



AMERICAN PUBLIC GAS ASSOCIATION

November 1, 2021

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

Submission via email to rulescoordinator@rrc.texas.gov

Re: Comments in Response to Railroad Commission of Texas Request for Comment on Proposed Rule 3.65: Critical Designation of Natural Gas Infrastructure

Dear Rules Coordinator:

The American Public Gas Association (APGA) appreciates the opportunity to provide comments in response to the above referenced proposed rule. As local distribution companies owned by and accountable to the communities they serve, APGA members are critical stakeholders in this rulemaking. This and related proceedings are critical not only to APGA members in Texas but dozens across the nation that experienced an economic catastrophe during Winter Storm Uri. We thank the Railroad Commission of Texas (TX RRC) for acting on these much-needed changes. APGA generally supports the proposed process for designating certain natural gas entities as critical during an energy emergency, and we offer the below comments for your consideration.

APGA is the trade association for approximately 1,000 communities across the U.S. that own and operate their retail natural gas distribution entities. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies, including over 80 systems in Texas. Public gas systems operate as not-for profit utilities and focus on providing safe, reliable, affordable, and resilient energy to their customers, while supporting their communities by delivering fuel to be used for cooking, clothes drying, and space and water heating, as well as for various commercial and industrial applications.

Reliable access to energy is critical during a weather emergency, as demonstrated by February's Winter Storm Uri, which brought the tragic loss of life in Texas associated with the loss of electricity. Although no single failure caused this crisis,¹ the loss of natural gas supplies was crucial, *and* it was a driver for the spike in natural gas prices that created an economic catastrophe that is still impacting APGA members and millions of their customers in Texas and many other states in the central U.S. Natural gas deliveries were lost for several reasons: wellhead equipment froze; compressor equipment froze and broke down;

¹ See <https://news.utexas.edu/2021/07/13/new-data-on-february-texas-blackouts-reveals-unprecedented-impact-on-energy-and-financial-systems/>.

gathering lines froze in the field; and poor weather conditions impeded key personnel from getting to critical infrastructure and increased repair times. Moreover, the state's grid operator, the Electric Reliability Council of Texas (ERCOT), also cut power to certain natural gas production facilities, which further reduced production capacity and hindered repairs. As well, some compression equipment had previously been switched from natural gas to electricity, which made it unnecessarily dependent on ERCOT and the grid.

In the future, to alleviate some of the supply constraints that the central U.S. experienced during February's severe winter weather, the appropriate designation of critical natural gas facilities is necessary. Consequently, APGA supports the proposed rule with some amendments. We believe that coordination with natural gas producers and pipelines is necessary moving forward to ensure that appropriate natural gas production, gathering, and compression facilities are insulated from any electric curtailments during any events involving the loss of power supplies, which will only worsen the situation, and are instead able to maximize natural gas production in a weather emergency.

As currently proposed, Rule 3.65 would allow a facility that is designated as a critical gas supplier to be exempt from the rule if the facility's operator asserts that the facility is not prepared to operate during a weather emergency through the filing of Form CI-X.² To ensure the most current data for critical natural gas infrastructure, we are supportive of the TX RRC's proposal to require such exempt facilities to re-file periodically, which will ensure that the exemption is still appropriate. While the rule does not allow these section (d) exceptions to transfer upon a change of operatorship,³ the facility may make adjustments to allow it to operate during a weather emergency without any operator change. In these cases, it would behoove the state to remove the section (d) exemption.

However, APGA is concerned that the proposed rule as drafted might create an "exemption that swallows the rule." These regulations should be supplemented with a statement that the act of filing is not a grant of an exemption. There is no stated process for approval or rejection. The regulation should be amended to make clear that the TX RRC may reject such a filing for cause. As drafted, the text only avers to "an approved Form CI-X" (Section 3.65(d)(3)). Approval, however, is not defined. This points out that there is no standard for whether an assertion meets the requirement of the law. Certainly, Form CI-X must require a certification that can lead to criminal penalties for false statements. Beyond truthfulness, the TX RRC might consider developing guidance on what factors it considers legitimate to qualify for a section (d) exemption.

Additionally, the TX RRC should require facilities that seek and are granted a section (d) exemption to disclose this information to their counterparties. Without this reporting requirement, such exempted facilities that are subject to weather interruptions might inappropriately be construed as firm suppliers in the competitive market. Sufficient notice of potential inoperability during severe weather is necessary to ensure that all counterparties can prepare appropriately for interruptions to their energy supply chains for which an exempted facility might be able to claim legal protections, such as force majeure.

APGA also encourages the TX RRC to explore ways to ensure as many critical natural gas facilities as possible are capable of operating during a weather emergency. For example, some type of incentive could provide for necessary facility improvements that would enable weather emergency operations. Alternatively, the TX RRC could consider requiring section (d)-exempted facilities to file an improvement

² Proposed TX RRC Rule 3.65(d) (section (d)).

³ *Id.* at (f).

plan with an associated timeline that outlines how the facility is working towards being capable of operations during emergencies (and progress on this plan in subsequent filing cycles). These additional steps would maximize the number of facilities able to operate during future extreme weather events like Uri, which would in turn minimize impacts to the nation's natural gas market during these critical times.

* * *

We believe that this rule proposed by TX RRC will not only benefit Texas public gas systems and consequently their customers, but also the energy industry more broadly, including those in the many states who also rely on Texas-produced natural gas to fuel their communities. We thank you for the review and consideration of these comments. If you have any questions regarding this submission, please do not hesitate to contact me.

Respectfully submitted,

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

Dave Schryver
President & CEO
American Public Gas Association