

WAYNE CHRISTIAN, *CHAIRMAN*  
 CHRISTI CRADDICK, *COMMISSIONER*  
 JIM WRIGHT, *COMMISSIONER*



ALEXANDER C. SCHOCH, *GENERAL COUNSEL*

# 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:** August 30, 2022

**SUBJECT:** Proposed Amendments to §3.65, relating to Critical Designation of Natural Gas Infrastructure

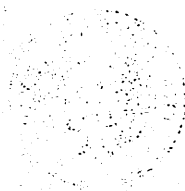
| August 30, 2022                |        |         |
|--------------------------------|--------|---------|
| Approved                       | Denied | Abstain |
| <div>DS</div> <div>WC</div>    |        |         |
| <div>DS</div> <div>CC</div>    |        |         |
| <div>DS</div> <div>CF JW</div> |        |         |

Attached is Staff's recommendation to propose amendments to 16 Texas Administrative Code §3.65, relating to Critical Designation of Natural Gas Infrastructure. The amendments are proposed to simplify the rule language and the process for designating certain natural gas facilities and entities critical during energy emergencies.

Section 3.65 went into effect December 20, 2021. It implemented requirements from House Bill 3648 and Senate Bill 3 (87<sup>th</sup> Legislature, Regular Session) directing the Commission to adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas in this state as critical customers or critical gas suppliers during energy emergencies. The Commission's process for designating certain facilities critical has been in place for approximately eight months. During that time, the Commission has become aware of points of confusion in current §3.65. Additionally, during the comment period for proposed 16 Texas Administrative Code §3.66 (relating to Weather Emergency Preparedness Standards), the Commission received several comments requesting changes to §3.65. The Commission addresses those concerns with these proposed amendments.

Staff requests the Commission's approval to publish the proposed amendments in the *Texas Register* for public comment. If approved at conference on August 30th, the proposal should appear in the September 16th issue of the *Texas Register*. The proposal and an online comment form would also be made available on the Commission's website, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Wei Wang, Executive Director  
 Jared Ware, Director, Critical Infrastructure Division  
 Natalie Dubiel, Attorney, Office of General Counsel



# STATE OF NEW YORK OFFICE OF THE ATTORNEY GENERAL

IN SENATE

January 1, 1910  
Albany, New York



REPORT OF THE ATTORNEY GENERAL  
ON THE PROCEEDINGS OF THE  
COMMISSIONERS OF THE LAND OFFICE  
IN THE MATTER OF THE  
LANDS BELONGING TO THE STATE

ALBANY: JAMES B. LEECH, STATE PRINTER, 1910.

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## 16 TAC Chapter 3--Oil and Gas Division

1           The Railroad Commission of Texas (the "Commission") proposes amendments to §3.65, relating  
2 to Critical Designation of Natural Gas Infrastructure. The amendments are proposed to simplify the rule  
3 language and the process for designating certain natural gas facilities and entities critical during energy  
4 emergencies.

5           Section 3.65 went into effect December 20, 2021. It implemented requirements from House Bill  
6 3648 and Senate Bill 3 (87<sup>th</sup> Legislature, Regular Session) directing the Commission to collaborate with  
7 the Public Utility Commission of Texas (the "PUC") to adopt rules to establish a process to designate  
8 certain natural gas facilities and entities associated with providing natural gas in this state as critical  
9 customers or critical gas suppliers during energy emergencies. The Commission's process for designating  
10 certain facilities critical has been in place for approximately eight months. During that time, the  
11 Commission has become aware of points of confusion in current §3.65. Additionally, during the recent  
12 comment period for proposed 16 Texas Administrative Code §3.66 (relating to Weather Emergency  
13 Preparedness Standards), the Commission received several comments requesting changes to §3.65. The  
14 Commission addresses some of those concerns with these proposed amendments.

