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RAILROAD COMMISSION OF TEXAS OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Wayne Christian
Commissioner Christi Craddick
Commissioner Jim Wright

FROM: Haley Cochran, Attorney
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel

DATE: November 29, 2021

SUBJECT: New 16 TAC §3.65 and Amendments to §3.107 to Implement HB 3648 and SB3

Attached is Staff's recommendation to adopt new 16 Texas Administrative Code §3.65, relating to Critical Designation of Natural Gas Infrastructure, and amend §3.107, relating to Penalty Guidelines for Oil and Gas Violations. The new section and amendments implement changes made by House Bill 3648 and Senate Bill 3 from the 87th Texas Legislative Regular Session. Staff also recommends adoption of related Forms CI-D and CI-X.

New §3.65 implements Section 4 of Senate Bill 3 and Section 1 of House Bill 3648 by specifying the criteria and process by which entities associated with providing natural gas in Texas are designated as critical gas suppliers or critical customers during an energy emergency. The amendments in §3.107 are found in the tables in subsection (e)(1) and subsection (j) and add references to the requirements of new §3.65.

On September 14, 2021, the Commission approved the publication of the proposed amendments in the Texas Register for a 30-day comment period, which ended on November 1, 2021. Staff recommends that the Commission adopt the amendments with changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6458). The recommended changes are described in the attached adoption preamble.

cc: Wei Wang, Executive Director
Ted Wooten, Director, Critical Infrastructure Division
Natalie Dubiel, Attorney, Office of General Counsel
Matt Garner, Attorney, Office of General Counsel

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1 The Railroad Commission of Texas (Commission) adopts new §3.65, relating to Critical Designation
2 of Natural Gas Infrastructure, and amendments to §3.107, relating to Penalty Guidelines for Oil and Gas
3 Violations, with changes to the proposed text as published in the October 1, 2021, issue of the Texas Register
4 (46 TexReg 6458). The new section and amendments implement changes made by House Bill 3648 and Senate
5 Bill 3 from the 87th Texas Legislative Regular Session.

6 The Commission also adopts Commission Forms CI-D and CI-X, which are related to the adopted new
7 rule and amendments and were proposed on the Commission's website.

8 The Commission received comments on the proposed new rule and amendments from 11 associations,
9 18 companies or organizations, and 910 individuals. The comments are summarized below.

10 House Bill 3648 amends Texas Natural Resources Code, Chapter 81, to add new section 81.073
11 regarding critical natural gas facilities and entities. Section 81.073 requires the Commission to collaborate with
12 the Public Utility Commission of Texas (PUCT) to adopt rules to establish a process to designate certain
13 natural gas facilities and entities associated with providing natural gas in this state as critical customers or
14 critical gas suppliers during energy emergencies. The rules adopted by the Commission under new section
15 81.073 must provide that those designated as critical natural gas facilities and entities provide critical customer
16 information, as defined by the Commission, to their electric entities. House Bill 3648 requires that the
17 Commission adopt the new rules not later than December 1, 2021.

18 Senate Bill 3 is the 87th Legislature's sweeping response to the February 2021 Winter Weather Event
19 ("Winter Storm Uri") in Texas and generally creates new law related to preparing for, preventing, and
20 responding to weather emergencies and power outages. Senate Bill 3 requires several state agencies and
21 regulated industries to make significant changes in response to Winter Storm Uri. This proposed rulemaking is
22 the Commission's first of many steps in implementing the requirements of Senate Bill 3.

23
24 Weatherization

25 Importantly, this rulemaking implements Section 4 of Senate Bill 3. It does not implement Sections 5
26 or 21 of Senate Bill 3, which added Natural Resources Code section 86.044 and Utilities Code section
27 121.2015 requiring the Commission to adopt rules requiring a gas supply chain facility operator and a gas
28 pipeline facility operator, respectively, to implement measures to prepare to operate during a weather
29 emergency (i.e., "weatherize"). Many comments focused on these weatherization requirements, and some
30 suggested the Commission include weatherization requirements or guidelines in §3.65. The Commission will
31 initiate a rulemaking at a later date to adopt weatherization rules. Because this rulemaking is limited to
32 addressing critical designation for load shed purposes, adding weatherization requirements or guidelines at this
33 stage of the rulemaking is inappropriate. And, as described more fully below, both the critical designation

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1 rulemaking and the publication of the electricity supply chain map are prerequisites to the weatherization rules.
2 Therefore, the Commission views these comments as outside the scope of the current rulemaking.

3 However, the Commission recognizes that the critical designation process in this rulemaking is
4 connected to the later weatherization rulemaking because, according to § 86.044, gas supply chain facilities
5 subject to weatherization requirements are those that are: (1) designated critical in section 3.65; and (2)
6 included on the electricity supply chain map created by the Texas Electricity Supply Chain Security and
7 Mapping Committee (Mapping Committee). The Commission notes that Section 21 of Senate Bill 3 provides
8 different criteria to determine whether gas pipeline facilities are subject to weatherization requirements. A gas
9 pipeline facility is subject to weatherization requirements if the pipeline: (1) directly serves a natural gas
10 electric generation facility operating solely to provide power to the electric grid for the ERCOT power region
11 or for the ERCOT power region and an adjacent power region; and (2) the pipeline is included on the
12 electricity supply chain map. Therefore, while a pipeline's critical designation status in section 3.65 does not
13 impact whether it will be required to weatherize, a gas supply chain facility's critical designation status does.
14 In any case, the specific requirements for weatherization will be proposed in a future rulemaking and will
15 depend on the map created by the Mapping Committee.

16 Comments from the Texas Senate Committee on Business and Commerce (Senate B&C), Sierra Club,
17 Texas Consumer Association (TCA), American Public Gas Association (APGA), City of Houston,
18 Commission Shift, Lower Colorado River Authority (LCRA), Texas Public Power Association (TPPA), CPS
19 Energy, Public Citizen, and 910 individuals expressed concerns regarding facilities either not designated
20 critical in the proposal or designated critical but eligible for an exception. Commenters opposed language that
21 would allow critical facilities to "opt out" of critical designation and subsequent weatherization requirements.
22 These commenters asked that more facilities stay critical, so these facilities are subject to weatherization
23 requirements adopted under § 86.044 and, ultimately, to ensure natural gas is available for electric generation
24 in an energy emergency.

25 The Commission has addressed these comments with two changes to the rule. First, the Commission
26 adopts § 3.65 with new subsection (e), which states certain facilities are not eligible for an exception. These
27 facilities include facilities on the electricity supply chain map and other facilities that contribute significantly
28 to the natural gas supply chain – namely gas wells or oil leases producing gas or casinghead gas in excess of
29 250 Mcf/day; gas processing plants; natural gas pipelines or pipeline facilities that directly serve local
30 distribution companies or electric generation; local distribution company pipelines or pipeline facilities;
31 underground natural gas storage facilities; natural gas liquids storage and transportation facilities; and
32 saltwater disposal facilities that support the other listed facilities. Because these facilities are not eligible for an
33 exception, they will remain critical for load shed purposes and they will be required to weatherize if they are

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1 included on the electricity supply chain map. The Commission notes that its deadline to adopt weatherization
2 rules in Sections 5 and 21 of Senate Bill 3 is six months after the Mapping Committee publishes the electricity
3 supply chain map. As stated above, Section 5 of Senate Bill 3 states that only gas supply chain facilities that
4 are both designated critical and on the electricity supply chain map are required to weatherize. The
5 Commission is prepared to timely adopt weatherization rules in accordance with the requirements of Senate
6 Bill 3.

7 Second, the Commission adopts subsection (b) with changes to designate two classes of facilities as
8 critical. The facilities designated “critical gas suppliers” are the key parts of the natural gas supply chain.
9 These facilities may or may not need electricity to operate. However, because they are designated critical, they
10 will later be required to comply with Commission weatherization rules if they are also included on the
11 electricity supply chain map regardless of whether they require electricity from an electric entity to operate.
12 This revision addresses concerns from the City of Houston, CPS Energy, Sierra Club, Commission Shift,
13 LCRA, and individuals that §3.65 should apply to gas facilities that may potentially supply electric generators,
14 regardless of whether a gas facility requires electricity. Subsection (b)(2) designates facilities as “critical
15 customers.” Only those critical facilities that need power to operate are “critical customers” and are required to
16 provide information to their electric entities, which will limit the number of critical facilities that electric
17 entities must prioritize as critical load. Both categories of facilities are designated critical and will be subject to
18 weatherization requirements, once adopted, if the facility is a gas supply chain facility included on the
19 electricity supply chain map.

