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# Power Supplier Bankruptcy Update

## Where Are We Now and How Did We Get Here?

It has been a year since we last updated you on the status of HILCO Electric Cooperative's wholesale power provider, Brazos Electric Power Cooperative, and its bankruptcy case. After the catastrophic winter weather event in February 2021 that turned into a catastrophic financial event, Brazos EPC continues to navigate the restructuring process under Chapter 11.

## What Happened?

Texas was blanketed with historic cold weather during the week of February 14–19 that caused an extreme demand for electric power, gas shortages and power generation issues that resulted in mandated rolling outages. To add more generation to the electric grid, the Electric Reliability Council of Texas increased power supply market prices to the cap of \$9 per kilowatt-hour. These extreme prices, along with the duration of the event, required Brazos EPC, our generation and transmission power supplier, to purchase power at unforeseen prices totaling over \$2 billion in invoices owed to ERCOT.

Before the severe cold weather event, Brazos EPC was, in all respects, a financially robust and stable company with an A to A+ credit rating. However, on March 1, 2021, Brazos EPC filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of Texas. The Chapter 11 filing was a protective measure that allowed Brazos EPC to continue to provide service to its member cooperatives while going through the bankruptcy process.

Since the bankruptcy filing in March 2021, Brazos EPC has continued to seek relief from the ERCOT claim. One attempt was during the 87th Texas legislative session. Brazos EPC and its member cooperatives spent months contacting our state representatives through numerous meetings, emails and calls during the regular session. By the end of the legislative session, our requests were all ignored. There was no relief from the state regarding the ERCOT market pricing, the extreme pricing cap of \$9 per kWh, or the high prices that ERCOT continued to charge for an additional 33 hours beyond the event. Those 33 hours were contested primarily because the pricing remained at the \$9 per kWh cap well after the rolling outages ended. Unfortunately, at the end of the legislative session, the state's view

of the ERCOT market was that it performed as intended and would not be reversed.

On May 25, 2021, the Texas Legislature did, however, adopt Senate Bill 1580, a financing act that authorizes electric cooperatives to issue securitized bonds for the purpose of financing the costs and expenses resulting from the February 2021 winter storm.

## Where Are We Now?

Several significant issues still remain unresolved such as the amount of the \$2 billion claim from ERCOT that Brazos EPC will have to pay and how it will pay that claim. The bankruptcy court hearings began February 22 in front of Chief U.S. Bankruptcy Judge David Jones of Houston. After two weeks of contentious hearings that featured leaders of ERCOT and the Public Utility Commission of Texas explaining their decision-making during the winter storm, Jones ordered in March that the parties enter into mediation overseen by Southern District of Texas Bankruptcy Judge Marvin Isgur.

After months of mediation, an agreement in principle was reached with most of the creditors, including ERCOT, that could result in Brazos EPC exiting bankruptcy by fall 2022.

With the agreement in principle, Brazos EPC intends to file its Chapter 11 exit plan of reorganization on or before September 1. The exit plan will detail a list of terms that the court will then consummate and mandate Brazos EPC to implement. Below are a few of the terms proposed in the plan that would be required of Brazos to meet the "sources and uses" of reorganization in order to exit bankruptcy.

## Terms

**Securitization**—A financing order to securitize bonds will be utilized by Brazos EPC members, including HILCO, to pay a reduced amount that the member cooperatives are obligated to pay. The settlement agreement is still being negotiated at the time of this article.

**Sale of Assets**—After the plan's effective date the reorganized Brazos EPC would divest its generation assets in one or more asset sales, disperse its power supply business, and transition the Brazos EPC from a generation and transmission electric cooperative to a transmission and distribution cooperative.

**Power Supply**—Member cooperatives will

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be released from the existing contract with Brazos EPC and execute an amended contract eliminating the power supply provision. At that point, all member cooperatives, including HILCO, will purchase their own wholesale power to serve their members.

**Hardship Fund**—Brazos EPC will set up, through a third-party administrator, a fund to assist low-income members with the charges incurred from the winter storm. The administrator will establish qualification procedure for those to receive assistance.

The bankruptcy situation is still very fluid, and at this point we still lack definitive answers about how much Brazos EPC must pay to exit bankruptcy.

Brazos EPC and its member cooperatives were not the only electric utilities affected by this unprecedented event. Unfortunately, the financial impact of the storm will affect consumers throughout Texas for many years to come. Unless there is future legislative intervention, the cost of power incurred during that time ultimately must be paid.

The saying “hindsight is always 20/20” is all so true. Looking back at the winter event and the financial implications, our commitment to provide our members safe, reliable energy at the lowest cost possible was tested at every level. As we continue to seek relief from the charges, your HILCO Electric Cooperative Board of Directors and staff will continue to work relentlessly to protect our members and provide you service. ■

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