



Via email

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

Re: Comments to Proposed Statewide Rule 66

Dear Mrs. Martinec:

Henry Resources LLC (“Henry”) hereby provides the following comments to the Railroad Commission of Texas (“RRC”) on the requested changes to 16 Texas Administrative Code § 3.66 (“Statewide Rule 66”), and the attached, corresponding blackline of the rule for your convenience. Henry is committed to the goal of improving reliability of the electricity supply chain in the State of Texas, and makes the following comments in furtherance of that objective.

Overview

The goal of Henry’s comments is twofold: First, to clarify a producer’s discretion to weatherize facilities it operates based on actual operations and its experience and expertise in the field. Second, to properly tailor the rule so that it only applies to those facilities materially contributing to power generation in the State. To that end, Henry adds the term “dry” to the description of natural gas because only dry natural gas is sent to Texas’s gas-fired electric generators. An operator will know how much dry gas it produces for a facility based on historical sales records—the ratio of wet gas produced to dry gas sold traditionally does not vary once production stabilizes.

In addition to the comments included in this letter regarding Statewide Rule 66, Henry strongly recommends that the RRC also amend Statewide Rule 65¹ to allow exceptions to the critical designation for facilities that do not contribute to power generation in the State, make a minimal contribution to power generation, or participate in the Electric Reliability Council of Texas’s (“ERCOT”) load resource program. ERCOT has publicly stated that, “the value of a Load Resource’s load reduction is equal to that of an increase in generation by a generating plant.”² Failure to exempt facility’s participating in the load resource program from the critical designation will, therefore, result in a loss of available power equivalent to that of a loss of dispatchable power generation.

In support of its stated goals, Henry submits the following comments:

¹ 16 Tex. Admin. Code § 3.65.

² ERCOT, LOAD RESOURCE PARTICIPATION IN THE ERCOT MARKETS, <https://www.ercot.com/services/programs/load/laar> (last visited June 13, 2022).

Comments

Comment 1: Subsection (a) *Applicability* should be amended to clarify that facilities are exempt from Statewide Rule 66 if the facilities produce less gas than the minimum production volumes described in Statewide Rule 65 or if the facilities are included on an approved Form CI-X (Critical Designation Exception Application).

Comment 2: Subsection (a) *Applicability* should be amended to clearly state that Statewide Rule 66 only applies to a gas supply chain facility that has received actual notice it is on the electricity supply chain map. Henry cannot see the map to determine if any of the facilities it operates are on the map. Thus, operators must be notified about which facilities are included on the map to determine whether the rule applies, and how to implement applicable weather emergency preparedness standards.

Comment 3: Subsection (b)(4) *Definitions* should be amended to clarify the meaning of “major weather-related forced stoppage” as follows:

- The definition should include an objective standard, e.g., a percent in loss of production, that would constitute a major weather-related forced stoppage. Giving the Director of the Critical Infrastructure Division discretion to determine which weather-related forced stoppages qualify as major weather-related forced stoppages will result in an inconsistent application of this rule.
- The definition should also be based on an operator’s intentional conduct. An operator must not be penalized if it attempts, in good faith, to produce natural gas during a weather emergency in compliance with this rule.
- The loss of production should be measured in volume of dry natural gas lost because only dry natural gas is sent to Texas’s gas-fired electric generators.

Comment 4: Subsection (b)(5) *Definitions* should be amended to include “major” in the definition of “repeated weather-related forced stoppage,” i.e., “When a gas supply chain facility or a gas pipeline facility has more than one major weather-related forced stoppage violation within a calendar year.” As proposed, any minor or immaterial weather-related forced stoppage may trigger the requirement for an operator to hire a third-party engineer and incur a significant, but unnecessary expense with no added benefit to grid reliability.

Comment 5: Subsection (b)(8) *Definitions* should be amended to clearly state an operator’s discretion to implement weatherization standards based on the operator’s own expertise and analysis regarding preparations to operate its own facilities during a weather emergency. As proposed, the definition requires operators to install equipment to mitigate weather-related operational risks, which may not be required in certain circumstances, is not the purpose of the rule, may lead to waste, and is unduly burdensome on producers.

