



TEXAS OIL & GAS ASSOCIATION | SINCE 1919

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The Texas Oil and Gas Association (TXOGA)¹ appreciates the opportunity to comment on proposed rule 3.65 relating to Critical Designation of Natural Gas Infrastructure. We believe the intent behind SB 3 is to provide increased electricity reliability during a weather emergency. We appreciate the Railroad Commission proposing changes to rule 3.65 and support the proposed changes to subsection (b)(1)(A) to increase the minimum volume for gas wells producing gas in excess of 250 Mcf/day and subsection (b)(1)(B) to increase the minimum volume for oil leases producing casinghead gas in excess of 500 Mcf/day. However, we believe additional clarifications and changes to the proposed rule are necessary to ensure the appropriate natural gas supply chain facilities are identified as critical.

Both the current rule and proposed amendments to rule 3.65 require that any facilities meeting the critical designation criteria under subsection (b), regardless of whether the facility is included on the Electricity Supply Chain Map (Map), be included on Form CI-D. To comply with the intent of SB 3 to promote reliability of Texas's electrical grid, it has been suggested by some of our members that only facilities that both meet the critical designation criteria in subsection (b) and are included on the Map should be reported on Form CI-D and included in the notification to the applicable electrical entities. The following changes to subsections (b) and (d) would clarify that only facilities meeting or exceeding the critical designation criteria in subsection (b) and included on the Map are required to be listed on Form CI-D and included in the notification to electric providers to be prioritized during a firm load shed event. This would not prohibit those that wish to be listed on Form CI-D from still doing so.

(b) Critical designation criteria. Any of the following facilities included on the electricity supply chain map are designated critical during an energy emergency, unless the Commission approves an exception under subsection (e) of this section:

...

(d) Acknowledgement of critical status. Except as provided in subsection (e) of this section, an operator of a facility designated as critical under subsection (b) or (c) of this section and included on the electricity supply chain map shall acknowledge the facility's critical status by filing Form CI-D as provided in this subsection.

The list of facilities designated as critical gas supplier can be further refined as well. Subsection (b)(1)(H) saltwater disposal facilities including saltwater disposal pipelines should be revised to include

¹ TXOGA is a statewide trade association representing every facet of the Texas oil and natural gas industry including small independents and major producers. TXOGA members produce more than 80 percent of Texas' crude oil and natural gas, operates over 80 percent of the state's refining capacity, and is responsible for the vast majority of the state's pipelines. In fiscal year 2021, the oil and natural gas industry employed more than 422,000 Texans in direct jobs and paid \$15.8 billion in state and local taxes and state royalties, funding our state's schools, roads and first responders.

only those facilities identified by the operator as necessary to leases that have critical production on the Map. Some companies maintain a number of inactive and backup saltwater disposal facilities. Having an inactive facility as critical is not prudent.

Specifically related to subsection (e), relating to filing for an exception, we request the following edit within subsection (e)(1) of rule 3.65.

~~“(e)(1) A facility listed in subsection (b) of this section that is not included on the electricity chain map produced by the Texas Electricity Supply Chain Security and Mapping Committee may apply for an exception.”~~

The exception process under section (e)(1) should apply to any facility listed in subsection (b), even if on the Map, and should allow the Director of Critical Infrastructure, or his/her delegate to grant exceptions administratively for any reason without going through the hearing process, so long as a reasonable basis and justification is provided. In practice, the RRC has limited exceptions to those listed in the rule as examples or granted via the hearing process.

Several reasons exist where a facility may meet the critical designation criteria listed in subsection (b) and be listed on the Map, but an exception to the critical designation is still necessary. These underlying instances, at a minimum, need to be allowed to be considered for an exception. For example, Enhanced Oil Recovery (EOR) leases are net power consumers and should have the ability to request an exception. In addition, there are implications for other Texas agencies’ regulations when a lease is designated as critical that would prevent operators from participating in other programs that benefit electric power customers (i.e., ERCOT Demand Response programs). This proposed change to subsection (e)(1) would ensure the rule is solely focused on critical facilities contributing to the increased electricity reliability, and additionally does not disincentivize the utilization of EOR leases which typically extend the life of aging assets and prevent waste of our state’s natural resources. Furthermore, there are some wells that, due to site specific characteristics, may not be readily able to be restarted or maintained under all operating scenarios. This could include flood prone areas and endangered species concerns.

Furthermore, if a facility meets a critical infrastructure designation under section (b) but is not identified on the Map, then it should be eligible for exception irrespective of any other factors. Not being on the supply chain map should be sufficient justification alone for an exception.

Section (a)(1) now defines what an energy emergency is, but still provides no mechanism for operators to know when an ERCOT alert is issued. We propose there be a provision in the rule that the RRC be responsible for communicating to operators when an alert from the reliability coordinator is issued. Alternatively, this should be addressed in the preamble. Otherwise, there’s still no “official” method for operators to know when an energy emergency is occurring.

Additional clarity in the rule regarding natural gas liquids (NGLs) is needed. The rule is prescriptive on natural gas but provides very little direction on NGLs. NGLs that originate at crude oil wells do not produce or supply gas and should be exempted from the “critical gas supplier” designation. We request the following edit within (b)(1)(G) of 3.65:

“(b)(1)(G) natural gas liquids transportation and storage facilities, with the exemption of natural gas liquids derived from crude oil;”

Also, Rule 3.65 (b)(1)(G) specifically includes “natural gas liquid transportation and storage facilities”; however, the critical designation exception listing in 3.65 (e) (2) “Examples of reasonable basis and justification” does not adequately address possible exceptions for natural gas liquid pipelines. It is not clear which type of NGL pipelines are intended to be included in the scope of the critical infrastructure rule. These pipelines do not produce or supply gas to power generation facilities; nor do they supply natural gas for use in the state natural gas supply chain. If a NGL pipeline is not listed on the Map; and transports NGL from a gas plant for its own use, can this pipeline system apply for an exception? Do all exceptions listed in rule 3.65 (e) (2) A - D, also apply to NGL pipelines or do these only apply to natural gas pipelines? The proposed rule amendments should specifically address what type of NGL pipelines are intended to be included in the scope of rule 3.65 to provide clarity to operators of liquid pipelines.

Lastly, there should be process in place at the relevant agencies that participate in the Electric Supply Chain Mapping and Security Committee (Mapping Committee) to include facilities on the Map and for operators or entities to appeal the inclusion of a facility on the Map. There remains a lack of transparency on what facilities are or will be included on the Map and how and when the Commission will communicate that information to operators. Further, because the Mapping Committee does not have a clear process for updates, notifications or appeals related to the Map, those entities which may be included on the Map at any time could unintentionally lead to violations of the proposed updates to 3.65 and the recently adopted 3.66. Proper notification to entities on the Map and allowing adequate time to comply with other related but separate regulatory guidelines will be critical.

Thank you for the opportunity to discuss proposed rule 3.65. We appreciate the work the Commission has undertaken to implement SB 3. We look forward to continuing to work with the Commission to ensure there is a regulatory structure in place that ensures the reliability of the natural gas supply chain.

Should you have any questions please do not hesitate to contact me at toberbeck@txoga.org or 512-478-6631.

Sincerely,



Tulsi Oberbeck
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