

PROJECT NO. 52345

**CRITICAL NATURAL GAS
FACILITIES AND ENTITIES**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

TEXAS COMPETITIVE POWER ADVOCATES' (TCPA's) EXECUTIVE SUMMARY

It is essential that the efforts to implement Senate Bill 3 and House Bill 3648 produce substantive documentation that can be used to ensure natural gas supply that the state relies on for electricity is handled as critical load *this winter* and in the future. TCPA recommends the following to ensure the required results.

1. The Proposed Amendments need to be decoupled from the RRC's §3.65 proposal.
 - A stand-alone definition of “critical natural gas” in proposed §25.52(c)(2) should be used to incorporate all of the requirements established by the legislature instead of relying upon the RRC's current proposed industry-wide critical designation under §3.65(d), which falls short of incorporating all of the statutory requirements.
 - A corresponding change to proposed §25.52(h) is necessary to complete the decoupling from §3.65 and instead rely upon the improved definition in §25.52(c)(2).
 - In the revised definition or revised § 25.52(h), specifically permit the electric utilities to use information from the *Application for Critical Load Serving Electric Generation and Cogeneration*¹ (“existing form”) as at least part of the process for determining and prioritizing critical natural gas.
2. The existing form used by electric utilities to designate Critical Load Serving Electric Generation and Cogeneration should be modified as necessary to provide any additional information needed for determination and prioritization.
3. The PUC should immediately pursue enhanced coordination efforts with the RRC regarding proposed §3.65 to encourage them to:
 - shift from the “presumed critical” approach in the current proposal to an approach that separates the truly critical infrastructure from less important components;

¹ *Application for Critical Load Serving Electric Generation and Cogeneration* (Mar. 2021) available at: [Final - pdf - App for gas pipeline load v020320.pdf\(ercot.com\)](#).

- prevent the misperception that entities opting-out of initial “critical” designation (by filing proposed RRC Form CI-X) will not become subject to weatherization requirements if imminent mapping and prioritization activities identify them as such; and
- create more meaningful threshold weatherization expectations so members of the natural gas industry can most accurately certify that they are “prepared to operate during a weather emergency.”

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**TEXAS COMPETITIVE POWER ADVOCATES' COMMENTS ON
PROPOSED AMENDMENTS TO 16 TEX. ADMIN. CODE §25.52**

Texas Competitive Power Advocates (“TCPA”) respectfully submits these comments in response to the Public Utility Commission of Texas’ (“PUC” or “Commission”) Proposal for Publication of Amendments of 16 TAC §22.52 as approved at the September 16, 2021 Work Session Meeting, which was filed in Project No. 52345 on September 16, 2021 (the “Proposed Amendments”). The deadline for comments is October 7, 2021. These comments are timely filed.

BACKGROUND

TCPA is a trade association representing power generation companies and wholesale power marketers with investments in Texas and the Electric Reliability Council of Texas (“ERCOT”) wholesale electric market. TCPA members² and their affiliates provide a wide range of important market functions and services in ERCOT, including development, operation, and management of power generation assets, power scheduling and marketing, energy management services and sales of competitive electric service to consumers. TCPA members participating in this filing provide nearly ninety percent (90%) of the non-wind electric generating capacity in ERCOT, representing billions of dollars of investment in the state, and employing thousands of Texans.

SB 3 addresses the importance of the PUC and the RRC coordinating weatherization standards, jointly mapping the gas-electric supply chain, and collaborating to develop and implement prioritization criteria to ensure that truly critical natural gas supplies are capable of

² TCPA member companies participating in these comments include: Calpine, Cogentrix, EDF Trading North America, Exelon, Luminant, NRG, Shell Energy North America, Talen Energy, Tenaska, TexGen Power, and WattBridge.

delivering fuel to power plants during weather emergencies. *See* SB 3 Sections 3,³ 4,⁴ 5,⁵ 16,⁶ 17,⁷ 21,⁸ 25,⁹ 33,¹⁰ and 37.¹¹

SB 3 directs the PUC and the RRC to coordinate in a number of areas, including designating certain natural gas facilities as “critical” and developing prioritization criteria so that system operators can differentiate during times of emergencies between natural gas facility loads that are important, but not critical to supply human needs and power plants with fuel, and those that are truly critical gas supply infrastructure. The process the legislature adopted requires the PUC and RRC to: (1) establish information submittal and weatherization standards for both generators and natural gas supply infrastructure; (2) develop technical information for documenting electricity and gas supply components for electricity supply chain mapping; and (3) once the first two steps are complete, utilize the electricity supply chain map to jointly develop a technical basis for prioritizing or otherwise differentiating among different components of the natural gas supply chain to ensure that power plants continue to receive a sufficient gas supply to operate at maximum installed capacity.

