Texas Electric Cooperatives

November 1, 2021

Rule Coordinator
Office of General Counsel
Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711-2967
rulescoordinator@rrc.texas.gov

RE: Comments of Texas Electric Cooperatives, Inc.
Proposed new 16 TAC §3.65, relating to critical natural gas designation

To the Honorable Commissioners of the Railroad Commission of Texas:

Texas Electric Cooperatives, Inc. ("TEC") respectfully submits these comments in response to the Railroad Commission of Texas' ("RRC") proposed new 16 Tex. Admin. Code ("TAC") §3.65 and proposed amendments to 16 TAC §3.107 to implement HB 3648 and SB 3, published for comment in the *Texas Register* on October 1, 2021 (the "Proposed Rule"). TEC is the statewide association of electric cooperatives operating in Texas, representing its members except as their interests may be separately represented.[1] The Proposed Rule directs comments to be filed by November 1, 2021. These comments are timely filed.

I. EXECUTIVE SUMMARY

TEC appreciates the RRC's efforts to develop a more resilient energy system for Texas. The Proposed Rule is an important component of that effort. The electric grid relies on a functioning natural gas supply system, and vice versa. To achieve the goal of prioritizing certain critical natural gas facilities during energy emergencies and ensuring that critical facilities are prepared to operate during weather emergencies, TEC respectfully requests that the RRC consider the following comments, which focus on new §3.65. In summary, the Proposed Rule should:

- Identify a subset of facilities with the most direct impact on electric power generation eligible to be designated as critical;
- Require operators of that subset of facilities to certify the facilities are prepared to operate in a weather emergency;

[1] TEC's 75 members include distribution cooperatives that provide retail electric utility service to approximately 4,000,000 consumers in statutorily authorized service areas that encompass more than half of the total area of the state. TEC's G&T members generally acquire generation resources and power supply for their member distribution cooperatives and deliver electricity to them at wholesale.

- Emphasize the importance of meeting information deadlines to be considered critical;
- Clearly state that critical status does not guarantee uninterrupted supply of power; and
- Require critical facility operators to timely respond to utilities' reasonable requests for additional information needed to properly classify, plan for, and prioritize load.

II. COMMENTS

A. Identify subset of facilities with the most direct impact on electric power generation

TEC interprets the Proposed Rule to assume that virtually all natural gas facilities are critical, unless an operator affirmatively indicates otherwise and pays $150.[2] This assumed-critical approach does not seem consistent with the statutory requirement to identify certain facilities that are truly critical to electric generation, nor with the "prepared to operate" requirement that is a pre-condition to critical designation.[3]

Through Senate Bill 3 (SB 3) and House Bill 3648 (HB 3648) of the 87th Regular Session, the Legislature directed the Public Utility Commission of Texas ("PUC") and the RRC to "collaborate" to adopt rules to establish a process to designate "certain" natural gas facilities in this state as critical during energy emergencies.[4] By use of the term "certain," the statute contemplates that some natural gas facilities are critical suppliers during energy emergencies, while others are not.[5] The Legislature further directed the RRC to establish designation criteria and, in doing so, consider essential operational elements when defining critical customer designations and critical gas supply information, including "the delivery of natural gas to generators of electric energy."[6] "[O]nly facilities and entities that are prepared to operate during a weather emergency may be designated as a critical customer."[7] The Senate Business and

[2] Railroad Commission of Texas, Staff Memorandum – Proposed New 16 TAC §3.65 and Proposed Amendments to §3.107 to Implement HB 3648 and SB 3 at §3.65(b)-(d) (Sept. 10, 2021).

[3] Tex. Nat. Res. Code § 81.073(b)(3) (framing the "prepared to operate" requirement as a condition precedent to critical designation status: "only facilities . . . that are prepared to operate during a weather emergency may be designated as a critical customer").

[4] Public Utility Regulatory Act (PURA), Tex. Util. Code § 38.074(a); Tex. Nat. Res. Code § 81.073(a).

[5] PURA § 38.074(a); Tex. Nat. Res. Code § 81.073(a).

