

**TEXAS PIPELINE ASSOCIATION’S COMMENTS TO COMMISSION’S PROPOSED  
NEW TAC §3.65 AND PROPOSED AMENDMENTS TO §3.107  
TO IMPLEMENT HB 3648 AND SB 3**

The Texas Pipeline Association (TPA) hereby submits these comments to the Railroad Commission of Texas (Commission) regarding the Commission staff’s recommended new 16 Texas Administrative Code §3.65, relating to Critical Designation of Natural Gas Infrastructure, and amended §3.107, relating to Penalty Guidelines for Oil and Gas Violations, approved at the September 14, 2021, conference. These comments are submitted on behalf of the TPA and do not necessarily reflect the opinions of any individual TPA member. Commission Staff requested comments by November 1, 2021; therefore, these comments are timely filed.

**INTRODUCTION**

The Texas Pipeline Association appreciates the opportunity to provide input on the proposed Rules §3.65 and §3.107.<sup>1</sup> The Association and its constituent companies wholeheartedly supports the Commissioner’s and Commission staff’s efforts in developing these rules and procedures under the pressures of an extraordinarily limited amount of time given the complexity of the issues, multitude of involved parties, and approaching winter season. We believe the rule proposed adheres to the express language of SB 3,<sup>2</sup> and seeks to strike the appropriate balance necessary to keep those truly critical facilities powered during an energy emergency. The TPA makes these comments recognizing that adjustments to the language and rules may be necessary as the mapping process becomes refined.

---

<sup>1</sup> Comments are limited to §3.65 as TPA member companies have none regarding §3.107.

<sup>2</sup> The bill clearly states that “the (Railroad) commission ...rules must...require that only facilities and entities that are prepared to operate during a weather emergency may be designated as a critical customer,” thus putting the burden on the operator of those facilities who are not prepared to identify themselves and subsequently be removed from the priority list.

The Texas Pipeline Association (“TPA”) is the largest state trade association in the country representing the interests of the intrastate pipeline network and the Texas pipeline industry. The TPA consists of more than forty members who, collectively, engage in the gathering, processing, and transmission of natural gas and liquids through pipelines across Texas.

Natural gas performed better than any other energy operator during Winter Storm Uri, with 99.95% of all local distribution company operations remaining up and running throughout the length of the storm. That means that of the 4.6 million households in the state of Texas that utilize gas in their home, 99.95% never experienced an interruption.

## **BACKGROUND**

The TPA recognizes that the natural gas industry and the electric industry must work together to protect the public during times of energy emergencies. The electric industry cannot run without gas and the gas industry cannot run without electricity.

The TPA submits these comments with the aim of assisting the Commission in the construction of a regulatory program that will work to achieve the common goal of enhanced preparation of both the electric and gas industries. To that end, the TPA strongly encourages all involved in the gas-electric supply chain, including regulators, to review the UT Austin study<sup>3</sup> commissioned by the Public Utility Commission (PUC) that “recounts the factors contributing to disruptions in electricity and natural gas service in Texas during Winter Storm Uri, with a particular focus on blackouts on the Electric Reliability Council of Texas (ERCOT) grid during the period from February 15-18, 2021. Our goal is to create a common basis of fact to educate the debate over strategies to avoid similar problems in the future.” Pages 28 – 34 in particular are illustrative as they inspect Generation Outages across the supply chain, not focusing solely on one industry.

## **COMMENTS RE: RECOMMENDED RULE §3.65**

### **Breadth and Scope of Rule**

As the Commission states in the memorandum published with the proposed rule, Section 3.65 lays out a process by which certain natural gas facilities and entities associated with providing natural gas in the state shall be designated as critical customers or critical gas suppliers. As a threshold issue, TPA notes that the Commission has further made clear in its subsequent communications regarding

---

<sup>3</sup> *The Timeline and Events of the February 2021 Texas Electric Grid Blackouts*. July 12, 2021. [https://www.puc.texas.gov/agency/resources/reports/UTAustin\\_\(2021\)\\_EventsFebruary2021TexasBlackout\\_\(002\)FINAL\\_07\\_12\\_21.pdf](https://www.puc.texas.gov/agency/resources/reports/UTAustin_(2021)_EventsFebruary2021TexasBlackout_(002)FINAL_07_12_21.pdf).



the proposed rule that, while the Commission is considering a review of its orders governing curtailment in a separate docket, the designation of facilities as critical infrastructure pursuant to proposed Rule 3.65 in no way alters the curtailment obligations and firm versus interruptible contractual obligations with which TPA members must comply.

