

## **BILL ANALYSIS**

C.S.S.B. 3  
By: Schwertner  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Winter Storm Uri struck Texas in February of this year, causing much of the state's electric generation capacity to trip offline and leaving millions of Texans without power for upwards of a week during record cold temperatures. Since then, legislators have heard hours of testimony from industry stakeholders and the leadership of relevant regulatory and oversight bodies regarding the power grid's failure to meet demand. The most consequential and repeatedly mentioned problems include a lack of weatherization, a lack of oversight, a breakdown of communication, and failures of coordination within and between state regulatory agencies. C.S.S.B. 3 seeks to enact provisions aimed at addressing these issues with the goals of ensuring the State of Texas has a reliable electricity grid and strengthening the state's prevention of and preparation for energy emergencies.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the public safety director of the Department of Public Safety in SECTION 1 of this bill; to the Public Utility Commission of Texas in SECTIONS 1, 12, and 14 of this bill; to the Railroad Commission of Texas in SECTIONS 3, 4, 5, 19, 20, and 24 of this bill; and to the Texas Commission on Environmental Quality in SECTIONS 26 and 30 of this bill.

### **ANALYSIS**

C.S.S.B. 3 establishes provisions relating to preparing for, preventing, and responding to weather emergencies and power outages.

#### **Texas Electricity Supply Chain Security and Mapping Committee**

C.S.S.B. 3 amends the Utilities Code to create the Texas Electricity Supply Chain Security and Mapping Committee for the following purposes:

- mapping the state's electricity supply chain;
- identifying critical infrastructure sources in the electricity supply chain;
- establishing best practices to prepare facilities that provide electric service and natural gas service in the electricity supply chain to maintain service in an extreme weather event and recommending oversight and compliance standards for those facilities; and
- designating priority service needs to prepare for, respond to, and recover from an extreme weather event.

The bill defines "electricity supply chain" as facilities and methods used for producing, treating, processing, pressurizing, storing, or transporting natural gas for delivery to electric generation facilities, and critical infrastructure necessary to maintain electricity service.

C.S.S.B. 3 establishes that the mapping committee is composed of the following members:

- the executive directors of both the Railroad Commission of Texas (RRC) and the Public Utility Commission of Texas (PUC);
- the president and CEO of the independent organization that is certified by the PUC to perform certain essential market functions for the ERCOT power region; and
- the chief of the Texas Division of Emergency Management (TDEM).

The bill authorizes each member to designate a personal representative from their respective organization to represent them on the mapping committee but specifies that the member is responsible for the acts and omissions of their designated representative. The bill designates the PUC executive director as the mapping committee's chair and the RRC executive director as the vice chair and further provides for the committee's administration and operation, including the provision of committee staff.

C.S.S.B. 3 requires the mapping committee to do the following:

- map the state's electricity supply chain in order to designate priority electricity service needs during extreme weather events and update the map at least annually;
- identify and designate the sources in the electricity supply chain necessary to operate critical infrastructure;
- develop a communication system between critical infrastructure sources, the PUC, and the certified ERCOT organization to ensure that electricity and natural gas supplies in the electricity supply chain are prioritized to those sources during an extreme weather event; and
- establish best practices to prepare facilities that provide electric service and natural gas service in the electricity supply chain to maintain service in an extreme weather event and recommend oversight and compliance standards for those facilities.

The bill requires the PUC to create, maintain, and annually update a database identifying the critical infrastructure sources with priority electricity needs to be used during an extreme weather event. The bill makes the information maintained in the database confidential and exempt from disclosure under state public information law.

C.S.S.B. 3 requires the mapping committee to submit a report covering its activities and findings to the governor, lieutenant governor, speaker of the house of representatives, and legislature not later than January 1, 2022, and sets out certain requirements for the content of the report. The bill establishes that the report is public information, except for portions considered confidential under state or federal law.

## **Weather Emergency Preparedness**

C.S.S.B. 3 amends the Natural Resources Code and Utilities Code to provide for the weatherization of certain gas supply chain facilities, certain entities that sell electric energy at wholesale or provide transmission service in the ERCOT power region, and certain gas pipeline facilities as provided below.

