



November 1, 2021

Rules Coordinator
Railroad Commission of Texas
Office of General Counsel
1701 N. Congress
Austin, Texas 78701

Re: Proposed New 16 TAC §3.65 and Proposed Rules to §3.107 to Implement HB 3648 and SB 3.

Texas Competitive Power Advocates (“TCPA”) respectfully submits these comments in response to the Railroad Commission of Texas’s (“RRC” or “Commission”) Proposed New 16 Texas Admin. Code (“TAC”) §3.65 and Proposed Amendments to 16 TAC §3.107 to Implement HB 3648 and SB 3 (the “Proposed Rules”). The deadline for comments is November 1, 2021. These comments are timely filed.

TCPA is a trade association representing power generation companies and wholesale power marketers with investments in Texas and the Electric Reliability Council of Texas (“ERCOT”) wholesale electric market. TCPA members¹ and their affiliates provide a wide range of important market functions and services in ERCOT, including development, operation, and management of power generation assets, power scheduling and marketing, energy management services and sales of competitive electric service to consumers. TCPA members participating in this filing provide nearly ninety percent (90%) of the non-wind electric generating capacity in ERCOT, representing billions of dollars of investment in the state and employing thousands of Texans. TCPA members collectively operate over 39,000 MW of natural gas fired generation and are therefore among the largest natural gas consumers in the state with peak gas demand requiring

¹ TCPA member companies participating in these comments include: Calpine, Cogentrix, EDF Trading North America, Exelon, Luminant, NRG, Shell Energy North America, Talen Energy, Tenaska, TexGen Power, and WattBridge.

flows in the range of 15bcf/day. TCPA appreciates the opportunity to submit comments on the Proposed Rules.

EXECUTIVE SUMMARY

It is inexcusable and unacceptable that in this State, with its abundance of resources, that there would not be enough natural gas delivered to power generators to avoid power loss to over one million Texas homes, as happened during Winter Storm Uri.² Natural gas is produced, processed and transported in some of the most inclement weather locations in the world. The Commission can and should ensure it is in Texas. TCPA looks forward to continued dialogue and cooperation with the Commission, the Public Utility Commission, and members of the natural gas supply chain to accomplish this urgent priority.

Under Senate Bill 3 and House Bill 3648, it is vital that the Commission accurately designate critical natural gas facilities necessary to support human needs, including delivering fuel to power plants, and ensure that such facilities are weatherized in order to avoid a recurrence of the energy disruptions experienced in February. To achieve those ends, SB 3 provides that the Commission “*shall*” adopt rules providing that only those facilities that are weatherized (i.e., “prepared to operate in a weather emergency”) may be designated as critical, and facilities included on the electricity supply chain map and designated as critical by the Commission *must* weatherize (i.e., “prepare to operate in a weather emergency”).

Many parties have rightly raised concerns that, if improperly implemented, this dynamic could undercut weatherization efforts by creating a “loophole” for the natural gas system. TCPA contends that this would be an absurd result that would undermine legislative intent and rules of statutory construction. Therefore, the Commission must be clear that natural gas facilities not deemed critical under the instant rule will not be permitted to avoid weatherization requirements

² See, e.g., *The Timeline and Events of the February 2021 Texas Electric Grid Blackouts*, The University of Texas at Austin Energy Institute, July 2021 at p. 74 available at: <https://energy.utexas.edu/sites/default/files/UTAustin%20%282021%29%20EventsFebruary2021TexasBlackout%2020210714.pdf> (stating that 6,700 MW of natural gas flows to generation units were curtailed during peak demand). 1 MW of electricity can power approximately 200 Texas homes during periods of peak demand. See 2020 State of the Grid Report, ERCOT, available at http://www.ercot.com/content/wcm/lists/219736/ERCOTSOG2020_Final.pdf. 6,700 MW multiplied by 200 homes equals 1.34 million Texas homes.

if they are part of the natural gas supply chain for power generation – and that such facilities will be deemed critical.

