



SENT VIA EMAIL TO rulescoordinator@rrc.texas.gov

August 15, 2022

Rules Coordinator
Railroad Commission of Texas
Office of General Counsel
P.O. Drawer 12967
Austin, TX 78711-2967

RE: New §3.66, Weather Emergency Preparedness Standards

The Permian Basin Petroleum Association (“PBPA”) writes to you today to share our members’ concerns and perspectives regarding the proposed Statewide Rule 3.66 (“Rule” or “Rule 3.66”) by the Railroad Commission of Texas (“Commission” or “RRC”). The PBPA represents oil and gas operators in the most prolific oil and natural gas producing region in the world. Our mission is to promote the safe and responsible development of oil and natural gas resources while providing legislative, regulatory, and educational support services for the industry. Our membership includes the smallest exploration, service and support companies as well as some of the largest oil and natural gas companies with world-wide operations. We firmly believe that America benefits from a vibrant and diverse oil and gas sector and are committed to the reliable, safe and responsible development of our region’s natural resources.

This is an extraordinarily complex issue that has involved some of the largest state agencies in Texas as well as diverse cross sections of some of its largest industries all working to prevent our state from being susceptible to weather conditions that can inflict harm on public health or safety. We are thankful for the Commissions continued work with the industry as well as lawmakers and other state agencies in attempting to tackle this challenging issue.

These comments are the product of innumerable group and individual conversations with our member companies including our Board of Directors. It is our hope that the Commission recognizes that they reflect a broad and diverse industry with perspectives from operators of all sizes throughout the Permian Basin.

We greatly appreciate the opportunity to provide these comments with the hope that significant improvements may be made to the Rule to accomplish a goal shared by all Texans. PBPA believes each and every resident of this state deserves a reliable, resilient, electric grid that provides affordable and efficient energy ensuring Texas remains the greatest place to live, work, and raise a family.

I. Background and Context

We recognize this Rule, and frankly the considerations within Senate Bill 3 (87th Regular Session, 2021), only partially address the real and more pressing challenge for the state. Far before “fuel supply” challenges existed at generation fleets across the state, these facilities began to freeze up, causing record load shed conditions resulting in blackouts that could not be managed. Whether this was because of poor maintenance, an indifference to required weatherization at those electric generating facilities, an unwillingness to plan ahead and purchase firm supplies of natural gas, a disinterest in investment in reliable new generation, or a failure to have ample storage on or offsite; these were the primary failures which led to a cascade of challenges all across Texas.

We need electric generators in Texas to fulfill their obligation as public utilities and further their objective in the public trust to invest in reliable, resilient, and dispatchable electric generation to prevent weather of any kind from disrupting the flow of electricity to homes and business in the Lone Star State.

At present time Texas has made great strides in creating a diversity of electric power sources that utilize the great strengths that exist. Unfortunately that has produced a complex diversity of unreliable power generation that has been constructed by distorted market forces incentivizing renewable power generation. The challenges this unpredictability creates for Texans is not unique to generation during winter events, it is a persistent weakness across all seasons.¹

PBPA fully supports an all of the above approach that economically powers the grid and ultimately provides affordable power across the state. We support the continued investment in generation that population and economic growth demand and further the adequate network of transmission and distribution that is required to efficiently dispatch electricity across the state. In fact, our thoughts are reflective of the reality that exists today and the efforts of some integrated power companies to finance thermal generation that can better serve Texans.²

We hear the calls for transparency in the process to better understand how the natural gas market works for those that operate power generating facilities. To that end we believe that their regulatory agencies, the Public Utilities Commission (“PUC”) and the Electric Reliability Council of Texas (“ERCOT”), have at their disposal the ability to request all generators provide their natural gas purchasing contracts and could, through any method they choose, make that data available so that generators have a better understanding of the section of the market in which they engage. That publicly available volume information would also be helpful in understanding whether or not these operators are planning to purchase sufficient volumes to fulfill their power generation commitments ahead of time to meet power demands as well as allow the PUC to enforce penalties should these operators fail to meet their standard as a public utility as required under Texas law.

