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October 7, 2022

**VIA EMAIL**

Rules Coordinator  
RAILROAD COMMISSION OF TEXAS  
Office of General Counsel  
P.O. Drawer 12967  
Austin, TX 78711-2967

Re: *Proposed Amendments to 16 TAC § 3.65, relating to Critical Designation of Natural Gas Infrastructure—Atmos Cities Steering Committee's Comments*

Dear Sir or Madam:

On August 30, 2022, the Railroad Commission of Texas ("RRC" or "Commission") published proposed amendments to 16 Texas Administrative Code ("TAC") § 3.65, relating to Critical Designation of Natural Gas Infrastructure, in the *Texas Register* and requested comments from interested parties by October 7, 2022. The Atmos Cities Steering Committee ("ACSC") appreciates the opportunity to submit these comments on the proposed rule amendments.

ACSC is a coalition of 179 cities in North and Central Texas, and has been a regular participant in rate cases of Atmos Energy Corp. and its predecessors for approximately 27 years. More generally, city involvement in gas utility matters has a long history in Texas. Cities have been active and productive partners of the RRC in regulating gas utility rates within their municipal boundaries. In response to Winter Storm Uri, city coalitions have become increasingly involved in ensuring reliable service during weather emergencies.

ACSC supported the adoption of § 3.65 and appreciates the steps taken by the Commission to implement the requirements of House Bill 3648 ("H.B. 3648") and Senate Bill 3 ("S.B. 3") from the 87th Texas Legislative Regular Session. The Commission's efforts to designate certain natural gas suppliers as critical facilities is an important step towards securing reliable gas and electric

utility service in our state. However, the original rule designated too many facilities as critical and even allowed additional facilities to apply for a critical designation. An excessive number of critical facilities renders the designation superfluous and, during times of grid constraint, counterproductive. The Commission's report of 95,000 critical designation requests illustrates this issue.<sup>1</sup>

The proposed amendments to § 3.65 removing gas wells that produce 250 Mcf/day of gas or less and oil leases that produce 500 Mcf/day of casinghead gas or less from the list of critical facilities will help remedy this problem. Moreover, ACSC supports the amendment to the "energy emergency" definition as it will provide operators additional clarity during times of grid constraint. In addition to this support, ACSC offers the following comments and suggestions to further clarify the provisions of § 3.65 and adequately address the requirements of H.B. 3648 and S.B. 3.

#### **I. COMMENTS ON THE PROPOSED RULE**

The proposed amendments to § 3.65 aim to simplify the rule language and the process for designating certain natural gas facilities and entities as critical during energy emergencies.

Although the amendments modify the list of critical facilities in § 3.65(b)(1-8), the amendments still fail to prioritize the list. Accordingly, electric utilities retain complete discretion regarding which critical facilities to disconnect. The Commission should not expect electric utilities to be natural gas infrastructure specialists in place of the specialists in the industry and at the Commission itself. To appropriately determine which critical facilities to prioritize, regulatory experts must establish a consistent set of criteria applicable to all electric utilities. The lack of a clear critical facility hierarchy will inevitably lead to an uncoordinated response to the detriment of consumers. This is particularly problematic when, as discussed above, there is an excessive

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<sup>1</sup> Public Hearing before the Senate Comm. on Nat. Res. & Econ. Dev., Video Testimony of Christi Craddick at 12:01, 87<sup>th</sup> I.S. (Sept. 14, 2022) ([https://tlcsenate.granicus.com/MediaPlayer.php?view\\_id=52&clip\\_id=17052](https://tlcsenate.granicus.com/MediaPlayer.php?view_id=52&clip_id=17052)).

number of critical facilities connected to the grid. Considering the 95,000 critical designation requests, it is unreasonable to expect an electric utility to efficiently prioritize, at a minimum, thousands of facilities without guidance from the Commission.

Accordingly, the Commission should establish a hierarchy that provides direction during load shed events. To protect consumers during future weather emergencies, a quick and effective load shed response is imperative. A well-defined critical facility hierarchy will ensure such a response. Moreover, because the Commission does not have jurisdiction over electric utilities or the prioritization of electric load shed, it should collaborate with the Public Utility Commission to ensure uniformity related to the prioritized list of most critical to least critical facilities.

Second, pursuant to § 3.65(c), a facility that § 3.65(b) does not designate as critical may write to the Commission to apply for a critical designation. However, the rule does not specify how this process is to take place. For clarity, the rule should stipulate who in the Commission is making this important determination and how facilities are deemed critical.

Third, § 3.65(e)(2)(D) provides that, when an electric utility rejects, denies, or otherwise disapproves a facility's request for critical designation, the Commission has a reasonable basis and justification to grant the facility a critical designation exception. However, the provision is silent regarding the source of an electric utility's authority to reject a facility's request for critical designation status. Assuming a utility has authority to disapprove a request, the rule should also provide the authority's statutory or regulatory basis.

Finally, § 3.66 requires a facility to weatherize only if it is designated as critical under § 3.65 *and* on the electricity supply chain map created under Texas Utilities Code § 38.203.<sup>2</sup> Thus, assuming that some natural gas facilities are critical under § 3.65 and not on the electricity supply

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<sup>2</sup> 16 Tex. Admin. Code § 3.66 (2022).

chain map, § 3.65 requires an electric utility to prioritize service to a natural gas facility that, under § 3.66, is not required to weatherize. This appears to encourage a waste of resources and, during times of grid constraint, could greatly exacerbate issues related to a limited power supply. We urge the Commission to reexamine the nexus between §§ 3.65 and 3.66 to ensure all facilities designated as critical are also required to weatherize.

## II. CONCLUSION

ACSC supports the Commission's adoption of the proposed amendments to § 3.65, with modifications, as a measure of protection for the health and lives of Texans and appreciates the opportunity to comment on the proposed amendments. ACSC respectfully urges the Commission to consider the foregoing comments and to adopt a rule consistent with same.

Sincerely,



Thomas L. Brocato

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