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General Comment

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Comment

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New §3.66, Weather Emergency Preparedness Standards

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Comments concerning proposed rulemakings

Comment 1 - "Proposed subsection (f) addresses weather-related forced stoppages experienced by a gas supply chain facility or gas pipeline facility. Proposed subsection (f)(1) requires a facility that experiences a weather-related forced stoppage in sustained operations during a weather emergency to notify the Commission of the stoppage if the stoppage is not resolved within 24 hours of discovery. The notification is only required if the weather-related forced stoppage occurs during a weather emergency." The phrasing allows a loophole whereby operators can avoid reporting a stoppage if they classify it as non-weather related. Given some ambiguity in this determination, especially if nobody is on location if production were to shut down automatically, it would be preferable for all stoppages during weather events to be reported and classified by cause. This would greatly improve the information available to the Commission to detect and respond to weather related stoppages.

Comment 2 - "The Commission recognizes that it does not have jurisdiction to require a facility to operate and that is not what proposed §3.66 requires. Instead, proposed §3.66 requires an operator to implement measures to prepare to operate in a weather emergency as specified in §3.66(c). In determining whether a facility that experiences a weather-related forced stoppage during a weather emergency has violated §3.66, the relevant inquiry is whether the weather-related forced stoppage was due to the operator's failure to implement measures to prepare to operate in a weather emergency." This clause, even if required by the Senate bill, opens a large loophole whereby operators can spend minimally on weatherization then "choose" not to operate. Given Senate bill constraints, at a minimum it seems prudent to at least close loopholes on the reporting requirements as noted in Comment 1. In the case of voluntary shutdowns, operators should be required to

provide a detailed explanation. This will facilitate the Commission's ability to detect and respond to under weatherization investments and market manipulation. Comment 3 - The classification system is insufficiently stringent to adequately incentivize operators to weatherize. Penalties <\$5,000 are utterly insufficient to incentivize weatherization. The threshold required to meet a Class A threshold, and allow penalties >\$5,000, is simply too high. For example, the largest class of facility (factor=4), in a situation causing hazards to health, safety, or economic welfare of the public (factor=5), in an event the duration of Winter Storm Uri (factor=1-2), would be assessed a fine of <\$5,000. Even if "reckless conduct of operator" (factor=3) or "repeat violations based on operator's history of compliance" (factor=3) are met, the threshold for assessing penalties >\$5,000 is not met. This indicates a deficient threshold to appropriate enforcement. It is likely that showing either "Intentional conduct of operator" or "No effort to remedy violation" would be required to meet the current minimum 15 point threshold to assess penalties >\$5,000. The standard of proof to demonstrate either of these would be very difficult to meet in most cases. The thresholds should, at the very minimum, be structured so that large facilities can be assessed penalties >\$5,000 if the facilities demonstrate reckless conduct or repeated violations. I recommend lowering the class violation thresholds to the following: 10 points or more = Class A violation 6-9 points = Class B violation 2-5 points = Class C violation 1-2 points = Class D violation

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