

November 1, 2021

Rules Coordinator
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RE: Comments to Proposed Amendments to 16 TAC §3.65, relating to Critical Designation of Natural Gas Infrastructure

Rules Coordinator:

On behalf of CPS Energy, thank you for the opportunity to submit comments on the Railroad Commission's proposed amendments to 16 TAC §3.65, relating to Critical Designation of Natural Gas Infrastructure.

Introduction and Executive Summary

As further described in these comments, CPS Energy is concerned that the proposed rule does little to incentivize operators of pipeline and other gas facilities to properly designate such facilities as critical in nature. The rule allows gas facilities operators to opt-out of critical designation any facilities that the operators deem not prepared to operate in a future weather emergency without any criteria or verification process applicable for such designation. Further, the rule does not specifically impose any weatherization requirements on critically designated gas facilities and the penalties for rule violation are insignificant. This set of factors will lead any rational gas facilities operator to opt-out of critical designation any facilities its does not wish to pay to weatherize. From a business perspective, it would be cheaper for any facilities operator to pay any rule violation penalties, assuming any enforcement action is brought in the first place, than to invest in weatherization of any critical facilities.

The only strategy proposed by the rule to prepare gas facilities for future winter storms is for operators to identify their gas facilities as critical customers to the Commission and to their electric service providers with the expectation that in any future weather emergency the burden will be placed on the electric providers to keep the facilities from losing power, regardless of whether freezing temperature bring gas flow to a standstill at any wellhead, pipeline, or other critical gas facility. This strategy fails to recognize that electric service providers across the state will not be able to keep power to all critically designated gas facilities during any given future load shed event – indeed they have no legal obligation to do so.

In addition, the Commission should be more transparent regarding its plans for complying with the various requirements spelled out in SB 3. In comparison to the efforts of the Public Utility Commission of Texas (“PUC”) regarding similar, and more voluminous rulemaking requirements, the Commission is lacking in urgency and creativity with regards to implementation, planning, and communications with stakeholders.

The current draft of the rule is a disservice to Texas customers and their families, which suffer greatly during Winter Storm Uri – some paying with their lives as they succumbed to the effects of hyperthermia when their homes could not be heated. The public expects more from the Commission. These comments provide recommendations to begin to develop true accountability for facilities operators to properly designate critical gas facilities and weatherize the facilities aligned with their critical nature.

About CPS Energy

CPS Energy is the nation's largest municipally owned energy utility providing both natural gas and electric service. As an electric and natural gas provider, we serve more than 884,000 electric and 366,000 natural gas customers. CPS Energy's gas system serves Bexar County and portions of the surrounding counties of Comal, Guadalupe and Medina. CPS Energy acquires and manages the combined natural gas supply requirements for its gas-fired generating units and local gas distribution system through a diversified portfolio of bilateral contracts with a number of gas suppliers. CPS Energy's dependence on reliable gas supply is significant. Twenty percent of CPS Energy's total generation, which accounted for 28.8 terawatt hours in 2020, comes from gas-fired generation units, while its local distribution gas system covers over 5,700 miles of distribution main lines. CPS Energy also owns and operates natural gas transmission facilities feeding its distribution system and several power plants, including approximately 90 miles of transmission pipeline.

CPS Energy attended the Commission's stakeholder workshop on October 5, 2021 where Commission staff provided an overview of the rulemaking and proposed the forms to be utilized to acknowledge pipeline and other gas facilities designated as critical and to certify any facilities that an operator claims are not prepared to operate in a weather emergency. The statutory authority for the proposed rule is new Section 81.073 of the Natural Resources Code.