TPA is aware that concerns have been expressed regarding “over-designation” of facilities, such that it could become impractical for electric entities to use the information gained through this rule in its load-shed planning to prevent outages that would inhibit electric generation. TPA members are sensitive to that concern and intend to work with the electric entities to assist in the prioritization of critical infrastructure in a way that meets their operational needs. One way in which proposed Rule 3.65 begins to meet this need is by requiring respondents under the proposed rule to report (1) whether the facility directly serves a natural gas electric generation facility; (2) whether the facility directly serves a Local Distribution Company or a city gate; and (3) whether the facility has back-up power in order to operate during an energy emergency should power from the facility’s electric utility become unavailable. These attributes, along with additional industry guidance provided herein, should assist the electric entities in using this information in their load-shed planning.

### **Breadth and Scope of Definitions**

A number of TPA member companies expressed concern that the defined terms “energy emergency” and “weather emergency” as proposed, are overly broad. While TPA recognizes the Commission worked extensively with the Public Utility Commission of Texas (PUC) to define these terms in a way that reflects the purpose of HB 3648 and sections 4 and 16 of SB 3, *(to prevent the loss of power to critical facilities that, if they receive power, could help alleviate the need to shed load)*, without further clarification or definition as to the types of events for which an operator is expected to be prepared, it is unlikely that even the most prudent operator could attest with any certainty as to whether they are “prepared to operate” during “any event that results in or has the potential to result in load shed” and in “any weather condition that results in or has the potential to result in an energy emergency.”<sup>4</sup>

---

<sup>4</sup> While the rule contemplates operators having a different operational status for hot and cold seasons, events that could fall under these definitions range well beyond prolonged extreme cold conditions or excessively hot weather, including a

It is the TPA's understanding that the definition was drafted in this way to help ensure the flow of power to critical entities during a multitude of weather conditions, not just extreme temperatures. However, as written, it creates uncertainty among applicants as to the appropriate way to fill out the forms. The definitions in the proposed rulemaking should be refined to either narrow the range of possible events that could reasonably result in an energy emergency or load shed event, or further define those events. In the alternative, consideration should be given to including language that the operator is attesting to their reasonable belief that they are prepared to operate within the physical and economic limits of their plant, otherwise the rules could disincentivize operators from claiming critical status because of the uncertainty of the unknown and unknowable obligation.

It should be made clear that submitting a CI-D form acknowledging critical designation status (thereby indicating that the operator is prepared to operate during a weather emergency) is not the equivalent of attesting that the operator will operate under any and all conditions. Stating that you believe you are prepared to operate during an emergency and being expected to operate no matter the circumstances are two separate concepts. The first is reasonable; the latter is impractical.

### **Proposed Forms and Attachments**

Secure information. The TPA has expressed to both the Railroad Commission and the PUC, the concern and need for assurance that proprietary and confidential information provided to either agency or provider, whether a retail electric utility or a transmission operator, will remain private and confidential in accordance with all laws, rules, regulations, and industry practices.

As drafted, Form CCI, CI-D and CI-X request operators provide non-public and sensitive information. In the interest of security, there must be robust protections implemented to secure this confidential information. Pipeline operators and storage service providers are deeply concerned about the physical and cyber security of their systems and work continuously to enhance that security. Exposure of this non-public and sensitive information in an unsecured format is the equivalent of laying out a road map for domestic and cyber terrorism against the key facilities this legislation seeks to ensure remain operational.

---

category 5 hurricane, a tornado, a lightning storm, extreme flooding, seismic activity, extreme windstorms, or any combination of the above not contemplated at the time of operational preparation.



Consider and provide for non-critical loads located on-site, or ancillary to, critical facilities. TPA member companies have an ongoing concern throughout the rulemaking discussions regarding this proposed rule, PUC Project No. 52345, and ERCOT NPRR 1087, as to how newly proposed rules designating the site of an operation as critical would affect the operator's ability to segment out the truly critical facilities from those that are not critical, ultimately being able to help put more electricity back on the grid. An example of such a facility would be a gas processing plant. Clearly this facility would be designated as critical under proposed §3.65(b)(3), however while certain operations or mechanisms at the site are truly considered "critical" load, other equipment powered by that same meter, such as parking lot lights, are not. In order to maintain an operator's ability to participate in Load Resource programs, and thereby put more electricity on the grid during an energy emergency, the TPA suggests including language to the effect of "this exemption is not required for non-critical loads located at critical natural gas infrastructure facilities."

