



To: Jared Ware, Director, Critical Infrastructure Division and Haley Cochran, Attorney, Office of General Counsel

From: Virginia E. Palacios, Executive Director, Commission Shift

Subject: Proposed New §3.66, relating to Weather Emergency Preparedness Standards

Date: August 15, 2022

Thank you for the opportunity to submit public comments on the Railroad Commission's proposed new rule §3.66, relating to Weather Emergency Preparedness Standards. Commission Shift is a statewide 501(c)3 nonpartisan nonprofit organization based in Laredo, Texas. Our mission is to build public support for reforming oil and gas oversight in Texas. Enclosed you will find a summary of our comments on proposed rule 16 TAC §3.66, general comments on related issues, detailed section-by-section comments on the rule language, and a hypothetical example of the violation classification system in use.

Our recommendations and comments are partly informed by discussions and comments made by participants at the Railroad Commission's recent Regulatory Conference held on August 8th and 9th in Austin, Texas. The conference offered opportunities for operators to ask questions and express challenges they are experiencing with the critical infrastructure rule (§3.65) and illuminated potential roadblocks in implementing proposed rule §3.66.

It is essential that the commission creates a weatherization rule and internal processes that result in a safer, more reliable natural gas supply chain – and not simply more paperwork or bureaucracy for operators. Over ten years ago Texas experienced widespread power outages affecting 4.4 million power customers in the state.¹ The Federal Energy Regulatory Commission (FERC) and the North American Electric Reliability Corporation (NERC) recommended that the Railroad Commission “investigate whether minimum standards for the winterization of gas production and processing facilities should be adopted.”² After the Railroad Commission declined to pass such standards, Texas experienced widespread power outages again during a February 2021 winter storm event.

¹ Federal Energy Regulatory Commission and North American Electric Reliability Corporation. (2011). Report on Outages and Curtailments During the Southwest Cold Weather Event of February 1 - 5, 2011. <https://www.ferc.gov/sites/default/files/2020-04/08-16-11-report.pdf>

² Id. at p. 215.

The 2021 event affected over 4.5 million power customers in Texas, leading to hundreds of deaths and the largest carbon monoxide poisoning event in state history.^{3, 4}

After last year's winter's storms, the Texas legislature required the RRC and the Public Utility Commission to assure that the gas wells, pipelines and generating plants were weatherized so that we don't face another big blackout. A 2021 FERC investigation noted that natural gas fuel supply issues were the second largest cause of unplanned outages, derates, and failures to start – behind electric generator freezing issues.⁵ It is critical that all the gas wells, pipelines, and parts of the gas supply chain that serve electric generators and human needs customers are prepared to operate in winter storms.

The importance of this weatherization rulemaking cannot be understated. Creating clear and effective processes for operators to follow will help to ensure the safety and reliability of the natural gas supply chain and our state's electrical grid.

As the commission prepares its first major weatherization rule, please consider making the following improvements:

1. Create a fair and ethical playing field for operators by developing a definition for a "Major weather-related forced stoppage" that is not subjectively determined by the director of the Critical Infrastructure Division.
2. Facilitate operator compliance by issuing guidance or a notice to operators clarifying deadlines for filing and implementation and explaining how RRC will enforce weatherization standards. The current sequence of deadlines creates confusion about which facilities will be on the final Electricity Supply Chain Map and whether those facilities will be held to weatherization standards this year.
3. Consider notifying facilities of their status on the Electricity Supply Chain Map by email rather than physical mail, which many operators have said they have trouble receiving.
4. Clarify the commission's position on what a "reasonable amount of time" will be to come into compliance with the rule after a notice of violation has been issued.

³ Federal Energy Regulatory Commission, & North American Electric Reliability Corporation. (2021). *The February 2021 Cold Weather Outages in Texas and the South Central United States*. <https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and>

⁴ Perla Trevizo, Ren Larson, Lexi Churchill, Mike Hixenbaugh, & Suzy Khimm. (2021, August 17). Texas power outages led to carbon monoxide poisoning catastrophe. The Texas Tribune, ProPublica, and NBC News. <https://www.texastribune.org/2021/04/29/texas-carbon-monoxide-poisoning/>

⁵ FERC/NERC, supra note 3 at p. 180.

Encourage operators to come back into compliance swiftly by significantly reducing the “time out of compliance” for each factor value in the penalty classification system.