Under the Proposed Rules, however, *all* natural gas facilities are presumed “critical” except those facilities that choose to opt out of the designation. The Proposed Rules are silent as to the status of facilities that opt out from critical designation but are later included on the supply chain map and designated as critical. The Proposed Rules thus appear constructed contrary the directives contained in SB 3.

TCPA therefore recommends that the Proposed Rules be modified as follows in order to carry out the legislative intent:

- Shift from the “presumed critical” approach for natural gas facilities, instead providing that such facilities are “eligible for designation as critical”;
- Make clear that those facilities that submit the Form CI-X exception may nonetheless be deemed a “gas supply chain facility” under Natural Resources Code § 86.044 and subject to weatherization requirements;
- State that beginning in 2023, the “critical” facility designation must include those facilities identified in the supply chain map pursuant to PURA § 38.203;
- Require entities to provide critical customer information as soon as possible if they have not already done so;
- Create more meaningful weatherization expectations so members of the natural gas industry can accurately certify that they are "prepared to operate during a weather emergency" in accordance with the Proposed Rules; and
- The RRC must quantify, for each component of gas infrastructure, its contribution to natural gas availability for human needs in emergency weather conditions. This “BCF-at-risk” framework would be used to ensure that electric delivery prioritization is assigned to those components that would provide the maximum natural gas for human needs and electric generation during an emergency. Alternatively, at a minimum, the RRC must require natural gas facilities to provide the information necessary for electric utilities and/or ERCOT to complete such an analysis.

TCPA also strongly recommends enhanced coordination between the RRC and the PUC on the important work ahead to implement SB 3 and HB 3648, including commencement of the electric supply chain mapping process as soon as possible with a goal of releasing the map and best practices far in advance of the September 1, 2022, deadline. TCPA also supports the agencies’

efforts to work toward releasing interim guidance in advance of the rapidly-approaching winter season.

Finally, TCPA requests the Commission’s immediate attention on certain other issues that are of critical importance to bolstering SB 3’s implementation by making the natural gas market more resilient to extreme weather events. These issues include:

- (1) increased transparency with regard to intrastate pipelines, which is crucial to mapping, prioritization, and ensuring that the gas market is fair and competitive by ensuring equal access to information; and
- (2) the initiation of a rulemaking for a permanent gas curtailment rule.

DISCUSSION

I. Background

The comprehensive measures directed by Senate Bill 3 (“SB 3”) and House Bill 3648 (“HB 3648”) of the 87th Regular Session address the importance of the RRC and the Public Utility Commission of Texas (“PUC”) coordinating weatherization standards, jointly mapping the gas-electric supply chain, and collaborating to develop and implement prioritization criteria to ensure that critical natural gas supplies are capable of delivering fuel to power plants during weather emergencies. See SB 3 Sections 3,³ 4,⁴ 5,⁵ 16,⁶ 17,⁷ 21,⁸ 25,⁹ 33,¹⁰ and 37.¹¹

Under SB 3, the RRC and the PUC are directed to coordinate designating certain natural gas facilities as “critical” and developing prioritization criteria so that system operators can differentiate during weather emergencies between natural gas facility loads that are important, but

³ Establishing Subchapter J of Chapter 418 of the Texas Government Code (Texas Energy Reliability Council).

⁴ Creating Texas Natural Resources Code Section 81.073 (Critical Natural Gas Facilities and Entities).

⁵ Creating Texas Natural Resources Code Section 86.044 (Weather Emergency Preparedness).

⁶ Amending Subchapter D, Chapter 38, by adding Sections 38.074, 38.075, 38.076, and 38.077 to create prioritization criteria for load-shed purposes governing critical natural gas infrastructure during an energy emergency.

⁷ Creating Subchapter F, Chapter 38, Texas Utilities Code (Texas Electricity Supply Chain Security and Mapping).

