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RAILROAD COMMISSION OF TEXAS OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Wayne Christian
Commissioner Christi Craddick
Commissioner Jim Wright

FROM: Haley Cochran, Attorney
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel

DATE: August 30, 2022

SUBJECT: New 16 TAC §3.66, Relating to Weather Emergency Preparedness Standards

Attached is Staff's recommendation to adopt new 16 Texas Administrative Code §3.66, relating to Weather Emergency Preparedness Standards. The new rule implements changes made by Sections 5, 6, 21, and 22 of Senate Bill 3, which was enacted by the 87th Legislature (Regular Session, 2021).

Section 5 of Senate Bill 3 created new §86.044 of the Texas Natural Resources Code, which requires the Commission to adopt rules requiring certain gas supply chain facility operators to implement measures to prepare to operate during a weather emergency. Section 6 of Senate Bill 3 amended §86.222 of the Texas Natural Resources Code to establish an enforcement process and penalties for violations of Commission rules adopted under §86.044. Similarly, Section 21 of Senate Bill 3 amends §121.2015 of the Texas Utilities Code to require the Commission to adopt rules requiring certain pipeline facility operators to implement measures to prepare to maintain service quality and reliability during extreme weather conditions. Section 22 of Senate Bill 3 amends §121.206 of the Texas Utilities Code to establish an enforcement process and penalties for violations of Commission rules adopted under §121.2015.

On June 28, 2022, the Commission approved the publication of the proposed amendments in the Texas Register for a public comment period, which ended on August 15, 2022. Staff recommends that the Commission adopt the new rule with changes to the proposed text as published in the July 15, 2022, issue of the *Texas Register* (47 TexReg 4042). The recommended changes are described in the attached adoption preamble.

cc: Wei Wang, Executive Director
Jared Ware, Director, Critical Infrastructure Division
Natalie Dubiel, Attorney, Office of General Counsel

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1 The Railroad Commission of Texas (the "Commission") adopts new §3.66, relating to Weather
2 Emergency Preparedness Standards, with changes to the proposed text as published in the July 15, 2022,
3 issue of the *Texas Register* (47 TexReg 4042). The new section implements changes made by Senate Bill
4 3 from the 87th Texas Legislative Regular Session, 2021.

5 Senate Bill 3 is the 87th Legislature's sweeping response to the February 2021 Winter Weather
6 Event ("Winter Storm Uri") in Texas and generally creates new law related to preparing for, preventing,
7 and responding to weather emergencies and power outages. Senate Bill 3 requires several state agencies
8 and regulated industries to make significant changes in response to Winter Storm Uri. This rulemaking
9 implements Sections 5, 6, 21, and 22 of Senate Bill 3. Section 5 of Senate Bill 3 created new §86.044 of
10 the Texas Natural Resources Code, which requires the Commission to adopt rules requiring certain gas
11 supply chain facility operators to implement measures to prepare to operate during a weather emergency
12 (i.e., "weatherize"). Section 6 of Senate Bill 3 amended §86.222 of the Texas Natural Resources Code to
13 establish an enforcement process and penalties for violations of Commission rules adopted under
14 §86.044. Similarly, Section 21 of Senate Bill 3 amends §121.2015 of the Texas Utilities Code to require
15 the Commission to adopt rules requiring certain pipeline facility operators to implement measures to
16 prepare to maintain service quality and reliability during extreme weather conditions (i.e., "weatherize").
17 Section 22 of Senate Bill 3 amends §121.206 of the Texas Utilities Code to establish an enforcement
18 process and penalties for violations of Commission rules adopted under §121.2015.

19 The Commission received 139 comments on the proposal, eight from associations, twenty-four
20 from companies/organizations, and 107 from individuals.

21
22 *16 Texas Administrative Code §3.65*

23 BTA Oil Producers, Inc. (BTA), Commission Shift, Diamondback E&P LLC (Diamondback),
24 Discovery Operating, Inc. (Discovery), DM3R Oil and Gas LLC, Endeavor Energy Resources, LP
25 (Endeavor), Formentera Operations LLC (Formentera), Henry Resources LLC (Henry), Five Stones
26 Energy LLC (Five Stones), Kevin Audrain Oil Co., Momentum Operating (Momentum), Ogden
27 Resources Corporation, Occidental (Oxy), Office of Public Utility Counsel (OPUC), Permian Basin
28 Petroleum Association (PBPA), Pioneer Natural Resources USA Inc (Pioneer), Reverence Operating,
29 Texas Alliance of Energy Producers (Alliance), Texas Independent Producers and Royalty Owners
30 Association (TIPRO), Texas Oil and Gas Association (TXOGA), and 81 individuals submitted comments
31 regarding the Commission's rule regarding critical designation of certain natural gas facilities and entities
32 associated with providing natural gas in this state – 16 Texas Administrative Code §3.65, relating to
33 Critical Designation of Natural Gas Infrastructure. Some of these comments were submitted as comments
34 on §3.66 but the concerns expressed are more germane to §3.65.

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1 The Commission appreciates these comments and will consider amendments to §3.65 to address
2 these concerns. The Commission does not respond to comments relevant to §3.65 here, as they are outside
3 the scope of this rulemaking to adopt new §3.66.

4
5 *General Comments on §3.66*

6 The following comments do not relate to any specific provision of proposed §3.66 but provide
7 general feedback on the new rule.

8 OPUC suggested the Commission consider making §3.66 subject to periodic review, such as
9 every 5 years. The Commission notes that staff members are consistently reviewing rules to determine
10 whether updates are needed. Commission staff will review §3.66 as well.

11 Commission Shift asked that the Commission consider convening a conversation between
12 operators each year to discuss methodologies for weatherization and evidence-based adaptive
13 management techniques for Emergency Operations Plans (EOPs).

14 As discussed further below, the Commission plans to provide information on weatherization
15 methodologies and will update that information periodically. The Commission engaged operators on
16 weatherization methodologies last year and published a report on weatherization best practices as a result.
17 The Commission agrees it would be beneficial to engage with operators any time the weatherization
18 information is updated.

19 BTA, Five Stones, and Henry requested the Commission change §3.66 throughout to refer to dry
20 natural gas because only dry gas is sent to electric generators and the change would ensure the rule
21 addresses facilities materially contributing to power generation.

22 The Commission declines to make this change. Senate Bill 3 specifies that only certain gas supply
23 chain facility operators and certain gas pipeline facility operators are required to comply with
24 Commission rules adopted pursuant to §86.044 of the Texas Natural Resources Code and §121.2015 of
25 the Texas Utilities Code (i.e., §3.66). The gas supply chain facility operators who must comply with
26 §3.66 are those whose facilities are included on the electricity supply chain map created under §38.203 of
27 the Texas Utilities Code and are designated as critical by the Commission in 16 Texas Administrative
28 Code §3.65, which was adopted under Texas Natural Resources Code §81.073. Section 3.65 does not
29 reference dry gas. Therefore, it would be inappropriate to refer to dry gas in §3.66.

30 One individual asked that the Commission ensure the Texas electric grid is connected to the rest
31 of the country. Another individual asked that the Commission weatherize the grid and limit outages.
32 Three other individuals commented that it is the Commission's responsibility to stabilize the grid and
33 asked that rogue corporations be effectively penalized and regulated such that they do not consider fines
34 as merely the cost of doing business.

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1 The Commission declines to make any changes in response to these comments. The Commission
2 has no jurisdiction over the electric grid. The Commission will do what Senate Bill 3 requires to ensure
3 facilities over which it has jurisdiction implement measures to prepare to operate during a weather
4 emergency.

5 Further, one individual expressed concern that the proposed rule does not contain requirements
6 for wind or solar facilities. Another individual expressed concern that there are no regulations to reduce
7 the Electric Reliability Council of Texas' (ERCOT) acquisition of wind and solar. The commenter
8 believes these energy sources are unreliable and adding them to the Texas grid will defeat the purpose of
9 any mandates to the oil and gas industry to weatherize.

10 The Commission notes that it does not have jurisdiction to regulate wind and solar facilities or to
11 address ERCOT's acquisition of these energy sources. The Commission makes no changes in response to
12 these comments.

13 The Lone Star Chapter of the Sierra Club (Sierra Club) asked the Commission to provide
14 flexibility for operators who participate in electric load resource programs. The Sierra Club asked that
15 these operators be required to weatherize but have flexibility.

16 The Commission disagrees. The Commission agrees that load resource programs are beneficial
17 but declines to provide flexibility to operators who are required weatherize by Senate Bill 3. Load
18 resource programs are administered by ERCOT and any flexibility is more appropriately addressed by
19 ERCOT.

20 The Alliance and Diamondback expressed concern that without greater prioritization in the form
21 of a floor or a multi-tiered effort to distinguish higher and lower priorities in the natural gas supply chain,
22 the rule and actions by operators to comply with the rule will negatively impact overall production. Thus,
23 these comments recommended that §3.66 or § 3.65 be narrowed in focus to higher producing facilities,
24 gas pipelines and storage facilities.

25 The Commission declines to make any changes to §3.66 in response to this comment but will
26 consider these concerns in determining whether to amend §3.65.

27 The Alliance and TXOGA expressed concern with the proposed weatherization requirements in
28 certain operations where weatherization is impractical, such as operating wells utilizing field gas for
29 artificial lift. The comments note that field gas has a high potential for freezing and hydrate formation
30 when exposed to the pressure drops of a gas lift system and ambient air temperatures in the 30s and
31 below. Such pressure and temperature issues make it impossible to maintain sustained operations with a
32 field gas artificial lift system during freezes, despite an operator taking preventive measures. This
33 problem cannot be remedied by simply installing additional devices or equipment. Instead, the cost to
34 retrofit an entire gas lift system to guarantee the sustained operation of these wells during a weather

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1 emergency would, in some cases, exceed the economic value of the remaining reserves. Thus, the
2 operator would have to shut in otherwise economic wells resulting in waste contrary to Texas Natural
3 Resources Code § 86.011. The comments recommended changes such as processes for administrative
4 exceptions to the rule or exceptions obtained through a hearing at the Commission.

5 The Commission understands this concern but declines to make any changes in response to these
6 comments. Gas supply chain facilities such as those described by the Alliance and TXOGA are required
7 by Senate Bill 3 to weatherize if they are (1) included on the electricity supply chain map; and (2) are
8 designated as critical by the Commission in 16 Texas Administrative Code §3.65. If a facility meets these
9 two elements, it is required to weatherize regardless of economic or other concerns. Senate Bill 3 did not
10 provide the Commission with the authority to address economic concerns. Further, §3.66 already provides
11 operators flexibility because it requires operators to consider the type of facility while implementing
12 measures to prepare for weather emergencies.

13 Permian Regulatory Solutions, Momentum, and one individual noted the new requirements are
14 overly burdensome to small operators.

15 As mentioned above, the determination of which facilities are required to comply with §3.66
16 partly stems from which facilities are designated critical in §3.65. Section 3.65 currently excludes gas
17 wells producing 15 Mcf per day or less and oil leases producing 50 Mcf per day or less. Several
18 comments on §3.66 requested that those volumetric thresholds be increased. The Commission notes that it
19 will consider these concerns in determining whether to amend §3.65.

20 Several commenters expressed opposition to the rule based on their belief that the Commission
21 exceeded its authority granted by the Legislature. Incline Energy commented that the critical designation
22 process and weatherization rules are outside of the Commission's authority granted in Senate Bill 3.
23 Endeavor Energy commented that the Commission's rules effectively encompass all natural gas
24 production, transmission, and adjacent facilities, regardless of criticality and, thus, the rules are at odds
25 with the intent of the Legislature. Endeavor also commented that the Commission violated Texas law
26 when it proposed §3.65 by failing to give all interested persons a reasonable opportunity to submit data,
27 views, or arguments prior to implementing a new rule. Endeavor also stated that designations on the
28 electricity supply chain map were not open to meaningful public comment. Earl Burns Inc. expressed
29 concern that the electricity supply chain map is not made public.