### Gas Supply Chain Facilities

C.S.S.B. 3 requires the RRC to require by rule that the operator of a gas supply chain facility included on the electricity supply chain map implement measures to prepare to operate during a weather emergency. The bill requires the RRC to do the following:

- inspect applicable gas supply chain facilities for compliance with those rules;
- prioritize inspections based on risk level, as determined by the RRC;
- provide a facility owner with a reasonable period of time in which to remedy any violation the RRC discovers in an inspection;

- report to the attorney general any violation that is not remedied in a reasonable period of time; and
- require by rule that an operator of a facility that experiences repeated or major weather-related forced interruptions of production contract with a person who is not an employee of the operator to assess the operator's weatherization plans, procedures, and operations and that the operator submit the assessment to the RRC.

The bill authorizes the RRC to require a facility operator to implement appropriate recommendations included in such an assessment. For purposes of these provisions, "gas supply chain facility" means a facility that is:

- used for producing, treating, processing, pressurizing, storing, or transporting natural gas;
- 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; and
- otherwise regulated by the RRC under state law governing the conservation and regulation of oil and gas, other than provisions governing gas pipelines.

C.S.S.B. 3 requires the RRC to notify the attorney general of a violation of a rule adopted under these provisions regarding the weatherization of certain gas supply chain facilities that is not remedied in a reasonable amount of time and requires the attorney general to initiate a suit to recover a penalty for the violation. The bill makes a person who violates a provision of such a rule liable for a penalty of not more than \$1,000,000 for each offense, notwithstanding the existing caps on penalties for a violation of natural gas regulations. The bill requires the RRC by rule to establish a classification system to be used by a court for violations of those rules that includes a range of penalties that may be recovered for each class of violation based on the following criteria:

- the seriousness of the violation, including:
  - the nature, circumstances, extent, and gravity of a prohibited act; and
  - the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- the history of previous violations;
- the amount necessary to deter future violations;
- efforts to correct the violation; and
- any other matter that justice may require.

The classification system must 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 system.

C.S.S.B. 3 requires the RRC to adopt rules necessary to implement these provisions regarding the weatherization of certain gas supply chain facilities not later than six months after the date the mapping committee produces the electricity supply chain map.

### Electric Energy Providers

C.S.S.B. 3 requires the PUC by rule to require each municipally owned utility, electric cooperative, power generation company, or exempt wholesale generator that sells electric energy at wholesale in the ERCOT power region to implement measures to prepare the provider's generation assets to provide adequate electric generation service during a weather emergency according to reliability standards adopted by the PUC. The bill requires the certified ERCOT organization to do the following:

- inspect generation assets in the ERCOT power region for compliance with the reliability standards;
- prioritize inspections based on risk level, as determined by the organization;
- provide the owner of a generation asset with a reasonable period of time in which to remedy any violation the organization discovers in an inspection; and
- report any violation to the PUC.

C.S.S.B. 3 requires the PUC by rule to require an applicable provider of electric generation service for a generation asset that experiences repeated or major weather-related forced interruptions of service to contract with a person who is not an employee of the provider to assess the provider's weatherization plans, procedures, and operations for that asset and require the provider to submit the assessment to the PUC and the certified ERCOT organization. The bill authorizes the PUC to require a provider to implement appropriate recommendations included in such an assessment.

C.S.S.B. 3 requires the certified ERCOT organization to review, coordinate, and approve or deny requests by the applicable providers of electric generation service for a planned power outage during any season and for any period of time.

C.S.S.B. 3 requires the PUC to impose an administrative penalty on an entity, including a municipally owned utility or an electric cooperative, that violates a rule adopted under these provisions regarding the weatherization of certain electric energy providers and does not remedy that violation within a reasonable period of time. The bill requires the PUC to adopt rules necessary to implement those provisions not later than six months after the bill's effective date.