Comment 6: Subsection (b)(9) *Definitions* should be amended to avoid redundancy and promote consistency—the definition of “weather-related forced stoppage” should reference “weather emergency,” i.e., “An unanticipated and/or unplanned outage in the production, treating, processing,

storage, or transportation of natural gas that is caused by a weather emergency [~~conditions such as freezing temperatures, freezing precipitation, or extreme heat~~].”

Comment 7: Subsection (c)(1)(A) *ensure the sustained operations* must be amended to avoid any suggestion that the RRC has jurisdiction to require producers of natural gas to operate under any conditions. Oil and gas producers are not public utilities, as that term is defined in Section 186.001 of the Texas Utilities Code, and are, therefore, not subject to the continuous and adequate service requirements outlined in Section 186.002 of the Texas Utilities Code. Henry recommends the text of this subsection be amended so that the subsection reads, “[~~ensure the sustained operation~~] prevent weather-related forced stoppage of a gas supply chain facility...during a weather emergency....”

Comment 8: Subsection (c)(1)(B) *correct known weather-related forced stoppages* should be amended to promote consistency with all other sections of the rule. The phrase “cold weather conditions” should be replaced with “weather emergencies” because cold weather conditions are included in the definition of “weather emergencies,” i.e., “correct known repeated weather-related forced stoppages that prevented sustained operation of a facility because of previous [~~cold weather conditions~~] weather emergencies.”

Subsection (c)(1)(B) should also be amended, as stated above, to narrow the scope of applicability to only those repeated weather-related forced stoppages. A single weather-related forced stoppage may be a fluke or an outlier, and correcting such an anomalous stoppage may not do anything to support reliability of the grid. More narrowly tailoring the rule to apply to repeated weather-related forced stoppages will ensure that only problematic stoppages are corrected, supporting the reliability of the grid.

Comment 9: Subsection (c)(2)(A)-(B) *weather emergency preparation measures* must be amended to avoid any suggestion that the RRC has jurisdiction to require producers of natural gas to operate under any conditions, and to clarify the operator’s discretion to implement weatherization standards based on the operator’s own expertise and analysis regarding preparations to operate its own facilities during a weather emergency. For example, the initial sentence of subsection (2) should be amended to read, “Weather emergency preparation measures required by paragraph (1) of this subsection [~~shall~~] may include but are not limited to....”

Comment 10: Subsections (c)(2)(C) *emergency operations planning using a risk-based approach* and (c)(2)(D) *weatherization methods* should be eliminated from the rule and placed into a manual for the following reasons:

First, placing the weatherization methods in a guidance manual instead of the rule allows the RRC to propose new and/or amended weatherization methods without the necessity of a lengthy rulemaking. New and/or amended weatherization methods will very likely become apparent as producers, transporters, and processors implement the currently recommended weatherization methods. If the weatherization methods were placed in a manual, the RRC could easily modify their recommendations to incorporate this additional information.

Second, the proposed weatherization methods currently included in the draft rule are not equally applicable to producers, transporters, and processors. For example, a prudent operator would not keep fuel onsite at a producing facility, as required by subsection (c)(2)(D)(i), because storing fuel onsite creates a fire hazard. Additionally, it is unclear how a producer would simulate cold weather conditions to test freeze protection components as required by subsection (c)(2)(D)(xii). Furthermore, an oil and gas producer cannot coordinate with local authorities to allow for ingress and egress during

weather emergencies, as required by subsection (c)(2)(D)(xix), because a producer only has authority under the mineral lease to enter and use as much of the surface estate as necessary to produce oil and gas. The mineral lease does not grant access to third parties at any time or allow the lessee to grant access to third parties, even during a weather emergency. Similarly, a producer cannot bury subsurface water piping, even new subsurface piping, without renegotiating existing mineral leases and/or surface use agreements. Placing the recommended weatherization methods in a manual will allow the RRC to distinguish between weatherization methods applicable to production facilities, transportation facilities, and processing facilities.

Third, many of the technical terms used in subsection (c)(2)(D) are not defined in statute, rule, case law, or other secondary sources. Henry finds it difficult, if not impossible, to implement the RRC's weatherization methods without additional detail regarding the definition and/or intended interpretation of the technical terms. Placing the recommended weatherization methods in a manual will allow the RRC to clearly define the technical terms currently cited in the proposed rule.

