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**RE: New §3.66, Weather Emergency Preparedness Standards**

The Texas Alliance of Energy Producers (the Alliance) represents over 2,600 individuals and member companies in the upstream oil and gas industry; our members are oil and gas operators/producers, service and drilling companies, royalty owners, and a host of affiliated companies and industries in Texas and beyond.

Thank you for the opportunity to provide comment on the new weatherization rule, SWR 66. We appreciate the Commission's diligent work on this issue to find a rule that is workable for industry and the Commission, and that ultimately meets the intent of Senate Bill 3 (SB 3): to ensure sufficient electricity and natural gas supplies for Texas during a weather emergency.

We believe the overarching legislative intent of SB 3 should be the goal of any rulemaking the Commission engages in on this topic. It was memorialized in an exchange in the Texas House of Representatives prior to the debate on SB 3 between State Affairs Committee Chairman Chris Paddie and Representative Ben Leman.

“REPRESENTATIVE LEMAN: In our joint hearing between the State Affairs and Energy Resources Committees, we've focused on the shortfalls in the supply of electricity and natural gas. Is there anything in this bill that should be construed to give the Public Utility Commission or the Railroad Commission the authority to take any action that would decrease the supply of electricity or natural gas in this state?

REPRESENTATIVE PADDIE: Not in this bill, no.”

- Sunday, May 23, 2021, HOUSE JOURNAL — 53rd Day, Page 3597

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The Alliance believes the Commission has prioritized that goal throughout SB 3 implementation but risk missing that target if this current rulemaking is not altered. The highest priority during normal weather conditions and energy emergencies is delivery of dry gas to electricity generators and natural gas utilities, which may come from a combination of onsite and remote storage, dry gas in pipeline, and daily production.

A one-size-fits-all approach to mandating weatherization from wellhead to electric generator places an incredible financial burden on lower producing assets, forcing small and large operators alike to respond to economics and shut in that well sooner. This action will decrease total gas production across the state, which is contrary to SB 3's intent.

Without greater prioritization in the form of a floor or a multi-tiered effort to distinguish higher and lower priorities in the natural gas supply chain, we fear that the rule and actions by operators to comply with the rule will negatively impact overall production. While the rule framework is not overly prescriptive on the specific methodology for weatherization, we are concerned each operator will approach their facilities differently, resulting in wide variations in Commission prioritization and enforcement. To best articulate the Commission's goals and standards, this rule or the previous § 3.65 Critical Infrastructure rule should be narrowed in focus to higher producing facilities, gas pipelines and storage facilities.

Beyond legislative intent, we believe the Commission should continue to urge their fellow regulatory agencies to prioritize and address the root causes of Winter Storm Uri's failures, primarily the lack of available, dispatchable electricity to the grid, and the inability of the Electric Reliability Council of Texas to mandate generators purchase firm fuel contracts. Weatherized production of natural gas is only possible with sufficient electricity supplies to maintain heating equipment and pipeline compression. Failure to maintain electricity service will negate any weatherization practices undertaken by producers.

The following are key items the Alliance respectfully requests be considered to improve the rule:

### **(a) Applicability**

The new Section 86.044, Subsection (b) of the Natural Resources Code created by SB 3 states that the weatherization requirements under the legislation shall only apply "to a gas supply chain facility that is: (1) include on the electricity supply chain map created under Section 38.203 Utilities Code; and (2) designated as critical by the commission..."

As currently written, SWR 66 would circumvent this clear two-step process of weatherization applicability required by SB 3 and would apply to ANY gas supply chain facility that is found on the supply chain map, even if that facility is not designated as critical by the Railroad Commission. The Alliance proposes that SWR 66 be amended to only apply to gas supply chain facilities that are BOTH included on the supply chain map AND designated as critical by the Railroad Commission.