[6] Tex. Nat. Res. Code § 81.073(b)(1)-(2).

[7] Tex. Nat. Res. Code § 81.073(b)(3).

Commerce Committee recently emphasized that "SB 3 requires the [RRC] to identify the portions of the natural gas supply chain with the most direct impact on electric power generation to be designated as critical. At the same time, the bill also directs critically designated assets to meet certain weatherization requirements, without exception."[8]

TEC recognizes this is a difficult and complicated task. But the task will be even more difficult, if not impossible, for utilities to implement if the RRC does not narrow the universe of what may be considered critical natural gas under 16 TAC §3.65. The Legislature directed the PUC to ensure that ERCOT and utilities receive critical customer information from critical natural gas facility operators, provide for prioritizing for load-shed purposes during an energy emergency the natural gas facilities that are designated as critical, and provide discretion to utilities to prioritize power delivery and power restoration among critical natural gas facilities on the utility's system, as circumstances require.[9] Electric utilities are relying on the RRC and the gas industry for their expertise to carry out these mandates in SB 3.

The current approach in the Proposed Rule could result in a massive over-designation of critical facilities, or an unfortunate under-designation of truly critical facilities if operators choose to exempt themselves from designation. In either scenario, the Legislature's goal of prioritizing and weatherizing the gas supply chain will not be met, at least not in year 2022.

If essential natural gas facilities opt out of critical designation, they will not be prioritized for purposes of power delivery and restoration. Similarly, if natural gas facilities not prepared to operate in a weather emergency are designated as critical and given priority, the prioritization of those facilities will be meaningless and at the expense of other load (critical or otherwise) that could be subject to interruption during an energy emergency. To give effect to SB 3, the Proposed Rule should identify the highest tier of critical natural gas facilities and require that they be prepared to operate during a weather emergency.

On the other hand, if all facilities are critical, the Proposed Rule and designation process will also have insufficient effect. Electric cooperatives cannot prioritize every natural gas facility on their distribution systems for power delivery and restoration. The greater number of loads deemed critical, whether natural gas facilities or otherwise, the fewer feeders available to shed load during energy emergencies. Fewer available feeders would mean utilities have less flexibility

[8] Letter from Senate Business and Commerce Committee to Railroad Commission of Texas (Oct. 8, 2021).
[9] PURA § 38.074(b)(1)-(3).

to manage load shed, prioritize and rotate customers, and restore power. There will be limited to no ability for utilities to implement power delivery and restoration plans that properly prioritize natural gas loads that are truly critical to the electric grid. Numerous of TEC's member systems have noted that reserving all natural gas load from load shed would result in diminished or complete inability to prioritize circuits or rotate remaining load.[10] Ultimately, nothing is critical if everything is critical. Utilities will be in a difficult position of trying to determine what facilities should be prioritized from among a potentially large number of critical designations. Thus, only natural gas facilities that serve a truly critical function in the supply of natural gas to electric generators should be eligible to be designated as critical in the Proposed Rule.

Accordingly, as an alternative to the current approach, TEC proposes that the RRC identify a subset of critical facilities in the natural gas supply chain with the most direct impact on electric power generation. The electric industry is relying on the expertise of the RRC and gas industry to guide this effort to ensure that truly critical facilities are identified. TEC recognizes that this effort will be informed by the supply chain map described in PURA[11] §38.203, but that map will not be available during the 2021-2022 winter season. Once available, this map (and the accompanying database) will identify the state's gas and electricity supply chain and critical infrastructure sources in that supply chain with priority electricity needs.[12] To address this timing issue, the Proposed Rule should contemplate that only a subset of natural gas facilities are eligible to be designated as critical until the supply chain map is complete. Then, upon the release of the supply chain map, the facility should also have to be identified as a critical infrastructure source with priority electric service needs on the supply chain map and database described in PURA §38.203. Consistent with this approach, the description of "critical designation criteria" in §3.65(b) should be revised to indicate that the types of facilities listed are "*eligible* to be designated critical gas suppliers and critical customers," rather than assumed to be, as only the top tier of facilities or those identified on the supply chain map should be designated critical, and only upon proof that the facilities are prepared to operate in a weather emergency.