30 The Commission disagrees with these comments. Comments regarding the Commission's critical
31 designation rules are outside the scope of this rulemaking adopting new §3.66. However, the Commission
32 notes that it provided public notice and comment in accordance with the Administrative Procedure Act
33 when proposing §3.65 and the public was provided adequate notice to comment during §3.65's
34 rulemaking. An informal public hearing was on also held during the public comment period for §3.65.

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1 The Electricity Supply Chain Security and Mapping Committee controls the process of mapping the
2 electricity supply chain, and the Commission notes that Texas Utilities Code § 38.203 states that the
3 electricity supply chain map is confidential. Comments related to the mapping process are beyond the
4 scope of this rulemaking.

5 Discovery Operating expressed opposition to §3.66 because it believes the rule requires a facility
6 to produce during a weather emergency. Conversely, nine individuals requested that the rule be revised to
7 require operators to operate in inclement weather. One individual expressed concern that §3.66 requires
8 operators to say they are prepared rather than be prepared.

9 The Commission disagrees with these comments and clarifies the requirements of §3.66 as
10 follows. The Commission does not have authority to require an operator to operate and §3.66 does not
11 require operation. Section 3.66 requires that operators of facilities described in §3.66(a) implement
12 weather emergency preparation measures intended to ensure sustained operation during a weather
13 emergency. This is consistent with the directive given to the Commission in Senate Bill 3, which requires
14 that the Commission adopt rules requiring certain facilities to “implement measures to prepare to operate
15 during a weather emergency.” As noted by one individual, §3.66(d) requires operators who are required to
16 comply to submit an attestation certifying that they have implemented the weather emergency preparation
17 measures required by §3.66(c). Section 3.66(c) requires those measures be implemented. Therefore, §3.66
18 does not merely require that operators say they are prepared but requires preparation.

19 Relatedly, one individual submitted a comment disagreeing that weather emergencies lead to a
20 loss of production. The individual believes that production loss is due to pipeline failures.

21 The Commission notes that Senate Bill 3 requires the Commission to adopt rules requiring certain
22 facilities to implement measures to prepare to operate during a weather emergency. Section 3.66
23 implements this requirement by incorporating the concept of weather emergency.

24
25 *Subsection (a) – Applicability*

26 Texas Competitive Power Associates and two individuals expressed concern that §3.66 allows
27 operators to decide not to operate during a weather emergency. These commenters understand that the
28 Commission cannot force facilities to operate, but requested the Commission clarify who is required to
29 comply and ensure compliance for those operators.

30 The Commission agrees that an operator may decide not to operate during a weather emergency.
31 As noted by TCPA, the Commission does not have authority to force facilities to operate. However, §3.66
32 requires operators to implement the weather emergency preparation measures listed in §3.66(c).
33 Implementing the weather emergency preparation measures is not optional for facilities required to
34 comply with §3.66. The following facilities are required to comply with §3.66: (1) a gas supply chain

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1 facility that is included on the electricity supply chain map and is designated as critical in §3.65; (2) a gas
2 pipeline facility that is included on the electricity supply chain map and that directly serves a natural gas
3 electric generation facility operating solely to provide power to the electric grid for the Electric Reliability
4 Council of Texas (ERCOT) power region or for the ERCOT power region and an adjacent power region.
5 The Commission will ensure compliance by operators of these facilities through scheduled inspections
6 and inspections to investigate weather-related forced stoppages.

7 The Commission received numerous comments regarding the electricity supply chain map.

8 Commission Shift, 76 individuals, the Alliance, Sierra Club, TXOGA, Texas Pipeline
9 Association (TPA), and Formentera submitted comments requesting clarification regarding the
10 applicability of §3.66 to facilities on the electricity supply chain map and the process for notifying
11 operators that facilities they operate are included on the map.

12 PBPA, TIPRO, TXOGA, Henry, BTA, Diamondback, Five Stones, and Rockcliff Energy
13 Operating (Rockcliff) requested the addition of language in subsection (a) to require the Commission to
14 notify operators of their facility's inclusion on the map. They suggested a change in subsection (a)(1)(A)
15 such that an operator is not subject to §3.66 until it receives notice from the Commission.

16 The Commission declines to incorporate the requested language. Upon adoption of §3.66, the
17 Commission will send notices to operators with facilities included on the electricity supply chain map and
18 include a list of the operator's relevant facilities. Commission Shift, Alliance, 76 individuals, and the
19 Sierra Club suggested that the notification be provided via email rather than regular mail to ensure
20 operators receive notice. The Commission agrees. It will provide notification of inclusion on the map via
21 certified mail, first class mail, and email if the operator's email address is provided to the Commission.

22 It is the Commission's understanding that the Electricity Supply Chain Security and Mapping
23 Committee will continue to periodically update the electricity supply chain map. The Commission
24 recognizes that those changes may impact a facility's obligation to comply with certain Commission
25 rules. Thus, the Commission will continue to provide notice to operators of an operator's facilities on the
26 map as the electricity supply chain map is updated.

27 PBPA expressed concerns about the accuracy of the mapping process and the accuracy of the
28 map. As mentioned in the previous paragraph, it is the Commission's understanding that the Mapping
29 Committee will work to ensure the map is up to date and improved as necessary.

30 Regarding enforcement of new §3.66, the Commission notes that operators of facilities described
31 in subsection (a) are required to comply with the rule's requirements by December 1, 2022. Commission
32 Shift and Sierra Club asked whether a facility is subject to the rule's requirements if a facility included on
33 the map has not been included on an operator's Form CI-D required under §3.65. Section 3.65 requires bi-
34 annual filing of the Form CI-D by March 1 and September 1 of each year. It is the Commission's

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1 understanding that the map will be updated continually even between official adoption timelines. In other
2 words, updates will be adopted at set times during the year. Those updates will prompt notification from
3 the Commission to operators with facilities on the most current version of the map. If possible, those
4 notifications will be issued prior to the bi-annual filing deadlines in §3.65. Further explanation regarding
5 the enforcement process is provided in the discussion of comments on subsections (e), (f), and (g) below.

6 TIPRO, Henry, BTA, Diamondback, Five Stones, Formentera, and Rockcliff asked that the
7 Commission revise subsection (a) to exempt a facility from §3.66 if the facility produces under the
8 production thresholds indicated in §3.65. Similarly, the Alliance asked that §3.66 only apply to gas supply
9 chain facilities that are both included on the electricity supply chain map and designated critical by the
10 Commission in §3.65. TXOGA, Endeavor, and Pioneer requested clarification on whether a facility needs
11 to weatherize if it produces below the volume threshold in §3.65 but is on the electricity supply chain
12 map.

13 The Commission declines to adopt any changes to §3.66 but will consider these comments and
14 may clarify the requirements of §3.65 in a future rulemaking. The Commission notes that a facility that is
15 not designated critical in §3.65, including a facility producing under the production thresholds, would not
16 meet §3.66(a)(1)(B) and, therefore, would not be subject to the weatherization requirements of §3.66.

17 The Joint Texas Electric Utilities also asked that §3.66 be adopted in a manner that requires
18 facilities deemed critical customers under §3.65 to comply with §3.66.

19 The Commission partly agrees. If the facility that is designated a critical customer under §3.65 is
20 also included on the electricity supply chain map, then the facility is required to comply with §3.66.

21 The Joint Texas Electric Utilities also requested adding new subsection (a)(3) to state that §3.66
22 applies to any facility designated a critical customer under §3.65, even if that facility is not included
23 subsection (a)(1) or (a)(2).

24 The Commission declines to incorporate the requested change. Senate Bill 3 states that a gas
25 supply chain facility must also be on the electricity supply chain map, in addition to being designated
26 critical, to be subject to the requirements of §3.66. To require that critical customer status is the only
27 requirement for weather emergency preparedness would ignore a portion of Senate Bill 3. Similarly,
28 Senate Bill 3 is clear that a gas pipeline facility's critical designation status has no bearing on whether the
29 facility must implement measures to prepare for a weather emergency; the only relevant inquiry for a gas
30 pipeline facility is whether the facility is on the electricity supply chain map and directly serving power
31 generation facilities. The Commission does note in response to the Joint Texas Electric Utilities that a
32 facility on the electricity supply chain map is not eligible for a critical designation exception under §3.65.

33 The Alliance expressed concerns with facilities located in prorated fields. The limitation of a gas
34 allowable during an energy emergency requires due consideration by the Commission to either remove

1 these limitations or consider whether prorated fields should not be subject to weatherization requirements.
2 This is due to operators regularly shutting in their wells temporarily when allowables will be exceeded for
3 the month. This rule should not penalize operators requiring significant investments for compliance when
4 other Commission rules will necessitate their closure, in some instances prior to or during an energy
5 emergency.

6 The Commission understands this concern and will consider allowing flexibility regarding
7 allowables in the event of a weather emergency.

8 The Commission makes no changes to subsection (a) based on the comments.
9

10 *Subsection (b) – Definitions*

11 Regarding the definition of critical component, CrownQuest Operating (CrownQuest), PBPA,
12 Ovintiv, and TXOGA requested the Commission add language regarding components on equipment
13 rented or leased from a third party, to clarify that weatherization is required only on susceptible
14 components, whether operator owned or leased, not on the whole piece of third-party equipment.

15 The Commission agrees that the intent of the definition is to address components, whether
16 operator owned or leased, and adopts §3.66(b)(1) with a change to clarify the intent.

17 TXOGA asked that the Commission also add language limiting the definition of critical
18 component to components over which the Commission has contractual authority to control. Endeavor
19 expressed a similar concern, stating that leased equipment must generally be maintained in the same state
20 as it was received.

21 The Commission declines to incorporate this language. The Commission understands that an
22 operator may not have authority to weatherize critical components on equipment that is leased from a
23 third-party. However, the operator should do what is within its authority to ensure critical components are
24 protected in accordance with §3.66, and this includes maintenance and operation of third-party
25 equipment. It is the operator's responsibility to ensure its facility complies with §3.66.

26 Pioneer requested clarification regarding critical components on multi-well oil leases in order for
27 field inspectors to properly identify which facilities are included in an operator's weather preparedness
28 efforts and which are omitted as a non-critical subsystem.

29 The Commission notes that the determination of what constitutes a weather-related forced
30 stoppage will be conducted at the facility level, not at a critical component level. However, operators shall
31 identify and protect critical components of a facility to ensure its sustained operation during a weather
32 emergency. The Commission recommends describing determinations such as those referenced in the
33 comment in the operator's Weather Emergency Readiness Attestation to ensure applicable Commission
34 staff members, including field inspectors, are sufficiently informed.

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1 An individual asked that the list of weather conditions in the definition of critical component be
2 revised to include extended periods of low sunlight. The commenter noted that many locations have
3 equipment that relies on a solar battery system in case of a power outage and that system can fail during
4 periods of cloudy weather.

5 The Commission declines to incorporate the requested change because it does not consider a low
6 sunlight a weather emergency. Though the commenter is correct that the solar battery system is
7 susceptible to weather-related interruptions, generally a solar battery system is used as a contingency and
8 it is not critical to the sustained operation of the facility.

9 PBPA commented that a different standard is applied for the consideration of critical components
10 than is applied for an operator elsewhere in §3.66. While later in the rule operators would be required to
11 consider the implications of a “forced stoppage,” in the definition of critical component operators are
12 required to consider the “occurrence of which is likely to significantly hinder sustained operation.” It
13 would be more consistent for operators to consider an occurrence that is likely to be linked to a weather-
14 related forced stoppage rather than the potential to significantly hinder sustained operations.

15 The Commission disagrees. The critical component definition discusses the component’s
16 influence on sustained operations. Sustained operations is the standard in later portions of the rule as well.
17 §3.66(c)(1)(A) states that an operator shall implement weather emergency preparation measures intended
18 to “ensure the sustained operation of a gas supply chain facility or a gas pipeline facility during a weather
19 emergency.”

20 Regarding the definition of “gas supply chain facility,” CrownQuest and PBPA asked that the
21 Commission revise the definition to mirror the language in subsection (b)(2) and reference the
22 Commission rules under which the relevant gas supply chain facilities are regulated.