Applicable Background and Context

Like many other energy market participants, CPS Energy is wary of another winter storm event similar to last February's Winter Storm Uri, during which natural gas supply became scarce resulting in increased gas prices of historic proportions.¹ The primary cause that created the scarcity issue was wellheads throughout Texas that were not well prepared for freezing conditions. Natural gas production stalled as water and other liquids froze and blocked the flow of gas out of wellheads. Some pipeline companies were forced to shut gas processing facilities due to freezing weather. At the peak of the winter storm, about 18.7 billion cubic feet per day of gas production was lost because of freeze-offs – equivalent to 20 percent of total U.S. output – according to Wood Mackenzie.² This had a devastating impact on gas-fired power plants which

¹ *The Texas Energy Crisis: It's Causes and Consequences*, Feb. 19, 2021, Ed Crooks, Vice-President, Americas Gas Research, Wood Mackenzie. The article is available at <https://www.woodmac.com/news/opinion/the-texas-energy-crisis-its-causes-and-consequences/>. (Prior to Winter Storm Uri at the beginning of February 2021, natural gas prices held below \$3/mmBTU. But during the winter storm, daily cash prices on the Midcontinental skyrocket to as high as \$1,250/mmBTU for certain transactions.)

² *Id.* For a national analysis of the performance of the natural gas industry during Winter Storm Uri see, *Natural Gas Market Performance During the February 2021 Cold Weather Event*, American Gas Association, Energy Analysis,

contribute over 50 percent of the generation within ERCOT. Yet, the natural gas industry that failed to prepare for the winter storm and sparked immediate and extreme price spikes, following Winter Storm Uri publicly announced record profits.

Not that the electric industry is without accountability. There was a range of problems that contributed to power plants experiencing reductions in output during the winter storm, but the common theme was equipment failures at generation facilities that were not prepared for bitter cold temperatures delivered by the winter storm.³ In response to these failures, the PUC has directed power generation operators throughout the state to weatherize power plants by adopting federal weather emergency preparedness recommendations stemming from the 2011 Texas winter storm event and to address all equipment failures experienced during Winter Storm Uri.⁴ CPS Energy has already spent millions of dollars implementing those requirements.

Natural Gas Facilities Must Be Weatherized

One concern that CPS Energy shares with other stakeholders is that operators of natural gas facilities upstream from power plants and gas distribution systems will fail to weatherize facilities critical for delivery of gas to such plants and systems by reporting to the Commission that those gas facilities are not prepared to operate during a weather emergency. There is reason to believe

Report EA 2021-01, April 5, 2021. (The Energy Analysis reported that freeze-offs at the wellhead and declines in natural gas processing capacity reduced nationwide supply by about 20%. In Texas, interruptions to electric power constrained natural gas supplies in instances where electricity was needed to operate natural gas production and processing infrastructure. Overall, Texas set a new record for natural gas consumption even with the severe challenges associated with the electric power outages. The cold drove a substantial increase in natural gas use for power generation, industrial consumption, and residential and commercial demand.)

³ *The Texas Energy Crisis: Causes and Consequences* (During Winter Storm Uri, the average capacity factors – generation as a percentage of nameplate capacity – dropped for the major sources of generation on ERCOT: 52% to 43% for gas-fired plants, 73% to 60% for coal plants, and 94% to 75% for nuclear plants.); and *National Gas Market Performance During the February 2021 Cold Weather Event* (According to ERCOT records, during Winter Storm Uri, electric generators were affected by mechanical issues, constrained gas supplies, lower than normal solar generation due to cloud cover, and limited wind generation, resulting in nearly 48.6 percent of electricity capacity generation being forced out during the height of the event.)