20
21 Critical Designation for Load Shed Purposes

22 Though Section 3.65 relates to weatherization, the purpose of §3.65 is to implement Section 4 of
23 Senate Bill 3 and Section 1 of House Bill 3648 by designating segments of the natural gas supply chain as
24 critical for load shed purposes. The rule specifies the criteria and process by which entities associated with
25 providing natural gas in Texas are designated as critical gas suppliers or critical customers during an energy
26 emergency. Designation as a critical customer prompts a requirement for the facility’s operator to directly
27 provide the electric entities described in 16 Texas Administrative Code §25.52(h) (relating to Reliability and
28 Continuity of Service) and section 38.074(b)(1) of the Texas Utilities Code (hereinafter “electric entities”)
29 with critical customer information. Providing the information positions a critical customer to receive power
30 during an energy emergency so that it can continue to supply natural gas in the state for power generation
31 and/or other important uses. The sections below summarize comments the Commission received on proposed
32 section 3.65.

33

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1 Subsection (a) - Definitions

2 The Permian Basin Petroleum Association (PBPA), the Texas Oil and Gas Association (TXOGA), the
3 Texas Alliance of Energy Producers (the Alliance), TPPA, and the Texas Pipeline Association (TPA)
4 commented on the Commission's proposed definition of "energy emergency." The comments expressed
5 concern that the definition was too broad. PBPA and TXOGA requested that the definition be tied to the
6 Electric Reliability Council of Texas (ERCOT) Energy Emergency Alert Level 2. Comments filed in the
7 PUCT's corresponding rulemaking to implement House Bill 3648 and Senate Bill 3 requested that the PUCT
8 adopt a definition of energy emergency. The PUCT's adopted definition is "any event that results in or has the
9 potential to result in firm load shed required by the reliability coordinator of a power region in Texas." The
10 Commission adopts subsection (a)(1) with changes to incorporate the PUCT's definition because consistent
11 definitions of "energy emergency" in the regulating agencies' rules will benefit those required to comply.

12 PBPA, the Alliance, TPPA and TPA also expressed concerns about the proposed definition of
13 "weather emergency," requesting additional clarification, and some comments noted under the proposed
14 definition affected facilities would not be able to determine whether they are prepared to operate in a weather
15 emergency. The Commission notes that this concern relates to the proposed exception process, in which an
16 operator was required to certify it was not prepared to operate in weather emergency. The exception process is
17 revised in the adopted version of §3.65, and the rule no longer includes the term "weather emergency." Thus,
18 the definition is removed.

19 Several comments concerned the definition of "critical customer information" in proposed subsection
20 (a)(3) (adopted in subsection (a)(2)) and the related Table CCI proposed on the Commission's website. First,
21 the Electric Reliability Council of Texas (ERCOT), comments jointly filed by the "Texas LDCs" (Atmos
22 Energy Corporation's Mid-Tex and West Texas Divisions; CenterPoint Energy Resources d/b/a CenterPoint
23 Energy Entex; and Texas Gas Service Company, a Division of ONE Gas, Inc.); and TPA asked that the
24 Commission consider requiring the critical customer information to be filed with the Commission in addition
25 to filing with electric entities. TPA suggested that forms be consolidated so that the same forms can be filed
26 with the RRC, ERCOT, PUCT, and transmission and distribution utilities (TDUs). The Texas LDCs
27 recommended amending the definition of "critical customer information" to omit the reference to Table CCI
28 and replace it with a reference to the Form CI-D. The Commission agrees with these comments. The proposed
29 Table CCI is removed and replaced with the Form CI-D and its attachment. The Commission revised the Form
30 CI-D to include the information that was listed on the Table CCI. Additional information was also added to the
31 Form CI-D in response to comments. The Form CI-D is still required to be filed by any facility designated
32 critical in §3.65(b). However, only critical customers are required to provide the "critical customer
33 information" (i.e., the Form CI-D and its attachments) to their electric entity. The Commission will also grant

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1 the PUCT secure access to the forms filed with the Commission, so that the Commission, the PUCT, and the
2 TDUs will have the same information. The Form CI-D attachment is currently in Excel form, which is the
3 format requested by the Joint TDUs and ERCOT in their comments. The Commission notes that in the future
4 an operator may be required to file the Form CI-D and attachment electronically without the use of Excel.

5 Subsection (a) is also adopted with a change to add a definition in subsection (a)(3). New subsection
6 (a)(3) states, "In this section, any volume of gas indicated in Mcf/day means the average daily production from
7 the well's six most recently filed monthly production reports. Wells without six months of production reports
8 shall average the production from the well's production reports on file with the Commission or use the
9 production volume from the well's initial potential test or deliverability test if the well has not yet filed a
10 production report." This language is added to ensure production volumes are calculated consistently and allow
11 for better evaluation by electric entities receiving critical customer information.

12
13 Subsection (b) – Critical Designation Criteria

14 Most commenters expressed concern that the proposal designated too many facilities critical such that
15 the rule does not provide information electric entities need to incorporate critical natural gas facilities into their
16 respective load-shed plans. These commenters include the Atmos Cities Steering Committee, Commission
17 Shift, CPS Energy, Joint TDUs, Office of Public Utility Counsel (OPUC), PBPA, Public Citizen, Senate B&C,
18 Southwestern Electric Power Company (SWEPCO), South Texas Electric Cooperative, Inc. (STEC), TCA,
19 Texas Competitive Power Advocates (TCPA), Texas Electric Cooperatives (TEC), Texas Independent
20 Producers and Royalty Owners Association (TIPRO), TXOGA, TPPA, TPA, and many individuals.
21 Specifically, the Joint TDUs, PBPA, TIPRO, and TXOGA requested that wells that produce non-reportable or
22 marginal amounts of gas not be designated critical. The Commission understands these concerns and has made
23 several changes to narrow the universe of critical facilities.

24 First, subsection (b) is adopted with changes to include two classes of critical facilities. Subsection
25 (b)(1) lists "critical gas suppliers." The list of critical gas suppliers is similar to the list of critical facilities in
26 proposed subsection (b). However, the list is narrowed in three important areas: (1) critical gas wells are
27 limited to those wells producing gas in excess of 15 Mcf/day; (2) critical oil leases are limited to those leases
28 producing casinghead gas in excess of 50 Mcf/day; and (3) the catchall provision in proposed (b)(8) is
29 removed. These revisions remove thousands of facilities from the universe of critical facilities. The
30 Commission notes that the Alliance requested the Commission refrain from making a blanket declaration that
31 all wells below a certain production threshold are not critical. The Commission disagrees. Removing wells and
32 leases not producing a certain threshold from critical designation removes thousands of facilities but only 1.2-

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1 1.4% of total gas production. However, the Commission notes the addition of an option for such wells to apply
2 for critical designation in new subsection (c), which is discussed below.

3 The Commission further narrowed the universe of critical facilities by requiring that only “critical
4 customers” – defined as the critical gas suppliers for whom electricity is essential to the ability of such gas
5 supplier to operate – provide critical customer information to the electric entities. This change will limit the
6 volume of information that electric entities must process in connection with their load shed planning. Electric
7 entities need not incorporate in their load-shed plans facilities that do not need power. Subsection (b) and
8 subsection (g) are adopted with a change to clarify which electric entities must be provided critical customer
9 information. Electric entities are those described in 16 Texas Administrative Code §25.52(h) and those
10 described in Texas Utilities Code §38.074(b)(1).

11 The Commission adopts subsection (b) with another change to add “control centers” to the description
12 of pipeline facilities designated critical in subsection (b)(1)(D) and (b)(1)(E). This addition was requested by
13 the Texas LDCs.