23 The Commission disagrees. The definitions of “gas supply chain facility” and “gas pipeline
24 facility” are taken directly from Senate Bill 3.

25 Regarding the definition of “major weather-related forced stoppage” in subsection (b)(4), the
26 Atmos Cities Steering Committee (ACSC), Atmos Pipeline Texas (APT), Commission Shift, 76
27 individuals, TIPRO, Sierra Club, Henry, BTA, Diamondback, Five Stones, and Rockcliff commented that
28 the proposed definition gives the Critical Infrastructure Division (CID) director too much discretion. The
29 commenters requested that objective criteria be added to guide the director’s determination. CrownQuest
30 requested the Commission revise subsection (b)(4) because operators will not know whether a major
31 stoppage occurs until after a weather emergency. APT suggested aligning the definition of “major” with
32 the volumetric thresholds proposed in subsection (f), relating to when an immediate notification of a
33 weather-related forced stoppage is required.

1 The Commission agrees that objective criteria should be added and adopts the definition of
2 “major weather-related forced stoppage” with revisions to incorporate the volumes proposed in subsection
3 (f). Thus, a major weather-related forced stoppage is defined as a weather-related forced stoppage during
4 a weather emergency that is the result of the deliberate disregard of §3.66 or that results in: (A) a loss of
5 production exceeding 5,000 Mcf of natural gas per day per oil lease; (B) a loss of production exceeding
6 5,000 Mcf of natural gas per day per gas well; (C) a loss of gas processing capacity exceeding 200 MMcf
7 per day; (D) a loss of storage withdrawal capacity exceeding 200 MMcf per day; or (E) a loss of
8 transportation capacity exceeding 200 MMcf per day. A weather-related forced stoppage that qualifies as
9 a major weather-related forced stoppage prompts two requirements. First, a major weather-related forced
10 stoppage is required to be reported within one hour of discovery, as required by §3.66(f)(2). Second, a
11 major-weather related forced stoppage that is a violation of §3.66 triggers a requirement to obtain a
12 weather emergency preparation assessment, as required by §3.66(f)(4). To ensure weather-related forced
13 stoppages are interpreted to include major weather-related forced stoppages where appropriate, the
14 Commission also adopts changes to §3.66 to add several references to major weather-related forced
15 stoppage alongside weather-related forced stoppage.

16 PBPA requested that the definition major-weather related forced stoppage be revised to require
17 intentional and deliberate disregard of the section that is not corrected in the manner prescribed by the
18 rule. Similarly, Henry, BTA, Diamondback, Five Stones, and Rockcliff commented that the definition
19 should be based on an operator’s intentional conduct. An operator should not be penalized if it attempts in
20 good faith to produce during a weather emergency in compliance with the rule.

21 The Commission disagrees. Section 3.66 requires an operator to implement weather emergency
22 preparation measures. If an operator produces during a weather emergency, it most likely is not
23 experiencing a weather-related forced stoppage. However, if a weather-related forced stoppage occurs
24 during a weather emergency, an attempt to produce will not prevent enforcement action because the
25 relevant inquiry regarding whether the facility is in violation is whether the operator implemented
26 emergency preparation measures in accordance with §3.66(c).

27 TXOGA asked that the Commission include “during a weather emergency” in the definition of
28 “major weather-related forced stoppage.”

29 The Commission agrees and adopts §3.66(b)(4) with a change to clarify that a major-weather
30 related forced stoppage occurs during a weather emergency.

31 Regarding the definition of “repeated weather-related forced stoppage,” PBPA, TIPRO, Henry,
32 BTA, Diamondback, Five Stones, Formentera, and Rockcliff requested that a repeated weather-related
33 forced stoppage only occur if a major weather-related forced stoppage occurs more than once in a

1 calendar year. These commenters note adding “major” will ensure the violations captured by a repeat
2 designation are those that impact public safety and not those that are minor or immaterial.

3 The Commission disagrees. The requirement in §3.66(f) that requires contracting for a weather
4 emergency preparation assessment is taken directly from Senate Bill 3. Senate Bill 3 requires the
5 assessment for a facility that experiences either a repeat or major interruption. Thus, the Commission
6 finds that defining repeated weather-related forced stoppage to only include major weather-related forced
7 stoppages is inconsistent with the statutory language.

8 PBPA and the Sierra Club suggested amending the definition of repeated weather-related forced
9 stoppage to apply to more than one weather-related forced stoppage within a season, rather than within a
10 calendar year. Sierra Club noted that a stoppage may occur in December and January during the same
11 winter season.

12 The Commission agrees with these comments and adopts the definition in §3.66(b)(5) with a
13 change to define repeated weather-related forced stoppage as more than one weather-related forced
14 stoppage in a 12-month period.

15 TXOGA requested that the definition be revised to ensure a weather-related forced stoppage is
16 not classified as a repeated weather-related forced stoppage if the operator experiences an additional
17 weather-related forced stoppage while trying to resolve its first weather-related forced stoppage.

18 The Commission disagrees this change is needed. The designation of repeated weather-related
19 forced stoppage will only occur if, after review, the facility is determined to be in violation of §3.66.
20 Therefore, the additional requirement applicable to a facility with a repeated weather-related forced
21 stoppage (i.e., the requirement to obtain a weather emergency preparedness assessment) will not be
22 triggered immediately upon more than one weather-related forced stoppage, but after more than one
23 weather-related forced stoppage determined to be in violation of §3.66 within a 12-month period.

24 Regarding the definition of “sustained operation” in subsection (b)(3), TCPA requested that the
25 Commission revise the definition to ensure operators maintain operations during weather emergencies and
26 operators account for both known and reasonably anticipated forced stoppages.

27 The Commission declines to make this change. The Commission finds that “reasonably
28 anticipated” may provide those required to comply with an excuse if they did not reasonably anticipate
29 the weather-related forced stoppage. The language is unclear and may prompt a failure to prepare.

30 Ovintiv requested a revision to the definition of sustained operation to allow flexibility for
31 operational downtime experienced while acting as a reasonably prudent operator.

32 The Commission disagrees because §3.66 already contemplates operational downtime.
33 Subsection (f), which contains the requirement to report a weather-related forced stoppage, only requires

1 the report if the stoppage meets the definition of a weather-related forced stoppage and the operator is
2 unable to resolve the stoppage within 24 hours of the stoppage.

3 Endeavor and OPUC commented that the definition of sustained operation fails to clearly define
4 “safe operation.” Endeavor stated this unnecessarily creates safety risks to operators’ personnel.

5 The Commission has incorporated additional language in subsection (c) to address this concern.

6 TIPRO, Henry, BTA, Diamondback, Five Stones, and Rockcliff requested the Commission
7 amend the definition of weather-related forced stoppage to include the term “weather emergency.”

8 The Commission agrees that the relevant timeframe for determining a weather-related forced
9 stoppage is during a weather emergency and adopts the definition with that change.

10 TXOGA asked that the Commission expressly provide that anticipated outages are exempt from
11 the definition of “weather-related forced stoppage” if previously disclosed to the Commission. TXOGA
12 noted that despite an operator’s best efforts to weatherize facilities and equipment, drops in production are
13 inevitable, particularly during cold weather events and in fields utilizing field gas for artificial lift, but
14 they are also predictable. TXOGA suggested adding language that outages described in the definition of
15 weather-related forced stoppage do not include outages caused by utility curtailment or other loss of
16 service that are outside the operator’s control.

17 The Commission declines to add the requested language. The Commission notes that an operator
18 of a gas supply chain facility or gas pipeline facility subject to §3.66 would not be subject to an
19 enforcement action for a weather-related forced stoppage caused by factors outside the operator’s control
20 if the operator is otherwise compliant with §3.66. However, the Commission does not agree that this
21 language should be added to narrow the definition of weather-related forced stoppage.

22 Similarly, CrownQuest asked that the definition of “weather emergency” be revised to reflect
23 there is no liability for issues outside the operator’s control.

24 The Commission agrees that an operator will not be subject to enforcement for a weather-related
25 forced stoppage caused by factors outside the operator’s control if the operator is otherwise compliant
26 with §3.66. However, the Commission declines to make any changes to the definition of “weather
27 emergency” due to this comment.

28 Sierra Club asked that the definition of weather emergency be revised to include additional
29 weather extremes such as wildfires, droughts, hurricanes, or other weather extremes.

30 The Commission declines to make the requested change. Section 3.66 requires operators to
31 implement weather emergency preparation measures intended to ensure sustained operations during a
32 weather emergency. The Commission finds that certain weather events or weather-related events cannot
33 reasonably be prepared for such that it would be inappropriate and unsafe to require the implementation
34 of weather emergency preparation measures. Wildfires and hurricanes are two examples of such events.

1 TXOGA also requested high winds, lightning, and fires be expressly excluded from the definition
2 of weather emergency.

3 The Commission declines to make the requested change. The definition already excludes weather
4 conditions that cannot be reasonably mitigated such as tornadoes, floods, or hurricanes. This is not an
5 exclusive list of the types of weather conditions that cannot be reasonably mitigated. The Commission
6 agrees that lightning and fires are also types of conditions that cannot reasonably be mitigated but does
7 not agree all of these events need to be listed in the definition.

8 During the comment period, the Commission received additional feedback from the state
9 climatologist. The Commission clarifies that the term "freezing precipitation" in the definition of weather
10 emergency includes freezing drizzle, freezing rain, sleet, ice pellets, snow, and snow pellets. It does not
11 include hail or graupel.

12 CrownQuest, Alliance, Pioneer, Oxy, and TXOGA requested clarification on when a weather
13 emergency occurs. Specifically, CrownQuest, the Alliance, TIPRO, TXOGA, and Formentera requested
14 the Commission notify operators of a weather emergency. Oxy and TXOGA asked that a weather
15 emergency be limited to events that result in firm load shed, not those that have the potential to result in
16 firm load shed.

17 The Commission notes that the comments relating to events with the potential to result in firm
18 load shed are more appropriately addressed in §3.65. The Commission will consider these comments if it
19 engages in future rulemaking on §3.65.

20 The Commission agrees with CrownQuest, the Alliance, TIPRO, TXOGA, and Formentera and
21 will issue a notice to operators when a weather emergency occurs such that reporting under subsection (f)
22 of §3.66 will be required.

23 Regarding the definition of "weatherization," CrownQuest, TXOGA, TIPRO, Henry, BTA,
24 Diamondback, Five Stones, and Rockcliff noted that the definition seems inconsistent with the
25 requirements in subsection (c) and asked that the Commission ensure consistency between subsections.
26 TIPRO, Henry, BTA, Diamondback, Five Stones, and Rockcliff requested removal of language regarding
27 implementation of processes or the installation of equipment, so that the definition would not be
28 interpreted to require those actions.

29 The Commission agrees that the definition should be clarified to be more consistent with the
30 requirements in subsection (c) but declines to remove the language regarding implementation of processes
31 or installation of equipment. The Commission adopts the definition with changes to incorporate
32 requirements in proposed subsection (c)(2) that are part of required weatherization rather than listing
33 those actions separately. The revised definition of weatherization is "the iterative cycle of preparedness
34 for sustained operation during weather emergencies that includes (A) correcting critical component

1 failures that occurred during previous weather emergencies; (B) installing equipment to mitigate weather-
2 related operational risks; and (C) internal inspection, self-assessment, and implementation of processes to
3 identify, test, and protect critical components.”
4

5 *Subsection (c) – Weather Emergency Preparedness Standards*

6 ACSC requested confirmation that compliance is required by December 1, 2022.

7 That is correct. Section 3.66 requires compliance by December 1 of each year as certified in the
8 operator’s Weather Emergency Readiness Attestation due on the same date.

9 PBPA, Endeavor, Pioneer, and Ovintiv expressed concerns with the December 1 deadline given
10 challenges in acquiring new equipment. The comments asked that the Commission consider this factor in
11 evaluating the steps operators will be able to undertake and allow a delayed or tiered implementation plan
12 beginning with wells producing the largest volumes of natural gas on the supply chain. TXOGA also
13 commented requesting consideration of supply chain constraints.