⁴ *Order Adopting New 16 TAC §25.55 Relating to Weather Emergency Preparedness*, PUC Docket No. 51840, *Rulemaking to Establish Weatherization Standards*, Oct. 26, 2021 (The new rule, 16 TAC §25.55, is the first of two phases in the Commission’s development of robust weather emergency preparedness reliability standards. The rule requires generators to implement winter weather readiness recommendations identified in the 2012 *Quanta Technology Report on Extreme Weather Preparedness Best Practices* and directs transmission service providers to implement key recommendations contained in the 2011 *Report on Outages and Curtailments During the Southwest Cold Weather Event on February 1-5, 2011*, jointly prepared by the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation. In addition, the rule requires generators and transmission service providers to fix any known acute issues that arose from winter weather conditions during the 2020-2021 winter weather season. The second phase of the weather emergency preparedness reliability standards will consist of a more comprehensive year-round set of weatherization standards that will be informed by a robust weather study that is currently being conducted by ERCOT in consultation with the Office of Texas State Climatologist.); and *Proposal for Publication of Amendment to 16 TAC §22.246 (Relating to Administrative Penalties) and §25.8 (Relating to a Classification System for Violation of Statutes, Rules, and Order Applicable to Electric Service Providers)*, PUC Docket No. 52312, *Review of Administrative Penalty Authority* (The proposed rule will implement an amendment to PURA §15.023(b-1) enacted by the 87th Texas Legislature that established an administrative penalty not to exceed \$1,000,000 for violations of PURA §35.002 or §35.075, each relating to weather emergency preparedness. The Commission received public comments on Sept. 16, 2021 and has not issued an order adopting the rule amendments of the date of these comments.)

that this may occur. According to recent reports, natural gas producers in Texas have not made significant investments to protect their wellheads and other equipment against freezing temperatures. While the industry claims that it is physically ready for this upcoming winter season, those claims are based on self-designation of natural gas wells and other facilities as critical customers to avoid power utilities cutting off electricity in the event of rotating outages.⁵ This is not a reassuring strategy to operators of power plants and gas distribution systems that depend on reliable delivery of natural gas during winter emergency events. The delivery of electricity to natural gas facilities is irrelevant unless those facilities are weatherized to prevent freezing temperatures from stopping the flow of gas.

Section 5 of SB 3 added Section 86.044 to Chapter 86, Natural Resources Code, which directs the Commission to initiate a rulemaking proceeding to require “gas supply chain facility” operators to “implement measures to prepare to operate during a weather emergency.” A *gas supply chain facility* means a facility “used for producing, treating, processing, pressurizing, storing, or transporting natural gas” and “designated as critical” by the proposed rule which is the subject to this Commission proceeding. Yet, the proposed rule fails to address any weatherization measures that would prepare these critical gas facilities to operate reliability during a future severe winter storm. In addition, Section 21 of SB 3, which added Section 121.2015, Utilities Code, directs the Commission to develop “measures a gas pipeline facility operator must implement to prepare the gas pipeline facility to maintain service quality and reliability during extreme weather conditions.” These measures are to apply to any gas pipeline facility that “directly serves a natural gas electric generation facility” that solely or primarily provides power to the ERCOT power grid. Once again, the proposed rule fails to mention any weatherization measures, procedures, or standards to ensure these critical gas facilities maintain service quality and operate reliability during future severe winter storms. The Commission should expand the proposed rule to include such weatherization measures applicable all these critical pipeline and other gas facility operators.

Develop Criteria for Critical Designation Opt-Out & Verification

The Texas Legislature has instructed the PUC and Commission to work together to identify and ensure critical gas and electric facilities are weatherized to withstand future freezing weather emergencies through several provisions of SB 3. As previously stated, the PUC has already implemented a new rule to ensure that power plant operators weatherize their generation facilities in preparation for the coming winter weather season and the Commission should do the same with respect to gas facilities operators pursuant to the authority granted the Commission by Sections 81.073 and 86.044 of the Natural Resources Code and Section 121.2015 of the Utilities Code.

⁵ *Texas Natural Gas Industry Showing Limited Progress in Winter Storm Prep, Expert Say*, San Antonio Express News, James Osborne, Oct. 19, 2021, available at https://www.expressnews.com/business/energy/article/Texas-natural-gas-industry-winter-storm-prep-16543874.php?sid=5b02345024c17c5e3d901368&utm_campaign=SAEN_210Report&utm_content=headlines&utm_medium=email&utm_source=newsletter; and *As Winter Nears, Tensions Rise Over How to Prevent Texas Blackouts from Happening Again*, Houston Chronicle, James Osborne, Oct. 4, 2021, available at <https://www.houstonchronicle.com/business/energy/article/As-winter-nears-tensions-rise-over-how-to-16503459.php>. (Texas Oil and Gas Association President Todd Staples has suggested he would resist efforts to require natural gas wells to weatherize, saying that “the market can provide the signals that are necessary to make sure the product flows.” Asked for further comment, an association representative stated that gas facilities “should weatherize” and that a process underway at the Railroad Commission would determine which ones needed to do so.)