5. Provide more information about how weather data was assembled for Figure: 16 TAC §3.66(c)(2)(D) and ensure that “typical longest consecutive hours of freezing or frozen precipitation in region” depicted in the table represent the higher values of valid data estimates. Operators will design their weatherization systems within the values you set. Texans are counting on you to set values that protect their safety.
6. Ensure that potential penalties are higher than the potential cost of non-compliance.
 - a. Please clarify the schedule of notices and order decisions that would be followed for issuing penalties to operators at each threshold of “time out of compliance.”
 - b. Please also clarify whether the commission would use this schedule for “time out of compliance” rather than considering each day the violation occurs to be a separate violation.
 - c. Please consider reducing the number of days allowed for the highest threshold in the “time out of compliance” section.
 - d. To reduce subjective use of the classification system, please consider defining the term “reckless.”
7. Create a process for ensuring that emergency contact information is updated on the Electricity Supply Chain Map in a timely manner. Operators who acquire facilities between critical infrastructure filing deadlines should immediately update the RRC by filing forms CI-D and CI-X for the acquired facilities. RRC needs to have a process for updating the map database in a matter of days, not months.
8. Please report on the number of facilities that are known to be subject to 16 TAC §3.66, by type of facility and volume produced or transported, if applicable.

Below are additional general comments and section-by-section comments on the rule language. Thank you for considering our recommendations and observations.

Sincerely,

Virginia E. Palacios
Executive Director
Commission Shift

General comments

Operators are required to file critical infrastructure designation (CI-D) and exception (CI-X) forms on March 1st and September 1st of each year. At the RRC Regulatory Conference, RRC staff noted that operators are responsible for forwarding emergency calls for properties they transfer to another operator between critical infrastructure filing dates. This means that operators that transfer a well on March 2nd, for example, may receive phone calls from the RRC or their electric entity during a summer weather emergency relate to facilities they are no longer responsible for. **To improve awareness of this issue, the rule or preamble could include some language making it clear to operators that they are responsible for forwarding emergency calls for properties they transfer to another operator between critical infrastructure filing dates.** At a minimum, the commission should issue a Notice to Operators or a guidance document that reiterates the importance of operators having a system in place to forward potential emergency calls to new operators of transferred assets. The commission could also consider updating Form T-4B, Pipeline Transfer Certification and Form P-4, Certificate of Compliance and Transportation Authority to include a certification for operators to check indicating they are aware of their responsibility to forward emergency calls.

Timeline

- August 30, 2022 - Railroad Commission [Open Meeting](#), where the commission is expected to finalize the weatherization rule.
- September 1st - operators are required to submit their critical infrastructure forms (CI-D and CI-X) on March 1st and September 1st each year. If a facility is listed on the map, operators must include it on Form CI-D.
- September 1, 2022 - the final Electricity Supply Chain Map is expected to be adopted. The map must be updated at least once each year (See Texas Utilities Code Sec. [38.203\(b\)](#)).
- Early September - the commission will begin mailing physical letters to gas supply chain operators affirming whether their facilities are on the map.
- September 30th - the commission is required to submit a Weather Emergency Preparedness Report to the Texas Legislature, summarizing preparedness of facilities on the map in the upcoming year (See Texas Utilities Code Sec. [186.008](#)). This report is only due in even-numbered years, but the commission may submit additional reports on March 1 and September 1 each year if necessary.
- December 1st - gas supply chain facility operators must implement weather emergency preparation measures and submit an annual attestation to the

commission describing all activities the operator engaged in to ensure sustained operation of the facility during a weather emergency.

The next date for filing a critical infrastructure designation form is September 1st, which is the same date the final Electricity Supply Chain Map will be published. Because letters informing operators of their facilities' mapped status will not be sent until after deadline for filing form CI-D, operators might not include some mapped facilities on their CI-D filing.

Will the commission enforce weatherization rules for those mapped facilities that are not included in CI-D filings this year or in the future? Operators need timely clarity on whether weatherization requirements will be enforced for critical infrastructure that was not included on the preliminary map released in April.

Importantly, the commission should know the total volume of gas production from wells that will be included on the September 1st Electricity Supply Chain Map, but that might not have already been designated as critical in the January 2022 filings. Operators must submit an attestation by Dec 1, 2022 indicating that they have implemented weather emergency preparedness measures. It is essential that they receive timely information about whether the weatherization rules apply to them. **The commission should attempt to share this information via email, and not mail.** Many operators made it clear at the RRC Regulatory Conference that they often don't receive physical mail from the commission in a timely manner.

Economic benefits

The preamble to the draft rule preamble notes "Jared Ware, Director, Critical Infrastructure Division, has determined that for each year of the first five years the new rule as proposed is in effect the primary public benefit will be the requirement for gas supply chain facilities and gas pipeline facilities to implement measures to prepare to operate in a weather emergency, increasing the likelihood that these facilities continue to operate in a weather emergency and, therefore, increasing the availability of natural gas for electric power generation. The public benefit will also be compliance with applicable state law."