14 The Commission recommends that any constraints in implementing the requirements of §3.66 be
15 noted in an operator’s Weather Emergency Readiness Attestation. The Commission understands that
16 certain factors are outside an operator’s control. However, the Commission declines to revise §3.66 to
17 allow a delayed implementation.

18 PBPA commented on §3.66(c)(1) requesting a change to require weatherizing critical components
19 for the sustained operation of a gas supply chain or gas pipeline facility rather than implementing weather
20 emergency preparation measures.

21 The Commission disagrees and keeps the proposed language because Senate Bill 3 uses the same
22 terms – it requires an operator to “implement measures to prepare to operate during a weather
23 emergency.” In addition, including the term “weatherization” in subsection (c)(1) as requested by PBPA
24 could be interpreted to limit the list of required weather emergency preparation measures in subsection
25 (c)(2), which include training and consideration of health, safety, and the environment. The Texas Caucus
26 on Climate, Environment, and the Energy Industry commented that the Commission should expand its
27 interpretation of Senate Bill 3 to require more than physical measures. The Caucus asked the Commission
28 to include establishing standard business practices of continuing normal operations during weather
29 emergencies. The Commission finds that the rule as adopted incorporates this request. The new definition
30 of weatherization includes internal inspection, self-assessment, and implementation of processes to
31 identify, test, and protect critical components. As mentioned above, the list of required preparation
32 measures in subsection (c)(2) also includes measures beyond physical preparedness.

33 TIPRO, Henry, BTA, Diamondback, Five Stones, and Rockcliff requested subsection (c)(1)(A)
34 be revised to “prevent weather-related forced stoppage of a gas supply chain facility or a gas pipeline

1 facility during a weather emergency” because the revised language removes the implication that the
2 Commission is requiring operation. Discovery Operating also requested revisions to avoid the suggestion
3 that the Commission is requiring operation.

4 The Commission declines to incorporate the requested change. The language in subsection
5 (c)(1)(A) does not require operation, it requires implementation of weather emergency preparation
6 measures intended to ensure sustained operation during a weather emergency. Further, the language
7 requested by these commenters is already encompassed in the definition of sustained operation, which is
8 defined as safe operation of a gas pipeline facility or gas supply chain facility such that the facility does
9 not experience a weather-related forced stoppage.

10 Regarding §3.66(c)(1)(B), Henry, BTA, Diamondback, and Five Stones requested changes to
11 promote consistency with other sections of the rule. They suggested changing “cold weather conditions”
12 to “weather emergencies” because cold weather conditions are included in the definition of weather
13 emergency. Also, they asked the Commission to narrow the scope of subsection (c)(1)(B) to only include
14 repeated weather-related forced stoppages so that only the problematic stoppages are corrected.

15 The Commission agrees with the first suggestion and adopts the requested change. A
16 corresponding change is also adopted in §3.66(d)(3). However, the Commission disagrees that the
17 provision should be limited to repeated weather-related forced stoppages and declines to add “repeated”
18 to subsection (c)(1)(B).

19 Regarding §3.66(c)(2), which states, “weather emergency preparation measures required by
20 paragraph (1) of this subsection shall include,” Henry, Diamondback, BTA, and Five Stones requested the
21 language be changed to “weather emergency preparation measures required by paragraph (1) of this
22 subsection may include but are not limited to.”

23 The Commission disagrees that the weather emergency preparation measures in subsection (c)(2)
24 should be optional and declines to adopt the requested change.

25 TXOGA requested two additions to the list in subsection (c)(2). First, TXOGA requested adding
26 a requirement to consider the risk to the health and safety of employees and protection of the
27 environment. Second, TXOGA requested a requirement to consider measures proportionate to the volume
28 of gas that may be impacted by a weather emergency.

29 The Commission agrees that consideration of employee health and safety and protection of the
30 environment shall be considered by an operator in implementing weather emergency preparation
31 measures. The Commission adopts subsection (c)(2)(B) to incorporate this requirement. The Commission
32 declines to adopt the second requested change regarding consideration of measures proportionate to the
33 volume of gas that may be impacted during a weather emergency. Facility-specific considerations are
34 outlined by the Commission in proposed subsection (c)(2)(D), which is adopted as subsection (c)(2)(C).

1 Proposed §3.66(c)(2)(C) required emergency operations planning using a risk-based approach to
2 identify, test, and protect the critical components of the facility. APT, CrownQuest, PBPA, TXOGA,
3 Henry, BTA, Diamondback, and Five Stones requested that the Commission clarify the meaning of risk-
4 based approach or, in the alternative, remove language requiring a risk-based approach.

5 The Commission agrees that this language is unclear and removes this language in the adopted
6 version. Thus, the requirements in proposed subsection (c)(2)(D) are now adopted as subsection (c)(2)(C).
7 The Commission's revised definition of "weatherization" incorporates the Commission's intent for
8 requirements to identify, test, and protect a facility's critical components.

9 Discovery Operating commented that the requirement to identify, test, and protect critical
10 components is difficult because operators may not be able to simulate conditions to accomplish a test.

11 As mentioned above, the testing requirement is relocated in the adopted version of §3.66 such
12 that it is included in the definition of weatherization. The Commission recognizes that weatherization
13 measures including testing may be different depending on the facility. The requirement to weatherize is
14 found in subsection (c)(2)(C) and states that weatherization, which includes testing, shall be conducted
15 using methods a reasonably prudent operator would take given the type of facility, the age of the facility,
16 the facility's critical components, the facility's location, and weather data for the facility's county or
17 counties such as data developed for the Commission by the state climatologist. Thus, an operator shall
18 test critical components in accordance with the reasonably prudent operator standard given the facility-
19 specific considerations in adopted §3.66(c)(2)(C).

20 The Commission received many comments on proposed §3.66(c)(2)(D), which required
21 weatherization of a gas supply chain or gas pipeline facility and included a list of potential weatherization
22 methods and weatherization data for operators to consider.

23 Oxy, Alliance, TXOGA, TPA, Endeavor, and Orintiv asked for clarification on the applicability
24 of the weatherization measures and recommended various revisions to achieve greater clarity. Oxy and
25 the Alliance requested "commercially reasonable measures that a prudent operator would take in
26 accordance with industry-accepted practices given the type and age of the facility including. . ." TXOGA
27 and Orintiv recommended "weatherization of the facility considering industry-accepted methods
28 considered by the operator to be appropriate and effective to the facility based on the type of facility, the
29 facility's critical components, the facility's location, and weather data for the facility's county or
30 counties." And TPA suggested "weatherization of the facility using economically feasible methods that
31 are reasonably applicable to the facility based on the type of facility, the facility's critical components . .
32 ."

33 Relatedly, CrownQuest, PBPA, Discovery, Alliance, TIPRO, TXOGA, Henry, BTA,
34 Diamondback, Endeavor, Five Stones, Orintiv, and an individual requested that the Commission

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1 reconsider the list of specific weatherization methods because it does not provide a clear directive for
2 operators. PBPA, Alliance, TIPRO, TXOGA, Henry, BTA, Diamondback, Five Stones, Pioneer, and
3 Rockcliff recommended that instead of including potential weatherization methods in the rule, the
4 Commission publish guidance that outlines practices. The commenters stated this approach will afford the
5 Commission greater ability to communicate changing technology or practices.

6 The Commission agrees that publishing weatherization methods on its website is more
7 appropriate and will allow the Commission to better communicate with operators as conditions or
8 information change. The Commission adopts subsection (c) to remove the list of weatherization methods.
9 New subsection (c)(2)(C) states that the Commission will periodically publish weatherization practices.

10 The Commission also agrees with comments requesting clarification of the weatherization
11 requirement, especially considering the removal of the weatherization methods list. The Commission
12 disagrees that language regarding “commercially-reasonable measures” or “economically feasible
13 methods” should be incorporated. The Commission understands that weather emergency preparedness
14 will impose costs on operators required to comply §3.66. However, the Commission finds that the
15 language in adopted §3.66 provides operators sufficient flexibility and Senate Bill 3 does not authorize
16 the Commission to consider economic considerations preventing proper preparation. The Commission
17 adopts subsection (c)(2)(C) to require weatherization of a gas supply chain or gas pipeline facility “using
18 methods a reasonably prudent operator would take given the type of facility, the age of the facility, the
19 facility's critical components, the facility's location, and weather data for the facility's county or counties
20 such as data developed for the Commission by the state climatologist.” The Commission adopts this
21 provision with “weather data . . . such as” rather than the proposed language of “weather data . . .
22 including” in response to comments from APT, Oxy, and TXOGA requesting clarification on whether the
23 weather data from the climatologist must be considered or is only one type of data that may be
24 considered. The Commission agrees that the weather data provided by the state climatologist is merely a
25 consideration. The weather data provided is based on historical extremes and the Commission does not
26 intend that operators weatherize their facilities in accordance with historical extremes. However,
27 historical information is helpful in determining appropriate weatherization methods in the facility's
28 county or counties.

29 The Commission received several comments on the proposed weather data table in
30 §3.66(c)(2)(D). ACSC asked that the table be modified to account for additional emergency weather risks
31 due to climate change factors. Sierra Club noted that the table does not contain weather predictions and
32 suggested the Commission revise the table or revisit the rules occasionally to determine if any updates to
33 the table are required. TXOGA requested the table be removed because it does not contain weather
34 predictions. However, if the table remains, TXOGA asked that the data's purpose be clarified. Similarly,

1 PBPA asked that the Commission clarify that the weather information provided is a consideration, not a
2 required weatherization standard.

3 The Commission agrees that the weather data would be more helpful if included in the
4 Commission's publication on weatherization practices which will be issued as stated in the adopted
5 version of §3.66(c)(2)(C). Including weather data outside §3.66 will allow the Commission to continue to
6 work with the state climatologist and ensure operators have up-to-date data on weather patterns in the
7 counties in which their facilities operate. The Commission adopts §3.66(c) without the proposed weather
8 data table. Subsection (c)(2)(C) states that the Commission may include weather data developed for the
9 Commission by the state climatologist in its publication of weatherization practices.

10
11 *Subsection (d) – Weather Emergency Readiness Attestation*

12 Comments from Commission Shift, Alliance, Henry, BTA, Diamondback, Five Stones, and
13 Rockcliff noted the similarity of the attestation to the Emergency Operations Plan (EOP) required to be
14 submitted to the Commission in accordance with Texas Utilities Code §186.008, which was created by
15 Senate Bill 3. Commission Shift requested clarification regarding whether the weather readiness
16 attestation required by §3.66(d) is the same as the EOP required by §186.008. Alliance, Henry, BTA,
17 Diamondback, Five Stones, and Rockcliff suggested the Commission revise subsection (d) to incorporate
18 the EOP requirement.

19 The Commission notes that the Weather Emergency Readiness Attestation required by subsection
20 (d) is distinct from the EOP requirement in Texas Utilities Code §186.008. The Weather Emergency
21 Readiness Attestation is a certification from an operator required to comply with §3.66 that it has
22 implemented the required weather emergency preparation measures described in subsection (c) of §3.66.
23 The EOP requirement is not incorporated into this rulemaking. The Commission understands the two
24 requirements caused confusion but declines to include the EOP requirement in §3.66 because it was not
25 contemplated in the proposal.

26 PBPA, Alliance, TIPRO, TXOGA, Henry, BTA, Diamondback, Five Stones, Pioneer, and
27 Rockcliff requested that the Weather Emergency Readiness Attestation requirements be revised to be
28 more consistent with typical language on forms required by the Commission, such as the Form P-5
29 Organization Report. Similarly, Endeavor asked the Commission to remove the requirement for an officer
30 to sign the attestation.

31 The Commission agrees and revises the language in §3.66(d)(1) to be more consistent with other
32 Commission forms. The Weather Emergency Readiness Attestation is still required to state that the
33 operator implemented the weather emergency preparation measures required in subsection (c). However,

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1 where the proposed version required an authorized officer to sign the attestation, the new language
2 requires an attestation by an authorized representative.