We recognize this is not the responsibility within the current jurisdiction of the RRC and only offer this perspective to provide context to the agency as you undergo implementation of Senate Bill 3.

¹ <https://www.bloomberg.com/news/articles/2022-07-11/texas-wind-power-is-failing-right-when-the-state-most-needs-it#xj4y7vzkg>

² <https://www.bloomberg.com/news/articles/2022-08-04/nrg-to-use-renewable-finance-strategy-to-build-new-gas-plants>

While the Rule does encompass broad weather preparedness, this is clearly most focused on winter weather events. To that end, it was stated often by representatives of the Commission during the hearings following Winter Storm Uri that “electrification is the best winterization”, yet the proposed Rule outlining requirements from Senate Bill 3 seem to either neglect this statement, or completely change course as to how to truly winterize our electrical generation and delivery system in Texas.

II. Rule 3.65 Considerations

In addition to the above remarks, our members could not more strongly request that the Commission recognize the de minimis production standard that is adopted in Rule 3.65 has a wide ranging and negative impact on those who are subject to Rule 3.66.

First, Rule 3.65 creates the process by which operators who produce effectively any amount of oil and natural gas in Texas are defined as critical and if these marginal facilities are “mapped” through the administrative process that the Commission has currently undertaken administratively, they are subject to onerous new requirements to weatherize these facilities or face ruinous penalties with minimal, if any, benefit to the reliability of the grid. In addition to the ever growing new regulatory proposals offered at the state and federal level, we worry this could create a strain on marginal operators and could create new economic challenges for natural gas production. This institutional disincentive will likely yield inefficiency in natural gas investment and production and could also contradict the Commission’s economic charge, and statutory requirement, to prevent waste and promote conservation.

While again, we recognize these comments are meant to improve the regulatory proposal of Rule 3.66, an effective weatherization rule must take into account a proper and reasonable accommodation of the relevant universe of natural gas production which is first established in Rule 3.65. We believe this because in the memorandum of the adoption of Rule 3.65 dated November 29, 2021, Commission staff notes “both the critical designation rulemaking and the publication of the electricity supply chain map are prerequisites to the weatherization rules.”³ Accordingly, we cannot speak to the proposed Rule 3.66 without recognizing the applicability established in Rule 3.65.

It is also worth noting that the Commission references the publication of the supply chain map, which has never occurred. The Supply Chain Mapping Committee has “adopted a map”, but to our knowledge it’s “publication” has not occurred and is not anticipated.⁴ Our members are concerned about how best to comply with the outcome of the mapping process that affords them the limited ability to provide accurate information based on the engagement of others and nothing else. The Commission recently attempted to firm up a supply chain concept by gathering information supplied by electric generators, then a request for information from processors that sell natural gas to these generators. After that, operators of oil and gas upstream facilities were contacted about assets of theirs that are tied to those gas processing facilities. Our members report on more than one occasion, the information provided to operators has been incorrect, out of date, duplicative, and some have shared concerns that the information gathered by others may be incomplete.

³ <https://www.rrc.texas.gov/media/xq4fiqda/adopt-new-3-65-amend-3-107-nov30-21-sig.pdf>

⁴ <https://www.puc.texas.gov/agency/resources/pubs/news/2022/042922-Joint-RRR-PUC-Map-press-release.pdf>

Our members fully support the amendment of Rule 3.65 to best capture the universe of natural gas production to ensure the natural gas supply chain effectively and efficiently produces the natural gas that is necessary for electric generation. PBPA will continue to advocate for this amendment because at the present time the current framework does a huge disservice to the stated goals of Senate Bill 3 in considering every molecule of production, including associated gasses, as critical.

Further, it is a known factor to industry that the interest in ensuring proper continuity of electricity to operators is a significantly more expansive universe when considering existing and presumed demand increase. In plain language, these existing regulatory frameworks require a broader universe of electricity than has ever been required. Weatherization, simply put, demands power. More assets demanding power because they cannot be shed (because they are made critical with a broad brush), and additional weatherization equipment that requires more power (an unknown amount as of yet), create a scenario that we feel regulators are not appropriately considering.

