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: New 16 TAC §3.66, Relating to Weather Emergency Preparedness Standards  

Attached is Staff’s recommendation to adopt new 16 Texas Administrative Code §3.66, relating to Weather Emergency Preparedness Standards. The new rule implements changes made by Sections 5, 6, 21, and 22 of Senate Bill 3, which was enacted by the 87th Legislature (Regular Session, 2021).

Section 5 of Senate Bill 3 created new §86.044 of the Texas Natural Resources Code, which requires the Commission to adopt rules requiring certain gas supply chain facility operators to implement measures to prepare to operate during a weather emergency. Section 6 of Senate Bill 3 amended §86.222 of the Texas Natural Resources Code to establish an enforcement process and penalties for violations of Commission rules adopted under §86.044. Similarly, Section 21 of Senate Bill 3 amends §121.2015 of the Texas Utilities Code to require the Commission to adopt rules requiring certain pipeline facility operators to implement measures to prepare to maintain service quality and reliability during extreme weather conditions. Section 22 of Senate Bill 3 amends §121.206 of the Texas Utilities Code to establish an enforcement process and penalties for violations of Commission rules adopted under §121.2015.

On June 28, 2022, the Commission approved the publication of the proposed amendments in the Texas Register for a public comment period, which ended on August 15, 2022. Staff recommends that the Commission adopt the new rule with changes to the proposed text as published in the July 15, 2022, issue of the Texas Register (47 TexReg 4042). The recommended changes are described in the attached adoption preamble.

cc: Wei Wang, Executive Director  
Jared Ware, Director, Critical Infrastructure Division  
Natalie Dubiel, Attorney, Office of General Counsel
The Railroad Commission of Texas (the "Commission") adopts new §3.66, relating to Weather Emergency Preparedness Standards, with changes to the proposed text as published in the July 15, 2022, issue of the Texas Register (47 TexReg 4042). The new section implements changes made by Senate Bill 3 from the 87th Texas Legislative Regular Session, 2021.

Senate Bill 3 is the 87th Legislature's sweeping response to the February 2021 Winter Weather Event ("Winter Storm Uri") in Texas and generally creates new law related to preparing for, preventing, and responding to weather emergencies and power outages. Senate Bill 3 requires several state agencies and regulated industries to make significant changes in response to Winter Storm Uri. This rulemaking implements Sections 5, 6, 21, and 22 of Senate Bill 3. Section 5 of Senate Bill 3 created new §86.044 of the Texas Natural Resources Code, which requires the Commission to adopt rules requiring certain gas supply chain facility operators to implement measures to prepare to operate during a weather emergency (i.e., "weatherize"). Section 6 of Senate Bill 3 amended §86.222 of the Texas Natural Resources Code to establish an enforcement process and penalties for violations of Commission rules adopted under §86.044. Similarly, Section 21 of Senate Bill 3 amends §121.2015 of the Texas Utilities Code to require the Commission to adopt rules requiring certain pipeline facility operators to implement measures to prepare to maintain service quality and reliability during extreme weather conditions (i.e., "weatherize"). Section 22 of Senate Bill 3 amends §121.206 of the Texas Utilities Code to establish an enforcement process and penalties for violations of Commission rules adopted under §121.2015.

The Commission received 139 comments on the proposal, eight from associations, twenty-four from companies/organizations, and 107 from individuals.

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BTA Oil Producers, Inc. (BTA), Commission Shift, Diamondback E&P LLC (Diamondback), Discovery Operating, Inc. (Discovery), DM3R Oil and Gas LLC, Endeavor Energy Resources, LP (Endeavor), Formentera Operations LLC (Formentera), Henry Resources LLC (Henry), Five Stones Energy LLC (Five Stones), Kevin Audrain Oil Co., Momentum Operating (Momentum), Ogden Resources Corporation, Occidental (Oxy), Office of Public Utility Counsel (OPUC), Permian Basin Petroleum Association (PBPA), Pioneer Natural Resources USA Inc (Pioneer), Reverence Operating, Texas Alliance of Energy Producers (Alliance), Texas Independent Producers and Royalty Owners Association (TIPRO), Texas Oil and Gas Association (TXOGA), and 81 individuals submitted comments regarding the Commission's rule regarding critical designation of certain natural gas facilities and entities associated with providing natural gas in this state – 16 Texas Administrative Code §3.65, relating to Critical Designation of Natural Gas Infrastructure. Some of these comments were submitted as comments on §3.66 but the concerns expressed are more germane to §3.65.
The Commission appreciates these comments and will consider amendments to §3.65 to address these concerns. The Commission does not respond to comments relevant to §3.65 here, as they are outside the scope of this rulemaking to adopt new §3.66.

General Comments on §3.66

The following comments do not relate to any specific provision of proposed §3.66 but provide general feedback on the new rule.

OPUC suggested the Commission consider making §3.66 subject to periodic review, such as every 5 years. The Commission notes that staff members are consistently reviewing rules to determine whether updates are needed. Commission staff will review §3.66 as well.

Commission Shift asked that the Commission consider convening a conversation between operators each year to discuss methodologies for weatherization and evidence-based adaptive management techniques for Emergency Operations Plans (EOPs).

As discussed further below, the Commission plans to provide information on weatherization methodologies and will update that information periodically. The Commission engaged operators on weatherization methodologies last year and published a report on weatherization best practices as a result. The Commission agrees it would be beneficial to engage with operators any time the weatherization information is updated.

BTA, Five Stones, and Henry requested the Commission change §3.66 throughout to refer to dry natural gas because only dry gas is sent to electric generators and the change would ensure the rule addresses facilities materially contributing to power generation.

The Commission declines to make this change. Senate Bill 3 specifies that only certain gas supply chain facility operators and certain gas pipeline facility operators are required to comply with Commission rules adopted pursuant to §86.044 of the Texas Natural Resources Code and §121.2015 of the Texas Utilities Code (i.e., §3.66). The gas supply chain facility operators who must comply with §3.66 are those whose facilities are included on the electricity supply chain map created under §38.203 of the Texas Utilities Code and are designated as critical by the Commission in 16 Texas Administrative Code §3.65, which was adopted under Texas Natural Resources Code §81.073. Section 3.65 does not reference dry gas. Therefore, it would be inappropriate to refer to dry gas in §3.66.

One individual asked that the Commission ensure the Texas electric grid is connected to the rest of the country. Another individual asked that the Commission weatherize the grid and limit outages. Three other individuals commented that it is the Commission’s responsibility to stabilize the grid and asked that rogue corporations be effectively penalized and regulated such that they do not consider fines as merely the cost of doing business.
The Commission declines to make any changes in response to these comments. The Commission has no jurisdiction over the electric grid. The Commission will do what Senate Bill 3 requires to ensure facilities over which it has jurisdiction implement measures to prepare to operate during a weather emergency.

Further, one individual expressed concern that the proposed rule does not contain requirements for wind or solar facilities. Another individual expressed concern that there are no regulations to reduce the Electric Reliability Council of Texas' (ERCOT) acquisition of wind and solar. The commenter believes these energy sources are unreliable and adding them to the Texas grid will defeat the purpose of any mandates to the oil and gas industry to weatherize.

The Commission notes that it does not have jurisdiction to regulate wind and solar facilities or to address ERCOT's acquisition of these energy sources. The Commission makes no changes in response to these comments.

The Lone Star Chapter of the Sierra Club (Sierra Club) asked the Commission to provide flexibility for operators who participate in electric load resource programs. The Sierra Club asked that these operators be required to weatherize but have flexibility.

The Commission disagrees. The Commission agrees that load resource programs are beneficial but declines to provide flexibility to operators who are required weatherize by Senate Bill 3. Load resource programs are administered by ERCOT and any flexibility is more appropriately addressed by ERCOT.

The Alliance and Diamondback expressed concern that without greater prioritization in the form of a floor or a multi-tiered effort to distinguish higher and lower priorities in the natural gas supply chain, the rule and actions by operators to comply with the rule will negatively impact overall production. Thus, these comments recommended that §3.66 or § 3.65 be narrowed in focus to higher producing facilities, gas pipelines and storage facilities.

The Commission declines to make any changes to §3.66 in response to this comment but will consider these concerns in determining whether to amend §3.65.

The Alliance and TXOGA expressed concern with the proposed weatherization requirements in certain operations where weatherization is impractical, such as operating wells utilizing field gas for artificial lift. The comments note that field gas has a high potential for freezing and hydrate formation when exposed to the pressure drops of a gas lift system and ambient air temperatures in the 30s and below. Such pressure and temperature issues make it impossible to maintain sustained operations with a field gas artificial lift system during freezes, despite an operator taking preventive measures. This problem cannot be remedied by simply installing additional devices or equipment. Instead, the cost to retrofit an entire gas lift system to guarantee the sustained operation of these wells during a weather
emergency would, in some cases, exceed the economic value of the remaining reserves. Thus, the operator would have to shut in otherwise economic wells resulting in waste contrary to Texas Natural Resources Code §86.011. The comments recommended changes such as processes for administrative exceptions to the rule or exceptions obtained through a hearing at the Commission.

The Commission understands this concern but declines to make any changes in response to these comments. Gas supply chain facilities such as those described by the Alliance and TXOGA are required by Senate Bill 3 to weatherize if they are (1) included on the electricity supply chain map; and (2) are designated as critical by the Commission in 16 Texas Administrative Code §3.65. If a facility meets these two elements, it is required to weatherize regardless of economic or other concerns. Senate Bill 3 did not provide the Commission with the authority to address economic concerns. Further, §3.66 already provides operators flexibility because it requires operators to consider the type of facility while implementing measures to prepare for weather emergencies.

Permian Regulatory Solutions, Momentum, and one individual noted the new requirements are overly burdensome to small operators.

As mentioned above, the determination of which facilities are required to comply with §3.66 partly stems from which facilities are designated critical in §3.65. Section 3.65 currently excludes gas wells producing 15 Mcf per day or less and oil leases producing 50 Mcf per day or less. Several comments on §3.66 requested that those volumetric thresholds be increased. The Commission notes that it will consider these concerns in determining whether to amend §3.65.

Several commenters expressed opposition to the rule based on their belief that the Commission exceeded its authority granted by the Legislature. Incline Energy commented that the critical designation process and weatherization rules are outside of the Commission's authority granted in Senate Bill 3. Endeavor Energy commented that the Commission's rules effectively encompass all natural gas production, transmission, and adjacent facilities, regardless of criticality and, thus, the rules are at odds with the intent of the Legislature. Endeavor also commented that the Commission violated Texas law when it proposed §3.65 by failing to give all interested persons a reasonable opportunity to submit data, views, or arguments prior to implementing a new rule. Endeavor also stated that designations on the electricity supply chain map were not open to meaningful public comment. Earl Burns Inc. expressed concern that the electricity supply chain map is not made public.

