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The Texas Oil and Gas Association (TXOGA)¹ appreciates the opportunity to comment on proposed rule 3.66 relating to Weather Emergency Preparedness Standards. We believe the intent behind SB 3 is to provide increased electricity reliability during a weather emergency. While we understand that there is a necessity for weatherization along the entire natural gas supply chain that is connected to the electric grid, we need to ensure that we incentivize as much natural gas production as possible. We appreciate that the Railroad Commission sees that not all natural gas facilities are equal and not all operators are the same and have allowed for flexibility in how an operator weatherizes. However, we believe additional clarifications and changes to the proposed rule are necessary to ensure the natural gas supply chain is appropriately weatherized while still encouraging that maximum production of natural gas possible.

Included below are specific comments and recommendation changes for each section of the proposed rule.

Clarification regarding TAC 3.65 production threshold

SB 3 set forth two requirements to be met before a “gas supply chain facility operator” is required to “implement measures to prepare to operate during a weather emergency”.

“(1) included on the electricity supply chain map created under Section 38.203, Utilities Code; and

(2) designated as critical by the commission in the manner provided by Section 81.073.”

See Tex. Nat. Res Code §86.044(b).

However, TAC 3.65 states:

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

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

(A) gas wells producing gas in excess of 15 Mcf/day;

(B) oil leases producing casinghead gas in excess of 50 Mcf/day;

(C)...(H)

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.

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

The Preamble to proposed TAC 3.66 states, at page 9:

“The Commission notes, however, that gas wells and oil leases are only required to comply with proposed §3.66 if they are designated critical under Commission §3.65 and are included on the electricity supply chain map. Section 3.65 excludes low-producing wells from the facilities it designates as critical. Therefore, a gas well producing 15 Mcf per day or less and an oil lease producing 50 Mcf per day or less are not subject to the requirements of §3.65 or proposed §3.66.”

Additional clarity is needed as to whether a facility needs to weatherize if it produces below the gas volume threshold in TAC 3.65 to be listed as critical but is on the electricity supply chain map. We recommend that any facility producing below the TAC 3.65 threshold should be exempt from weatherization regardless of designation on the electricity supply chain map. The cost of weatherization of low producing facilities can make producing uneconomical and have the unintended consequence of lowering production rather than maintaining production of natural gas.

Preamble

There are several points of clarification that we recommend addressing in the preamble.

- Additional clarity is needed on the timeline of a facility being placed on the map and the process where an operator gets notified of being on the map. Operators need to have ample time to prepare their emergency operations plan and to weatherize appropriate facilities.
- The risk-based approach mentioned in (c)(2)(C) of the rule is not clearly defined. Operators are going to measure risk differently and should be clarified in the preamble.
- There should be additional clarification as to the purpose of Figure 16 TAC 3.66 (c)(2)(D).
 - All four of the references to the state climatologist in SB 3 provide: “[i]n adopting the rules, the commission shall take into consideration weather predictions produced by the office of the state climatologist.” See SB 3 at page 10, Section 86.044 (c); page 17, Section 35.0021(b); page 22, Section 38.075 (a); and page 34-35, Section 121.2015(a-1). However, the 10-page table prepared by the climatologist attached to the draft rule does not contain or reflect any “weather predictions” – it is merely a list of actual and extrapolated yearly high and low temperatures and typical longest consecutive days of freezing temperatures, that do not constitute “weather predictions” required by SB 3. As such, we recommend removing the table.
 - If the table remains, we recommend that the preamble clarifies that operators may consider the weather data provided by the state climatologist and may also use other data when considering what weatherization techniques are most appropriate for their facility.
- Additional clarity is needed regarding how an operator and the commission determines when there is a “weather emergency”. We recommend that the Commission detail in the preamble a process for providing notice to operators of an extreme weather event as well as notice of the end

of an event so there is a defined period of time governing emergency response actions and reporting.