We encourage Director Ware to also acknowledge in the final rule's preamble that increased availability of natural gas supply in a weather emergency may also help to prevent extraordinary increases in the price of natural gas, thereby maintaining affordability of natural gas and electricity during a weather emergency.

Furthermore, the preamble discusses economic cost “for persons required to comply as a result of adoption of the proposed new rule.” We encourage Director Ware to also acknowledge the economic benefits of the new rule to operators that will potentially be able to sell gas if forced stoppages are prevented as a result of the new rule.

Volume thresholds for applicability

Some operators have recommended using a gas-to-oil ratio to determine rule applicability for the critical infrastructure rule (§3.65), which partially determines applicability of the weatherization rule (§3.66). Only operators that are both on the Electricity Supply Chain Map and are designated as critical infrastructure will have to comply with the weatherization rule.

Using gas-to-oil ratio to determine critical infrastructure designation would be inappropriate, because it may result in some oil wells that produce high volumes of dry gas being excluded from weatherization requirements. Additionally, some operators have said that the filing threshold for critical infrastructure forms of 15 thousand cubic feet per day (Mcf/d) is too low to be meaningful. This volume of gas is roughly enough to fill a 1,600 square foot home with standard nine-foot-tall ceilings. More importantly, it could produce enough energy to power the average residential home for about 5 hours.⁶ Fifteen thousand cubic feet per day may be a relatively low volume compared to a well that produces millions of cubic feet per day, but the energy value of the entire population of low-producing wells could be collectively significant in a weather emergency. **Please report on the number of facilities that are known to be subject to 16 TAC §3.66, by type of facility and volume produced or transported, if applicable.**

⁶ According to the U.S. Energy Information Administration, “In 2020, the average annual electricity consumption for a U.S. residential utility customer was 10,715 kilowatthours (kWh), an average of about 893 kWh per month.” And 7.4 cubic feet of natural gas are needed to produce one kWh of electricity in 2021.

Section-by-section comments

a) Applicability.

No comments.

b) Definitions.

The definition of a “major weather-related forced stoppage” is subjective and relies primarily on a qualitative assessment by the Critical Infrastructure Division Director. Otherwise, the commission will have to prove that the forced stoppage resulted from the operator’s deliberate disregard of the rule.

Additionally, the preamble to the draft of this rule notes “The proposed definitions for major weather-related forced stoppage and repeated weather-related forced stoppage are consistent with the definitions for major and repeated violations in the Commission's Oil and Gas Strategic Monitoring and Enforcement Plan.”

The Oil and Gas Strategic Monitoring and Enforcement Plan is a requirement of HB 1818 (85th legislature) codified in Texas Natural Resources Code Sec. [81.066](#). Although the natural resources code does not define “major violation,” the commission provides a list of rules in the monitoring and enforcement plan that it includes in its assessment of major violations required by HB 1818, but the commission has indicated that violations of rules in the list are not by themselves major violations. The definition of “major violation” described in the Plan also requires that a major violation “causes a significant impact to public safety and/or the environment, is accompanied by conditions that indicate a significant impact to public safety and/or the environment is imminent or is the result of deliberate disregard of Commission rules and regulations related to public safety or environmental protection.” The term “major violation” is not defined in rule nor statute and is clearly subjective. Although there were [more than 14,000](#) violations of rules included in the list of “major violation” rules in the FY 2020 Plan, the commission reported that it considered only 12 of those rule violations to be “major violations.”

Considering the commission’s prior treatment of “major violations” in its Oil and Gas Strategic Monitoring and Enforcement Plan, we have little confidence that serious violations will be classified as “major violations” if such a subjective definition is used. Moreover, the structure of the commission and campaign finance rules followed by the

commission are so weak as to leave open the potential for violating companies to influence not only the commissioners' decisions, but also the decisions of the Critical Infrastructure Division Director without triggering the state's laws on Bribery and Corrupt Influence (See Texas Penal Code [Chapter 36](#)). As has been noted in the 2017 Sunset Advisory Commission staff report on the Railroad Commission, the commissioners approve each employee's salary and pay raises, and this structure "creates the appearance of favoritism because commissioners accept substantial campaign contributions from many of the industries they regulate." **We recommend the commission adopt a definition of "major weather-related forced stoppage" that is not subjective.**

c) Weather emergency preparedness standards for a gas supply chain facility or a gas pipeline facility.

