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Submitted via e-mail.

Rules Coordinator
Office of General Counsel
Railroad Commission of Texas
rulescoordinator@rrc.texas.gov

Dear Rules Coordinator,

Endeavor Energy Resources, L.P. ("Endeavor") appreciates this opportunity to comment on the Texas Railroad Commission's ("RRC" or the "Commission") proposed rules to be codified at 16 TEX. ADMIN. CODE § 3.66, Weather Emergency Preparedness Standards (the "Proposed Rules"). Endeavor is a privately held exploration and production company. We are one of the largest private operators in the United States, with approximately 370,000 net acres across the Midland Basin of Texas. Endeavor was the first privately held company to serve as a member of the Permian Strategic Partnership, a coalition of seventeen oil and gas companies dedicated to supporting projects that positively impact education, healthcare, housing, roads, and workforce development. As a company, we are committed to strengthening and protecting our state's energy infrastructure.

In response to Winter Storm Uri's devastating effect on Texas last year, the Texas Legislature (the "Legislature") adopted Senate Bill 3, "an Act relating to preparing for, preventing, and responding to weather emergencies, power outages, and other disasters; increasing the amount of administrative and civil penalties" ("SB 3"). SB 3, which has been signed into law by Governor Abbott, directs the RRC to take certain, specific steps to regulate *critical* natural gas facilities and entities. While we applaud good-faith efforts to strengthen our energy infrastructure and mitigate the risk of future catastrophes, the Proposed Rules would impose needless requirements that run counter to the general objectives of the SB 3. Some of these requirements impose additional burdens, conditions, or restrictions in excess of, or inconsistent with, the relevant statutory provision.

As a general matter, we note that much of the Proposed Rules, including the proposed "methods" of weatherization, overlook the primary root cause of disruption that natural gas supply chain operators faced during Uri. Namely, the failure of utilities to deliver electric services to critical natural gas facilities that directly supply fuel to power generation facilities. We recognize that other state agencies are working to address many of those issues. However, the Proposed Rules ignore those efforts, sweeping in virtually all aspects of operations of the natural gas industry, without taking into account how ensuring that power is not cut to electrical substations serving critical natural gas infrastructure addresses some of the grid resiliency concerns arising out of Uri. The Proposed Rules do not take the tailored approach to improving resiliency of critical natural

gas infrastructure called for by SB 3. Rules "must … come fairly within the character and scope of each of the statute's requirements in specific and unambiguous terms. *Reliant Energy, Inc. v. Public Util. Comm'n*, 62 S.W.3d 833, 840-841 (Tex. App.—Austin 2001, no pet.). Otherwise, Texas courts have held that such rules are invalid. *See Office of Pub. Util. Counsel v. Public Util. Comm'n*, 104 S.W.3d 225, 232 (Tex. App.—Austin 2003, no pet.).

As set forth in greater detail below, we are concerned that many of the requirements of the Proposed Rules, especially when considered in conjunction with Commission Rule 3.65, are clearly beyond the objective of the Legislature. For one, many of the new requirements will burden operators unnecessarily and will have little or no effect on weather preparedness, causing waste. Other requirements are vague and ambiguous, which will cause inconsistencies of application and challenges in enforcement. Given the substantial penalties authorized under SB 3, fair notice and due process considerations require reconsideration of many aspects of the Proposed Rules. If the goal is to have a robust and reliable natural gas infrastructure that can withstand severe weather events, the Commission must focus its efforts on requirements that will actually work and that can actually be enforced.

I. The Proposed Rules Run Counter to the General Objectives of the Statute and Imposes Additional Burdens, Conditions, or Restrictions in Excess of, or Inconsistent with, the Relevant Statutory Provisions.