The comprehensive measures directed by Senate Bill 3 (“SB 3”) and House Bill 3648 (“HB 3648”) of the 87th Regular Session require the PUC and Railroad Commission of Texas (“RRC”) to work in close coordination immediately and over the long-term to vastly improve the reliability of our natural gas supply infrastructure, including the coordinated provision of electricity to that infrastructure. TCPA appreciates that the Proposed Amendments are just the first step among the many joint activities the PUC and RRC will be pursuing to implement the legislative directives

³ Establishing Subchapter J of Chapter 418 of the Texas Government Code (Texas Energy Reliability Council).

⁴ Creating Texas Natural Resources Code Section 81.073 (Critical Natural Gas Facilities and Entities).

⁵ Creating Texas Natural Resources Code Section 86.044 (Weather Emergency Preparedness).

⁶ Amending Subchapter D, Chapter 38, by adding Sections 38.074, 38.075, 38.076, and 38.077 to create prioritization criteria for load-shed purposes governing critical natural gas infrastructure during an energy emergency.

⁷ Creating Subchapter F, Chapter 38, Texas Utilities Code (Texas Electricity Supply Chain Security and Mapping).

⁸ Creating new Subsections 121.2015(a-1), (c-1), and (c-2), (d), (e), and (f), Texas Utilities Code (establishing weatherization, mapping and enforcement provisions for natural gas pipelines).

⁹ Creating Texas Utilities Code Section 186.008 (Railroad Commission Weather Emergency Preparedness Reports).

¹⁰ Creating the State Energy Plan Advisory Committee (to be appointed by the Governor, Lt. Governor, and Speaker of the House [4 positions each] and requiring the submitted of a State Energy Plan by September 1, 2022).

¹¹ Requiring the Texas Electricity Supply Chain Security and Mapping Committee to produce the above-referenced map by September 1, 2022.

handed down in response to the energy disruptions caused by Winter Storm Uri. However, as currently crafted, the Proposed Amendments risk undermining the legislature’s intent when read in conjunction with the RRC’s proposed amendments to 16 Texas Admin. Code (“TAC”) § 3.65 (“§3.65”); TCPA recommends the Commission take reasonable steps to mitigate that risk by taking the steps recommended herein.

DISCUSSION

I. NECESSARY CHANGES TO THE PROPOSED AMENDMENTS

The Proposed Amendments rely on the RRC’s determination of “critical gas suppliers” in §3.65, which as currently drafted would unfortunately result in both an over-broad categorization of “critical” facilities and underwhelming expectation of weatherization of such facilities. The Proposed Amendments define “critical natural gas” as follows:

A facility designated as a critical gas supplier by the Railroad Commission of Texas under §3.65(b) of this title (relating to Critical Designation of Natural Gas Infrastructure) unless the critical gas supplier has obtained an exception from its critical status under §3.65(d) of this title. Critical natural gas is a critical load during an energy emergency.

The Proposed Amendments are thus premised on the assumption that the RRC’s proposed new 16 TAC §3.65 would establish a list of “critical” facilities for consideration by utilities¹² in complying with the load shed provisions of Section 16 of SB 3.¹³ At a minimum, the RRC’s initial step to implement SB 3 was expected to establish sufficient criteria to enable the PUC, ERCOT, and utilities to discern which parts of the natural gas industry should be deemed “critical” for purposes of prioritizing electrical service. It was also anticipated that minimum weatherization standards would be specified in order for members of the natural gas industry to understand what type of weatherization requirements would apply to them if they certified (by filing new “Form

¹² The Proposed Amendments define “utility” to include transmission/distribution utilities, electric cooperatives and municipally-owned utilities for purposes of new section 25.52(h). Although cooperatives and municipally-owned utilities are not traditionally included under that term in other parts of PURA these comments will group those entities under the term “utilities” for consistency with the Proposed Amendments.