Additionally, a universal and expensive mandatory weatherization requirement will render marginal, low volume gas production uneconomic, resulting in waste and harm to correlative rights. The Alliance recommends the Commission adopt a minimum production floor to ensure marginal assets are not subject to costly weatherization requirements that would render them uneconomic sooner. This may require the re-consideration by the Commission of previous rulemaking in 3.65 and we would support the revision in that rule, as well. A minimum 250 mcf per day (mcf/d) floor is necessary to function correctly with the intent of SB 3 and the Commission's action on 3.65. Under 3.65, operators can apply for exception from critical status for facilities under 250 mcf/d. The understanding by the Commission, operators, and the transmission & distribution utilities (TDUs) is that this asset may be interrupted from electricity delivery because of its non-criticality to the overall system.

The Commission has received numerous comments from operators and TDUs that these assets use more electricity than the amount of dry gas they produce, meaning that keeping them on the system during an energy emergency is more detrimental to electricity supplies than if their electricity was interrupted involuntarily. Just as important, these assets provide gas to the system and revenues to their operators and should not be condemned or encouraged to shut in prematurely. Without electricity delivery to either the lease, or its midstream component, no amount of weatherization can prevent production interruptions. This forces the operator into shutting in the asset contrary to the intent of SB 3. We think this is disastrous for overall production but also deeply harmful to operators and communities that rely on marginal production. Ultimately, a 250 mcf/d floor is consistent with 3.65 and should be made explicit in a weatherization framework.

Beyond a reasonable minimum production floor in 3.65 or amending that floor into 3.66, operators have raised concerns with the Alliance regarding facilities located in prorated fields. The limitation of a gas allowable during an energy emergency requires due consideration by the Commission to either remove these limitations or consider whether prorated fields should not be subject to weatherization requirements. This is due to operators regularly shutting in their wells temporarily when allowables will be exceeded for the month. This rule should not penalize operators requiring significant investments for compliance when other Commission rules will necessitate their closure, in some instances prior to or during an energy emergency.

## **(b) Definitions**

Additional clarity would help operators in understanding when a normal stoppage becomes a weather-related forced stoppage subject to reporting to the Commission. The best way to accomplish this is to have the Commission declare when an energy emergency is occurring. This is consistent with a number of other rules at the Commission pertaining to limitations on available gas supplies, including but not limited to the newly revised curtailment rules in 16 TAC §7.455 or the existing 16 TAC §3.84 pertaining to a Gas Shortage Emergency Response. We recommend revising the definition of an "energy emergency" to "a Commission declaration as the result of any event that results in firm load shed required by the reliability coordinator of a power region in Texas."

## **(c) Weather Emergency Preparedness Standards**

### *Attestation*

As currently written, SWR 66 requires an authorized officer responsible for the operator's regulatory compliance to sign the attestation. An operator's officer is often not the representative of the company who is best situated to have actual knowledge of the weatherization practices adopted by the company. Additionally, most other attestations required by the Railroad Commission simply require "an authorized representative" of the operator to attest to certain information. To ensure that the person who is best situated to have knowledge of the weatherization practices implemented by the operator and to provide uniformity with other Railroad Commission forms, the Alliance recommends deletion of subsection (d)(1)(A)(iii) and amending subsection (d)(1)(A) references from "authorized officer" to "authorized representative" similar to the existing P-5 requirements.

The Commission is missing an opportunity in the Attestation Attachment section to codify the requirements in SB 3 pertaining to Emergency Operations Plans. This subsection should be eliminated and replaced with the requirement to file an emergency operations plan or similar annual filing with a general description of the operator's operations and weatherization procedures.

### *Due Notice*

The Alliance recommends amending the applicability section to ensure those entities identified on the Supply Chain Map have been properly notified in a manner beyond First Class Mail. A certified letter and electronic communication are necessary for proper notification.

### *Weatherization Standards*

We also recommend the Commission clarify that operators should be required to implement prudent, industry-accepted weather emergency preparation measures that are appropriate for the type/age of the applicable facility.