The Commission disagrees with these comments. Comments regarding the Commission's critical designation rules are outside the scope of this rulemaking adopting new §3.66. However, the Commission notes that it provided public notice and comment in accordance with the Administrative Procedure Act when proposing §3.65 and the public was provided adequate notice to comment during §3.65's rulemaking. An informal public hearing was on also held during the public comment period for §3.65.
The Electricity Supply Chain Security and Mapping Committee controls the process of mapping the electricity supply chain, and the Commission notes that Texas Utilities Code § 38.203 states that the electricity supply chain map is confidential. Comments related to the mapping process are beyond the scope of this rulemaking.

Discovery Operating expressed opposition to §3.66 because it believes the rule requires a facility to produce during a weather emergency. Conversely, nine individuals requested that the rule be revised to require operators to operate in inclement weather. One individual expressed concern that §3.66 requires operators to say they are prepared rather than be prepared.

The Commission disagrees with these comments and clarifies the requirements of §3.66 as follows. The Commission does not have authority to require an operator to operate and §3.66 does not require operation. Section 3.66 requires that operators of facilities described in §3.66(a) implement weather emergency preparation measures intended to ensure sustained operation during a weather emergency. This is consistent with the directive given to the Commission in Senate Bill 3, which requires that the Commission adopt rules requiring certain facilities to “implement measures to prepare to operate during a weather emergency.” As noted by one individual, §3.66(d) requires operators who are required to comply to submit an attestation certifying that they have implemented the weather emergency preparation measures required by §3.66(c). Section 3.66(c) requires those measures be implemented. Therefore, §3.66 does not merely require that operators say they are prepared but requires preparation.

Relatedly, one individual submitted a comment disagreeing that weather emergencies lead to a loss of production. The individual believes that production loss is due to pipeline failures.

The Commission notes that Senate Bill 3 requires the Commission to adopt rules requiring certain facilities to implement measures to prepare to operate during a weather emergency. Section 3.66 implements this requirement by incorporating the concept of weather emergency.

Subsection (a) – Applicability

Texas Competitive Power Associates and two individuals expressed concern that §3.66 allows operators to decide not to operate during a weather emergency. These commenters understand that the Commission cannot force facilities to operate, but requested the Commission clarify who is required to comply and ensure compliance for those operators.

The Commission agrees that an operator may decide not to operate during a weather emergency. As noted by TCPA, the Commission does not have authority to force facilities to operate. However, §3.66 requires operators to implement the weather emergency preparation measures listed in §3.66(c).

Implementing the weather emergency preparation measures is not optional for facilities required to comply with §3.66. The following facilities are required to comply with §3.66: (1) a gas supply chain
facility that is included on the electricity supply chain map and is designated as critical in §3.65; (2) a gas
pipeline facility that is included on the electricity supply chain map and that directly serves a natural gas
electric generation facility operating solely to provide power to the electric grid for the Electric Reliability
Council of Texas (ERCOT) power region or for the ERCOT power region and an adjacent power region.
The Commission will ensure compliance by operators of these facilities through scheduled inspections
and inspections to investigate weather-related forced stoppages.

The Commission received numerous comments regarding the electricity supply chain map.
Commission Shift, 76 individuals, the Alliance, Sierra Club, TXOGA, Texas Pipeline
Association (TPA), and Formentera submitted comments requesting clarification regarding the
applicability of §3.66 to facilities on the electricity supply chain map and the process for notifying
operators that facilities they operate are included on the map.

PBPA, TIPRO, TXOGA, Henry, BTA, Diamondback, Five Stones, and Rockcliff Energy
Operating (Rockcliff) requested the addition of language in subsection (a) to require the Commission to
notify operators of their facility’s inclusion on the map. They suggested a change in subsection (a)(1)(A)
such that an operator is not subject to §3.66 until it receives notice from the Commission.

The Commission declines to incorporate the requested language. Upon adoption of §3.66, the
Commission will send notices to operators with facilities included on the electricity supply chain map and
include a list of the operator’s relevant facilities. Commission Shift, Alliance, 76 individuals, and the
Sierra Club suggested that the notification be provided via email rather than regular mail to ensure
operators receive notice. The Commission agrees. It will provide notification of inclusion on the map via
certified mail, first class mail, and email if the operator’s email address is provided to the Commission.

It is the Commission’s understanding that the Electricity Supply Chain Security and Mapping
Committee will continue to periodically update the electricity supply chain map. The Commission
recognizes that those changes may impact a facility’s obligation to comply with certain Commission
rules. Thus, the Commission will continue to provide notice to operators of an operator’s facilities on the
map as the electricity supply chain map is updated.

PBPA expressed concerns about the accuracy of the mapping process and the accuracy of the
map. As mentioned in the previous paragraph, it is the Commission’s understanding that the Mapping
Committee will work to ensure the map is up to date and improved as necessary.

Regarding enforcement of new §3.66, the Commission notes that operators of facilities described
in subsection (a) are required to comply with the rule’s requirements by December 1, 2022. Commission
Shift and Sierra Club asked whether a facility is subject to the rule’s requirements if a facility included on
the map has not been included on an operator’s Form CI-D required under §3.65. Section 3.65 requires bi-
annual filing of the Form CI-D by March 1 and September 1 of each year. It is the Commission’s
understanding that the map will be updated continually even between official adoption timelines. In other words, updates will be adopted at set times during the year. Those updates will prompt notification from the Commission to operators with facilities on the most current version of the map. If possible, those notifications will be issued prior to the bi-annual filing deadlines in §3.65. Further explanation regarding the enforcement process is provided in the discussion of comments on subsections (e), (f), and (g) below.

TIPRO, Henry, BTA, Diamondback, Five Stones, Formentera, and Rockcliff asked that the Commission revise subsection (a) to exempt a facility from §3.66 if the facility produces under the production thresholds indicated in §3.65. Similarly, the Alliance asked that §3.66 only apply to gas supply chain facilities that are both included on the electricity supply chain map and designated critical by the Commission in §3.65. TXOGA, Endeavor, and Pioneer requested clarification on whether a facility needs to weatherize if it produces below the volume threshold in §3.65 but is on the electricity supply chain map.

The Commission declines to adopt any changes to §3.66 but will consider these comments and may clarify the requirements of §3.65 in a future rulemaking. The Commission notes that a facility that is not designated critical in §3.65, including a facility producing under the production thresholds, would not meet §3.66(a)(1)(B) and, therefore, would not be subject to the weatherization requirements of §3.66.

The Joint Texas Electric Utilities also asked that §3.66 be adopted in a manner that requires facilities deemed critical customers under §3.65 to comply with §3.66.

The Commission partly agrees. If the facility that is designated a critical customer under §3.65 is also included on the electricity supply chain map, then the facility is required to comply with §3.66.

The Joint Texas Electric Utilities also requested adding new subsection (a)(3) to state that §3.66 applies to any facility designated a critical customer under §3.65, even if that facility is not included subsection (a)(1) or (a)(2).

The Commission declines to incorporate the requested change. Senate Bill 3 states that a gas supply chain facility must also be on the electricity supply chain map, in addition to being designated critical, to be subject to the requirements of §3.66. To require that critical customer status is the only requirement for weather emergency preparedness would ignore a portion of Senate Bill 3. Similarly, Senate Bill 3 is clear that a gas pipeline facility’s critical designation status has no bearing on whether the facility must implement measures to prepare for a weather emergency; the only relevant inquiry for a gas pipeline facility is whether the facility is on the electricity supply chain map and directly serving power generation facilities. The Commission does note in response to the Joint Texas Electric Utilities that a facility on the electricity supply chain map is not eligible for a critical designation exception under §3.65.

The Alliance expressed concerns with facilities located in prorated fields. The limitation of a gas allowable during an energy emergency requires due consideration by the Commission to either remove
these limitations or consider whether prorated fields should not be subject to weatherization requirements. This is due to operators regularly shutting in their wells temporarily when allowables will be exceeded for the month. This rule should not penalize operators requiring significant investments for compliance when other Commission rules will necessitate their closure, in some instances prior to or during an energy emergency.

The Commission understands this concern and will consider allowing flexibility regarding allowables in the event of a weather emergency.

The Commission makes no changes to subsection (a) based on the comments.

Subsection (b) – Definitions

Regarding the definition of critical component, CrownQuest Operating (CrownQuest), PBPA, Ovintiv, and TXOGA requested the Commission add language regarding components on equipment rented or leased from a third party, to clarify that weatherization is required only on susceptible components, whether operator owned or leased, not on the whole piece of third-party equipment.

The Commission agrees that the intent of the definition is to address components, whether operator owned or leased, and adopts §3.66(b)(1) with a change to clarify the intent.

TXOGA asked that the Commission also add language limiting the definition of critical component to components over which the Commission has contractual authority to control. Endeavor expressed a similar concern, stating that leased equipment must generally be maintained in the same state as it was received.

The Commission declines to incorporate this language. The Commission understands that an operator may not have authority to weatherize critical components on equipment that is leased from a third-party. However, the operator should do what is within its authority to ensure critical components are protected in accordance with §3.66, and this includes maintenance and operation of third-party equipment. It is the operator’s responsibility to ensure its facility complies with §3.66.

Pioneer requested clarification regarding critical components on multi-well oil leases in order for field inspectors to properly identify which facilities are included in an operator’s weather preparedness efforts and which are omitted as a non-critical subsystem.

The Commission notes that the determination of what constitutes a weather-related forced stoppage will be conducted at the facility level, not at a critical component level. However, operators shall identify and protect critical components of a facility to ensure its sustained operation during a weather emergency. The Commission recommends describing determinations such as those referenced in the comment in the operator’s Weather Emergency Readiness Attestation to ensure applicable Commission staff members, including field inspectors, are sufficiently informed.
An individual asked that the list of weather conditions in the definition of critical component be revised to include extended periods of low sunlight. The commenter noted that many locations have equipment that relies on a solar battery system in case of a power outage and that system can fail during periods of cloudy weather.

The Commission declines to incorporate the requested change because it does not consider a low sunlight a weather emergency. Though the commenter is correct that the solar battery system is susceptible to weather-related interruptions, generally a solar battery system is used as a contingency and it is not critical to the sustained operation of the facility.

PBPA commented that a different standard is applied for the consideration of critical components than is applied for an operator elsewhere in §3.66. While later in the rule operators would be required to consider the implications of a “forced stoppage,” in the definition of critical component operators are required to consider the “occurrence of which is likely to significantly hinder sustained operation.” It would be more consistent for operators to consider an occurrence that is likely to be linked to a weather-related forced stoppage rather than the potential to significantly hinder sustained operations.