Unfortunately, the proposed rule is not just limited in scope, it also includes a provision that some observers have called a “loophole” that allows gas facilities that are not “prepared to operate during a weather emergency” to opt-out of critical designation by paying a \$150 fee, thus avoiding the cost of weatherization. Under the proposed rule, a gas facilities operator gets to determine which facilities are not prepared to operate during a weather emergency without any Commission guidance. This is in conflict with the Commission’s legislative directives under Section 121.2015 of the Utilities Code, which does not include any opt-out option from critical designation for gas pipeline facilities that directly serve natural gas power plants. Under rules of statutory construction, the Commission must interpret Sections 81.073 and 121.2015 to give them full effect. The only way to do this is to conclude that the critical designation opt-out provision found in Section 81.073 does not apply to pipeline facilities identified in Section 121.2015.

The Texas House State Affairs Committee amended SB 3 to include the opt-out requirement being proposed in the rule. Discussions held during the committee meeting reflect that the requirement was inserted into SB 3 not as an exemption but as an additional requirement on gas facility operators to ensure that the self-designation option is not abused.⁶ But the proposed rule does nothing to support this assurance. For this reason, several stakeholders during the Commission workshop voiced the concern that gas facilities should not be exempt from critical designation without verification from the Commission that the facilities are indeed, not critical in nature. Seeking the willingness of natural gas operators to weatherize certain self-designated facilities is not enough.⁷ Nor is allowing natural gas companies to opt-out of weatherization requirements if

⁶ *Texas Natural Gas Industry Showing Limited Progress in Winter Storm Prep, Expert Say*, (Rep. Chris Paddie, R-Marshall, chairman of the House State Affairs Committee, which wrote the House version of SB 3, explained that the provision was necessary to avoid hundreds of thousands of natural gas facilities applying for critical designation, limiting utilities’ ability to rotate outages around oil and gas fields. According to a spokesman for Rep. Paddie, “The provision was inserted not as an exemption, but rather as an additional requirement on operators [to] ensure that the self-designation option is not abused and that those operators self-designating will have to winterize their equipment.”)

⁷ *Texas Isn’t Ready for Another Deep Freeze*, Bloomberg News, Mark Chediak and Naureen S. Malik, Oct. 30, 2021. (The authors cite several experts who assert that the gas industry is not prepared for this winter season. The article argues that the gas industry is placing profits ahead of safety. According to the Federal Reserve Bank of Dallas, it would cost between \$20,000 and \$50,000 to weatherize each oil and gas well. By not weatherizing, the gas industry would save cash to please investors and lenders after a decade of hefty spending and poor returns. “Operators are also betting that enough of their own wells will remain open even if rival’s freeze, potentially reaping eye-wateringly high prices.” The Texas Oil & Gas Association, which represents the natural gas industry, argues that it does not make sense to apply mandates across the entire gas industry when only a portion of its supplies the state power sector. Todd Staples, president of the association cites to an industry commissioned report of the February winter storm for support of the proposition that power outages were the primary reason for the drop in natural gas production during the storm. But an independent analysis by BloombergNEF found that 52% of the gas volume declined during Winter Storm Uri came before ERCOT’s first call for involuntary load shedding in the early hours of February 15, 2021, suggesting that frozen gas equipment also played a significant part in the drop in natural gas production.) The article is available at https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fu12097671.ct.sendgrid.net%2Ffs%2Fclick%3Fupn%3D4PC2wo0fWhUBQdJDPL-2Fxrma-2FiNLXrBX17zncJLRZJMUwC2RIiKEz0TaeJq6-2FMqrngclYgcztBgLGKrxqxIRIg-3D-3DRaCv_dRb9e8QhM-2BKXn-2BvBte7oaKmAppd9jyMGxahru2rH52hhdZrWSIGfYOGlalSw2pM3z7SDpM6skJfvU-2FTDwKKBG8wJWjleNGBFMXN02F1lc6Dp2tiAov5K6-2BdF62l62f7FaT98ZpP6XImrjAQGL5IfJ93Aj-2FH3xZnziaiWdZvHc52dNxgD6H6XUJtsQurccYAxLGSVZzJdm1IY6AORuyZP3mf3j5t6KgKwEXDsDYSxUspZuqe9SHHeAq-2BSwuo00bxNoKY9ZPzL1P21KNmMz5wATw-3D-3D&data=04%7C01%7Cdsotoodeh%40cpsenergy.com%7C6ffbb0a3103c40fe9b8208d99d40a968%7C13eedade72024cae8bde09b4b30b8a6c%7C0%7C0%7C637713723336309629%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4