Given the ever-changing technologies and methods developed in the oil field, the Alliance is concerned that including a prescriptive list of weather emergency preparedness measures in the rule itself could pose problems and require more frequent rule changes. Rather than include a list in Subsection (c)(2), we believe it would be more effective to provide practices such as this list in a guidance document or notice to operators. This would prevent changes to the rule being necessary as new methods are developed and would have the added benefit of providing more flexibility to the operators to adopt methods they feel are best suited to their facility rather than having to follow a more rigid list found in a rule. The Alliance would support a workgroup being established to maintain this list and advise inspectors on new practices and techniques occurring in the field to maximize dry gas production.

While we support the removal of the prescribed list in (D)(i-xx), this list encompasses practices not meant to occur at production facilities but that are utilized at pipeline or storage facilities. This further reinforces the importance of a workgroup to properly guide inspections on the applicable facility or equipment.

#### **(d) Weather Emergency Readiness Attestation**

For this initial Weather Emergency Readiness Attestation due December 1, 2022, the Commission should consider the tight implementation timeline between supply chain notification and the time required to deploy weather emergency preparedness actions. This is being done simultaneously across the state which will result in limitations on supplies like heat tape, insulation, spare parts, securing onsite chemical, installing wind breaks, and other methods that are not existing requirements to daily production. The Commission should allow for operators to note supply chain constraints, personnel limitations, and any other relevant factors preventing full deployment by December 1. Additionally, the Commission should allow operators to deploy these methods in accordance with their Emergency Operation Plans which may result in later deployment than December 1 or centralizing these resources at an accessible though secure office or equipment yard, rather than an unmanned lease site.

#### *Leverage operator's expertise across production spectrum*

Some Alliance members have expressed concerns regarding facilities that utilize certain operations where weatherization is impractical, such as operating wells utilizing field gas for artificial lift. Field gas has a high potential for freezing and hydrate formation when exposed to the pressure drops of a gas lift system and ambient air temperatures in the 30s and below. Such pressure and temperature issues make it impossible to maintain sustained operations with a field gas artificial lift system during freezes, despite an operator taking preventive measures. This problem cannot be remedied by simply installing additional devices or equipment. Instead, the cost to retrofit an entire gas lift system to guarantee the sustained operation of these wells during a weather emergency would, in some cases, exceed the economic value of the remaining reserves. Thus, the operator would have to shut in otherwise economic wells before an officer could validly execute a Weather Emergency Readiness Attestation. Prematurely abandoning economic wells will result in waste contrary to Texas Natural Resources Code § 86.011. We propose three alternative recommendations for amending Proposed Rule 3.66 that would mitigate these unintended consequences:

1. Despite an operator's best efforts to weatherize facilities and equipment, drops in production are inevitable in fields utilizing field gas for artificial lift. However, the volumes of such production drops are predictable during cold weather events. Accordingly, the Weather Readiness Attestation requirement of Section (d) of Proposed Rule 3.66 could be revised to include a provision whereby an operator could describe its efforts to weatherize and include a discussion of safety concerns and anticipated outages for facilities subject to Rule 3.66 during a weather emergency. Proposed Rule 3.66 could expressly provide that such *anticipated*

outages are exempt from the definition of “weather-related forced stoppage” if previously disclosed to the Commission

2. Similar to Form W-3C (allowing an exception to Statewide Rule 15 if an operator signs an affirmation of facts), Proposed Rule 3.66 could include a provision whereby an operator could attach an affirmation of facts exempting the operator from the rule’s requirements to notify the Commission of a weather-related forced stoppage, so long as the operator’s collective production for facilities subject to Rule 3.66 does not drop below the amount specified in the accompanying affirmation of facts. The affirmation of facts could show that the operator has complied with applicable API standards, or has otherwise weatherized to the extent that a reasonably prudent operator would, and that failure to obtain an exception would result in waste.
3. The operator could obtain an exception to Rule 3.66 through a request for hearing. The request could include an affidavit describing the circumstances for the request, affirming that the operator has complied with applicable API standards, or has otherwise weatherized to the extent that a reasonably prudent operator would, and that failure to obtain an exception would result in waste.

Implementation of one of the three foregoing solutions would give an operator the flexibility to operate during the overly broad Weather Emergency and maximize production online without fear of unnecessary penalty or interruption to operations.

