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RAILROAD COMMISSION OF TEXAS OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Wayne Christian
Commissioner Christi Craddick
Commissioner Jim Wright

FROM: Haley Cochran, Assistant General Counsel
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel

DATE: November 1, 2022

SUBJECT: Adoption of Amendments to 16 TAC §3.65

Attached is Staff's recommendation to adopt amendments to 16 Texas Administrative Code §3.65, relating to Critical Designation of Natural Gas Infrastructure. The amendments simplify the rule language and the process for designating certain natural gas facilities and entities critical during energy emergencies.

Section 3.65 went into effect December 20, 2021. It implemented requirements from House Bill 3648 and Senate Bill 3 (87th Legislature, Regular Session) directing the Commission to adopt rules 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. The Commission's process for designating certain facilities critical has been in place for approximately ten months. During that time, the Commission has become aware of points of confusion in current §3.65. Additionally, during the comment period for proposed 16 Texas Administrative Code §3.66 (relating to Weather Emergency Preparedness Standards), the Commission received several comments requesting changes to §3.65. The Commission addresses some of those concerns with these amendments.

On August 30, 2022, the Commission approved the publication of the proposed amendments in the Texas Register for a public comment period, which ended on October 7, 2022. Staff recommends that the Commission adopt the amendments with changes to the proposed text as published in the September 16, 2022 issue of the *Texas Register* (47 TexReg 5560). The recommended changes are described in the attached adoption preamble.

cc: Wei Wang, Executive Director
Jared Ware, Director, Critical Infrastructure Division
Natalie Dubiel, Assistant General Counsel, Office of General Counsel

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1 The Railroad Commission of Texas (the "Commission") adopts amendments to §3.65, relating to
2 Critical Designation of Natural Gas Infrastructure, with changes to the proposed text as published in the
3 September 16, 2022, issue of the Texas Register (47 TexReg 5560). The amendments are adopted to
4 simplify the rule language and the process for designating certain natural gas facilities and entities critical
5 during energy emergencies.

6 Section 3.65 went into effect December 20, 2021. It implemented requirements from House Bill
7 3648 and Senate Bill 3 (87th Legislature, Regular Session) directing the Commission to collaborate with
8 the Public Utility Commission of Texas (the "PUC") to adopt rules to establish a process to designate
9 certain natural gas facilities and entities associated with providing natural gas in this state as critical
10 customers or critical gas suppliers during energy emergencies. The Commission's process for designating
11 certain facilities critical has been in place for approximately ten months. During that time, the
12 Commission became aware of points of confusion in current §3.65. Additionally, during the recent
13 comment period for proposed 16 Texas Administrative Code §3.66 (relating to Weather Emergency
14 Preparedness Standards), the Commission received several comments requesting changes to §3.65. The
15 Commission addresses some of those concerns with these adopted amendments.

16 The Commission received 35 comments on the proposal: 7 from associations, 18 from
17 companies/organizations, and 10 from individuals.

18 *Comments on proposed amendments to §3.65(a) – Definitions*

19 CrownQuest Operating (CrownQuest), Office of Public Utility Counsel (OPUC), Permian
20 Regulatory Solutions (PRS), and the Texas Oil and Gas Association (TXOGA) support the Commission's
21 proposed amendments to the definition of "energy emergency." The Commission appreciates these
22 comments.

23 TXOGA and the Texas Independent Producers and Royalty Owners Association (TIPRO)
24 requested that the Commission notify operators with facilities subject to the requirements of §3.65 when
25 the Electricity Reliability Council of Texas (ERCOT) issues an Energy Emergency Alert (EEA) 1, EEA
26 2, or EEA 3.

27 The Commission will notify operators of a weather emergency as defined in §3.66. Thus, the
28 Commission will notify operators when weather conditions result in an energy emergency, as that term is
29 modified in these amendments.

30 The Texas Competitive Power Advocates (TCPA) and Texas Electric Cooperatives (TEC)
31 suggested the Commission align the definition of "energy emergency" with the definition of "weather
32 emergency" adopted by the PUC. TCPA and TEC expressed concern that the Commission's definition of
33 "energy emergency," which focuses on ERCOT-issued EEAs, places the threshold for targeted action at a
34 point in an emergency where there could be insufficient time to implement meaningful steps to stave off

1 further situational deterioration. TCPA and TEC noted that gas facilities should address the risk of losing
2 production long before the onset of an EEA. Thus, TCPA suggested the Commission define “energy
3 emergency” more broadly to include an Operating Condition Notice, Advisory, Watch, or some other
4 threshold prior to an EEA and TEC suggested the Commission define “energy emergency” to include an
5 Emergency Notice.

6 The Commission declines to change the definition in response to these comments. The
7 requirement in the Commission’s weatherization rule, §3.66, is for facilities subject to that rule to
8 “implement measures to prepare to operate during a weather emergency.” Weather emergency is defined
9 in §3.66 as “weather conditions such as freezing temperatures, freezing precipitation, or extreme heat in
10 the facility's county or counties that result in an energy emergency as defined by §3.65 of this title.”
11 Because an energy emergency is now defined as when the reliability coordinator issues an Energy
12 Emergency Alert (EEA) 1, 2, or 3, facilities subject to §3.66 are required to implement measures to
13 prepare to operate in weather conditions that result in the issuance of an EEA 1, 2, or 3. The Commission
14 finds that if a facility has implemented measures to prepare to operate in weather conditions that cause an
15 EEA 1 or higher, then consequently, the facility is prepared to operate in less serious conditions, such as
16 those that prompt a advisory, watch, or emergency notice. Thus, the facility will be prepared to operate in
17 the period leading up to the emergency – the period about which TCPA and TEC expressed concern.

18 Henry Resources, LLC (Henry) asked that the Commission include clarifying definitions of
19 “electricity supply chain map” and “Director.”

20 The Commission agrees that adding definitions to clarify these terms is helpful and adopts
21 subsection (a) with changes to add the definitions in paragraphs (4) and (5).