⁸ Creating new Subsections 121.2015(a-1), (c-1), and (c-2), (d), (e), and (f), Texas Utilities Code (establishing weatherization, mapping, and enforcement provisions for natural gas pipelines).

⁹ Creating Texas Utilities Code Section 186.008 (Railroad Commission Weather Emergency Preparedness Reports).

¹⁰ Creating the State Energy Plan Advisory Committee (to be appointed by the Governor, Lt. Governor, and Speaker of the House [4 positions each] and requiring the submitted of a State Energy Plan by September 1, 2022).

¹¹ Requiring the Texas Electricity Supply Chain Security and Mapping Committee to produce the above-referenced map by September 1, 2022.

not critical, to supply human needs and power plants with fuel and those that are truly critical to meet human needs and fuel electric power plants. Given the size of the natural gas industry and the in-house expertise at the RRC, the RRC's expertise is *essential* in designating critical natural gas facilities so that electric load shedding priorities developed by the PUC, and implemented by ERCOT and electric utilities, properly differentiate among different tiers within the gas supply chain.

SB 3 provides that the Commission “*shall*” adopt rules providing that: (1) only those facilities that are weatherized (i.e., “prepared to operate during a weather emergency”) “*may*” be designated as critical;¹² and (2) facilities included on the electricity supply chain map and designated as critical by the Commission *must* weatherize.¹³

This means that a facility that is weatherized voluntarily may nonetheless be determined *not* critical for purposes of electric delivery prioritization. Further, a facility whose owner has opted *not* to weatherize may ultimately be included on the supply chain map and, in turn, can be required to weatherize and deemed critical for electric delivery prioritization by the Commission. As discussed in detail herein, however, the plain language of the Proposed Rules risks undermining those directives and must be corrected by the Commission in adopting the final rules.

The preamble to the Proposed Rules provides that the Commission's adoption of § 3.65 is “the first of many steps in implementing the requirements of Senate Bill 3” and “does not prioritize the critical facilities for load-shed purposes.”¹⁴

The language of the draft rule itself, however, seems to indicate the opposite. It provides that all natural gas facilities “*are designated critical gas suppliers*” unless the facility's operator submits the Form CI-X exception asserting that the facility is not prepared to operate during a weather emergency, along with a one-time fee. As currently crafted, the Proposed Rule risks being interpreted in a way contrary to the legislative intent. TCPA recommends the Commission take reasonable steps to mitigate that risk, including the following:

- Shift from the “presumed critical” approach. Instead provide that natural gas facilities are “eligible for designation as critical” rather than stating that they are “designated critical gas suppliers.” This is wholly consistent with SB 3 and the preamble.

¹² See Nat. Res. Code § 81.073(b)(3).

¹³ See Nat. Res. Code § 86.044. “(c) The commission by rule *shall require* a gas supply chain facility operator to implement measures to prepare to operate during a weather emergency” (emphasis added).

¹⁴ See, e.g., 46 Tex.Reg. 5458.

- State that beginning in 2023, the “critical” facility designation must include those facilities identified by the Texas Electricity Supply Chain Security and Mapping Committee (“Mapping Committee”) in the supply chain map pursuant to PURA § 38.203;
- Require entities to provide critical customer information to entities described in Texas Utilities Code § 38.074(b)(1) (utilities, municipal providers, and electric cooperatives) as soon as possible if they have not already done so; and
- Create more meaningful weatherization expectations so members of the natural gas industry can accurately certify that they are “prepared to operate during a weather emergency” in accordance with the Proposed Rules.

II. The Proposed Rule’s overly broad categorization of “critical” facilities is counter to the legislative directive of SB 3.

a. Issues surrounding the current proposed language of §3.65.

SB 3 requires the RRC and the PUC to coordinate in designating “*certain*” natural gas facilities as “critical” and developing prioritization criteria.¹⁵ It was also anticipated that minimum weatherization standards would be specified in order for members of the natural gas industry to understand what type of weatherization requirements would qualify them to certify (by filing new “Form CI-D”) that they are “prepared to operate during a weather emergency.”