The Commission disagrees. The critical component definition discusses the component’s influence on sustained operations. Sustained operations is the standard in later portions of the rule as well. §3.66(c)(1)(A) states that an operator shall implement weather emergency preparation measures intended to “ensure the sustained operation of a gas supply chain facility or a gas pipeline facility during a weather emergency.”

Regarding the definition of “gas supply chain facility,” CrownQuest and PBPA asked that the Commission revise the definition to mirror the language in subsection (b)(2) and reference the Commission rules under which the relevant gas supply chain facilities are regulated.

The Commission disagrees. The definitions of “gas supply chain facility” and “gas pipeline facility” are taken directly from Senate Bill 3.

Regarding the definition of “major weather-related forced stoppage” in subsection (b)(4), the Atmos Cities Steering Committee (ACSC), Atmos Pipeline Texas (APT), Commission Shift, 76 individuals, TIPRO, Sierra Club, Henry, BTA, Diamondback, Five Stones, and Rockcliff commented that the proposed definition gives the Critical Infrastructure Division (CID) director too much discretion. The commenters requested that objective criteria be added to guide the director’s determination. CrownQuest requested the Commission revise subsection (b)(4) because operators will not know whether a major stoppage occurs until after a weather emergency. APT suggested aligning the definition of “major” with the volumetric thresholds proposed in subsection (f), relating to when an immediate notification of a weather-related forced stoppage is required.
The Commission agrees that objective criteria should be added and adopts the definition of "major weather-related forced stoppage" with revisions to incorporate the volumes proposed in subsection (f). Thus, a major weather-related forced stoppage is defined as a weather-related forced stoppage during a weather emergency that is the result of the deliberate disregard of §3.66 or that results in: (A) a loss of production exceeding 5,000 Mcf of natural gas per day per oil lease; (B) a loss of production exceeding 5,000 Mcf of natural gas per day per gas well; (C) a loss of gas processing capacity exceeding 200 MMcf per day; (D) a loss of storage withdrawal capacity exceeding 200 MMcf per day; or (E) a loss of transportation capacity exceeding 200 MMcf per day. A weather-related forced stoppage that qualifies as a major weather-related forced stoppage prompts two requirements. First, a major weather-related forced stoppage is required to be reported within one hour of discovery, as required by §3.66(f)(2). Second, a major-weather related forced stoppage that is a violation of §3.66 triggers a requirement to obtain a weather emergency preparation assessment, as required by §3.66(f)(4). To ensure weather-related forced stoppages are interpreted to include major weather-related forced stoppages where appropriate, the Commission also adopts changes to §3.66 to add several references to major weather-related forced stoppage alongside weather-related forced stoppage.

PBPA requested that the definition major-weather related forced stoppage be revised to require intentional and deliberate disregard of the section that is not corrected in the manner prescribed by the rule. Similarly, Henry, BTA, Diamondback, Five Stones, and Rockcliff commented that the definition should be based on an operator's intentional conduct. An operator should not be penalized if it attempts in good faith to produce during a weather emergency in compliance with the rule.

The Commission disagrees. Section 3.66 requires an operator to implement weather emergency preparation measures. If an operator produces during a weather emergency, it most likely is not experiencing a weather-related forced stoppage. However, if a weather-related forced stoppage occurs during a weather emergency, an attempt to produce will not prevent enforcement action because the relevant inquiry regarding whether the facility is in violation is whether the operator implemented emergency preparation measures in accordance with §3.66(e).

TXOGA asked that the Commission include "during a weather emergency" in the definition of "major weather-related forced stoppage."

The Commission agrees and adopts §3.66(b)(4) with a change to clarify that a major-weather related forced stoppage occurs during a weather emergency.

Regarding the definition of "repeated weather-related forced stoppage," PBPA, TIPRO, Henry, BTA, Diamondback, Five Stones, Formentera, and Rockcliff requested that a repeated weather-related forced stoppage only occur if a major weather-related forced stoppage occurs more than once in a
calendar year. These commenters note adding “major” will ensure the violations captured by a repeat
designation are those that impact public safety and not those that are minor or immaterial.

The Commission disagrees. The requirement in §3.66(f) that requires contracting for a weather
emergency preparation assessment is taken directly from Senate Bill 3. Senate Bill 3 requires the
assessment for a facility that experiences either a repeat or major interruption. Thus, the Commission
finds that defining repeated weather-related forced stoppage to only include major weather-related forced
stoppages is inconsistent with the statutory language.

PBPA and the Sierra Club suggested amending the definition of repeated weather-related forced
stoppage to apply to more than one weather-related forced stoppage within a season, rather than within a
calendar year. Sierra Club noted that a stoppage may occur in December and January during the same
winter season.

The Commission agrees with these comments and adopts the definition in §3.66(b)(5) with a
change to define repeated weather-related forced stoppage as more than one weather-related forced
stoppage in a 12-month period.

TXOGA requested that the definition be revised to ensure a weather-related forced stoppage is
not classified as a repeated weather-related forced stoppage if the operator experiences an additional
weather-related forced stoppage while trying to resolve its first weather-related forced stoppage.

The Commission disagrees this change is needed. The designation of repeated weather-related
forced stoppage will only occur if, after review, the facility is determined to be in violation of §3.66.
Therefore, the additional requirement applicable to a facility with a repeated weather-related forced
stoppage (i.e., the requirement to obtain a weather emergency preparedness assessment) will not be
triggered immediately upon more than one weather-related forced stoppage, but after more than one
weather-related forced stoppage determined to be in violation of §3.66 within a 12-month period.

Regarding the definition of “sustained operation” in subsection (b)(3), TCPA requested that the
Commission revise the definition to ensure operators maintain operations during weather emergencies and
operators account for both known and reasonably anticipated forced stoppages.

The Commission declines to make this change. The Commission finds that “reasonably
anticipated” may provide those required to comply with an excuse if they did not reasonably anticipate
the weather-related forced stoppage. The language is unclear and may prompt a failure to prepare.

Ovintiv requested a revision to the definition of sustained operation to allow flexibility for
operational downtime experienced while acting as a reasonably prudent operator.

The Commission disagrees because §3.66 already contemplates operational downtime.

Subsection (f), which contains the requirement to report a weather-related forced stoppage, only requires
the report if the stoppage meets the definition of a weather-related forced stoppage and the operator is unable to resolve the stoppage within 24 hours of the stoppage.

   Endeavor and OPUC commented that the definition of sustained operation fails to clearly define "safe operation." Endeavor stated this unnecessarily creates safety risks to operators’ personnel.
   
   The Commission has incorporated additional language in subsection (c) to address this concern.
   
   TIPRO, Henry, BTA, Diamondback, Five Stones, and Rockcliff requested the Commission amend the definition of weather-related forced stoppage to include the term “weather emergency.”
   
   The Commission agrees that the relevant timeframe for determining a weather-related forced stoppage is during a weather emergency and adopts the definition with that change.

   TXOGA asked that the Commission expressly provide that anticipated outages are exempt from the definition of “weather-related forced stoppage” if previously disclosed to the Commission. TXOGA noted that despite an operator’s best efforts to weatherize facilities and equipment, drops in production are inevitable, particularly during cold weather events and in fields utilizing field gas for artificial lift, but they are also predictable. TXOGA suggested adding language that outages described in the definition of weather-related forced stoppage do not include outages caused by utility curtailment or other loss of service that are outside the operator’s control.

   The Commission declines to add the requested language. The Commission notes that an operator of a gas supply chain facility or gas pipeline facility subject to §3.66 would not be subject to an enforcement action for a weather-related forced stoppage caused by factors outside the operator’s control if the operator is otherwise compliant with §3.66. However, the Commission does not agree that this language should be added to narrow the definition of weather-related forced stoppage.

   Similarly, CrownQuest asked that the definition of “weather emergency” be revised to reflect there is no liability for issues outside the operator’s control.

   The Commission agrees that an operator will not be subject to enforcement for a weather-related forced stoppage caused by factors outside the operator’s control if the operator is otherwise compliant with §3.66. However, the Commission declines to make any changes to the definition of “weather emergency” due to this comment.

   Sierra Club asked that the definition of weather emergency be revised to include additional weather extremes such as wildfires, droughts, hurricanes, or other weather extremes.

   The Commission declines to make the requested change. Section 3.66 requires operators to implement weather emergency preparation measures intended to ensure sustained operations during a weather emergency. The Commission finds that certain weather events or weather-related events cannot reasonably be prepared for such that it would be inappropriate and unsafe to require the implementation of weather emergency preparation measures. Wildfires and hurricanes are two examples of such events.
TXOGA also requested high winds, lightning, and fires be expressly excluded from the definition of weather emergency.

The Commission declines to make the requested change. The definition already excludes weather conditions that cannot be reasonably mitigated such as tornadoes, floods, or hurricanes. This is not an exclusive list of the types of weather conditions that cannot be reasonably mitigated. The Commission agrees that lightning and fires are also types of conditions that cannot reasonably be mitigated but does not agree all of these events need to be listed in the definition.

During the comment period, the Commission received additional feedback from the state climatologist. The Commission clarifies that the term “freezing precipitation” in the definition of weather emergency includes freezing drizzle, freezing rain, sleet, ice pellets, snow, and snow pellets. It does not include hail or graupel.

CrownQuest, Alliance, Pioneer, Oxy, and TXOGA requested clarification on when a weather emergency occurs. Specifically, CrownQuest, the Alliance, TIPRO, TXOGA, and Formentera requested the Commission notify operators of a weather emergency. Oxy and TXOGA asked that a weather emergency be limited to events that result in firm load shed, not those that have the potential to result in firm load shed.

The Commission notes that the comments relating to events with the potential to result in firm load shed are more appropriately addressed in §3.65. The Commission will consider these comments if it engages in future rulemaking on §3.65.

The Commission agrees with CrownQuest, the Alliance, TIPRO, TXOGA, and Formentera and will issue a notice to operators when a weather emergency occurs such that reporting under subsection (t) of §3.66 will be required.

Regarding the definition of “weatherization,” CrownQuest, TXOGA, TIPRO, Henry, BTA, Diamondback, Five Stones, and Rockcliff noted that the definition seems inconsistent with the requirements in subsection (c) and asked that the Commission ensure consistency between subsections. TIPRO, Henry, BTA, Diamondback, Five Stones, and Rockcliff requested removal of language regarding implementation of processes or the installation of equipment, so that the definition would not be interpreted to require those actions.