14 Many of the commenters listed above requested that the rule incorporate a “tiering” concept for
15 purposes of prioritizing facilities for load shed. These commenters include CPS Energy, Joint TDUs, the
16 Alliance, PBPA, SWEPCO, STEC, TCPA, TPA, TIPRO, and TXOGA. The Commission does not have any
17 jurisdiction over electric utilities or their load shed planning and accordingly, §3.65 does not include tiers.
18 However, recognizing that there are certain facilities that play a more significant role than others in the natural
19 gas supply chain due to their volumetric contributions or their proximity and connectedness to electric power
20 generation facilities and local distribution companies, the adopted rule identifies facilities in new subsection
21 (e) that are not eligible to apply for an exception to critical designation.

22 The Alliance, the Joint TDUs, STEC, TPA, and TXOGA included in their comments proposed “tiers”
23 for prioritization of critical natural gas facilities for load-shed purposes during an energy emergency. However,
24 the above-referenced organizations, representing several portions of the natural gas and electricity supply
25 chain, did not provide consistent suggestions regarding which critical natural gas facilities should fall into the
26 first tier. While the Commission does not have jurisdiction over electric utilities or electricity load-shed events,
27 the Commission sent a letter to the PUCT on November 23, 2021 to offer suggestions for the PUCT’s
28 guidance document implementing Tex. Util. Code § 38.074(b)(2) relating to load-shed during an energy
29 emergency. The Commission recommended the following facilities be given highest priority for maintaining
30 electric service and restoring electric service following an outage: pipelines that directly provide natural gas to
31 electric generation or to local distribution company facilities; underground natural gas transportation and
32 storage facilities; natural gas liquids transportation and storage facilities; gas processing plants with a capacity
33 of 200 MMcf/day and greater; natural gas wells and oil leases producing natural gas in the amount of 5000

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1 Mcf/day or greater, and saltwater disposal wells, compressor stations, and control centers supporting the listed
2 facilities. The letter also indicated support for the types of facilities that should be given lower priority, as
3 proposed by the industry groups in their comments.

4 As mentioned above, facilities with a significant role in the natural gas supply chain are listed in new
5 subsection (e). These facilities may not obtain an exception and, therefore, remain critical. Critical facilities
6 that are not included in subsection (e) may apply for an exception to critical designation. These facilities are
7 listed on the revised form CI-X and include gas wells producing less than or equal to 250 Mcf/day; oil leases
8 producing less than or equal to 250 Mcf/day in casinghead gas; natural gas pipelines and pipeline facilities that
9 do not directly serve local distribution companies or electric generation; and saltwater disposal wells and
10 pipelines that do not support a facility listed under §3.65(e)(1)-(7). The process to apply for an exception is
11 discussed below.

12
13 New Subsection (c) – Request for Critical Designation

14 The Commission adopts § 3.65 with a change to add new language in subsection (c). New subsection
15 (c) creates an option for facilities that are excluded from critical designation in subsection (b) to apply for
16 critical designation. The option to apply for critical designation is limited to two types of facilities: (1)
17 facilities that are not designated in subsection (b) but are required to operate in order for another critical
18 facility to operate; and (2) facilities that are not designated in subsection (b) but are included on the electricity
19 supply chain map.

20 Subsection (c)(1) incorporates the catch-all provision from proposed subsection (b)(8). To limit the
21 universe of facilities designated critical, the catch-all provision was removed from subsection (b). In
22 subsection (c) as adopted, facilities that must operate in order for a critical facility to operate may apply for
23 critical designation if they provide objective evidence that their operation is necessary for a critical facility to
24 operate. Facilities that are included on the electricity supply chain map are required to apply for critical
25 designation. Adopted changes in subsection (c) address comments from STEC, TCPA, TEC, and TPPA
26 suggesting that the Commission require an application for critical designation rather than presume facilities are
27 critical. The Commission agrees that for certain types of facilities, an application process is appropriate. The
28 application process involves writing the Commission a letter requesting critical designation. If and when a
29 facility's application is approved, the facility's operator will be required to file the Form CI-D.

30
31 Subsection (d) – Acknowledgment of Critical Status

32 The Commission received few comments on proposed subsection (d), which requires a critical facility
33 to acknowledge its critical status on Commission Form CI-D. Comments from Commission Shift suggested

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1 that connectivity information be collected on the Form CI-D. Similarly, ERCOT, the Texas LDCs, TPA,
2 TPPA, and TEC asked that the Commission consider requiring the critical customer information to be filed
3 with the RRC in addition to electric entities. TPA suggested that forms be consolidated so that the same forms
4 can be filed with the RRC, ERCOT, PUCT, and TDUs. The Texas LDCs recommended amending the
5 definition of “critical customer information” to omit the reference to Table CCI and replace it with a reference
6 to the Form CI-D. TPPA and TEC requested a requirement that critical customer information be provided to
7 electric utilities at the same time the Form CI-D is filed with the Commission.

8 The Commission agrees and adopts subsections (a) and (d) with changes to address these comments.
9 As mentioned above, the Table CCI is removed, and the information previously included on that Table CCI is
10 now included on the Form CI-D attachment. The definition of “critical customer information” is revised in
11 subsection (a) to reference the Form CI-D rather than the Table CCI. Section 3.65 now requires that all
12 facilities designated critical in subsection (b) (both critical gas suppliers and critical customers) file the Form
13 CI-D and any attachments with the Commission. Only critical customers are then required to file the same
14 information with their electric entity. The certification on the Form CI-D is revised to reflect a requirement
15 that a critical customer provide the critical customer information (i.e., the Form CI-D) to its electric entity
16 before or at the same time the information is filed with the Commission. To address comments by TEC, the
17 Commission has added the following statement to the Form CI-D: “Designation as a critical customer does not
18 guarantee the uninterrupted delivery of electric service to your facilities.”

19 Relatedly, some comments requested a certification on the Form CI-D that the facilities listed on the
20 attachment are prepared to operate in a weather emergency. The Commission disagrees. It is not appropriate to
21 require certification that a facility is prepared to operate until the Commission adopts weatherization rules to
22 define what an operator must do to prepare to operate. PBPA and TPA requested language that filing the Form
23 CI-D is not a guarantee that a facility will operate. The Commission agrees with PBPA and TPA but does not
24 adopt this change in the rule or forms.

25 Subsection (d) as adopted removes references to an electronic acknowledgment or electronic system
26 because the Commission’s “RRC Online” filing system will be available to operators for filing Forms CI-D
27 and CI-X by the time §3.65 is effective. A more comprehensive online system filing system for Forms CI-D
28 and CI-X may be developed in the future and operators will be notified of such a new system.

29 Subsection (d) is adopted with a change to the biannual filing deadlines in 2022. A facility included on
30 the electricity supply chain map will no longer be eligible for an exception and must file Form CI-D. The map
31 will not be available by the first Form CI-D filing deadline of January 15, 2022. The second filing deadline in
32 2022 was proposed as September 1, 2022. However, that is the same deadline included in Senate Bill 3 for
33 when the map must be produced. Therefore, in order to give facilities included on the map time to learn

1 whether they are included on the map prior to filing the Form CI-D or Form CI-X, the Commission has altered
2 the second filing deadline to September 1, 2022, or 30 days after the electricity supply chain map is published,
3 whichever is later. Thus, if the map is published March 1, 2022, the second deadline for filing Form CI-D
4 would be September 1, 2022, but if the map is not published until September 1, 2022, then the deadline for
5 filing would be October 1, 2022 (30 days after the map is published).

6 The Commission notes STEC and TCPA suggested the rules make clear that the Form CI-D must be
7 submitted for each facility, rather than permitting operators to submit a single form purporting to cover all of
8 an operator's facilities. The Commission disagrees. The Form CI-D as proposed and adopted has a spreadsheet
9 attachment that allows an operator to list of its critical facilities. The Commission and commenters who will
10 use the form agree that a process that allows an operator to list all its facilities in one filing is most efficient.
11 PBPA suggested that the Commission allow operators to supplement and amend forms as more information is
12 available. The Commission agrees that forms it requires to be filed may be updated as appropriate.