Although SB 3's revisions to the Texas Natural Resources Code are wholly focused on improving the weatherization and reliability of natural gas infrastructure that is critical for electric generation in the state, the Proposed Rules have been written and set forth in such a way that, when paired with the rules at Commission Rule 3.65, encompass nearly all natural gas production, storage, transmission, and disposal infrastructure in the state. This is directly at odds with the intent of the Legislature and the text of the statute does not support this approach. SB 3 amended the Texas Natural Resources code to require only the designation of *certain* natural gas facilities as critical to the service quality and reliability of power generation during extreme weather conditions. *See* Tex. Nat. Res. Code 81.073(a). This is an unambiguous directive from the Legislature that any subsequent rulemaking must follow. *See Reliant Energy*, 62 S.W.3d 833, 840-841.

SB 3 directed the Commission to take a measured approach to winterization, first by identifying critical infrastructure to be included on the electricity supply chain map created under TEXAS UTILITIES CODE § 38.203. *See* Proposed Rule § 3.66(a)(1)(A). SB 3 neither directed nor authorized the Legislature to impose weatherization requirements on the entire natural gas industry. However, the Proposed Rules have effectively encompassed all natural gas production, transmission, and adjacent facilities, regardless of criticality. There has been little to no engagement with operators on the rationale for such widespread designations, especially relating to facilities that are not directly implicated by the statute, such as saltwater disposal wells, and also regarding the inclusion of facilities that do not service electric generation facilities.

The oil and natural gas industry is facing an unprecedented skilled labor and contractor shortage. Accordingly, the inadvertent consequence of designating non-critical infrastructure at the expense of true critical infrastructure is that instead of focusing limited resources on the most important areas to ensure electric grid reliability and resiliency, the RRC's implementation of the Proposed Rules risks trying to do too much at the expense of accomplishing the underlying goals of SB 3.

An agency acts arbitrarily if in making a decision it commits any of the following errors: (1) does not consider a factor that the Legislature intended the agency to consider in the circumstances; (2) considers an irrelevant factor; or (3) reaches a completely unreasonable result after weighing only relevant factors. *Reliant Energy*, 62 S.W.3d at 841. By taking such a sweeping approach to applicability of the Proposed Rules, the Commission has, at a minimum, both failed to consider factors the Legislature required pursuant to SB3 and reached an unreasonable result by imposing requirements on facilities that do not play a material role in electric grid resiliency and reliability. Such a result is arbitrary and capricious and does not comply with the requirements of Texas law. We request that the Commission reconsider the scope of applicability of the Proposed Rules with the guiding principal provided by the Legislature that only *certain* natural gas infrastructure be designated as critical and subject to weatherization requirements.

II. There are Fundamental Concerns with Respect to Prior Rulemakings Under SB 3 that Require Reconsideration of the Scope of the Proposed Rules.

As noted above, there are significant issues with operators' due process rights under the Proposed Rules, especially when considered in light of 16 TEX. ADMIN. CODE § 3.65. Operators have not been provided with adequate opportunity to comment, petition, or appeal the designation of their facilities. Not only a constitutional issue, Texas law requires state agencies to "give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing" prior to implementing a new rule. TEX. GOV'T CODE § 2001.029(a). This has been violated first with the critical infrastructure designations and second with designations on the "electric supply chain map."

As we have already mentioned, there was minimal engagement with operators about the rationale for critical infrastructure designations. The process appears to have been a wholesale designation of all operators and natural gas infrastructure. No justification has been provided by the Commission for why facilities were originally designated and, furthermore, operators have not been provided with an appropriate avenue of appeal. The process to seek exemptions from Commission Rule 3.65 is unnecessarily complex and burdensome. Trade associations have informed us that applications for exemption have been almost unilaterally denied without proper administrative review.

Facilities that are designated critical and that appear on the "electricity supply chain map" will now be required to comply with severe and burdensome rules, or face substantial penalties. Designations on the "electricity supply chain map" were not open to meaningful public comment. Operators were notified of the designations, but the map was never made available to the public. The operators' due process rights have been violated because they have not been provided adequate information or opportunity to challenge the designations and the significant consequences of the designation. These deficiencies and failures to comply with the directives of SB 3 in prior rulemakings taint the Proposed Rules and set them on unsound footing. We respectfully urge the Commission to take the necessary action to align all of its rulemakings with the express directives of the Legislature contained in SB 3.

