



October 6, 2022

**Via email**

Kellie Martinec, Rules Coordinator  
Office of General Counsel  
Railroad Commission of Texas  
[rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov)

**Re: Proposed Amendments to Statewide Rule 65**

Dear Mrs. Martinec:

Henry Resources LLC (“Henry”) would first like to thank the Railroad Commission of Texas (“RRC”) for proposing to increase the production thresholds in 16 Texas Administrative Code § 3.65 (“Statewide Rule 65”). Henry believes that these proposed increases will help focus the regulation to only those properties with the “most direct impact on electrical power generation”<sup>1</sup> consistent with the intent of Senate Bill 3. Henry appreciates the RRC’s diligent efforts in reviewing the production data and proposing amendments supported by that data.

In addition to the amendments proposed by the RRC, Henry proposes several additional amendments to Statewide Rule 65, the most important being an operator’s ability to apply for an exception for any facility, regardless of whether the facility is identified on the electricity supply chain map. As we have seen in the past year, there is no one-size-fits-all solution to address grid reliability. And Henry finds that restricting an operator’s ability to apply to the RRC for exception will likely exacerbate the problem instead of alleviating it. The RRC must maintain a process that allows operators the option to present evidence refuting their status as critical. Otherwise, non-critical facilities may be improperly prioritized during a weather emergency—an outcome that contradicts the intention of Senate Bill 3.

Henry’s comments and recommended amendments are fully set out as follows:

**Comment 1:** Subsection (a) *Definitions* should be amended to define “electricity supply chain map” and “Director” to clarify and streamline the text of the rule. Conforming changes should be made throughout the rule. Henry recommends the following definitions:

- “(4) In this section, the term ‘electricity supply chain map’ means the electricity supply chain map produced by the Texas Electricity Supply Chain Security and Mapping Committee.”
- “(5) In this section, the term ‘Director’ means the Director of the Critical Infrastructure Division or their delegate.”

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<sup>1</sup> Letter from the Tex. Senate Bus. and Commerce Comm. to the R. R. Comm’n of Tex. (Oct. 8, 2021) (on file with the RRC).

**Comment 2:** Subsection (b)(1)(H) *saltwater disposal facilities including saltwater disposal pipelines* should be amended to clarify that not all saltwater disposal wells are critical and that only those disposal wells that support critical facilities included on the electricity supply chain map are classified as critical. If all disposal wells are classified as critical, many non-critical disposal wells will be improperly prioritized during a weather emergency—an outcome that contradicts the intention of Senate Bill 3. Henry proposes the following amendment: “saltwater disposal facilities including saltwater disposal pipelines that support a facility listed in subsections (A) through (G) of this subsection.” Alternatively, Henry proposes that saltwater disposal facilities that do not support critical facilities be specifically identified as a reasonable basis and justification for exception under subsection (e)(2) (more fully discussed in Comment 5).

**Comment 3:** Subsection (b)(2) *Critical Customer* should be amended to clarify the definition of “Critical Customer.” Henry proposes the following amendment: “Critical Customer. A critical customer is a critical gas supplier ~~[for whom the delivery of]~~ that requires electricity ~~[from an electric entity is essential to the ability of such gas supplier]~~ to operate.”

**Comment 4:** Subsection (e)(1) *Critical designation exception* should be amended so that every facility, regardless of inclusion on the electricity supply chain map, is eligible for an exception to Statewide Rule 65. There may be instances where facilities included on the electricity supply chain map should be eligible for exception to the critical designation. For example, a legacy oil lease producing 500 mcf/d where 1,000 or more marginal oil wells are contributing to production. On average, each well would be producing less than 1 mcf/d and would likely be consuming more electricity than the gas produced from the lease would generate. However, under the RRC’s proposed version of the rule, this legacy oil lease would not be eligible for an exception to the critical designation even though the facility would, ultimately, be a power drain to the grid. This is contrary to the intent of Senate Bill 3. Moreover, the RRC should not limit its own ability to review, on a case-by-case basis, each facility otherwise designated as “critical” under the rule. For the foregoing reasons, Henry proposes the following amendment: “A facility listed in subsection (b) of this section [that is not included on the electricity supply chain map produced by the Texas Electricity Supply Chain Security and Mapping Committee] ~~[other than those identified in subsection (e) of this section]~~ may apply for an exception.”