The list of weatherization methods that operators may include in their weatherization preparation measures appears to be generally good, although the rule does not prescribe the use of any given method. We commend the commission for including "developing and implementing redundancies" and "coordinating with local authorities" to its list of methods. **One valuable step the commission could take in the future would be to convene a conversation between operators each year to discuss methodologies for weatherization and evidence-based adaptive management techniques for emergency operations plans.**

d) Weather Emergency Readiness Attestation.

Texas Utilities Code [186.008](#) requires the commission to analyze operators' emergency operations plans (EOPs) and "make recommendations on improving emergency operations plans and procedures in order to ensure the continuity of natural gas service for the electricity supply chain, as mapped under Section 38.203." This report is due to the Texas Legislature by September 30th each even-numbered year.

Draft rule 16 TAC §3.66 does not explicitly require operators to submit emergency operations plans to the Railroad Commission, but operators will be required by to conduct emergency operations planning. Instead, paragraph (d) will require operators to submit a Weather Emergency Readiness Attestation that "includes an attachment describing all activities engaged in by the operator to implement the requirements of subsection (c)." **Will the commission consider these Weather Emergency Readiness Attestations to be the same as the "emergency operations plans" required by the Texas Utilities Code**

186.008? If so, why are the attestations not labeled as “emergency operations plans” in the rule?

Along these lines, the attestations are not due to the commission until December 1st of each year, months after the commission submits its report on EOPs to the legislature in even-numbered years. This, and the fact that the report on EOPs is only due every other year raises concerns about the quality of planning at the state level on an annual basis.

The utilities code allows the commission to submit reports on EOPs on March 1st and September 1st of each year, if it finds that “significant changes to weatherization techniques have occurred or are necessary to protect consumers or vital services, or if there have been changes to statutes or rules relating to weatherization requirements.” However, it is unclear whether the attestation deadline of December 1st or the critical infrastructure filing deadlines on March 1st and September 1st will provide information in a sequence that is useful to the commission in preparing the report on EOPs. **Please comment on the sequence of information available to the commission and what information the commission will include in the report on EOPs.**

e) Inspection of gas supply chain facilities and gas pipeline facilities.

Although not included in the rule language, we appreciate the commission’s clarification in the draft rule preamble that “generally, an inspection will stem from one of two places: (1) an regular inspection of the facility conducted in accordance with the Commission’s inspection schedule or (2) an inspection scheduled in response to a weather-related stoppage notification filed under proposed subsection (f).”

f) Weather-related forced stoppages by a gas pipeline facility or gas supply chain facility.

Paragraph (f)(1) first states that operators must notify the commission of a forced stoppage if it is not resolved within 24 hours, but then defines volumetric thresholds at which “immediate” reporting is required. This sequencing creates confusion and ambiguity as to whether the commission considers “immediate” contact to be necessary before or after the 24-hour threshold is met. **Please clarify how the commission defines “immediate” in relation to the 24-hour timeframe described in paragraph (f)(1).**

The commission uses volumetric thresholds of “5,000 Mcf” and “200 MMcf per day” to define thresholds for “production” and “processing, storage withdrawal, or transportation” facilities, respectively, potentially to indicate when operators should immediately contact the commission in the event of a weather-related forced stoppage. **We recommend the commission use the same units to describe each threshold and spell out the first instance; for example: “5 million cubic feet per day (MMcfd)” and “200 MMcfd.”**

g) Enforcement.

This paragraph requires the commission to notify the Office of the Attorney General of Texas if a violation is not remedied in a “reasonable amount of time.” The draft rule does not define a “reasonable amount of time,” but some timeframes are outlined in Figure: 16 TAC §3.66(g)(1) Classification System. The timeframes described in the classification system go up to “90 days or greater.” Depending on when the violation was discovered, waiting weeks or months for compliance may result in a loss of gas supply that causes forced outages to electric generators. **Please clarify what the commission considers would be a reasonable amount of time for an operator to come into compliance after receiving a notice of violation.**

The rule notes that “each day a violation occurs constitutes a separate offense, the penalty for which may be up to \$1,000,000.” **Does the commission count the days after a notice of violation is issued to be a separate offense? How will daily separate offenses be considered alongside the Classification system’s thresholds for “time out of compliance?”**

Figure: 16 TAC §3.66(c)(2)(D) [weather data]

In the last column labeled “Typical longest consecutive hours of freezing or frozen precipitation in region,” does the word “typical” imply a mathematical average, or was some other calculation used to determine “typical?”