13 Commission Shift, PBPA, and TXOGA asked that the Commission clarify how its Form CI-D process
14 works with the ERCOT Critical Load Designation Form. PBPA also asked the Commission to make changes
15 to ensure § 3.65 does not prevent participation in ERCOT's Load Resources Program. The Commission
16 declines to adopt any changes in response to these comments. Based on ERCOT's comments, the Commission
17 expects that ERCOT will use information provided on Form CI-D moving forward, but the Commission
18 cannot speak for ERCOT on that matter. To ensure entities associated with providing natural gas in Texas are
19 considered critical for Winter 2021-2022, the Commission sent Notices to Operators reminding operators
20 within Commission jurisdiction to file ERCOT's Critical Load Designation Form.

21 22 New subsection (e) – Facilities Not Eligible for An Exception

23 As mentioned above, many commenters expressed concerns about the exception provision in proposed
24 §3.65. These commenters include Senate B&C, the American Public Gas Association (APGA), City of
25 Houston, Commission Shift, CPS Energy, LCRA, OPUC, Sierra Club, TCA, TPPA, and the comments
26 submitted by individuals. The comments requested that the Commission limit the types of facilities that can
27 obtain an exception. Several comments, such as those by STEC, TPPA, and TCPA, specifically suggested that
28 facilities included on the electricity supply chain map be ineligible for an exception.

29 As mentioned above, the Commission adopts §3.65 with new language in subsection (e) to list
30 facilities that are not eligible for an exception to critical designation. The facilities not eligible for an exception
31 are those with a significant contribution to the natural gas supply chain, namely, facilities on the electricity
32 supply chain map; gas wells or oil leases producing gas or casinghead gas in excess of 250 Mcf/day; gas
33 processing plants; natural gas pipelines or pipeline facilities that directly serve local distribution companies or

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1 electric generation; local distribution company pipelines or pipeline facilities; underground natural gas storage
2 facilities; natural gas liquids storage and transportation facilities; and saltwater disposal facilities that support
3 the other listed facilities. Because these facilities are not eligible for an exception, they will remain critical for
4 load shed purposes and they will be required to weatherize if they are included on the electricity supply chain
5 map.

6
7 Subsection (f) – Critical Designation Exception.

8 Other commenters opposed the process for a facility to obtain an exception. These commenters include
9 APGA, Atmos Cities Steering Committee, Commission Shift, CPS Energy, Joint TDUs, LCRA, OPUC, Sierra
10 Club, TCA, TPPA, and the comments submitted by individuals. The concern expressed in these comments is
11 that an exception could be obtained too easily and the comments suggested including a more robust application
12 and review process. The Commission agrees and clarifies its exception review process in subsection (f)(1).

13 New language added in (f)(1) requires that an application for exception to critical designation include
14 objective evidence to demonstrate a reasonable basis and justification in support of the application. Some
15 commenters, including the Alliance, requested examples of information an operator could provide to obtain an
16 exception. Subsection (f)(1) includes an example of a reasonable basis and justification, which is that all of the
17 gas produced at a critical facility is for on-site consumption or is otherwise not available for third-party use.
18 The evidence demonstrating the reasonable basis must be included with the applicant's Form CI-X. Subsection
19 (f) further states that the application will be approved or denied by the Director of the Critical Infrastructure
20 Division, and if denied, the applicant will have an opportunity to request a hearing.

21 The Commission also adopts changes to the exception application language similar to the changes
22 made in subsection (d) for the Form CI-D – references to an electronic acknowledgement are removed and
23 filing deadlines for 2022 are altered to allow facilities included on the electricity supply chain map to learn of
24 their map status prior to filing Form CI-D or Form CI-X as appropriate.

25 Commenters such as OPUC, Sierra Club, and individuals opposed the amount an operator is required
26 to pay for an exception application. The Commission understands this concern but the Commission cannot
27 charge a fee or penalty unless it has statutory authority. With regard to the \$150 exception application fee, the
28 Commission's authority comes from Natural Resources Code section 81.0521, which sets the fee amount at
29 \$150.

30 APGA and LCRA asked that the Commission require facilities granted an exception to disclose this
31 information to their counterparties on the supply chain so the counterparties can prepare appropriately. The
32 Commission understands this concern and notes that whether a facility obtains an exception is public
33 information that will be available unless claimed confidential under the Public Information Act.

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2 Subsection (g) – Providing Critical Customer Information

3 The Commission adopts proposed subsection (e) as subsection (g). Subsection (g) clarifies that only
4 critical customers are required to provide critical customer information to their electric entities. Subsection (g)
5 is adopted with a change to clarify which electric entities must be provided critical customer information.
6 Electric entities are those described in 16 Texas Administrative Code §25.52(h) and those described in Texas
7 Utilities Code §38.074(b)(1). Due to comments from TPPA, subsection (g) is adopted with a change to require
8 that critical customers provide critical customer information (the Form CI-D) to their electric entity prior to or
9 at the same time the critical customer files the Form CI-D with the Commission. As mentioned above, this
10 statement was also added to the certification language on the Form CI-D.

11 TPPA and TEC commented that the Commission should also require critical customers to timely
12 respond to an electric entity’s reasonable request for additional information within five business days of
13 receipt of the request. The Commission agrees that critical customers and their electric entities should work
14 together to ensure the electric entity has the information it needs for load-shed purposes. However, the
15 Commission does not agree this language should be included in the rule.

16

17 Subsection (h) - Confidentiality of Information Filed Pursuant to §3.65

18 The Commission adopts §3.65 with a change to add new subsection (h). CPS Energy, Texas LDCs,
19 and TPA requested that if critical customer information is provided to the Commission in addition to electric
20 entities, the Commission specify how the information will be kept confidential. Though no provision of law
21 excludes the information collected under this rule from the Public Information Act and the Commission cannot
22 determine whether information is confidential, the Commission adds subsection (h) to describe the process
23 prescribed under the Public Information Act, Texas Government Code Chapter 552, for claiming information
24 is confidential. The Commission has also added a section on both the Form CI-D and Form CI-X to allow
25 filers to indicate that information included on the forms/attachments is confidential.

26

27 Subsection (i)

28 The Commission did not receive comments on proposed subsection (f), “Exceptions not transferable,”
29 adopted as subsection (i). Therefore, that provision is adopted with only minor changes to correct internal rule
30 references.

31

32 §3.65(j) and §3.107

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1 The Commission received comments from Atmos Cities Steering Committee, Commission Shift, CPS
2 Energy, OPUC, and Sierra Club opposing the minimum penalties specified in the proposed amendments to
3 §3.107, which is referenced in §3.65(j). Atmos Cities Steering Committee and CPS Energy suggested that the
4 penalties align with those in the statute relating to weatherization requirements. That statute, Natural
5 Resources Code §86.222, gives the Commission authority to issue a penalty up to \$1,000,000 for each
6 violation of a rule adopted under Natural Resources Code §86.044. However, section 3.65 is not adopted under
7 Natural Resources Code §86.044. The statute requiring adoption of a critical designation rule, Natural
8 Resources Code §81.073, does not provide the Commission penalty authority. Therefore, the Commission
9 relies on its general penalty authority in Natural Resources Code § 81.0531. The Commission notes that the
10 penalties to which commenters are opposed are included in the Commission's penalty guidelines rule and are
11 merely minimum penalties. The Commission has discretion to increase the penalties if circumstances warrant
12 an increase. Therefore, the Commission adopts the penalty amounts as proposed, with the only adopted
13 changes to §3.107 being updates to subsection references in §3.65.

14 TEC and TPPA asked that the Commission penalize critical facilities who fail to provide required
15 information by removing those facilities' critical designation. The Commission disagrees because removing
16 critical status as a penalty could incentivize non-compliance.

