



October 7, 2022

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

Via rulescoordinator@rrc.texas.gov

Re: Proposed Amendments to 16 TAC §3.65

Texas Competitive Power Advocates (“TCPA”) respectfully submits these comments in response to the Railroad Commission of Texas’s (“RRC” or “Commission”) Proposed Amendments 16 Texas Admin. Code (“TAC”) §3.65 (the “Proposed Rules”). The deadline for comments is October 7, 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 members¹ 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. TCPA members collectively operate over 39,000 MW of natural gas fired generation and are therefore among the largest natural gas consumers in the state with peak gas demand requiring

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.

flows in the range of 15 bcf/day. TCPA appreciates the opportunity to submit comments on the Proposed Rules.

DISCUSSION

I. Background and Summary of Comments

The Railroad Commission adopted §3.65 in December of 2021 to implement requirements from SB 3, in response to Winter Storm Uri. The Railroad Commission, along with Public Utility Commission of Texas (“PUCT”), the Texas Department of Emergency Management (“TDEM”), and the Electric Reliability Council of Texas (“ERCOT”) have been charged with mapping the electricity supply chain in Texas and identifying critical infrastructure. Specifically, §3.65 implemented requirements from SB 3 for designating certain facilities as critical gas suppliers or as critical customers during energy emergencies. The adoption of §3.65 in 2021 was a step in the right direction to develop a more reliable natural gas and electric power system in the face of extreme weather events.

Yet, the existing §3.65 has garnered feedback that it presumes too many facilities as critical, such that electric utilities are unable to effectively prioritize facilities during load-shed situations. Furthermore, under the current version of §3.65, it is not clear whether facilities that are included on the electricity supply chain map could request an exception from critical designation. While the proposed amendments to §3.65 attempt to rectify those concerns, TCPA recommends the following revisions to the Proposed Rule to provide additional clarity and consistency with other agency regulations.

- Revise the proposed definition of “energy emergency” to such that the effective definition of “weather emergency” in §3.66 will align with the PUCT’s definition of “weather emergency.” At a minimum, the definition should include Operating Condition Notice, Conservation Alert, Advisory, Watch, or some other threshold (e.g., SOC/TERC activation) that extends beyond an acute Energy Emergency Alert issuance from ERCOT; Make clear in the final rule that the Commission will automatically reject a facility’s critical designation under §3.65 (b)(1) if it fits an exclusion under §3.65 (e)(2)(A), (B), or (C) unless the facility can clearly demonstrate its importance to in-state supply of natural gas within the electric supply chain.

- Revise the language in (e)(2)(B) to replace the word “produced” with “produced, processed, or delivered”
- Revise the language in (e)(2)(D) to replace the word “providing” with “delivering.”

TCPA is also unclear on whether gas infrastructure used for gas exportation either to Mexico or LNG liquefaction and export facilities are or should be treated as critical infrastructure under the language in (e)(1)(D). TCPA requests that the Commission provide clarity as to whether these types of natural gas facilities should be designated as critical infrastructure

II. The Proposed Rule’s Defines “Energy Emergency” Too Narrowly

The Commission has proposed to revise the definition of “Energy Emergency” such that an event with “potential to result in firm load shed” is triggered when the reliability coordinator of a power region in Texas issues an Energy Emergency Alert (EEA) Level 1 or 2. Thus, under this proposed definition the potential for firm load shed is tied to the issuance of certain EEAs instead of being triggered by conditions that present a heightened risk of firm load shed (which occurs at EEA Level 3). TCPA recommends that the Commission decline to make the proposed change, and instead better align its definition with the definition of “weather emergency” recently adopted by the Public Utility Commission.

It must be noted that §3.66, adopted concurrently with these proposed amendments to §3.65, defines weather emergency as “weather conditions such as freezing temperatures, freezing precipitation, or extreme heat in the facility’s county or counties that result in an *energy emergency as defined by §3.65 of this title.*” Thus, the proposed revision directly impacts the scope of conditions for which weatherization requirements under §3.66 must be implemented.

Because the definition of “energy emergency” in §3.65 dictates the definition of “weather emergency” in §3.66, the proposed definition may have unintended consequences. Gas facilities are only required to weatherize to sustain operations “during weather emergencies” that “result in an energy emergency as defined by 3.65 of this title.” Ideally, gas facilities would address the risk of losing production *long before* the onset of an EEA –which was precisely the scenario during Winter Storm Uri, where natural gas production declines began more than a week ahead of ERCOT

declaring an EEA.² Accordingly, the proposed definition of a weather emergency being tied to the issuance of a Level 1 or Level 2 EEA would miss that entire period leading up to – and contributing to – the actual load shed event. Therefore, the Commission should define “energy emergency” in §3.65 more broadly to at least include Operating Condition Notice, Advisory, Watch, or some other threshold (e.g., SOC/TERC activation) that extends beyond an acute Energy Emergency Alert issuance from ERCOT.