The Commission agrees that the definition should be clarified to be more consistent with the requirements in subsection (c) but declines to remove the language regarding implementation of processes or installation of equipment. The Commission adopts the definition with changes to incorporate requirements in proposed subsection (c)(2) that are part of required weatherization rather than listing those actions separately. The revised definition of weatherization is “the iterative cycle of preparedness for sustained operation during weather emergencies that includes (A) correcting critical component
failures that occurred during previous weather emergencies; (B) installing equipment to mitigate weather-related operational risks; and (C) internal inspection, self-assessment, and implementation of processes to identify, test, and protect critical components."

Subsection (c) – Weather Emergency Preparedness Standards
ACSC requested confirmation that compliance is required by December 1, 2022.
That is correct. Section 3.66 requires compliance by December 1 of each year as certified in the operator's Weather Emergency Readiness Attestation due on the same date.

PBPA, Endeavor, Pioneer, and Ovintiv expressed concerns with the December 1 deadline given challenges in acquiring new equipment. The comments asked that the Commission consider this factor in evaluating the steps operators will be able to undertake and allow a delayed or tiered implementation plan beginning with wells producing the largest volumes of natural gas on the supply chain. TXOGA also commented requesting consideration of supply chain constraints.

The Commission recommends that any constraints in implementing the requirements of §3.66 be noted in an operator's Weather Emergency Readiness Attestation. The Commission understands that certain factors are outside an operator's control. However, the Commission declines to revise §3.66 to allow a delayed implementation.

PBPA commented on §3.66(c)(1) requesting a change to require weatherizing critical components for the sustained operation of a gas supply chain or gas pipeline facility rather than implementing weather emergency preparation measures.

The Commission disagrees and keeps the proposed language because Senate Bill 3 uses the same terms – it requires an operator to “implement measures to prepare to operate during a weather emergency.” In addition, including the term “weatherization” in subsection (c)(1) as requested by PBPA could be interpreted to limit the list of required weather emergency preparation measures in subsection (c)(2), which include training and consideration of health, safety, and the environment. The Texas Caucus on Climate, Environment, and the Energy Industry commented that the Commission should expand its interpretation of Senate Bill 3 to require more than physical measures. The Caucus asked the Commission to include establishing standard business practices of continuing normal operations during weather emergencies. The Commission finds that the rule as adopted incorporates this request. The new definition of weatherization includes internal inspection, self-assessment, and implementation of processes to identity, test, and protect critical components. As mentioned above, the list of required preparation measures in subsection (c)(2) also includes measures beyond physical preparedness.

TIPRO, Henry, BTA, Diamondback, Five Stones, and Rockcliff requested subsection (c)(1)(A) be revised to “prevent weather-related forced stoppage of a gas supply chain facility or a gas pipeline
facility during a weather emergency" because the revised language removes the implication that the
Commission is requiring operation. Discovery Operating also requested revisions to avoid the suggestion
that the Commission is requiring operation.

The Commission declines to incorporate the requested change. The language in subsection
(c)(1)(A) does not require operation, it requires implementation of weather emergency preparation
measures intended to ensure sustained operation during a weather emergency. Further, the language
requested by these commenters is already encompassed in the definition of sustained operation, which is
defined as safe operation of a gas pipeline facility or gas supply chain facility such that the facility does
not experience a weather-related forced stoppage.

Regarding §3.66(c)(1)(B), Henry, BTA, Diamondback, and Five Stones requested changes to
promote consistency with other sections of the rule. They suggested changing "cold weather conditions"
to "weather emergencies" because cold weather conditions are included in the definition of weather
emergency. Also, they asked the Commission to narrow the scope of subsection (c)(1)(B) to only include
repeated weather-related forced stoppages so that only the problematic stoppages are corrected.

The Commission agrees with the first suggestion and adopts the requested change. A
Corresponding change is also adopted in §3.66(d)(3). However, the Commission disagrees that the
 provision should be limited to repeated weather-related forced stoppages and declines to add "repeated"
to subsection (c)(1)(B).

Regarding §3.66(c)(2), which states, "weather emergency preparation measures required by
paragraph (1) of this subsection shall include," Henry, Diamondback, BTA, and Five Stones requested the
language be changed to "weather emergency preparation measures required by paragraph (I) of this
subsection may include but are not limited to."

The Commission disagrees that the weather emergency preparation measures in subsection (c)(2)
should be optional and declines to adopt the requested change.

TXOGA requested two additions to the list in subsection (c)(2). First, TXOGA requested adding
a requirement to consider the risk to the health and safety of employees and protection of the
environment. Second, TXOGA requested a requirement to consider measures proportionate to the volume
of gas that may be impacted by a weather emergency.

The Commission agrees that consideration of employee health and safety and protection of the
environment shall be considered by an operator in implementing weather emergency preparation
measures. The Commission adopts subsection (c)(2)(B) to incorporate this requirement. The Commission
decides to adopt the second requested change regarding consideration of measures proportionate to the
volume of gas that may be impacted during a weather emergency. Facility-specific considerations are
outlined by the Commission in proposed subsection (c)(2)(D), which is adopted as subsection (c)(2)(C).
Proposed §3.66(c)(2)(C) required emergency operations planning using a risk-based approach to
identify, test, and protect the critical components of the facility. APT, CrownQuest, PBPA, TXOGA,
Henry, BTA, Diamondback, and Five Stones requested that the Commission clarify the meaning of risk-
based approach or, in the alternative, remove language requiring a risk-based approach.
The Commission agrees that this language is unclear and removes this language in the adopted
version. Thus, the requirements in proposed subsection (c)(2)(D) are now adopted as subsection (c)(2)(C).
The Commission’s revised definition of “weatherization” incorporates the Commission’s intent for
requirements to identify, test, and protect a facility’s critical components.

Discovery Operating commented that the requirement to identify, test, and protect critical
components is difficult because operators may not be able to simulate conditions to accomplish a test.

As mentioned above, the testing requirement is relocated in the adopted version of §3.66 such
that it is included in the definition of weatherization. The Commission recognizes that weatherization
measures including testing may be different depending on the facility. The requirement to weatherize is
found in subsection (c)(2)(C) and states that weatherization, which includes testing, shall be conducted
using methods a reasonably prudent operator would take given the type of facility, the age of the facility,
the facility's critical components, the facility's location, and weather data for the facility's county or
counties such as data developed for the Commission by the state climatologist. Thus, an operator shall

test critical components in accordance with the reasonably prudent operator standard given the facility-
specific considerations in adopted §3.66(c)(2)(C).

The Commission received many comments on proposed §3.66(c)(2)(D), which required
weatherization of a gas supply chain or gas pipeline facility and included a list of potential weatherization
methods and weatherization data for operators to consider.

Oxy, Alliance, TXOGA, TPA, Endeavor, and Ovintiv asked for clarification on the applicability
of the weatherization measures and recommended various revisions to achieve greater clarity. Oxy and
the Alliance requested “commercially reasonable measures that a prudent operator would take in
accordance with industry-accepted practices given the type and age of the facility including...” TXOGA
and Ovintiv recommended “weatherization of the facility considering industry-accepted methods
considered by the operator to be appropriate and effective to the facility based on the type of facility, the
facility’s critical components, the facility’s location, and weather data for the facility’s county or
counties.” And TPA suggested “weatherization of the facility using economically feasible methods that
are reasonably applicable to the facility based on the type of facility, the facility’s critical components...

Relatedly, CrownQuest, PBPA, Discovery, Alliance, TIPRO, TXOGA, Henry, BTA,
Diamondback, Endeavor, Five Stones, Ovintiv, and an individual requested that the Commission
reconsider the list of specific weatherization methods because it does not provide a clear directive for
operators. PBPA, Alliance, TIPRO, TXOGA, Henry, BTA, Diamondback, Five Stones, Pioneer, and
Rockcliff recommended that instead of including potential weatherization methods in the rule, the
Commission publish guidance that outlines practices. The commenters stated this approach will afford the
Commission greater ability to communicate changing technology or practices.

The Commission agrees that publishing weatherization methods on its website is more
appropriate and will allow the Commission to better communicate with operators as conditions or
information change. The Commission adopts subsection (c) to remove the list of weatherization methods.
New subsection (c)(2)(C) states that the Commission will periodically publish weatherization practices.

The Commission also agrees with comments requesting clarification of the weatherization
requirement, especially considering the removal of the weatherization methods list. The Commission
disagrees that language regarding “commercially-reasonable measures” or “economically feasible
methods” should be incorporated. The Commission understands that weather emergency preparedness
will impose costs on operators required to comply §3.66. However, the Commission finds that the
language in adopted §3.66 provides operators sufficient flexibility and Senate Bill 3 does not authorize
the Commission to consider economic considerations preventing proper preparation. The Commission
adopts subsection (c)(2)(C) to require weatherization of a gas supply chain or gas pipeline facility “using
methods a reasonably prudent operator would take given the type of facility, the age of the facility, the
facility's critical components, the facility's location, and weather data for the facility's county or counties
such as data developed for the Commission by the state climatologist.” The Commission adopts this
provision with “weather data . . . such as” rather than the proposed language of “weather data . . .
including” in response to comments from APT, Oxy, and TXOGA requesting clarification on whether the
weather data from the climatologist must be considered or is only one type of data that may be
considered. The Commission agrees that the weather data provided by the state climatologist is merely a
consideration. The weather data provided is based on historical extremes and the Commission does not
intend that operators weatherize their facilities in accordance with historical extremes. However,
historical information is helpful in determining appropriate weatherization methods in the facility’s
county or counties.

The Commission received several comments on the proposed weather data table in
§3.66(c)(2)(D). ACSC asked that the table be modified to account for additional emergency weather risks
due to climate change factors. Sierra Club noted that the table does not contain weather predictions and
suggested the Commission revise the table or revisit the rules occasionally to determine if any updates to
the table are required. TXOGA requested the table be removed because it does not contain weather
predictions. However, if the table remains, TXOGA asked that the data’s purpose be clarified. Similarly,
PBPA asked that the Commission clarify that the weather information provided is a consideration, not a required weatherization standard.

The Commission agrees that the weather data would be more helpful if included in the Commission's publication on weatherization practices which will be issued as stated in the adopted version of §3.66(c)(2)(C). Including weather data outside §3.66 will allow the Commission to continue to work with the state climatologist and ensure operators have up-to-date data on weather patterns in the counties in which their facilities operate. The Commission adopts §3.66(c) without the proposed weather data table. Subsection (c)(2)(C) states that the Commission may include weather data developed for the Commission by the state climatologist in its publication of weatherization practices.

Subsection (d) – Weather Emergency Readiness Attestation

Comments from Commission Shift, Alliance, Henry, BTA, Diamondback, Five Stones, and Rockcliff noted the similarity of the attestation to the Emergency Operations Plan (EOP) required to be submitted to the Commission in accordance with Texas Utilities Code §186.008, which was created by Senate Bill 3. Commission Shift requested clarification regarding whether the weather readiness attestation required by §3.66(d) is the same as the EOP required by §186.008. Alliance, Henry, BTA, Diamondback, Five Stones, and Rockcliff suggested the Commission revise subsection (d) to incorporate the EOP requirement.