22 *Comments on proposed amendments to §3.65(b) – Critical Designation Criteria*

23 Bluefin Resources, Citation Oil and Gas Corp. (Citation), Creek Energy, Inc., CrownQuest,
24 Henry, OPUC, Diamondback, PRS, Southwest Gas Systems, Stephens Engineering, Permian Basin
25 Petroleum Association (PBPA), the Texas Alliance of Energy Producers (Alliance), TXOGA, TIPRO,
26 and four individuals expressed support for the Commission’s proposed amendments in subsections
27 (b)(1)(A) and (b)(1)(B), which increase the average amount of gas a gas well or oil lease must produce for
28 it to be designated critical. The Commission appreciates the support of these commenters.

29 Diamondback requested the Commission raise the threshold to 1500 Mcf/day for oil leases. The
30 Atmos Cities Steering Committee (ACSC) and TEC also asked that the Commission further limit the list
31 of critical facilities. Conversely, Commission Shift expressed concern that too many facilities are
32 excluded and the remaining facilities designated critical will not produce enough gas to meet peak
33 demand experienced during Winter Storm Uri.

1 These four comments highlight the difficulty in striking the appropriate balance in determining
2 the amount of critical facilities -- designating too many facilities critical places a burden on electric
3 utilities when prioritizing critical loads during an energy emergency and designating too few facilities
4 critical risks losing natural gas supply to meet demand during the emergency. As the Commission noted
5 in the preamble for the proposed amendments, raising the threshold in §3.65(b)(1) to 250 Mcf/day for gas
6 wells and 500 Mcf/day for oil leases producing casinghead gas leaves 78.4% of the total natural gas
7 produced per day, or approximately 24.5 Bcf/day of natural gas, designated as critical while removing the
8 low-producing gas wells and oil leases, which aggregated together statewide only represent a small
9 portion of the natural gas production. However, they account for a large number of the facilities. Thus,
10 removing these facilities from the list reduces the burden on electric utilities and helps ensure other
11 electric customers receive power in an emergency. Additionally, gas-fired generation nameplate capacity
12 in Texas is 15 Bcf/d according to TCPA. During Winter Storm Uri, peak day demand for gas-fired
13 generation was approximately 9 Bcf/d based on American Gas Association's estimates.

14 The Commission also notes that raising the volume thresholds in subsection (b)(1)(A) and
15 (b)(1)(B) does not preclude facilities producing under the thresholds from producing gas during an energy
16 emergency. Removing those wells and leases from the critical gas supplier list merely prevents their
17 power from being prioritized by electric utilities during a load-shed event. However, the facilities may be
18 located on the same meter as another critical facility such that their power remains on and they continue
19 to produce, or they may otherwise maintain power, allowing more than 24.5 Bcf of production to be
20 available. Therefore, the Commission declines to make changes to subsection (b)(1)(A) or subsection
21 (b)(1)(B) in response to these comments.

22 ACSC also commented that the Commission has not provided enough guidance to electric
23 utilities regarding how the facilities should be prioritized. The Commission should establish a hierarchy to
24 provide direction during load shed events.

25 The Commission declines to make any changes in response to this comment. The PUC has the
26 authority to regulate electric utilities and has published guidance on how critical natural gas facilities
27 should be prioritized for load-shed purposes. The guidance is available on the PUC's website.

28 Regarding the list of facilities in subsection (b)(1), the Alliance and TXOGA requested that the
29 facilities only be designated critical if they are also included on the electricity supply chain map
30 developed by the Electricity Supply Chain Security and Mapping Committee pursuant to Senate Bill 3
31 (87th Legislature, Regular Session).

32 The Commission disagrees. The facilities on the electricity supply chain map are included on the
33 map because they are located in the natural gas supply chain for electric generation. Thus, they are
34 designated critical to ensure electric utilities prioritize their power during an energy emergency and they

1 continue to operate to provide gas for electric generation. However, facilities that are not included on the
2 map provide natural gas to other end users, notably, local distribution companies (LDCs) that serve city
3 gates. Therefore, these facilities should also remain critical.

4 Relatedly, TEC asked that the Commission further limit the list of critical facilities to only those
5 that directly support the delivery of gas to gas-fired electric generation or to end users.

6 The Commission notes that facilities that help provide gas to gas-fired electric generation and
7 other end users are those designated critical in §3.65(b)(1). Other facilities designated critical in
8 subsection (b)(1), such as saltwater disposal facilities, are included because if they lose power and are
9 unable to operate, facilities that more directly contribute to the supply chain may be unable to operate.
10 The Commission also notes that it adopts changes to the list of critical facilities in subsection (b) due to
11 other comments.

12 AVAD Operating LLC, Slant Operating, PBPA, the Alliance, and one individual asked the
13 Commission to find a solution for large waterflood/enhanced oil recovery (EOR) projects. These
14 operations cover large areas of land (often thousands of acres) and are particularly vulnerable to cold
15 weather but produce negligible volumes of casinghead gas from each unit, especially considering the
16 likelihood of high energy intensive electricity equipment required to operate a single lease.

17 The Commission understands this concern and adopts subsections (a) and (b) with changes to
18 address EOR projects. Subsection (a) is adopted with a change to define "EOR project" for the purposes
19 of §3.65 as "an enhanced oil recovery project as defined in §3.50(c)(6) of this title (relating to Enhanced
20 Oil Recovery Projects-Approval and Certification for Tax Incentive) with at least one injection well
21 permitted under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) whether or not
22 the project has received Commission approval or certification under §3.50." Changes adopted in
23 subsection (b)(1)(B) exclude EOR projects from oil leases designated critical provided the EOR project
24 consumes more energy than it produces calculated by comparing the amount of electricity used to the
25 amount of gas produced both in Million British Thermal Units (MMBTU).