¹³ Adding new Sections 38.074, 38.075, 38.076, and 38.077.

CI-D”) that they are “prepared to operate during a weather emergency.” Unfortunately, the RRC’s proposal does neither as currently drafted.

Rather than use the discretion and judgment required by the legislation to specify criteria that will govern the “prepared to operate” certification, or even signal when that criteria will be forthcoming, the RRC rule simply assumes any facility is “critical” unless its owner elects to opt-out by submitting a Form CI-X and paying the one-time (\$150) fee .¹⁴ Proposed §3.65 provides a blanket “critical” designation for arguably the entire natural gas industry when it states that:

*The following facilities **are designated critical** gas suppliers and critical customers of the entities described by Texas Utilities Code, §38.074(b)(1) during an energy emergency:*

- (1) wells producing gas or casinghead gas;*
- (2) gas processing plants;*
- (3) natural gas pipelines and pipeline facilities including compressor stations;*
- (4) local distribution company pipelines and pipeline facilities including compressor stations;*
- (5) natural gas storage facilities;*
- (6) natural gas liquids transportation and storage facilities;*
- (7) saltwater disposal facilities including saltwater disposal pipelines; and*
- (8) other facilities under the jurisdiction of the Commission the operation of which is necessary to operate any of the facilities in paragraphs (1) through (7) of this subsection.¹⁵*

Although TCPA would welcome an industry-wide approach to weatherization for the natural gas industry, like the PUC is pursuing for the entire ERCOT generation fleet, we are concerned that this does not appear to be the intent of the RRC, given that they have not clarified that the requirement in Natural Resources Code Section 81.073(b)(3) (requiring any facility wishing to be deemed critical to be prepared to operate during a weather emergency) is not an automatic opt-out provision for any facility that desires not to weatherize.

A related deficiency in the RRC’s proposal is that there is no provision (or preamble clarification) made to ensure that those entities wishing to opt out of weatherization requirements will not be allowed to if they are deemed critical as a result of the upcoming gas-electric supply

¹⁴ Railroad Commission of Texas Proposed New 16 TAC §3.65 and Proposed Amendments to §3.107 to Implement HB 3648 and SB 3 at §3.65(b)-(d) (46 Tex. Reg. 6458)(Oct. 1, 2021).

¹⁵ Natural Resources Code Section 81.073(b)(3)(emphasis added).

chain mapping process. TCPA reads the plain language of SB 3, taken as a whole, to provide two distinct functions that stem from a gas facility’s being “prepared to operate during a weather emergency”: (1) the objective of weatherization requirements for facilities identified by the gas-electric supply chain map;¹⁶ and (2) an initial criterion for critical load designation for purposes of load shed and load restoration prioritization.¹⁷ The only reasonable way to construct these statutory requirements together while giving meaning to each is to conclude that the latter does not interfere with the former. That is, a gas facility must not be given full deference in determination of its preparedness to operate in a weather emergency – the RRC must establish weatherization requirements that apply to facilities included in the gas-electric supply chain map, and only provide good cause exceptions based on specific conditions for such facilities to be exempted from those reliability requirements.

Another point of confusion about the RRC proposal that materially impacts the Proposed Amendments is the incongruity between the above-referenced (and emphasized) statement that the long list of facilities “are designated as critical” in proposed §3.65 while RRC’s acknowledgement in the preamble to their proposal that §3.65 “is the first of many steps in implementing the requirements of SB 3” and “does not prioritize the critical facilities for load-shed purposes.”¹⁸ This correct understanding by the RRC of the limited value of their initial “critical” facility listing does not marry-up with the significance being placed on their rule by the Commission in the Proposed Amendments. This is the reason the Commission needs to revise the Proposed Amendments to avoid confusion and misplaced reliance on §3.65.