they do not voluntarily declare themselves to be critical infrastructure. CPS Energy supports a verification proposal and urges the Commission to include in the rule criteria for what constitutes an exempt gas facility and a verification procedure to ensure the exemption is not abused. At the very least, the proposed rule should specifically state that pipeline facilities that directly serve natural gas power plants cannot opt-out of critical facility designation.

Commission Should Expand the Scope of the Proposed Rule

The Commission could go much further than that and include in the proposed rule weatherization measures applicable to supply chain facility operators, which it is required to implement by Section 86.044 of the Natural Resources Code. Section 17 of SB 3 added Subchapter F to Chapter 38 of the Utilities Code to create the Texas Electricity Supply Chain Security and Mapping Committee (“Mapping Committee”). Section 38.203 directs the Mapping Committee to, among other items, develop weatherization best practices, oversight recommendations, and compliance standards for natural gas facilities in the electricity supply chain to maintain service in extreme weather. The executive director of the Commission is a member of the Mapping Committee, along with representatives from the PUC, ERCOT, and Texas Division of Emergency Management (“TDEM”). Further, the Mapping Committee is required to submit a report to the governor and legislative leaders by January 1, 2022, which among other items, includes “best practices to prepare facilities that provide [] natural gas service in the electricity supply chain to maintain service in an extreme weather event.” Since the Commission is a member of the Mapping Committee, it will be aware of the weatherization “best practices” referenced above weeks if not months before the Mapping Committee submits its January 1, 2022 report. Therefore, the Commission will have in hand prior to the end of this year the weatherization measures/best practices applicable to critical gas facility operators that it must adopt pursuant to Section 86.044. Incorporating into the proposed rule these weatherization measures/best practices is consistent with the Commission’s intention to finalize the proposed rule by the end of December.⁸ CPS Energy encourages the Commission to take this action.

More Specific Criteria for Critical Gas Facilities

The rule should also include specific criteria applicable to gas facilities designated as critical in nature. Such criteria should indicate several components, including (1) critical gas facilities should be categorized by tier to provide guidance to electric service providers in implementing mandatory load shed and restoration efforts during future weather emergencies; (2) each tier should include appropriate weatherization requirements applicable to the gas facilities; (3) pipeline facilities and pressure stations that feed power plants and gas distribution systems should be categorized in the top tier; and (4) certain gas facilities that are not connected to the power grid, but nonetheless are susceptible to malfunction due to freezing temperatures, should also be included as critical facilities under the appropriate tier.

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⁸ The Commission may implement the remaining requirements of Section 86.044 of the Natural Resources Code at a later time, which is not later than six months after the Mapping Committee issues its electricity supply chain map (September 1, 2022). There is nothing in the Section 86.044 that requires the Commission to adopt all the requirements of the section at the same time.

There is support for a tiered approach in SB 3. Section 86.044 of the Natural Resources Code, which was added by SB 3, directs the Commission to conduct compliance inspections of gas supply chain facilities and “prioritize inspections ... based on risk level, as determined by the commission.” There is no reason why critical gas facilities should not be tiered based on the same risk prioritization level methodology applicable to inspections. Moreover, gas pipeline facilities that directly serve gas-fired power plants, and cannot be exempt from critical facility designation, should be included in the top tier.