#### **(f) Weather-related forced stoppages**

In public discussions of the proposed rule, the Commission has frequently cited the fact that SB 3 limits the focus of the weatherization rule to operator actions, not third party interruptions that could disrupt operations wholly or in part. These include electricity interruption, road closures, and contractor limitations. This intent should be reflected in the rule rather than in implementation by explicitly stating operators should not be penalized for third party failures. We recommend amending Section (f), Subsection (1) as follows:

“(1) An operator of a gas supply chain facility(ies) or a gas pipeline facility(ies) that experiences a material weather-related forced stoppage in sustained operations during a weather emergency shall notify the Commission as promptly as practicable immediately through the Commission’s Critical Infrastructure Division’s notification portal if the stoppage is not resolved within 24 hours of discovery of the stoppage. In the event a weather-related 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, or a stoppage of gas processing, storage withdrawal, or transportation capacity exceeding 200 MMcf per day, the operator shall, upon discovery of the stoppage, immediately contact the Commission ~~on~~ through the Commission’s Critical Infrastructure Division’s 24-hour emergency telephone number. The operator reporting such a weather-related forced stoppage during a weather emergency may include in such report information (if applicable) regarding any third party issues that may have directly contributed to such operator’s stoppage. If an inspection determines that the stoppage was caused by the operator’s facility’s failure to materially adhere to the requirements of this

section, the Commission may initiate ~~facility will be subject to~~ an enforcement action. Forced stoppages caused by third party actions or inactions are not subject to enforcement actions.

### **(g) Enforcement**

The Alliance recommends that language be added to the rule to clarify what constitutes a violation. As it is currently written, a weather-related failure could be a violation, however it seems implied that if something that was identified in the Weather Emergency Readiness Report caused the failure, this could be a violation. Conversely is it a violation if you did everything in your Readiness Report and still had a failure? The aforementioned workgroup could help to define this and increase compliance with the rule through industry communications.

If an operator has taken reasonable action to protect against weather emergencies, they should not be penalized for a failure. We would like to suggest the following language to address this concern:

“In the event that the operator of a gas supply chain facility or a gas pipeline facility has taken commercially reasonable measures that a prudent operator would take prior to a weather emergency in accordance with industry-accepted practices and such facilities nonetheless experience a failure during such weather emergency, such operator shall not be subject to any penalties under this section provided such operator submits a supplemental weatherization plan to address issues identified as a result of such weather emergency or internal review.”

As was mentioned earlier in reinforcing communications between the Commission and operators, we recommend amending (g) Enforcement. (1) Violation of this section by a gas supply chain facility operator. A gas supply chain facility operator will be given notice and opportunity for a hearing for alleged violations of this section. The notice shall be sent by certified mail and state the facts or conduct alleged to comprise the violation. The notice shall give the operator 30 days to demonstrate or achieve compliance with this section or request a hearing. For consistency, replicate for (2) Violation of this section by a gas pipeline facility operator.

The Alliance represents the entire spectrum of large and small operators located in Texas, so we are sensitive to any enforcement provisions in Railroad Commission rules that may unduly burden operators of all sizes. The proposed violation factors fail to consider a larger operator’s overall or statewide gas production and efforts to maintain compliance across all operations subject to SWR 66. At the same time, we are concerned that violation factors based on a pure percentage of facilities that are in compliance with the rule could unfairly burden small operators who only have one or two facilities.

To help address this concern, the Alliance recommends a hybrid approach to violation factors found in the Figure 16 TAC §3.66(g)(1). We recommend adding in a line item to the classification system table that deducts violation points if an operator keeps a certain

percentage of their aggregate production within Texas online in the event there are failures at a number of low-production leases and/or wells.

We would like to thank the Railroad Commission for their hard work on this rulemaking and for providing the Alliance the opportunity to provide comments. We appreciate your serious consideration of our members' concerns and look forward to working with the Commission as it implements these new standards.

Sincerely,



Jason Modglin  
President