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New Railroad Commission of Texas Rules for Natural Gas Infrastructure

Texas regulators recently took additional steps in an effort to prevent another catastrophic loss of power like that experienced during Winter Storm Uri in February 2021. On November 29, 2021, the Railroad Commission of Texas (“RRC”): (i) adopted a new section of the Texas Administrative Code (“TAC”) relating to “Critical Designation of Natural Gas Infrastructure”; and (ii) amended existing sections of the TAC regarding “Penalty Guidelines for Oil and Gas Violations.” This Client Alert summarizes the new sections and amendments of the TAC, and it is another in the series of [Client Alerts](#) we have issued regarding new rules in Texas that are designed to protect the state from future power loss due to extreme winter weather.

On November 29, 2021, as directed by Senate Bill 3 and House Bill 3648 from the 87th Legislature Regular Session of the Texas Legislature,¹ the RRC adopted 16 Texas Administrative Code § 3.65 and amended § 3.17. The new rules establish “the criteria and process by which entities associated with providing natural gas in Texas are designated as critical gas suppliers or critical customers during an energy emergency.”²

Once designated as a critical customer, an entity is required to provide electric entities with certain critical customer information. The critical customer information will “position a critical customer to receive power during an energy emergency so that it can continue to supply natural gas in the state for power generation and/or other important uses.”³ The new rules do not focus on weatherization requirements; the RRC will initiate a separate rulemaking at a later date to adopt weatherization rules.

Specifically, the new rules require a “Critical Customer” to provide critical customer information to electric entities so that these entities may prioritize the facilities for load-shed purposes.⁴ Under the new rules, a “Critical Customer” is a “[C]ritical [G]as [S]upplier for whom the delivery of electricity from an electric entity is essential to the ability of such gas supplier to operate.”⁵ A “Critical Gas Supplier” is designated as one of the following facilities:



- (1) Gas wells producing gas in excess of 15 Mcf/day;
- (2) Oil leases producing casinghead gas in excess of 50 Mcf/day;
- (3) Gas processing plants;
- (4) Natural gas pipelines and pipeline facilities including associated compressor stations and control centers;
- (5) Local distribution company pipelines and pipeline facilities including associated compressor stations and control centers;
- (6) Underground natural gas storage facilities;
- (7) Natural gas liquids transportation and storage facilities; and
- (8) Saltwater disposal facilities including saltwater disposal pipelines.⁶

Critical Customers must provide critical customer information on RRC Form CI-D.⁷ Further, a facility that is a Critical Customer must acknowledge the facility's critical status by filing RRC Form CI-D on a bi-annual basis.⁸ The first RRC Form CI-D is due by January 15, 2022. Beginning in 2023, the Form CI-D shall be filed by March 1 and September 1 of each year. An entity can request that information submitted in accordance with the new rules is to be treated as "confidential by law" by notifying the RRC on the applicable form.⁹

The new rules contain a process for entities to obtain critical designation if they do not meet the definition of a Critical Customer. A facility desiring critical designation may apply to the RRC to be designated critical "if the facility's operation is required in order for another facility designated critical to operate."¹⁰ The applicant seeking critical designation shall include objective evidence supporting its application, and if the RRC approves of such critical designation, the applicant must submit RRC Form CI-D.¹¹

The new rules also contain a process for entities to obtain an exception to the critical designation.¹² To obtain this exception, a Critical Customer must provide objective evidence to demonstrate a reasonable basis and justification for its exception.¹³ An applicant for an exception shall submit RRC Form CI-X and an exception application fee of \$150. RRC Form CI-X shall be filed bi-annually, and the first RRC Form CI-X is due January 15, 2022. The Director of the Critical Infrastructure Division within the RRC will administratively approve or deny a request for an exception. If an exception application is denied, the applicant can request a hearing.

Certain classes of Critical Customer entities are not allowed to obtain an exception to the critical designation; these are:

- (1) A facility included on the electricity supply chain map produced by the Texas Electricity Supply Chain and Security Mapping Committee;
- (2) Gas wells or oil leases producing gas or casinghead gas in excess of 250 Mcf/day;
- (3) Gas processing plants;
- (4) Natural gas pipelines or pipeline facilities that directly serve local distribution companies or electric generation;
- (5) Local distribution company pipelines or pipeline facilities;
- (6) Underground natural gas storage facilities;
- (7) Natural gas liquids storage and transportation facilities; and
- (8) A saltwater disposal facility, including a saltwater disposal pipeline, that supports a facility listed in the above items (1) through (7).¹⁴



The new rules state that exceptions are not transferable upon a change of operatorship, and a change in operatorship must be reflected on RRC Form CI-D and Form CI-X.¹⁵ Finally, failure to file RRC Form CI-D or RRC Form CI-X will result in a minimum penalty amount of \$1,000, while failure to provide critical customer information will result in a minimum penalty amount of \$2,500.¹⁶

King & Spalding will continue to monitor developments involving rules intended to head off another event like Winter Storm Uri. If there are questions regarding the new rules or for help interfacing with Texas regulators, please contact the authors of this Client Alert.



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¹ Tex. S.B. 3, 83d Leg., R.S. (2021), available at: <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/SB00003F.pdf#navpanes=0>; Texas H.B. 3648, 83d Leg., R.S. (2021), available at: <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/HB03648F.pdf#navpanes=0>

² Railroad Commission of Texas, Office of General Counsel “*New 16 TAC §3.65 and Amendments to §3.107 to Implement HB 3648 and SB3*” (Nov. 29, 2021), available at: <https://www.rrc.texas.gov/media/xq4fiqda/adopt-new-3-65-amend-3-107-nov30-21-sig.pdf> (“RCT Nov. 29 Memorandum”)

³ *Id.* at p. 3

⁴ Tex. Util. Code § 38.074(b)(2).

⁵ 16 TAC § 3.65(b)(2).

⁶ 16 TAC § 3.65(b)(1).

⁷ 16 TAC § 3.65(a)(2).

⁸ 16 TAC § 3.65(d).

⁹ 16 TAC § 3.65(h).

¹⁰ 16 TAC § 3.65(c)(1). See also 16 TAC § 3.65(c)(2) (“A facility that is not designated critical under subsection {b} of this section but that is included on the electricity supply chain map produced by the Texas Electricity Supply Chain Security and Mapping Committee shall write to the Commission to apply to be designated critical, and after approval, shall submit Form CI-D”).

¹¹ *Id.*

¹² 16 TAC § 3.65(f).

¹³ 16 TAC § 3.65(f)(1).

¹⁴ 16 TAC § 3.65(e)(1)-(8).

¹⁵ 16 TAC § 3.65(i).

¹⁶ 16 TAC § 3.107(e)(1).