15           First, proposed amendments to subsection (a) provide more certainty regarding the definition of  
16 "energy emergency." Currently, the definition includes any event that results in firm load shed or has the  
17 potential to result in firm load shed required by the reliability coordinator of a power region in Texas.  
18 Ninety percent of Texas' power load is managed by the Electric Reliability Council of Texas (ERCOT)  
19 according to ERCOT's website. Because firm load shed is associated with an alert from the reliability  
20 coordinator, those required to comply with §3.65 and members of the public are made aware when firm  
21 load shed occurs. It is the Commission's understanding that firm load shed is associated with an Energy  
22 Emergency Alert Level 3 issued by ERCOT. However, there is less certainty regarding an event with  
23 "potential to result in firm load shed." Therefore, the Commission proposes amendments to define an  
24 event with "potential to result in firm load shed" as when the reliability coordinator of a power region in  
25 Texas issues an Energy Emergency Alert Level 1 or 2. More clearly defining when there is a potential for  
26 firm load shed will provide operators with more certainty as to when an energy emergency is occurring.

27           For example, according to ERCOT protocols, an Energy Emergency Alert (EEA) is required  
28 when operating reserves drop below 2,300 megawatts (MW) or the system frequency cannot be  
29 maintained above certain levels and durations. The three levels of EEA depend on the amount of  
30 operating reserves available to meet electric demand. Currently, an EEA 1 is issued when operating  
31 reserves drop below 2,300 MW and are not expected to recover within 30 minutes. An EEA 2 is issued  
32 when operating reserves are less than 1,750 MW and are not expected to recover within 30 minutes. An  
33 EEA 3 is issued when operating reserves cannot be maintained above 1,375 MW. If conditions do not

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1 improve, ERCOT orders transmission companies to reduce demand on the system (i.e., firm load shed).  
2 Thus, the proposed change defines an energy emergency as an event in which ERCOT has issued an EEA  
3 1 or higher. Additionally, tying the potential for firm load shed to EEAs and not to specific MW  
4 thresholds will allow the definition of energy emergency to maintain its accuracy even if ERCOT were to  
5 change the MW thresholds for its EEAs in the future.

6 Section 3.66, adopted concurrently with these proposed amendments to §3.65, contains a related  
7 definition. It defines weather emergency as "weather conditions such as freezing temperatures, freezing  
8 precipitation, or extreme heat in the facility's county or counties that result in an energy emergency as  
9 defined by §3.65 of this title." Comments received on proposed §3.66 noted the lack of certainty in the  
10 definition due to its reference to "energy emergency" in §3.65. The proposed amendments to subsection  
11 (a) address these concerns.

12 Second, the Commission proposes amendments to the list of critical gas suppliers in subsection  
13 (b)(1). The commission received multiple comments on the original proposal of §3.65 expressing concern  
14 that the list of critical gas suppliers encompassed too many facilities such that electric utilities may  
15 experience a burden in prioritizing the facilities for load-shed purposes. Similarly, comments on proposed  
16 §3.66 requested reducing facilities on the list by excluding more gas wells and oil leases with marginal  
17 production. The amendments now proposed to §3.65(b)(1) exclude gas wells producing an average of 250  
18 Mcf of natural gas per day or less and oil leases producing an average of 500 Mcf of natural gas per day  
19 or less.

20 The Commission has conducted calculations regarding the amount of natural gas provided by  
21 critical producers considering different volume thresholds in subsection (b) (i.e, the amount of natural gas  
22 available under the current rule versus the amount of natural gas available if facilities producing lower  
23 volumes are excluded from the critical gas supplier list in §3.65(b)(1)). The Commission used March  
24 2022 production reports to conduct these calculations. Raising the threshold in §3.65(b)(1) to 250  
25 Mcf/day for gas wells and 500 Mcf/day for oil leases producing casinghead gas leaves 78.4% of the total  
26 natural gas produced per day, or approximately 24.5 Bcf/day of natural gas, designated as critical. In other  
27 words, those low-producing gas wells and oil leases aggregated together statewide only represent a small  
28 portion of the natural gas production. However, they account for a large number of the facilities. This was  
29 confirmed after the January critical designation filing earlier this year. By raising the volume thresholds  
30 for critical facility designation, the rule focuses on truly critical facilities. It also addresses some of the  
31 commenters' concerns that the current volumetric threshold will have the unintended consequences of  
32 forcing small operators to stop producing or selling natural gas in Texas, which will have a negative  
33 impact on gas supply in the state.