Fourth, the proposed weatherization methods currently included in the draft rule are methods deployed in cold weather climates.³ The weatherization manual should be prepared in consultation with industry so that production of natural gas in the State is not prematurely curtailed due to unduly burdensome weatherization requirements.

The RRC regularly maintains manuals that are used by industry and enforced by the RRC, e.g., H2S Manual, Injection Storage Manual, Oil & Gas Procedure Manual, Guidance Manual for Operators of Small Natural Gas Systems, etc. The weatherization methods currently detailed in the proposed rule are the type of guidance materials the RRC has typically included in a guidance manual—a practice common at the RRC for the past 50 years. Subsections (c)(2)(C) *emergency operations planning using a risk-based approach* and (c)(2)(D) *weatherization methods* should be eliminated from the rule and placed into a weatherization manual.

Comment 11: Subsections (d)(1)(A)(i) – (v) *Weather Emergency Readiness Attestation* should be eliminated and replaced with the standard RRC certification:

Certificate: I declare under penalties prescribed in Sec. 91.143, Texas Natural Resources Code, that I am authorized to make this report, that this report was prepared by me or under my supervision and direction, and that data and facts stated therein are true, correct, and complete, to the best of my knowledge.

Comment 12: Subsections (d)(1)(B)(i) – (xvi) *Attestation Attachment* should be eliminated and replaced with the requirement to file an emergency operations plan or similar annual filing with a general description of the operator's operations and weatherization procedures.

Comment 13: Subsection (f) *Weather-related forced stoppages* should be amended to distinguish between reporting standards applicable to gas supply chain facilities and gas pipeline facilities. Henry recommends creating subsection (f)(1), reporting standards applicable to gas supply chain facilities, and subsection (f)(2), reporting standards applicable to gas pipeline facilities. Subsection (f)(3) could address repeated weather-related forced stoppages, and would be applicable to both gas supply chain

³ See, e.g., APPENDIX: GTI REPORT, FERC REPORT ON OUTAGES AND CURTAILMENTS DURING THE SOUTHWEST COLD WEATHER EVENT OF FEBRUARY 1 – 5, 2011 (Aug. 2011), available at <https://www.ferc.gov/sites/default/files/2020-04/08-16-11-report.pdf>.

facilities and gas pipeline facilities. As proposed, the rule is not clear about which reporting standards apply to the different facilities.

Comment 14: Subsection (f)(1) *Weather-related forced stoppages* should be amended to increase the threshold for a reportable weather-related forced stoppage from >0 mcf to the greater of 15,000 mcf per lease or a forty percent (40%) reduction in lease production averaged over a three (3) month period of standard production, whichever is greater. Producers may experience a slowdown in the gas molecules during a cold-weather weather emergency due to thermodynamics. There are also natural fluctuations in production. Subsection (f)(1) should be clarified to ensure that the reporting requirements are only triggered when a reduction in production is caused by an unanticipated and/or unexpected weather emergency. This would also ensure that operators are only penalized for degradations of production from actual weather-related forced stoppages.

Comment 15: Subsection (f)(2) *Repeated weather-related forced stoppages* should be amended to clarify the following:

- Contracting with a third-party is only required after notice and opportunity for hearing, and in accordance with a RRC final order.
- The term “qualified engineer” should be replaced with “registered professional engineer,” consistent with all other RRC regulations.
- Operators must be given the option to file the engineer’s assessment and operator’s corrective action plan as confidential in accordance with subsection (d) of the rule to protect operational trade secrets.

Comment 16: Subsection (g)(1) *Violation of this section by a gas supply chain facility operator* should be amended to clarify that an alleged violation that is not remedied in a reasonable amount of time will only be referred to the Office of the Attorney General after notice and opportunity for hearing. This will ensure enforcement of Statewide Rule 66 is consistent with all other RRC rules.

Comment 17: Subsection (g)(1) *Enforcement* should be amended to replace “person” from line 4 with “gas supply chain facility” to clarify that this subsection only applies to gas supply chain facility operators.

Comment 18: Subsection (g)(2) *Enforcement* should be amended, as stated above, to replace “person” from line 4 with “gas pipeline facility operator” to clarify that this subsection only applies to gas supply chain facility operators.

