

**PROPOSED NEW 16 TAC §3.65 AND
PROPOSED AMENDMENTS TO §3.107
TO IMPLEMENT HB 3648 AND SB 3**

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**BEFORE THE
RAILROAD COMMISSION
OF TEXAS**

**ATMOS ENERGY CORPORATION, CENTERPOINT ENERGY RESOURCES CORP.,
AND TEXAS GAS SERVICE COMPANY COMMENTS TO PROPOSED
NEW 16 TAC §3.65 AND PROPOSED AMENDMENTS TO §3.107
TO IMPLEMENT HB 3648 AND SB 3**

Atmos Energy Corporation’s Mid-Tex and West Texas Divisions, CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Entex, and Texas Gas Service Company, a Division of ONE Gas, Inc. (collectively “Texas LDCs”) submit these timely filed comments in response to proposed new 16 Tex. Admin. Code § 3.65 (“proposed §3.65”) approved for publication by the Railroad Commission of Texas (“Commission”) on September 14, 2021, and published in the October 1, 2021 issue of the *Texas Register*,¹ and related proposed Table CCI and proposed Forms CI-D and CI-X posted on the Commission’s website on September 29, 2021.

I. OVERVIEW

The Texas LDCs operate as gas utilities under Texas Utilities Code §§ 101.003(7) and are subject to the original and appellate jurisdiction of the Commission. Collectively, the Texas LDCs provide service to a wide array of over 4 million residential, commercial, governmental, and industrial customers. This represents over 90 percent of the natural gas customers in the State of Texas. Texas LDCs submit these comments because they each operate local distribution company (“LDC”) pipelines and pipeline facilities and under the terms of proposed §3.65(b)(4), each is a “critical customer.”

¹ 46 Tex. Reg. 6461-6462 (Oct. 1, 2021).

II. COMMENTS ON PROPOSED §3.65

As discussed in detail below, the Texas LDCs respectfully request that the Commission revise the definition of Critical Customer Information in proposed §3.65(a)(3); revise proposed §3.65(b)(4) to replace the reference to compressor stations with a reference to control centers; and revise proposed §3.65(e) to reference Form CI-D Attachment, and revise Form CI-D Attachment to include existing battery or backup power capacity and to protect confidential critical customer information.

A. Definition of Critical Customer Information

Proposed §3.65(a)(3) defines Critical Customer Information as follows:

(3) Critical customer information—The critical customer and critical gas supply information specified on Commission Table CCI such as facility identification information, facility location information, emergency contract information, gas production and/or handling information, electrical power and backup power capabilities, and electric utility information.

In order to simplify the filing of Critical Customer Information with both the Commission and electric utilities, the Texas LDCs suggest that this definition be revised to delete the reference to Table CCI and replace it with a reference to Form CI-D Attachment. This revision will allow critical customers and critical gas suppliers (“Critical Customers/Suppliers”) to utilize the same forms they are required to file with the Commission pursuant to proposed §3.65(c) for their required filings with the electric utilities pursuant to proposed §3.65(e). In addition, this revision eliminates the need for Table CCI, which avoids potential confusion between the information presented on Table CCI and the information Critical Customers/Suppliers are required to provide in Form CI-D Attachment.

The Texas LDCs respectfully request that proposed §3.65(a)(3) be revised to read as follows:

(3) Critical customer information—The critical customer and critical gas supply information specified on Commission Form CI-D Attachment.

B. Revision of Proposed §3.65(b)(4)

Proposed §3.65(b)(4) designates LDC assets as critical customers and reads as follows:

(4) local distribution company pipelines and pipeline facilities including compressor stations;

Because operators of distribution facilities receive natural gas from pipeline suppliers at pressures that are sufficient to maintain adequate LDC system pressure, LDC operators do not require or utilize compressor stations as a part of their facilities. Therefore, the reference to compressor stations is unnecessary and it would be appropriate to delete this reference.

LDC operators maintain secure facilities that serve to oversee, monitor, and support the safety and emergency operations of their distribution systems 24 hours a day, 365 days a year, such as control centers. These facilities are staffed by qualified technicians and help ensure the safe and efficient operation of the distribution system. Accordingly, this subsection of the proposed rule should be revised to include a reference to control centers.

The Texas LDCs respectfully request that proposed §3.65(b)(4) be revised to read as follows:

(4) local distribution company pipelines and pipeline facilities including control centers necessary to support the safety and emergency operations of the distribution systems.

The Texas LDCs are sensitive to the concerns of stakeholders that designation of a large number of facilities provided in response to this rule may prove to be impractical for inclusion in the electric entities' load-shed planning. The Texas LDCs would like to reassure stakeholders that, due to the nature of LDC operations and the emergency planning that is undertaken, the number

of facilities that are considered critical load for LDC operators in the context of the provision of electricity are minimal. Given that it could take time and iterations to determine exactly how each of the thousands of unique natural gas facilities throughout the state should be categorized and potentially reported under proposed §3.65, the Texas LDCs further respectfully request that proposed §3.65 contain a procedure for the Commission to respond to operators' submissions under the rule with suggested changes, including the removal of listed facilities or the addition of unlisted facilities, with an opportunity for operators to respond within a reasonable period of time.