17 The Commission adopts the new rule under Texas Natural Resources Code §81.073, which requires
18 the Commission to adopt rules to establish a process to designate natural gas facilities and entities associated
19 with providing natural gas in this state as critical customers or critical gas suppliers during an energy
20 emergency; and Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction
21 over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt
22 all necessary rules for governing and regulating persons and their operations under the jurisdiction of the
23 Commission. The amendments are adopted under Texas Natural Resources Code, §81.0531, which gives the
24 Commission authority to assess a penalty if a person violates provisions of Texas Natural Resources Code,
25 Title 3, that pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license,
26 permit, or certificate that pertain to safety or the prevention or control of pollution that are issued under Title 3.

27 Statutory authority: Natural Resources Code §§81.051, 81.052, 81.0531, and 81.073.

28 Cross reference to statute: Natural Resources Code Chapter 81.

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1
2 §3.65. Critical Designation of Natural Gas Infrastructure.

3 (a) Definitions.

4 (1) In this section, the term “energy emergency” means any event that results in or has the
5 potential to result in firm load shed required by the reliability coordinator of a power region in Texas.

6 (2) In this section, the term “critical customer information” means the information required on
7 Commission Form CI-D and any attachments.

8 (3) In this section, any volume of gas indicated in Mcf/day means the average daily production
9 from the well’s six most recently filed monthly production reports. Wells without six months of production
10 reports shall average the production from the well’s production reports on file with the Commission or use the
11 production volume from the well’s initial potential test or deliverability test if the well has not yet filed a
12 production report.

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

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

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

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

18 (C) gas processing plants;

19 (D) natural gas pipelines and pipeline facilities including associated compressor
20 stations and control centers;

21 (E) local distribution company pipelines and pipeline facilities including associated
22 compressor stations and control centers;

23 (F) underground natural gas storage facilities;

24 (G) natural gas liquids transportation and storage facilities; and

25 (H) saltwater disposal facilities including saltwater disposal pipelines.

26 (2) Critical Customer. A critical customer is a critical gas supplier for whom the delivery of
27 electricity from an electric entity is essential to the ability of such gas supplier to operate. A critical customer
28 is required to provide critical customer information pursuant to subsection (g) of this section to the electric
29 entities described in §25.52(h) of this title (relating to Reliability and Continuity of Service) and Texas
30 Utilities Code §38.074(b)(1) so that those electric entities may prioritize the facilities in accordance with Texas
31 Utilities Code §38.074(b)(2) and (b)(3). Priority for load-shed purposes during an energy emergency is
32 described by §25.52(h)(2) of this title and any guidance issued thereunder by the Public Utility Commission.

33 (c) Request for critical designation if not designated critical in subsection (b) of this section.

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1 (1) A facility that is not designated critical under subsection (b) of this section may write to
2 the Commission to apply to be designated critical if the facility's operation is required in order for another
3 facility designated critical to operate. The applicant shall include objective evidence that the facility's
4 operation is required for another facility designated critical in subsection (b) of this section to operate. If
5 approved, the facility shall submit Form CI-D.

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

10 (d) Acknowledgment of critical status. Except as provided by subsection (f) of this section, an
11 operator of a facility designated as critical under subsection (b) of this section shall acknowledge the facility's
12 critical status by filing Form CI-D as provided in this subsection. In the year 2022, the Form CI-D
13 acknowledgment shall be filed bi-annually by January 15, 2022, and either September 1, 2022, or 30 days
14 from the date the map is produced by the Texas Electricity Supply Chain Security and Mapping Committee,
15 whichever is later. Beginning in 2023, the Form CI-D acknowledgment shall be filed bi-annually by March 1
16 and September 1 of each year.

17 (e) Facilities not eligible for an exception. Because of their contribution to the natural gas supply
18 chain, the following facilities designated critical under subsection (b) of this section are not eligible for an
19 exception under subsection (f) of this section:

20 (1) a facility included on the electricity supply chain map produced by the Texas Electricity
21 Supply Chain Security and Mapping Committee;

22 (2) gas wells or oil leases producing gas or casinghead gas in excess of 250 Mcf/day;

23 (3) gas processing plants;

24 (4) natural gas pipelines or pipeline facilities that directly serve local distribution companies or
25 electric generation;

26 (5) local distribution company pipelines or pipeline facilities;

27 (6) underground natural gas storage facilities;

28 (7) natural gas liquids storage and transportation facilities; and

29 (8) a saltwater disposal facility, including a saltwater disposal pipeline, that supports a facility
30 listed in paragraphs (1) through (7) of this subsection.

31 (f) Critical designation exception.

32 (1) A facility listed in subsection (b) of this section other than those identified in subsection
33 (e) of this section may apply for an exception. An applicant shall demonstrate with objective evidence a

1 reasonable basis and justification in support of the application, such as all of the gas produced at a facility is
2 for on-site consumption, or the facility does not otherwise provide gas for third-party use. The Director of the
3 Critical Infrastructure Division will administratively approve or deny a request for an exception. If the request
4 is denied, the Division will notify the applicant and the applicant may request a hearing to challenge the denial.
5 The party requesting the hearing shall have the burden of proof.

6 (2) An applicant for exception shall submit a Form CI-X exception application that identifies
7 each facility for which an exception is requested. The Form CI-X shall be accompanied by an exception
8 application fee. The amount of the fee is \$150 as established in Chapter 81, Texas Natural Resources Code.

9 (A) In the year 2022, the Form CI-X exception application shall be filed bi-annually
10 by January 15, 2022, and either September 1, 2022, or 30 days from the date the map is produced by the Texas
11 Electricity Supply Chain Security and Mapping Committee, whichever is later. Beginning in 2023, the Form
12 CI-X exception application shall be filed bi-annually by March 1 and September 1 of each year.

13 (B) Once an operator has an approved Form CI-X on file with the Commission, the
14 operator is not required to pay the \$150 exception application fee when the operator updates the facilities
15 identified on its Form CI-X.

16 (g) Providing critical customer information. A critical customer shall provide the critical customer
17 information to the electric entities described in §25.52 of this title and Texas Utilities Code § 38.074(b)(1)
18 unless the critical customer is granted an exception under subsection (f) of this section. The critical customer
19 information shall be provided in accordance with §25.52 of this title. The operator shall certify on its Form CI-
20 D that it has provided the critical customer information to its electric entity.

21 (h) Confidentiality of information filed pursuant to this section. A person filing information with the
22 Commission that the person contends is confidential by law shall notify the Commission on the applicable
23 form. If the Commission receives a request under the Texas Public Information Act (PIA), Texas Government
24 Code, Chapter 552, for materials that have been designated confidential, the Commission will notify the filer
25 of the request in accordance with the provisions of the PIA so that the filer can take action with the Office of
26 the Attorney General to oppose release of the materials.

27 (i) Exceptions not transferable. Exceptions are not transferable upon a change of operatorship. When
28 a facility is transferred, both the transferor operator and the transferee operator shall ensure the transfer is
29 reflected on each operator's Form CI-D or Form CI-X when the applicable form update is submitted in
30 accordance with the bi-annual filing timelines in subsections (d) and (f) of this section. If the facility has an
31 exception under subsection (f) of this section, the exception shall remain in effect until the next bi-annual
32 filing deadline. If the transferee operator seeks to continue the exception beyond that time period, the

1 transferee operator shall indicate the transferred facility on the Form CI-X pursuant to subsection (f) of this
2 section.

3 (j) Failure to file or provide required information. An operator who fails to comply with this section
4 may be subject to penalties under § 3.107 of this title (relating to Penalty Guidelines for Oil and Gas
5 Violations).

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20 §3.107. Penalty Guidelines for Oil and Gas Violations.

21 (a) - (d) (No change.)

22 (e) Typical penalties. Regardless of the method by which the guideline typical penalty amount is
23 calculated, the total penalty amount will be within the statutory limit.

24 (1) A guideline of typical penalties for violations of Texas Natural Resources Code, Title 3;
25 the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the
26 Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas
27 Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, are set forth in Table 1.

28 Figure: 16 TAC §3.107(e)(1)

29 (2) (No change.)

30 (f) - (i) (No change.)

31 (j) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the
32 guideline minimum penalty amounts for certain violations; the circumstances justifying enhancements of a

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1 penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the
2 amount of the reduction.
3 Figure: 16 TAC §3.107(j)

4 This agency hereby certifies that the rules as adopted have been reviewed by legal counsel and found
5 to be a valid exercise of the agency's legal authority.

