

**PROPOSED NEW 16 TAC § 3.66
TO IMPLEMENT SB 3 SECTIONS
5, 6, 21, 22**

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**RAILROAD COMMISSION

OF TEXAS**

**OFFICE OF PUBLIC UTILITY COUNSEL’S INITIAL COMMENTS
ON THE TEXAS RAILROAD COMMISSION’S PROPOSED NEW 16 TAC § 3.66**

The Office of Public Utility Counsel (“OPUC”) respectfully submits these comments on the Proposal for Publication (“PFP”) approved by the Railroad Commission of Texas (“RRC”) on June 28, 2022. The RRC proposes a new 16 Texas Administrative Code (“TAC”) § 3.66, relating to Weather Emergency Preparedness Standards, to implement Texas Natural Resources Code (“TNRC”), §§ 86.044 and 86.222, and Texas Utility Code (“TUC”), §§ 121.2015 and 121.206.

Specifically, the proposed § 3.66 requires certain pipeline facilities and gas supply chain facilities to implement weatherization preparedness measures for operation during an energy emergency associated with extreme weather conditions.¹ The PFP implements several changes for these designated critical pipeline and gas supply chain facilities within the Electric Reliability Council of Texas (“ERCOT”) power region under proposed § 3.66 (a), as defined by the RRC, and to certain entities described by TUC § 121.2015.²

OPUC appreciates the RRC’s efforts to implement effective weatherization standards that would prevent or lessen the impact of major weather events on electric service within ERCOT. OPUC believes that formalizing rules that require a designated critical facility to implement weatherization measures and notify the RRC if they are out of compliance with the weatherization requirements, is necessary to carry out the statutory requirements of SB 3. However, there are no standards or definitions as to what qualifies a facility as safely operating during a weather emergency, only that this aids in sustained operation.³ Proposed § 3.66 requires a more robust reporting to include continuous mitigation and additional efforts for stoppages in the attestation reports due every December—not just the first one in 2022, to help ensure best practices.⁴

¹ Proposal for Publication at 1 – 2 (“PFP”).

² *Id.*; proposed § 3.66 (a) (these designated critical facilities will be “included on the electricity supply chain map created under Texas Utilities Code § 38.203.”).

³ Proposed § 3.66 (b).

⁴ PFP at 4 – 5; proposed § 3.66(d)(1)(C).

I. NEED FOR NONCOMPLIANCE NOTIFICATION PRIOR TO STOPPAGE

OPUC recommends that, in addition to codifying some of the RRC’s best operating practices already promulgated,⁵ the RRC should more clearly define what constitutes the safe operation of a sustained operating facility and require notification if a critical facility is not able to correct known weather-related stoppages.⁶

The RRC defines sustained operation for a facility as the “safe operation of a gas pipeline facility or a gas supply chain facility such that the facility does not experience a weather-related forced stoppage in production, treating, processing, storage, or transportation of natural gas.”⁷ However, “safe operation” is not further defined. This could allow facilities to fail to comply with the requirements of the proposed rule, and subsequent failure to properly weatherize critical infrastructure, absent further clarification. The RRC’s intent appears to be the safety of the facility’s employees.⁸ Yet, this idea of safe employees yielding the safe operation of a facility lacks elaboration.

OPUC believes that the safe operation requirement should be expanded to not only require weatherization of a designated critical facility, but also require notification to the RRC if they are unable to meet the weatherization requirement prior to a necessary stoppage event. OPUC believes the weatherization standards outlined in proposed § 3.66 are not fully adequate to notify and require critical facilities to comply with the RRC’s weatherization standards.

The RRC recently published a *Notice to Gas Facility Operators and Gas Pipeline Operators* that provides best practices for weatherization.⁹ This guidance from the RRC’s Oversight and Safety Division is helpful. OPUC recommends that the RRC incorporate this guidance more into the baseline weatherization best practices in Rule § 3.66 with regard to a critical facility meeting the minimum standards during a weather emergency. Sheila Olmstead, economist and professor at the Lyndon B. Johnson School of Public Affairs, said, “most companies

⁵ NOTICE TO GAS FACILITY OPERATORS AND GAS PIPELINE FACILITY OPERATORS, *Preparation by Operators for Winter 2021-2022*, https://rrc.texas.gov/media/r5dbn5b2/2021-nto_preparation-by-operators-for-winter_2021-2022_mlb_10-6-2021.pdf (Oct. 2021) (“Notice”).

⁶ Proposed § 3.66(c)(1).

⁷ *Id.* at § 3.66 (b)(6).