Comment 19: *Figure 16 TAC §3.66(g)(1)*. The production thresholds identified in the violation factors should be updated to reflect the degradation in production (greater of 15,000 mcf per lease or a forty percent (40%) reduction in lease production averaged over a three (3) month period of standard production) discussed in the previous comment.

Comment 20: *Figure 16 TAC §3.66(g)(1)*. The factor value assigned to an oil lease or gas well facility producing an average of 5,000 mcf and a gas processing plant, underground gas storage, or gas pipeline facility transporting 200,000 mcf is a five-fold increase in potential volume lost, thus producers should be entitled to a higher threshold of greater of 15,000 mcf per lease or a forty percent (40%) reduction in lease production averaged over a three (3) month period of standard production discussed in the previous comment.

Comment 21: *Figure 16 TAC §3.66(g)(1).* The violation factor “Hazard to health, safety, or economic welfare of the public” should be amended to “Actual hazard to health, safety, or economic welfare of the public.”

Comment 22: Figure 16 TAC §3.66(g)(1) should be amended to include a factor value of “-4” for a producers good-faith attempt to produce natural gas during a weather emergency.

Please let me know if there is anything else we can provide.

Sincerely,

HENRY RESOURCES LLC


By: David Bledsoe *MB*
President

§3.66. Weather Emergency Preparedness Standards.

(a) Applicability.

(1) ~~[In accordance with Texas Natural Resources Code §86.044]~~ Unless otherwise provided in subsection (a)(2), this section applies to a gas supply chain facility that is:

(A) included on the electricity supply chain map created under Texas Utilities Code §38.203; and

(B) designated as critical in §3.65 of this title, relating to Critical Designation of Natural Gas Infrastructure.

(2) This section does not apply to a gas supply chain facility that is:

(A) a gas well or oil lease producing less gas than the minimum production volumes described in §3.65 of this title, relating to critical gas suppliers, regardless of whether the facility is included on the electricity supply chain map created under Texas Utilities Code §38.203; or

(B) included on an approved Form CI-X pursuant to § 3.65 of this title, relating to exceptions to Critical Designation of Natural Gas Infrastructure.

(3) In accordance with Texas Utilities Code §121.2015, this section applies to a gas pipeline facility that:

(A) directly serves a natural gas electric generation facility operating solely to provide power to the electric grid for the Electric Reliability Council of Texas (ERCOT) power region or for the ERCOT power region and an adjacent power region; and

(B) is included on the electricity supply chain map created under Texas Utilities Code §38.203.

(4) This section will only apply to those gas supply chain facilities for which the operator has received no less than six-months actual notice that the facility is included on the electricity supply chain map created under Texas Utilities Code §38.203.

(b) Definitions. In this section, the following definitions apply.

(1) Critical component--Any component, including equipment rented or leased from a third party, 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.

(2) Gas pipeline facility--A pipeline or pipeline facility regulated by the Commission under Texas Utilities Code Chapter 121.

(3) Gas supply chain facility--A facility that is:

(A) used for producing, treating, processing, pressurizing, storing, or transporting natural gas, as well as handling waste produced;

(B) not primarily used to support liquefied natural gas pretreatment, liquefaction, or regasification facilities in the business of exporting or importing liquefied natural gas to or from foreign countries;

(C) otherwise regulated by the Commission under Subtitle B of Title 3, Texas Natural Resources Code; and

(D) not regulated by the Commission under Texas Utilities Code Chapter 121.

(4) Major weather-related forced stoppage--A weather-related forced stoppage that:

(A) is caused by the intentional disregard of this section; and

(B) results in a significant impact to public safety and [as determined by the Critical Infrastructure Division Director or is the result of the deliberate disregard of this section];

(C) results in the loss of production exceeding 15,000 Mcf of dry natural gas per day or a forty percent (40%) reduction in lease production of dry natural gas averaged over a three (3) month period of standard production, whichever is greater.

(5) Repeated weather-related forced stoppage--When a gas supply chain facility or a gas pipeline facility has more than one major weather-related forced stoppage violation within a calendar year.

(6) Sustained operation--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) Weather emergency--Weather conditions such as freezing temperatures, freezing precipitation, or extreme heat in the facility's county or counties that result in an energy emergency as defined by §3.65 of this title. A weather emergency does not include weather conditions that cannot be reasonably mitigated such as tornadoes, floods, or hurricanes.