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1           Additionally, gas wells producing less than 250 Mcf of natural gas per day on average are defined  
2 as marginal in Natural Resources Code §86.091. The Natural Resources Code does not define marginal  
3 production for oil leases. However, the Commission notes that oil leases contain an average of  
4 approximately five wells each, and each well produces more oil than gas. Therefore, the Commission  
5 believes raising the production threshold to 500 Mcf per day in subsection (b)(1)(B) is appropriate.

6           The Commission notes that raising the volume thresholds in subsection (b)(1)(A) and (b)(1)(B)  
7 does not preclude facilities producing under the thresholds from producing and providing gas for the  
8 supply chain during an energy emergency. Removing those wells and leases from the critical gas supplier  
9 list merely prevents their power from being prioritized by electric utilities during a load-shed event.  
10 However, the facilities may be located on the same meter as another critical facility such that their power  
11 remains on and they continue to produce or they may otherwise maintain power, allowing more than 78%  
12 of total production to be available.

13           Third, proposed amendments in subsections (c), (e), and (f) revise requirements triggered by a  
14 critical gas supplier's inclusion on the electricity supply chain map produced by the Texas Electricity  
15 Supply Chain Security and Mapping Committee. Changes to subsection (c) allow a facility that is not  
16 designated a critical gas supplier in subsection (b) an exemption from filing Form CI-D. Proposed  
17 amendments to subsection (e) and (f) clarify that if a facility designated critical in subsection (b) is  
18 included on the electricity supply chain map, it is not eligible to request an exception from critical  
19 designation.

20           A facility's inclusion on the map is not determined by its critical designation in §3.65. Instead,  
21 the facility's inclusion on the map is determined by whether it provides, processes, or transports natural  
22 gas for gas-fired electric generation facilities. Now that a first version of the map has been issued, the  
23 Commission recognizes that it will be rare for a facility not designated critical to appear on the electricity  
24 supply chain map. This result is only possible for gas wells or oil leases not designated critical in  
25 subsection (b) (i.e., those gas wells producing an average of 250 mcf per day or less or oil leases  
26 producing an average of 500 mcf per day or less according to the proposed amendments to subsection  
27 (b)(1) described above). Removing the existing subsection (c)(1) from §3.65 means that if a non-critical  
28 facility is included on the electricity supply chain map, then the gas well or oil lease will not be required  
29 to file Form CI-D.

30           Importantly, the Commission notes that removing facilities that produce under the thresholds  
31 proposed in §3.65(b)(1) may actually increase the likelihood that those facilities will continue to produce  
32 natural gas during a weather emergency as defined in §3.66. Producing facilities are defined as "gas  
33 supply chain facilities" in §3.66, and per Senate Bill 3, a gas supply chain facility must be both designated

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critical by §3.65 and on the electricity supply chain map to be required to comply with §3.66. Operators of low producing facilities, if required to comply with §3.66's preparation standard, may voluntarily shut-in low producing facilities before a weather emergency—or decommission the facilities in their entirety—because the risks associated with complying with §3.66 may exceed the facility's production value. This is particularly true given that Senate Bill 3's penalty ceiling is up to \$1,000,000 per violation of §3.66. Excluding the very small subset of low producing wells from the critical designation list removes the threat of penalty, increasing the likelihood that the facilities stay online and produce natural gas during a weather emergency.

Proposed changes to subsection (e) and (f) restate the exception process to affirmatively state which facilities are eligible for an exception rather than stating the facilities that are not eligible for an exception. The Commission believes these changes will reduce confusion experienced during the Form CI-D and CI-X filing processes. The proposed amendments remove the current language in subsection (e) and make current subsection (f) new subsection (e).