Consider use of one form for all information requested. Having three different processes for submitting three sets of documents to three different parties creates confusion, disorganization and the potential for the inaccurate submission of information, slowing down processing of that information. As proposed under Rule 3.65, PUC Project No. 52345, and ERCOT protocols, an operator would be responsible for: 1) Submitting either Form CI-D (and attachment) or Form CI-X (and attachment) to the Railroad Commission; 2) Submitting the information requested under Table CCI in "as useable format" to their electric service provider (*see* comment below); and 3) Submitting the ERCOT Application for Critical Load Serving Electric Generation and Cogeneration revised March 2021 to ERCOT. Several TPA member companies have pointed out that much of the information being requested among the forms is similar to that already provided under the ERCOT application. If possible, combining information requests and provision into one form to be used across agencies and TDUs could prove more efficient.

\*NOTE: In the alternative, reference in the instructions for Form CI-D and attachment to the requirement to provide information found under Table CCI to the operator's electric service provider could go a long way to clarifying that the information requested under Table CCI is to be submitted separately.

Clarity as to "Usable Format." Regarding the instructions for providing critical customer information under table CCI and corresponding with PUC PFP No. 52345, the TPA requests that

either a standardized format be developed, or at a minimum, more guidance is given detailing what is meant by “information must be provided in a useable format via email.” There should be no confusion or disagreement about what is and is not a considered a useable format among the sending and receiving parties, or which party determines what is and is not “useable.” A common protocol will lessen the likelihood of the provision of insufficient information, or the slowing of documenting that information.

### **Comments on Prioritization, Not to be Included in Rule**

The TPA acknowledges that there are competing viewpoints about whether comments on proposed tier recommendations should appear in respective Rule 3.65 and Proposed Project 52345. The TPA is of the opinion that these recommendations are just that, suggestions on how Transmission and Distribution Utilities (TDUs) might approach load shedding in their discretion afforded them under SB 3 and would not be appropriate in rule.<sup>5</sup> However, the Association wants to be responsive to the requests and expectations of the Legislature to provide as much information as possible to assist TDUs in making informed load shedding decisions.

At the direction of the Senate Business and Commerce Committee and the request of some electric market participants to provide suggestion on how facilities designated as critical *might* be prioritized, several gas-electric supply chain stakeholders came together to discuss what those tiers could look like in a load shed event. After several meetings, the TPA believes that the assets identified below substantially reflect the priorities identified in those conversations with TXOGA and TDUs Oncor, American Electric Power (AEP), CenterPoint Energy and Texas-New Mexico Power (TNMP).

\*NOTE: The TPA does not propose to comment on or advocate on behalf of the interests of the other industry participants; thus, while any tier system crafted should contemplate the positioning

---

<sup>5</sup> As stated on page 3 of the Railroad Commission Memorandum dated September 14, 2021 on the subject of the Proposed New 16 TAC 3.65 and Proposed Amendments to 3.107 to Implement HB 3648 and SB3, “The Commission does not have jurisdiction over electric utilities or the prioritization of electric load shed and does not purport to exercise such jurisdiction in this proposed rulemaking.” It is also TPA’s understanding from meetings with the TDUs that their load shed plans may not include all priorities identified by the Commission; ERCOT load shed only applies to facilities served by electric distribution not those served by electric transmission.



of both upstream and midstream assets<sup>6</sup> based on input from the other supply chain participants, we are only commenting on where we believe midstream assets might fall in the prioritization.

Because these are suggestions provided to give TDUs as much information as possible so that they might make the most informed decision in a potential load shed event, the TPA would like to point out that they are given from a broad perspective of general categories, rather than with specific thresholds.

The TPA would like to further point out that these recommended tiers were developed based on conversations with the TDUs and the Texas Oil and Gas Association, but not all supply-chain participants. In each meeting on the subject, industry participants and regulators have acknowledged that a full and accurate picture cannot be achieved without participation from all segments, including electric generators and marketers.

### **Potential Prioritization of Critical Infrastructure Designated Under Proposed Rule 3.65**

Recognizing that the 2021-2022 winter season will take place before the deadlines established in SB 3 and HB 3648 come to pass, we seek to provide “right now” guidance on how to enhance preparations to ensure natural gas supply is available for purchase by and delivery to local distribution companies and natural gas-fired electric generators. With this caveat in mind the TPA makes these suggestions with the understanding that these rules and recommendations will be revisited after the season to evaluate what was effective, and what needs modification.

