

PROPOSED AMENDMENTS TO § 3.65 § RAILROAD COMMISSION
RELATING TO CRITICAL §
DESIGNATION OF NATURAL GAS §
INFRASTRUCTURE § OF TEXAS

JOINT ELECTRIC UTILITIES’ COMMENTS ON PROPOSED AMENDMENTS TO § 3.65

AEP Texas Inc. (AEP Texas), Entergy Texas, Inc. (Entergy Texas), Oncor Electric Delivery Company LLC (Oncor), Southwestern Electric Power Company (SWEPCO), Southwestern Public Service Company (SPS), and Texas-New Mexico Power Company (TNMP) (collectively, the Joint Electric Utilities) provide the following comments regarding the Railroad Commission of Texas’ (Commission’s) proposed amendments to 16 Texas Administrative Code (TAC) § 3.65. The Joint Electric Utilities appreciate the collaboration by the Commission with the Public Utility Commission of Texas (PUC) on weather emergency preparedness, as well as the opportunity to comment on this proposed rule before the Commission.

The Joint Electric Utilities collectively provide electric delivery service to more than 6 million homes and businesses in Texas. SWEPCO and SPS are vertically integrated electric utilities operating within the Southwest Power Pool, Inc. (SPP) power region, and Entergy Texas is a vertically integrated electric utility operating in the Midcontinent Independent System Operator, Inc. (MISO) power region. AEP Texas, Oncor, and TNMP are electric transmission and distribution utilities (TDUs) operating within the Electric Reliability Council of Texas, Inc. (ERCOT) power region.

I. Comments

The creation of 16 TAC § 3.65 was mandated by Section 4 of Senate Bill 3, which created Texas Natural Resources Code § 81.073. Section 81.073 requires the Commission to “establish a process to designate certain natural gas facilities and entities associated with providing natural gas in this state as critical customers or critical gas suppliers during energy emergencies.” Section 81.073 further states that “[t]he rules must require that only facilities and entities that are prepared to operate

during a weather emergency may be designated as a critical customer under this section.”¹ In other words, the law prohibits natural gas entities from including non-weatherized facilities in the list of “critical” facilities they provide to the electric utility. To include such facilities would defeat the purpose of prioritizing them during a weather emergency and would potentially permit non-weatherized gas facilities to take priority on an electric utility’s load-shed list over many residential and other commercial electric customers in Texas.

Despite this statutory requirement, 16 TAC § 3.65 designates numerous types of facilities as critical customers, but does not contain a provision requiring them to weatherize nor does it contain a provision that prevents a situation where a facility seeks to be designated as critical but has not been identified on the electricity supply chain facility map. As currently drafted, 16 TAC § 3.65(b)(1) designates eight types of entities as critical gas suppliers. Subsection (b)(2) then designates a subset of critical gas suppliers as critical customers: “A critical customer is a critical gas supplier for whom the delivery of electricity from an electric entity is essential to the ability of such gas supplier to operate.” Subsection (g) requires critical customers to provide their critical customer information to the electric utilities. But despite the plain language of Texas Natural Resources Code § 81.073(b), 16 TAC § 3.65 does *not* require critical customers to weatherize. Similarly, it does not contain language that would limit the list of critical facilities to those that have been weatherized. Nor does Form CI-D or CI-D Attachment contain any such limitations. This rule and its forms do not specify that a critical natural gas facility must be prepared to operate during a weather emergency.

In order to comply with the plain language of Texas Natural Resources Code § 81.073(b)(3), the Commission must develop a method to assure the public that facilities designated as critical customers under 16 TAC § 3.65 are prepared to operate during a weather emergency.² The Joint

¹ Texas Natural Resources Code § 81.073(b)(3).

² 16 TAC § 3.66(b)(7) defines a “weather emergency” as “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

Electric Utilities recognize that the Commission created a weatherization rule (16 TAC § 3.66) intended to satisfy Texas Natural Resources Code § 86.044 and Texas Utilities Code § 121.2015. However, the Commission has not yet created a weatherization rule that satisfies Texas Natural Resources Code § 81.073(b)(3). The Commission has asserted that 16 TAC § 3.66 was developed for facilities that are designated as critical *and* are included on the electricity supply chain map.³ Thus, the Commission might be inclined to create a new, separate standard or process by which to satisfy Texas Natural Resources Code § 81.073(b)(3). However, the Joint Electric Utilities suggest that the most efficient and effective manner in which to satisfy Texas Natural Resources Code § 81.073(b)(3) would be to require all critical facilities to comply with the Commission's existing natural gas facility weatherization rule, 16 TAC § 3.66. To that end, the Joint Electric Utilities recommend the following new sub-section be added to 16 TAC § 3.65:

- (k) A facility designated as a critical customer under this section must comply with the requirements of 16 TAC § 3.66(c) and (d).

II. Conclusion

Regardless of whether the Commission creates a new, separate process or simply requires compliance with its existing weatherization rule, it must ensure critical natural gas facilities comply with the law, including the requirement to be prepared to operate during a weather emergency per Texas Natural Resources Code § 81.073(b)(3). If a facility does not meet such weatherization requirements, then it must not be designated as a critical customer for the purposes of 16 TAC § 25.52(h) relating to prioritization of critical natural gas facilities by electric utilities. To deem a non-weatherized facility as such would violate Texas Natural Resources Code § 81.073(b)(3) and

by §3.65 of this title. A weather emergency does not include weather conditions that cannot be reasonably mitigated such as tornadoes, floods, or hurricanes.”

³ See page 7, lines 17 through 32, of Staff's recommendation to adopt new 16 TAC § 3.66, dated August 30, 2022. Although not specifically cited, presumably the Commission's reference to Senate Bill 3 is to Texas Natural Resources Code § 86.044(b).

defeat the purpose of prioritizing the facility during a weather emergency.

The Joint Electric Utilities appreciate the opportunity to comment on the proposed rule and are available to respond to questions if needed.

Respectfully submitted,

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