6 Issued in Austin, Texas, on November 30, 2021.

7 Filed with the Office of the Secretary of State on November 30, 2021.

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Wayne Christian
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Wayne Christian, Chairman

DocuSigned by:
Christi Craddick
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Christi Craddick, Commissioner

DocuSigned by:
Jim Wright
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Jim Wright, Commissioner



ATTEST:
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Callie Parrar
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Secretary of the Commission

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Haley Cochran
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Haley Cochran
Rules Attorney
Office of General Counsel
Railroad Commission of Texas

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Figure: 16 TAC §3.107(e)(1)

Table 1. Penalty Guideline

Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty Amount or Range
16 TAC §3.2	Commission denied access	\$1,000
16 TAC §3.3	failure to comply with well sign requirements	\$500
16 TAC §3.3	failure to comply with entrance sign requirements	\$1,000
16 TAC §3.3	failure to comply with tank battery sign requirements	\$1,000
16 TAC §3.5(a)	no drilling permit approved	\$5,000
16 TAC §3.5(a)	no drilling permit: no application filed	\$10,000
16 TAC §3.8(b)	pollution of surface or subsurface water	\$1,000 minimum
16 TAC §3.8(d)(1)	improper disposal of oil and gas waste; enhance for actual or threatened pollution: dry pit area	\$500 base penalty plus \$0.30/sq. ft.
16 TAC §3.8(d)(1)	improper disposal of oil and gas waste; enhance for actual or threatened pollution: wet pit area	\$500 base penalty plus \$0.50/sq. ft.
16 TAC §3.8(d)(2)	use of prohibited pits: fresh water pit area	\$2,500 base plus \$0.25 sq. ft.
16 TAC §3.8(d)(2)	use of prohibited pits: salt water or other fluid area	\$2,500 base plus \$0.75 sq. ft.
16 TAC §3.8(d)(4)(G)(i)(I), (II)	reserve pits: fresh water pit area	\$2,500 base plus \$0.25 sq. ft.
16 TAC §3.8(d)(4)(G)(i)(I), (II)	reserve pits: salt water or other fluid pit area	\$2,500 base plus \$0.75 sq. ft.
16 TAC §3.8(d)(4)(G)(i)(III), (IV)	workover and other pits: dry	\$2,500
16 TAC §3.8(d)(4)(G)(i)(III), (IV)	workover and other pits: wet	\$5,000
16 TAC §3.9(1)	no permit to dispose or inject	\$5,000
16 TAC §3.9(9)(A)	failure to comply with tubing and packer requirements	\$2,000
16 TAC §3.9(9)(B)	no pressure observation valve	\$1,000 per valve
16 TAC §3.9(12)	no test, failed test, or no Form H-5	\$5,000
16 TAC §3.13(b)(1)(B)	open casing/tubing	\$1,000 to \$5,000
16 TAC §3.13(b)(1)(C)	failure to comply with wellhead control requirements	\$5,000
16 TAC §3.13(b)(2)	failure to comply with surface casing requirements	\$2,000
16 TAC §3.14(a)(2)	failure to file Form W-3A	\$2,500
16 TAC §3.14(a)(3)	failure to notify of setting plugs	\$1,500

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Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty Amount or Range
16 TAC §3.14(b)(1)	failure to file Form W-3	\$5,000
16 TAC §3.14(b)(2)	failure to plug onshore well	\$2,000 plus \$1/ft. of total depth
16 TAC §3.14(b)(2)	failure to plug bay, estuary, or inland waterway well	\$15,000 plus \$2 per foot of total depth, subject to statutory maximum
16 TAC §3.14(b)(2)	failure to plug offshore well	\$50,000 plus \$5 per foot of total depth, subject to statutory maximum
16 TAC §3.14(d)(1)-(11)	failure to follow general plugging requirement	\$1,000
16 TAC §3.14(d)(12)	failure to remove miscellaneous loose junk and trash	\$1,000
16 TAC §3.14(d)(12)	failure to remove tanks, vessels, and related piping	\$2,500
16 TAC §3.14(d)(12)	failure to empty tanks, vessels, and related piping	\$5,000
16 TAC §3.15(l)(7)	failure to test prior to reactivating well	\$1,000
16 TAC §3.15(f)(2)(A)	failure to disconnect electricity	\$5,000
16 TAC §3.15(f)(2)(A)	failure to purge vessels	\$7,500
16 TAC §3.15(f)(2)(A)	failure to remove equipment	\$10,000
16 TAC §3.16(b) and (c)	failure to file completion records/logs	\$2,500
16 TAC §3.17	Bradenhead violations: no valve; no access; or pressure on it	\$1,000 to \$2,500
16 TAC §3.20(a)(1)	failure to notify of incident	\$2,500 to \$5,000
16 TAC §3.21(a)-(i)	improper fire prevention	\$1,000
16 TAC §3.21(j)	failure to comply with dike/firewall requirements	\$2,500
16 TAC §3.21(k)	swabbing without authority	\$1,000 per well
16 TAC §3.21(l)	failure to comply with electric power line requirements	\$2,000
16 TAC §3.22	no nets	compliance
16 TAC §3.35(a)	failure to notify of lost logging tool	\$5,000
16 TAC §3.35(b)	failure to properly abandon lost logging tool	\$5,000
16 TAC §3.36(c)(5)(B)	improper storage tank signs in a non-public area	\$1,000
16 TAC §3.36(c)(5)(B)	improper storage tank signs in a public area	\$2,000
16 TAC §3.36(c)(6)(A)	improper entry signs in a non-public area	\$1,000

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Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty Amount or Range
16 TAC §3.36(c)(6)(A)	improper entry signs in a public area	\$2,000
16 TAC §3.36(c)(6)(A)	improper entry signs in a populated public area	\$5,000
16 TAC §3.36(c)(6)(B)	failure to fence specific area at a well	\$5,000
16 TAC §3.36(c)(6)(B)	failure to fence specific area at a battery	\$10,000
16 TAC §3.36(c)(6)(C)	materials provision	\$2,500
16 TAC §3.36(c)(8)	failure to maintain H ₂ S equipment	\$5,000
16 TAC §3.36(c)(9)(Q)	failure to update contingency plan	\$2,500
16 TAC §3.36(c)(9)(N)	failure to notify of H ₂ S contingency plan activation	more than 6 hours up to 12 hours-\$5,000
16 TAC §3.36(c)(9)(N)	failure to notify of H ₂ S contingency plan activation	12 hours or more-\$10,000
16 TAC §3.36(c)(14)	failure to notify of H ₂ S release	more than 6 hours up to 12 hours-\$5,000
16 TAC §3.36(c)(14)	failure to notify of H ₂ S release	12 hours or more-\$10,000
16 TAC §3.36(c)(11)-(12), except (12)(F)	failure to follow requirements at drill/workover site; no injury	\$5,000
16 TAC §3.36(c)(11)-(12), except (12)(F)	failure to follow requirements at drill/workover site; injury or death	\$10,000
16 TAC §3.36(c)(12)(F)	failure to notify of drill stem test in H ₂ S formation	\$2,000
16 TAC §3.36(c)(13)	failure to have H ₂ S trained personnel	\$5,000 per person
16 TAC §3.36(d)(1)(E)	failure to file Form H-9; non-public area	\$1,000
16 TAC §3.36(d)(1)(E)	failure to file Form H-9; public area	\$10,000
16 TAC §3.36(d)(2)	failure to identify well as sour on completion report	\$10,000
16 TAC §3.36(d)(3)	intentional failure to file written report of H ₂ S release	\$3,000
16 TAC §3.36(d)(3)	failure to file written report of emergency H ₂ S release	\$5,000
16 TAC §3.46(a)	no permit to dispose or inject	\$5,000
16 TAC §3.46(g)(1)	failure to comply with tubing and packer requirements	\$2,000
16 TAC §3.46(g)(2)	no pressure observation valve	\$1,000 per valve
16 TAC §3.46(j)	no test, failed test, or no Form H-5	\$5,000
16 TAC §3.57	reclamation plant operation violation	\$1,000
16 TAC §3.65 (c), (d), or (f)	failure to file Form CI-D or Form CI-X	\$1,000