Include Meaningful Penalties to Incentivize Compliance

Additionally, failure to comply with criteria for designation of critical gas facilities or opt-out designation, or with the verification procedures for opt-out designations, should result in significant penalties. SB 3 includes provisions that authorize the Commission to adopt penalties for weatherization-related violations of up to \$1 million per violation. The Commission should impose significant penalties not less than \$500,000 applicable to requests to opt-out from critical facility designations that fail the proposed verification process.⁹ Without clear standards and verification procedures, there will be little incentive to weatherize critical natural gas facilities, especially knowing that in a future weather emergency where natural gas becomes scarce, prices will once again spike to the benefit of the same industry that failed to weatherize its critical facilities.

Protect Confidentiality of Critical Gas Facilities

Further, the rule should take into account concerns regarding security and confidentiality of data associated with reports filed with the Commission. The rule would require operators to file very granular information with the Commission associated with critical gas facilities. Such information in the wrong hands could jeopardize the safety of critical infrastructure. For this reason, CPS Energy recommends that the information be exempt from public disclosure under the Texas Public Information Act.

Need for Additional Transparency from Commission

Finally, with the passage of SB 3 the Texas Legislature placed on the Commission the responsibility of initiating several rulemaking proceedings to implement new legal requirements applicable to critical natural gas facilities related to weatherization standards and winter preparedness. The Commission has not been transparent in how it intends to comply with those various rulemaking requirements. The PUC, which was also directed to implement several new rules, has already (1) initiated multiple rulemaking proceedings and implemented several new rules; (2) created a table identifying all the new rules and rule amendments that will need to be implemented; and (3) provided a general timeline for the implementation. By comparison, the Commission, has only initiated the present rulemaking proceedings with a narrow scope, has not yet identified all the new rules and rule amendments that it will need to implement, nor provided

⁹ The current rule contemplates penalties ranging from \$1,000 to \$2,500 per violation. These penalties apply to failure to file prescribed forms or provide critical customer information to the Commission as required by the rule. It does not appear that the penalties would apply to any failure to weatherize gas facilities.

any implementation timeline. This lack of transparency creates uncertainty and anxiety for certain industry stakeholders that are looking to the Commission for assurances that critical gas facilities will be able to operate reliably during the coming winter season and other extreme weather events into the future.

Summary Conclusion

In summary, this rulemaking proceeding is important to industry stakeholders and the millions of Texas families looking for the Commission for leadership and assurance that gas facilities across the state will be properly designated as critical in nature and that critical gas facilities will be properly weatherized to operate reliability in future winter storms. CPS Energy is in alignment with many of the same concerns raised by other stakeholders during the Commission workshop, and raises some addition considerations outlined above, all of which include:

- The proposed rule should be expanded to include weatherization measures/best practices applicable to critical gas facilities
- Gas pipeline facilities that directly serve power plants should not be subject to opt-out of critical facility designation
- Commission should categorize critical gas facilities by tier (based on risk level)
- Each tier should include appropriate weatherization standards for critical gas facilities
- Gas pipeline facilities that directly serve power plants and gas distribution systems belong in the top tier
- Certain non-electrical gas facilities susceptible to freezing should be designated as critical
- Gas facilities should not be exempt from critical designation without verification
- Requests to opt-out from critical facility designation that fail verification should be assess a penalty of no less than \$500,000
- Data should be filed as confidential and not subject to public disclosure
- Commission should be more transparent regarding its rulemaking compliance plan, demonstrate a sense of urgency, and communication its plan openly with stakeholders

CPS Energy appreciates the opportunity to submit comments on this proposed rulemaking and requests that the Commission consider its comments and proposed revisions. CPS Energy looks forward to working with the Commission, its staff, and the stakeholders on these important questions and this broader discussion in the coming months.

Sincerely,

Gabriel Garcia

Gabriel Garcia
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