The Commission notes that the Weather Emergency Readiness Attestation required by subsection (d) is distinct from the EOP requirement in Texas Utilities Code §186.008. The Weather Emergency Readiness Attestation is a certification from an operator required to comply with §3.66 that it has implemented the required weather emergency preparation measures described in subsection (c) of §3.66. The EOP requirement is not incorporated into this rulemaking. The Commission understands the two requirements caused confusion but declines to include the EOP requirement in §3.66 because it was not contemplated in the proposal.

PBPA, Alliance, TIPRO, TXOGA, Henry, BTA, Diamondback, Five Stones, Pioneer, and Rockcliff requested that the Weather Emergency Readiness Attestation requirements be revised to be more consistent with typical language on forms required by the Commission, such as the Form P-5 Organization Report. Similarly, Endeavor asked the Commission to remove the requirement for an officer to sign the attestation.

The Commission agrees and revises the language in §3.66(d)(1) to be more consistent with other Commission forms. The Weather Emergency Readiness Attestation is still required to state that the operator implemented the weather emergency preparation measures required in subsection (c). However,
where the proposed version required an authorized officer to sign the attestation, the new language
requires an attestation by an authorized representative.

CrownQuest requested that the list of potential critical components be removed or clarified. CrownQuest and TXOGA suggested reorganizing the list if it is retained so that critical components from different facilities along the supply chain are not listed together.

Upon further review of the critical component list, the Commission agrees that it may cause confusion and adopts subsection (d) without the list. The list was intended to provide guidance on the sections that could be incorporated in an operator's Weather Emergency Readiness Attestation. As such, the critical component list may be more appropriately incorporated into published Commission guidance or templates for attestations. Because the list is removed, the Commission adopts subsection (d)(2) with a change requiring the attestation to include a description of the weatherization methods utilized by the operator to weatherize each type of facility.

TXOGA asked that subsection §3.66(d)(3) be revised to only require a description of non-privileged corrective actions, that cold weather conditions be revised to extreme cold weather conditions, and that descriptions of corrective actions be limited to those that could have a similar impact in future extreme cold weather conditions.

The Commission notes that §3.66(d)(3) is adopted with a change to reflect changes made to §3.66(c)(1)(B), which remove language related to cold weather conditions and instead reference previous weather emergencies. The Commission declines to incorporate the other requested language. If sharing certain information with the Commission violates a legal privilege, the Commission encourages operators to provide as much information as possible without violating the privilege. The Commission disagrees that the operator's description of weather-related forced stoppages should be limited to those that could have a similar impact in future weather emergencies. Relatedly, OPUC requested that reporting on corrective actions taken to mitigate previous weather-related forced stoppages be required in each Weather Emergency Readiness Attestation, not just the first attestation due on December 1, 2022. The Commission finds that the assessment of future weather-related forced stoppages is encompassed in the weather emergency preparation measures required by §3.66(c) and, therefore, declines to incorporate OPUC's changes in subsection (d)(3). Subsection (d)(3) ensures the Commission has information on weather-related forced stoppages that occurred prior to implementation of Commission weatherization rules. That information is only required in the first attestation.

TXOGA asked the Commission to add new subsection (d)(1)(D) to allow an operator to describe in its attestation the weather data it relied upon if it relied upon data other than that provided by the state climatologist.
The Commission agrees that the Weather Emergency Readiness Attestation may include this type of information but does not believe this language in necessary in the rule. The Commission encourages operators submitting an attestation to include any information they believe is useful to demonstrate compliance with §3.66.

Oxy, Alliance, TIPRO and TXOGA also requested changes to allow operators to incorporate in their Weather Emergency Readiness Attestations a schedule for implementing required emergency preparation measures after December 1, 2022 to the extent the operator is unable to complete all requirements of subsection (c) by that date.

The Commission does not agree that operators should be able to delay implementation of weatherization requirements. However, the Commission understands supply chain and other constraints may prevent timely weatherization of all facilities subject to §3.66. The Commission refers these commenters to revisions in subsection (e), which provide information on which facilities will be prioritized for inspection purposes. The Commission notes that violations will stem from one of two places. Commission Shift requested clarification on a similar statement from the proposal preamble. First, a violation could stem from a scheduled inspection (outside of a weather emergency and after the December 1 deadline for compliance) after which a facility is determined to be out of compliance with §3.66. Second, a violation could result from an inspection conducted as part of an investigation into a reported weather-related forced stoppage or major weather-related forced stoppage that occurs during a weather emergency. If the investigation determines the stoppage is due to an operator's failure to comply with §3.66, the facility will be issued a notice of violation. Notices of violation are discussed in more detail below.

CrownQuest, PBPA, and TXOGA expressed concerns regarding confidentiality of the Weather Emergency Readiness Attestation and other information filed pursuant to §3.66. Some comments stated that the Legislature took great care to prevent the disclosure of certain information, like the electricity supply chain map, from being public and the Commission should follow that lead in creating an inherent confidentiality of these facilities as well as the methods by which they safely operated.

The Commission understands these concerns but has no authority to treat information as inherently confidential unless the Legislature deems the information confidential by law. However, the Commission adopts §3.66 with a change to move instructions for filing confidential information from proposed subsection (d)(2) to new subsection (h). This will clarify that any information, not just the attestation, can be filed confidentially with the Commission. If an operator deems certain information confidential, subsection (h) requires that the operator file two copies of the information required under §3.66 – one complete copy and one copy redacted for public inspection. This will reduce the burden on Commission staff and operators and decrease the time needed to compile responsive information for a
Texas Public Information Act (PIA) request. However, the Commission will still follow the process required under the PIA when it receives a PIA request for any information marked confidential.

ACSC notes that confidentiality claims should be limited and requests that the Commission publicly disclose weather-related forced stoppage information on its website as well as information on violations of §3.66.

The Commission notes that the amount of confidentiality claims is unknown at this time. It will consider ACSC’s comment as it begins to receive required filings.

**Subsection (e) - Inspections**

Sierra Club requested the Commission inspect critical infrastructure for weatherization readiness at least once every two years and not just in response to a weather-related forced stoppage during a weather emergency. ACSC asked for more information on the risk-based inspection prioritization process required by Senate Bill 3.

The Commission plans to inspect facilities for compliance with §3.66 on a rotating basis and not just in response to a weather-related forced stoppage or major weather-related forced stoppage. The Commission adopts subsection (e) with changes to clarify the Commission’s inspection process. The revisions state that beginning December 1, 2022, the Commission will inspect facilities to ensure compliance with this section and will prioritize inspections of oil leases and gas wells producing greater than 5,000 mcf per day of natural gas and facilities storing, processing, or transporting greater than 200 MMcf per day of natural gas. The Commission will further prioritize inspections in descending order in accordance with a facility’s production volume or storage, processing, or transportation capacity. This is consistent with Senate Bill 3’s requirement that the Commission shall prioritize based on risk level, as determined by the Commission.

**Subsection (f) – Notifications and other requirements for gas supply chain facilities and gas pipeline facilities.**

The Commission received numerous comments on proposed subsection (f), which was titled “Weather-related forced stoppages by a gas pipeline facility or gas supply chain facility.” The Commission adopts subsection (f) with several changes, including a change to the title to better reflect the contents of the subsection.

First, the Commission reorganizes subsection (f) to separate the notification requirements based on how soon the notification is required.

Subsection (f)(1) addresses notification of weather-related forced stoppages or forced stoppages caused by a loss of electricity that occur during a weather emergency. These notifications are required
The Commission added language to clarify that the notification requirement is triggered if a weather-related forced stoppage occurs during a weather emergency. This language was added in response to comments from PBPA, Oxy, Alliance, TXOGA, and Ovintiv. The Commission also added language requiring notification of forced stoppages due to a loss of electricity in addition to weather-related forced stoppages. The Texas Caucus on Climate, Environment, and the Energy Industry and one individual commented that the Commission should require notice for all stoppages, including curtailments, and that the Commission should not allow operators to circumvent the reporting requirement by internally classifying an outage as not weather related. The Commission agrees that forced stoppages caused by a loss of electricity, such as a curtailment, should be reported to the Commission. The Commission includes that language in new subsection (f)(1) and (f)(2). The Commission also adopts new subsection (f)(3) to allow notifications of forced stoppages to include information such as any third-party issues that may have directly contributed to the stoppage, if applicable.

PBPA requested clarification regarding how the Commission will handle multiple stoppages within a 24-hour period. The 24-hour clock will begin from when the facility experiences the first weather-related forced stoppage or forced stoppage caused by a loss of electricity. If the stoppage is not resolved within 24-hours, the operator must notify the Commission.

TIPRO, Henry, BTA, Diamondback, and Five Stones asked that the notification requirements only be triggered when a reduction in production is caused by an unexpected weather emergency so that operators are not penalized for degradations of production from non-weather-related forced stoppages or third-party failures.

The Commission notes that notification of a forced stoppage is required when a forced stoppage occurs during a weather emergency. The Commission will issue a notice to operators when a weather emergency occurs. Further, a weather-related forced stoppage is defined as an “unanticipated or unplanned” outage due to weather conditions. Therefore, the Commission believes the rule already addresses these concerns.

Oxy, PBPA, Alliance, TXOGA, and Ovintiv also asked for clarification regarding whether a weather-related forced stoppage caused by third party failures will prompt a violation for the operator of the facility that experienced the stoppage. These commenters requested language be added to subsection (f) to clarify that an operator is not responsible for third-party failures.

Regarding operators being penalized for things outside their control, the Commission refers the commenters to language proposed in subsection (f) and adopted in subsection (g) that states if a major
Weather-related forced stoppage or a weather-related forced stoppage was caused by a gas supply chain facility’s or gas pipeline facility’s failure to adhere to the requirements of this section, the facility’s operator will be subject to an enforcement action. Conversely, a major weather-related forced stoppage or weather-related forced stoppage not caused by the facility’s failure to adhere to the requirements of §3.66 will not prompt an enforcement action for the facility’s operator. The Commission declines to add the requested change in subsection (f).

TXOGA suggested that notification “on” the Commission’s 24-hour emergency telephone number be changed to notification “through” the Commission’s 24-hour emergency telephone number.

The Commission agrees and adopts the requested change in subsection (f)(1).

Regarding proposed language requiring immediate notification for weather-related forced stoppages resulting in a certain volume of loss, APT, TIPRO, Henry, BTA, Diamondback, Five Stones, and Rockcliff asked that the Commission distinguish between reporting requirements applicable to producers, transporters, and other sectors.