For comparison, the Public Utility Commission recently defined “weather emergency” in 16 TAC §25.55:³

“Weather emergency -- A situation resulting from a summer or winter weather event that produces significant risk for a TSP that firm load must be shed or a situation for which ERCOT issues an Emergency Notice to market participants involving an operating condition in which the safety or reliability of the ERCOT system is compromised or threatened by summer or winter weather.”

Notably, TCPA had commented in that rulemaking that the Public Utility Commission adopt an EEA-related definition of “weather emergency,” which the Public Utility Commission explicitly rejected “as the threshold to trigger such events is too high of a standard for the purposes of this rule,” instead finding that “[t]ying the definition to ERCOT Emergency Notices creates an objective, independent basis for determining whether a ‘weather emergency’ exists” because “such Notices are communicated to market participants and the general public in a manner that is already known.”⁴ TCPA acknowledges the Public Utility Commission’s rationale, and recommends that the Commission adopt similar language to address the concerns raised above as well as to ensure related definitions are consistent between Railroad Commission and Public Utility Commission regulations.

² See *FERC-NERC Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South Central United States* at pp. 81-94 (<https://ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and>). While “production began to decline first in Oklahoma and Texas beginning on approximately February 7 and continued to decline as the week progressed,” ERCOT did not issue an EEA until February 15, 2021.

³ See recently-adopted 16 TAC § 25.55(b)(12) in Project No. 53401, Final Order at 181 (<https://interchange.puc.texas.gov/search/documents/?controlNumber=53401&itemNumber=39>).

⁴ *Id.* at pp. 64-65.

III. Critical Designation Eligibility

The proposed rule would amend subsection (e) to restate the exception process to affirmatively state which facilities are eligible for an exception rather than stating the facilities that are not eligible for an exception. The proposed amendments also clarify the acceptable reasons for requesting an exception.

However, facilities that qualify for an exception from critical designation under §3.65 (e)(2)(A) - (C) should not be eligible to be designated as critical. If a facility consumes all of its own gas on site⁵, all of the facility's natural gas production is consumed in another state⁶, or the facility does not provide gas for third party use⁷, then such a facility should not be part of the electric supply chain. Simply put, these facilities do not supply gas to Texas consumers. Any facility excepted under §3.65 (e)(2)(A) - (C) is not essential to the electric supply chain and, therefore, should not be considered a critical facility.

The designation of gas infrastructure facilities used to export natural gas from Texas via intrastate gas pipelines to Mexico or by way of LNG liquefaction and export terminals into the international LNG market could have a significant impact on both gas and electric supply available for consumption during emergency weather events. TCPA requests that the Commission provide clarity as to whether these types of natural gas facilities are or should be designated as critical infrastructure.

IV. Clarifying Language

Regarding proposed (e)(2)(B), TCPA notes that there may be more than just natural gas production that is directed entirely out of state, and the rule language would benefit from reflecting this. TCPA suggests the language be slightly revised as follows:

(B) All of the natural gas produced, processed, or delivered by ~~at~~ the facility is consumed in another state

⁵ Proposal for Publication at 11 (Proposed §3.65 (e)(2)(A)).

⁶ *Id.* (Proposed §3.65 (e)(2)(B)).

⁷ *Id.* (Proposed §3.65 (e)(2)(C)).

Regarding proposed (e)(2)(D), TCPA suggests the language be slightly revised as follows:

(D) the electric entity ~~providing~~ delivering electricity to the facility has provided notice that the facility's request for critical designation status was rejected, denied, or otherwise disapproved by the electric utility; provided, however, that the electric utility communicated its determination in writing, and the decision was for reasons other than the lack of correct identifying information or other administrative reasons.

For the majority of Texas, the “electric entity” that will receive and review critical designation forms required under 16 TAC § 25.52(h) will be Transmission and Distribution Utilities (TDUs). TDUs *deliver* electricity, but in the ERCOT competitive market, the *provision* of electricity is a transaction between generators and retail electric providers for the benefit of providing service to the customer. While 16 TAC § 25.52(h) is also applicable to electric cooperatives and municipally owned utilities that may engage in both the delivery and provision of electricity, TCPA suggests that the term “deliver” is more universally applicable in this context.

CONCLUSION

TCPA recognizes the difficult task presented to the RRC with respect to designating critical natural gas loads and developing weatherization criteria. We appreciate the opportunity to comment on this rulemaking. TCPA is available to provide any additional information that may be helpful to the Commission.

Sincerely,

Michele Richmond

Michele Richmond
Executive Director
Texas Competitive Power Advocates (TCPA)
(512) 653-7447
michele@competitivepower.org

and

Michael J. Nasi

Michael J. Nasi
Attorney
Jackson Walker, LLP
(512)-236-2216
mnasi@jw.com

