CompetitivePower.org

August 15, 2022

Rules Coordinator
Railroad Commission of Texas
Office of General Counsel
1701 N. Congress
Austin, Texas 78701

Re: Proposed New 16 TAC §3.66, relating to Weather Emergency Preparedness Standards.

Texas Competitive Power Advocates ("TCPA") respectfully submits these comments in response to the Railroad Commission of Texas's ("RRC" or "Commission") Proposed New 16 Texas Admin. Code ("TAC") §3.66 (the "Proposed Rule" or the "Weatherization Rule"). The deadline for comments is August 15, 2022. These comments are timely filed.

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 members[1] and their affiliates provide a wide range of important market functions and services within 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. TCPA members collectively operate over 39,000 MW of natural gas fired generation and

[1] 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.

are therefore among the largest natural gas consumers in the state with peak gas demand requiring flows in the range of 15 bcf/day. TCPA appreciates the opportunity to submit comments on the Proposed Rule.

EXECUTIVE SUMMARY

TCPA applauds the Commission for recognizing the need to provide clear and consistent weatherization standards. As part of the Commission's preamble finalizing the weatherization standards, we request that the Commission provide additional clarity regarding the operators that are required to implement the weatherization standards and the circumstances under which operators may be exempted form weatherization requirements. Furthermore, we believe the Commission should expound on the expectations surrounding operator performance during weather emergencies. Finally, we believe the penalties should be commensurate with the offending action; however, it appears that it is unlikely that operators could ever exceed 15 points, and therefore most penalties will never exceed $5,000. While we do not seek for the commission to be punitive, in order to have the desire effect, penalties should serve as an incentive to avoid violations, not as a minor inconvenience.

I. Clarity Regarding Applicability of Weatherization Requirements

Senate Bill 3 requires certain pipeline facility operators to implement measures to prepare to maintain service quality and reliability during extreme weather conditions. The Weatherization Rule further explains that gas supply chain facility operators who must comply are those whose facilities are included on the electricity supply chain map created and are designated as critical by the Commission. The gas pipeline facility operators who must comply with Commission weatherization rules are those who are included on the electricity supply chain map and directly

serve a natural gas electric generation facility operating solely to provide power to the electric grid for the ERCOT power region or for the ERCOT power region and an adjacent power region.

The preamble notes that gas supply chain facility operators or a gas pipeline operators shall implement weather emergency preparation measures intended to, first, ensure the sustained operation of a gas supply chain facility or a gas pipeline facility during a weather emergency. "Sustained operation" is defined in proposed subsection (b)(6) as the safe operation of a gas pipeline facility or gas supply chain facility such that the facility does not experience a weather-related forced stoppage in production, treating, processing, storage, or transportation of natural gas.

As proposed, the Weatherization Rule would allow operators to opt out of winter operations. While we agree the Commission cannot impose a "duty to operate," we request that the Commission provide greater clarity about who is required to implement the weatherization rules. Furthermore, the Commission should ensure that the operators who do intend to operate have implemented the weatherization requirements in the Proposed Rule.

II. Expectations Regarding Sustained Operations

As previously noted, the Proposed Rule defines "sustained operation" as:

> Safe operation of a gas pipeline facility or a gas supply chain facility such that the facility does not experience a weather-related forced stoppage in production, treating, processing, storage, or transportation of natural gas.

We recommend that this definition be amended to ensure that 1) operators maintain operations during weather emergencies and 2) operators account for both known and reasonably anticipated weather-related forced stoppages. Our proposed revisions are as follows:

> Safe operation of a gas pipeline facility or a gas supply chain facility such that the facility does not experience ~~a~~ weather-related forced stoppage in production, treating, processing, storage, or transportation of natural gas.

Good operator practice and safe operation of a gas pipeline facility or a gas supply chain facility such that the facility:

(a) Does not experience ~~a~~ reasonably anticipated weather-related forced stoppages in production, treating, processing, storage, or transportation of natural gas; and

(b) Maintains good work practices during weather emergencies.

III. Penalty Amounts

We commend the Commission for establishing a penalty system designed to ensure compliance with applicable weatherization requirements. However, upon closer examination, it appears that it is almost impossible for operators to reach 15 penalty points (i.e., a Class A violation). Thus any penalty is likely to be at most $5,000. While do not seek to make the penalty provisions overly punitive, they should be designed in a way to incentivize compliance with the applicable weatherization requirements and deter operators from taking short cuts and failing to address non-compliant operations. As an example, the penalty points matrix contains different categories for violations that remain out of compliance for 5, 30, 60, or 90+ days. While this does increase the amount of penalty points, it does not necessarily increase the penalty amount and seems fundamentally incompatible with the compounding violation provisions in statute.

Additionally, there is a slight discrepancy between the proposed rule language in 3.66(g),which provides that "each day a violations occurs constitutes a separate offense," while the SB3 language that says "each day a violation *continues* may be considered a separate violation."

CONCLUSION

We appreciate the opportunity to provide comments on the Commission's proposed Weatherization Rule. We commend the Commission's efforts to develop rules and procedures to prepare the state for weather emergencies.

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