26 Henry, TXOGA, the Alliance, WaterBridge Operating LLC, and Stephens Engineering
27 commented about the Commission's critical designation of saltwater disposal facilities and saltwater
28 disposal pipelines in §3.65(b)(1)(H). Henry and TXOGA requested that the Commission limit the
29 saltwater disposal facilities designated as critical to those that support the other facilities designated
30 critical in subsection (b)(1). The Alliance and WaterBridge raised concerns that the designation of all
31 saltwater disposal facilities in subsection (b)(1)(H) does not allow flexibility for saltwater disposal well
32 networks connected through pipelines. These networks allow operators to shift disposal volumes to
33 different areas if constraints arise in one part of their system. The Alliance and WaterBridge requested the
34 rule allow operators of interconnected systems to only designate as critical the portions of the network

1 necessary to ensure sufficient disposal capacity is maintained. Stephens asked for clarification on which
2 types of saltwater disposal facilities are included in subsection (b)(1)(H) and asked that critical
3 designation be limited to commercial saltwater disposal facilities.

4 The Commission declines to make changes in response to these comments. The Commission
5 prefers that operators of saltwater disposal facilities who do not want their facilities to be critical seek an
6 exception to critical designation through the process in subsection (e). If a saltwater disposal facility is not
7 on the electricity supply chain map and can provide objective evidence that it does not support a critical
8 facility listed in subsection (b)(1)(A)-(G), then it is eligible for an exception to critical designation, as
9 discussed in the section regarding comments on subsection (e) below.

10 Similarly, the Commission disagrees with the Alliance and WaterBridge that saltwater disposal
11 connected system operators should be able to determine which facilities on their system are critical. The
12 Commission notes that all saltwater disposal facilities that are not included on the electricity supply chain
13 map are now eligible to request an exception to critical designation. The Commission prefers saltwater
14 disposal facilities to go through the exception process rather than removing these facilities from the list of
15 critical facilities.

16 The Commission disagrees with Stephens that critical saltwater disposal facilities should be
17 limited to commercial facilities. The Commission defines commercial saltwater disposal facilities as those
18 whose owner or operator receives compensation from others for the storage, reclamation, treatment, or
19 disposal of oil field fluids or oil and gas wastes that are wholly or partially trucked or hauled to the
20 facility and whose primary business purpose is to provide these services for compensation. This definition
21 excludes saltwater disposal facilities that receive waste through a pipeline and the Commission
22 determines facilities that receive waste through a pipeline should be designated critical.

23 TCPA asked the Commission to provide clarity as to whether gas infrastructure facilities used to
24 export natural gas from Texas via intrastate gas pipelines to Mexico or by way of liquefied natural gas
25 (LNG) liquefaction and export terminals into the international LNG market are or should be designated as
26 critical infrastructure.

27 LNG facilities are not currently designated critical under §3.65(b)(1) and the Commission
28 declines to make changes to subsection (b) to include LNG facilities or LNG export terminals. Senate Bill
29 3 specified that the Commission's critical designation rule should designate certain facilities that are
30 associated with providing natural gas in this state. LNG being exported for the international market is
31 outside the intended scope of Senate Bill 3. Additionally, the Commission has no jurisdiction over LNG
32 export facilities. A natural gas pipeline subject to the jurisdiction of the Commission that delivers natural
33 gas to an LNG liquefaction plant may be designated critical under subsection (b)(1)(D) ("natural gas
34 pipelines and pipeline facilities including associated compressor stations and control centers"); however,

1 if the pipeline is not on the electricity supply chain map and all of the natural gas delivered by the pipeline
2 facility is consumed outside of this state, the pipeline is eligible to apply for an exception to critical
3 designation pursuant to §3.65(e).

4 TXOGA requested additional clarity regarding natural gas liquids transportation and storage
5 facilities, which are designated critical in §3.65(b)(1)(G). TXOGA suggested that natural gas liquids that
6 originate at crude oil wells be exempted from critical designation.

7 The Commission disagrees. Section 3.65(b)(1) designates as critical natural gas liquids
8 transportation and storage facilities to ensure facilities that store or carry off natural gas liquids retain
9 power. If these facilities lose power and a gas processing facility or an oil lease operator has no transport
10 or storage for natural gas liquids, then the liquids may back up and slow or stop production or processing
11 of natural gas.

12 Henry requested that the Commission clarify the term “critical customer,” in subsection (b)(2) by
13 changing the description to “a critical customer is a critical gas supplier that requires electricity to
14 operate.”

15 The Commission agrees to clarify the term “critical customer,” but does not adopt Henry’s
16 proposed language, which would inadvertently include facilities that have their own power source or
17 otherwise do not receive power from an electric entity. The Commission adopts §3.65(b)(2) with the
18 following description: “A critical customer is a critical gas supplier that requires electricity delivered by
19 an electric entity to operate.” This change ensures that only customers of electric entities are deemed
20 “critical customers” such that only true customers are required to be prioritized by the electric entities for
21 load shed purposes.

22 *Comments on proposed amendments to §3.65(c) – Request for Critical Designation*

23 Citation and PRS commented in support of the Commission’s proposed amendments to
24 subsection (c). The Commission appreciates the support of these commenters.

25 TCPA and TEC commented that facilities that qualify for an exception under the list of
26 reasonable bases and justifications in §3.65(e)(2)(A)-(C) should not be eligible to request critical
27 designation under §3.65(c).

28 The Commission agrees in part. A facility that does not contribute to the natural gas supply chain
29 in Texas should not be designated critical *unless* the facility supports a facility designated critical in
30 subsection (b)(1). To be designated critical through the process in §3.65(c), a facility’s operator must
31 show with objective evidence that the facility’s operation is required for another facility designated
32 critical in §3.65(b) to operate. The Commission retains this process in the adopted amendments to ensure
33 facilities not listed in subsection (b)(1) may apply to retain power if their operation is required for a
34 critical facility to operate.

1 ACSC requested clarification regarding the process for requesting critical designation under
2 §3.65(c). Specifically, ACSC requested clarification regarding who makes the determination that a
3 facility is critical and how that decision is made.