We wish to bring one final point to the Commission's attention. During the RRC seminar on August 9, 2022, a Commission representative asserted that all leases associated with the electricity supply chain map created under the Texas Utilities Code must be designated as critical

infrastructure designation and weatherized. This idea is not set forth in the Proposed Rules, which states that the requirements apply only to those facilities that are included in the electricity supply chain map *and also* designated as critical under Commission Rule 3.65. Any wholesale duplication without meaningful consideration would be a violation of the legislative directive, which prescribed specific factors which must be considered before a facility is designated as critical infrastructure. Further explanation on this point is needed from the Commission.

III. *The Proposed Rules Lack the Clarity Necessary to Safeguard Worker and Environmental Safety in the Face of Extreme Weather Events.*

The proposed definition of "sustained operations" included in the Proposed Rules does not adequately define "safe operation," and the vagueness of the RRC's proposal unnecessarily creates safety risks to operators' personnel. Endeavor appreciates that the RRC considered safety concerns to be a factor in requiring "sustained operations" during extreme weather events; however, the rule should provide greater clarity that the safety of an operator's employees and the safety of the environment have priority over any weatherization or weather-induced actions. Extreme weather conditions change rapidly, cannot always be reliably predicted, and pre-planning may not be feasible. For example, anti-freeze and other winterization chemicals may be stocked at a critical facility as required under the Proposed Rules, but if a sudden change in weather forecasting occurs it may neither be practical nor safe for operators to deploy personnel to implement weatherization methods. Operators should not have to choose between directing field personnel to leave the safety of their homes and risk unsafe conditions or face the risk of seven-figure monetary penalties. Accordingly, we request that the Commission revise the Proposed Rules to provide relief for operators from risk of enforcement in such situations.

IV. Senate Bill 3 does not Authorize the Commission to Impose Weatherization Obligations on Saltwater Disposal Well Facilities.

SB 3 amended the Texas Natural Resources Code to require natural gas supply chain facility operators to implement measures to prepare to operate during a weather emergency. TEX. NAT. RES. CODE § 86.044(c). Natural gas supply chain facilities are defined in SB 3 to include those facilities used for producing, treating, processing, pressurizing, storing, or transporting natural gas. TEX. NAT. RES. CODE § 86.044(a)(1). This definition does not include natural gas production waste disposal facilities generally nor produced water disposal wells specifically. And yet, despite this statutory limitation, the Commission's definition of the same term goes further to encompass waste handling facilities. Proposed Rules 3.66(b)(3)(A). While SB 3 does direct the Commission to consider operational elements including produced water disposal and handling facilities in its critical infrastructure designations, TEX. NAT. RES. CODE § 81.073(b)(2), this does not relieve the Commission of the need to align the scope of the Proposed Rules with the statutory defined terms. The weatherization rules application to produced water disposal wells is not authorized by SB 3 and, therefore, exceeds the legislative mandate. There is not a reasonable basis for disposal wells to be required to operate during severe weather events, as there are other means for temporarily handling produced water and other wastes. Further, weatherization of natural gas waste disposal facilities and produced water disposal facilities can be sufficiently guaranteed by winterizing electrical substations and electric transmission infrastructure. Accordingly, imposing additional requirements on natural gas waste disposal facilities would have minimal impact on reliability and be beyond the purview of the Commission under SB 3.