TCPA will participate in the upcoming comment period on proposed §3.65 in an effort to clarify, strengthen, and reconcile the language used in the RRC proposed rules with the Proposed Amendments. For now, it is important for the Commission to recalibrate the final rule language of the Proposed Amendments to account for the shortcomings of the current RRC proposal.

Toward that end, TCPA recommends that proposed §25.52, be supplemented as follows:

1. In the definition of “critical natural gas” in §25.52(c)(2), add a requirement that, in order to be considered critical natural gas, an authorized officer of the operator of

¹⁶ Texas Natural Resources Code, §86.044(c) and Texas Utilities Code, §38.201(b)

¹⁷ Texas Natural Resources Code, §81.073(a)-(b) and Texas Utilities Code §38.074

¹⁸ See, e.g., 46 Tex.Reg. 5458 (clarifying that §3.65 “does not prioritize the critical facilities for load-shed purposes”).

the facility must also certify that the facility is in compliance with the best practices to prepare the facility to maintain service in an extreme weather event established under PURA §38.203(a)(4).

2. In §25.52(h), strike the cross reference to §3.65 and instead rely solely on the definition and requirements of critical natural gas facilities finalized by the Commission in its own §25.52(c)(2), as supplemented by item #1.
3. In the revised definition or revised § 25.52(h), specifically permit the electric utilities to use information from the *Application for Critical Load Serving Electric Generation and Cogeneration* as at least part of the process for determining and prioritizing critical natural gas.

Additionally, to the extent that the coordination process identifies additional information needed in the existing form used by electric utilities to designate Critical Load Serving Electric Generation and Cogeneration, the form should be modified as necessary, and as soon as possible, to provide any additional information needed for determination and prioritization. This may necessitate the facilities who have already provided such forms to provide supplemental information.

These changes will insulate the Commission's rules from the weaknesses of the RRC's initial proposed §3.65 and decouple the two rulemakings so that the Commission does not have to depend upon subsequent strengthening of the RRC rule, but instead can simply initiate the implementation of SB 3 through the express provisions of a rule under its control.

II. RECOMMENDED PATH FORWARD FOR COMMISSION AND RRC COORDINATION

Although TCPA is recommending that the Commission decouple the Proposed Amendments from the RRC current rulemaking to establish §3.65, we strongly recommend enhanced coordination between the agencies on the important work ahead to implement SB 3 and HB 3648. Moving forward, it is crucial that the agencies collaborate in an immediate, constant, and substantive way, and send identical parallel messages to the public and their respective regulated communities regarding the multi-step process that needs to be conducted to complete and synchronize the legislative directives relating to natural gas supply. As noted at a high level

above, TCPA believes the process envisioned by SB 3 includes three distinct steps that can be best summarized as follows:

STEP 1: INFO SUBMITTAL & INITIAL WEATHERIZATION COMMITMENT

PUC: Finalize proposed §22.52 to more accurately reflect the limitations of the RRC’s proposed §3.65 and, in the preamble to the final rule, clarify this 3-step roadmap and the need for interim prioritization criteria to be developed.

RRC: Rule establishing initial weatherization and information submission requirements for entities within natural gas supply infrastructure to meet as a prerequisite to being considered critical – i.e., criteria for being deemed “prepared to operate in a weather emergency.” Note that this cannot mean that anyone who weatherizes will be “critical” because several provisions of SB 3, most notably Section 17, make it clear that prioritization criteria must be established to ensure that we don’t ignore the technical reality that “if everyone is critical, nobody is critical.”

STEP 2: MAPPING & WEATHERIZATION BEST PRACTICE DEVELOPMENT

PUC: (with ongoing coordination and information from RRC): (1) develop sufficient technical information to provide the Texas Electricity Supply Chain Security and Mapping Committee the basis for documenting the electricity components of the required map (e.g., location of gas-fired power plants, storage facilities, required gas volumes and pressures, and power distribution lines feeding oil and gas loads, including the size of those lines and power needs of the different components of the industry) and (2) issue the “best practices to prepare facilities that provide electric service [] in the electricity supply chain to maintain service in an extreme weather event and recommend oversight and compliance standards for those facilities” pursuant to PURA § 38.203(a)(4) (emphasis added).