4 The Commission agrees to clarify the process for requesting critical designation and adopts
5 subsection (c) to state that the Critical Infrastructure Division director reviews applications submitted
6 under §3.65(c). The changes also clarify that if a request for critical designation is denied, the applicant
7 may request a hearing. The Commission notes that the determination will be made based on the whether
8 the requirements specified in subsection (c) are satisfied. Subsection (c) requires an applicant to submit
9 objective evidence that the facility requesting critical designation must operate in order for a facility
10 designated critical in subsection (b) to operate.

11 *Comments on proposed amendments to §3.65(e) – Critical Designation Exception*

12 Henry, Occidental (Oxy), PBPA, PRS, the Alliance, TXOGA, and TIPRO commented that every
13 critical facility should be able to request an exception regardless of the facility's status on the electricity
14 supply chain map.

15 The Commission declines to make any changes in response to these comments. It is the
16 Commission's understanding that the legislature does not support allowing facilities on the electricity
17 supply chain map to apply for an exception to critical designation. When §3.65 was proposed in 2021, the
18 Senate Business and Commerce Committee submitted a comment letter on the proposed rule. The letter
19 stated, "Under no circumstances should a component of the natural gas supply chain that is directly tied to
20 electric power generation be allowed to opt out of the critical designation requirements and subsequent
21 weatherization."

22 TIPRO also requested that critical facilities that are not included on the electricity supply chain
23 map be allowed to request an exception.

24 The amendments as proposed allow critical facilities not included on the electricity supply chain
25 map to request an exception if the operator's reasonable basis and justification for the exception aligns
26 with the examples provided in §3.65(e)(2).

27 The Alliance suggested that disposal wells that are disposing relatively small volumes in their
28 daily operations be allowed to apply for a critical designation exception, just as disposal wells not
29 supporting critical wells are currently allowed to do.

30 The amendments as proposed allow saltwater disposal facilities and pipelines not included on the
31 electricity supply chain map to request an exception. A reasonable basis and justification for saltwater
32 disposal facilities is added in §3.65(e)(2)(D) in response to comments below.

33 Regarding the examples of a reasonable basis and justification that may be provided with an
34 exception request, TCPA noted that there may be more than just natural gas production that is directed

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1 entirely out of state and the reasonable basis and justification in §3.65(e)(2)(B) should be amended to
2 include other types of facilities.

3 PRS and an individual requested the Commission add more bases for exception into the rule to
4 allow for more administrative exceptions and reduce the number of hearings. Henry and PBPA requested
5 that the Commission include a reasonable basis and justification specific to saltwater disposal facilities in
6 §3.65(e)(2).

7 The Commission adopts §3.65(e)(2) with changes in response to these comments. The
8 Commission adds “processed” and “delivered” in subsection (e)(2)(B) to address processing facilities and
9 pipeline facilities. The Commission also adopts new §3.65(e)(2)(D) to provide a reasonable basis and
10 justification applicable to saltwater disposal facilities. A saltwater disposal facility or saltwater disposal
11 pipeline may request an exception if it is not included on the electricity supply chain map and it provides
12 objective evidence to show that the facility or pipeline does not support a facility designated critical in
13 §3.65(b)(1)(A)-(G).

14 Stephens Engineering commented that it is impossible to provide objective evidence of where
15 lease water comes from for a non-commercial saltwater disposal facility. Thus, Stephens suggests a
16 statement from the operator should be sufficient evidence to support an exception application.

17 The Commission understands this concern but declines to remove the requirement for objective
18 evidence. To grant administrative approval without a hearing, Commission Staff must be able to verify
19 the reasonable basis and justification claimed by a facility seeking an exception to critical designation.

20 Citation asked that the Commission include in the list of reasonable bases and justifications the
21 bases and justifications approved in a final order by the Commission after a hearing. Henry also requested
22 that a reasonable basis and justification approved in a final order of the Commission be added in
23 subsection (e)(2).

24 The Commission does not agree these should be added to the rule because the list would become
25 incomplete if the Commission issues additional final orders after a hearing.

26 TXOGA commented that the examples of reasonable bases and justifications does not adequately
27 address possible exceptions for natural gas liquids pipelines.

28 The Commission notes that the list of reasonable bases and justifications is not exhaustive. Under
29 the proposed amendments, natural gas liquids facilities and pipelines are eligible to request an exception
30 if the facility/pipeline is not included on the electricity supply chain map. The Commission makes no
31 changes in response to this comment.

32 In addition to Henry’s comments requesting provisions in §3.65(e)(2) for saltwater disposal
33 facilities and a reasonable basis and justification approved after a hearing, Henry requested that the
34 following reasonable bases and justifications be added to subsection (e)(2): (1) The facility does not

1 produce gas that supports electric generation in the state; (2) Gas production reported on an oil lease basis
2 is disproportionately high when compared to gas production attributable to the individual oil wells on the
3 lease; (3) The Commission has not provided at least 30 days written notice to the operator prior to the
4 March 1 or September 1 Form CID filing deadline that the facility is included on the map; and (4) Other
5 good cause shown, including but not limited to, facilities are capable of reducing their demand in
6 response to an instruction issued by the applicable power region's reliability coordinator during certain
7 grid conditions.

8 The Commission declines to add these provisions to §3.65(e)(2). First, the Commission notes that
9 the list of reasonable bases and justifications contains examples and is not an exhaustive list. Operators
10 seeking an exception may provide objective evidence of a reasonable basis and justification not contained
11 in the list and receive administrative review. If the exception request is administratively denied, the
12 operator may request a hearing.