3 CrownQuest requested that the list of potential critical components be removed or clarified.
4 CrownQuest and TXOGA suggested reorganizing the list if it is retained so that critical components from
5 different facilities along the supply chain are not listed together.

6 Upon further review of the critical component list, the Commission agrees that it may cause
7 confusion and adopts subsection (d) without the list. The list was intended to provide guidance on the
8 sections that could be incorporated in an operator's Weather Emergency Readiness Attestation. As such,
9 the critical component list may be more appropriately incorporated into published Commission guidance
10 or templates for attestations. Because the list is removed, the Commission adopts subsection (d)(2) with a
11 change requiring the attestation to include a description of the weatherization methods utilized by the
12 operator to weatherize each type of facility.

13 TXOGA asked that subsection §3.66(d)(3) be revised to only require a description of non-
14 privileged corrective actions, that cold weather conditions be revised to extreme cold weather conditions,
15 and that descriptions of corrective actions be limited to those that could have a similar impact in future
16 extreme cold weather conditions.

17 The Commission notes that §3.66(d)(3) is adopted with a change to reflect changes made to
18 §3.66(c)(1)(B), which remove language related to cold weather conditions and instead reference previous
19 weather emergencies. The Commission declines to incorporate the other requested language. If sharing
20 certain information with the Commission violates a legal privilege, the Commission encourages operators
21 to provide as much information as possible without violating the privilege. The Commission disagrees
22 that the operator's description of weather-related forced stoppages should be limited to those that could
23 have a similar impact in future weather emergencies. Relatedly, OPUC requested that reporting on
24 corrective actions taken to mitigate previous weather-related forced stoppages be required in each
25 Weather Emergency Readiness Attestation, not just the first attestation due on December 1, 2022. The
26 Commission finds that the assessment of future weather-related forced stoppages is encompassed in the
27 weather emergency preparation measures required by §3.66(c) and, therefore, declines to incorporate
28 OPUC's changes in subsection (d)(3). Subsection (d)(3) ensures the Commission has information on
29 weather-related forced stoppages that occurred prior to implementation of Commission weatherization
30 rules. That information is only required in the first attestation.

31 TXOGA asked the Commission to add new subsection (d)(1)(D) to allow an operator to describe
32 in its attestation the weather data it relied upon if it relied upon data other than that provided by the state
33 climatologist.

1 The Commission agrees that the Weather Emergency Readiness Attestation may include this type
2 of information but does not believe this language is necessary in the rule. The Commission encourages
3 operators submitting an attestation to include any information they believe is useful to demonstrate
4 compliance with §3.66.

5 Oxy, Alliance, TIPRO and TXOGA also requested changes to allow operators to incorporate in
6 their Weather Emergency Readiness Attestations a schedule for implementing required emergency
7 preparation measures after December 1, 2022 to the extent the operator is unable to complete all
8 requirements of subsection (c) by that date.

9 The Commission does not agree that operators should be able to delay implementation of
10 weatherization requirements. However, the Commission understands supply chain and other constraints
11 may prevent timely weatherization of all facilities subject to §3.66. The Commission refers these
12 commenters to revisions in subsection (e), which provide information on which facilities will be
13 prioritized for inspection purposes. The Commission notes that violations will stem from one of two
14 places. Commission Shift requested clarification on a similar statement from the proposal preamble. First,
15 a violation could stem from a scheduled inspection (outside of a weather emergency and after the
16 December 1 deadline for compliance) after which a facility is determined to be out of compliance with
17 §3.66. Second, a violation could result from an inspection conducted as part of an investigation into a
18 reported weather-related forced stoppage or major weather-related forced stoppage that occurs during a
19 weather emergency. If the investigation determines the stoppage is due to an operator's failure to comply
20 with §3.66, the facility will be issued a notice of violation. Notices of violation are discussed in more
21 detail below.

22 CrownQuest, PBPA, and TXOGA expressed concerns regarding confidentiality of the Weather
23 Emergency Readiness Attestation and other information filed pursuant to §3.66. Some comments stated
24 that the Legislature took great care to prevent the disclosure of certain information, like the electricity
25 supply chain map, from being public and the Commission should follow that lead in creating an inherent
26 confidentiality of these facilities as well as the methods by which they safely operated.

27 The Commission understands these concerns but has no authority to treat information as
28 inherently confidential unless the Legislature deems the information confidential by law. However, the
29 Commission adopts §3.66 with a change to move instructions for filing confidential information from
30 proposed subsection (d)(2) to new subsection (h). This will clarify that any information, not just the
31 attestation, can be filed confidentially with the Commission. If an operator deems certain information
32 confidential, subsection (h) requires that the operator file two copies of the information required under
33 §3.66 – one complete copy and one copy redacted for public inspection. This will reduce the burden on
34 Commission staff and operators and decrease the time needed to compile responsive information for a

1 Texas Public Information Act (PIA) request. However, the Commission will still follow the process
2 required under the PIA when it receives a PIA request for any information marked confidential.

3 ACSC notes that confidentiality claims should be limited and requests that the Commission
4 publicly disclose weather-related forced stoppage information on its website as well as information on
5 violations of §3.66.

6 The Commission notes that the amount of confidentiality claims is unknown at this time. It will
7 consider ACSC's comment as it begins to receive required filings.

8
9 *Subsection (e) - Inspections*

10 Sierra Club requested the Commission inspect critical infrastructure for weatherization readiness
11 at least once every two years and not just in response to a weather-related forced stoppage during a
12 weather emergency. ACSC asked for more information on the risk-based inspection prioritization process
13 required by Senate Bill 3.

14 The Commission plans to inspect facilities for compliance with §3.66 on a rotating basis and not
15 just in response to a weather-related forced stoppage or major weather-related forced stoppage. The
16 Commission adopts subsection (e) with changes to clarify the Commission's inspection process. The
17 revisions state that beginning December 1, 2022, the Commission will inspect facilities to ensure
18 compliance with this section and will prioritize inspections of oil leases and gas wells producing greater
19 than 5,000 mcf per day of natural gas and facilities storing, processing, or transporting greater than 200
20 MMcf per day of natural gas. The Commission will further prioritize inspections in descending order in
21 accordance with a facility's production volume or storage, processing, or transportation capacity. This is
22 consistent with Senate Bill 3's requirement that the Commission shall prioritize based on risk level, as
23 determined by the Commission.

24
25 *Subsection (f) – Notifications and other requirements for gas supply chain facilities and gas pipeline*
26 *facilities.*

27 The Commission received numerous comments on proposed subsection (f), which was titled
28 "Weather-related forced stoppages by a gas pipeline facility or gas supply chain facility." The
29 Commission adopts subsection (f) with several changes, including a change to the title to better reflect the
30 contents of the subsection.

31 First, the Commission reorganizes subsection (f) to separate the notification requirements based
32 on how soon the notification is required.

33 Subsection (f)(1) addresses notification of weather-related forced stoppages or forced stoppages
34 caused by a loss of electricity that occur during a weather emergency. These notifications are required

1 immediately upon the expiration of 24 hours from discovery of the stoppage if the stoppage is not
2 resolved within that 24-hour period.

3 The Commission added language to clarify that the notification requirement is triggered if a
4 weather-related forced stoppage occurs during a weather emergency. This language was added in
5 response to comments from PBPA, Oxy, Alliance, TXOGA, and Ovintiv. The Commission also added
6 language requiring notification of forced stoppages due to a loss of electricity in addition to weather-
7 related forced stoppages. The Texas Caucus on Climate, Environment, and the Energy Industry and one
8 individual commented that the Commission should require notice for all stoppages, including
9 curtailments, and that the Commission should not allow operators to circumvent the reporting
10 requirement by internally classifying an outage as not weather related. The Commission agrees that
11 forced stoppages caused by a loss of electricity, such as a curtailment, should be reported to the
12 Commission. The Commission includes that language in new subsection (f)(1) and (f)(2). The
13 Commission also adopts new subsection (f)(3) to allow notifications of forced stoppages to include
14 information such as any third-party issues that may have directly contributed to the stoppage, if
15 applicable.

16 PBPA requested clarification regarding how the Commission will handle multiple stoppages
17 within a 24-hour period. The 24-hour clock will begin from when the facility experiences the first
18 weather-related forced stoppage or forced stoppage caused by a loss of electricity. If the stoppage is not
19 resolved within 24-hours, the operator must notify the Commission.

20 TIPRO, Henry, BTA, Diamondback, and Five Stones asked that the notification requirements
21 only be triggered when a reduction in production is caused by an unexpected weather emergency so that
22 operators are not penalized for degradations of production from non-weather-related forced stoppages or
23 third-party failures.

24 The Commission notes that notification of a forced stoppage is required when a forced stoppage
25 occurs during a weather emergency. The Commission will issue a notice to operators when a weather
26 emergency occurs. Further, a weather-related forced stoppage is defined as an “unanticipated or
27 unplanned” outage due to weather conditions. Therefore, the Commission believes the rule already
28 addresses these concerns.

29 Oxy, PBPA, Alliance, TXOGA, and Ovintiv also asked for clarification regarding whether a
30 weather-related forced stoppage caused by third party failures will prompt a violation for the operator of
31 the facility that experienced the stoppage. These commenters requested language be added to subsection
32 (f) to clarify that an operator is not responsible for third-party failures.

33 Regarding operators being penalized for things outside their control, the Commission refers the
34 commenters to language proposed in subsection (f) and adopted in subsection (g) that states if a major

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1 weather-related forced stoppage or a weather-related forced stoppage was caused by a gas supply chain
2 facility's or gas pipeline facility's failure to adhere to the requirements of this section, the facility's
3 operator will be subject to an enforcement action. Conversely, a major weather-related forced stoppage or
4 weather-related forced stoppage not caused by the facility's failure to adhere to the requirements of §3.66
5 will not prompt an enforcement action for the facility's operator. The Commission declines to add the
6 requested change in subsection (f).

7 TXOGA suggested that notification "on" the Commission's 24-hour emergency telephone
8 number be changed to notification "through" the Commission's 24-hour emergency telephone number.

9 The Commission agrees and adopts the requested change in subsection (f)(1).

10 Regarding proposed language requiring immediate notification for weather-related forced
11 stoppages resulting in a certain volume of loss, APT, TIPRO, Henry, BTA, Diamondback, Five Stones,
12 and Rockcliff asked that the Commission distinguish between reporting requirements applicable to
13 producers, transporters, and other sectors.

14 As noted in the section relating to comments on subsection (b), the Commission agrees with
15 comments that the volumes proposed in subsection (f) as those triggering an immediate notification to the
16 Commission should be used to define a major weather-related forced stoppage. Because the volumes of
17 loss proposed in subsection (f) are incorporated in the definition of major weather-related forced
18 stoppage, the Commission removes the volumes from subsection (f) and instead refers to a major
19 weather-related forced stoppage. This change also addresses the comments from APT, TIPRO, Henry,
20 BTA, Diamondback, Five Stones, and Rockcliff noted in the previous paragraph.

21 New subsection (f)(2) addresses notification of major weather-related forced stoppages and
22 forced stoppages caused by a loss of electricity that result in the same volume of loss or capacity as a
23 major weather-related forced stoppage. In other words, a forced stoppage due to a loss of electricity that
24 results in: a loss of production exceeding 5,000 Mcf of natural gas per day per oil lease; a loss of
25 production exceeding 5,000 Mcf of natural gas per day per gas well; a loss of gas processing capacity
26 exceeding 200 MMcf per day; a loss of storage withdrawal capacity exceeding 200 MMcf per day; or a
27 loss of transportation capacity exceeding 200 MMcf per day.

28 Subsection (f)(2) requires notification of these stoppages within one hour of discovery.

29 Commission Shift requested clarification from the Commission on how it defines "immediate" in
30 relation to the 24-hour timeframe in proposed subsection (f).