⁸ PFP at 2 (“The Commission understands that operators’ first concern in a weather emergency is the safety of their employees. ‘Safe operation’ is included in the definition of ‘sustained operation’ to reflect this concern.”).

⁹ Notice, *supra* note 5.

are unlikely to voluntarily declare themselves as critical infrastructure because weatherizing equipment is costly, and the energy market does not reward them for reliability.”¹⁰ OPUC recommends incentivizing reliability in addition to penalizing fees for critical facilities that fail to properly weatherize while considering more weatherization practices and a more robust reporting process.

II. NEED FOR REPORTING OF CONTINUOUS MITIGATION AND ADDITIONAL MEASURES TAKEN

OPUC recommends the RRC expand the Attestation reporting requirement, so as to include monitoring methods that allow the RRC to see weatherization steps taken by critical facilities and which practices are common among them.¹¹ This would allow the RRC, in future rulemakings, to establish best practices or add weatherization requirements that are commonly and successfully used among facilities. Additionally, an ongoing reporting requirement containing the additional weatherization steps will allow these best practices and weatherization requirements to be continually updated for maximum effect, giving Texas a more dynamic regulatory response for weatherization of vital components to the critical infrastructure of Texas.

In § 3.66(d), the proposed rule requires facilities to submit a Weather Emergency Readiness Attestation (“Attestation”) report annually by December 1st.¹² This report is to include all activities the facility engaged in to comply with the weatherization standards.¹³ The first Attestation report is due December 1, 2022.¹⁴ By OPUC’s reading, only this initial report is to contain and have “described corrective actions taken to mitigate known weather-related forced stoppages that prevented sustained operation of a facility because of previous cold weather conditions.”¹⁵ OPUC recommends that this requirement be included in all subsequent reports as well for any actions taken in the previous year. This information can help guide the RRC in

¹⁰ Marisa Huerta, *UT Professors say Texas Legislature Should do More to Improve Power Grid Structure Reliability*, The Daily Texan (Oct. 22, 2021), <https://thedailytexan.com/2021/10/22/ut-professors-say-texas-legislature-should-do-more-to-improve-power-grid-structure-reliability/>.

¹¹ Proposed § 3.66(d).

¹² *Id.* at § 3.66(d)(1).

¹³ *Id.* at § 3.66(d)(1)(B).

¹⁴ *Id.* at § 3.66(d)(1)(C).

¹⁵ *Id.*

determining the best weatherization practices and further complement any facility's good faith efforts. Furthermore, as described above, any facility that could not correct known issues that caused stoppages, or any other noncompliance, should be included in the annual Attestation report, and in turn, the RRC should be notified of the noncompliance.

As a secondary consideration to this policy, the RRC may wish to consider making the weatherization rules subject to periodic review, for example, every 5 years. This would help provide notice of weatherization expectations to critical facilities regarding the next round of potential changes, as well as reinforce the current weatherization standards they must meet. Depending on the period of time selected, this could also allow for the collection of quality information from the reported additional weatherization steps taken by critical facilities that could then inform the next round of weatherization rulemaking. OPUC believes that setting a periodic review of weatherization requirements will allow Texas to respond more effectively to changing weather patterns and technologies and hopefully prevent or mitigate the effects of future extreme weather events. OPUC put forward a similar recommendation in the Public Utility Commission's phase II weatherization rulemaking.¹⁶

OPUC also recommends that the RRC identify the most important and effective critical natural gas facilities that ought to be given priority in a load shed event. This would help enhance reliability of critical infrastructure by avoiding an approach that negatively affects the electric utility's ability to efficiently shed load. The RRC estimates that roughly 6,200 operators are subject to § 3.65, and are deemed a critical facility. OPUC appreciates that the critical facilities map may have limited this number; however, in lieu of an unnecessary reduction, a simple two-tier system that identifies the more critical infrastructures could make all the difference in maintaining power to the most essential critical facilities in a severe weather emergency. OPUC urges the RRC to collaborate with the Public Utility Commission of Texas, Electric Reliability Council of Texas, Texas Department of Emergency Management and other Stakeholders to identify the most important critical natural gas facilities based on the critical facilities map and incorporate the most restrictive designation of critical infrastructure or a tiered system in proposed § 3.66.

¹⁶ *Electric Weather Preparedness Standards-Phase II*, Public Utility Commission of Texas Project No. 53401, OPUC's Initial Comments on Proposal for Publication at 4 (Jun. 23, 2022).

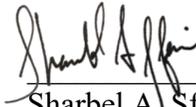
III. CONCLUSION

OPUC appreciates the opportunity to provide these comments on the PFP and looks forward to working with RRC Staff and other stakeholders in this project.

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