As noted in the section relating to comments on subsection (b), the Commission agrees with comments that the volumes proposed in subsection (f) as those triggering an immediate notification to the Commission should be used to define a major weather-related forced stoppage. Because the volumes of loss proposed in subsection (f) are incorporated in the definition of major weather-related forced stoppage, the Commission removes the volumes from subsection (f) and instead refers to a major weather-related forced stoppage. This change also addresses the comments from APT, TIPRO, Henry, BTA, Diamondback, Five Stones, and Rockcliff noted in the previous paragraph.

New subsection (f)(2) addresses notification of major weather-related forced stoppages and forced stoppages caused by a loss of electricity that result in the same volume of loss or capacity as a major weather-related forced stoppage. In other words, a forced stoppage due to a loss of electricity that results in: a loss of production exceeding 5,000 Mcf of natural gas per day per oil lease; a loss of production exceeding 5,000 Mcf of natural gas per day per gas well; a loss of gas processing capacity exceeding 200 MMcf per day; a loss of storage withdrawal capacity exceeding 200 MMcf per day; or a loss of transportation capacity exceeding 200 MMcf per day.

Subsection (f)(2) requires notification of these stoppages within one hour of discovery.

Commission Shift requested clarification from the Commission on how it defines “immediate” in relation to the 24-hour timeframe in proposed subsection (f).

Proposed subsection (f) used the term “immediate” for both types of notifications. The Commission understands that this could cause confusion. The Commission makes no changes to the term immediate in new subsection (f)(1). Notifications required under subsection (f)(1) shall be made
immediately upon the expiration of 24 hours from discovery of the stoppage if the stoppage is not resolved within that 24-hour period.

Subsection (f)(2) is adopted with a change to remove the term immediate and instead requires notification of the stoppages described in subsection (f)(2) within one hour of discovery. This timeframe is consistent with other notifications required by the Commission, such as notification of pipeline safety incidents.

Commission Shift requested the Commission use the same units when describing thresholds of gas (i.e., either designate all thresholds in Mcf or all in MMcf).

The Commission disagrees. Different units are commonly used for different types of facilities and are also used in §3.65. Thus, the Commission chooses to make the two rules consistent.

Proposed subsection (f)(2) contained a requirement that a facility that experiences repeated or major weather related-forced stoppages as defined in subsection (b) contract with a qualified engineer to obtain an assessment of the operator’s weather emergency preparation measures. This requirement was incorporated to ensure consistency with Senate Bill 3. However, CrownQuest, Discovery, Diamondback, PBPA, TIPRO, and TXOGA noted that the Commission’s requirement went beyond what was required in the statute and requested the Commission revise the language to allow consultation with a Commission employee rather than require a qualified engineer. Conversely, Henry, BTA, Five Stones, and Rockcliff asked that the Commission revise “qualified engineer” to “registered professional engineer” to ensure consistency with other Commission rules.

The Commission agrees that Senate Bill 3 does not require contracting with a qualified engineer. Senate Bill 3 states that the operator of a facility that experiences repeated or major forced interruptions shall contract with a person who is not an employee of the operator. The Commission declines to allow an operator subject to this requirement to consult with a Commission employee. The statutes added by Senate Bill 3 (Natural Resources Code §86.044 and Utilities Code §121.2015) require contracting with a person. The Commission interprets the term “contract” to exclude consultation with a Commission employee. However, the Commission adopts subsection (f)(4) with a change to allow contracting with a person with related experience.

Henry, BTA, Diamondback, Five Stones, and Rockcliff asked that the Commission add language to clarify that the requirement to contract with a person under subsection (f)(4) is only applicable after a hearing and final order. Endeavor requested that the requirement in subsection (f)(4) not apply if the stoppage was due to an electricity failure or other third-party failure.

The Commission declines to incorporate the requested changes. However, the Commission notes that the requirement in subsection (f)(4) will not be triggered immediately but only upon a determination
that the applicable weather-related forced stoppage/stoppages were due to an operator’s failure to comply with §3.66.

Henry, BTA, Diamondback, Five Stones, and Rockcliff requested the Commission give operators the option of filing the engineer’s assessment and operator’s corrective action plan as confidential. The Commission agrees. This comment is addressed by the relocated language in subsection (h).

Subsection (g) - Enforcement

PBPA, TIPRO, Henry, BTA, Diamondback, and Five Stones recommended the Commission change references to “person” in subsection (g) to “operator” for consistency. The Commission agrees and adopts subsection (g) with the requested change.

Henry, BTA, Diamondback, and Five Stones asked that subsection (g)(1) be revised to state that a violation that is not remedied within a reasonable amount of time will only be referred to the Office of the Attorney General after notice and opportunity for hearing. The Commission agrees and adopts subsection (g) with the requested change.

Commission Shift and Endeavor asked the Commission to clarify what the Commission considers to be a reasonable amount of time to come into compliance. The Commission’s position is that a reasonable amount of time will depend on the circumstances of the violation.

PBPA, TXOGA, and Ovintiv asked that the Commission incorporate language clarifying that operators will be given notice, hearing, and an opportunity to appeal as allowed in all other enforcement actions at the Commission. The Commission has incorporated language in subsections (g)(1) and (2) to clarify that the Commission will provide notice of a violation by certified mail and the notice will give the operator 30 days to request a hearing.

Commission Shift asked whether the Commission will use the schedule of time out of compliance in the Classification Table or if the Commission will consider each day a violation occurs to be a separate violation as stated in proposed subsection (g). TCPA noted that proposed subsection (g) should be revised to be consistent with the statutory language, which states that each day a violation “continues” may be considered a separate violation. The Commission agrees with TCPA and adopts subsection (g)(1) and (g)(2) with changes to ensure consistency with applicable statutory language. Natural Resources Code §86.222, relating to gas supply chain facilities, does not include language permitting the Commission to treat each day a violation continues as a separate violation. Therefore, the Commission removes that language from subsection (g)(1). Because the Commission does not have authority to treat each day a separate violation for gas
supply chain facility violations, the Commission will use the time out of compliance factors for gas
supply chain facility violations. However, Texas Utilities Code §121.206 allows the Commission to
consider each day a violation continues as a separate offense. Therefore, the Commission retains this
option for violations by gas pipeline facility operators.

ACSC asked that the Commission outline penalties for failure to fully cooperate with inspectors.
The Commission is not aware that this situation frequently occurs such that the rule should be
revised. The Commission declines to adopt the requested change.

Endeavor asked for more guidance as to what will warrant the maximum $1,000,000 fine.
The Commission notes that, in accordance with Natural Resources Code §86.222, a penalty in an
amount that exceeds $5,000 may be recovered only if the violation is included in the highest class of
violations in the classification system. According to the Classification Table, only violations with a total
factor value of 15 points or more will be eligible for the $1,000,000 penalty. The higher the total factor
value, the more likely the Commission will recommend a higher penalty to the Attorney General when
the violation is referred for penalty assessment, which will ultimately be assessed by the district court.

ACSC requested that subsection (g) include language stating that the Commission maintains full
authority to classify any violation under the rule as a top-tier Class A violation, notwithstanding any other
language in §3.66.

The Commission declines to adopt this change and instead will utilize the classification table in
assessing penalty amounts.

Commission Shift, 76 individuals, TCPA, and Sierra Club asked that the potential penalties be
higher than the potential cost of non-compliance.

The Commission finds that the potential penalties will encourage compliance. Points for each
factor value will be accumulated in calculating the total. Operators who intentionally choose not to
comply with §3.66 may be considered Class A violators. Therefore, the Commission declines to make
any changes in response to these comments.

Classification Table in Subsection (g)

ACSC, Commission Shift, Sierra Club, and 77 individuals asked that the Classification Table be
revised to allow a lower point total to result in the highest class such that more violations may be assessed
a penalty of greater than $5,000.

The Commission notes that it will not be difficult for a violation to be classified as Class A in
accordance with the table. For example, an operator of a facility, regardless of size, who fails to take any
measures to comply with §3.66, makes no effort to remedy its violation resulting in an extended time out
of compliance, and creates an actual or potential hazard to health, safety, or economic welfare of the
public has a total of 15 or more points. This total is achieved even without considering factors due to the facility’s production volume or capacity.

Oxy, Alliance, and TXOGA asked that the table consider an operator’s overall or statewide gas production. Oxy and TXOGA suggested that a line item be added to the classification table if an operator keeps a certain percentage of its aggregate production within Texas online in the event there are failures at a number of very lower tier, low-production leases and/or gas wells. Their comments suggested -2 for 70%, -3 for 80%, and -4 for 90%.

The Commission declines to incorporate the line items requested because an operator’s amount of statewide production is likely unrelated to the amount of gas it contributes to the electricity supply chain. A facility subject to the requirements of §3.66 is on the electricity supply chain map and, therefore, a weather-related forced stoppage in violation of §3.66 has a potential impact to the electricity supply chain that is likely not resolved by the operator’s ability to maintain production at facilities that are not on the electricity supply chain map.

However, the Commission agrees that an incentive may be given to operators to redirect gas to the supply chain or otherwise make up for the impact to the supply chain caused by the violation. Therefore, the Commission adopts the table with new rows to allow a credit of three points if, during the weather emergency in which the facility’s violation occurred, the operator had no reduction in the natural gas supplied to the Texas electricity supply chain. For saltwater disposal well operators, an operator can obtain the credit by showing that during the weather emergency in which the facility’s violation occurred, the disposal well operator had no reduction in saltwater disposal capacity made available to Texas electricity supply chain facilities.

TIPRO, Henry, BTA, Diamondback, Five Stones, and Rockcliff asked that the Commission include a factor of -4 for a good faith attempt to produce during a weather emergency.

The Commission disagrees. The relevant inquiry is whether the operator properly took measures to prepare during the weather emergency in accordance with §3.66. An operator that took no measures but then attempted in good faith to produce during the weather emergency should not receive a credit.

TXOGA and Ovintiv requested a line item of -15 for an operator’s inability to remedy a violation due to conditions endangering safety of the operator’s personnel.

The Commission declines to add the line item because the violation was issued due to a facility’s failure to prepare not because of a facility’s inability to remedy a violation. A -15 factor value would effectively remove all consequences of a failure to prepare in accordance with §3.66.

TIPRO, Henry, BTA, Diamondback, and Five Stones requested that production thresholds be updated to reflect the possibility of degradation of production. Specifically, comments requested the
threshold for gas wells and oil leases be increased from 5,000 Mcf per day to 15,000 Mcf per day or a 40% reduction in lease production averaged over a three-month period.

The Commission declines to make the requested change. As discussed in the proposal for §3.66, the thresholds were chosen to correspond to thresholds for Tier 1 facilities in the Public Utility Commission's guidance to electric utilities regarding prioritizing critical natural gas supply chain facilities for load-shed purposes.