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[10] By way of example, a cooperative in the Panhandle would have 2 remaining circuits available for load shed; a cooperative serving North Texas would see its available circuits reduced from 84 to 23; a cooperative serving South Texas would have only 16% of its system eligible for curtailment; and a cooperative in Central Texas would see over half of its system reserved from load shed. Similar outcomes can be observed for cooperatives throughout the state.

[11] Public Utility Regulatory Act (PURA), Tex. Util. Code §§ 11.001-66.016.

[12] PURA §§ 38.201(b), 38.203(a), (c).

B. Operators should certify the facility is prepared to operate in a weather emergency

TEC's proposed approach would do away with the need for natural gas facility operators to opt-out of critical designation by certifying the facility is not prepared to operate during a weather emergency. Instead, the subset of truly critical facilities must be winterized and prepared to operate in a weather emergency,[13] otherwise any prioritization of those facilities for power delivery and restoration is meaningless and will be to the detriment of other critical customers and residential customers. The Legislature recognized this by requiring the RRC to adopt measures to prepare to operate during a weather emergency that will be applicable to natural gas facilities designated as critical under Texas Natural Resource Code §81.073 and identified on the supply chain map created under PURA §38.203.[14] The initial subset of critical facilities, and eventually those identified on the supply chain map, should not have the ability to opt-out of being prepared to operate in a weather emergency. This preparation requirement serves a crucial purpose, because utilities cannot guarantee an uninterrupted supply of power or that load will not be shed as circumstances require.

To ensure compliance with this legislative directive, the Proposed Rule should require that operators submit a certification from an authorized officer that the facility claiming critical designation status is prepared to operate in a weather emergency and, once the best practices required by PURA §38.201(a)(3) are established, the facility is in compliance with applicable best practices to prepare the facility to maintain service in an extreme weather event.[15] This certification should accompany the acknowledgment of critical status required by §3.65(c) and be included on Form CI-D and included on Table CCI. The certification must be included on Table CCI, because Table CCI comprises the information provided to electric utilities, and electric utilities must have assurance that critical facilities are prepared to operate.

[13] PURA § 38.203(a)(4); Tex. Nat. Res. Code §§ 81.073(b)(3), 86.044(b)-(c).

[14] Tex. Nat. Res. Code § 86.044.

[15] PURA § 38.203(a)(4).

D. Meeting information deadlines is crucial

The Proposed Rule, in §3.65(c)-(e), sets deadlines by which operators must provide critical customer information. Electric cooperatives require an orderly process and dates certain each year by which they receive natural gas customer information. TEC commends the RRC for creating filing deadlines in the Proposed Rule, which, in future years, should give utilities sufficient time to evaluate the information, notify operators, and plan for and adjust their load shed plans. The first deadline of January 15, 2022 is too late for incorporation into 2021-2022 prioritization plans, but TEC appreciates the RRC's efforts to encourage the gas industry to submit this information as soon as possible in 2021.

Going forward, the twice annual deadlines are crucial for prioritization planning. These deadlines create dates certain by which all operators must submit critical customer and other information to the appropriate entities. TEC has proposed to the PUC that it create resulting subsequent dates certain by which utilities must respond to critical natural gas operators. Without this type of orderly process, utilities could be required to continuously review and respond to operators throughout the year, each time having to coordinate, update, or adjust their load shed and prioritization plans. That would be an unreasonable and unworkable situation for utilities. A utility should not be required to adjust its plan on the fly or in the middle of a weather event. Utilities need to know the universe of critical customer information by two dates each year, allowing them to evaluate that information during a known time period and to make appropriate and comprehensive updates to their load shed and prioritization plans at the end of those two periods each year. Given the importance of these deadlines, the Proposed Rule should recognize that a facility will not be designated as critical if the critical customer information for the facility has not been provided by the deadlines in §3.65(c). TEC requests that this consequence be expressly stated in the Proposed Rule in §3.65(c) and (e).