Proposed subsection (e) states that a facility designated critical under subsection (b) may request an exception unless the facility is included on the electricity supply chain map. The proposed amendments also clarify the acceptable reasons for requesting an exception. Examples of acceptable reasons include: (A) all of the natural gas produced at the facility is consumed on site; (B) all of the natural gas produced at the facility is consumed outside of this state; (C) the facility does not provide gas for third-party use; or (D) the electric entity providing electricity to the facility has provided notice that the facility's request for critical designation status was rejected, denied, or otherwise disapproved by the electric utility; provided, however, that the electric utility communicated its determination in writing, and the decision was for reasons other than the lack of correct identifying information or other administrative reasons. These reasons are examples which are intended to capture the Commission's goal that facilities contributing natural gas to the supply chain in Texas are not eligible for an exception. Proposed subsection (e)(2)(A) and (e)(2)(C) were included in the original proposal of §3.65. In this proposal, the exceptions are moved from subsection (e)(1) to the list in subsection (e)(2). Proposed subsection (e)(2)(B) adds language consistent with Natural Resources Code §81.073, which states, "The commission shall collaborate with the Public Utility Commission of Texas to adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas *in this state* as critical customers or critical gas suppliers during energy emergencies" (emphasis added).

The Commission recognizes that hearings are pending at the Commission in which Administrative Law Judges (ALJs) are reviewing whether other reasons are sufficient to allow an exception. A determination by the ALJ will be reviewed by the Commissioners and, if granted, future

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1 exception applications demonstrating the same facts may also be approved. The Commission also notes  
2 that no changes are proposed regarding the requirement for objective evidence supporting the reasonable  
3 basis and justification. An applicant for an exception must provide objective evidence or its exception  
4 request will not be considered.

5       Regarding proposed subsection (e)(2)(D), it is the Commission's understanding that some  
6 facilities designated critical customers were denied as critical loads by their electric utilities. This decision  
7 is in the electric utility's discretion. However, if a critical facility is denied as a critical load, the proposed  
8 amendments allow the facility to request an exception such that it is not required to comply with §3.65.  
9 The exception will not be approved if the utility's denial was not communicated in writing or was due to  
10 errors made by the critical facility in submitting its critical customer information. Similarly, the exception  
11 will not be approved if the denial was based on the utility's administrative reasons, such as the facility's  
12 power is already prioritized due to its location on a meter that is already a critical load.

13       Other proposed amendments merely update internal references due to the proposed removal of  
14 subsection (e) and the renaming of subsection (f).

15       Jared Ware, Director, Critical Infrastructure Division, has determined that for each year of the  
16 first five years that the amendments will be in effect, there will be no additional cost to state government  
17 as a result of enforcing and administering the amendments as proposed. There is also no fiscal effect on  
18 local government. As referenced during the original proposal of §3.65, the Commission anticipates  
19 revenue of \$150 per operator for an operator's Form CI-X exception application. The proposed  
20 amendments allow additional facilities to request an exception, so the Commission may receive increased  
21 exception application fees due to the proposed amendments.

22       Mr. Ware has determined that for each year of the first five years the proposed amendments are in  
23 effect the primary public benefit will be establishing a clear process for facilities who are critical natural  
24 gas suppliers to be given priority in a load shed event, thus increasing the availability of natural gas for  
25 electric power generation in an energy emergency. The public benefit will also be compliance with  
26 applicable state law.

27       Mr. Ware has determined that for each year of the first five years that proposed amendments will  
28 be in full effect, persons required to comply as a result of adoption of the proposed amendments will incur  
29 minor economic costs of \$150 if the operator files a Form CI-X to request an exception from §3.65.