Unfortunately, the proposed rule results in an overly broad categorization of “critical” facilities while failing to set meaningful expectations for what qualifies as weatherization of the facilities.

Rather than use the discretion and judgment required by the legislation to specify criteria that will govern the “prepared to operate” certification, or even signal when that criteria is forthcoming, the Proposed Rules assume any facility is “critical” unless its owner elects to opt-out by submitting a Form CI-X and paying the one-time (\$150) fee.¹⁶ Proposed §3.65 provides a blanket “critical” designation for arguably the entire natural gas industry when it states that:

¹⁵ See Tex. Nat. Res. Code § 81.073(a) (“The commission shall collaborate with the Public Utility Commission of Texas to adopt rules to establish a process to designate *certain* natural gas facilities and entities associated with providing natural gas in this state as critical customers or critical gas suppliers during energy emergencies”) (emphasis added).

¹⁶ Railroad Commission of Texas Proposed New 16 TAC §3.65 and Proposed Rules to §3.107 to Implement HB 3648 and SB 3 at §3.65(b)-(d) (46 Tex. Reg. 6458)(Oct. 1, 2021).

The following facilities ***are designated critical*** gas suppliers and critical customers of the entities described by Texas Utilities Code, §38.074(b)(1) during an energy emergency:

- (1) wells producing gas or casinghead gas;
- (2) gas processing plants;
- (3) natural gas pipelines and pipeline facilities including compressor stations;
- (4) local distribution company pipelines and pipeline facilities including compressor stations;
- (5) natural gas storage facilities;
- (6) natural gas liquids transportation and storage facilities;
- (7) saltwater disposal facilities including saltwater disposal pipelines; and
- (8) other facilities under the jurisdiction of the Commission the operation of which is necessary to operate any of the facilities in paragraphs (1) through (7) of this subsection.¹⁷

The preamble provides that §3.65 “is the first of many steps in implementing the requirements of SB 3” and “does not prioritize the critical facilities for load-shed purposes.”¹⁸ The preamble language is a helpful attempt to clarify that §3.65 does not result in the designation of “critical” facilities that are to be prioritized in accordance with SB 3. But the incongruity between the preamble and the Proposed Rules’ provision that the long list of facilities “are designated as critical” creates confusion. Indeed, the PUC’s proposed amendments to 16 TAC §22.52 are premised on the assumption that the Proposed Rules establish the list of and data points necessary regarding “critical” facilities for consideration by utilities in complying with the load shed provisions of Section 16 of SB 3.¹⁹ The Proposed Rules should be revised to address the legislative directive, as discussed in more detail below.

A related deficiency in the Proposed Rules is that there is no provision (or preamble clarification) to ensure that those entities wishing to opt out of weatherization requirements will *not* be allowed to do so if they are deemed a “gas supply chain facility” in the upcoming gas-electric supply chain mapping process. TCPA reads the plain language of SB 3, taken as a whole, to provide two distinct functions that relate to a gas facility’s being “prepared to operate during a

¹⁷ Natural Resources Code Section 81.073(b)(3)(emphasis added).

¹⁸ See, e.g., 46 Tex.Reg. 5458 (clarifying that §3.65 “does not prioritize the critical facilities for load-shed purposes”).

¹⁹ Adding new Sections 38.074, 38.075, 38.076, and 38.077. The PUC defines “critical natural gas” in the proposed amendments to 16 TAC §22.52 as “[a] facility *designated as a critical gas supplier by the Railroad Commission of Texas under §3.65(b)* of this title (relating to Critical Designation of Natural Gas Infrastructure) unless the critical gas supplier has obtained an exception from its critical status under §3.65(d) of this title. Critical natural gas is a critical load during an energy emergency.” PUC Proposal for Publication of Amendments of 16 TAC §22.52 as approved at the September 16, 2021 Work Session Meeting, filed in Project No. 52345 on September 16, 2021 (emphasis added).