V. The proposed definition of "critical component" is overbroad and arbitrary and capricious.

The Proposed Rules define "critical components" to include equipment that is owned or leased. Proposed Rule 3.66(b)(1). At the same time, the Proposed Rules require operators to make, or to have others make, weatherization modifications to such equipment. Operators have limited ability to weatherize leased equipment. Generally, leased equipment must be maintained in the same state as it was received. Contractual obligations prevent operators from modifying this equipment and the same contracts hold for failure to abide by the terms of the agreement with the equipment supplier. The inclusion of leased equipment as "critical components" that require weatherization is arbitrary and capricious because operators do not have control over the leased equipment and the Proposed Rules do not provide sufficient time or allowances for operators to even to attempt renegotiate equipment lease terms. In addition, there is no guarantee that such attempts to amend existing agreements would even be successful.

Moreover, requiring operators to modify leased equipment unnecessarily exposes them to potential legal liability that may arise from breach of contract or damage to the leased equipment resulting from attempts to weatherize. In some cases, where equipment is or could be placed out-of-service by a weather event, the operator does not have the legal right to modify the equipment and must rely on third-parties to complete the work. Furthermore, where contractors are willing to perform weatherization modifications on the leased equipment, due to a limited number of providers of leased equipment and the current shortage of skilled labor in the oil and natural gas industry, operators may be unable to have the required modifications performed in a timely manner consistent with the Proposed Rules. Practically, operators may not be able to do more than install wind breaks around leased equipment, which will have limited value depending on the type and duration of the weather event. This work will also require skilled labor that may be not be available. Accordingly, implementation of the requirements of the Proposed Rules will not be feasible for all operators in the timeframes proposed. This is an unreasonable result and renders the requirements as applied to leased equipment arbitrary and capricious under Texas law. *Reliant* Energy, 62 S.W.3d 833.

The RRC needs to revise it proposed implementation timeline to take these considerations into account. We recommend that the Commission remove leased equipment from the scope of the Proposed Rules, or, in the alternative, (1) either provide an additional year under any final rule to complete weatherization-related actions on leased equipment or (2) include explicit limitations on enforcement for the first year of implementation of any final rule to ensure that operators are not exposed to unreasonable risk of massive monetary penalties because of circumstances beyond their control.

VI. The Commission's Laundry List of Weatherization Methods Will be Interpreted as Mandates that Do Not Take into Account Facility and Operator-Specific Conditions.

Although presented as merely options, not requirements, the listing of weatherization methods in Proposed Rule 3.66(c)(2)(D) creates the perception of a mandatory list of items that operators must fulfill or else face substantial seven-figure penalties. This is due to the fact that operators are required to verify with the Commission that they have weatherized their facilities and, in the case of weather-related interruptions, the Commission may issue massive fines for failure to comply with the weatherization requirements. Creating a list of required weatherization actions

unnecessarily restricts operators, and does not allow for a tailored approach to the risks natural gas supply chain facilities may face from severe weather events. Inspections and enforcement of the Proposed Rule's requirements may result in an unnecessary narrow focus on the laundry list being the only permissible measures, and any item from the laundry list that is missing will be considered proof positive of a failure to weatherize. This creates an incentive structure where the explicit methods recommended by the Commission become the standard to the detriment of techniques or methods which might be better suited to operator-specific needs. As explained below, many of the suggested methods also appear unreasonable in light of the risks presented from extreme weather events. Accordingly, the Proposed Rules will likely increase costs for operators without necessarily resulting in implementation of weatherization methods best-suited for operations. In addition, as also explained in greater detail below, there are practical constraints and liability concerns raised by the measures identified in the laundry list.

Endeavor requests that the Commission revise the Proposed Rules to explicitly state that failure to implement one of the specific identified measures will not result in any penalty to operators so long as appropriate risk-based measures are implemented with respect to weatherization measures. Any final rule should clarify that any of the weatherization measures identified in the laundry list do not need not be implemented if doing so unnecessarily exposes the operator to risk of third-party liability or if there is a reasonable basis to believe that the suggested method would not have the intended weatherization effect at the given facility.

VII. Requiring Third-Party Certified Engineering Assessments Following a Force Majeure Weather Event is Not Required under SB 3 and is Overbroad, Unnecessary, and Unduly Burdensome.