31 Proposed subsection (f) used the term "immediate" for both types of notifications. The
32 Commission understands that this could cause confusion. The Commission makes no changes to the term
33 immediate in new subsection (f)(1). Notifications required under subsection (f)(1) shall be made

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1 immediately upon the expiration of 24 hours from discovery of the stoppage if the stoppage is not
2 resolved within that 24-hour period.

3 Subsection (f)(2) is adopted with a change to remove the term immediate and instead requires
4 notification of the stoppages described in subsection (f)(2) within one hour of discovery. This timeframe
5 is consistent with other notifications required by the Commission, such as notification of pipeline safety
6 incidents.

7 Commission Shift requested the Commission use the same units when describing thresholds of
8 gas (i.e., either designate all thresholds in Mcf or all in MMcf).

9 The Commission disagrees. Different units are commonly used for different types of facilities and
10 are also used in §3.65. Thus, the Commission chooses to make the two rules consistent.

11 Proposed subsection (f)(2) contained a requirement that a facility that experiences repeated or
12 major weather related-forced stoppages as defined in subsection (b) contract with a qualified engineer to
13 obtain an assessment of the operator's weather emergency preparation measures. This requirement was
14 incorporated to ensure consistency with Senate Bill 3. However, CrownQuest, Discovery, Diamondback,
15 PBPA, TIPRO, and TXOGA noted that the Commission's requirement went beyond what was required in
16 the statute and requested the Commission revise the language to allow consultation with a Commission
17 employee rather than require a qualified engineer. Conversely, Henry, BTA, Five Stones, and Rockcliff
18 asked that the Commission revise "qualified engineer" to "registered professional engineer" to ensure
19 consistency with other Commission rules.

20 The Commission agrees that Senate Bill 3 does not require contracting with a qualified engineer.
21 Senate Bill 3 states that the operator of a facility that experiences repeated or major forced interruptions
22 shall contract with a person who is not an employee of the operator. The Commission declines to allow an
23 operator subject to this requirement to consult with a Commission employee. The statutes added by
24 Senate Bill 3 (Natural Resources Code §86.044 and Utilities Code §121.2015) require *contracting* with a
25 person. The Commission interprets the term "contract" to exclude consultation with a Commission
26 employee. However, the Commission adopts subsection (f)(4) with a change to allow contracting with a
27 person with related experience.

28 Henry, BTA, Diamondback, Five Stones, and Rockcliff asked that the Commission add language
29 to clarify that the requirement to contract with a person under subsection (f)(4) is only applicable after a
30 hearing and final order. Endeavor requested that the requirement in subsection (f)(4) not apply if the
31 stoppage was due to an electricity failure or other third-party failure.

32 The Commission declines to incorporate the requested changes. However, the Commission notes
33 that the requirement in subsection (f)(4) will not be triggered immediately but only upon a determination

1 that the applicable weather-related forced stoppage/stoppages were due to an operator's failure to comply
2 with §3.66.

3 Henry, BTA, Diamondback, Five Stones, and Rockcliff requested the Commission give operators
4 the option of filing the engineer's assessment and operator's corrective action plan as confidential.

5 The Commission agrees. This comment is addressed by the relocated language in subsection (h).
6

7 *Subsection (g) - Enforcement*

8 PBPA, TIPRO, Henry, BTA, Diamondback, and Five Stones recommended the Commission
9 change references to "person" in subsection (g) to "operator" for consistency.

10 The Commission agrees and adopts subsection (g) with the requested change.

11 Henry, BTA, Diamondback, and Five Stones asked that subsection (g)(1) be revised to state that a
12 violation that is not remedied within a reasonable amount of time will only be referred to the Office of the
13 Attorney General after notice and opportunity for hearing.

14 The Commission agrees and adopts subsection (g) with the requested change.

15 Commission Shift and Endeavor asked the Commission to clarify what the Commission considers
16 to be a reasonable amount of time to come into compliance.

17 The Commission's position is that a reasonable amount of time will depend on the circumstances
18 of the violation.

19 PBPA, TXOGA, and Ovintiv asked that the Commission incorporate language clarifying that
20 operators will be given notice, hearing, and an opportunity to appeal as allowed in all other enforcement
21 actions at the Commission.

22 The Commission has incorporated language in subsections (g)(1) and (2) to clarify that the
23 Commission will provide notice of a violation by certified mail and the notice will give the operator 30
24 days to request a hearing.

25 Commission Shift asked whether the Commission will use the schedule of time out of compliance
26 in the Classification Table or if the Commission will consider each day a violation occurs to be a separate
27 violation as stated in proposed subsection (g). TCPA noted that proposed subsection (g) should be revised
28 to be consistent with the statutory language, which states that each day a violation "continues" may be
29 considered a separate violation.

30 The Commission agrees with TCPA and adopts subsection (g)(1) and (g)(2) with changes to
31 ensure consistency with applicable statutory language. Natural Resources Code §86.222, relating to gas
32 supply chain facilities, does not include language permitting the Commission to treat each day a violation
33 continues as a separate violation. Therefore, the Commission removes that language from subsection
34 (g)(1). Because the Commission does not have authority to treat each day a separate violation for gas

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1 supply chain facility violations, the Commission will use the time out of compliance factors for gas
2 supply chain facility violations. However, Texas Utilities Code §121.206 allows the Commission to
3 consider each day a violation continues as a separate offense. Therefore, the Commission retains this
4 option for violations by gas pipeline facility operators.

5 ACSC asked that the Commission outline penalties for failure to fully cooperate with inspectors.

6 The Commission is not aware that this situation frequently occurs such that the rule should be
7 revised. The Commission declines to adopt the requested change.

8 Endeavor asked for more guidance as to what will warrant the maximum \$1,000,000 fine.

9 The Commission notes that, in accordance with Natural Resources Code §86.222, a penalty in an
10 amount that exceeds \$5,000 may be recovered only if the violation is included in the highest class of
11 violations in the classification system. According to the Classification Table, only violations with a total
12 factor value of 15 points or more will be eligible for the \$1,000,000 penalty. The higher the total factor
13 value, the more likely the Commission will recommend a higher penalty to the Attorney General when
14 the violation is referred for penalty assessment, which will ultimately be assessed by the district court.

15 ACSC requested that subsection (g) include language stating that the Commission maintains full
16 authority to classify any violation under the rule as a top-tier Class A violation, notwithstanding any other
17 language in §3.66.

18 The Commission declines to adopt this change and instead will utilize the classification table in
19 assessing penalty amounts.

20 Commission Shift, 76 individuals, TCPA, and Sierra Club asked that the potential penalties be
21 higher than the potential cost of non-compliance.

22 The Commission finds that the potential penalties will encourage compliance. Points for each
23 factor value will be accumulated in calculating the total. Operators who intentionally choose not to
24 comply with §3.66 may be considered Class A violators. Therefore, the Commission declines to make
25 any changes in response to these comments.

26
27 *Classification Table in Subsection (g)*

28 ACSC, Commission Shift, Sierra Club, and 77 individuals asked that the Classification Table be
29 revised to allow a lower point total to result in the highest class such that more violations may be assessed
30 a penalty of greater than \$5,000.

31 The Commission notes that it will not be difficult for a violation to be classified as Class A in
32 accordance with the table. For example, an operator of a facility, regardless of size, who fails to take any
33 measures to comply with §3.66, makes no effort to remedy its violation resulting in an extended time out
34 of compliance, and creates an actual or potential hazard to health, safety, or economic welfare of the

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1 public has a total of 15 or more points. This total is achieved even without considering factors due to the
2 facility's production volume or capacity.

3 Oxy, Alliance, and TXOGA asked that the table consider an operator's overall or statewide gas
4 production. Oxy and TXOGA suggested that a line item be added to the classification table if an operator
5 keeps a certain percentage of its aggregate production within Texas online in the event there are failures
6 at a number of very lower tier, low-production leases and/or gas wells. Their comments suggested -2 for
7 70%, -3 for 80%, and -4 for 90%.

8 The Commission declines to incorporate the line items requested because an operator's amount of
9 statewide production is likely unrelated to the amount of gas it contributes to the electricity supply chain.
10 A facility subject to the requirements of §3.66 is on the electricity supply chain map and, therefore, a
11 weather-related forced stoppage in violation of §3.66 has a potential impact to the electricity supply chain
12 that is likely not resolved by the operator's ability to maintain production at facilities that are not on the
13 electricity supply chain map.

14 However, the Commission agrees that an incentive may be given to operators to redirect gas to
15 the supply chain or otherwise make up for the impact to the supply chain caused by the violation.
16 Therefore, the Commission adopts the table with new rows to allow a credit of three points if, during the
17 weather emergency in which the facility's violation occurred, the operator had no reduction in the natural
18 gas supplied to the Texas electricity supply chain. For saltwater disposal well operators, an operator can
19 obtain the credit by showing that during the weather emergency in which the facility's violation occurred,
20 the disposal well operator had no reduction in saltwater disposal capacity made available to Texas
21 electricity supply chain facilities.

22 TIPRO, Henry, BTA, Diamondback, Five Stones, and Rockcliff asked that the Commission
23 include a factor of -4 for a good faith attempt to produce during a weather emergency.

24 The Commission disagrees. The relevant inquiry is whether the operator properly took measures
25 to prepare during the weather emergency in accordance with §3.66. An operator that took no measures but
26 then attempted in good faith to produce during the weather emergency should not receive a credit.

27 TXOGA and Ovintiv requested a line item of -15 for an operator's inability to remedy a violation
28 due to conditions endangering safety of the operator's personnel.

29 The Commission declines to add the line item because the violation was issued due to a facility's
30 failure to prepare not because of a facility's inability to remedy a violation. A -15 factor value would
31 effectively remove all consequences of a failure to prepare in accordance with §3.66.

32 TIPRO, Henry, BTA, Diamondback, and Five Stones requested that production thresholds be
33 updated to reflect the possibility of degradation of production. Specifically, comments requested the

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1 threshold for gas wells and oil leases be increased from 5,000 Mcf per day to 15,000 Mcf per day or a
2 40% reduction in lease production averaged over a three-month period.

3 The Commission declines to make the requested change. As discussed in the proposal for §3.66,
4 the thresholds were chosen to correspond to thresholds for Tier 1 facilities in the Public Utility
5 Commission's guidance to electric utilities regarding prioritizing critical natural gas supply chain
6 facilities for load-shed purposes.

7 TIPRO, Henry, BTA, Diamondback, Five Stones, and Rockcliff commented that the violation
8 factor "Hazard to health, safety, or economic welfare of the public" should be amended to "Actual hazard
9 to health, safety, or economic welfare of the public."

10 The Commission agrees and adopts the table with that language.

11 The Commission appreciates all the comments submitted on the proposal.

12 The Commission summarizes the provisions adopted in §3.66 as follows. Adopted §3.66(a)(1)
13 incorporates elements from §86.044 of the Natural Resources Code and adopted §3.66(a)(2) incorporates
14 elements from Texas Utilities Code §121.2015.

15 Adopted §3.66(b) contains definitions for "gas pipeline facility" and "gas supply chain facility" to
16 further clarify which facilities are subject to the requirements of §3.66. The definitions for "gas pipeline
17 facility" and "gas supply chain facility" are consistent with Texas Utilities Code §121.2015 and Texas
18 Natural Resources Code §86.044, respectively. A gas pipeline facility is a pipeline or pipeline facility
19 regulated by the Commission under Texas Utilities Code Chapter 121. A gas supply chain facility is a
20 facility that is used for producing, treating, processing, pressurizing, storing, or transporting natural gas as
21 well as handling waste produced. These facilities include gas wells, oil leases producing casinghead gas,
22 gas processing plants, underground natural gas storage, and saltwater disposal facilities.

23 A gas supply chain facility or gas pipeline facility must be included on the electricity supply
24 chain map for §3.66 to apply to the facility. If the facility is not included on the map, the requirements of
25 new §3.66 do not apply to the facility.