30       Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic  
31 Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact  
32 statement that assesses the potential impact of a proposed rule on rural communities, small businesses,  
33 and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving

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1 the purpose of the rule if the proposed rule will have an adverse economic effect on rural communities,  
2 small businesses, or micro-businesses. The proposed amendments will not have an adverse economic  
3 effect on rural communities, small businesses, or micro-businesses. Therefore, the regulatory flexibility  
4 analysis is not required.

5 The Commission has also determined that the proposed amendments will not affect a local  
6 economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to  
7 Texas Government Code §2001.022.

8 The Commission has determined that the proposed amendments do not meet the statutory  
9 definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a);  
10 therefore, a regulatory analysis conducted pursuant to that section is not required.

11 During the first five years that the amendments would be in effect, the proposed amendments  
12 would not: create or eliminate a new government program, create a new regulation, or expand the  
13 Commission's existing regulations. The proposed amendments do not require an increase in future  
14 legislative appropriations and do not increase or decrease fees required to be paid to the Commission. The  
15 proposed amendments do not require the creation of employee positions or the elimination of existing  
16 employee positions. The proposed amendments decrease the number of facilities subject to the rule's  
17 requirements. Finally, the proposed amendments would not affect the state's economy.

18 Comments on the proposed amendments may be submitted to Rules Coordinator, Office of  
19 General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at  
20 [www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings](http://www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings); or by electronic mail  
21 to [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov). The Commission will accept comments until 5:00 p.m. on Friday,  
22 October 7, 2022. The Commission finds that this comment period is reasonable because the proposal and  
23 an online comment form will be available on the Commission's website more than two weeks prior to  
24 Texas Register publication of the proposal, giving interested persons additional time to review, analyze,  
25 draft, and submit comments. The Commission cannot guarantee that comments submitted after the  
26 deadline will be considered. For further information, call Mr. Ware at (512) 463-7336. The status of  
27 Commission rulemakings in progress is available at [www.rrc.texas.gov/general-counsel/rules/proposed-rules](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules).  
28 Once received, all comments are posted on the Commission's website at  
29 <https://rrc.texas.gov/general-counsel/rules/proposed-rules/>. If you submit a comment and do not see the  
30 comment posted at this link within three business days of submittal, please call the Office of General  
31 Counsel at 512-463-7149. The Commission has safeguards to prevent emailed comments from getting  
32 lost; however, your operating system's or email server's settings may delay or prevent receipt.



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1           The Commission proposes the amendments under Texas Natural Resources Code §81.073, which  
2 requires the Commission to adopt rules to establish a process to designate natural gas facilities and  
3 entities associated with providing natural gas in this state as critical customers or critical gas suppliers  
4 during an energy emergency; and Texas Natural Resources Code, §81.051 and §81.052, which give the  
5 Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in  
6 Texas and the authority to adopt all necessary rules for governing and regulating persons and their  
7 operations under the jurisdiction of the Commission .

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

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

10  
11   §3.65. Critical Designation of Natural Gas Infrastructure.

12       (a) Definitions.

13           (1) In this section, the term “energy emergency” means any event that results in firm  
14 load shed or has the potential to result in firm load shed required by the reliability coordinator of a power  
15 region in Texas. An event that has the “potential to result in firm load shed” is when the reliability  
16 coordinator of a power region in Texas has issued an Energy Emergency Alert Level 1 or 2.

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

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

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

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

27                   (A) gas wells producing gas in excess of 250 [~~15~~] Mcf/day;

28                   (B) oil leases producing casinghead gas in excess of 500 [~~50~~] Mcf/day;

29                   (C) gas processing plants;

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

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

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1 (F) underground natural gas storage facilities;

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

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

4 (2) Critical Customer. A critical customer is a critical gas supplier for whom the delivery  
5 of electricity from an electric entity is essential to the ability of such gas supplier to operate. A critical  
6 customer is required to provide critical customer information pursuant to subsection (f) [(g)] of this  
7 section to the electric entities described in §25.52(h) of this title (relating to Reliability and Continuity of  
8 Service) and Texas Utilities Code §38.074(b)(1) so that those electric entities may prioritize the facilities  
9 in accordance with Texas Utilities Code §38.074(b)(2) and (b)(3). Priority for load shed [~~load shed~~]  
10 purposes during an energy emergency is described by §25.52(h)(2) of this title and any guidance issued  
11 thereunder by the Public Utility Commission.