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Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty Amount or Range
16 TAC §3.65(g)	failure to provide critical customer information	\$2,500
16 TAC §3.73(a)	failure to notify of pipeline connection	\$1,000
16 TAC §3.73(h)	reconnecting, transporting from well/lease without approved Form P-4	\$1,000 minimum; see Table 1A for additional amount
16 TAC §3.73(j)	reporting, producing, injecting, disposing without approved Form P-4	\$1,000 minimum; see Table 1A for additional amount
16 TAC §3.81	failure to comply with brine mining injection well operation requirements	\$1,000
16 TAC §3.95	failure to comply with underground salt formation liquid or liquefied hydrocarbon storage facility operation requirements	\$2,000
16 TAC §3.96	failure to comply with underground productive or depleted reservoir gas storage facility operation requirements	\$2,000
16 TAC §3.98	failure to comply with hazardous waste disposal operation requirements	\$2,000
16 TAC §3.99(d)(2)	failure to comply with protection/isolation of usable quality water requirements	\$2,500 per well
16 TAC §3.99(e)	failure to comply with cathodic protection well construction requirements	\$1,000 per well
16 TAC §3.99(g)	failure to file completion report	\$1,000 per well
16 TAC §3.100(d)(2)	failure to permit seismic/core holes penetrating usable quality water	\$1,000 per hole
16 TAC §3.100(f)	failure to properly plug seismic/core holes	\$1,000 per hole
16 TAC §3.100(g)	failure to file final survey report	\$5,000 per survey
16 TAC §3.106(b)	commenced construction of a sour gas pipeline facility without a permit	\$10,000
16 TAC §3.106(e)	published notice with egregious errors/omissions	\$5,000
16 TAC §3.106(f)	provided pipeline plat with egregious errors/omissions	\$5,000

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Figure: 16 TAC §3.107(j)

Table 5. Penalty Calculation Worksheet

	Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty from Table 1	Penalty Tally
1	16 TAC §3.2	Commission denied access	\$1,000	\$
2	16 TAC §3.3	failure to comply with well sign requirements	\$500	\$
3	16 TAC §3.3	failure to comply with entrance sign requirements	\$1,000	\$
4	16 TAC §3.3	failure to comply with tank battery sign requirements	\$1,000	\$
5	16 TAC §3.5(a)	no drilling permit: filed but not approved	\$5,000	\$
6	16 TAC §3.5(a)	no drilling permit: no application filed	\$10,000	\$
7	16 TAC §3.8(b)	pollution of surface or subsurface water	\$1,000 minimum	\$
8	16 TAC §3.8(d)(1)	improper disposal of oil and gas waste; enhance for actual or threatened pollution: dry pit area	\$500 base penalty plus \$0.30/sq. ft.	\$
9	16 TAC §3.8(d)(1)	improper disposal of oil and gas waste; enhance for actual or threatened pollution: wet pit area	\$500 base penalty plus \$0.50/sq. ft.	\$
10	16 TAC §3.8(d)(2)	use of prohibited pits: fresh water pit area	\$2,500 base plus \$0.25 sq. ft.	\$
11	16 TAC §3.8(d)(2)	use of prohibited pits: salt water or other fluid area	\$2,500 base plus \$0.75 sq. ft.	\$
12	16 TAC §3.8(d)(4)(G)(i)(I), (II)	reserve pits: fresh water pit area	\$2,500 base plus \$0.25 sq. ft.	\$
13	16 TAC §3.8(d)(4)(G)(i)(I), (II)	reserve pits: salt water or other fluid pit area	\$2,500 base plus \$0.75 sq. ft.	\$
14	16 TAC §3.8(d)(4)(G)(i)(III), (IV)	workover and other pits: dry	\$2,500	\$
15	16 TAC §3.8(d)(4)(G)(i)(III), (IV)	workover and other pits: wet	\$5,000	\$
16	16 TAC §3.9(1)	no permit to dispose or inject	\$5,000	\$
17	16 TAC §3.9(9)(A)	failure to comply with tubing and packer requirements	\$2,000	\$
18	16 TAC §3.9(9)(B)	no pressure observation valve	\$1,000 per valve	\$
19	16 TAC §3.9(12)	no test, failed test, or no Form H-5	\$5,000	\$
20	16 TAC §3.13(b)(1)(B)	open casing/tubing	\$1,000 to \$5,000	\$
21	16 TAC §3.13(b)(1)(C)	failure to comply with wellhead control requirements	\$5,000	\$
22	16 TAC §3.13(b)(2)	failure to comply with surface casing requirements	\$2,000	\$
23	16 TAC §3.14(a)(2)	failure to file Form W-3A	\$2,500	\$

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	Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty from Table 1	Penalty Tally
24	16 TAC §3.14(a)(3)	failure to notify of setting plugs	\$1,500	\$
25	16 TAC §3.14(b)(1)	failure to file Form W-3	\$5,000	\$
26	16 TAC §3.14(b)(2)	failure to plug onshore well	\$2,000 plus \$1/ft. of total depth	\$
27	16 TAC §3.14(b)(2)	failure to plug bay, estuary, or inland waterway well	\$15,000 plus \$2 per foot of total depth, subject to statutory maximum	\$
28	16 TAC §3.14(b)(2)	failure to plug offshore well	\$50,000 plus \$5 per foot of total depth, subject to statutory maximum	\$
29	16 TAC §3.14(d)(1)-(11)	failure to follow general plugging requirement	\$1,000	\$
30	16 TAC §3.14(d)(12)	failure to remove miscellaneous loose junk and trash	\$1,000	\$
31	16 TAC §3.14(d)(12)	failure to remove tanks, vessels, and related piping	\$2,500	\$
32	16 TAC §3.14(d)(12)	failure to empty tanks, vessels, and related piping	\$5,000	\$
33	16 TAC §3.15(l)(7)	failure to test prior to reactivating well	\$1,000	\$
34	16 TAC §3.15(f)(2)(A)	failure to disconnect electricity	\$5,000	\$
35	16 TAC §3.15(f)(2)(A)	failure to purge vessels	\$7,500	\$
36	16 TAC §3.15(f)(2)(A)	failure to remove equipment	\$10,000	\$
37	16 TAC §3.16(b) and (c)	failure to file completion records/logs	\$2,500	\$
38	16 TAC §3.17	Bradenhead violations: no valve; no access; or pressure on it	\$1,000 to \$2,500	\$
39	16 TAC §3.20(a)(1)	failure to notify of incident	\$2,500 to \$5,000	\$
40	16 TAC §3.21(a)-(i)	improper fire prevention	\$1,000	\$
41	16 TAC §3.21(j)	failure to comply with dike/firewall requirements	\$2,500	\$
42	16 TAC §3.21(k)	swabbing without authority	\$1,000 per well	\$
43	16 TAC §3.21(l)	failure to comply with electric power line requirements	\$2,000	\$
44	16 TAC §3.22	no nets	compliance	
45	16 TAC §3.35(a)	failure to notify of lost logging tool	\$5,000	\$
46	16 TAC §3.35(b)	failure to properly abandon lost logging tool	\$5,000	\$
47	16 TAC §3.36(c)(5)(B)	improper storage tank signs in a non-public area	\$1,000	\$
48	16 TAC §3.36(c)(5)(B)	improper storage tank signs in a public area	\$2,000	\$