Proposed Rule 3.66(f) would require operators to engage a third-party engineer to perform a weatherization assessment if the operator experiences repeated weather-related stoppages. This proposal fails to take into account weather-related stoppages that may result from the failures of third parties, rather than the operator of the natural gas supply chain facility. For example, Endeavor could experience a "weather-related forced stoppage" due to a third-party's inability to provide Endeavor's facilities with electricity, which in turn forces Endeavor to stop production. In such situations, Endeavor should not be obligated to incur additional costs to hire an engineer to assess its weather emergency preparedness.

The Proposed Rules also presuppose that sufficient qualified independent engineers will be available. As previously noted, there is currently a general shortage of qualified labor in the oil and gas industry. Finding an engineer that meets the RRC's proposed requirements could be difficult, particularly following a severe weather event that is likely to disrupt the operations of hundreds of entities across the natural gas supply chain. As such, operators should not face the risk of substantial fines or penalties because of factors outside their control.

Such concerns carry even greater weight given that SB 3 does not contain any mention of the need for such third-party assessments. While we acknowledge that Texas courts have found that statutes do not need to include every specific detail and provide agencies with reasonable discretion to fill in any legislative gaps, *Railroad Comm'n v. Lone Star Gas Co.*, 844 S.W.2d 679, 689 (Tex. 1992), given the concerns raised in this section we believe that the Commission should reconsider its Proposed Rules with respect to this requirement.

This requirement should be removed, or alternatively, revised to (1) affirmatively state that such third-party engineering assessment will not be required if the weather-related stoppages are the result of an electricity provider's or other third-party's failure to implement weatherization methods which cause or contribute to the stoppage and (2) provide a safe harbor from enforcement for operators who face delays findings qualified independent engineers as a result of high demand.

VIII. The RRC's Proposed Implementation Timeline is Arbitrary and Capricious.

Under the Proposed Rules, operators will have until December 1, 2022 to take any actions required by the RRC's proposal. This will be practically impossible due to the supply chain issues and labor shortages affecting the oil and gas industry. Some operators will have the resources and manpower to make the changes, but not all. This will undoubtedly expose many operators to the risk of enormous penalties, and could have the perverse effect of operators curtailing production (at a time when energy prices continue to be at historical highs), if they do not believe that weatherization methods can be implemented on lower-producing or marginal wells on the Commission's proposed timeline.

Moreover, implementation of certain measures identified in the RRC's Proposed Rules could require retrofitting existing facilities, which similarly can take significant time. For example, the RRC's proposal identifies using nitrogen in closed loop systems for instrument controls as an alternative to air. Proposed Rule 3.66(c)(1)(D)(xiv). There is no current requirement to use air controlled instruments, so mandating nitrogen control lines would necessitate more than simply purging a line. Entire systems and facilities would have to be replaced to meet this new requirement. Beyond the monumental expense, this conversion would not be feasible in the proposed timeframe given current supply chain constraints. There is also concern that the available nitrogen supplies would not meet demand and would affect other supply chains that require the gas. While the laundry list of weatherization methods proposed appears permissive, in practice both operators and RRC enforcement staff will likely fixate on such measures as either the only permissible weatherization methods or as methods preferred by the Commission. Furthermore, many operators will no doubt interpret the reference in the Proposed Rules to be a mandate given the substantial risk of seven-figure penalties for non-compliance. Endeavor respectfully requests that the Commission allow for a deferred implementation timeline, and revise its proposal to provide operators with relief so long as they show reasonable progress towards implementing reasonable, risk-based weatherization measures. We also request that any final rule explicitly state that, so long as reasonable, risk-based weatherization measures are implemented, operators will not be penalized if such measures do not match up with the laundry list contained in the Proposed Rules.

IX. The Attestation Requirement Unreasonably Gives Rise to the Risk of Imposition of Personal Legal Liability, is Unwarranted, and Goes Beyond the Authority Conveyed by the Legislature Pursuant to SB 3.