- There are many issues that can arise in the field that are outside the operator’s control. The preamble should clarify that a forced stoppage due to third party issues, such as saltwater disposal and gathering, will not be considered a violation. Compliance requirements and enforcement potential as prescribed in this proposed rule should be based on stoppages due to issues within the operators control and that occur during a weather-emergency event.
- When considering the public benefit of the proposed rule, there is no mention of the negative impact of the potential lost gas production from some wells due to the economic cost of weatherization. Prematurely abandoning otherwise economic wells would result in waste, which violates one of the Commission’s core mandates. See Texas Natural Resources Code § 86.011.
- Supply chain issues are impacting every industry. This should be considered in the preamble. To the extent an operator has not been able to complete all required weather emergency preparation measures described in subsection (c) by December 1, 2022, due to supply chain issues, a plan submitted by such operator for the implementation of additional weather emergency preparation measures that are in progress as of such date or that it plans to complete subsequent to that date in accordance with the measures described in subsection (c) of this section. It has also been suggested that a phased implementation of weatherization, beginning with high volume production assets and working down to lower volume would help address this issue.
- There should also be additional language added that provides guidance to the enforcement division on providing allowances for scenarios where an operator is not able to complete all required weatherization requirements by December 1, 2022, due to, among other reasons, supply chain issues, permit delays, etc.

(a) Applicability

Subsection (1) (A)

Recommend adding:

(A) included on the electricity supply chain map created under Texas Utilities Code §38.203 and the commission has notified the operator of the facility’s inclusion on the map by September 1 for the upcoming winter and March 1 for the upcoming summer of each year; and

We recommend that there be a mechanism that allows an operator to know with certainty whether a facility is on the electricity supply chain map, such as a formal notification from Commission via email or Commission website. If a facility is not identified through this process, then it is not “on the map.” Operators should not have an additional obligation to conduct further inquiry to determine if facilities are on the electricity supply chain map. Additionally, the map could change as winter and summer approach, thus providing operators with sufficient time to implement weatherization. We suggest September 1 for winter and March 1 for summer.

(b) Definitions

(1) – Critical component definition

Recommend editing this definition to:

Any component, including components on equipment rented or leased from a third party over whom operator has the contractual authority to control, that is susceptible to weather-related interruptions, such as those caused by freezing temperatures, freezing precipitation, or extreme

heat, the occurrence of which is likely to significantly hinder sustained operation of the gas pipeline or gas supply chain facility.

Rented or leased equipment could be as complex as a compressor with thousands of components or as simple as a tank with only a few components. This inclusion would clarify that weatherization is required only for susceptible components, whether operator owned or rented/leased. Without this clarification, the definition applies a higher standard to third-party equipment by requiring weatherization of the whole piece of equipment rather than the susceptible components.

(4) – Major weather-related forced stoppage definition

Recommend editing this definition to:

weather-related forced stoppage during a weather emergency that results in a significant impact to public safety as determined by the Critical Infrastructure Division Director or is the result of the deliberate disregard of this section.

(5) – Repeated weather-related forced stoppage definition

Recommend editing this definition to:

When a gas supply chain facility or gas pipeline facility has more than one weather-related forced stoppage violation within a calendar year that is not in the process of remediation by the operator thereof as required under this section.

(7) – Weather emergency definition

Recommend editing this definition to:

Extreme weather conditions such as freezing temperatures, freezing precipitation, or extreme heat in the facility's county or counties that constitute an event that results in firm load shed required by the reliability coordinator of a power region in Texas and that creates significant risk to power supply reliability due to the potential inability to maintain sustained operation of gas supply chain facilities or gas pipeline facilities as a result of such conditions. A weather emergency does not include weather conditions that cannot be reasonably mitigated such as, but not limited to, tornadoes, floods, ~~or~~ hurricanes, high winds, lightning, or fires.

(8) – Weatherization definition

The commission should clarify this definition to specify that the corrective actions, implementations or processes, and installations of equipment only apply to matters within operators' control. It should be clear that instances beyond an operator's control, e.g., a facility losing power due to utility curtailment or loss, should not be a part of the weatherization requirements.

