



October 7, 2022

Rule Coordinator
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**RE: Comments of Texas Electric Cooperatives, Inc.
Proposed amendments to 16 TAC §3.65, relating to critical natural gas designation**

To the Honorable Commissioners of the Railroad Commission of Texas:

Texas Electric Cooperatives, Inc. (“TEC”) respectfully submits these comments in response to the Railroad Commission of Texas’ (“RRC” or “Commission”) proposed amendments to 16 Tex. Admin. Code (“TAC”) §3.65, published for comment in the *Texas Register* on September 16, 2022 (the “Proposed Rule”). TEC is the statewide association of electric cooperatives operating in Texas, representing its members except as their interests may be separately represented.¹ The Proposed Rule directs comments to be filed by October 7, 2022. These comments are timely filed.

I. EXECUTIVE SUMMARY

TEC appreciates the RRC’s efforts to develop a more resilient energy system for Texas. The Proposed Rule is an important component of that effort. The electric grid relies on a functioning natural gas supply system, and vice versa. The Commission’s existing rule defines critical gas supplier and requires that critical facilities identify themselves to the utility from which the critical natural gas facility receives electric delivery service (“Electric Utilities”).² However, the existing rule is too broad and has resulted in a deluge of applications for critical status, creating administrative and operational challenges for TEC’s member systems and diluting the significance of being deemed a critical facility. To support a resilient gas/electric supply chain, Electric Utilities

¹ TEC’s 75 members include distribution cooperatives that provide retail electric utility service to approximately 4,000,000 consumers in statutorily authorized service areas that encompass more than half of the total area of the state. TEC’s G&T members generally acquire generation resources and power supply for their member distribution cooperatives and deliver electricity to them at wholesale.

² 16 TAC §3.65 (b)(2) and 16 TAC § 25.52 (h)(1)(a)(i).

need more particularized information regarding how to prioritize certain natural gas loads. While the Proposed Rule moves in the right direction, the types of facilities that qualify for critical designation need to be further refined. Ideally, Electric Utilities, which includes electric cooperatives, would have access to the supply chain map, which would improve operational insight. However, TEC understands the map is not subject to disclosure.³ In lieu of access to the map, TEC's comments improve transparency by proposing changes that support Electric Utilities' insight into the critical nature of natural gas facilities and by appropriately limiting the subset of facilities that play a truly critical role in providing natural gas to electric generation and other end users.

To prioritize certain critical natural gas facilities during energy emergencies and to ensure that critical facilities are prepared to operate during weather emergencies, TEC therefore respectfully requests that the RRC consider the following comments, which focus on the amended §3.65. In summary, the Proposed Rule should:

- Harmonize the definition of “energy emergency” in the proposed RRC rules with the definition of “weather emergency” in 16 TAC §25.55 of the Public Utility Commission of Texas (“PUC”) rules;
- Limit the designation of critical facilities to only those that are essential to the electricity generation supply chain;
- Allow the Electric Utility to submit a notice to the Commission requesting assistance in validating which natural gas loads perform a critical function in the supply chain. Such a notice would be submitted when the Electric Utility cannot verify if a natural gas load is critical, thus supporting truly critical load and limiting the potential impact of load shed on residential consumers and other critical customers;
- Automatically eliminate from eligibility for critical designation any facility that qualifies for an exception under proposed §3.65 (e)(2)(A), (B), or (C).

II. COMMENTS

³ Public Utility Regulatory Act (“PURA”) §38.203 (d).

A. Harmonize the definition of “energy emergency” in the proposed RRC rules with the definition of “weather emergency” in 16 TAC §25.55 of the PUC rules

The definition of a “weather emergency” should match in PUC and RRC rules given the interrelationship of the critical designation issue to the electricity and natural gas industries. The RRC defines “Weather Emergency” in 16 TAC §3.66 (b)(7) as:

§3.66 (b)(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.*”

This is in contrast to the PUC “Weather Emergency” definition in the Electric Substantive Rules, 16 TAC §25.55:

§25.55 Weather emergency “-- *A situation resulting from a summer or winter weather event that produces significant risk for a TSP that firm load must be shed or a situation for which ERCOT issues an Emergency Notice to market participants involving an operating condition*”

ERCOT issues an “Emergency Notice” when extreme hot or cold weather begins to have an adverse impact on the ERCOT system and contains the following instruction: “*Prepare for higher than usual loads and the possibility of load shedding.*”⁴ An Emergency Notice precedes an Energy Emergency Alert (“EEA”) 1 or EEA2 as the first step in ERCOT’s emergency protocols. For reference, the “Emergency Notice” for Winter Storm Uri was issued on February 13, 2021, at approximately 8:45 AM. EEA1 was declared shortly after midnight on February 15, 2021, with load shed directives issued at 1:24 AM, a roughly 41-hour difference from the Emergency Notice to the load shed directives.