After reviewing production data from across the state, PBPA believes that a threshold of at the very least, 250 mcf/d, captures about 80% of total statewide production. In considering the volume outstanding in the processing of that natural gas, and the mapping of these assets if they are tied to natural gas powered electric generation, the amount of natural gas produced using this threshold is still far larger than the amount needed to produce electricity in Texas with current thermal generation capacity. Additionally, any modification of Rule 3.65 should allow operators to demonstrate good cause exemption beyond the current process for any number of reasons despite the size of the facility. The Commission can certainly approve or deny these applications for exemption, but allowing an operator to demonstrate issues is vital to ensuring the most accurate network of facilities are on designated as critical.

Lastly, now that the Commission, operators, and the public have had the ability to review and operate under the new provisions of Rule 3.65, we believe additional improvements can be made to create a more functional and beneficial process for the natural gas supply chain. This would also include ensuring that the application is narrowly tailored to ensure there is no ambiguity about the types of energy emergencies that may exist. Further, the application should be limited to events that do require firm load shed by the reliability coordinator of a power region in Texas.

III. Rule 3.66 Comments

With regard to the proposed Rule 3.66, PBPA would like to note that we provide all of these comments with the consideration that the Commission will as soon as practicable amend Rule 3.65 and implement the above offered and other appropriate recommendations. We would strongly recommend Commission in its memorandum on adoption of Rule 3.66, recognize several important factors. These include but are not limited to the safety of personnel, global supply chain constraints, and the continued ability and obligation of the Commission to utilize its discretion in considering the totality of circumstances operators have to contend with in implementing new or existing rules as a result of elements often outside of their control, including but not solely, third party impacts or loss of power impacting sustained operations.

As you are also aware, operations in the oil and natural gas industry are not without their risks. However, by implementing acceptable safety standards and protocols, operators work to reduce if not eliminate those risks to protect the health and safety of employees and the public. Operators cannot and will not send employees into harm's way and in the event emergency operation plans would

necessitate the deployment of personnel, these plans will absolutely be contingent on human health and safety, very much including that of employees going into the field.

We also cannot overstate the challenge operators have, and will likely continue to have, in acquiring new equipment. This consideration needs to be a factor in evaluating the steps operators will be able to undertake with a rapidly approaching December 1, 2022 deadline as proposed in the Rule. To be more explicit, operators will effectively have, at most, 90 days after adoption of this Rule to review the new Rule, educate relevant staff and develop internal processes to evaluate concepts, establish standards, test standards, and purchase equipment if it can be sourced and procured; and then receive, deploy, and install this new equipment. Some operators in Texas have already experienced significantly increased procurement times for routine activities. Because of those concerns, PBPA encourages the Commission's consideration of a delayed or tiered implementation plan that allows a reasonable implementation schedule beginning with wells producing the largest volumes of natural gas on the supply chain.

Of initial concern in the proposed Rule 3.66 under subsection (a)(1)(A) and (2)(B), the trigger for operators to be subject to the application is inclusion on the map, however this does not require the Commission to have any standard for a notification to an operator that specific facilities are or have been included on an electricity supply chain map. We understand there are plans to notify operators this year of the inclusion of their facilities, however there is no clear standard at present in the proposed rule and we believe an affirmative obligation by the Commission to notify an operator of their inclusion must be the standard. A clear and consistent notice affords all parties within the process the greatest ability to organize operational efforts to comply with the proposed and eventual Rule.

In proposed Rule 3.66(b), a different standard is applied for the consideration of critical components than is applied for an operator in general considerations of the Rule. While later in the proposal operators would be required to consider the implications of a "forced stoppage", in subsection (b) they are required to consider the "occurrence of which is likely to significantly hinder sustained operation." It would be more consistent for operators to consider an occurrence that is likely to be linked to a weather related forced stoppage rather than the potential to significantly hinder sustained operations. While seemingly minor, this distinction will afford operators a consistent preparation standard as a matter of routine operation and will likely yield better compliance and greater sustained production volumes. In addition to that, PBPA asks the Commission to clarify that despite an operator's efforts, the failure of a third party would not implicate an operator has failed to prepare despite those good faith efforts.

Additionally, in proposed Rule 3.66(b)(1) we would recommend the following change "Any component, including components on equipment rented or leased..." to best clarify an operators responsibility.