### Transmission Providers

C.S.S.B. 3 requires the PUC by rule to require each electric cooperative, municipally owned utility, and transmission and distribution utility providing transmission service in the ERCOT power region to implement measures to prepare the cooperative's or utility's facilities to maintain service quality and reliability during a weather emergency according to standards adopted by the PUC. The bill requires the certified ERCOT organization to do the following:

- inspect the facilities of each such electric cooperative, municipally owned utility, and transmission and distribution utility for compliance with the reliability standards;
- prioritize inspections based on risk level, as determined by the organization;
- provide a facility owner with a reasonable period of time in which to remedy any violation the organization discovers in an inspection; and
- report to the PUC any violation that is not remedied in a reasonable period of time.

The bill requires the PUC to impose an administrative penalty on an entity, including a municipally owned utility or an electric cooperative, that violates a rule adopted under these provisions and does not remedy that violation within a reasonable period of time.

C.S.S.B. 3 requires the PUC to allow an applicable transmission and distribution utility to design and operate a load management program for nonresidential customers to be used during extreme weather where the certified ERCOT organization has declared an emergency. A transmission and distribution utility implementing a load management program must be permitted to recover the reasonable and necessary costs of the program through its rates. The bill provides that a load management program operated under these provisions is not considered a competitive service.

C.S.S.B. 3 requires the PUC to adopt rules necessary to implement these provisions regarding the weatherization of certain transmission providers not later than six months after the bill's effective date.

### Gas Pipeline Facilities

C.S.S.B. 3 requires the RRC to do the following:

- adopt rules regarding measures a gas pipeline facility operator must implement to prepare the facility to maintain service quality and reliability during extreme weather conditions if the facility directly serves a natural gas electric generation facility operating solely to provide power to the electric grid for the ERCOT power region and is included on the electricity supply chain map;
- inspect applicable gas pipeline facilities for compliance with those rules;
- prioritize inspections based on risk level, as determined by the RRC;

- provide a facility owner with a reasonable period of time in which to remedy any violation the RRC discovers in an inspection; and
- report to the attorney general any violation that is not remedied in a reasonable period of time.

The bill requires the RRC to assess an administrative penalty against a person who violates those rules if the violation is not remedied in a reasonable period of time. The penalty for each violation may not exceed \$1,000,000 and each day a violation continues may be considered a separate violation for the purpose of penalty assessment, notwithstanding existing limitations on administrative penalties for violations of pipeline safety standards or rules. The bill requires the RRC guidelines for the imposition of an administrative penalty regarding pipeline safety to provide that a penalty in an amount that exceeds \$5,000 for a violation of those rules may be assessed only if circumstances justify the enhancement of the penalty.

C.S.S.B. 3 requires the RRC by rule to require an applicable gas pipeline facility operator that experiences repeated or major weather-related forced interruptions of service to contract with a person who is not an employee of the operator to assess the operator's weatherization plans, procedures, and operations and require the operator to submit the assessment to the RRC. The bill authorizes the RRC to require an operator to implement appropriate recommendations included in such an assessment.

C.S.S.B. 3 requires the RRC to adopt rules necessary to implement these provisions regarding weatherization of certain gas pipeline facilities not later than six months after the date the mapping committee produces the electricity supply chain map.

### **Power Outage Alert**

C.S.S.B. 3 amends the Government Code to require the Department of Public Safety (DPS), with the cooperation of the Texas Department of Transportation (TxDOT), TDEM, the office of the governor, and the PUC, to develop and implement an alert to be activated when the power supply in Texas may be inadequate to meet demand. The bill requires the PUC by rule to adopt criteria for the content, activation, and termination of the alert and requires that the criteria provide for an alert to be regional or statewide.

C.S.S.B. 3 designates the public safety director of DPS as the statewide coordinator of the power outage alert. The bill requires the director to adopt rules and issue directives as necessary to ensure proper implementation of the alert and requires that the rules and directives include the procedures to be used by the PUC and the certified ERCOT organization to communicate with the director about the alert.

C.S.S.B. 3 requires DPS to recruit public and commercial television and radio broadcasters, private commercial entities, state or local governmental entities, the public, and other appropriate persons to assist in developing and implementing the power outage alert system. The bill requires a participating state agency to cooperate with DPS and assist in developing and implementing the alert system and to establish a plan for providing relevant information to its officers, investigators, or employees, as appropriate, once the alert system has been activated.

