

June 8, 2021

The Honorable Greg Abbott
Governor of Texas
P.O. Box 12428
Austin, TX 78711-2428

RE: SB 1580 & HB 4492: Request for Signature

Dear Governor Abbott:

Texas Competitive Power Advocates (TCPA)¹ and the Alliance for Retail Markets (ARM)² respectfully request your signature to SB 1580 and HB 4492 ("the bills").

SB 1580 provides a dedicated financing mechanism for electric cooperatives (including Brazos) to pay off approximately \$2.5 billion owed to ERCOT for unpaid invoices. HB 4492 allows ERCOT to borrow funds from the state's Economic Stabilization Fund to pay up to \$800 million in unpaid invoices owed by competitive market participants and provides for reimbursement of other unanticipated storm-related costs. The bills provide a fair and reasonable means to stabilize the ERCOT market, enabling electric market participants to remain in the ERCOT market while paying their share of the costs associated with power and gas supply shortages resulting from Winter Storm Uri. The bills critically include provisions necessary to restore and protect the integrity of Texas' electricity market going forward and provide stability for customers. It is important that the financial mechanisms created by these bills move forward as expeditiously as possible.

We are aware of a letter from Brazos Electric Cooperative ("Brazos") requesting that you veto the bills. We strongly and respectfully urge you to sign these bills and decline Brazos' request.

We would like to start by saying it is unfortunate that Brazos chose not to participate in the robust stakeholder discussions about these bills at the Texas legislature and appears to not embrace the tools created by the bills, which are designed to stabilize the market and provide cost-efficient means for entities to pay their debts to other ERCOT market participants. One thing must be made very clear: for a market to function properly, a participant cannot continue to operate in that market after they fail to make payment. Brazos is the single largest debtor to the ERCOT market, owing approximately 2/3 of the total shortfall from Winter Storm Uri, and Brazos continues to fail to make certain payments even for periods unrelated to Winter Storm Uri. Yet Brazos continues to operate as an ERCOT market participant.

If ERCOT loses the ability to remove defaulting participants, it perversely provides an incentive to take on greater risk without consequences. Denying continued participation in the ERCOT market is the strongest incentive for these defaulting market participants to secure funding. The ERCOT market has experienced multi-billion-dollar bankruptcies in the past, and in each case the defaulting entity paid their ERCOT invoices in full to prevent removal from the market. That same outcome must be the result here as well. Brazos must pay their debts or face the same consequence as any other market participants, which is to be removed from the market. To do otherwise would set a dangerous precedent for other market participants to push their financial

¹ TCPA is a trade association representing power generators and wholesale power marketers with investments in Texas and the ERCOT wholesale electric market. TCPA member companies, who represent more than 60% of the generating capacity in ERCOT, unanimously support this letter and include: Calpine, EDF Trading North America, Exelon, Luminant, NRG, Shell Energy North America, Talen Energy, and Tenaska.

² ARM is an association of retail electric providers (REPs) certificated to provide electric service to customers in areas currently open to retail competition in Texas. The ARM members supporting this letter include: Calpine Retail; Constellation NewEnergy, Inc.; ENGIE Resource LLC; the NRG Retail Companies; and the Vistra Retail Companies.

obligations on to others with no repercussions. The language Brazos objects to is consistent with and supportive of current ERCOT Protocols that apply to all market participants that default on ERCOT payment obligations. This consequence is not new, draconian or unfair.

In addition, there are numerous inaccuracies and misstatements in the Brazos letter, and we felt it important to correct some of the more egregious misinformation.

Cooperative customers are not saddled with a “double payment whammy.”

Brazos’ characterization of HB 4492 securitization of default costs is misleading and inaccurate. Similarly, SB 1580 is neither punitive nor draconian – it simply creates the mechanism for cooperatives to access low cost financing to pay the debts the cooperatives owe the ERCOT market and remain ERCOT market participants in good standing.

The expectation for a cooperative to pay debts is the same expectation that *exists for every other market participant*. HB 4492 provides the ability for ERCOT to cover the default costs associated with retail electric providers who were removed (or are pending removal) from the market and can no longer participate unless they pay their full balance owed. To be absolutely clear, *these retail electric providers are not “beneficiaries” of HB 4492 and will still owe their debts, even if the default costs are securitized*. The bills do not bail out the defaulting entities.