13 Regarding Henry's first suggestion, the Commission disagrees that a facility that does not
14 produce gas for electric generation should be able to obtain an exception on that basis alone. Facilities
15 that do not support electric generation help provide gas for other end users, such as local distribution
16 companies (LDCs) that serve city gates. Regarding Henry's second item, the Commission partly
17 addressed this concern with changes to subsection (b)(1)(B) regarding EOR projects. The Commission
18 also declines to add Henry's third item. The Commission understands operators' concerns with receiving
19 notice of their facilities on the electricity supply chain map because a facility's map status affects whether
20 it is required to weatherize pursuant to §3.66. Although §3.65 and §3.66 are related, the purpose of §3.65
21 is not solely to identify facilities required to weatherize, but to designate facilities as critical customers so
22 that critical customers' power is prioritized during a load-shed event. Thus, an operator's failure to
23 receive notice from the Commission regarding a facility's map status is not a sufficient reason to be
24 exempt from critical designation. Finally, the Commission declines to add Henry's fourth item. Section
25 3.65 already allows an operator to submit an exception application for other good cause shown, because
26 the list included in subsection (e)(2) merely contains examples. Further, it is not appropriate for the
27 Commission to make changes that impact demand response programs managed by reliability coordinators
28 and outside the Commission's authority to regulate. Operators concerned with demand response program
29 implications may contact their reliability coordinator regarding changes to these programs.

30 The Commission received several comments regarding amendments proposed in §3.65(e)(2)(D),
31 which allow an operator to submit objective evidence of an electric utility's denial of a facility's critical
32 designation application as a reasonable basis and justification in support of an exception application. The
33 Commission notes that this provision proposed in subsection (e)(2)(D) is adopted as subsection (e)(2)(E)
34 because of the new language related to saltwater disposal facilities adopted as subsection (e)(2)(D).

1 TCPA's comment stated that for the majority of Texas, the "electric entity" that will receive and
2 review critical designation forms required under 16 TAC §25.52(h) (relating to Reliability and Continuity
3 of Service) will be Transmission and Distribution Utilities (TDUs). TDUs deliver electricity, but in the
4 ERCOT competitive market, the provision of electricity is a transaction between generators and retail
5 electric providers for the benefit of providing service to the customer. Thus, TCPA suggested the word
6 "providing" in proposed subsection (e)(2)(D) be changed to "delivering."

7 The Commission appreciates this insight from TCPA and adopts §3.65(e)(2)(E) with the
8 requested change.

9 Commission Shift commented that a denial from an electric utility should not be a reason an
10 operator is eligible for an exception under subsection (e)(2) because designating facilities critical is not
11 the sole purpose of §3.65. PBPA expressed support for the proposed amendment allowing an exception if
12 a facility's critical load request is denied by their utility.

13 The Commission understands that a facility that receives an exception from critical designation is
14 no longer required to weatherize under the requirements of §3.66. The Commission considers an
15 exception to critical designation and, consequently, weatherization requirements, appropriate when a
16 facility's electric utility has communicated the facility's power will not be prioritized during a weather
17 emergency. It would be unreasonable to require an operator to invest in weatherizing a facility that is a
18 critical customer (i.e., a facility requiring electricity from an electric utility to operate) if the electric
19 utility communicates the customer's electricity will not be prioritized.

20 ACSC requested a change to subsection (e)(2)(D) to specify electric utilities' authority to deny a
21 request for critical status.

22 The Commission does not regulate electric utilities and, therefore, declines to make changes
23 addressing electric utilities' authority for denials. However, the Commission notes that Utilities Code
24 §38.074 directs electric utilities to be provided discretion to prioritize power delivery and power
25 restoration among facilities and entities designated critical, as circumstances require.

26 Commission Shift commented generally on subsection (e)(2) expressing concern that the list
27 contains examples of reasonable bases and justifications such that the Commission could routinely grant
28 exceptions for other reasons not listed in the rule.

29 Commission Shift is correct that the Commission retains discretion to approve exceptions for
30 additional reasons. However, the Commission included the examples because the Commission considers
31 those reasons sufficient. A request for an exception that does not align with the examples in subsection
32 (e)(2) would require a hearing before it could be approved.

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1 Henry requested the Commission revise §3.65(e) to require the CID director to administratively
2 approve a request for exception if the exception was previously approved for the same facility or
3 facilities.

4 The Commission declines to add the requested language. An exception will be administratively
5 approved if it meets the requirements of §3.65 at the time the exception request is filed.

6 *Other Comments*

7 Proposed amendments in subsection (e) reference the electricity supply chain map, and the
8 Commission received several comments about the map. Atmos Pipeline Texas (APT), PBPA, TXOGA,
9 and an individual asked that the Commission clarify the process operators should use for adding or
10 removing assets from the map.

11 These comments are outside the scope of this rulemaking, but the Commission will consider these
12 comments as it works to ensure the map continues to be viable and accurate.

13 An individual, WaterBridge, and Commission Shift expressed concerns about the confidentiality
14 of the electricity supply chain map.

15 The Commission does not have authority to address these concerns. The information on the
16 electricity supply chain map is deemed confidential by Texas Utilities Code §38.203.

17 ACSC and the Joint TDUs (AEP Texas Inc., Entergy Texas, Inc., Oncor Electric Delivery
18 Company LLC, Southwestern Electric Power Company, Southwestern Public Service Company, and
19 Texas-New Mexico Power Company) noted that §3.66 requires a facility to weatherize only if it is
20 designated critical under §3.65 and on the electricity supply chain map. Thus, some facilities may be
21 critical but not on the map and, therefore, are not required to weatherize. The comments stated it does not
22 make sense for utilities to have to prioritize facilities as critical if they are not required to weatherize. The
23 Joint TDUs stated the Commission should require all critical facilities to weatherize, not just those that
24 are included on the map.

25 The Commission declines to make any changes in response to these comments. The
26 Commission's authority in Natural Resources Code §86.044 to adopt rules requiring gas supply chain
27 facilities to implement measures to prepare to operate during a weather emergency (i.e., "weatherize") is
28 limited to gas supply chain facilities that are (1) included on the electricity supply chain map; and (2)
29 designated critical by the Commission. The legislature included the two elements intentionally. If the
30 legislature intended for all facilities designated critical to weatherize, it would not have included the first
31 element, which limits the list of facilities required to weatherize to those on the electricity supply chain
32 map. Requiring facilities that are not on the map to weatherize goes beyond what was authorized in
33 §86.044.