The TPA believes the assets listed below should be among the last cut and the first restored based not solely on the crucial function in the supply-chain, but also on the physics of how the gas flows through these facilities. Those operational elements are outlined below.

**Natural gas Local Distribution Company (LDC) pipelines and pipeline facilities, including compressor stations - 3.65(b)(4).** These are the facilities responsible for getting natural gas to the state’s human needs customers, including homes, hospitals, and other high priority locations where people dwell.

---

<sup>6</sup> For example, ERCOT identified black start facilities such as natural gas electric generators are not a midstream asset, but the pipelines associated with them should be identified and considered during load shedding.

**Natural gas storage facilities** – 3.65(b)(5). When gas was no longer being produced in significant quantities during Winter Storm Uri, Texas turned to gas storage and reserves to fill that void. Without the availability of this stored natural gas, the electric grid for the ERCOT region would almost certainly have gone black.

**Natural gas pipelines and pipeline facilities including compressor stations** - 3.65(b)(3). These are the actual transport lines, and the compressor stations along those lines, carrying product from production areas to the region of the end-user.

**Natural gas processing plants** – 3.65(b)(2). Because natural gas does not generally come out of the ground in a ready-to-use state, it must first be processed before it is shipped. Like the other discreet components of the supply chain, if these facilities go down, everything upstream and downstream of them will halt as well. There has been discussion about separating out “large and small” capacity processing facilities into separate tiers. While in many situations prioritizing large processing plants over smaller ones might make a great deal of sense, certain scenarios exist where a geographic region is not served by one large plant. Rather, in many Texas regions, a community relies on several smaller plants to power the area. These smaller capacity facilities might do little on their own to keep electricity up and running, but in the aggregate, they are the sole source of gas supply for the region. Automatically classifying smaller producing facilities in a lesser tier creates the very real danger of cutting all processing, and thus all gas-powered electric generation to an entire region. This scenario is an excellent example of why the TPA believes tiered prioritization should not be dictated via rule, but rather given as a resource for TDUs to reference and considered when weighing the priorities of their operations and devising individual load shed plans.

**Natural gas liquids transportation and storage facilities** – 3.65(b)(6). A natural result of processing of oil and gas is the separating out of other materials like natural gas liquids ethane and propane. While the “clean” gas is then shipped off in a transport line, those liquids need to be further processed before they can be used. If the lines that transport those liquids out of the processing plant are not receiving power, and the line is not “cleared,” processing facilities will back up, preventing any new gas from coming into the plant. Ultimately, this would halt all flow upstream.

\*NOTE: While the control centers for the above facilities are not regulated by the Railroad Commission, the ERCOT form specifically mentions them in the instruction portion of the



Application for Critical Load Serving Electric Generation and Cogeneration revised March 2021.<sup>7</sup>  
We recommend these centers be considered for top prioritization in each load shed event.

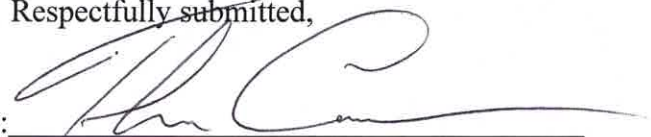
Natural gas supply purchased by customers of operators, including LDC and natural gas fired generation customers, moves through each of the assets listed above. Continuity of supply is critical during a potential electric load shed event as it allows end-use customers to nominate sufficient volumes of natural gas onto transportation pipeline systems to maintain baseline pressure and line pack volume required for pipeline transportation to serve all critical load.

### CONCLUSION

The Texas Pipeline Association applauds the Commission in their tireless efforts, working with the PUC as well as industry stakeholders to devise a rule that best achieves the intent of the legislature, while adhering to the language of SB 3. The joint efforts of both the electric and gas industry in implementing this recent legislation will not be easily accomplished and the TPA acknowledges it will not be perfectly accomplished on the first attempt. The pipelines of Texas, however, look forward to assisting in that effort, and encourage other stakeholders and associations to join us in a continued dialogue.

Respectfully submitted,

By: \_\_\_\_\_



Thure Cannon - President  
Texas Pipeline Association

---

<sup>7</sup> TPA noticed that control centers are named in the introduction paragraph but are not listed in the body of the application itself where applicants are asked to describe the facilities to which they refer. TPA suggests that control centers be added into that specific segment where applicants are prompted to input information.