Additionally, we recommend the Commission revisit the idea of weatherization throughout the proposed rule for consistency. For instance, Section (c)(2)(D) allows operators to define their weatherization identifications and practices. Later, Section (d)(1)(B) sets forth a required list of critical components to weatherize. These conflicting ideas make compliance incredibly difficult for operators.

(9) – Weather-related forced stoppage definition

Recommend editing this definition to:

An unanticipated and/or unplanned outage in the production, treating, processing, storage, or transportation of natural gas that is caused by weather conditions such as freezing temperatures,

freezing precipitation, or extreme heat during a weather emergency event. Such outages do not include outages caused by utility curtailment or other loss of service that are outside the operator's control.

The commission should also clarify that a weather-related forced stoppage does not include a facility losing power due to utility curtailment or loss that is outside an operator's control.

(c) Weather emergency preparedness standards

While we offer specific changes below, we recommend that weatherization methods and methods applicable to specific categories of critical gas supply chain facilities would be best addressed through a published manual with input from stakeholders or guideline in a Notice to Operator issued by the Railroad Commission, as opposed to adopted through rulemaking. These methods should further be emphasized through SWR 3.66 as methods the operator may take into consideration in determining the most effective and applicable practices to implement, as opposed to a list of requirements that may not be applicable given the specific location and type of critical gas supplier facility. As industry identifies weatherization practices most efficient and successful in complying with the intent of SB 3, we anticipate these specific procedures and practices will evolve over time. Therefore, including these weatherization methods in a Notice to Operator would eliminate the extensive and time-consuming rulemaking process required when changes or updates would be necessary to incorporate updated weatherization methods and applicable facility categories. Publication and distribution through a Weatherization Practices manual or guideline through a Notice to Operators would allow flexibility and continued development of the most effective weatherization methods. The Railroad Commission currently utilizes and regularly maintains manuals and guidelines in other divisions that are utilized efficiently by both industry and the Railroad Commission alike.

Some members also raised concerns regarding facilities that utilize certain operations that make weatherization impracticable, e.g., artificial gas lift supplied by field gas. Field gas has a high potential for freezing and hydrate formation when exposed to the pressure drops of a gas lift system and ambient air temperatures in the 30s and below. Such pressure and temperature issues make it impossible to maintain perfectly sustained operations with a field gas artificial lift system during freezes despite an operator taking preventive measures. This problem cannot be remedied by simply installing additional devices or equipment. *See* Proposed Rule 66(c)(2)(D)(x)-(xi). Instead, the cost to retrofit an entire gas lift system to guarantee the sustained operation of these wells during a weather emergency would, in some cases, exceed the economic value of the remaining reserves. Thus, the operator would have to shut in otherwise economic wells before an officer could validly execute a Weather Emergency Readiness Attestation. Prematurely abandoning economic wells would result in waste, which is violates the Commission's core mandate. *See* Texas Natural Resources Code § 86.011.

The rule can be amended in a number of ways to ameliorate these unintended consequences. The most obvious path is to include (a) substantive and (b) procedural provisions for operators to request an exception to Rule 66. Substantively, if an operator shows that it has complied with applicable API standards or acts as a reasonably prudent operator, it should be otherwise able to sign the Weather Emergency Readiness Attestation without fear of penalties. Procedurally, the Rule could provide that an operator could obtain such an exception via a request for hearing. The request for hearing could be accompanied with a supplemental affidavit describing how the operator's inability to obtain an exception would result in a waste. Alternatively, instead of requesting a hearing, the operator could submit a form and attach a supplemental affidavit explaining the operator's efforts to weatherize and the circumstances for the exception request, a procedure which is similarly set forth in Form W-3C. This form allows an exception to Statewide

Rule 15 if an operator signs an affirmation of facts. For example, the officer of an operator could attest to the fact that to comply with Proposed Rule 66, it would be required to shut in wells despite efforts to weatherize, resulting in waste. With either the hearing or form exception options, the operator could request a blanket exception for a certain percentage of operator's collective production from facilities subject to Proposed Rule 3.66 where weatherization is impracticable for certain operations, e.g., artificial gas lifts supplied by field gas.