Collecting payment from all market participants to cover defaults is a fundamental aspect of the ERCOT market and something all participants have agreed to contractually. It is neither discriminatory nor does it violate the fundamental principles of the wholesale or retail electric market: instead, it is actually foundational to its financial stability.

Implementation of HB 4492 and SB 1580 will not threaten reliability.

This claim made by Brazos is untrue and ignores the fact that the Public Utility Commission of Texas (PUCT) and ERCOT can develop the details to replace and remove Brazos from the ERCOT market in an orderly manner if necessary. If Brazos refuses to utilize the new financing tool provided by the legislature, then other options for Brazos’s generation and member cooperatives’ customer load must be explored.

To be clear, we would prefer to see Brazos pay their debts, exit bankruptcy, and restore their good standing in the market than see this alternative play out. While Brazos insinuates that the bills were championed at the behest of competitive retail electric providers, the simple fact is that the provisions to which Brazos takes offense are intended to protect all market participants from Brazos’ (and others’) defaults, while promoting competition and *providing a viable tool to enable Brazos’ continued operation in the ERCOT market*.

In fact, the financial stabilization created by these bills will increase liquidity in the market that will enhance the ability of all market participants to move forward with measures necessary to support the reliability of infrastructure in this market for the summer and beyond.

HB 4492 and SB 1580 offer tools for the bankruptcy courts, not a conflict.

Brazos alleges that the bills create some intractable conflict between Texas and the Bankruptcy Court. Rather than creating conflict, the bills provide useful financing tools to protect creditors and other market participants from Brazos’ inability to pay its debts to the market. The bills provide flexibility for Brazos and other ERCOT market participants to either avoid bankruptcy altogether or, once bankruptcy has been filed, to finance an exit from bankruptcy, settle debts with creditors and pay what they owe, which is the outcome Brazos should strive to achieve.

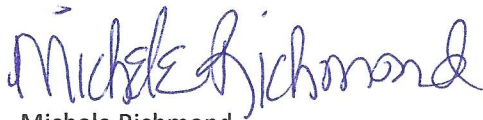
Contrary to Brazos's suggestion, the legislation does not prevent the Bankruptcy Court or any other court or governmental entity with jurisdiction from determining the amount of ERCOT's claim against Brazos, which determination will necessarily require a review and assessment of the validity of ERCOT's claim under applicable state law. Nor does the legislation require Brazos to take advantage of the securitization financing to pay the uplift obligation or pay the default balance in full. Rather, it only provides for the unremarkable proposition that failure by Brazos or any other market participant to pay the uplift obligation and default balance (a mechanism for funding of which is provided pursuant to the legislation) would violate a condition to continued participation in ERCOT.

This is not a surprising result under the Bankruptcy Code; in fact, it is wholly consistent with the requirements of the Bankruptcy Code. It is black letter law that, if a chapter 11 debtor seeks to assume an executory contract, the debtor must assume the benefits and burdens of that agreement, including payment in full of the prepetition amounts due under such agreement. In the context of the Brazos case, the ERCOT Standard Form Market Participant Agreement and related agreements, pursuant to which Brazos participates as a member of ERCOT, are unquestionably "executory contracts" (i.e., contracts under which both parties owe future performance), and Brazos must pay in full the prepetition amounts due under such agreements if Brazos wants to "assume" such agreements and continue in ERCOT. Although the legislation may not give Brazos the complete relief from its liabilities as it may have hoped, the financing mechanism provided by this legislation actually enables Brazos to make this cure payment and remain in ERCOT.

In sum, HB 4492 and SB 1580 create a sensible, fair, and equitable plan that will stabilize the ERCOT market for all participants and Texas customers. Your signature to these bills allows the market to absorb some of the shock from Winter Storm Uri, sending an important message to market participants and investors that the market will be stabilized and will remain fully functional going forward. Debts must be paid in order to participate in the market. Vetoing these bills would allow Brazos to continue participating in the ERCOT wholesale market despite failing to pay for nearly \$2 billion in wholesale market costs incurred during the storm, thereby shifting those costs to all other market participants.

For these reasons, we respectfully request your signature to SB 1580 and HB 4492.

Sincerely,



Michele Richmond
Executive Director
Texas Competitive Power Advocates



Carrie Collier-Brown
General Counsel
Alliance for Retail Markets

cc: The Honorable Dan Patrick
The Honorable Dade Phelan
The Honorable Kelly Hancock
The Honorable Chris Paddie