TIPRO, Henry, BTA, Diamondback, Five Stones, and Rockcliff commented that the violation factor “Hazard to health, safety, or economic welfare of the public” should be amended to “Actual hazard to health, safety, or economic welfare of the public.”

The Commission agrees and adopts the table with that language.

The Commission appreciates all the comments submitted on the proposal.

The Commission summarizes the provisions adopted in §3.66 as follows. Adopted §3.66(a)(1) incorporates elements from §86.044 of the Natural Resources Code and adopted §3.66(a)(2) incorporates elements from Texas Utilities Code §121.2015.

Adopted §3.66(b) contains definitions for "gas pipeline facility" and "gas supply chain facility" to further clarify which facilities are subject to the requirements of §3.66. The definitions for "gas pipeline facility" and "gas supply chain facility" are consistent with Texas Utilities Code §121.2015 and Texas Natural Resources Code §86.044, respectively. A gas pipeline facility is a pipeline or pipeline facility regulated by the Commission under Texas Utilities Code Chapter 121. A gas supply chain facility is a facility that is used for producing, treating, processing, pressurizing, storing, or transporting natural gas as well as handling waste produced. These facilities include gas wells, oil leases producing casinghead gas, gas processing plants, underground natural gas storage, and saltwater disposal facilities.

A gas supply chain facility or gas pipeline facility must be included on the electricity supply chain map for §3.66 to apply to the facility. If the facility is not included on the map, the requirements of new §3.66 do not apply to the facility.

In addition to definitions for "gas supply chain facility" and "gas pipeline facility," adopted subsection (b) contains definitions for the following terms: critical component, major weather-related forced stoppage, repeated weather-related forced stoppage, sustained operation, weather emergency, weatherization, and weather-related forced stoppage.

Adopted subsection (c) contains the weather emergency preparedness standards for a gas supply chain facility or a gas pipeline facility subject to §3.66 as specified in subsection (a). By December 1st of each year, a gas supply chain facility operator or a gas pipeline facility operator shall implement weather emergency preparation measures intended to, first, ensure the sustained operation of a gas supply chain facility or a gas pipeline facility during a weather emergency.
Adopted subsection (c)(1)(A) states that weather emergency preparation measures intended to ensure sustained operation are required during a weather emergency.

The definition of "weather emergency" ensures that the requirements of adopted §3.66 help achieve the purpose of Senate Bill 3, which aims to stabilize the electricity supply chain. Therefore, adopted §3.66 tasks operators of gas supply chain facilities and gas pipeline facilities with implementing measures to ensure sustained operation when weather conditions create a risk to the electricity supply chain.

As adopted in §3.66(c)(1)(B), by December 1st of each year, a gas supply chain facility operator or a gas pipeline operator shall also implement weather emergency preparation measures intended to correct known weather-related forced stoppages that prevented sustained operation of a facility because of previous weather emergencies.

Adopted §3.66(c)(2) lists the weather emergency preparation measures that are required. First, weather emergency preparation measures shall include providing training on weather emergency preparations and operations to relevant operational personnel. Adopted subsection (c)(2)(B) requires consideration of the risk to the health and safety of employees and protection of the environment.

Adopted subsection (c)(2)(C) requires weatherization of the facility using methods a reasonably prudent operator would take given the type of facility, the age of the facility, the facility's critical components, the facility's location, and weather data for the facility's county or counties such as data developed for the Commission by the state climatologist. The Commission will periodically publish weatherization practices and may include weather data developed for the Commission by the state climatologist. The definition of "weatherization" is adopted with changes in subsection (b) as described in the summary of comments section.

Adopted subsection (d) requires a gas supply chain facility operator or gas pipeline facility operator to submit to the Commission a Weather Emergency Readiness Attestation by December 1st of each year. The attestation must be prepared by an authorized representative of the operator entity or under the authorized representative's supervision and direction and must attest that the operator implemented the weather emergency preparation measures described in subsection (c). The attestation must also include an attachment describing all activities the operator engaged in to implement the requirements of subsection (c), including a description of the weatherization methods utilized by the operator to weatherize each type of facility.

Additionally, subsection (d)(3) requires that for the first attestation due December 1, 2022, the attestation describe corrective actions taken to mitigate known weather-related forced stoppages that prevented sustained operation of the facility because of previous weather emergencies.
Adopted §3.66(c) states that the Commission will inspect facilities subject to §3.66 to ensure compliance with the section's requirements. The Commission notes that, generally, an inspection will stem from one of two places: (1) a regular inspection of the facility conducted in accordance with the Commission's inspection schedule; or (2) an inspection scheduled in response to a weather-related forced stoppage notification filed under subsection (f).

Adopted subsection (f) is adopted with changes described in the comment summary section. It contains requirements related to weather-related forced stoppages and forced stoppages due to a loss of electricity. Subsection (f)(1) requires the operator of a facility that experiences a weather-related forced stoppage or a forced stoppage due to a loss of electricity to notify the Commission of the stoppage if the stoppage is not resolved within 24 hours of discovery. The notification is only required if the forced stoppage occurs during a weather emergency. The notification shall be made to the Commission's Critical Infrastructure Division's notification portal. However, if the facility experiences a stoppage described in adopted subsection (f)(2), the operator shall, within one hour of discovery of the stoppage, contact the Commission through the Critical Infrastructure Division 24-hour emergency telephone number. As mentioned above, a notification through the portal or to the emergency number will result in an inspection to determine whether the stoppage was caused by the facility's failure to adhere to the requirements of adopted §3.66. If the weather-related forced stoppage was unrelated to the requirements of §3.66, the facility will not be issued a violation.

Subsection (f)(4) incorporates requirements added to Texas Natural Resources Code §86.044 and Texas Utilities Code §121.2015 by Senate Bill 3. If a gas supply chain facility or a gas pipeline facility experiences repeated weather-related forced stoppages or major weather-related forced stoppages it shall contract with a person with related experience to assess the facility's weather emergency preparation measures, plans, procedures, and operations. "Major weather-related forced stoppage" is defined in subsection (b)(4) and is adopted with changes due to comments as described above. "Repeated weather-related forced stoppage" is defined in subsection (b)(5) and is also adopted with a change such that "calendar year" is revised to "12-month period."

Adopted §3.66(g) relates to enforcement of violations of §3.66 and is adopted with changes as described in the comment summary above. Texas Natural Resources Code §§86.044 and 86.222-.224 stipulate the enforcement process and penalties for a violation of §3.66. Pursuant to these statutes, if the Commission determines that an operator has violated §3.66 and the violation is not remedied within a reasonable amount of time, the Commission is required to notify the Office of the Attorney General of Texas. Texas Natural Resources Code section 86.044 requires that the Attorney General initiate a suit to recover a penalty for the violation. Texas Natural Resources Code section 86.222 requires the Commission to establish a classification system to be used by a court for violations of §3.66. The
classification system shall include a range of penalties that may be recovered for each class of violation based on factors such as the nature, circumstances, extent, and gravity of a prohibited act; the hazard or potential hazard created to the public's health, safety, or economic welfare; the history of previous violations; the amount necessary to deter future violations; and efforts to correct the violation. Section 86.222 further specifies that the classification system require only the highest class of violations to be eligible for a penalty exceeding $5,000. The maximum penalty allowed by section 86.222 is $1,000,000 for each offense.

The table in subsection (g)(1) contains the classification system required by section 86.222. It incorporates the factors required by section 86.222 and assigns a factor value to each factor. The values are then totaled to assign each violation a class based on point total, and the class determines the penalty range. A Class A violation is the highest class of violations, making it eligible under section 86.222 for a penalty amount greater than $5,000 up to $1,000,000.

Adopted subsection (g)(2) incorporates the enforcement process and penalty requirements specified in Texas Utilities Code sections 121.2015 and 121.206. Section 121.2015 requires that the Commission assess an administrative penalty against an operator who violates §3.66 if the violation is not remedied within a reasonable amount of time. It also requires that the Commission report such violations to the Attorney General. However, unlike Texas Natural Resources Code section 86.044, the Attorney General is not required to file suit. Instead, the Commission is authorized to assess an administrative penalty. The Commission will use the table in subsection (g)(1) to assess penalties for a violation of §3.66.

The Commission notes that violations of §3.66 will be issued on a facility basis. The operator of a facility with an alleged violation will be issued a notice of the violation and given an opportunity for a hearing. A gas supply chain facility violation will be determined by the Commission and then referred to the Attorney General for penalty assessment as specified in subsection (g). For a gas pipeline facility violation, the Commission will determine whether there is a violation, and if so, will also assess the appropriate penalty.

The Commission adopts the new rule under section 86.044 of the Texas Natural Resources Code, which requires the Commission to adopt rules requiring certain gas supply chain facility operators to implement measures to prepare to operate during a weather emergency (i.e., "weatherize"); section 86.222 of the Texas Natural Resources Code, which requires the Commission to establish an enforcement process and penalties for violations of Commission rules adopted under section 86.044; section 121.2015 of the Texas Utilities Code, which requires the Commission to adopt rules requiring certain pipeline facility operators to implement measures to prepare to maintain service quality and reliability during extreme weather conditions; and section 121.206 of the Texas Utilities Code, which requires the
§3.66. Weather Emergency Preparedness Standards.

(a) Applicability.

(1) In accordance with Texas Natural Resources Code §86.044, this section applies to a gas supply chain facility that is:

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

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

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

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

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

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

(1) Critical component—Any component, including components on equipment rented or leased from a third party, that is susceptible to weather-related interruptions, such as those caused by freezing temperatures, freezing precipitation, or extreme heat, the occurrence of which is likely to significantly hinder sustained operation of the gas pipeline or gas supply chain facility.

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

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

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

(B) not primarily used to support liquefied natural gas pretreatment, liquefaction, or regasification facilities in the business of exporting or importing liquefied natural gas to or from foreign countries;
(C) otherwise regulated by the Commission under Subtitle B of Title 3, Texas Natural Resources Code; and

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

(4) Major weather-related forced stoppage--A weather-related forced stoppage during a weather emergency that is the result of the deliberate disregard of this section or that results in:

(A) a loss of production exceeding 5,000 Mcf of natural gas per day per oil lease;

(B) a loss of production exceeding 5,000 Mcf of natural gas per day per gas well;

(C) a loss of gas processing capacity exceeding 200 MMcf per day;

(D) a loss of storage withdrawal capacity exceeding 200 MMcf per day; or

(E) a loss of transportation capacity exceeding 200 MMcf per day.

(5) Repeated weather-related forced stoppage--When a gas supply chain facility or a gas pipeline facility has more than one major weather-related forced stoppage or weather-related forced stoppage violation within a 12-month period.

