



## Filing Receipt

**Received - 2021-09-08 02:57:46 PM**

**Control Number - 52322**

**ItemNumber - 286**

**DOCKET NO. 52322**

**APPLICATION OF THE ELECTRIC § PUBLIC UTILITY COMMISSION  
RELIABILITY COUNCIL OF TEXAS, §  
INC. FOR A DEBT OBLIGATION § OF TEXAS  
ORDER TO FINANCE UPLIFT §  
BALANCES UNDER PURA CHAPTER §  
39, SUBCHAPTER N, FOR AN ORDER §  
INITIATING A PARALLEL DOCKET, §  
AND FOR A GOOD CAUSE §  
EXCEPTION §**

**EAST TEXAS ELECTRIC COOPERATIVE, INC.’S AND GOLDEN SPREAD  
ELECTRIC COOPERATIVE, INC.’S JOINT REPLY BRIEF**

East Texas Electric Cooperative, Inc. (“ETEC”) and Golden Spread Electric Cooperative, Inc. (“GSEC”) submit this Joint Reply Brief and in support thereof, state as follows:

In their joint Initial Brief, ETEC and GSEC explained that the plain meaning of House Bill 4492 (“HB 4492”) expressly includes electric cooperatives among the load-serving entities (“LSEs”) eligible to participate in uplift balance financing if they meet the other qualifications under the statute. A single party continues to allege that the “competitive wholesale market” referenced in HB 4492 actually relates to the competitive retail market without recognition of the competitive attributes of the ERCOT wholesale market.<sup>1</sup> The analysis in the joint Initial Brief conclusively shows that the artificial insertion of a competitive retail criterion in HB 4492 fails every method for legislative interpretation, most importantly failing a plain reading of the statute as it could have included a competitive retail limitation to the eligible LSEs and clearly did not.

The arguments in the joint Initial Brief<sup>2</sup> remain valid and correct, specifically:

- HB 4492 includes electric cooperatives in the definition of LSEs, and all LSEs are permitted to participate in the uplift balance financing subject to certain terms and conditions.<sup>3</sup>

---

<sup>1</sup> See PUC Docket No. 52321, TIEC Initial Brief at 2-3.

<sup>2</sup> See generally East Texas Electric Cooperative, Inc.’s and Golden Spread Electric Cooperative, Inc.’s Initial Brief (Sep. 1, 2021) (AIS No. 264) (“ETEC and GSEC’s Initial Brief”).

<sup>3</sup> PURA § 39.652(2); ETEC and GSEC’s Initial Brief at 1-4.

- HB 4492 provides electric cooperatives with an opt-out mechanism through which they may elect not to pay uplift balance charges and agree not to receive uplift balance proceeds.<sup>4</sup>
- HB 4492 explicitly references electric cooperatives that elect to receive funds related to this uplift balance financing.<sup>5</sup>
- HB 4492 adds reference to both Subchapters M and N in their entirety as applying to electric cooperatives.<sup>6</sup>

Accordingly, ETEC and GSEC respectfully request the Commission find that all eligible LSEs, including electric cooperatives, may participate in the uplift balance financing consistent with the plain language of HB 4492.

---

<sup>4</sup> PURA § 39.653(d) (“The commission shall develop a one-time process that allows municipally owned utilities, electric cooperatives, river authorities, a retail electric provider that has the same corporate parent as each of the provider’s customers, a retail electric provider that is an affiliate of each of the provider’s customers, and transmission-voltage customers served by a retail electric provider to opt out of the uplift charges by paying in full all invoices owed for usage during the period of emergency. Load-serving entities and transmission-voltage customers that opt out under this subsection shall not receive any proceeds from the uplift financing.”); ETEC and GSEC’s Initial Brief at 4-5.

<sup>5</sup> PURA § 39.660 (“Customer Charges. All load-serving entities that receive offsets to specific uplift charges from the independent organization under this subchapter must adjust customer invoices to reflect the offsets for any charges that were or would otherwise be passed through to customers under the terms of service with the load-serving entity, including by providing a refund for any offset charges that were previously paid. **An electric cooperative, including an electric cooperative that elects to receive offsets, shall not otherwise become subject to rate regulation by the commission and receipt of offsets does not affect the applicability of Chapter 41 to an electric cooperative.**”) (Emphasis added.) If electric cooperatives were prohibited receiving uplift balance proceeds, this language would have no meaning. See ETEC and GSEC’s Initial Brief at 5.

<sup>6</sup> PURA § 39.002 (“Applicability. This chapter, other than Sections 39.151, 39.1516, 39.155, 39.157(e), 39.159, 39.203, 39.904, 39.9051, 39.9052, and 39.914(e), and Subchapters M and N, does not apply to a municipally owned utility or an electric cooperative.”); ETEC and GSEC’s Initial Brief at 5.

Respectfully submitted,

/s/ Jacob Lawler

Mark C. Davis  
State Bar No. 05525050  
Mark.Davis@hkklaw.com  
Adrienne M. Waddell  
State Bar No. 24098556  
Adrienne.Waddell@hkklaw.com  
Jacob J. Lawler  
State Bar No. 24076502  
Jacob.Lawler@hkklaw.com  
**HOLLAND & KNIGHT, LLP**  
111 Congress Avenue, Suite 540  
Austin, Texas 78701  
(512) 472-1081  
(512) 472-7473 FAX

Patrick Burchette  
Patrick.Burchette@hkklaw.com  
**HOLLAND & KNIGHT, LLP**  
800 17<sup>th</sup> Street N.W.  
Suite 1100  
Washington, D.C. 20006  
(202) 955-3000  
(202) 955-5564 FAX  
**ATTORNEYS FOR EAST TEXAS  
ELECTRIC COOPERATIVE, INC.**

/s/ Todd Kimbrough

Todd F. Kimbrough  
Texas Bar No. 24050878  
**BALCH & BINGHAM LLP**  
919 Congress Avenue  
Suite 1110  
Austin, Texas 78701  
Telephone: (713) 362-2554  
Fax: (866) 258-8980  
Email: tkimbrough@balch.com

Maggie Berry  
Texas Bar No. 24094541  
Associate General Counsel  
Golden Spread Electric Cooperative,  
Inc.  
905 S. Fillmore, Suite 300 (79101)  
P.O. Box 9898  
Amarillo, Texas 79105-5898  
Telephone: (806) 349-4069  
Fax: (806) 374-2922  
Email: mberry@gsec.coop  
**ATTORNEYS FOR GOLDEN SPREAD  
ELECTRIC COOPERATIVE, INC.**

### CERTIFICATE OF SERVICE

I certify that a true and correct copy of this pleading has been made available to all parties of record via filing this document on the Commission's Interchange on September 8, 2021, with such filing constituting service of the document on all parties to this proceeding pursuant to Order No. 4.

/s/ Jacob Lawler  
Jacob Lawler