



November 1, 2021

Rules Coordinator
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Railroad Commission of Texas
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RE: Comments to Proposed Amendments to 16 TAC §3.65, relating to Critical Designation of Natural Gas Infrastructure

Rules Coordinator:

The Texas Public Power Association (TPPA) appreciates the opportunity to respond to the proposed rule by the Railroad Commission of Texas (Commission) regarding the critical designation of natural gas infrastructure. These comments are submitted on behalf of TPPA and do not necessarily reflect the opinions of any individual TPPA member.

Formed in 1978, TPPA is the statewide association for the 72 municipally-owned utilities (MOUs) in Texas. TPPA members serve urban, suburban, and rural Texas and vary in size from large, vertically-integrated utilities to relatively small distribution-only systems. We are proud to serve approximately 5.1 million Texans across the state. Sixty-three of our members operate within the Electric Reliability Council of Texas (ERCOT) region¹ and nine are located within either the Southwest Power Pool (SPP) or Midcontinent Independent System Operator (MISO) region. MOUs offer a long track record of stability, and we serve an essential role in providing secure and reliable power to the wholesale electricity markets in these regions, including ERCOT. Many of our member systems have been providing stable and reliable electric power to communities in Texas for over 100 years, and collectively, our members provide more than 10,500 MW of generation and maintain nearly 3,000 miles of high-voltage transmission assets.

Under new Section 81.073 of the Texas Natural Resources Code, as created by Senate Bill 3, 87th regular session (SB3) and House Bill 3648, 87th regular session (HB3648), the Commission, in collaboration with the Public Utility Commission of Texas (PUCT), is required to develop rules that establish a process to designate certain natural gas facilities and associated entities as critical during energy emergencies. To implement this process, the Commission proposes amendments to 16 TAC §3.65.

¹ 70% of Lubbock Power and Light's customers were moved to the ERCOT region on May 29 and 30, 2021. The remainder will be transitioned from SPP in 2023.

Proposed Rule

On September 14, 2021, the Commission approved the filing of the proposed rule in the Texas Register in the October 1st issue. The proposed rule requested comments by November 1. These comments are timely filed.

TPPA supports the Commission's work in this space. Winter Storm Uri viscerally demonstrated the need for increased communication and collaboration between the electric and natural gas sectors, and TPPA believes that this rulemaking will serve as a critical step in ensuring those communication pathways remain strong going forward. However, TPPA does have some concerns with the language of the proposed rule.

In **proposed §3.65(a)(1)**, the Commission would define "energy emergency" as "any event that results in or has the potential to result in load shed . . ." TPPA believes that this definition may be overbroad. Many events may have some small potential to result in limited, localized load shed, but these events should not be classified as statewide energy emergencies. TPPA recommends that the definition be limited to events with a *significant risk of regional or statewide* load shed, rather than just the potential for any load shed. TPPA makes a similar recommendation for **proposed §3.65(a)(2)**, which would define "weather emergency." TPPA recommends this definition be modified to focus on a weather condition that has a *significant risk* to result in an energy emergency.²

In **proposed §3.65(b)**, the Commission would designate several facility types as critical, as a matter of definition. TPPA is concerned that this kind of blanket designation may be overly broad. SB3 and HB3648 both focused on the need for "certain" natural gas facilities and associated entities to be designated as critical.³ To that end, TPPA believes that only a certain subset of natural gas facilities should be eligible for designation as critical, namely those facilities that directly serve human needs customers (i.e., if the pipeline directly serves a Local Distribution Company or a city gate), or electric generation facilities that, in turn, serve human needs customers. Under the proposed rule, even gas that would not serve human needs or electric generation would be designated as critical, which, in times of severe load shed, can result in longer and more widespread rolling outages elsewhere on the system.

TPPA is also concerned by the process by which these facilities are designated as critical. Under the proposed rule, the relevant entities are entitled to critical status by virtue of their function, and unless an exception is filed, that status cannot be removed.⁴ This results in circumstances where,

² TPPA notes that the PUCT recently adopted a weatherization rule that defines "weather emergency" as "[a] situation resulting from weather conditions that produces significant risk for a [transmission service provider] that firm load must be shed or a situation for which ERCOT provides advance notice to market participants involving weather-related risks to the ERCOT power region." See 16 TAC § 25.55, Weather Emergency Preparedness. The effectiveness of these rules depends greatly on coordination between the Commission and the PUCT, and disparate rules may result in differing responses from the two agencies at a time when lives are at stake.