weather emergency”: (1) the objective of weatherization requirements for facilities identified by the gas-electric supply chain map;²⁰ and (2) an initial criterion for critical load designation for purposes of load shed and load restoration prioritization – particularly important as Winter 2022 approaches.²¹

The only reasonable way to construct these statutory requirements together, while giving meaning to each, is to conclude that the latter does not interfere with the former. That is, a gas facility’s own evaluation cannot receive full deference in determination of its “preparedness to operate” in a weather emergency, and facilities deemed “gas supply chain facilities” *must* be (or become) prepared to operate in a weather emergency.

b. TCPA’s Recommended Changes to the Proposed Rules.

TCPA respectfully recommends that the Proposed Rules be revised to conform with the legislative directive. Rather than implying that all natural gas facilities are presumed critical, the Proposed Rules should instead provide at § 3.65(b) that natural gas facilities are “eligible for designation as critical.” In addition, TCPA recommends revising § 3.65(d) as follows:

(d) Critical designation exception. A facility listed in subsection (b) may request an exception to potential critical designation status if of this section is designated as a critical gas supplier unless the facility’s operator asserts the facility is not prepared to operate during a weather emergency and the facility is not determined to be a gas supply chain facility, as defined in Natural Resources Code Section 86.044. An operator shall submit a Form CI-X exception application that identifies each such facility. The Form CI-X shall be accompanied by a \$150 exception application fee. A facility with an accepted or approved Form CI-X on file will have that designation revoked if the facility is determined to be a gas supply chain facility.

This shift in language makes clear that a facility’s decision to weatherize is necessary but may not be sufficient to yield a RRC determination that such facility is “critical.” Rather, the ultimate designation of certain natural gas facilities as critical for purposes of developing prioritization criteria must be primarily rooted in those gas supply chain facilities that are truly critical gas supply infrastructure.

The Proposed Rules and the preamble should also clarify, consistent with the suggested changes to Subsection (d) above, that facilities that are included on the supply chain map will be

²⁰ Texas Natural Resources Code, §86.044(c) and Texas Utilities Code, §38.201(b)

²¹ Texas Natural Resources Code, §81.073(a)-(b) and Texas Utilities Code §38.074

required to weatherize, and be deemed critical, regardless of whether they have filed the Form CI-X exception. SB 3 does not permit operators of facilities that are included on the electricity supply chain map to opt out of weatherization requirements, and it follows naturally that if designated and weatherized as gas supply chain facilities that such facilities should be designated as critical natural gas infrastructure as well.

In addition, TCPA recommends that the Proposed Rules make explicit that beginning in 2023, the “critical” facility designation must include those facilities that are identified by the Mapping Committee pursuant to PURA § 38.203. This requirement is consistent with SB 3, which provides that facilities included on the electricity supply chain map will be required to weatherize and, as such, must be prepared to operate in an emergency.²² TCPA notes that it is not yet clear how new infrastructure will be added into the mapping process, so it is appropriate for the long term rule to allow for inclusion of such facilities that show they are eligible for critical status to be designated pending review for inclusion in the mapping process.

Because it may be impossible to serve electric load at every gas facility in a region during an Energy Emergency, TCPA recommends that the Commission adopt a “BCF-at-Risk” strategy to prioritize the relevant natural gas assets to mitigate the impacts of such an event. At a minimum, the Commission should require that sufficient data regarding natural gas production and throughput is collected and provided to ERCOT and the electric utilities to support their optimization of electric load shedding priorities in their service area. This data would be used to quantify how much natural gas contribution each critical component supports and ensure that the prioritization of critical natural gas infrastructure leads to the maximum natural gas available during a weather emergency.