**Comment 5:** Subsection (e)(2) *Examples of a reasonable basis and justification* should be amended to add the following as examples of reasonable bases and justifications for the following reasons:

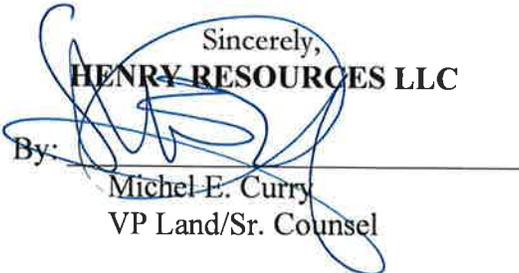
No.	Reasonable Basis & Justification	Support
1	The facility does not produce gas that supports electric power generation in the State	Per Senate Bill 3, the RRC’s authority is limited to “establish[ing] a process to designate certain natural gas facilities and entities associated with providing natural gas <b>in this state</b> as critical customers or critical gas suppliers during energy emergencies.” Tex. Nat. Res. Code § 81.073(a).  The proposed amendment clarifies that a facility producing gas that does not support electric generation in this State is not subject to Statewide Rule 65.
2	Gas production reported on an oil lease basis is disproportionately high when compared to gas production attributable to the individual oil wells on the lease	<i>See</i> Comment 4.

No.	Reasonable Basis & Justification	Support
3	For oil leases, the electricity required to operate the lease on a daily basis exceeds the electricity potentially produced from daily gas production	This has already been recognized by the RRC as a valid reasonable basis and justification. <i>See</i> Docket No. OG-22-00009426, Final Order granting Avad Operating, LLC an exception to Statewide Rule 65 because the subject facility consumes more electricity and gas in its daily operations than it could generate or produce. Codifying the RRC's precedent in rule will help streamline the exception process going forward.
4	For saltwater disposal facilities, the saltwater disposal facility does not support a facility classified as critical and included on the electricity supply chain map	<i>See</i> Comment 2.
5	The Commission has not provided at least thirty (30) days written notice to the operator prior to the March 1 or September 1 Form CI-D filing deadline that a facility is included on the electricity supply chain map	An operator must receive fair notice before becoming subject to additional regulation.
6	Other good cause shown, including, but not limited to, facilities that are capable of reducing their demand in response to an instruction issued by the applicable power regions reliability coordinator during certain grid conditions, including system-wide emergencies	This clarifies that the list is not exhaustive, and that the RRC may consider demand response capability in their review of an application for exception.

**Comment 6:** Subsection (e) *Critical designation exception* should be amended to include a subsection (e)(4), to clearly state that the Director of the Critical Infrastructure Division must administratively approve a Form CI-X if a Form CI-X was previously approved for the same facilities. This amendment will prevent operators from incurring the unnecessary cost of proceeding to a hearing on a matter that has already been finally determined by the RRC. Henry proposes the following amendment: “**The Director shall administratively approve any Form CI-X that identifies the same facilities identified on a previously approved Form CI-X without the necessity of a hearing. The operator shall submit proof of the previously approved Form CI-X as the reasonable basis and justification required for the Form CI-X under subsection (e)(1).**”

Henry would again like to express its appreciation to the RRC for its willingness to reopen Statewide Rule 65 and its work to establish production thresholds supported by data. Henry is available to provide additional information and discussion upon request.

Sincerely,  
**HENRY RESOURCES LLC**

By:   
 Michel E. Curry  
 VP Land/Sr. Counsel