The Proposed Rules require a natural gas supply chain facility operator or gas pipeline facility operator to submit to the Commission a Weather Emergency Readiness Attestation by December 1st of each year. Attestation must be provided either by an officer of the operator or done at the direction and under the supervision of such officer. This is an unnecessary overreach that is not expressly contemplated by SB 3. The text of SB 3 neither directs, nor explicitly authorizes the

RRC to impose an officer attestation requirement. Moreover, given the substantial fines and penalties authorized by SB 3, the Legislature clearly expressed an intent for risk of fines and penalties to provide the necessary assurance for compliance with any weatherization requirements. Accordingly, the officer attestation requirement is unnecessary. When coupled with the risk of personal liability this imposes on any attesting officer, requiring such attestation is arbitrary and capricious. We recommend that the Commission remove this requirement from any final rule.

X. The Commission Does Not Have Authority to Impose Broad Road Maintenance Obligations on Private Operators.

Proposed Rule 3.66(c)(2)(D)(xv) requires operators to have sand or gravel available for "road and/or ground maintenance and access." Most of the state's natural gas facilities are serviced by public roads and private driveways. The private driveways are typically dirt paths. At its broadest reading, implementation of this Proposed Rule could require maintenance of county or other third-party owned roads. Operators may not have the legal right to access or perform any winterization activities on private properties and, even if they did have the right to do so, such a requirement unnecessarily exposes them to risk of liability.

Having sand or gravel available for road maintenance during a weather event suggests that the Commission expects private operators to service public or landowner roads in cases where winter conditions prevent passage. The Texas Supreme Court has held that agencies must possess statutory authority to adopt rules and may not exceed that statutory authority. *See Pruett v. Harris Cty. Bail Bond Bd.* 249 S.W.3d 447, 452 (Tex. 2008). General road maintenance is outside the statutory authority of the Commission to regulate. First, the Commission does not have authority over public or private roads and the Legislature has not delegated this authority to the Commission under SB 3. Second, private parties are not allowed to release "loose material" on public roads in the state and doing so would subject the operator to punishment under the Transportation Code as well as liability for any damages to others or to the roadway. TEXAS TRANSPORTATION CODE § 725.003. Oil and gas operators are not trained in highway and road maintenance, nor do we hold ourselves out as holding such expertise. Such a requirement is arbitrary and capricious, and additional clarity must be included in any final rule making clear where operators' road maintenance obligations start and stop or else remove this specific regulation altogether.

XI. Burying all Water Lines Four Feet Deep is Not Necessary to Safeguard Against Freeze Risks and is Arbitrary and Capricious.

Proposed Rule 3.66(c)(2)(D)(xx) would require all new "water transportation" to be buried four feet or deeper and insulating all above-ground piping. Water lines are significant investments for operators who have other options at their disposal for moving water. The advantages of pipelines include efficiency, safety, and reduction of potential noise and air pollution from increased truck traffic. Pipelines also enable producers to economically move large volumes of produced water from areas of higher seismicity to areas where there is less concern. Many of these projects would become cost prohibitive under the Proposed Rules, disincentivizing operators from engaging in these laudable projects. The net result is that the Proposed Rules may ultimately stymie the pursuit of environmentally positive projects and operational efficiencies.

The Proposed Rules would also require specific contracting with landowners who often have their own requirements. For existing contracts with landowners, compliance would be difficult. Many landowners, including University Lands, require all flowlines to be aboveground. In cases where water pipelines can be buried, four feet is an arbitrary depth. First, the frostline varies across the state. At a minimum, the Proposed Rule should be adapted to the local circumstances. Second, a four-foot depth for water transportation lines is excessive throughout the state. An appropriate revision may require operators to ensure that any water transportation lines be buried at an appropriate depth below recorded frostlines or otherwise insulated to mitigate the effects of severe weather.