³ See Tex. Nat. Res. Code § 81.073.

⁴ TPPA notes that this approach may be inconsistent with the language of SB3 and HB3648, which require the Commission and the PUCT to collaborate to establish a process by which critical status can be obtained. Under the proposed rule, there would be no such process – critical status is obtained simply if a natural gas facility meets the definitional category.

for example, a natural gas facility that fails to provide critical customer information to its electric utility under proposed §3.65(e) might face a fine, but the electric utility would still need to consider that customer as critical, despite the natural gas facility's failure to provide the very information needed to ensure that critical status is effective. To incorporate both of the above concerns, TPPA recommends that the Commission amend proposed §3.65(b) to state that the listed types of natural gas facilities are *eligible for critical status if they directly serve human needs customers or natural gas electric generation facilities*.

In **proposed §3.65(d)**, the Commission would grant all eligible natural gas facilities critical status unless the facility files for an exemption and pays the requisite \$150 fee. As noted above, it would appear that the failure to provide critical customer information to an electric utility would not put this critical status in jeopardy. Further, critical status would not appear to hinge on the provision of the acknowledgment of critical customer form (proposed form CI-D) as required under proposed §3.65(c). Under the proposed rule, either of these failures may result in the Commission assessing administrative penalties, but a natural gas facility's critical status would appear to be unaffected, as that occurs as a matter of definition. TPPA believes that this process should be inverted – the default should be that a natural gas facility is not critical unless it provides adequate critical customer information to its electric utility.

Moreover, TPPA believes that the opt-out process should be more limited. Under the proposed rule's current formulation, natural gas facilities would seem to be able to opt out even if the facilities have been determined to be critical infrastructure by the Texas Electricity Supply Chain Security and Mapping Committee as part of that committee's effort to map the state's electricity supply chain.⁵ It would be counterproductive if a facility deemed critical infrastructure by one entity would be allowed to opt out of critical status by another.⁶ TPPA recommends that the Commission's rule forbid any facility mapped by the Texas Electricity Supply Chain Security and Mapping Committee as critical infrastructure from opting out.

In **proposed §3.65(e)**, the Commission would allow a natural gas facility to file the form attesting that it has provided critical customer information to ERCOT and its electric utility up to five days prior to it doing so. TPPA opposes this five-day safe harbor provision. TPPA recommends that this provision be amended to require that the natural gas facility include a copy of the critical customer information, as provided to ERCOT and the relevant electric utility, attached to the form. By removing the five-day safe harbor and requiring a copy of the information provided be attached to the form, the Commission would be better able to determine whether the natural gas facility provided usable information to ERCOT and its electric utility, increasing the likelihood of compliance.

In **proposed §3.65(g)**, the Commission would be able to seek administrative penalties against natural gas facilities that fail to provide required information or file required forms. As noted

⁵ See Tex. Util. Code § 38.201-204.

⁶ TPPA notes that under Tex. Nat. Res. Code § 86.004, gas supply chain facilities that are 1) included on Texas Electricity Supply Chain Security and Mapping Committee's critical infrastructure map and 2) designated as critical by the Commission are required to weatherize. It is unclear whether the Commission's opt-out process would allow a natural gas facility to similarly opt out of weatherizing.

above, TPPA would support the removal of critical status, in addition to the possibility of administrative penalties, as a further incentive for compliance.

Proposed Forms

To implement this rule, the Commission has also proposed new forms CI-D and CI-X, each with an attachment. TPPA has reviewed these draft forms and their respective attachments, and TPPA offers the following comment.

Each of the attachments contain important information that TPPA believes should be on the form proper, including the following:

- whether the facility directly serves a natural gas electric generation facility,
- whether the facility directly serves a Local Distribution Company or a city gate,
- latitude and longitude locational information, and
- on-site and emergency contact information.

Electric utilities will likely see a substantial number of applications submitted, and a lost or corrupted attachment will create substantial delays in processing. If this important information is on the form proper instead of a separate attachment, electric utilities will be better equipped to process incomplete applications.

Conclusion

TPPA appreciates the opportunity to submit comments on this proposed rulemaking and requests that the Commission consider its comments and proposed revisions. TPPA looks forward to working with the Commission, its staff, and the stakeholders on these important questions and this broader discussion in the coming months.

Respectfully,



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