



## Filing Receipt

**Received - 2021-09-16 10:15:32 PM**

**Control Number - 51840**

**ItemNumber - 99**

**PROJECT NO. 51840**

**RULEMAKING TO ESTABLISH            §        PUBLIC UTILITY COMMISSION  
ELECTRIC WEATHERIZATION        §  
STANDARDS                                §                                OF TEXAS**

**COMMENTS OF PUBLIC CITIZEN**

COMES NOW Public Citizen and files these Comments in response to the Proposal for Publication filed in this proceeding on August 24, 2021.

**Executive Summary**

Public Citizen is providing comments in this rulemaking about a parallel rulemaking by the Railroad Commission of Texas dated Sept. 14, 2021 with the subject “Proposed New 16 TAC §3.65 and Proposed Amendments to §3.107 to implement HB 3648 and SB 3.” We are concerned that the Railroad Commission’s proposal does not satisfy the requirements of HB 3648 and SB 3 and will also prevent the Public Utility Commission from satisfying those requirements. Specifically, we believe the Railroad Commission has not proposed a process to designate natural gas facilities as critical customers or critical gas suppliers that gives the electric entities that provide them with power enough information to appropriately prioritize their needs against the needs of other customers, or between one natural gas facility and another. This failure of the Railroad Commission’s rulemaking will prevent the Public Utility Commission from meeting the goals it sets for itself in its own rulemaking. Specifically, we do not believe that generation entities will be able to satisfy the requirement in this proposed rule at 16 TAC §25.55 (C) to take “All actions necessary to prevent a reoccurrence of any cold weather critical component failure that occurred in the period between November 30,2020, and March 1, 2021.”

We recommend that, before making their sworn statement, the generation entities ensure that their specific gas suppliers have undertaken appropriate weatherization measures and designated themselves as critical. We also recommend that the Public Utility Commission recommend to the Railroad Commission that that agency revise its rule in order to establish a better process for designating critical gas suppliers. In these comments we are offering a critique of the Railroad Commission’s proposed rule as compared to the PUC’s proposal.

## Comments

About 20% of the electricity generation failures that occurred during winter storm Uri were caused by failure of natural gas fuel supply. In order for electric generators to comply with weatherization requirements, the gas supply chain must also comply.

The Railroad Commission has not done this in its proposed rule. Instead, it has designated all entities as “critical gas suppliers” by default. This plainly fails to satisfy the requirements of Senate Bill 3, which directs the Railroad Commission to promulgate rules that, “consider essential operational elements when defining critical customer designations and critical gas supply information...including... the delivery of natural gas to generators of electric energy[.]” The Railroad Commission has not considered any such elements because it has not distinguished among its 6,200 operators in any way. Instead it has simply declared that, “during the storm, every molecule of gas was important.” This approach provides the PUC with no information about how generation entities will be assured gas supply from the critical gas supply chain.

In its proposal, the Railroad Commission has turned the obligation of designating critical gas supply around onto its operators. Operators are designated critical by default unless they file for an exception (new Form CI-X) every six months. This exception is simply elective. The Railroad Commission has provided no criteria or qualifications for an exception.

Past practice at the Railroad Commission—specifically its routine practice of granting exceptions to statewide flaring rule 32—has shown that the Commission may fail to evaluate in any way the merits of elective rule exceptions. The Railroad Commission has not proposed any criteria or procedure to evaluate exceptions to the critical gas supply designation.

Placing this obligation with operators is especially troublesome because operators can file the exception without any consideration of their place in the gas supply chain. The filing is simply an elective action that requires the operator to certify that the facility is not prepared to operate in a weather emergency. The uncoordinated approach of operators acting in isolation and filing elective exceptions every six months will not result in a logical or consistent critical gas supply chain. This should gravely concern generation entities that rely on gas supply.

Contrast this with the Public Utility Commission’s approach in this rulemaking. PUC’s proposed rule requires generation entities to do the following:

- Complete winter weather emergency preparations.
- Installation of specifically identified weatherization equipment such as wind breaks and closed sensors.
- All actions necessary to prevent a recurrence of failures related to winter storm Uri.
- Training of personnel.
- Determination of minimum operating parameters.
- Submission of a winter weather readiness report.

Granted, the Railroad Commission has not yet promulgated its own weatherization rules. It must do so by September 1, 2022. But those rules will only apply to entities in the critical gas supply chain. And the Railroad Commission has proposed a process that will allow operators to simply exempt themselves out of the supply chain. Even after weatherization rules are promulgated, it will not be possible to weatherize the supply chain effectively if the Railroad Commission has never defined or identified a critical gas supply chain.

The PUC's rule requires a generation entity's highest-ranking representative to swear in a notarize attestation that they have completed all activities necessary to meet weatherization requirements. We believe that generation entities that rely on natural gas supply will not be able to swear to this because they will not have taken "all actions necessary to prevent a recurrence" of failures during winter storm Uri. Specifically, they will not be able to ensure that their gas supply is part of a critical gas supply chain that will actually perform during a weather emergency. To remedy this, we recommend that a generation entity that relies on gas suppliers determine that its specific suppliers have undertaken appropriate weatherization measures and properly designated themselves as a part of the critical gas supply chain.

## **Conclusion**

We believe that the PUC should interpret the Railroad Commission's proposed critical gas supply designation rule as failing to provide generation entities with the reliable fuel supply they will need to meet the PUC's proposed weatherization requirements. SB 3 directs the PUC to collaborate with the Railroad Commission to designate critical gas facilities. We recommend that the PUC respond to the Railroad Commission's proposed rule now with the goal of promulgating

a more robust rule that will allow the PUC and generation entities to meet their statutory obligations.

Public Citizen appreciates the opportunity to provide these comments and looks forward to working with the Commission and other interested parties on these issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Adrian Shelley". The signature is fluid and cursive, with the first name "Adrian" and last name "Shelley" clearly distinguishable.

Adrian Shelley  
309 E. 11th Street, Suite 2  
Austin, TX 78701  
512-477-1155  
ashelley@citizen.org