The BCF-at-Risk approach requires the Commission to identify the infrastructure reasonably expected to produce and deliver a sufficient volume of natural gas to priority endpoints (i.e., gas-fired electric generation and natural gas utilities). TCPA has estimated that the state-wide Texas natural gas-fired generation fleet requires ~15 BCF/d hourly gas (between 0.55 and 0.7 BCF/hour) of delivered fuel to produce maximum generation output in the winter. Note that this does not account for other needs to maintain sufficient pipeline pressure, or include natural gas demand from other human needs and natural gas expected to be consumed by industry, LNG

²² See Nat. Res. Code § 86.044.

production, and exports (which were not fully curtailed during Winter Storm Uri despite the Commission's curtailment order). In addition to the total supply, regional bottlenecks need to be identified so natural gas delivery can be ensured to serve all human needs, including all electric generation. By utilizing a BCF-at-Risk approach, the Commission can ensure that only critical infrastructure is identified, avoid over- or under-designating natural gas assets, and permit effective load shed by ERCOT and the electric utilities. This BCF-at-Risk approach is well supported by a plain language reading of the legislation and as clearly expressed legislative intent.

The Proposed Rules and the preamble should also clarify that natural gas facilities that are included on the supply chain map will be deemed critical and required to weatherize, regardless of whether they have filed the Form CI-X exception. SB 3 does not permit operators of facilities that are included on the electricity supply chain map to opt out of weatherization requirements, and it follows that if natural gas facilities have been designated and weatherized as gas supply chain facilities they should be designated as critical natural gas infrastructure as well.

The Proposed Rules and the preamble, however, do not address the requirements for facilities that opt out under §3.65 that are later deemed critical. The Commission's silence on this important point risks confusion and false expectations. The RRC must establish weatherization requirements that apply to facilities included in the supply chain map, including those that previously filed the Form CI-X exception, and only provide good cause exceptions based on specific conditions for such facilities to be exempted from those reliability requirements.

Additionally, TCPA requests the RRC require an interim designation process prior to the completion of the mapping process, and even prior to 2022, as appears to be contemplated in proposed subsection (e). Subsection (e) already contemplates requiring facilities not excepted from the critical designation to provide critical customer information to their utility, municipal provider, or electric cooperative (by reference to Texas Utilities Code §38.074(b)(1), collectively "utilities"). However, it does so with reference to forms that are not required until 2022, and it is thus unclear if applicable entities are already expected to provide such information prior to that date. There is no reason for natural gas facilities that already know they are part of the electric generation supply chain to wait to request treatment as critical load, or for the RRC to wait to require that. The existing form *Application for Critical Load Serving Electric Generation and Cogeneration* can be used and submitted for this purpose, at least for the transmission and

distribution service providers within ERCOT.²³ This is consistent with the recent reminders by the RRC to complete this critical load form by November 1, 2021.²⁴

Accordingly, proposed subsection (e) should be modified to include the following language: “A facility that knows that it is part of the electric generation supply chain, and has not done so, shall apply for critical load status with their electric utility as soon as possible, providing any necessary information for designation as critical load. The facility shall provide the application and necessary information in the manner required by the utility.” Once the supply chain map has been prepared, however, those facilities designated “critical” should be primarily limited to the facilities on that map (or at a minimum be designated for higher priority by the Commission and PUCT).

In addition, the Proposed Rules require operators to certify (by filing the “Form CI-D”) that they are “prepared to operate during a weather emergency.” The RRC has not, however, provided the necessary information that allows members of the natural gas industry to understand what type of weatherization requirements qualify them to be certified as critical. TCPA understands the tremendous task imposed upon the Commission in SB 3 and that time is of the essence. Under the circumstances, it may not be possible to address weatherization requirements in this rulemaking. However, any guidance from the Commission on this important subject is crucial in allowing operators to determine whether they are (or how they could be) “prepared to operate during a weather emergency” and to plan accordingly.

Lastly, after the Proposed Rules have been finalized, TCPA recommends that the Commission hold a technical workshop to answer questions and provide guidance on the implementation of the rule, including the proper completion of the associated forms and tables.

c. Recommended path forward for RRC and PUC Coordination.