Commission Shift requested that the Commission clearly explain how both gas production and storage can meet demand needs during the next weather event. The Commission should also disclose its plan for extra supply in the event the supply chain is not functioning in all geographies. The CID should develop systems and processes to regularly compare projected gas demand against the supply that can be generated from facilities designated as critical and subject to the weatherization rule.

The Commission will not “establish a plan for extra supply” because the Commission does not have authority to require facilities to operate during a weather emergency. Further, it is not appropriate to explain production and storage availability, demand needs, or CID systems and processes in §3.65; therefore, the Commission declines to make any changes to the rule in response to these comments.

Finally, the Commission received several comments that address issues outside the scope of the proposed amendments. Two individuals, PBPA, PRS, and Southwest Gas Systems commented about experiencing difficulty with the critical designation and exception request filing processes (the Form CI-D and CI-X filings, respectively).

The Commission is working to improve the filing process and resolve any technical issues that arise. The Commission has also increased its CID staff since the first filing deadline in January 2022, and more staff members are available to assist operators when filing deadlines occur.

Commission Shift expressed concern regarding when operators transfer their critical assets between the Form CI-D filing deadlines and asked how the new operator’s contact information will be available if a weather emergency occurs during that timeframe.

The Commission understands this concern. For most critical facilities, the Commission requires a filing upon transfer of a facility to a new operator. The Commission can access this information during an emergency if necessary. The Commission is working to ensure it has accurate information for the remainder of the facilities. The Commission also notes that it coordinated with the PUC when §3.65 was adopted in 2021. The PUC and the electric utilities informed the Commission that the electric utilities create their critical load lists twice per year and cannot continually update the critical load information. Thus, to align with this process and lessen the administrative burden on the utilities, §3.65 requires critical customers to send their electric utility their critical customer information twice per year.

Commission Shift commented that the penalties for violations of §3.65 are too low to incentivize compliance.

The Commission disagrees and declines to make any changes because the penalty rule, §3.107 of this title (relating to Penalty Guidelines for Oil and Gas Violations), was not included in this rulemaking.

Commission Shift expressed concern that ERCOT is still using a redundant form and process to obtain information from operators on whether they represent a critical load. Commission Shift asked the Commission to coordinate with ERCOT to simplify the process for operators and reduce redundancies.

1 The Commission will communicate this concern to ERCOT but notes that it cannot require
2 ERCOT to change its process.

3 TEC asked the Commission to provide another tool to electric utilities by allowing electric
4 utilities to obtain assistance from the Commission in parsing critical load applications submitted to the
5 utility.

6 The Commission is available to assist electric utilities with critical load applications. The
7 Commission does not make any changes to the rule in response to this comment.

8 NGL Water Solutions requested an opportunity to engage with the Commission to discuss
9 weatherization methods for saltwater disposal wells and systems.

10 This comment is outside the scope of §3.65 but the Commission notes it will engage with
11 operators when it updates the Weatherization Practices Guidance Document on its website.

12 Finally, the Commission received a comment from an individual about hydrogen sulfide gas,
13 which is not related to §3.65, and a comment from another individual regarding Commission trainings on
14 §3.65. The Commission makes no changes in response to these comments.

15 The adopted rule language is summarized in the paragraphs below.

16 Amendments to subsection (a) provide more certainty regarding the definition of "energy
17 emergency." The Commission adopts amendments to define an event with "potential to result in firm load
18 shed" as when the reliability coordinator of a power region in Texas issues an Energy Emergency Alert
19 Level 1 or 2. More clearly defining when there is a potential for firm load shed will provide operators
20 with more certainty as to when an energy emergency is occurring.

21 Section 3.66, which was adopted concurrently when these amendments to §3.65 were proposed,
22 contains a related definition. It defines weather emergency as "weather conditions such as freezing
23 temperatures, freezing precipitation, or extreme heat in the facility's county or counties that result in an
24 energy emergency as defined by §3.65 of this title." Comments received on §3.66 noted the lack of
25 certainty in the definition due to its reference to "energy emergency" in §3.65. The adopted amendments
26 to subsection (a) address these concerns.

27 As noted above, subsection (a) is also adopted with definitions of "Director," "electricity supply
28 chain map," and "EOR project" in response to comments.

29 The Commission adopts amendments to the list of critical gas suppliers in subsection (b)(1). The
30 Commission received multiple comments on the original proposal of §3.65 expressing concern that the
31 list of critical gas suppliers encompassed too many facilities such that electric utilities may experience a
32 burden in prioritizing the facilities for load-shed purposes. Similarly, comments on §3.66 requested
33 reducing facilities on the list by excluding more gas wells and oil leases with marginal production. The

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1 amendments now adopted in §3.65(b)(1) exclude gas wells producing an average of 250 Mcf of natural
2 gas per day or less and oil leases producing an average of 500 Mcf of natural gas per day or less.

3 The Commission also adopts subsection (b)(1)(B) with changes due to comments on EOR
4 projects.

5 Third, adopted amendments in subsections (c), (e), and (f) revise requirements triggered by a
6 critical gas supplier's inclusion on the electricity supply chain map produced by the Texas Electricity
7 Supply Chain Security and Mapping Committee. Changes to subsection (c) allow a facility that is not
8 designated a critical gas supplier in subsection (b) an exemption from filing Form CI-D. Additional
9 amendments are adopted in subsection (c) in response to comments requesting clarification on the process
10 to request critical designation.

11 Amendments to subsection (e) and (f) clarify that if a facility designated critical in subsection (b)
12 is included on the electricity supply chain map, it is not eligible to request an exception from critical
13 designation.

14 Adopted changes to subsection (e) and (f) restate the exception process to affirmatively state
15 which facilities are eligible for an exception rather than stating the facilities that are not eligible for an
16 exception. The amendments remove the current language in subsection (e) and make current subsection
17 (f) new subsection (e).

