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August 15, 2022

VIA EMAIL

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

Re: *Proposed Amendments to 3 TAC § 3.66, relating to Weather Emergency Preparedness Standards—Atmos Cities Steering Committee's Comments*

Dear Sir or Madam:

On July 15, 2022, the Railroad Commission of Texas ("RRC" or "Commission") published a proposed new rule in the Texas Register, and requested comments from interested parties be filed by August 15, 2022. The Atmos Cities Steering Committee ("ACSC") appreciates the opportunity to submit comments regarding Proposed New TAC § 3.66, relating to Weather Emergency Preparedness Standards.

ACSC is a coalition of over 180 cities in North and Central Texas and has been a regular participant in the rate cases of Atmos Energy Corp. and its predecessors for approximately 27 years. More generally, city involvement in gas utility matters has a long history in Texas, and cities have been active and productive partners of the RRC in regulating gas utility rates within their municipal boundaries. City coalitions have been involved in ensuring reliable service during weather emergencies. Like others across the state, ACSC cities were severely impacted by Winter Storm Uri. ACSC appreciates the steps taken by the Legislature and the Commission to ensure cities never experience the extensive power outages and struggles with adequate gas supply that occurred in February 2021. Reliable gas and electric utility service is critical to our state.

As a general matter, ACSC supports the proposed rule and commends the RRC for taking bold steps to contribute to the health and welfare of Texas citizens and businesses. The proposed rule implements Sections 5, 6, 21 and 22 of Senate Bill 3, enacted during the 87th Legislature. The proposed rule includes detailed gas system performance measures that should allow the

RRC—in coordination with the Public Utility Commission of Texas—to further secure the energy supply chain that serves electricity customers.

In addition to supporting the rule generally, ACSC has several concerns with the proposed rule. Among them, the proposed rule lacks sufficient specificity in certain provisions and does not adequately account for future weather uncertainties, particularly in light of ongoing climate change. ACSC also recommends adding transparency provisions to the rule and calls for strengthening the Classification System for penalties.

These concerns are detailed below along with relevant recommendations.

I. EXECUTIVE SUMMARY

ACSC provides the following executive summary to its comments:

- The rule should further account for future climate uncertainty;
- The rule should include objective criteria in its Forced Stoppage definition;
- The rule should clearly mandate a December 1, 2022 compliance date;
- Transparency provisions should be added;
- The inspections process should be clarified to ensure operator compliance;
- The Violation Factors described in the proposed rule should be strengthened; and
- The rule should be clarified to ensure it does not restrict the RRC’s enforcement authority to assign Class A penalties in certain egregious cases.

II. COMMENTS

A. The rule should further account for future climate uncertainty

The table proposed in § 3.66(c)(2)(D) is based on back-cast, historic weather data. By definition, however, any *unprecedented* weather emergency would not be captured by the historical record. Given ongoing changes to the climate, Texans should expect that unprecedented weather emergencies will occur with greater frequency in the future. In consultation with the State Climatologist, the table should be modified to account for additional emergency weather risks due to potential climate change effects.

B. Include objective criteria in Forced Stoppage definition

The definition in § 3.66(b)(4) of “Major weather-related forced stoppage” lacks specificity and grants too much discretion to the Critical Infrastructure Division Director. The

subsection would allow the Critical Infrastructure Division Director in many instances to determine what constitutes a “Major weather-related forced stoppage” on a largely subjective basis. As such, objective criteria to guide the Critical Infrastructure Division Director should be added to this section.

C. Clearly mandate 2022 compliance date

Section 3.66(c)(1) calls for gas supply chain facilities and gas pipeline facility operators to comply with emergency preparation measures by December 1. The rule should clarify that initial compliance under this section begins in 2022. Gas supply chain facilities and pipeline operators have been aware since the 87th Legislative Session in 2021 that these requirements were on the horizon and so should comply with them promptly. Timely compliance with these requirements is critical to the welfare of the citizens of Texas.

D. Add transparency provisions

Confidentiality claims under § 3.66(d)(2) should be limited only to specifically justified information. That is, no sweeping claims of confidentiality should be allowed under the rule. Similarly, the rule should require public disclosure on the Commission website of any event that constitutes “a Major weather-related forced stoppage,” as defined under § 3.66(b)(f). Further, the rule should require the Commission to identify on its website those gas supply chain facility operators and gas pipeline facility operators found to have committed violations, as defined under § 3.66(g)(1) and (g)(2), as well as the details of those violations.

E. Add specificity in inspection process

Conducting a sufficient number of inspections under § 3.66(e) may prove daunting to the Commission, given the vast number of facilities in Texas covered under the new weather emergency preparedness standards. As such, § 3.66(3) should outline a risk-based inspection prioritization process, as required by Senate Bill 3 and Texas Natural Resources Code §86.044(e). The rule should also include language outlining penalties for facility operators that fail to fully cooperate with inspectors.

F. Strengthen Violation Factors

The Violation Factors found in the table at § 3.66(g)(1) should be strengthened considerably per the direction from the Legislature imposing penalty liability up to \$1 million

per violation. For instance, as the Violation Factors currently stand, a reckless violation by even a very major facility that lasted for more than 90 days and that created a “potential hazard to health, safety or economic welfare of public” might not even be considered within the highest categories of violations where the penalty amount begins at only \$5,000. In particular, more weight should be added to the Violation Factor identified as “potential hazard to health, safety, or economic welfare of public,” where gas facilities and pipelines should be on notice of the risk of a penalty as high as \$1 million per violation. Another possible means for strengthening the Violation Factors would be to lower the threshold points used to define each Class.

G. Do not restrict Commission’s lawful enforcement authority

The Violation Factors found at § 3.66(g)(1) are useful in determining the relative severity of violations, but under certain circumstances, fail to give sufficient weight to particularly egregious acts, such as those that result in massive loss of life. It is important that the classification system does not restrict the Commission’s lawful authority to cite such severe violators in an appropriate manner. As such, clarifying language should be added to § 3.66(g) to ensure the Commission maintains full authority to classify any violation under the rule as a top-tier Class A violation, notwithstanding any other language found under TAC § 3.66.

III. CONCLUSION

ACSC supports the Commission’s adoption of the new proposed rule, with modifications, as a measure of protection for the health and lives of Texans. ACSC appreciates the opportunity to comment on the proposed rule and respectfully urges the Commission to consider the foregoing comments and to adopt a rule consistent with the principles discussed in these comments.

Respectfully submitted,

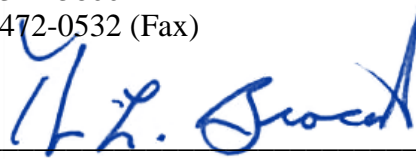
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