TEC is concerned that the proposed change in the definition of “weather emergency”, focusing on EEA1 and EEA2, places the threshold for targeted action at a point in an emergency where there could be insufficient time to implement meaningful steps to stave off further situational deterioration. Critical natural gas facilities should be prepared to operate in an energy emergency as defined by the PUC.

⁴ ERCOT Operating Procedure Manual – Scripts, Sections T#70 and T#83.

TEC therefore recommends that the definition for Energy Emergency in proposed §3.65 (a)(1) be amended to include an Emergency Notice as follows:

In this section, the term "energy emergency" means any event that results in firm load shed or has the potential to result in firm load shed required by the reliability coordinator of a power region in Texas. An event that has the "potential to result in firm load shed" is when the reliability coordinator of a power region in Texas has issued an Emergency Notice or an Energy Emergency Alert Level 1 or 2.

In the event of an emergency like Winter Storm Uri, using the Emergency Notice for responsive action could have expedited action by a full day in order to avert grid deterioration and the need for load shedding.

B. Limit the designation of critical facilities to those that are essential to the electrical supply chain

TEC appreciates the efforts of the RRC to limit the number of facilities that can apply for a critical designation by increasing the Mcf threshold of natural gas production.⁵ Current rules allow gas leases that produce as little as 15 Mcf/day and oil leases producing gas at 50 Mcf/day⁶, to self-style as "critical". This over-designation of facilities as critical restricts the ability of Electric Utilities to manage their load shed in the event of an emergency. One TEC member reports that, following the increased number of critical gas facilities, it only has eight remaining feeders without a critical gas facility. This means that any required load shed would be limited to only those eight, mostly residential, feeder systems. In the event of a lengthy emergency, TEC members cannot support such a heavy, potentially harmful burden on their residential membership. As TEC has stated previously, if everyone is critical, then no one is critical.⁷ TEC believes that raising the production requirements is an important first step in effectively limiting the number of facilities that qualify as critical.

However, TEC is still concerned that merely limiting the amount of production, and not the reason for the production, bypasses the intention of mapping the electric supply chain and

⁵ Amend §3.65, *Critical Designation of Natural Gas Infrastructure (Senate Bill 3, 2021)*, Proposal for Publication at 7 (Sep. 16, 2022) (Proposed §3.65 (b)(1)(A) and (B)).

⁶ 16 TAC §3.65 (b)(1)(A) and (B).

⁷ *Critical Natural Gas Facilities and Entities*, Public Utility Commission of Texas Project No. 52345, Texas Electric Cooperatives, Inc.'s Comments at 1 (Oct. 7, 2021).

determining what facilities are truly critical to the production of electricity in the event of an emergency.⁸ TEC recommends that §3.65 (b)(1) be amended to further limit those facilities to only those that directly support the delivery of gas to a gas-fired electric generation facility or to end users.⁹

Under TEC's proposal, saltwater disposal facilities could still qualify as critical, for example, but only if they functioned to directly support the delivery of gas to generators or to end users. In line with this change, the RRC should update Form CI-D to require that natural gas operators provide a justification for their critical function demonstrating how the facilities directly support the provision of natural gas to generators or end users. TEC believes this would appropriately harmonize the critical facilities in the electric supply chain map, which is not subject to disclosure¹⁰, with the facilities actually eligible for a critical designation under RRC rules. Further, by including additional information in Form CI-D, Electric Utilities will have improved insight into how these facilities function in the gas/electric supply chain.

C. In addition to the amendments described above, the rule should enable the utility to provide notice to the Commission and request assistance with prioritization of critical load applications

In addition to the changes recommended above, TEC asks that the Commission provide another tool to Electric Utilities by allowing the Electric Utility to submit notice to the RRC requesting assistance from the Commission with parsing the critical load applications submitted to the provider. TEC envisions that an Electric Utility would submit such a notice to avoid shedding large amounts of residential load while continuing to serve the truly critical natural gas loads on its system. As previously mentioned, some TEC members have concerns regarding an over-saturation of designated critical natural gas facilities on their systems, meaning that the only circuits left to bear the burden of load shed during an energy emergency are likely heavily residential circuits, the very people the Commission's rules are designed to protect.