²³ *Application for Critical Load Serving Electric Generation and Cogeneration* (Mar. 2021) available at: [Final - pdf - App for gas pipeline load v020320.pdf \(ercot.com\)](#).

²⁴ See for example, the recent Notice to Operators posted on the Commission’s website at https://rrc.texas.gov/media/ov2j2bsh/2021-nto_ercot-critical-load-10-22-2021.pdf (October 22, 2021) or the associated video reminder posted at RRC YouTube Channel at <https://www.youtube.com/watch?v=87nrD6XZmRk> (October 28, 2021)

TCPA strongly recommends enhanced coordination between the RRC and the PUC on the important work ahead to implement SB 3 and HB 3648. It is vital that the agencies collaborate in an immediate, constant, and substantive way, and send identical parallel messages to the public and their respective regulated communities regarding the multi-step process that needs to be conducted to complete and synchronize the legislative directives relating to natural gas supply.

As mentioned above, the supply chain map is crucial to the ultimate designation of critical natural gas supply chain facilities. Given the importance of the mapping, best practices for winter weatherization, and the ultimate designation and prioritization of critical natural gas facilities, the agencies should commence the mapping process as soon as possible with a goal of releasing the map and best practices far in advance of the September 1, 2022, deadline.

Moreover, given that the State is rapidly approaching the first winter since Winter Storm Uri, interim guidelines should be developed as soon as possible to provide some assurances to the public and the electric generation industry that the natural gas supply chain is prepared to prevent the disruptions to their system that occurred last February. Such guidance should include information on weatherization requirements, as noted above.

Interim guidelines could leverage the information already available to Commission-regulated gas utilities. All natural gas fired power plants rely on pipelines to transport their fuel. The Commission should request information from jurisdictional pipelines to determine what natural gas infrastructure is critical to supply natural gas-fired electric generation with fuel and use that assessment to provide immediate designation and mitigate any risk in the upcoming winter. Moreover, once available, results from designations under CI-D and CI-X should be made publicly available in an easy to review manner. Power plant operators need to know which natural gas infrastructure is identified as critical and is prepared to operate during extreme weather. Without this information power generators will not have sufficient information to identify the right counterparties to contract with for natural gas supply, transportation, or storage.

III. Additional Considerations.

Several additional issues warrant the attention of the Commission. While these issues are not squarely within the scope of the current rulemaking, they are of critical importance to the prevention of a recurrence of what occurred in February. TCPA respectfully requests that the

Commission give immediate attention to these key issues, including initiation of a rulemaking where appropriate.

A. Need for transparency for intrastate pipelines

As the RRC and the PUC proceed in coordinating the supply chain map and best practices discussed above, TCPA recommends that particular attention be paid to the need for transparency regarding certain essential information about intrastate pipelines. There are significant differences between federal regulation of interstate pipelines and state regulation of intrastate gas pipelines in Texas, including transparency requirements of gas system conditions. While beneficial information relating to *interstate* pipelines is available, including pipeline volumes and capacities, little information concerning *intrastate* pipelines is publicly available. This lack of information could hinder efforts to gather the information necessary for mapping, best practice development and prioritization purposes. Moreover, it was a source of inefficiency during Winter Storm Uri, as gas power plant operators had to call each pipeline and supplier to identify sources of available fuel and transportation. For this reason, TCPA strongly urges the RRC to inject more transparency regarding intrastate natural gas pipelines as part of the mapping process in a way that public information available for intrastate pipelines is like interstate pipelines.

Specifically, TCPA recommends that all pipelines publicly post daily the capacities of, and volumes flowing through, receipt and delivery points (consistent with interstate practices) and mainline segments on electronic bulletin boards to make available the information needed to track daily flows of natural gas throughout Texas. Just as TCPA's members, the Commission, and ERCOT have processes for keeping information confidential when there are legitimate security and/or proprietary reasons for doing so. We trust that the RRC and the PUC can establish adequate protective protocols both independently and in their joint dealings with the Mapping Committee and the Texas Energy Reliability Council.