26 In addition to definitions for "gas supply chain facility" and "gas pipeline facility," adopted
27 subsection (b) contains definitions for the following terms: critical component, major weather-related
28 forced stoppage, repeated weather-related forced stoppage, sustained operation, weather emergency,
29 weatherization, and weather-related forced stoppage.

30 Adopted subsection (c) contains the weather emergency preparedness standards for a gas supply
31 chain facility or a gas pipeline facility subject to §3.66 as specified in subsection (a). By December 1st of
32 each year, a gas supply chain facility operator or a gas pipeline facility operator shall implement weather
33 emergency preparation measures intended to, first, ensure the sustained operation of a gas supply chain
34 facility or a gas pipeline facility during a weather emergency.

1 Adopted subsection (c)(1)(A) states that weather emergency preparation measures intended to
2 ensure sustained operation are required during a weather emergency.

3 The definition of "weather emergency" ensures that the requirements of adopted §3.66 help
4 achieve the purpose of Senate Bill 3, which aims to stabilize the electricity supply chain. Therefore,
5 adopted §3.66 tasks operators of gas supply chain facilities and gas pipeline facilities with implementing
6 measures to ensure sustained operation when weather conditions create a risk to the electricity supply
7 chain.

8 As adopted in §3.66(c)(1)(B), by December 1st of each year, a gas supply chain facility operator
9 or a gas pipeline operator shall also implement weather emergency preparation measures intended to
10 correct known weather-related forced stoppages that prevented sustained operation of a facility because of
11 previous weather emergencies.

12 Adopted §3.66(c)(2) lists the weather emergency preparation measures that are required. First,
13 weather emergency preparation measures shall include providing training on weather emergency
14 preparations and operations to relevant operational personnel. Adopted subsection (c)(2)(B) requires
15 consideration of the risk to the health and safety of employees and protection of the environment.
16 Adopted subsection (c)(2)(C) requires weatherization of the facility using methods a reasonably prudent
17 operator would take given the type of facility, the age of the facility, the facility's critical components, the
18 facility's location, and weather data for the facility's county or counties such as data developed for the
19 Commission by the state climatologist. The Commission will periodically publish weatherization
20 practices and may include weather data developed for the Commission by the state climatologist. The
21 definition of "weatherization" is adopted with changes in subsection (b) as described in the summary of
22 comments section.

23 Adopted subsection (d) requires a gas supply chain facility operator or gas pipeline facility
24 operator to submit to the Commission a Weather Emergency Readiness Attestation by December 1st of
25 each year. The attestation must be prepared by an authorized representative of the operator entity or under
26 the authorized representative's supervision and direction and must attest that the operator implemented the
27 weather emergency preparation measures described in subsection (c). The attestation must also include an
28 attachment describing all activities the operator engaged in to implement the requirements of subsection
29 (c), including a description of the weatherization methods utilized by the operator to weatherize each type
30 of facility.

31 Additionally, subsection (d)(3) requires that for the first attestation due December 1, 2022, the
32 attestation describe corrective actions taken to mitigate known weather-related forced stoppages that
33 prevented sustained operation of the facility because of previous weather emergencies.

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1 Adopted §3.66(e) states that the Commission will inspect facilities subject to §3.66 to ensure
2 compliance with the section's requirements. The Commission notes that, generally, an inspection will
3 stem from one of two places: (1) a regular inspection of the facility conducted in accordance with the
4 Commission's inspection schedule; or (2) an inspection scheduled in response to a weather-related forced
5 stoppage notification filed under subsection (f).

6 Adopted subsection (f) is adopted with changes described in the comment summary section. It
7 contains requirements related to weather-related forced stoppages and forced stoppages due to a loss of
8 electricity. Subsection (f)(1) requires the operator of a facility that experiences a weather-related forced
9 stoppage or a forced stoppage due to a loss of electricity to notify the Commission of the stoppage if the
10 stoppage is not resolved within 24 hours of discovery. The notification is only required if the forced
11 stoppage occurs during a weather emergency. The notification shall be made to the Commission's Critical
12 Infrastructure Division's notification portal. However, if the facility experiences a stoppage described in
13 adopted subsection (f)(2), the operator shall, within one hour of discovery of the stoppage, contact the
14 Commission through the Critical Infrastructure Division 24-hour emergency telephone number. As
15 mentioned above, a notification through the portal or to the emergency number will result in an inspection
16 to determine whether the stoppage was caused by the facility's failure to adhere to the requirements of
17 adopted §3.66. If the weather-related forced stoppage was unrelated to the requirements of §3.66, the
18 facility will not be issued a violation.

19 Subsection (f)(4) incorporates requirements added to Texas Natural Resources Code §86.044 and
20 Texas Utilities Code §121.2015 by Senate Bill 3. If a gas supply chain facility or a gas pipeline facility
21 experiences repeated weather-related forced stoppages or major weather-related forced stoppages it shall
22 contract with a person with related experience to assess the facility's weather emergency preparation
23 measures, plans, procedures, and operations. "Major weather-related forced stoppage" is defined in
24 subsection (b)(4) and is adopted with changes due to comments as described above. "Repeated weather-
25 related forced stoppage" is defined in subsection (b)(5) and is also adopted with a change such that
26 "calendar year" is revised to "12-month period."

27 Adopted §3.66(g) relates to enforcement of violations of §3.66 and is adopted with changes as
28 described in the comment summary above. Texas Natural Resources Code §§86.044 and 86.222-.224
29 stipulate the enforcement process and penalties for a violation of §3.66. Pursuant to these statutes, if the
30 Commission determines that an operator has violated §3.66 and the violation is not remedied within a
31 reasonable amount of time, the Commission is required to notify the Office of the Attorney General of
32 Texas. Texas Natural Resources Code section 86.044 requires that the Attorney General initiate a suit to
33 recover a penalty for the violation. Texas Natural Resources Code section 86.222 requires the
34 Commission to establish a classification system to be used by a court for violations of §3.66. The

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1 classification system shall include a range of penalties that may be recovered for each class of violation
2 based on factors such as the nature, circumstances, extent, and gravity of a prohibited act; the hazard or
3 potential hazard created to the public's health, safety, or economic welfare; the history of previous
4 violations; the amount necessary to deter future violations; and efforts to correct the violation. Section
5 86.222 further specifies that the classification system require only the highest class of violations to be
6 eligible for a penalty exceeding \$5,000. The maximum penalty allowed by section 86.222 is \$1,000,000
7 for each offense.

8 The table in subsection (g)(1) contains the classification system required by section 86.222. It
9 incorporates the factors required by section 86.222 and assigns a factor value to each factor. The values
10 are then totaled to assign each violation a class based on point total, and the class determines the penalty
11 range. A Class A violation is the highest class of violations, making it eligible under section 86.222 for a
12 penalty amount greater than \$5,000 up to \$1,000,000.

13 Adopted subsection (g)(2) incorporates the enforcement process and penalty requirements
14 specified in Texas Utilities Code sections 121.2015 and 121.206. Section 121.2015 requires that the
15 Commission assess an administrative penalty against an operator who violates §3.66 if the violation is not
16 remedied within a reasonable amount of time. It also requires that the Commission report such violations
17 to the Attorney General. However, unlike Texas Natural Resources Code section 86.044, the Attorney
18 General is not required to file suit. Instead, the Commission is authorized to assess an administrative
19 penalty. The Commission will use the table in subsection (g)(1) to assess penalties for a violation of
20 §3.66.

21 The Commission notes that violations of §3.66 will be issued on a facility basis. The operator of a
22 facility with an alleged violation will be issued a notice of the violation and given an opportunity for a
23 hearing. A gas supply chain facility violation will be determined by the Commission and then referred to
24 the Attorney General for penalty assessment as specified in subsection (g). For a gas pipeline facility
25 violation, the Commission will determine whether there is a violation, and if so, will also assess the
26 appropriate penalty.

27 The Commission adopts the new rule under section 86.044 of the Texas Natural Resources Code,
28 which requires the Commission to adopt rules requiring certain gas supply chain facility operators to
29 implement measures to prepare to operate during a weather emergency (i.e., "weatherize"); section 86.222
30 of the Texas Natural Resources Code, which requires the Commission to establish an enforcement
31 process and penalties for violations of Commission rules adopted under section 86.044; section 121.2015
32 of the Texas Utilities Code, which requires the Commission to adopt rules requiring certain pipeline
33 facility operators to implement measures to prepare to maintain service quality and reliability during
34 extreme weather conditions; and section 121.206 of the Texas Utilities Code, which requires the

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Commission to establish an enforcement process and penalties for violations of Commission rules adopted under section 121.2015.

Statutory authority: Natural Resources Code §§86.044 and 86.222; Utilities Code §§121.2015 and 121.206.

Cross reference to statute: Natural Resources Code Chapter 86, Utilities Code Chapter 121.

§3.66. Weather Emergency Preparedness Standards.

(a) Applicability.

(1) In accordance with Texas Natural Resources Code §86.044, this section applies to a gas supply chain facility that is:

(A) included on the electricity supply chain map created under Texas Utilities Code §38.203; and

(B) designated as critical in §3.65 of this title, relating to Critical Designation of Natural Gas Infrastructure.

(2) In accordance with Texas Utilities Code §121.2015, this section applies to a gas pipeline facility that:

(A) directly serves a natural gas electric generation facility operating solely to provide power to the electric grid for the Electric Reliability Council of Texas (ERCOT) power region or for the ERCOT power region and an adjacent power region; and

(B) is included on the electricity supply chain map created under Texas Utilities Code §38.203.

(b) Definitions. In this section, the following definitions apply.

(1) Critical component--Any component, including components on equipment rented or leased from a third party, that is susceptible to weather-related interruptions, such as those caused by freezing temperatures, freezing precipitation, or extreme heat, the occurrence of which is likely to significantly hinder sustained operation of the gas pipeline or gas supply chain facility.

(2) Gas pipeline facility--A pipeline or pipeline facility regulated by the Commission under Texas Utilities Code Chapter 121.

(3) Gas supply chain facility--A facility that is:

(A) used for producing, treating, processing, pressurizing, storing, or transporting natural gas, as well as handling waste produced;

(B) not primarily used to support liquefied natural gas pretreatment, liquefaction, or regasification facilities in the business of exporting or importing liquefied natural gas to or from foreign countries;

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(C) otherwise regulated by the Commission under Subtitle B of Title 3, Texas
Natural Resources Code; and

(D) not regulated by the Commission under Texas Utilities Code Chapter 121.

(4) Major weather-related forced stoppage--A weather-related forced stoppage during a
weather emergency that is the result of the deliberate disregard of this section or that results in:

(A) a loss of production exceeding 5,000 Mcf of natural gas per day per oil lease;

(B) a loss of production exceeding 5,000 Mcf of natural gas per day per gas well;

(C) a loss of gas processing capacity exceeding 200 MMcf per day;

(D) a loss of storage withdrawal capacity exceeding 200 MMcf per day; or

(E) a loss of transportation capacity exceeding 200 MMcf per day.

(5) Repeated weather-related forced stoppage--When a gas supply chain facility or a gas
pipeline facility has more than one major weather-related forced stoppage or weather-related forced
stoppage violation within a 12-month period.

(6) Sustained operation--Safe operation of a gas pipeline facility or a gas supply chain
facility such that the facility does not experience a major weather-related forced stoppage or weather-
related forced stoppage in production, treating, processing, storage, or transportation of natural gas.

(7) Weather emergency--Weather conditions such as freezing temperatures, freezing
precipitation, or extreme heat in the facility's county or counties that result in an energy emergency as
defined by §3.65 of this title. A weather emergency does not include weather conditions that cannot be
reasonably mitigated such as tornadoes, floods, or hurricanes.

(8) Weatherization--The iterative cycle of preparedness for sustained operation during
weather emergencies that includes:

(A) correcting critical component failures that occurred during previous weather
emergencies;

(B) installing equipment to mitigate weather-related operational risks; and

(C) internal inspection, self-assessment, and implementation of processes to
identify, test, and protect critical components.