Subsection (2)(D)

Modify lead-in as follows:

weatherization of the facility considering industry-accepted methods applicable considered by the operator to be appropriate and effective to the facility based on the type of facility, the facility's critical components, the facility's location, and weather data for the facility's county or counties including data illustrated in the table of this subsection. Weather data that may be considered by the operator includes the data illustrated in the table of this subsection, as well as alternate weather data regarding low and high temperature patterns and temperature forecasts in the geographic area where the facility is located. Weatherization methods to be considered and that may be implemented at the option of the operator may include but are not limited to the following:"

We recommend the Commission revisit the methods mentioned in Sections (c)(2)(D)(i-xx). The list should include utilizing a heater treater or burner. Additionally, the list should also include a weatherization method that allows the operator to modify or suspend operations in advance of weather emergencies to improve safety performance, overall gas production performance during a weather emergency and gas production recovery following a weather emergency.

We recommend the Commission reconsider the phrase "may include but are not limited to" in this section, as it creates uncertainty for operators. It could be interpreted in such a way that each of the methods listed are required, and that the Commission could require more. We recommend editing this Section to clarify that the methods are exclusive to matters within operators' control.

We recommend consideration of workforce safety, protection of the environment, and measures proportionate to volume of gas be added to the weather emergency preparedness section, (c)(2) as part of the list of "issues to consider".

- Consideration of the risk to the health and safety of the workforce and protection of the environment.
- Consideration of measures proportionate to the volume of gas that may be impacted by a weather emergency.

Also, correct typo in the proposed rule by renumbering "developing and implementing redundancies..." from (xiii) to (xviii).

(2)(D)(xx) – Burying subsurface piping

We recommend editing this Section to be aligned with readily available data about the average frost line in Texas or specific frost lines in individual counties. For example, the City of Midland reports the frost line as 12 inches. Burying piping four feet deep may be a good weatherization practice in North Dakota, where the frost line is studied and tracked by the National Weather Service. However, requiring that standard in Texas is not scientifically based and should not be required without actual data supporting it.

(d) Weather Emergency Readiness Attestation

Subsection (1)(A)

We recommend converting the attestation language to be in line with the P-5 form. Most designated corporate officers are not closely tied to specific field operations and thus lack pertinent knowledge. Rarely is a single person responsible for all operations or regulatory compliance especially in larger organizations.

(1) Submittal of Weather Emergency Readiness Attestation. By December 1 of each year, an operator of a gas supply chain facility or a gas pipeline facility shall submit to the Commission a Weather Emergency Readiness Attestation that:

(A) is ~~sworn to~~ signed by an authorized ~~officer~~ representative of the operator entity attesting, under penalties prescribed in Texas Natural Resources Code §91.143, that:

(i) the operator implemented the required weather emergency preparation measures described in subsection (c) of this section;

(ii) the information and statements made in the Weather Emergency Readiness Attestation are true, correct, and complete to the best of the attestor's knowledge;

~~(iii) the authorized officer is responsible for the operator entity's regulatory compliance with this section;~~

(iv) the ~~officer~~ attestor is authorized to sign the attestation on behalf of the operator entity; and

(v) the Weather Emergency Readiness Attestation was prepared by the ~~authorized officer~~ attestor or under the ~~authorized officer's~~ attestor's supervision and direction;

Despite an operator's best efforts to weatherize facilities and equipment, drops in production are inevitable in fields utilizing field gas for artificial lift. However, the volumes of such production drops are fairly predictable during cold weather events. Accordingly, the Weather Readiness Attestation requirement of Section (d) could be revised to include a provision whereby an operator could describe its efforts to weatherize and include a discussion of safety concerns and anticipated outages for facilities subject to 3.66 during a Weather Emergency. 3.66 could expressly provide that such anticipated outages are exempt from the definition of "weather-related forced stoppage."

