Facsimile and Certified Mail, Return Receipt Requested

Re: NOTICE OF FORCE MAJEURE EVENT
Market Participant Agreement between the Electric Reliability Council of Texas, Inc. and Brazos Electric Power Cooperative, Inc.

Pursuant to Section 8(C) of the Standard Form Market Participant Agreement found in Section 22 of the Electric Reliability Council of Texas's ("ERCOT") Nodal Protocols, Brazos Electric Power Cooperative, Inc. ("Brazos") hereby provides this notice to ERCOT of a Force Majeure Event. As you are aware, last week brought a severe and unprecedented winter storm, and the Governor of the State of Texas issued a State of Disaster for all 254 counties in Texas on February 12, 2021. Additionally, on February 20, 2021, President Biden declared a major disaster for much of Texas.

In light of these events outside of the reasonable control of Brazos, Brazos declares a Force Majeure Event. The ERCOT Protocols provide that a market participant may declare a Force Majeure Event to avoid a Default. The ERCOT Protocols define a Force Majeure Event as follows:

Any event beyond the reasonable control of, and that occurs without the fault or negligence of, an Entity whose performance is prevented by the occurrence of such event. Examples of such a Force Majeure Event may include the following, subject to the limitations of the above sentence: an act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, or a curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities. (ERCOT Protocol Section 2.1 – Definitions).

The events of last week's polar vortex event, which were undoubtedly beyond the reasonable control of Brazos, prevented Brazos from complying with Brazos's generation commitments to the ERCOT market and Brazos's ability to avoid unprecedented energy prices through alternative means. All of the factors that contributed to this Force Majeure Event are now the subject of investigations by the Texas Legislature and the Texas Attorney General, and Brazos expects that these investigations will provide further detail in the coming weeks and months. Some of the unprecedented facts currently known that contributed to this Force Majeure Event include, but are not limited to, the following:

- (1) extremely high natural gas prices during the storm that were approximately 50 to 250 times the price of gas before the storm began;
- (2) natural gas shortages or loss of pressure that forced generators to de-rate or to go off-line due to a lack of fuel; and
- (3) approximately 20,000 megawatts of firm load interruptions due to unavailable generation, most of which was related to the lowest temperatures recorded since these generation resources began commercial operations.

Additionally, the Public Utility Commission of Texas ordered a number of actions beyond Brazos's control including, but not limited to, the following:

- (1) granting ERCOT the discretion to deviate from the ERCOT Nodal Protocols; and
- (2) directing ERCOT to make adjustments to ERCOT market prices to reflect a price of \$9,000 per MWh during its emergency meeting on February 15 and keeping prices at that level until February 19.

As a result of these events, Brazos is abating further payments relating to this Force Majeure Event, including ERCOT's demands for Financial Security and Payment of Invoices.

Notably ERCOT may deem that a Market Participant's payment abatements are not a Payment Breach nor a Late Payment when the "failure to pay when due was not within the control of the Market Participant." (ERCOT Nodal Protocol Section 16.11.6.7).

Brazos requests that ERCOT (1) confirm its forbearance with respect to further collateral demands, payment demands and default notices on Brazos until such a time as the Force Majeure Event is resolved, and (2) acknowledge that Brazos's abatement of payments is neither a Payment Breach nor a Late Payment.

Brazos reserves all rights, powers, privileges or remedies it may have under its agreements, applicable law or in equity and shall not be deemed to have waived any such rights, powers privileges or remedies.

BRAZOS ELECTRIC POWER
COOPERATIVE, INC.



Name: Clifton Karnei

Title: Executive Vice President and
General Manager