In addition, TCPA recommends that steps be taken to promote transparency surrounding claimed force majeure events affecting intrastate pipeline systems. Gas suppliers and intrastate pipelines should be required to provide gas flow data and trading prices for a period surrounding the force majeure event – e.g., beginning 48 hours before the claimed force majeure event and ending 48 hours after the interruption caused by the Force Majeure ceased.

While implementing these and other key reforms necessary to bring more transparency to natural gas supply is outside the scope of the specific provisions of the Proposed Rules, TCPA believes that this topic is wholly consistent with the legislative intent of SB 3. We wanted to take this opportunity to request, on the administrative record, that the RRC and PUC take immediate action to improve the flow and public availability of information to ensure that adequate mapping, prioritization, and information sharing is occurring to prevent a recurrence of what occurred this past February.

B. Permanent Gas Curtailment Rule

On February 12, 2021, the Commission issued an Emergency Order temporarily amending Rule 2 of Docket 489 regarding natural gas utility curtailment priorities. The stated goal was to ensure the protection of human needs customers. Under the Emergency Order, the RRC made first in priority “deliveries of gas by natural gas utilities to residences, hospitals, schools, churches and other human needs customers, and deliveries to Local Distribution Companies which serve human needs customers,” while “[d]eliveries of gas to electric generation facilities which serve human needs customers” are second in priority.

The prioritization of electric generation must, however, be included as a component of human needs. Individuals cannot heat their homes without electricity and power generation is, thus, a key component of meeting human needs. TCPA requests that a rulemaking concerning gas utility curtailment priorities be initiated immediately to make the rule permanent rather than a temporary emergency measure and to include electric generation as a component of human needs.

This prioritization of electric generation should be consistent across all of the Texas intrastate network. Under Railroad Commission rules, “All gas utilities within the state shall file curtailment programs with the Commission.” 16 TAC §7.305. The requirement to maintain a curtailment program and to file such program with the Commission is not limited to a subset of gas utility pipelines, but applies to all gas utilities within the state, including those pipelines transporting gas for service for compensation, for public use, for sale to municipalities, for sale to persons distributing or selling natural gas to the public, and for sale or delivery to the public for domestic use. As part of this rulemaking the Commission should review all intrastate gas pipelines under its jurisdiction to ensure that individual curtailment programs are consistent with the priority of deliveries to electric generation facilities in the revised Rule 2.

While it is understood that the Railroad Commission's regulatory authority is limited to intrastate pipelines, we urge the Commission to coordinate with the Federal Regulatory Energy Commission ("FERC") to ensure the allocation of natural gas supplies controlled by both interstate pipelines regulated under the Natural Gas Act and the Natural Gas Policy Act, as well as intrastate pipelines, are delivered to the appropriate users to serve human needs customers, including electric generation.

C. Implementation of SB 3 and HB 3648

TCPA urges the Commission to promptly identify any jurisdictional or procedural roadblocks observed in the process of implementing SB 3 and HB 3648. Texans are relying upon the in-house expertise of the RRC to guide the state through this transition to a better functioning energy market as intended by the legislature. To the extent the Commission finds any barriers that inadvertently impede the progress towards intent of the legislature those should be promptly brought forward for resolution.

CONCLUSION

TCPA recognizes the difficult task presented to the RRC with respect to designating critical natural gas loads and developing weatherization criteria. We appreciate the opportunity to comment on this rulemaking. With the suggested revisions to the Proposed Rules discussed above, and immediate and enhanced coordination with the PUC on the multi-step process established by SB 3, TCPA is confident that the Commission can go a long way to preventing the recurrence of the energy disruptions experienced last February. TCPA stands ready to actively participate in the stakeholder process at both agencies to expedite implementation of SB 3 and is available to provide any additional information that may be helpful to the Commission.

Sincerely,



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