Subsequently, operators note that clarity in the definition of proposed Rule 3.66(b)(3), and mirroring the definition of (b)(2), noting that a gas supply chain facility could more appropriately be "A facility regulated by the Commission under Texas Administrative Code, Title 16, Chapters 3, 7, 8, and 18."

Our members would support rephrasing the definition of "repeated weather-related forced stoppage" under proposed Rule 3.66 in subsection (b)(5) so that it states "more than one major weather-related force stoppage violation within a calendar year." This will better ensure that those repeated violations capture violations that result in a significant impact to public safety. Additionally, while a long

compliance history is broadly reflective of an operators actions, perhaps a consideration of these forced stoppages should be considered within its seasonality. Logically, a challenge in one season, like winter, is unlikely to present itself as the issue in the summer. Further the Commission should consider establishing the resulting major stoppage occurs because of an “intentional and deliberate disregard” that is not corrected in the manner prescribed by the proposed rule in further sections.

Operators would also like clarity from the Commission about qualifying events. If a stoppage were to occur at a facility below 5000mcf/d and is remedied within the 24 hour period-but another issue were to arise shortly thereafter causing a “stoppage”-will that be considered a separate event by the Commission and can operators expect to have an additional 24 hours to remedy that separate event? Also, additional clarity could be provided in (f)(1) that the events occurring for facilities above 5000mcf/d to consider their impacts and could read more adequately, “In the event a weather-relate forced stoppage in sustained operations of a gas supply chain facility during a weather emergency results in a loss of production exceeding 5,000 Mcf of natural gas per day...”

Again, given that the “weather emergency” definition in proposed Rule 3.66(7) references the definition of “energy emergency” in Rule 3.65, we would reiterate the importance of clarifying those events as ones that are not simply potential load shed circumstances but rather, actual load shed events. Further the rule would provide better clarity for operators and enforcement if it makes it clear that a loss of power at a facility or other third party services (gas processing offtake, SWD offtake, etc.) would not subject an operator to a violation.

Within proposed Rule 3.66 in subsection (c)(1)(A) we recommend that the language should better capture the efforts to maintain operations. This segment could more appropriately read “(A) weatherize critical components for the sustained operation...”

In proposed Rule 3.66(c)(2)(C), the Commission offers “using a risk based approach” without a clarifying standard of what that would entail and by simply removing that phrase, the remaining language still informs emergency operations planning without a vague, undefined, standard.

Proposed Rule 3.66(c)(2)(D) attempts to establish a comprehensive offering of options for operators to consider as part of their weatherization efforts. While we understand and appreciate the Commission providing these detailed options, we are concerned placing them in rule removes the ability of the Commission to more proactively include, exclude, or modify practices that industry may consider, or which might be developed.

We strongly recommend the Commission note in the Rule that they will provide an annual guidance document that outlines practices, similar to the “Notice to Operators” that has been provided in the past, rather than an exhaustive list of considerations.⁵ This affords the agency greater ability to communicate changing technologies or practices which would benefit operators of every size and each year, without having to amend the rules for minor considerations of practices. It also affords Commission staff the opportunity to continue a dialogue with the industry before and after events and determine which practices serve better purposes than others and inform future guidance document revisions, rather than an annual rule modification.

⁵ https://rrc.texas.gov/media/r5dbn5b2/2021-nto_preparation-by-operators-for-winter_2021-2022_mlb_10-6-2021.pdf

If the Commission is unwilling to do so, we at the very least encourage the affirmation that these considerations are explicitly not required practices and that an operator's decision to pursue one, more, or an unlisted practice because of their operational considerations is not by its nature a violation of this Rule. Further, we recommend it be stated clearly that these options are not presumed requirements at this time or in the future given the changing dynamics in this complex and innovative industry.

For consideration of proposed Rule 3.66(c)(2)(D), we offer the following: "weatherization of the facility considering, safe, industry-accepted methods applicable..." We note that while Senate Bill 3, states "...the commission shall take into consideration weather predictions produced by the office of the state climatologist..." the weather data provided in the proposal is a backward look at extreme weather values and not a prediction of future weather.