(8) Weatherization--The iterative cycle of preparedness for weather emergencies that may include[s] corrective actions taken on issues identified from [previous] recent extreme weather events or internal review, implementation of processes, [and] potential installation of equipment to mitigate weather-related operational risks, or any other measures the operator believes are prudent to prepare for a weather emergency.

(9) Weather-related forced stoppage--An unanticipated and/or unplanned outage in the production, treating, processing, storage, or transportation of natural gas that is directly caused by a weather emergency [~~conditions such as freezing temperatures, freezing precipitation, or extreme heat~~].

(c) Weather emergency preparedness standards for a gas supply chain facility or a gas pipeline facility.

(1) By December 1st of each year, a gas supply chain facility operator or a gas pipeline facility operator shall implement weather emergency preparation measures intended to:

(A) ~~[ensure the sustained operation]~~ prevent weather-related forced stoppage of a gas supply chain facility or a gas pipeline facility during a weather emergency; and

(B) correct known repeated weather-related forced stoppages that prevented sustained operation of a facility because of previous ~~[cold weather conditions]~~ weather emergencies.

(2) Weather emergency preparation measures required by paragraph (1) of this subsection ~~[shall]~~ may include but are not limited to:

(A) self-assessment~~[,]~~ and inspection~~[s, and tests]~~ of critical components and other equipment;

(B) ~~[providing]~~ training on weather emergency preparations and operations to relevant operational personnel;

(C) emergency operations planning using a risk-based approach to identify, test, and protect the critical components of ~~[the]~~ any facility that experienced a repeated weather-related forced stoppage; and

~~(D)~~ weatherization of ~~[the]~~ any facility that experienced a repeated weather-related forced stoppage using best practices and methods applicable 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]~~. ~~[Weatherization methods may include but are not limited to the following:~~

(i) ~~securing onsite fuel and spare parts;~~

(ii) ~~securing sufficient chemicals, auxiliary fuels, and other materials;~~

(iii) ~~keeping inventory of hydrate and/or freeze protection chemical readily available and accessible;~~

(iv) ~~securing personnel including contractors required to operate the facility;~~

(v) ~~installing adequate wind breaks or temporary enclosures equipment or facilities susceptible to outages caused by wind;~~

(vi) ~~enclosing sensors and other sensitive instruments for cold weather critical components;~~

(vii) ~~installing thermal insulation and/or heat tracing devices;~~

~~inspecting thermal insulation for damage or degradation, and repairing damaged or degraded insulation;~~

~~(viii) — installing monitoring devices for cold weather critical components, including circuitry providing freeze protection or preventing instrument air moisture;~~

~~(ix) — confirming the operability of instrument air moisture prevention systems;~~

~~(x) — installing chemical injection systems for lowering freezing point of entrained water at the facility;~~

~~(xi) — installing devices and equipment to remove, store, or dispose of liquids to prevent freeze-offs of equipment;~~

~~(xii) — establishing a schedule for testing of such freeze protection components prior to December and through March of each year;~~

~~(xiii) — conducting maintenance of freeze protection components for all applicable equipment;~~

~~(xiv) — using nitrogen in closed loop systems for instrument controls as an alternative to air;~~

~~(xv) — ensuring equipment availability and inventory of sand or gravel stock to allow for road and/or ground maintenance and access;~~

~~(xvi) — procuring necessary third party services such as rental tanks, enclosures, tank trucks, mobile steamer units, and pressure trucks;~~

~~(xvii) — creating accessible operating procedures that include steps and actions to be taken by personnel during extreme weather conditions, such as de-pressuring and draining of process lines or systems, hydrate removal, and ice plug removal;~~

~~(xviii) — developing and implementing redundancies for continued operations during loss of critical and high-risk critical equipment during weather emergencies;~~

~~(xix) — coordinating with local authorities for allowing ingress and egress to critical facilities during weather emergencies; and~~

~~(xx) for new water transportation, burying all subsurface piping four feet or deeper and insulating and tracing above-ground piping.~~

Figure: 16 TAC §3.66(c)(2)(D)]

(d) Weather Emergency Readiness Attestation.