(6) Sustained operation--Safe operation of a gas pipeline facility or a gas supply chain facility such that the facility does not experience a major weather-related forced stoppage or weather-related forced stoppage in production, treating, processing, storage, or transportation of natural gas.

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

(8) Weatherization--The iterative cycle of preparedness for sustained operation during weather emergencies that includes:

(A) correcting critical component failures that occurred during previous weather emergencies;

(B) installing equipment to mitigate weather-related operational risks; and

(C) internal inspection, self-assessment, and implementation of processes to identify, test, and protect critical components.

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

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

(A) ensure the sustained operation of a gas supply chain facility or a gas pipeline facility during a weather emergency; and

(B) correct known major weather-related forced stoppages and weather-related forced stoppages that prevented sustained operation of a facility because of previous weather emergencies.

(2) Weather emergency preparation measures required by paragraph (1) of this subsection shall include:

(A) providing training on weather emergency preparations and operations to relevant operational personnel;

(B) consideration of the risk to the health and safety of employees and protection of the environment; and

(C) weatherization of the facility using methods a reasonably prudent operator would take given the type of facility, the age of the facility, the facility's critical components, the facility's location, and weather data for the facility's county or counties such as data developed for the Commission by the state climatologist. The Commission will periodically publish weatherization practices and may include weather data developed for the Commission by the state climatologist.

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

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

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

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

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

(v) the Weather Emergency Readiness Attestation was prepared by the authorized representative or under the authorized representative’s supervision and direction;
(B) includes an attachment describing all activities engaged in by the operator to implement the requirements of subsection (c) of this section, including a description of the weatherization methods utilized by the operator to weatherize each type of facility; and

(C) for the Weather Emergency Readiness Attestation due December 1, 2022, also describes corrective actions taken to mitigate known major weather-related forced stoppages and weather-related forced stoppages that prevented sustained operation of a facility because of previous weather emergencies.

(e) Inspection of gas supply chain facilities and gas pipeline facilities. Beginning December 1, 2022, the Commission will inspect facilities to ensure compliance with this section and will prioritize inspections of oil leases and gas wells producing greater than 5,000 Mcf per day of natural gas and facilities storing, processing, or transporting greater than 200 MMcf per day of natural gas. The Commission will further prioritize inspections in descending order in accordance with a facility’s production volume or storage, processing, or transportation capacity.

(f) Notifications and other requirements for gas supply chain facilities and gas pipeline facilities.

(1) An operator of a gas supply chain facility or a gas pipeline facility that experiences either of the following during a weather emergency shall notify the Commission immediately through the Critical Infrastructure Division’s notification portal if the stoppage is not resolved within 24 hours of discovery of the stoppage:

(A) a weather-related forced stoppage; or

(B) a forced stoppage caused by a loss of electricity.

(2) An operator of a gas supply chain facility or gas pipeline facility that experiences either of the following during a weather emergency shall, within one hour of discovery of the stoppage, contact the Commission through the Critical Infrastructure Division’s 24-hour emergency telephone number. Subsequent to the phone call, the operator shall submit a notification through the Critical Infrastructure Division’s notification portal:

(A) a major weather-related forced stoppage; or

(B) a forced stoppage caused by a loss of electricity that results in the same volume of loss in natural gas production, withdrawal capacity, processing capacity, or transportation capacity as a major weather-related forced stoppage.

(3) The notification of the major weather-related forced stoppage or weather-related forced stoppage may include information such as any third-party issues that may have directly contributed to the stoppage, if applicable.

(4) A gas supply chain facility or a gas pipeline facility that is determined to have experienced repeated weather-related forced stoppages or major weather-related forced stoppages in
sustained operation during a weather emergency shall comply with this paragraph. Upon notice from the Commission that the facility is required to comply with this paragraph, the facility’s operator shall contract with a person with related experience to assess the facility’s weather emergency preparation measures, plans, procedures, and operations. The person with related experience shall not be an employee of the facility or its affiliate and shall not have participated in any assessments of the facility for at least the previous five years, unless the facility’s operator can document that no other persons with related experience are reasonably available for engagement. Within the timeframe provided by the Commission, the operator shall submit to the Commission a written assessment prepared by the person and the facility operator’s corrective action plan in compliance with the terms in the Commission’s notice that the facility is required to comply with this paragraph.

(g) Enforcement.

(1) Violation of this section by a gas supply chain facility operator. If a major weather-related forced stoppage or weather-related forced stoppage was caused by a gas supply chain facility’s failure to adhere to the requirements of this section, the facility’s operator will be subject to an enforcement action. A gas supply chain facility operator will be given notice and opportunity for a hearing for alleged violations of this section. The notice will be sent by certified mail and state the facts or conduct alleged to comprise the violation. The notice will give the operator 30 days from receipt to request a hearing. Pursuant to Texas Natural Resources Code §86.044 and §§86.222-.224, if after notice and opportunity for a hearing, the Commission determines that an operator has violated this section and the violation is not remedied in a reasonable amount of time, the Commission shall notify the Office of the Attorney General of Texas of the violation in accordance with Texas Natural Resources Code §86.222. The table in this paragraph contains a classification system to be used under Texas Natural Resources Code §86.222 for violations of this section. The penalty for each violation may be up to $1,000,000.

Figure: 16 TAC §3.66(g)(1)

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

(A) If a major weather-related forced stoppage or weather-related forced stoppage was caused by a gas pipeline facility’s failure to adhere to the requirements of this section, the facility’s operator will be subject to an enforcement action. A gas pipeline facility operator will be given notice and opportunity for a hearing for alleged violations of this section. The notice will be sent by certified mail and state the facts or conduct alleged to comprise the violation. The notice will give the operator 30 days from receipt to request a hearing. Pursuant to Texas Utilities Code §121.2015, if after notice and opportunity for a hearing, the Commission determines that an operator has violated this section and the violation is not remedied in a reasonable amount of time, the Commission shall report the
violation to the Office of the Attorney General of Texas. Pursuant to Texas Utilities Code §121.206, the Commission shall assess an administrative penalty for a violation of this section, which may be up to $1,000,000 for each offense. Each day a violation continues constitutes a separate offense.

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

(h) Confidentiality. If a gas supply chain facility operator or a gas pipeline facility operator filing information required by this section contends certain information is confidential by law, the operator shall file a complete version of the required information and a version for public inspection in which the confidential information has been redacted. If the Commission receives a request under the Texas Public Information Act (PIA), Texas Government Code, Chapter 552, for materials that have been designated confidential, the Commission will notify the filer of the request in accordance with the provisions of the PIA so that the filer can take action with the Office of the Attorney General to oppose release of the materials.

Figure: 16 TAC §3.66(c)(2)(D) - removed
## Classification System

<table>
<thead>
<tr>
<th>Violation Factors</th>
<th>Factor Value</th>
<th>Points Tally</th>
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<tbody>
<tr>
<td>Oil lease or gas well facility out of compliance with §3.66 produces an average of 5,000 Mcf or more of natural gas per day</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Oil lease or gas well facility out of compliance with §3.66 produces an average of 1,000 Mcf or more per day but less than 5,000 Mcf of natural gas per day</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Oil lease or gas well facility out of compliance with §3.66 produces an average of 500 Mcf or more per day but less than 1,000 Mcf of natural gas per day</td>
<td>2</td>
<td></td>
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<tr>
<td>Oil lease or gas well facility out of compliance with §3.66 produces an average of 250 Mcf or more per day but less than 500 Mcf of natural gas per day</td>
<td>1</td>
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</tr>
<tr>
<td>Gas processing plant, underground gas storage, or gas pipeline facility out of compliance with §3.66 that resulting in a loss of processing, storage withdrawal, or transportation of 200 MMcf or more of natural gas per day</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Gas processing plant, underground gas storage, or gas pipeline facility out of compliance with §3.66 that results in a loss of processing, storage withdrawal, or transportation capacity of less than 100 MMcf of natural gas per day</td>
<td>3</td>
<td></td>
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<tr>
<td>Gas processing plant, underground gas storage, or gas pipeline facility out of compliance with §3.66 that results in a loss of processing, storage withdrawal, or transportation capacity less than 100 MMcf of natural gas per day</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Actual Hazard to health, safety, or economic welfare of the public</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Potential hazard to health, safety, or economic welfare of the public</td>
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<tr>
<td>Time out of compliance (calculated as days the operator fails to remedy a violation noted in a Commission notice of violation)</td>
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<td>90 days or greater</td>
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<td>60 days or more but less than 90 days</td>
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<td></td>
</tr>
<tr>
<td>30 days or more but less than 60 days</td>
<td>2</td>
<td></td>
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<tr>
<td>5 days or more but less than 30 days</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Reckless conduct of operator</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Intentional conduct of operator</td>
<td>5</td>
<td></td>
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</table>
Repeat violations based on operator's history of compliance & Good faith effort to remedy violation & No effort to remedy violation & During the weather emergency in which the facility’s violation occurred, the operator had no reduction in the natural gas supplied to the Texas electricity supply chain & During the weather emergency in which the facility’s violation occurred, the operator of a saltwater disposal well had no reduction in saltwater disposal capacity made available to Texas electricity supply chain facilities.

<table>
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<tr>
<th>Repeat violations based on operator's history of compliance</th>
<th>3</th>
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<tbody>
<tr>
<td>Good faith effort to remedy violation</td>
<td>-2</td>
</tr>
<tr>
<td>No effort to remedy violation</td>
<td>5</td>
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<tr>
<td>During the weather emergency in which the facility’s violation occurred, the operator had no reduction in the natural gas supplied to the Texas electricity supply chain</td>
<td>-3</td>
</tr>
<tr>
<td>During the weather emergency in which the facility’s violation occurred, the operator of a saltwater disposal well had no reduction in saltwater disposal capacity made available to Texas electricity supply chain facilities.</td>
<td>-3</td>
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<tr>
<td>Total</td>
<td>11</td>
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<table>
<thead>
<tr>
<th>Penalty maximum per violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 points or more = Class A violation</td>
</tr>
<tr>
<td>10-14 points = Class B violation</td>
</tr>
<tr>
<td>5-9 points = Class C violation</td>
</tr>
<tr>
<td>1-4 points = Class D violation</td>
</tr>
</tbody>
</table>

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

Issued in Austin, Texas, on August 30, 2022.

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

Wayne Christian, Chairman

Christi Craddick, Commissioner

Jim Wright, Commissioner

Secretary of the Commission

1 Pursuant to Natural Resources Code §86.222, the required classification system shall provide that a penalty in an amount that exceeds $5,000 may be recovered only if the violation is included in the highest class of violations in the classification system.
Railroad Commission of Texas
16 TAC Chapter 3--Oil and Gas Division

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