C. Revision of Proposed §3.65(e)

Proposed §3.65(e) requires Critical Customers/Suppliers to provide their critical customer information to the Electric Reliability Council of Texas (“ERCOT”) and each electric utility, municipally owned utility and electric cooperative which provides electric service to the Critical Customers/Suppliers. The last sentence of proposed §3.65(e) reads as follows:

The operator shall certify on its Form CI-D that it has provided, or will within five business days provide, the critical customer information to the electric entity in a format usable to the electric entity.

As suggested above in section A, the most efficient manner for Critical Customers/Suppliers to provide their critical customer information to ERCOT and electric service providers is to require that they utilize the same form they are required to file with the Commission pursuant to proposed §3.65(c), Form CI-D Attachment. Revising the proposed language to require Critical Customers/Suppliers to use Form CI-D Attachment is efficient and ensures that all the recipients of critical customer information, including the Commission, ERCOT and electric service providers, have access to the same information, presented in the same format.

The Texas LDCs respectfully request that the last sentence of proposed §3.65(e) be revised to read as follows:

The operator shall certify on its Form CI-D that it has provided, or will within five business days provide, Form CI-D Attachment to the electric entity.

D. Revision of Form CI-D Attachment to include Existing Battery or Backup Power Capacity and to Protect Transportation Security Administration Sensitive Security Information and Confidential Information not subject to disclosure under Texas Public Information Act

Proposed Form CI-D Attachment requires Critical Customers/Suppliers to list all the Critical Customers/Suppliers facilities designated as critical under proposed §3.65(b) and includes identifying information for each facility. One category of information that is not included on the form relates to a facility's existing battery or backup power capacity. Because this information is critical to electric utilities during an energy or weather emergency, the Texas LDCs respectfully request that proposed Form CI-D Attachment be revised to include a column that requires Critical Customers/Suppliers to provide existing battery or backup power capacity.

Certain categories of the identifying information such as Pipeline Information (Column I) and Facility Location Information (Columns Q-W) may include Transportation Security Administration designated Sensitive Security Information ("SSI") that requires protection against improper disclosure and is subject to restrictions regarding access under federal regulation at 49 C.F.R. Part 1520. These same categories of identifying information may also qualify as confidential information that is not subject to disclosure under Texas Public Information Act ("PIA") set out in Government Code Chapter 552.

While the Commission's Rule 1.68 provides for the submission of confidential materials in filings with the Commission other than in a hearing, the procedures outlined in Rule 1.68 are not easily applied to the manner of submission contemplated by proposed §3.65. In order to

prevent the potential release of SSI or confidential information, Texas LDCs respectfully request that proposed Form CI-D Attachment be revised to explicitly allow for designation of any appropriate identifying information categories as “confidential” through a secure electronic form of transmittal. By revising Form CI-D Attachment to allow the confidential designation, Critical Customers/Suppliers will have the opportunity to object to the release of the information pursuant to the provisions of the PIA in the event that the Commission receives a PIA request for such information.

The Texas LDCs also would like to take this opportunity to note that the risk to transportation security becomes further heightened as the information compiled under this rule is aggregated in a manner that ties facility attributes to facility location. As the Commission continues to work with other stakeholders to further implement S.B. 3 by aggregating the information received pursuant to this rule, the Texas LDCs look forward to working together to ensure that all necessary safeguards and best practices are in place to protect the SSI.

E. Critical Designation of Natural Gas Infrastructure and Natural Gas Curtailment Priorities are Separate Issues

As the Commission states in the preamble to the proposed rule, “[d]uring an energy emergency caused by a weather emergency, factors unrelated to power may hinder a facility’s ability to provide natural gas. These factors include road conditions and telecommunication availability.” As the Commission is also aware, these factors also include curtailment priorities and contractual terms and obligations governing firm and interruptible service. The Texas LDCs understand that the Commission is considering a review of its orders governing curtailment in a separate docket and that the designation of facilities as critical infrastructure pursuant to proposed §3.65 *in no way* alters the curtailment obligations and firm versus interruptible contractual obligations to which the Texas LDCs must adhere.

Since at least 1973, when the Commission adopted the Final Order in Gas Utilities Docket No. 489, it has placed the highest priority for natural gas availability and delivery to residences, hospitals, schools, churches, and other human needs customers. It is vitally important that the Commission continue to recognize the sound public policy underlying this service prioritization as it implements the requirements of H.B. 3648 and S.B. 3. Continuing support for the Commission's service priority policy was most recently evidenced during Winter Storm Uri, which saw millions of Texas citizens relying on natural gas as their sole source of energy. It is also important to recognize that there are many other operational circumstances, that may not be related to a weather emergency, under which curtailment priorities are necessary to govern safe and reliable operations of natural gas systems in the State of Texas. Similarly, the Commission should also recognize the existing service obligation that Texas LDCs must provide safe and reliable service to all customers. The Texas LDCs trust that the Commission will be able to effectively identify and prioritize natural gas delivery to critical natural gas facilities and entities in a manner that does not conflict with this obligation or jeopardize the ability of the Texas LDCs to maintain the safety of their natural gas systems.

III. CONCLUSION

The Texas LDCs appreciate the opportunity to submit these comments and look forward to working with the Commission, Staff, and other interested parties to developing the final version of this significant rulemaking.

Respectfully submitted,

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