(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 by an authorized [~~officer~~] agent of the operator entity

attesting, under penalties prescribed in Texas Natural Resources Code §91.143, that the agent was authorized to make the report, that the report was prepared by the agent or under the agent's supervision and direction, and that the data and facts stated in the report are true, correct, and complete, to the best of the agent's knowledge; and [~~:(i) the operator implemented the required weather emergency preparation measures described in subsection (c) of this section; the information and statements made in the Weather Emergency Readiness Attestation are true, correct, and complete;~~]

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

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

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

(B) includes an emergency operations plan, including a general description of the operator's emergency operations and weatherization procedures. [~~attachment describing all activities engaged in by the operator to implement the requirements of subsection (c) of this section for each of the following categories applicable to the facility:~~

~~(i) — process piping and vessels;~~

~~(ii) — process fluids including dry gas, wet gas, and produced water;~~

~~(iii) — fuel gas systems;~~

~~(iv) — tankage, terminals, and distribution;~~

~~(v) — instrument air management;~~

~~(vi) — electrical management systems;~~

~~(vii) — water management systems;~~

~~(viii) — utility connections;~~

~~(ix) — pumps, compressors, and turbines;~~

~~(x) — air intake systems;~~

~~(xi) — chemical tanks and porta feeds;~~

~~(xii) — flare systems;~~

~~(xiii) — safety systems including showers and facewash;~~

~~(xiv) — maintenance preparation and readiness;~~

~~(xv) — closed loop glycol heaters and tracing systems; and~~

~~(xvi) — additional critical components not listed above; and~~

(C) for the Weather Emergency Readiness Attestation due December 1,

~~2022, also describes corrective actions taken to mitigate known weather-related forced stoppages that prevented sustained operation of a facility because of previous cold weather conditions.]~~

(2) 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. 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.

(e) Inspection of gas supply chain facilities and gas pipeline facilities. Each facility required to comply with this section is subject to Commission inspections to ensure compliance with this section.

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

(1) Gas supply chain facility.

(A) An operator of a gas supply chain facility ~~[or a gas pipeline facility]~~ that experiences a weather-related forced stoppage in sustained operations during a weather emergency shall notify the Commission immediately through the Critical Infrastructure Division's notification portal if the stoppage is not resolved within ~~[24]~~ 72 hours of discovery of the stoppage.

(B) In the event a weather-related forced stoppage results in the greater of a loss of production exceeding 15,000 Mcf of dry natural gas per day, or a forty percent (40%) reduction in lease production of dry natural gas averaged over a three (3) month period of standard production ~~[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 the Critical Infrastructure Division 24-hour emergency telephone number. ~~[If an inspection determines that the stoppage was caused by the facility's failure to adhere to the requirements of this section, the facility will be subject to an enforcement action.]~~

(2) Gas pipeline facility.

(A) An operator of a gas pipeline facility that experiences a weather-related forced stoppage in operations during a weather emergency shall notify the Commission immediately through the Critical Infrastructure Division's notification portal if the stoppage is not resolved within 24 hours of discovery of the stoppage.

(B) In the event a weather-related forced stoppage results in the 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 the Critical Infrastructure Division 24-hour emergency telephone number.

(3) Repeated weather-related forced stoppages. 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 operations [~~, such as equipment freeze-offs, instrument failures, forced outages, or forced shut-ins~~] shall, after notice and opportunity for hearing, [~~upon notice from the~~] and in accordance with a Final Order issued by the Commission;[~~;~~]

(A) contract with a registered professional engineer in accordance with Texas Natural Resources Code § 86.044(f) [~~qualified engineer with related experience~~] to assess its weather emergency preparation measures, plans, procedures, and operations. [~~The qualified engineer shall not be an employee of the facility or its affiliate and shall not have participated in any assessments of the facility for at least the previous five years, unless the facility's operator can document that no other qualified engineers are reasonably available for engagement.~~]

(B) [~~The facility's operator shall~~] Within the timeframe provided and in compliance with the Commission's [notice] order, the operator shall submit to the Commission a written assessment prepared by the [~~qualified~~] registered professional engineer [~~and~~] setting out 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 corrective action plan as "confidential" in accordance with subsection (d) of this section, relating to Confidentiality of the Weather Emergency Readiness Attestation.

(4) If an inspection determines that the weather-related forced stoppage was caused by the facility's failure to adhere to the requirements of this section, the facility may be subject to an enforcement action.

(g) Enforcement.