In addition, §3.65(e) of the Proposed Rule allows an operator to provide critical customer information to a utility within five business days after that information is filed with the RRC. Given the importance of timing and the utilities' immediate need for this information, particularly in 2021, this subsection should be revised to require that operators provide critical customer information, and certification that the facility is prepared to operate in a weather emergency, to utilities on the same day or before the information is filed with the RRC. For the 2021-2022 winter season, every day is important for utilities' prioritization planning.

E. Critical designation does not guarantee uninterrupted supply of power

The Proposed Rule should contain a statement in §3.65(c) to clearly warn operators that critical designation status does not guarantee uninterrupted supply of energy or that the load will not be shed during an energy emergency. This statement would resolve any misunderstanding among critical natural gas facility operators and emphasize the need to prepare to operate during a weather emergency and adopt best practices to maintain service in an extreme weather event.

F. Additions to Table CCI and utility requests for additional information

The critical customer information that an operator must provide to utilities, and identified in Table CCI, contains important information that a utility needs to properly classify, plan for, and prioritize load. Additional fields or descriptions should be added to Table CCI to ensure that utilities have sufficient information to inform their prioritization effort, including a column describing the actions the facility has undertaken to prepare to operate during a weather emergency and the role the facility plays in the gas supply chain. TEC recommends that Table CCI provide descriptions of the type of information that facility operators should disclose in these new fields or the existing fields, including:

- Facility's average daily production for the past 12 months;
- Existing backup, battery, or dual feed capability, including fuel source, length of time (in hours) the facility can operate without service from the electric utility, and length of time for start-up following a power outage;
- Size of the facility's electric load;
- New or upgraded electric energy equipment or facilities necessary to serve the facility during an energy emergency; and
- Role of the facility in the natural gas supply chain; identity of any power plant, storage facility, or local distribution company to which the facility is directly connected; and a description of the equipment or premises served and any interdependencies with other natural gas facilities.

While Table CCI should endeavor to provide the electric utility with all relevant information needed to prioritize the load, the table will not be exhaustive, because the electric utility may need circumstance-specific information that cannot be reflected in a generic form. Because the supply chain map and database may not be completed until September 1, 2022, and

due to the varying types of distribution systems, geography, and weather in Texas, utilities may need additional information from operators to evaluate critical designations and priority needs. The Proposed Rule should include a requirement in §3.65(e) that an operator timely respond to a utility's reasonable request for additional information within five business days of receipt of the request. It should also clarify that, if an operator fails to timely respond, the utility may not further evaluate or designate the facility as critical for purposes of prioritizing power delivery and restoration. This warning would incentivize a timely response to requests for additional information needed for prioritizing power delivery and restoration.

III. CONCLUSION

TEC appreciates the opportunity to comment on the Proposed Rule, and recognizes the difficult task presented to the RRC with respect to identifying critical natural gas loads in this state. TEC's comments are supported by statute and make practical sense. To give Texans a more resilient energy system, the RRC should narrow the universe of critical natural gas facilities to those with the most direct impact on electric power generation,[16] require certification that those subset of facilities are prepared to operate in a weather emergency,[17] and require operators to timely provide critical customer and other information to maintain critical status.[18] TEC is available to provide any additional information that may be helpful to the RRC.

Dated: November 1, 2021

Respectfully submitted,

/s/Julia Harvey

Julia Harvey
Vice President
Government Relations & Regulatory Affairs
Texas Electric Cooperatives, Inc.
1122 Colorado Street, 24th Floor
Austin, TX 78701
(512) 486-6220
jharvey@texas-ec.org

[16] PURA §§ 38.201, .203, .204.

[17] Tex. Nat. Res. Code § 81.073(b)(3); *see also* Tex. Nat. Res. Code § 86.044(b)-(c).

[18] Tex. Nat. Res. Code § 81.073(b)(1); PURA § 38.074(b)(1)