

Mr. Brocato's Direct Line: (512) 322-5857
Email: tbrocato@lglawfirm.com

October 29, 2021

VIA EMAIL

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

Re: *Proposed New 16 TAC § 3.65 and Proposed Amendments to § 3.107, Pursuant to H.B. 3648 and S.B. 3, 87th Texas Legislative Regular Session—Atmos Cities Steering Committee's Comments*

Dear Sir or Madam:

On September 14, 2021, The Railroad Commission of Texas ("RRC" or "Commission") published proposed amendments of its rules in the *Texas Register*,¹ and requested comments from interested parties to be filed by November 1, 2021. Therefore, these Comments are timely filed. The Atmos Cities Steering Committee ("ACSC") appreciates the opportunity to submit comments regarding *Proposed New 6 TAC § 3.65 and Proposed Amendments to § 3.107 Pursuant to H.B. 3648 and S.B. 3, 87th Texas Legislative Regular Session*.

ACSC is a coalition of 179 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. Most recently, city coalitions have become increasingly 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

¹ 46 Tex. Reg. 6458 (Oct. 1, 2021).

and the Commission to ensure cities never experience the extensive power outages and struggles with adequate gas supply that occurred last February. Reliable gas and electric utility service is critical to our state.

Generally, ACSC supports the new and proposed rules. However, we offer several comments and suggestions to adequately address the requirements of House Bill 3648 (“H.B. 3648”) and Senate Bill 3 (“S.B. 3”) from the 87th Texas Legislative Regular Session.

COMMENTS ON THE PROPOSED RULE

I. EXECUTIVE SUMMARY

As requested,² ACSC provides the following executive summary to its comments:

- The Commission should be more specific on industry-wide prioritization of critical facilities listed in § 3.65(b)(1-8) to ensure a clear pathway of any required load shed.
- The Commission should collaborate with the PUC (“PUC) to ensure uniformity across both agencies related to prioritization of utilities.
- The Commission should provide that any claimed exemption under § 3.65(d) is mutually exclusive of, and separate from, weatherization requirements.
- The Commission should provide for additional minimum requirements from utilities if claiming a critical designation exemption under § 3.65(d), and require justification of both utilities claiming an exemption as well as those requesting a critical designation.
- Penalties in amended Rule § 3.107 should increase and must adequately address the critical nature of this process to maintain consistency with risk of weatherization penalties.

² *Id.*

II. COMMENTS

New Rule § 3.65, relating to Critical Designation of Natural Gas Infrastructure, and amendments to § 3.107, relating to Penalty Guidelines for Oil and Gas Violations are proposed to implement changes made by H.B. 3648 and S.B. 3.

Newly proposed § 3.65 includes a list of critical facilities in § 3.65(b)(1-8), but fails to prioritize this list. While this is a step in the right direction, the list provides no direction to the PUC or, frankly, the industry facilities as to how to prioritize the eight critical facilities. There needs to be some guidance to both industry facilities of their level in the prioritization list, as well as guidance to the PUC. Subsequently, this would provide the necessary direction that electric utilities need when determining load shed. The way this section is currently drafted, all gas facilities are declared as critical. This runs the risk that during a weather emergency, there is no clear direction for load shed. The objective of H.B. 3648 and S.B. 3 was to protect critical infrastructure, but maintaining flexibility on the system to continue to rotate any required load shed. Without properly creating a hierarchical list of prioritized critical facilities, this rule overly protects and rotation cannot effectively occur. The State would be in the same position it was in during Winter Storm Uri, when loads needed to be cut off and could not be reconnected. This rule, as written, takes the sweeping approach that everything is critical. Contrary to S.B. 3 and H.B. 3648 requirements, the rule does not establish any process or emphasize “certain facilities,” nor does it establish criteria for designating a person who must provide critical information. Moreover, it does not consider what are “essential operational elements.” There is a balance point that this rule must meet, including determining which of the listed facilities are most critical. If the basis of the hierarchical list stems from the supply chain study in the future, as required by Section 17

of S.B. 3, that may be sufficient to address this concern. If not, there must be more guidance provided in this subsection.

The Commission should collaborate and work jointly with the PUC to ensure consistency and uniformity related to the prioritized list of most critical to least critical facilities. Collaboration is critical, because as Commission Staff notes in its Memorandum,³ the Commission does not have jurisdiction over electric utilities or the prioritization of electric load shed. While this jurisdictional assertion is accurate, collaborating with the PUC to design a priority list of most critical to least critical facilities provides direction that would be embraced by the PUC and utilized in its comparable rulemaking proceeding. While the preamble of the rule published in the *Texas Register* leaves the prioritization up to the Transmission/Distribution Service Providers (“TDSPs”), it is neither the responsibility nor the expertise of the TDSPs to determine which gas facilities are: 1) truly critical and which are not, 2) most vulnerable to the cold, 3) have backup generation, or 3) entail the greatest risk of system loss. That is the job of the Commission, established under S.B. 3.

Second, the rules should provide that any claimed exemption under § 3.65(d) is mutually exclusive of, and separate from, weatherization requirements. This Section does not make it clear that these rules and requirements are independent of weatherization requirements, thus causing confusion. In the most recent Senate Business and Commerce hearing,⁴ the Senators seemed to interpret this Section of the drafted rule as allowing for an exemption to the weatherization requirements, which was not the intent of this rule. The rule should draw a distinction between

³ See <https://www.rrc.texas.gov/media/huvofy14/final-item-263-signed-091421.pdf>—*Proposed New 16 TAC § 3.65 and Proposed Amendments to §3.107 to Implement HB 3648 and SB3*, H. Cochran Memorandum, Staff’s Recommendation at 3 (Sept. 10, 2021).

⁴ Senate Committee on Business & Commerce, 87th Leg., 3d C.S., Hearing (Sept. 28, 2021).

declaring these facilities critical (or filing for an exemption) in order to protect circuits from disconnection, and the weatherization obligations. If the facility applies for an exemption to opt-out of being declared a critical load, and it is not in operation, it should not be protected. This subsection has no exemption from opting out of weatherization, and that should be made clear.

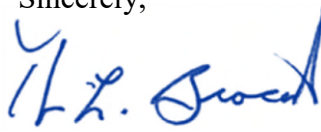
Additionally, the rules should provide for additional minimum requirements from utilities if claiming a critical designation exemption under § 3.65(d), and require justification of both utilities claiming an exemption as well as those requesting a critical designation. Utilities should be required to provide comprehensive justification to the Commission in order to allow for a more in depth understanding of the reasoning behind why the utilities are or are not prepared. This requirement would provide the foundation for the Commission to understand the distinct needs and operations of each critical facility. In addition to the justification requirement, there should be a process in place to address whether or not the designation of critical—or the exemption—is appropriate, and a determination by the Commission that approves or denies the justification based upon the evaluation. In other words, the Commission should indicate a procedure whereby it determines whether the exemption is reasonable or not.

Finally, the penalty fees in amended Rule § 3.107 should be increased to mirror the weatherization penalties. These penalties should be indicative of the importance and critical nature of this process. Currently, the penalties are no different than other penalties in the Section. If a critical facility does not provide service during an emergency for failure to properly identify as a critical facility, its failure is of no different magnitude than the failure of a critical facility to provide service during an emergency for failure to properly weatherize.

III. CONCLUSION

ACSC supports the Commission's adoption of the new and amended rules, with modifications, as a measure of protection for the health and lives of Texans and appreciates the opportunity to comment on the proposed rules. ACSC respectfully urges the Commission to consider the foregoing comments and to adopt a rule consistent with same.

Sincerely,



Thomas L. Brocato

TLB/pem