(1) Violation of this section by a gas supply chain facility operator.

(A) A gas supply chain facility operator will be given notice and opportunity for a hearing for alleged violations of this section if the alleged violation is not remedied in a reasonable amount of time.

(B) Pursuant to Texas Natural Resources Code §86.044 and §§86.222-.224, if the Commission determines, after notice and opportunity for hearing, that a [~~person~~] gas supply chain facility operator 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.~~]

(C) The table in this paragraph contains a classification system to be used under Texas Natural Resources Code §86.222 for violations of this section.

Figure: 16 TAC §3.66(g)(1)

(2) Violation of this section by a gas pipeline facility operator.

(A) A gas pipeline facility operator will be given notice and opportunity for a hearing for alleged violations of this section. Pursuant to Texas Utilities Code §121.2015, if the Commission determines that ~~[a person]~~ the gas pipeline facility operator has violated this section and the violation is not remedied in a reasonable amount of time_[7]

(B) ~~[t]~~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.

(C) In accordance with Texas Utilities Code §121.206(d), the Commission will use the table in paragraph (1) of this subsection in assessing penalties for a violation of this section. The penalty amounts contained in the table in paragraph (1) of this subsection are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations Texas Utilities Code, Chapter 121, Subchapter E, or a safety standard or other rule prescribed or adopted under that subchapter. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The Commission retains full authority and discretion to cite violations of Texas Utilities Code, Chapter 121, Subchapter E, or a safety standard or other rule prescribed or adopted under that subchapter, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section. The penalty calculation worksheet shown in the table in paragraph (1) of this subsection lists the typical penalty amounts for certain violators, the circumstances justifying enhancements of a penalty, and the circumstances justifying a reduction in a penalty.

Figure: 16 TAC §3.66(g)(1)

Classification System

Violation Factors		Factor Value	Points Tally
Oil lease or gas well facility out of compliance with §3.66 produces an average of <u>15,000 Mcf of dry natural gas per day or a forty percent (40%) reduction in lease production of dry natural gas averaged over a three (3) month period of standard production, whichever is greater</u>		4	
Oil lease or gas well facility out of compliance with §3.66 produces an average of 1,000 Mcf or more per day but less than 5,000 Mcf of natural gas per day		3	
Oil lease or gas well facility out of compliance with §3.66 produces an average of 500 Mcf or more per day but less than 1,000 Mcf of natural gas per day		2	
Oil lease or gas well facility out of compliance with §3.66 produces an average of 250 Mcf or more per day but less than 500 Mcf of natural gas per day		1	
Gas processing plant, underground gas storage, or gas pipeline facility out of compliance with §3.66 that resulting in a loss of processing, storage withdrawal, or transportation of 200 MMcf or more of natural gas per day		4	
Gas processing plant, underground gas storage, or gas pipeline facility out of compliance with §3.66 that results in a loss of processing, storage withdrawal, or transportation capacity 100 MMcf or more per day but less than 200 MMcf of natural gas per day		3	
Gas processing plant, underground gas storage, or gas pipeline facility out of compliance with §3.66 that results in a loss of processing, storage withdrawal, or transportation capacity of less than 100 MMcf of natural gas per day		2	
<u>Actual</u> [H] hazard to health, safety, or economic welfare of the public		5	
Potential hazard to health, safety, or economic welfare of the public		2	
Time out of compliance (calculated as days the operator fails to remedy a violation noted in a Commission notice of violation)	90 days or greater	4	
	60 days or more but less than 90 days	3	
	30 days or more but less than 60 days	2	
	5 days or more but less than 30 days	1	

Reckless conduct of operator	3	
Intentional conduct of operator	5	
Repeat violations based on operator's history of compliance	3	
Good faith effort to remedy violation	-2	
No effort to remedy violation	5	
<u>Good-faith effort to produce during weather emergency</u>	<u>-4</u>	
		Total
		Penalty maximum per violation
15 points or more = Class A violation		\$More than 5,000 ¹
10-14 points = Class B violation		\$5,000
5-9 points = Class C violation		\$4,000
1-4 points = Class D violation		\$3,000

¹ Pursuant to Natural Resources Code §86.222, the required classification system shall provide that a penalty in an amount that exceeds \$5,000 may be recovered only if the violation is included in the highest class of violations in the classification system.