It seems important to note that while the circumstances surrounding Winter Storm Uri were unprecedented due to the expansive nature and duration of that storm, the values illustrated in the reflection of historical data show that extreme temperatures statewide have actually been beyond what was experienced during that particular storm. For example, proposed Figure 16 TAC 3.66(c)(2)(D) offers high and low temperatures for all 254 counties, or in some cases uses estimations of neighboring county data going back to 1899. For only 32 out of Texas' 254 counties, 2021 represents the lowest historical temperature and by reason operators are being asked to consider a scope of data significantly more extreme and not forward looking. This is important to share in order to demonstrate that the Commission should clearly note that practices and information provided to operators are considerations, not explicit expectations or requirements.

While again, we would rather see these 20 weatherization considerations as part of a guidance document provided annually, if such a recommendation is not implemented despite its clear benefits, the requirement for new water transportation being buried provides an example of our concerns. This particular consideration leaves the circumstances unclear as to what "new" truly means. Effectively an operator has to determine whether replacing segments of an existing line would qualify. This is a clear example of the benefit of having a "living" guidance document that is more easily addressed by Commission staff as circumstances evolve and while we would like to provide an exhaustive list of concerns about these 20 considerations, we provide one such example above and are happy to discuss others in more detail following the submission of these public comments.

This new rule also proposes a new and confusing standard for attestation's that differs greatly with any other form or process at the Commission. Currently, the Form P-5 prescribed by Rule 3.1 is required for any organization performing operations within the jurisdiction of the Commission. This form appropriately and effectively establishes the standard for the rights, duties, and obligations of an operator in the state. It states:

"I declare under penalties prescribed in Sec. 91.143, Texas Natural Resources Code, that I am authorized to make this report, that this report was prepared by me or under my supervision and direction, and that data and facts stated therein are true, correct, and complete, to the best of my knowledge."⁶

Given that burden, our members strongly encourage the Commission to adopt language more similar to, or exactly the same as, what is required in the Form P-5 rather than what is proposed by Rule

⁶ <https://www.rrc.texas.gov/media/02nddiqq/form-p5.pdf>

3.66(d). While we understand the interest in mirroring other agency language, or perhaps establishing a new standard, it contradicts the standard that operators currently abide by and is even inconsistent with the language in the CI-D and CI-X filings required under Rule 3.65.

Additionally, the P-5 form is how the Commission has been communicating with operators in order to determine assets linked to the natural gas supply chain. Its use administratively is evident that it is an effective and consistent standard that the Commission should not depart from.

Further, with regard to the attestation, the Legislature took great care to prevent the disclosure of certain information, like the “map” from being public and the Commission should follow that lead in creating an inherent confidentiality of these facilities as well as the methods by which they safely operated.

Subsequently in considering enforcement, the language in proposed Rule 3.66(g) should also be consistent that “an operator”, not a “person”, should be responsible in the event they violate the sections as the language in proposed Rule 3.66(f) provides.

The Legislature in Senate Bill 3, does require an operator responsible for repeated or major repeated events to “contract with a person who is not an employee of the operator to assess the operator’s weatherization plans, procedures, and operations.” The Commission has offered a requirement beyond that to include the contract of a qualified engineer that has not previously been an employee unless certain circumstances exist. We urge the Commission to rework those requirements and allow an operator to consult with a Commission employee to ensure appropriate engagement rather than propose unproven and unknown sectors of consultants that may or may not exist.

Lastly, throughout the enforcement/violation sections, an operator should still expect a notice, hearing, and opportunity to appeal as prescribed throughout all other enforcement actions at the Commission and that language should be included in each provision of subsections (f) and (g).

We again applaud the work of the Commission and staff to interpret the requirements adopted by the Texas Legislature in Senate Bill 3 and we appreciate the opportunity to provide these comments. PBPA and its members look forward to working with the Commission to adopt an efficient and effective regulatory structure that ensures a diverse oil and natural gas sector that can best contribute to a robust and reliable natural gas supply chain.

Regards,

A handwritten signature in blue ink that reads "Ben Shepperd". The signature is written in a cursive, flowing style.

Ben Shepperd
President