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

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

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

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

29 ~~[(e) Facilities not eligible for an exception. Because of their contribution to the natural gas supply~~  
30 ~~chain, the following facilities designated critical under subsection (b) of this section are not eligible for an~~  
31 ~~exception under subsection (f) of this section:]~~

32 ~~[(1) a facility included on the electricity supply chain map produced by the Texas~~  
33 ~~Electricity Supply Chain Security and Mapping Committee;]~~

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1                   ~~[(2) gas wells or oil leases producing gas or casinghead gas in excess of 250 Mcf/day;]~~

2                   ~~[(3) gas processing plants;]~~

3                   ~~[(4) natural gas pipelines or pipeline facilities that directly serve local distribution-~~

4                   ~~companies or electric generation;]~~

5                   ~~[(5) local distribution company pipelines or pipeline facilities;]~~

6                   ~~[(6) underground natural gas storage facilities;]~~

7                   ~~[(7) natural gas liquids storage and transportation facilities; and]~~

8                   ~~[(8) a saltwater disposal facility, including a saltwater disposal pipeline, that supports a-~~  
9                   ~~facility listed in paragraphs (1) through (7) of this subsection.]~~

10                  (e) ~~[(f)]~~ Critical designation exception.

11                   (1) A facility listed in subsection (b) of this section that is not included on the electricity  
12 supply chain map produced by the Texas Electricity Supply Chain Security and Mapping Committee  
13 [other than those identified in subsection (e) of this section] may apply for an exception. An applicant  
14 shall demonstrate with objective evidence a reasonable basis and justification in support of the  
15 application~~[such as all of the gas produced at a facility is for on-site consumption, or the facility does not~~  
16 ~~otherwise provide gas for third-party use]~~. The Director of the Critical Infrastructure Division will  
17 administratively approve or deny a request for an exception. If the request is denied, the Division will  
18 notify the applicant and the applicant may request a hearing to challenge the denial. The party requesting  
19 the hearing shall have the burden of proof.

20                   (2) Examples of a reasonable basis and justification for which an exception may be  
21 granted include, but are not limited to, the following:

22                               (A) All of the natural gas produced at the facility is consumed on site;

23                               (B) All of the natural gas produced at the facility is consumed outside of this  
24 state;

25                               (C) The facility does not provide gas for third-party use; or

26                               (D) The electric entity providing electricity to the facility has provided notice that  
27 the facility's request for critical designation status was rejected, denied, or otherwise disapproved by the  
28 electric utility; provided, however, that the electric utility communicated its determination in writing, and  
29 the decision was for reasons other than the lack of correct identifying information or other administrative  
30 reasons.

31                   (3)~~[(2)]~~ An applicant for exception shall submit a Form CI-X exception application that  
32 identifies each facility for which an exception is requested. The Form CI-X shall be accompanied by an

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1 exception application fee. The amount of the fee is \$150 as established in Chapter 81, Texas Natural  
2 Resources Code.

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

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

11 (f) ~~(g)~~ Providing critical customer information. A critical customer shall provide the critical  
12 customer information to the electric entities described in §25.52 of this title and Texas Utilities Code §  
13 38.074(b)(1) unless the critical customer is granted an exception under subsection (e) ~~(f)~~ of this section.  
14 The critical customer information shall be provided in accordance with §25.52 of this title. The operator  
15 shall certify on its Form CI-D that it has provided the critical customer information to its electric entity.

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

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

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

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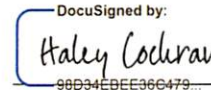
16 TAC Chapter 3--Oil and Gas Division

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on August 30, 2022.

Filed with the Office of the Secretary of State on August 30, 2022.

DocuSigned by:

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