The preamble states “when no observations were available from a county, the climatologist used a conservative value (generally not the most extreme) from a bordering county.” The language “conservative value” and “(generally not the most extreme)” imply that the climatologist used a value that does not represent the maximum number of “longest consecutive hours of freezing or frozen precipitation in region.” Does “conservative” in this sense mean that a lower estimate of hours was selected for the table? **We recommend the commission consult with the state climatologist to include values in the table**

that are on the higher end of known estimates. If lower values are used, it is likely that operators will design their weatherization plans to withstand fewer hours of freezing weather or frozen precipitation, which may be insufficient to ensure operation during the next winter weather emergency.

Figure: 16 TAC §3.66(g)(1) Classification system

The proposed rule's draft penalty structure is not strong enough. In the attached hypothetical example, the proposed violation classification system would call for a maximum penalty of no more than \$5,000 per violation even if an operator that produces the highest volumes of gas (> 5 million cubic feet per day) was deemed "reckless," created a potential hazard to public health, safety, or economic welfare, and made no effort to remedy the violation. According to Gas Technology Institute, winter weatherization for gas wells can cost anywhere from \$2,500 to just over \$30,000.⁷ Penalties that don't exceed \$5,000 might lead operators to accept the violations rather than paying to weatherize their equipment, leaving Texans at risk of more widespread blackouts.

In this example, the point tally would only reach 15 points or more if the operator takes between five and 30 days to come into compliance. At face value, this may appear to incentivize faster compliance. However, because the base value of penalties in the highest class of violations is only \$5,000, this structure leaves room for operators to remain unprepared to operate in a weather emergency for weeks even after a potentially hazardous violation occurs.

Moreover, the longer time thresholds for "time out of compliance" described in the classification system imply that the commission would give operators three or four chances to come into compliance, with failed results, before issuing a penalty.

- **Please clarify the schedule of notices and order decisions that would be followed for issuing penalties to operators at each threshold of "time out of compliance."**
- **Please also clarify whether the commission would use this schedule for "time out of compliance" rather than considering each day the violation occurs to be a separate violation.**

⁷ Gas Technology Institute. (2011) "Impact of Cold Weather on Gas Production in the Texas and New Mexico Gas Production Regions of the United States During early February, 2011." p. 33 Included as "Appendix: GTI Report" in FERC/NERC (2011) supra note 1.

- Please consider reducing the number of days allowed for the highest threshold in the “time out of compliance” section.

Finally, to reduce the subjective nature of the classification system, please consider defining the term “reckless.”

Attachment: Hypothetical Example

Figure: 16 TAC §3.66(g)(1)

Classification System

Violation Factors		Factor Value	Points Tally
Oil lease or gas well facility out of compliance with §3.66 produces an average of 5,000 Mcf or more of natural gas per day		4	4
Oil lease or gas well facility out of compliance with §3.66 produces an average of 1,000 Mcf or more per day but less than 5,000 Mcf of natural gas per day		3	
Oil lease or gas well facility out of compliance with §3.66 produces an average of 500 Mcf or more per day but less than 1,000 Mcf of natural gas per day		2	
Oil lease or gas well facility out of compliance with §3.66 produces an average of 250 Mcf or more per day but less than 500 Mcf of natural gas per day		1	
Gas processing plant, underground gas storage, or gas pipeline facility out of compliance with §3.66 that resulting in a loss of processing, storage withdrawal, or transportation of 200 MMcf or more of natural gas per day		4	
Gas processing plant, underground gas storage, or gas pipeline facility out of compliance with §3.66 that results in a loss of processing, storage withdrawal, or transportation capacity 100 MMcf or more per day but less than 200 MMcf of natural gas per day		3	
Gas processing plant, underground gas storage, or gas pipeline facility out of compliance with §3.66 that results in a loss of processing, storage withdrawal, or transportation capacity of less than 100 MMcf of natural gas per day		2	
Hazard to health, safety, or economic welfare of the public		5	
Potential hazard to health, safety, or economic welfare of the public		2	2
Time out of compliance (calculated as days the operator fails to remedy a violation noted in a Commission notice of violation)	90 days or greater	4	
	60 days or more but less than 90 days	3	
	30 days or more but less than 60 days	2	
	5 days or more but less than 30 days	1	

Reckless conduct of operator	3	3
Intentional conduct of operator	5	
Repeat violations based on operator's history of compliance	3	
Good faith effort to remedy violation	-2	
No effort to remedy violation	5	5
		Total 14
		Penalty maximum per violation
15 points or more = Class A violation		\$More than 5,000 ¹
10-14 points = Class B violation		\$5,000
5-9 points = Class C violation		\$4,000
1-4 points = Class D violation		\$3,000

¹ Pursuant to Natural Resources Code §86.222, the required classification system shall provide that a penalty in an amount that exceeds \$5,000 may be recovered only if the violation is included in the highest class of violations in the classification system.