

Storm Uri Electric Disputes

Lessons Learned from the Winter Storm

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Lessons Learned from the Winter Storm Uri

In February 2021, a severe weather event – unofficially dubbed “Winter Storm Uri” – swept across Texas and South Central US, bringing prolonged below-freezing temperatures across the region. The storm contributed to over 200 deaths, and catastrophic multi-day blackouts affected millions of Texans, with the state’s power grid unable to keep up with the record-breaking electricity demand. Wholesale power prices in the Electricity Reliability Council of Texas (ERCOT) market reached \$9,000/MWh for multiple days.

The widespread power failures and rolling blackouts – estimated to [have impacted nearly three-quarters of Texans](#) between February 14 and 20 – were due to the generation plant outages resulting from insufficient winterization of electricity generation and natural gas production, combined with record demand for electric space heating. These failures led to regulatory actions such as the Federal Energy Regulatory Commission (FERC) requiring the North American Electric Reliability Corporation (NERC) to strengthen winterization requirements for power plant owners, and legislation mandating winterization in Texas.

The financial fallout of such high prices and delivery failures was also extreme. Some companies that ended up being in net short positions during the event suffered financial losses.

This notably included Brazos Electric Power Cooperative, which had to declare bankruptcy;¹ its bankruptcy and a separate proceeding have focused on whether ERCOT’s wholesale prices were set appropriately. Many market participants became parties to contractual disputes regarding force majeure claims, performance of supply and demand-side resources, and payment responsibility for various ERCOT charges. Finally, the high spot prices of natural gas and power during the event resulted in state regulators challenging the prudence of various utilities’ fuel and power hedging practices.

Brattle experts have assisted clients with financial and economic analyses in many of these Uri-related disputes and regulatory proceedings. Some highlights from those cases are provided below. These span a variety of issues that may recur in ERCOT or arise in other regional transmission organizations (RTOs) when such unusual extreme events arise from time to time, including identifying force majeure, compliance with prevailing market rules, the reasonableness of those market rules themselves, adequacy of supply planning or risk management in advance of the crisis conditions, and fairness and feasibility of financial recovery mechanisms.

¹ Other electricity companies suffering significant financial losses included Vistra Corporation and Rayburn Electric Cooperative.

Winter Storm Uri Casework

| ERCOT Post-Uri Contract Dispute

In an ongoing contract dispute over ancillary services imbalance charges deployed during the storm, Brattle was retained on behalf of a Texas-based energy services company that served as the qualified scheduling entity for an industrial company. Brattle was tasked with determining the energy services company's responsibility to pay ancillary services imbalance charges incurred by the industrial company's load resource that sold Responsive Reserve Service (RRS) forward and deployed during the February 2021 storm. The team assessed the purpose and effect of ERCOT's protocols for financially settling imbalance charges and other related credits surrounding RRS and analyzed the economic sense of allocating imbalance charges to one party versus the other.

| Heat Rate Call Option Contract Dispute

For the owner of two gas-fired peaking generation plants in Texas, Brattle provided expert reports before the District Court of the 165th Judicial District in Harris County, Texas, regarding the economics of certain heat rate call option (HRCO) contracts. The counterparty to these contracts – a large wholesale energy marketer and trader – was limited to exercising the HRCO by an annual cap defined in the contracts. The HRCO contracts also provided the counterparty the ability to cancel an exercise an hour prior to a specific time. Brattle's experts estimated the economic damages from the counterparty's violation of the HRCO contracts by exceeding the annual cap on exercise hours during the storm in February 2021 and assessed the economic value of the cancellation clause in the HRCOs.

| ERCOT High Power Price Implications

For Calpine, the US's largest generator of electricity from natural gas, a Brattle expert provided testimony in US bankruptcy court regarding the reasonableness and necessity of the extreme ERCOT wholesale power prices during the February 2021 storm. The testimony explained why the high power prices were consistent with the scarcity pricing mechanism and market design in ERCOT, the state of uncertainty and potential catastrophic risk for the power system, and why such prices reflected – or even understated – the value of lost load during the scarcity conditions.

| Wind Farm Force Majeure Claims

On behalf of a large financial market participant, a Brattle expert filed direct testimonies in litigation brought in New York and Texas involving the failure of several wind farms to deliver Firm (LD) Energy at several ERCOT hubs during the storm. Brattle's analyses confirmed that replacement power was available at the ERCOT hubs throughout the event and that the participant was owed the costs incurred to purchase replacement power to cover the wind farms' deficiencies in production under the contracts' terms.

| Electric Cooperative Cost Recovery Analysis

A Brattle team is assisting an electric cooperative in recovering the costs of its power sold into a RTO, the Southwest Power Pool (SPP), while it was operating in Energy Emergency Alert (EEA) status during storm. Brattle's analyses include an evaluation of the data to be submitted to SPP as cost justification, and our experts are also supporting the client and its counsel in subsequent proceedings before the FERC and, if necessary, any subsequent litigation.

CONTACT US

For more information about our litigation expertise, please contact one of our practice area representatives.



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