C.S.S.B. 3 sets out provisions relating to the activation and termination of a power outage alert and requires the alert to include a statement that electricity customers may experience a power outage. In addition to its duties as a participating state agency, TxDOT must also establish a plan for providing relevant information to the public through an existing system of dynamic message signs located across Texas. TxDOT is not required to use any existing system of dynamic message signs if it receives notice from the Federal Highway Administration that the use of the signs would result in the loss of federal highway funding or other punitive actions taken against the state due to noncompliance with federal laws, regulations, or policies.

### **Winter Storm Preparedness Actions**

C.S.S.B. 3 requires TDEM to create a list of suggested actions for state agencies and the public to take to prepare for winter storms, organized by severity of storm based on the National Weather Service Winter Storm Severity Index.

### **Texas Energy Disaster Reliability Council**

C.S.S.B. 3 amends the Utilities Code to establish the six-member Texas Energy Disaster Reliability Council with the following duties:

- preventing extended natural gas supply failures or power outages caused by a disaster, defined in the bill as a disaster defined by the Texas Disaster Act of 1975 or an extended power outage in turn defined by the bill to mean an interruption in electric service lasting more than 24 hours;
- implementing procedures to manage emergencies caused by disasters;
- maintaining records of critical infrastructure facilities to maintain service in a disaster;
- coordinating the delivery of fuel to serve human needs, natural gas customers, and providers of electric generation service in a disaster;
- monitoring supply chains for the electric grid in Texas to minimize service disruptions; and
- studying and making recommendations on methods to maintain reliability of the electric grid during a disaster, including methods for maintaining the reliability of natural gas supply networks.

C.S.S.B. 3 sets out the composition of the council, which is as follows:

- the presiding officer and the executive director of the PUC;
- the chairman and the executive director of the RRC;
- the CEO of the certified ERCOT organization; and
- the chief of TDEM, who is the council's presiding officer.

C.S.S.B. 3 requires the council to hold meetings during the weeks of March 1 and September 1 of each year and also to convene as soon as reasonably possible during or in anticipation of a disaster to coordinate fuel supplies and minimize the duration of an actual or potential extended power outage caused by the disaster. The bill requires a public utility or gas provider to provide to the council any information related to a disaster that it requests. Information obtained by the council is confidential and not subject to disclosure by the council if the information is critical energy infrastructure information as defined by the certified ERCOT organization or federal law.

C.S.S.B. 3 exempts the council's meetings and any information obtained or created by the council from state open meetings law and state public information law, as applicable, and exempts the council from statutory provisions governing state agency advisory committees. However, information written, produced, collected, assembled, or maintained under law or in connection with the transaction of official business by the council or an officer or employee of the council is subject to provisions of state public information law governing the provision of information for legislative purposes in the same manner as public information.

C.S.S.B. 3 requires the council to submit a report to the legislature on the reliability and stability of the electric supply chain in Texas not later than November 1 of each even-numbered year. The bill requires the report to include recommendations on methods to strengthen the electric supply chain and decrease the frequency of extended power outages caused by a disaster in Texas. The bill sets out federal, state, local, and private sector entities and individuals that the council may consult and coordinate with in carrying out its functions.

### **Involuntary and Voluntary Load Shedding**

C.S.S.B. 3 requires the PUC by rule to adopt a system to allocate load shedding among electric cooperatives, municipally owned utilities, and transmission and distribution utilities providing transmission service in the ERCOT power region during an involuntary load shedding event initiated by the certified ERCOT organization for the region during an energy emergency. The system must provide for allocation of the load shedding obligation to each electric cooperative, municipally owned utility, and transmission and distribution utility in different seasons based on historical seasonal peak demand in their respective service territories.

C.S.S.B. 3 requires the PUC by rule to do the following:

- categorize types of critical load that may be given the highest priority for power restoration;
- require electric cooperatives, municipally owned utilities, and transmission and distribution utilities providing transmission service in the ERCOT power region to submit the following information to the PUC and the certified ERCOT organization:
  - customers or circuits the cooperative or utility has designated as critical load; and
  - a plan for participating in load shedding in response to an involuntary load shedding event; and
- require electric cooperatives and municipally owned utilities providing transmission service in the ERCOT power region to maintain lists of customers willing to voluntarily participate in voluntary load reduction and coordinate with municipalities, businesses, and customers that consume large amounts of electricity to encourage voluntary load reduction.