18 Adopted subsection (e) states that a facility designated critical under subsection (b) may request
19 an exception unless the facility is included on the electricity supply chain map. The amendments also
20 clarify the acceptable reasons for requesting an exception. The reasons are examples which are intended
21 to capture the Commission's goal that facilities contributing natural gas to the supply chain in Texas are
22 not eligible for an exception. Subsection (e)(2)(A) and (e)(2)(C) were included in the original proposal of
23 §3.65 when it was adopted effective December 20, 2021. In this rulemaking, the exceptions are moved
24 from subsection (e)(1) to the list in subsection (e)(2). Adopted subsection (e)(2)(B) adds language
25 consistent with Natural Resources Code §81.073, which states, "The commission shall collaborate with
26 the Public Utility Commission of Texas to adopt rules to establish a process to designate certain natural
27 gas facilities and entities associated with providing natural gas *in this state* as critical customers or critical
28 gas suppliers during energy emergencies" (emphasis added).

29 The Commission adopts subsection (e)(2) with changes to include new subsection (e)(2)(D),
30 which provides a reasonable basis and justification specific to saltwater disposal facilities in response to
31 comments.

32 Regarding adopted subsection (e)(2)(E), proposed as subsection (e)(2)(D), it is the Commission's
33 understanding that some facilities designated critical customers were denied as critical loads by their
34 electric utilities. This decision is in the electric utility's discretion. However, if a critical facility is denied

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as a critical load, the amendments allow the facility to request an exception such that it is not required to comply with §3.65. The exception will not be approved if the utility's denial was not communicated in writing or was due to errors made by the critical facility in submitting its critical customer information. Similarly, the exception will not be approved if the denial was based on the utility's administrative reasons, such as the facility's power is already prioritized due to its location on a meter that is already a critical load.

Other adopted amendments merely update internal references due to the removal of subsection (e) and the renaming of subsection (f).

The Commission adopts the amendments under Texas Natural Resources Code §81.073, which requires the Commission to adopt rules to establish a process to designate natural gas facilities and entities associated with providing natural gas in this state as critical customers or critical gas suppliers during an energy emergency; and Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

Statutory authority: Natural Resources Code §§81.051, 81.052, and 81.073.

Cross reference to statute: Natural Resources Code Chapter 81.

§3.65. Critical Designation of Natural Gas Infrastructure.

(a) Definitions.

(1) 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 Energy Emergency Alert Level 1 or 2.

(2) In this section, the term "critical customer information" means the information required on Commission Form CI-D and any attachments.

(3) In this section, "any volume of gas indicated in Mcf/day" means the average daily production from the well's six most recently filed monthly production reports. Wells without six months of production reports shall average the production from the well's production reports on file with the Commission or use the production volume from the well's initial potential test or deliverability test if the well has not yet filed a production report.

(4) In this section, the term "electricity supply chain map" means the electricity supply chain map produced by the Texas Electricity Supply Chain Security and Mapping Committee.

1 (5) In this section, the term "Director" means the Director of the Critical Infrastructure
2 Division or the director's delegate.

3 (6) In this section, the term "EOR project" means an enhanced oil recovery project as
4 defined in §3.50(c)(6) of this title (relating to Enhanced Oil Recovery Projects-Approval and Certification
5 for Tax Incentive) with at least one injection well permitted under §3.46 of this title (relating to Fluid
6 Injection into Productive Reservoirs) whether or not the project has received Commission approval or
7 certification under §3.50 of this title.

8 (b) Critical designation criteria. The following facilities are designated critical during an energy
9 emergency:

10 (1) Critical Gas Supplier. The following facilities are designated a critical gas supplier:

11 (A) gas wells producing gas in excess of 250 ~~[15]~~ Mcf/day;

12 (B) oil leases producing casinghead gas in excess of 500 ~~[50]~~ Mcf/day, except for
13 EOR projects provided the EOR project consumes more energy than it produces calculated by comparing
14 the amount of electricity used to the amount of gas produced both in Million British Thermal Units
15 (MMBTU);

16 (C) gas processing plants;

17 (D) natural gas pipelines and pipeline facilities including associated compressor
18 stations and control centers;

19 (E) local distribution company pipelines and pipeline facilities including
20 associated compressor stations and control centers;

21 (F) underground natural gas storage facilities;

22 (G) natural gas liquids transportation and storage facilities; and

23 (H) saltwater disposal facilities including saltwater disposal pipelines.

24 (2) Critical Customer. A critical customer is a critical gas supplier that requires ~~for~~
25 ~~whom the delivery of~~ electricity delivered by ~~[from]~~ an electric entity ~~[is essential to the ability of such~~
26 ~~gas supplier]~~ to operate. A critical customer is required to provide critical customer information pursuant
27 to subsection ~~(f)~~ ~~[(g)]~~ of this section to the electric entities described in §25.52(h) of this title (relating to
28 Reliability and Continuity of Service) and Texas Utilities Code §38.074(b)(1) so that those electric
29 entities may prioritize the facilities in accordance with Texas Utilities Code §38.074(b)(2) and (b)(3).
30 Priority for load shed ~~[load-shed]~~ purposes during an energy emergency is described by §25.52(h)(2) of
31 this title and any guidance issued thereunder by the Public Utility Commission.

32 (c) Request for critical designation if not designated critical in subsection (b) of this section.

33 ~~[(1)]~~ A facility that is not designated critical under subsection (b) of this section may
34 write to the Commission to apply to be designated critical if the facility's operation is required in order for

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1 another facility designated critical to operate. The applicant shall include objective evidence that the
2 facility's operation is required for another facility designated critical in subsection (b) of this section to
3 operate. The director will review the application and if the application is [H] approved, the facility shall
4 submit Form CI-D. If the request is denied, the applicant may request a hearing.

