



# SIERRA CLUB

## LONE STAR CHAPTER

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Comments of the Lone Star Chapter of the Sierra Club on Proposed Weatherization Rules for Certain Pipelines and Gas Facilities.

The Lone Star Chapter of the Sierra Club appreciates the opportunity to submit these brief comments implementing sections of SB 3 related to weatherization of certain pipelines, gas wells and other facilities that are linked to the production of power in ERCOT and other grids in Texas. These rules are of the utmost importance given the failures of the gas infrastructure during Winter Storm Uri last February, but also previous failures tied to other freezing events. In fact, more than 10 years ago following problems in 2011, federal regulators recommended that the Railroad Commission (RRC) “investigate whether minimum standards for the winterization of gas production and processing facilities should be adopted.” The commission never adopted the standards, and Winter Storm Uri affected 4.5 million power customers in Texas, leading to hundreds of deaths and the largest carbon monoxide poisoning event in state history. Sierra Club supported much of SB 3, including weatherization requirements and required consultation with the State Climatologist in the development of these rules. While we continue to worry that SB 3 did not go far enough in limiting weatherization to only those facilities identified in the mapping exercise, and putting caps on penalties of

\$5,000 in many cases, we applaud the Commission for finally moving forward with this rulemaking in a timely manner.

A 2021 FERC investigation noted that natural gas fuel supply issues were the second largest cause of outages, other than electric generator freezing issues. It's critical that all the gas wells, pipelines, and parts of the gas supply chain are prepared to operate in winter storms. While we support much of the proposed rule, we believe further strengthening of the rule and clarifications are needed.

### **Making Sure Industry is Aware of Compliance Deadlines**

The Commission should provide specific written and email notice to facilities and pipelines that are required to comply with these new rules.

As noted, Senate Bill 3 specifies that only certain gas supply chain facility operators and certain gas pipeline facility operators are required to comply with Commission rules. The gas supply chain facility operators who must comply are those whose facilities are included on the electricity supply chain map created under §38.203 of the Texas Utilities Code and are designated as critical by the Commission in 16 Texas Administrative Code §3.65, relating to Critical Designation of Natural Gas Infrastructure. Similarly, the gas pipeline facility operators who must comply with Commission weatherization rules are those who are included on the electricity supply chain map and directly serve a natural gas electric generation facility operating solely to provide power to the electric grid for the ERCOT power region or for the ERCOT power region and an adjacent power region.

The Commission should clarify through written and email notice who the new rules apply to. Many operators have noted that having both written and email notice is important. Since the gas supply chain facility map is confidential, it is possible that a facility might not be aware it is subject to a rule, so we hope the Commission will provide written and email notice to all facilities and pipelines that will be subject to these new rules. While we support rigorous weatherization requirements, and strict inspection and enforcement, because of the confusion over "critical infrastructure" that resulted in the first set of rulemakings stemming from SB 3 it will be important to make clear to industry who is expected to comply with the new rule, and the timeline they have for complying.

We would support an effort by the Commission to issue guidance to operators clarifying deadlines for filing and implementation, and explaining how RRC will enforce weatherization standards for critical gas supply chain facilities that are on the final Electricity Supply Chain Map to be published on September 1.

## **Some discretion for facilities providing load resource for ERCOT**

Some facilities may be participating in providing ancillary services to ERCOT's spinning or non-spinning reserves. The Commission should consider adding some specific flexibility for these facilities since they are providing a needed resource - demand response - during times when the grid is under stress. Note we are not saying that such facilities should not weatherize if they are part of critical infrastructure, but for those facilities that register to be a load resource in an ancillary service, some flexibility should be provided so they are not caught in a regulatory loophole where they are punished for turning off power when they are used as a load resource.

## **Clean up the definitions around weather events and repeat offenders**

In the definition section, many of the proposed definitions refer to weather conditions or weather-related interruptions, "such as those caused by freezing temperatures, freezing precipitation, or extreme heat." While we do not disagree that these are conditions that can relate to interruptions, stoppage or critical components, the Commission may want to add to the conditions by including wildfires, droughts, hurricanes or other weather extremes, or simply state "or other weather extremes that could impact the gas supply" to be more inclusive in its definitions.

Furthermore, in the definition of "Repeated weather-related forced stoppage" we would suggest rather than relying on a repeat violation within a calendar year, we would suggest removing the word calendar and just make it within a year. If a facility has one violation in December of 2023 and another in January of 2024, it should be considered a repeat violation even though it was in different calendar years.

Finally, the definition of "Major weather-related forced stoppage" is very arbitrary since it relies on the Critical Infrastructure Division Director to determine when such a stoppage is major. The Commission should consider a more specific definition related to a specific standard for when a stoppage is considered major such as the volume of gas lost or where there might be specific impacts to a community.

## **The Commission did consult with the Office of State Climatology, but The Rule only looks "back" on weather data, failing to fully incorporate climate change**

While we appreciate the fact that the Commission did in fact consult with the State Climatologist on creating the specific county-level weather data being used to provide basic guidance under proposed 16 TAC 3.66 (c) (2) (D) (xx), we would not that of course looking back is not proof of what will happen in the future. The climate is

changing rapidly and we believe some consideration of the potential for more extreme cold, heat, precipitation and flood should be considered in the rules, such as creating a 10% buffer zone. At the very least we encourage the Commission to revisit the rules in a timely manner. Perhaps having some language such as: “At least once every three years, the Commission will revisit the rule, including consulting with the State Climatologist to see if updates are needed to the weatherization requirements.”

### **Inspection and Penalties should be rigorous**

We appreciate the language that all facilities subject to the rules are subject to inspection, but would ask that the Commission consider adding inspections of critical infrastructure for weatherization readiness be added as a parameter in the Commission’s annual enforcement strategy and report. We would like to see all such facilities be inspected at least once every two years, and not just inspected as a result of an emergency.

In terms of penalties, while we understand that certain caps (\$5 K per violation no more than \$1 million total) were put in statute, the Commission should do its best to ensure that potential penalties are higher than the potential cost of non-compliance. Facilities should be subject to penalties both for failing to meet weatherization requirements found in their plans, as well as actual failures that occur in a weather-related forced stoppage that are due to not implementing their plan. We do question the language that gives the Commission the authority to determine when being out of compliance with a violation is considered enforceable since the proposed rule gives broad discretion for the Commission to consider what is a reasonable amount of time. We would suggest defining that reasonable amount of time for being out of compliance such as 60 days.

We believe the Commission should also encourage operators to come back into compliance swiftly by significantly reducing the “time out of compliance” for each factor value in the penalty classification system. In other words, we would suggest assessing more points for the longer a facility is out of compliance, by raising the point total up to 5 (from 4) and adding an additional category of 45 days (90 days - 5; 60 days - 4; 45 days - 3; 30 days - 2; and 5 days - 1 point).

It is essential that the commission creates a weatherization rule and internal processes that result in a safer, more reliable gas supply chain. Texans – and Americans in other states who rely on Texas’ gas supply – are counting on you to get this right, even as we transition away from fossil fuels toward other forms of energy production.

The Lone Star Chapter looks forward to working with the Commission on timely implementation of these rules.

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