(9) Weather-related forced stoppage--An unanticipated and/or unplanned outage in the
production, treating, processing, storage, or transportation of natural gas that is caused by weather
conditions such as freezing temperatures, freezing precipitation, or extreme heat and occurs during a
weather emergency.

(c) Weather emergency preparedness standards for a gas supply chain facility or a gas pipeline
facility.

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(1) By December 1st of each year, a gas supply chain facility operator or a gas pipeline facility operator shall implement weather emergency preparation measures intended to:

(A) ensure the sustained operation of a gas supply chain facility or a gas pipeline facility during a weather emergency; and

(B) correct known major weather-related forced stoppages and weather-related forced stoppages that prevented sustained operation of a facility because of previous weather emergencies.

(2) Weather emergency preparation measures required by paragraph (1) of this subsection shall include:

(A) providing training on weather emergency preparations and operations to relevant operational personnel;

(B) consideration of the risk to the health and safety of employees and protection of the environment; and

(C) weatherization of the facility using methods a reasonably prudent operator would take given the type of facility, the age of the facility, the facility's critical components, the facility's location, and weather data for the facility's county or counties such as data developed for the Commission by the state climatologist. The Commission will periodically publish weatherization practices and may include weather data developed for the Commission by the state climatologist.

(d) Weather Emergency Readiness Attestation. By December 1 of each year, an operator of a gas supply chain facility or a gas pipeline facility shall submit to the Commission a Weather Emergency Readiness Attestation that:

(A) is signed by an authorized representative of the operator entity attesting, under penalties prescribed in Texas Natural Resources Code §91.143, that:

(i) the operator implemented the required weather emergency preparation measures described in subsection (c) of this section;

(ii) the information and statements made in the Weather Emergency Readiness Attestation are true, correct, and complete to the best of the attestor's knowledge;

(iii) the representative is authorized to sign the attestation on behalf of the operator entity; and

(v) the Weather Emergency Readiness Attestation was prepared by the authorized representative or under the authorized representative's supervision and direction;

1 (B) includes an attachment describing all activities engaged in by the operator to
2 implement the requirements of subsection (c) of this section, including a description of the weatherization
3 methods utilized by the operator to weatherize each type of facility; and

4 (C) for the Weather Emergency Readiness Attestation due December 1, 2022,
5 also describes corrective actions taken to mitigate known major weather-related forced stoppages and
6 weather-related forced stoppages that prevented sustained operation of a facility because of previous
7 weather emergencies.

8 (e) Inspection of gas supply chain facilities and gas pipeline facilities. Beginning December 1,
9 2022, the Commission will inspect facilities to ensure compliance with this section and will prioritize
10 inspections of oil leases and gas wells producing greater than 5,000 Mcf per day of natural gas and
11 facilities storing, processing, or transporting greater than 200 MMcf per day of natural gas. The
12 Commission will further prioritize inspections in descending order in accordance with a facility's
13 production volume or storage, processing, or transportation capacity.

14 (f) Notifications and other requirements for gas supply chain facilities and gas pipeline facilities.

15 (1) An operator of a gas supply chain facility or a gas pipeline facility that experiences
16 either of the following during a weather emergency shall notify the Commission immediately through the
17 Critical Infrastructure Division's notification portal if the stoppage is not resolved within 24 hours of
18 discovery of the stoppage:

19 (A) a weather-related forced stoppage; or

20 (B) a forced stoppage caused by a loss of electricity.

21 (2) An operator of a gas supply chain facility or gas pipeline facility that experiences
22 either of the following during a weather emergency shall, within one hour of discovery of the stoppage,
23 contact the Commission through the Critical Infrastructure Division's 24-hour emergency telephone
24 number. Subsequent to the phone call, the operator shall submit a notification through the Critical
25 Infrastructure Division's notification portal:

26 (A) a major weather-related forced stoppage; or

27 (B) a forced stoppage caused by a loss of electricity that results in the same
28 volume of loss in natural gas production, withdrawal capacity, processing capacity, or
29 transportation capacity as a major weather-related forced stoppage.

30 (3) The notification of the major weather-related forced stoppage or weather-related
31 forced stoppage may include information such as any third-party issues that may have directly contributed
32 to the stoppage, if applicable.

33 (4) A gas supply chain facility or a gas pipeline facility that is determined to have
34 experienced repeated weather-related forced stoppages or major weather-related forced stoppages in

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1 sustained operation during a weather emergency shall comply with this paragraph. Upon notice from the
2 Commission that the facility is required to comply with this paragraph, the facility's operator shall
3 contract with a person with related experience to assess the facility's weather emergency preparation
4 measures, plans, procedures, and operations. The person with related experience shall not be an employee
5 of the facility or its affiliate and shall not have participated in any assessments of the facility for at least
6 the previous five years, unless the facility's operator can document that no other persons with related
7 experience are reasonably available for engagement. Within the timeframe provided by the Commission,
8 the operator shall submit to the Commission a written assessment prepared by the person and the facility
9 operator's corrective action plan in compliance with the terms in the Commission's notice that the facility
10 is required to comply with this paragraph.

11 (g) Enforcement.

12 (1) Violation of this section by a gas supply chain facility operator. If a major weather-
13 related forced stoppage or weather-related forced stoppage was caused by a gas supply chain facility's
14 failure to adhere to the requirements of this section, the facility's operator will be subject to an
15 enforcement action. A gas supply chain facility operator will be given notice and opportunity for a
16 hearing for alleged violations of this section. The notice will be sent by certified mail and state the facts or
17 conduct alleged to comprise the violation. The notice will give the operator 30 days from receipt to
18 request a hearing. Pursuant to Texas Natural Resources Code §86.044 and §§86.222-.224, if after notice
19 and opportunity for a hearing, the Commission determines that an operator has violated this section and
20 the violation is not remedied in a reasonable amount of time, the Commission shall notify the Office of
21 the Attorney General of Texas of the violation in accordance with Texas Natural Resources Code
22 §86.222. The table in this paragraph contains a classification system to be used under Texas Natural
23 Resources Code §86.222 for violations of this section. The penalty for each violation may be up to
24 \$1,000,000.

25 Figure: 16 TAC §3.66(g)(1)

26 (2) Violation of this section by a gas pipeline facility operator.

27 (A) If a major weather-related forced stoppage or weather-related forced
28 stoppage was caused by a gas pipeline facility's failure to adhere to the requirements of this section, the
29 facility's operator will be subject to an enforcement action. A gas pipeline facility operator will be given
30 notice and opportunity for a hearing for alleged violations of this section. The notice will be sent by
31 certified mail and state the facts or conduct alleged to comprise the violation. The notice will give the
32 operator 30 days from receipt to request a hearing. Pursuant to Texas Utilities Code §121.2015, if after
33 notice and opportunity for a hearing, the Commission determines that an operator has violated this section
34 and the violation is not remedied in a reasonable amount of time, the Commission shall report the

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1 violation to the Office of the Attorney General of Texas. Pursuant to Texas Utilities Code §121.206, the
2 Commission shall assess an administrative penalty for a violation of this section, which may be up to
3 \$1,000,000 for each offense. Each day a violation continues constitutes a separate offense.

4 (B) In accordance with Texas Utilities Code §121.206(d), the Commission will
5 use the table in paragraph (1) of this subsection in assessing penalties for a violation of this section. The
6 penalty amounts contained in the table in paragraph (1) of this subsection are provided solely as
7 guidelines to be considered by the Commission in determining the amount of administrative penalties for
8 violations of Texas Utilities Code, Chapter 121, Subchapter E, or a safety standard or other rule
9 prescribed or adopted under that subchapter. The establishment of these penalty guidelines shall in no
10 way limit the Commission's authority and discretion to cite violations and assess administrative penalties.
11 The Commission retains full authority and discretion to cite violations of Texas Utilities Code, Chapter
12 121, Subchapter E, or a safety standard or other rule prescribed or adopted under that subchapter, and to
13 assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in
14 any case, regardless of inclusion in or omission from this section. The penalty calculation worksheet
15 shown in the table in paragraph (1) of this subsection lists the typical penalty amounts for certain
16 violators, the circumstances justifying enhancements of a penalty, and the circumstances justifying a
17 reduction in a penalty.

18 (h) Confidentiality. If a gas supply chain facility operator or a gas pipeline facility operator filing
19 information required by this section contends certain information is confidential by law, the operator shall
20 file a complete version of the required information and a version for public inspection in which the
21 confidential information has been redacted. If the Commission receives a request under the Texas Public
22 Information Act (PIA), Texas Government Code, Chapter 552, for materials that have been designated
23 confidential, the Commission will notify the filer of the request in accordance with the provisions of the
24 PIA so that the filer can take action with the Office of the Attorney General to oppose release of the
25 materials.

Figure: 16 TAC §3.66(c)(2)(D) - removed

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Figure: 16 TAC §3.66(g)(1)

Classification System

Violation Factors		Factor Value	Points Tally
Oil lease or gas well facility out of compliance with §3.66 produces an average of 5,000 Mcf or more of natural gas per day		4	
Oil lease or gas well facility out of compliance with §3.66 produces an average of 1,000 Mcf or more per day but less than 5,000 Mcf of natural gas per day		3	
Oil lease or gas well facility out of compliance with §3.66 produces an average of 500 Mcf or more per day but less than 1,000 Mcf of natural gas per day		2	
Oil lease or gas well facility out of compliance with §3.66 produces an average of 250 Mcf or more per day but less than 500 Mcf of natural gas per day		1	
Gas processing plant, underground gas storage, or gas pipeline facility out of compliance with §3.66 that resulting in a loss of processing, storage withdrawal, or transportation of 200 MMcf or more of natural gas per day		4	
Gas processing plant, underground gas storage, or gas pipeline facility out of compliance with §3.66 that results in a loss of processing, storage withdrawal, or transportation capacity 100 MMcf or more per day but less than 200 MMcf of natural gas per day		3	
Gas processing plant, underground gas storage, or gas pipeline facility out of compliance with §3.66 that results in a loss of processing, storage withdrawal, or transportation capacity of less than 100 MMcf of natural gas per day		2	
Actual Hazard to health, safety, or economic welfare of the public		5	
Potential hazard to health, safety, or economic welfare of the public		2	
Time out of compliance (calculated as days the operator fails to remedy a violation noted in a Commission notice of violation)	90 days or greater	4	
	60 days or more but less than 90 days	3	
	30 days or more but less than 60 days	2	
	5 days or more but less than 30 days	1	
Reckless conduct of operator		3	
Intentional conduct of operator		5	

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Repeat violations based on operator's history of compliance	3	
Good faith effort to remedy violation	-2	
No effort to remedy violation	5	
During the weather emergency in which the facility's violation occurred, the operator had no reduction in the natural gas supplied to the Texas electricity supply chain	-3	
During the weather emergency in which the facility's violation occurred, the operator of a saltwater disposal well had no reduction in saltwater disposal capacity made available to Texas electricity supply chain facilities.	-3	
		Total
		Penalty maximum per violation
15 points or more = Class A violation		\$More than 5,000 ¹
10-14 points = Class B violation		\$5,000
5-9 points = Class C violation		\$4,000
1-4 points = Class D violation		\$3,000

1
2 This agency hereby certifies that the rules as adopted have been reviewed by legal counsel and
3 found to be a valid exercise of the agency's legal authority.

4 Issued in Austin, Texas, on August 30, 2022.

5 Filed with the Office of the Secretary of State on August 30, 2022.

DocuSigned by:

Wayne Christian

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Wayne Christian, Chairman

DocuSigned by:

Christi Craddick

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Christi Craddick, Commissioner

DocuSigned by:

Jim Wright

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Jim Wright, Commissioner

ATTEST:

DocuSigned by:

Callie Farrar

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Secretary of the Commission

¹ Pursuant to Natural Resources Code §86.222, the required classification system shall provide that a penalty in an amount that exceeds \$5,000 may be recovered only if the violation is included in the highest class of violations in the classification system.

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Haley Cochran

Rules Attorney

Office of General Counsel

Railroad Commission of Texas