Subsection (1)(B)(i-xvi)

The Commission should better categorize Sections (d)(1)(B)(i-xvi) because the listed categories currently mix terminology used by different industry segments. This change would help alleviate uncertainty in the rule by utilizing gas plant or compression terms that do not generally apply to well sites and tank batteries.

Subsection (1)(C)

Clarify Subsection (1)(C) as follows:

for the Weather Emergency Readiness Attestation due December 1, 2022, also describes any non-privileged corrective actions taken to mitigate known weather-related forced stoppages and potential associated critical component failures that may occur in future weather emergencies that prevented sustained operation of a facility because of previous extreme cold weather conditions and could have similar impact in future extreme cold weather conditions; and

Add new Subsection (1)(D)

Add new subsection (1)(D) that allows an operator to describe the alternate weather data, other than the state climatologist's table included in subsection (c) of this section, that the operator considered in

respect of its implementation of weatherization requirements for its facilities. This addition will align with the recommended change to (c)(2)(D).

Subsection (2)

As the electricity supply chain map is considered confidential, the Commission should apply the same information protections on all facilities identified on the electricity supply chain map.

Clarify Subsection (2) as follows:

Confidentiality of the Weather Emergency Readiness Attestation. A gas supply chain facility operator or a gas pipeline facility operator filing information with the Commission that the operator contends is confidential by law shall notify the Commission on the Weather Emergency Readiness Attestation and may redact the confidential information.

(f) Weather-related forced stoppages by a gas pipeline facility or gas supply chain facility

Subsection (1)

Clarify Subsection (1) as follows:

“(1) An operator of a gas supply chain facility(ies) or a gas pipeline facility(ies) that experiences a material weather-related forced stoppage in sustained operations during a weather emergency shall notify the Commission as promptly as practicable immediately through the Commission’s Critical Infrastructure Division’s notification portal if the stoppage is not resolved within 24 hours of discovery of the stoppage. In the event a weather-related forced stoppage in sustained operations of a gas supply chain facility during a weather emergency results in a loss of production exceeding 5,000 Mcf of natural gas per day, or a stoppage of gas processing, storage withdrawal, or transportation capacity exceeding 200 MMcf per day, the operator shall, upon discovery of the stoppage, immediately contact the Commission ~~on~~ through the Commission’s Critical Infrastructure Division’s 24-hour emergency telephone number. The operator reporting such a weather-related forced stoppage during a weather emergency may include in such report information (if applicable) regarding any third-party issues that may have directly contributed to such operator’s stoppage. If an inspection determines that the stoppage was caused by the operator’s facility’s failure to materially adhere to the requirements of this section, the Commission may initiate ~~facility will be subject to~~ an enforcement action. Forced stoppages caused by third party actions or inactions are not subject to enforcement actions.

Subsection (2) – Contracting with an engineer

Clarify Subsection (2) as follows:

An operator of a gas supply chain facility or a gas pipeline facility that experiences repeated weather-related forced stoppages or major weather-related forced stoppages in sustained operation during a weather emergency, such as equipment freeze-offs, instrument failures, forced outages, or forced shut-ins within the control of the operator shall, upon notice from the Commission, contract with a qualified engineer with ~~related~~ relevant experience or consult with the Commission, to assess its weather emergency preparation measures, plans, procedures, and operations.....~~The facility’s operator shall~~ Within the timeframe provided by the Commission, the operator shall submit to the Commission a written assessment prepared by, in accordance with Texas Natural Resources Code 86.044(f), a person who is not an employee of the operator

and which sets out ~~the qualified engineer and the facility operator's corrective action plan within the timeframe required and in compliance with the terms in the Commission's notice that the facility is required to comply with this paragraph.~~ The operator may submit the assessment and correction action plan as "confidential" in accordance with subsection (d) of this section, relating to Confidentiality of the Weather Emergency Readiness Attestation.