After each load shedding event, the PUC may conduct an examination of the implementation of load shedding, including whether each electric cooperative, municipally owned utility, and transmission and distribution utility complied with its plan as filed with the PUC.

C.S.S.B. 3 provides that these provisions relating to load shedding do not abridge, enlarge, or modify the obligation of an electric cooperative, a municipally owned utility, or a transmission and distribution utility to comply with federal reliability standards.

### **Load Shedding Exercises**

C.S.S.B. 3 requires the PUC and the certified ERCOT organization to conduct simulated or tabletop load shedding exercises with providers of electric generation service and transmission and distribution service in the ERCOT power region. The PUC must ensure that each year at least one simulated or tabletop exercise is conducted during a summer month and one simulated or tabletop exercise is conducted during a winter month.

### **Provision of Transmission Service**

C.S.S.B. 3 requires the PUC to do the following:

- review the type, volume, and cost of ancillary services to determine whether those services will continue to meet the needs of the electricity market in the ERCOT power region;
- evaluate whether additional voluntary seasonal, month-ahead, or other forward products would enhance reliability in the ERCOT power region while providing adequate incentives for dispatchable generation; and
- ensure that all generation resources, energy storage resources, and loads in the ERCOT power region are allowed to provide ancillary services on a voluntary basis and that the ancillary services are procured and costs recovered on an equitable and nondiscriminatory basis.

The bill authorizes the PUC to require the certified ERCOT organization to modify the design, procurement, and cost allocation of ancillary services for the ERCOT power region in a manner consistent with cost-causation principles and on a nondiscriminatory basis.

### **Customer Awareness**

C.S.S.B. 3 requires an electric utility providing electric delivery service for a retail electric provider to provide to the retail electric provider information about the following topics:

- the utility's procedures for implementing involuntary load shedding initiated by the certified ERCOT organization;
- the types of customers who may be considered, and the procedure for applying to be considered, a critical care residential customer, a critical load industrial customer, or a critical load according to applicable PUC rules; and
- reducing electricity use at times when involuntary load shedding events may be implemented.

The bill requires the retail electric provider to periodically provide the information to its retail customers together with bills sent to the customers and requires a municipally owned utility or electric cooperative to periodically provide similar information to the utility's or cooperative's retail customers with their bills. The bill establishes definitions of "critical care residential customer" and "critical load industrial customer."

### **Wholesale Indexed Retail Electric Products**

C.S.S.B. 3 authorizes a retail electric provider to enroll a residential or small commercial customer in a wholesale indexed product in which the price a customer pays for electricity includes a direct pass-through of real-time settlement point prices determined by the certified ERCOT organization only under the following circumstances:

- the enrollment complies with any other applicable law or PUC rule;
- the product caps the monthly average all-in price per kilowatt hour of electricity charged to the customer at a maximum of 200 percent more than the monthly average price of electricity in Texas during the same month for the prior year, as determined by monthly electric power industry reports required by the U.S. Energy Information Administration;
- the provider provides to each potential customer before enrollment notice of the highest monthly average price for the next six months for the product;
- the provider provides to each customer in each billing statement notice of the highest monthly average price for the next six months; and
- for service starting at the beginning of the next month, the provider allows the customer to switch without charge or penalty at the beginning of the next month to a fixed rate product offered by the provider to other residential and small commercial customers.

The bill prohibits a retail electric provider from offering such a wholesale indexed product to a residential or small commercial customer under any other circumstances. These provisions do not apply to accounts of a customer on the same property or contiguous properties in which one or more of the accounts has a peak demand of at least 250 kilowatts.