5 ~~[(2) A facility that is not designated critical under subsection (b) of this section but that is~~
6 ~~included on the electricity supply chain map produced by the Texas Electricity Supply Chain Security and~~
7 ~~Mapping Committee shall write to the Commission to apply to be designated critical, and after approval,~~
8 ~~shall submit Form CI-D].~~

9 (d) Acknowledgment of critical status. Except as provided by subsection (e) ~~[(f)]~~ of this
10 section, an operator of a facility designated as critical under subsection (b) or (c) of this section shall
11 acknowledge the facility's critical status by filing Form CI-D as provided in this subsection. In the year
12 2022, the Form CI-D acknowledgment shall be filed bi-annually by January 15, 2022, and either
13 September 1, 2022, or 30 days from the date the map is produced by the Texas Electricity Supply Chain
14 Security and Mapping Committee, whichever is later. Beginning in 2023, the Form CI-D
15 acknowledgment shall be filed bi-annually by March 1 and September 1 of each year.

16 ~~[(e) Facilities not eligible for an exception. Because of their contribution to the natural gas supply~~
17 ~~chain, the following facilities designated critical under subsection (b) of this section are not eligible for an~~
18 ~~exception under subsection (f) of this section:]~~

19 ~~[(1) a facility included on the electricity supply chain map produced by the Texas~~
20 ~~Electricity Supply Chain Security and Mapping Committee;]~~

21 ~~[(2) gas wells or oil leases producing gas or casinghead gas in excess of 250 Mcf/day;]~~

22 ~~[(3) gas processing plants;]~~

23 ~~[(4) natural gas pipelines or pipeline facilities that directly serve local distribution~~
24 ~~companies or electric generation;]~~

25 ~~[(5) local distribution company pipelines or pipeline facilities;]~~

26 ~~[(6) underground natural gas storage facilities;]~~

27 ~~[(7) natural gas liquids storage and transportation facilities; and]~~

28 ~~[(8) a saltwater disposal facility, including a saltwater disposal pipeline, that supports a~~
29 ~~facility listed in paragraphs (1) through (7) of this subsection.]~~

30 (e) ~~[(f)]~~ Critical designation exception.

31 (1) A facility listed in subsection (b) of this section that is not included on the electricity
32 supply chain map produced by the Texas Electricity Supply Chain Security and Mapping
33 Committee ~~[other than those identified in subsection (e) of this section]~~ may apply for an exception. An
34 applicant shall demonstrate with objective evidence a reasonable basis and justification in support of the

1 application[, such as all of the gas produced at a facility is for on-site consumption, or the facility does not
2 otherwise provide gas for third-party use]. The Director of the Critical Infrastructure Division will
3 administratively approve or deny a request for an exception. If the request is denied, the Division will
4 notify the applicant and the applicant may request a hearing to challenge the denial. The party requesting
5 the hearing shall have the burden of proof.

6 (2) Examples of a reasonable basis and justification for which an exception may be
7 granted include, but are not limited to, the following:

8 (A) All of the natural gas produced at the facility is consumed on site;

9 (B) All of the natural gas produced, processed, or delivered by the facility is
10 consumed outside of this state;

11 (C) The facility does not provide gas for third-party use;

12 (D) For saltwater disposal facilities and saltwater disposal pipelines, the facility
13 or pipeline does not support a facility designated critical in subsection (b)(1)(A)-(G) of this section; or

14 (E) The electric entity delivering electricity to the facility has provided notice
15 that the facility's request for critical designation status was rejected, denied, or otherwise disapproved by
16 the electric utility; provided, however, that the electric utility communicated its determination in writing,
17 and the decision was for reasons other than the lack of correct identifying information or other
18 administrative reasons.

19 (3) [(2)] An applicant for exception shall submit a Form CI-X exception application that
20 identifies each facility for which an exception is requested. The Form CI-X shall be accompanied by an
21 exception application fee. The amount of the fee is \$150 as established in Chapter 81, Texas Natural
22 Resources Code.

23 (A) In the year 2022, the Form CI-X exception application shall be filed bi-
24 annually by January 15, 2022, and either September 1, 2022, or 30 days from the date the map is
25 produced by the Texas Electricity Supply Chain Security and Mapping Committee, whichever is later.
26 Beginning in 2023, the Form CI-X exception application shall be filed bi-annually by March 1 and
27 September 1 of each year.

28 (B) Once an operator has an approved Form CI-X on file with the Commission,
29 the operator is not required to pay the \$150 exception application fee when the operator updates the
30 facilities identified on its Form CI-X.

31 (f) [(g)] Providing critical customer information. A critical customer shall provide the critical
32 customer information to the electric entities described in §25.52 of this title and Texas Utilities Code
33 §38.074(b)(1) unless the critical customer is granted an exception under subsection (e) [(f)] of this
34 section. The critical customer information shall be provided in accordance with §25.52 of this title. The

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operator shall certify on its Form CI-D that it has provided the critical customer information to its electric entity.

(g) [(h)] Confidentiality of information filed pursuant to this section. A person filing information with the Commission that the person contends is confidential by law shall notify the Commission on the applicable form. If the Commission receives a request under the Texas Public Information Act (PIA), Texas Government Code, Chapter 552, for materials that have been designated confidential, the Commission will notify the filer of the request in accordance with the provisions of the PIA so that the filer can take action with the Office of the Attorney General to oppose release of the materials.

(h) [(i)] Exceptions not transferable. Exceptions are not transferable upon a change of operatorship. When a facility is transferred, both the transferor operator and the transferee operator shall ensure the transfer is reflected on each operator's Form CI-D or Form CI-X when the applicable form update is submitted in accordance with the bi-annual filing timelines in subsections (d) and (e) [(f)] of this section. If the facility has an exception under subsection (e) [(f)] of this section, the exception shall remain in effect until the next bi-annual filing deadline. If the transferee operator seeks to continue the exception beyond that time period, the transferee operator shall indicate the transferred facility on the Form CI-X pursuant to subsection (e) [(f)] of this section.

(i) [(j)] Failure to file or provide required information. An operator who fails to comply with this section may be subject to penalties under §3.107 of this title (relating to Penalty Guidelines for Oil and Gas Violations).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 1, 2022.

Filed with the Office of the Secretary of State on November 1, 2022.

DocuSigned by:

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Wayne Christian, Chairman

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ATTEST:

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