Railroad Commission of Texas
16 TAC Chapter 3--Oil and Gas Division

	Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty from Table 1	Penalty Tally
49	16 TAC §3.36(c)(6)(A)	improper entry signs in a non-public area	\$1,000	\$
50	16 TAC §3.36(c)(6)(A)	improper entry signs in a public area	\$2,000	\$
51	16 TAC §3.36(c)(6)(A)	improper entry signs in a populated public area	\$5,000	\$
52	16 TAC §3.36(c)(6)(B)	failure to fence specific area at a well	\$5,000	\$
53	16 TAC §3.36(c)(6)(B)	failure to fence specific area at a battery	\$10,000	\$
54	16 TAC §3.36(c)(6)(C)	materials provision	\$2,500	\$
55	16 TAC §3.36(c)(8)	failure to maintain H ₂ S equipment	\$5,000	\$
56	16 TAC §3.36(c)(9)(Q)	failure to update contingency plan	\$2,500	\$
57	16 TAC §3.36(c)(9)(N)	failure to notify of H ₂ S contingency plan activation	more than 6 hours up to 12 hours-\$5,000	\$
58	16 TAC §3.36(c)(9)(N)	failure to notify of H ₂ S contingency plan activation	12 hours or more-\$10,000	\$
59	16 TAC §3.36(c)(14)	failure to notify of H ₂ S release	more than 6 hours up to 12 hours-\$5,000	\$
60	16 TAC §3.36(c)(14)	failure to notify of H ₂ S release	12 hours or more-\$10,000	\$
61	16 TAC §3.36(c)(11)-(12), except (12)(F)	failure to follow requirements at drill/workover site; no injury	\$5,000	\$
62	16 TAC §3.36(c)(11)-(12), except (12)(F)	failure to follow requirements at drill/workover site; injury or death	\$10,000	\$
63	16 TAC §3.36(c)(12)(F)	failure to notify of drill stem test in H ₂ S formation	\$2,000	\$
64	16 TAC §3.36(c)(13)	failure to have H ₂ S trained personnel	\$5,000 per person	\$
65	16 TAC §3.36(d)(1)(E)	failure to file Form H-9; non-public area	\$1,000	\$
66	16 TAC §3.36(d)(1)(E)	failure to file Form H-9; public area	\$10,000	\$
67	16 TAC §3.36(d)(2)	failure to identify well as sour on completion report	\$10,000	\$
68	16 TAC §3.36(d)(3)	intentional failure to file written report of H ₂ S release	\$3,000	\$
69	16 TAC §3.36(d)(3)	failure to file written report of emergency H ₂ S release	\$5,000	\$
70	16 TAC §3.46(a)	no permit to dispose or inject	\$5,000	\$
71	16 TAC §3.46(g)(1)	failure to comply with tubing and packer requirements	\$2,000	\$
72	16 TAC §3.46(g)(2)	no pressure observation valve	\$1,000 per valve	\$

Railroad Commission of Texas
16 TAC Chapter 3--Oil and Gas Division

	Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty from Table 1	Penalty Tally
73	16 TAC §3.46(j)	no test, failed test, or no Form H-5	\$5,000	\$
74	16 TAC §3.57	reclamation plant operation violation	\$1,000	\$
75	16 TAC §3.65 (c), (d), or (f)	failure to file Form CI-D or Form CI-X	\$1,000	\$
76	16 TAC §3.65(g)	failure to provide critical customer information	\$2,500	\$
77 75	16 TAC §3.73(a)	failure to notify of pipeline connection	\$1,000	\$
78 76	16 TAC §3.73(h)	reconnecting, transporting from well/lease without approved Form P-4	\$1,000 minimum; see Table 1A for additional amount	\$
79 77	16 TAC §3.73(j)	reporting, producing, injecting, disposing without approved Form P-4	\$1,000 minimum; see Table 1A for additional amount	\$
80 78	16 TAC §3.81	failure to comply with brine mining injection well operation requirements	\$1,000	\$
81 79	16 TAC §3.95	failure to comply with underground salt formation liquid or liquefied hydrocarbon storage facility operation requirements	\$2,000	\$
82 80	16 TAC §3.96	failure to comply with underground productive or depleted reservoir gas storage facility operation requirements	\$2,000	\$
83 81	16 TAC §3.97	failure to comply with underground salt formation gas storage facility operation requirements	\$2,000	\$
84 82	16 TAC §3.98	failure to comply with hazardous waste disposal operation requirements	\$2,000	\$
85 83	16 TAC §3.99(d)(2)	failure to comply with protection/isolation of usable quality water requirements	\$2,500 per well	\$
86 84	16 TAC §3.99(e)	failure to comply with cathodic protection well construction requirements	\$1,000 per well	\$
87 85	16 TAC §3.99(g)	failure to file completion report	\$1,000 per well	\$
88 86	16 TAC §3.100(d)(2)	failure to permit seismic/core holes penetrating usable quality water	\$1,000 per hole	\$
89 87	16 TAC §3.100(f)	failure to properly plug seismic/core holes	\$1,000 per hole	\$
90 88	16 TAC §3.100(g)	failure to file final survey report	\$5,000 per survey	\$
91 89	16 TAC §3.106(b)	commenced construction of a sour gas pipeline facility without a permit	\$10,000	\$
92 90	16 TAC §3.106(c)	published notice with egregious errors/omissions	\$5,000	\$
93 91	16 TAC §3.106(f)	provided pipeline plat with egregious errors/omissions	\$5,000	\$
94				

Railroad Commission of Texas
16 TAC Chapter 3--Oil and Gas Division

	Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty from Table 1	Penalty Tally
92	Tex. Nat. Res. Code, §91.143	false filing	\$1,000 per form	\$
95 93	Subtotal of guideline penalty amounts from Table 1 (lines 1-94 1-92, inclusive)			\$
96 94	Reduction for settlement before hearing: up to 50% of line 95 93 amt.		%	\$
97 95	Subtotal: amount shown on line 95 93 less applicable settlement reduction on line 96 94			\$
Penalty enhancement amounts for threatened or actual pollution from Table 2				
98 96	Agricultural land or sensitive wildlife habitat		\$1,000 to \$5,000	\$
99 97	Endangered or threatened species		\$2,000 to \$10,000	\$
100 98	Bay, estuary or marine habitat		\$5,000 to \$25,000	\$
101 99	Minor freshwater source (minor aquifer, seasonal watercourse)		\$2,500 to \$7,500	\$
102 100	Major freshwater source (major aquifer, creeks, rivers, lakes and reservoirs)		\$5,000 to \$25,000	\$
Penalty enhancement amounts for safety hazard from Table 2				
103 101	Impacted residential/public areas		\$1,000 to \$15,000	\$
104 102	Hazardous material release		\$2,000 to \$25,000	\$
105 103	Reportable incident/accident		\$5,000 to \$25,000	\$
106 104	Well in H ₂ S field		up to \$10,000	\$
Penalty enhancement amounts for severity of violation from Table 2				
107 105	Time out of compliance		\$100 to \$2,000 each month	\$
108 106	Subtotal: amount shown on line 97 95 plus all amounts on lines 98 96 through 107 105, inclusive			\$
Penalty enhancements for culpability of person charged from Table 2				
109 107	Reckless conduct of operator		double line 108 106 amount	\$
110 108	Intentional conduct of operator		triple line 108 106 amount	\$
Penalty enhancements for number of prior violations within past seven years from Table 3				
111 109	One		\$1,000	\$
112 110	Two		\$2,000	\$
113 111	Three		\$3,000	\$
114 112	Four		\$4,000	\$
115 113	Five or more		\$5,000	\$

Railroad Commission of Texas
 16 TAC Chapter 3--Oil and Gas Division

	Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty from Table 1	Penalty Tally
Penalty enhancements for amount of penalties within past seven years from Table 4				
<u>116</u> 114		Less than \$10,000	\$1,000	\$
<u>117</u> 115		Between \$10,000 and \$25,000	\$2,500	\$
<u>118</u> 116		Between \$25,000 and \$50,000	\$5,000	\$
<u>119</u> 117		Between \$50,000 and \$100,00	\$10,000	\$
<u>120</u> 118		Over \$100,000	10% of total amt.	\$
<u>121</u> 119	Subtotal: Line <u>97 95</u> amt. plus amts. on line <u>109 107</u> and/or <u>110 108</u> plus the amt. shown on any line from <u>111 109</u> through <u>120 118</u> , inclusive			\$
<u>122</u> 120	Reduction for demonstrated good faith of person charged			\$
<u>123</u> 121	TOTAL PENALTY AMOUNT: amount on line <u>121 119</u> less any amount shown on line <u>122 120</u>			\$