XII. The Cost of Weatherization Will Force Some Operators to Shut in Productive Wells.

For some operators, the effect of the Proposed Rules will be to shut-in production rather than undertake potentially costly weatherization requirements. For wells that produce small amounts of natural gas, especially those producing less than the 50 mcfd threshold established under the Proposed Rules, the costs of weatherization may exceed the present and future value of the asset. Others may not have the capital to undertake the modifications in the current lending environment. Forcing the shutting-in of productive wells would be counterproductive to the objectives of SB 3, which is focused reliable availability of state energy resources. We recommend that the Commission revise its proposal to raise the applicability threshold with respect to production from 50 mcfd to 250 mcfd.

XIII. The Proposed Rules Require Greater Clarity Regarding "A Reasonable Period of Time" to Remedy Violations".

The Proposed Rules require the Commission to provide operators with a "reasonable period of time" to remedy potential violations of the weatherization requirements, but does not provide any additional detail. Failing to provide a specific timeframe opens the door for the Commission to act in an arbitrary and inconsistent manner, exposing operators to substantial fines or penalties of up to $1 million per day per violation. Additionally, given the sweeping scope of the Commission's rulemaking, there will inevitably be an incredible surge in demand for contractors to assist operators in their efforts to comply with any final rule.

Compounded with the existing labor crisis in the oil and natural gas industry, these Proposed Rules will have two undesirable effects. First, many operators will be subject to risk of tremendous fines if they are unable to secure the scarce labor resources needed to modify their facilities to reach compliance. Second, this new demand for labor will exacerbate the existing labor shortage, possibly creating new shortages and difficulties in scheduling work. Further strain on the oil and natural gas skilled labor market could have cascading effects on the ability of operators to produce hydrocarbons, which would contravene the Commission's core mission to ensure responsible production of the oil and gas resources of the state.

The Commission should provide greater clarity with respect to what a reasonable period of time would be to account for these issues. A reasonable period of time to complete the work should be no less than twelve months' time. And the Commission should provide for the current market conditions by expressly authorizing extensions of any deadline under any final rule if the operator is able to demonstrate that it has made diligent efforts to schedule contractor support to complete

the necessary work, but has not yet been able to complete weatherization remedies because of labor shortages.

XIV. The Proposed Rules Should Provide Greater Clarity with Respect to When the Maximum Penalty of $1,000,000 May Be Assessed.

SB 3 authorizes the Commission to assess penalties of up to $1,000,000 per violation per day, for failure to comply with the weatherization rules. This action significantly increases the maximum penalty that the RRC may assess an operator. Although the amount is authorized by the Legislature, the Commission must provide clear statements to regulated entities as to when the penalties will apply, otherwise any penalty above $5,000 will be arbitrary and capricious. The proposed penalty matrix, Figure: 16 TEX. ADMIN. CODE § 3.66(g)(1), does not provide any guidance as to the circumstances that may warrant imposing the maximum $1,000,000 fine, and only provides guidance for fines in the $3,000 to $5,000 range.

Endeavor appreciates the need for a strong deterrent to encourage compliance; however, given the unprecedented high penalty that may be imposed for violating the RRC's weatherization rules the regulated community requires additional clarity. RRC inspectors will also require additional guidance to ensure appropriate penalty amounts are ultimately assessed. This information must necessarily be included in any final rule. While we defer to the Commission's exercise of its enforcement discretion, we strongly urge that guardrails be included in any final rule such as outlining specific circumstances or types of violations that may warrant imposing the maximum fine allowed under SB 3.

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Endeavor supports efforts to weatherize infrastructure that is actually critical in order to ensure that downstream customers, especially the most vulnerable Texans, have reliable access to energy. We know this is best accomplished by focusing energy and expense on facilities that play a direct role in electric generation and transmission. We appreciate the opportunity to provide comments on the Commission's Proposed Rules and we again encourage the Commission to focus its scope and effort on actions that will improve the reliability of the electric grid consistent with the directives of SB 3.

Respectfully,

William F. Krueger
General Counsel and VP – Legal
Endeavor Energy Resources, L.P.