RRC (with ongoing coordination and information from PUC): (1) develop sufficient technical information to provide the same Committee the basis for documenting the different gas supply components of the required map (e.g., working back from the power plants, identifying the pipelines, compressor stations, gas processing facilities, and initial production locations that feed the supply lines that feed those power plants) and (2) issue the “best practices to prepare facilities that provide [] natural gas service in the electricity supply chain to maintain service in an extreme weather event and recommend oversight and compliance standards for those facilities” pursuant to PURA § 38.203(a)(4) (emphasis added).

STEP 3: ESTABLISHING PRIORITIZATION CRITERIA

PUC & RRC JOINTLY: Pursuant to PURA § 38.074(b)(2), using the above-referenced map, develop a technical basis for prioritizing (including tiering or

otherwise differentiating among) different components of the natural gas supply chain to ensure that power plants continue receive a sufficient gas supply to operate at the maximum available installed capacity during an energy emergency.

Given the importance of the electricity supply chain map, best practices for winterization and the ultimate designation and prioritization of “critical” gas facilities, the agencies should commence the mapping process as soon as possible with a goal of releasing the map and best practices far in advance of the September 1, 2022 deadline. Moreover, given that the State is rapidly approaching the first winter since Winter Storm Uri, interim guidelines should be developed as soon as possible to provide some assurances to the public and the electric generation industry that the natural gas supply chain is prepared to prevent the disruptions to their system that occurred last February.

III. NEED FOR TRANSPARENCY REGARDING INTRASTATE PIPELINES

As the Commission and RRC proceed in their close coordination to develop the map and best practices discussed above, TCPA recommends that particular attention be paid to the need for transparency regarding certain essential information about intrastate pipelines. There are significant differences between federal regulation of interstate pipelines and state regulation of intrastate gas pipelines in Texas, including transparency requirements of gas system conditions. While beneficial information relating to *interstate* pipelines is available, including with regard to the pipelines’ volumes and capacities, little information concerning *intrastate* pipelines is publicly-available. The lack of available information concerning intrastate pipelines could hinder efforts to gather the information necessary for mapping, best practice development and prioritization purposes.

For this reason, TCPA urges the Commission to work with the RRC to bring about more transparency regarding intrastate natural gas pipelines as part of the mapping process, so that information available for intrastate pipelines is more similar to that available for interstate pipelines. Specifically, TCPA recommends that all pipelines should publicly post daily the capacities of, and volumes flowing through receipt and delivery points (consistent with interstate practices) and mainline segments on electronic bulletin boards in order to make available the information needed to track daily flows of natural gas throughout Texas. Just as TCPA’s members,

the Commission, and ERCOT have processes for keeping information confidential when there are legitimate security and/or proprietary reasons for doing so, we trust that the Commission and the RRC can establish adequate protective protocols both independently and in their joint dealings with the Texas Electricity Supply Chain Security and Mapping Committee, as well as the Texas Energy Reliability Council.

While implementing these and other key reforms necessary to bring more transparency to natural gas supply is outside the scope of the specific provisions of the Proposed Amendments, TCPA believes that this topic is squarely within the legislative directives of SB 3 and wanted to take this opportunity to request, on the administrative record, that both agencies take immediate action to improve the flow and public availability of information in order to ensure that adequate mapping, prioritization and information sharing is occurring to prevent a recurrence of what occurred in February.

CONCLUSION

With the suggested revisions to the Proposed Amendments discussed above, immediate and enhanced coordination with the RRC on the multi-step process established by SB 3, and a renewed sense of urgency for the natural gas supply side of the power generation equation, TCPA is confident that the Commission can go a long way to preventing the recurrence of the energy disruptions experienced in February. It is essential that the current pace of progress improve, however, as the deficiencies of the current proposals at both agencies and the slow start in developing prioritization criteria are cause for concern. TCPA stands ready to actively participate in the stakeholder process at both agencies to expedite implementation of SB 3, appreciates the opportunity to comment on the Proposed Amendments and is available to provide any additional information that may be helpful to the Commission.

Dated: October 7, 2021

Respectfully submitted,



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and

A handwritten signature in blue ink, appearing to read "M. Nasi", is centered on the page.

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