TEC cannot accept a situation where its residential members are curtailed to provide power to natural gas loads that are not truly critical to the electricity supply chain. Further, Electric Utilities generally do not have the necessary information related to the natural gas supply chain,

⁸ Senate Research Center, Committee Report, Tex. C.S.H.B. 3648, 87th Leg., R.S. (May 13, 2021).

⁹ See PURA §38.201 (a)(1).

¹⁰ PURA §38.203 (d).

and the burden should not solely be on these Electric Utilities to evaluate natural gas critical load applications, particularly for utilities that receive a high volume of applications.

TEC therefore requests that the Commission allow for the submission of a notice by an Electric Utility to the Commission to ask for assistance in validating critical load applications. Such notice would state that the utility cannot verify a natural gas load applying for designation as critical load on its system, while meeting all relevant North American Electric Reliability Corporation (“NERC”), Federal Energy Regulatory Commission (“FERC”), Electric Reliability Counsel of Texas (“ERCOT”), and PUC regulations. For many utilities, especially those with more personnel or those located farther away from significant oil and gas operations, this may not be an issue and hopefully will not be needed. For others, an opportunity to request that the RRC assist the Electric Utility in evaluating critical gas facility applications would be a valuable tool for those operating in areas that are closer in proximity to heavy oil and gas operations, and particularly for rural electric cooperatives with limited resources.

TEC is not asking for utilities to take on the task of actually determining which oil and gas facilities are critical. This would be outside the scope of the data available to an electric utility and is more appropriately determined by the Commission, as contemplated under the PUC’s definition of a “critical natural gas facility” under 16 TAC §25.52 (c)(2)¹¹. Rather, TEC is suggesting that Electric Utilities be given an avenue to request assistance from the entity with true expertise and insight into the natural gas supply chain, the RRC.

D. Automatically eliminate from eligibility for critical designation any facility that qualifies for an exception under proposed §3.65 (e)(2)(A), (B), or (C).

TEC believes that any facility that qualifies for an exception from a critical designation under §3.65 (e)(2)(A), (B), or (C) should be automatically excluded from receiving a critical facility designation. If a facility consumes all of its own gas on site¹², exports all gas out of state for consumption¹³, or does not provide gas for third party use¹⁴, then it can be reasonably assumed

¹¹ 16 TAC §25.52 (c)(2) (“Critical natural gas facility – A facility designated as a critical customer *by the Railroad Commission of Texas* under §3.65(b) of this title (relating to Critical Designation of Natural Gas Infrastructure) unless the facility has obtained an exception from its critical status. Designation as a critical natural gas facility does not guarantee the uninterrupted supply of electricity.” (emphasis added)).

¹² Proposal for Publication at 11 (Proposed §3.65 (e)(2)(A)).

¹³ *Id.* (Proposed §3.65 (e)(2)(B)).

¹⁴ *Id.* (Proposed §3.65 (e)(2)(C)).

that such a facility is not part of the electric supply chain or providing gas to Texas consumers. It would therefore be inappropriate to designate such facilities as critical, unless the facility can affirmatively demonstrate its relevance to the electric supply chain. The purpose of §3.65 and the counterpart rulemakings at the PUC are to ensure continued operation of natural gas plants deemed to be critical.¹⁵ Any facility that meets one of these exceptions is not essential to the electric supply chain or to the provision of gas to consumers in Texas and should, therefore, not be considered a critical facility. TEC requests that any facility found to qualify for an exception under §3.65 (e)(2)(A), (B), or (C) be automatically rejected by the Commission for designation as a critical facility and not qualify for critical status under §3.65 (b)(1), unless the facility can affirmatively demonstrate its relevance to the electric supply chain.

III. CONCLUSION

TEC appreciates the opportunity to comment on the Proposed Rule, and recognizes the difficult task presented to the RRC with respect to identifying critical natural gas loads in this state. TEC's comments are supported by statute and make practical sense. To give Texans a more resilient energy system, the RRC should narrow the universe of critical natural gas facilities to those with the most direct impact on electric power generation or end users.¹⁶ Outside of the scope of this proposed rulemaking focused solely on the designation of critical facilities, RRC and PUC may wish to consider a requirement for all critical facilities to have some form of backup generation in the event of an emergency in their next consideration of emergency response or weatherization requirements. TEC is available to provide any additional information that may be helpful to the RRC.

Dated: October 7, 2022

Respectfully submitted,



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¹⁵ Proposal for Publication at 1:5 – 9.

¹⁶ PURA §§ 38.201, .203, .204.

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