The Commission should allow for consultation with the Commission staff rather than force operators to contract with a third-party engineer. Requiring operators to use a private party to recommend and verify may be good government practice, but it is not good public policy when it is the only option. Over the next few years, finding and securing a "qualified engineer" may be difficult as weatherization in Texas is generally new. Operators should always have the option to consult with the Commission for approved plans. The Commission should not relegate operators to contract external de facto regulators, nor create new cottage industries of consultants. There is significant potential for conflicts of interest where a third-party engineer is the sole option. A private party recommendation should be in conjunction with rather than in lieu of the Commission's orders.

(g) Enforcement

Subsection (1)

Clarify Subsection (1) as follows:

Violation of this section by a gas supply chain facility operator. A gas supply chain facility operator will be given notice and opportunity for a hearing for alleged violations of this section. The notice shall be sent by certified mail and state the facts or conduct alleged to comprise the violation. The notice shall give the operator 30 days from receipt to demonstrate or achieve compliance with this section or request a hearing. Pursuant to Texas Natural Resources Code §86.044 and §§86.222-.224, if the Commission determines that a person has violated this section and the violation is not remedied in a reasonable amount of time, the Commission shall notify the Office of the Attorney General of Texas of the violation in accordance with Texas Natural Resources Code §86.222. Each day a violation occurs constitutes a separate offense, the penalty for which may be up to \$1,000,000. The table in this paragraph contains a classification system to be used under Texas Natural Resources Code §86.222 for violations of this section.

Subsection (2)(A)

Clarify Subsection (2)(A) as follows:

A gas pipeline facility operator will be given notice and opportunity for a hearing for alleged violations of this section. The notice shall be sent by certified mail and state the facts or conduct alleged to comprise the violation. The notice shall give the operator 30 days from receipt to demonstrate or achieve compliance with this section or request a hearing. Pursuant to Texas Utilities Code §121.2015, if the Commission determines that a person has violated this section and the violation is not remedied in a reasonable amount of time, the Commission shall report the violation to the Office of the Attorney General of Texas. Pursuant to Texas Utilities Code §121.206, the Commission shall assess an administrative penalty for a violation of this section, which may be up to \$1,000,000 for each offense. Each day a violation occurs constitutes a separate offense.

Figure 16 TAC §3.66(g)(1)

Change in Classification System Table:

- Suggest adding in a line item to the classification system table that deducts points if an operator keeps a certain percentage of its aggregate production within Texas online in the event there are failures at a number of very low-production leases and/or wells. Suggest -2 for 70%, -3 for 80% and -4 for 90%.
- Suggest adding a line item to give consideration of safety of operator's personnel with a score of -15. This number is designed to offset the values in the table for hazard to health, safety, or economic welfare of the public, intentional conduct of operator, and no effort to remedy violation. "Inability to remedy violation due to conditions endangering safety of operators personnel."
- The proposed Classification Table and Violation Factors is limited to a review of a single oil lease or gas well facility that is allegedly non-compliant with 3.66. The proposed violation factors fail to consider an operator's overall or statewide gas production and efforts to maintain compliance across all operations subject to 3.66. Violation Factors based on the overall percentage of statewide gas production or gas production applicable to 3.66 would better address the overall intent of SB 3 of critical gas supply chain facilities and an operator's good faith efforts to prepare to operate on a state-wide basis.

Amend Figure 16 TAC 3.66(g)(1) such that Factor Value 4 applies when 75% or more of the operator's facilities are out of compliance, Factor Value 3 applies when 50%-75% of the operator's facilities are out of compliance, Factor Value 2 applies when 25%-50% of the operator's facilities are out of compliance, and Factor Value 1 applies when less than 25% of the operator's facilities are out of compliance.

Thank you for the opportunity to discuss proposed rule 3.66. 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
Director of Government and Regulatory Affairs