### **Dispatchable Generation**

C.S.S.B. 3 requires the PUC to ensure that the certified ERCOT organization does the following:

- establishes requirements to meet the reliability needs of the ERCOT power region;
- periodically determines the quantity and characteristics of ancillary or reliability services necessary to ensure appropriate reliability during extreme heat and extreme cold weather conditions and during times of low non-dispatchable power production in the power region;
- procures ancillary or reliability services on a competitive basis to ensure appropriate reliability during those conditions and times;
- develops appropriate qualification and performance requirements for providing those ancillary or reliability services, including appropriate penalties for failure to provide the services; and
- sizes the procured ancillary or reliability services to prevent prolonged rotating outages due to net load variability in high demand and low supply scenarios.

For purposes of these provisions, a generation facility is considered to be non-dispatchable if the facility's output is controlled primarily by forces outside of human control.

C.S.S.B. 3 requires the PUC to ensure the following:

- that the resources that provide the ancillary or reliability services are dispatchable and able to meet continuous operating requirements for the season in which the service is procured;
- that the winter resource capability qualifications for an ancillary or reliability service include on-site fuel storage, dual fuel capability, or fuel supply arrangements to ensure winter performance for several days; and
- that the summer resource capability qualifications for an ancillary or reliability service include facilities or procedures to ensure operation under drought conditions.

### **Distributed Generation Reporting**

C.S.S.B. 3 requires the certified ERCOT organization to require an owner or operator of distributed generation to register with the organization and interconnecting transmission and distribution utility information necessary for the interconnection of the distributed generator. "Distributed generation" means an electrical generating facility that may be located at a customer's point of delivery, is connected at a voltage less than 60 kilovolts, and may be connected in parallel operation to the utility system. These provisions do not apply to distributed generation serving a residential property.

### **Penalty for Disconnection of Gas Service**

C.S.S.B. 3 requires a civil penalty imposed for the disconnection of natural gas service to a residential customer during an extreme weather emergency, or for the failure of a provider to defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over and work with customers to establish a pay schedule for deferred bills, to be in an amount of not less than \$1,000 and not more than \$1,000,000 for each violation, notwithstanding the existing cap on civil penalties against a gas utility or affiliate. The bill requires the RRC by rule to establish a classification system to be used by a court for such a violation that includes a range of penalties that may be recovered for each class of violation based on the following criteria:

- the seriousness of the violation;
- the history of previous violations;
- the amount necessary to deter future violations;
- efforts to correct the violation; and
- any other matter that justice may require.

The classification system must 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 system.

### **Public Utility Commission Weather Emergency Preparedness Reports**

C.S.S.B. 3 revises provisions governing the one-time PUC power generation weatherization preparedness report that was due in 2012 to require the PUC to submit weather emergency preparedness reports on a biennial basis. The bill updates those provisions as follows:

- includes retail electric providers among the entities whose emergency operations plans the PUC must analyze in preparing the report;
- makes the report due not later than September 30 of each even-numbered year; and
- replaces the authorization for the PUC to require an entity whose emergency operations plan must be analyzed to file an updated emergency operations plan if it finds that an emergency operations plan on file does not contain adequate information to determine whether the entity can provide adequate electric services with a requirement to do so.

### **Railroad Commission Weather Emergency Preparedness Reports**

C.S.S.B. 3 requires the RRC to analyze emergency operations plans developed by operators of facilities that produce, treat, process, pressurize, store, or transport natural gas and are included on the electricity supply chain map and prepare a weather emergency preparedness report on weatherization preparedness of those facilities. The bill sets out certain required actions for the RRC in preparing that report and requires the RRC to require an entity whose emergency operations plan must be analyzed to file an updated emergency operations plan if it finds that an emergency operations plan on file does not contain adequate information to determine whether the entity can provide adequate natural gas services. The bill requires the RRC to submit the report to the lieutenant governor, the speaker, and the members of the legislature not later than September 30 of each even-numbered year. The RRC may adopt rules relating to the implementation of the report.

C.S.S.B. 3 authorizes the RRC to submit additional weather emergency preparedness reports if it finds that significant changes to weatherization techniques have occurred or are necessary to protect consumers or vital services, or if there have been changes to statutes or rules relating to weatherization requirements. Such a report must be submitted not later than March 1 for a summer weather emergency preparedness report or September 1 for a winter weather emergency preparedness report.

C.S.S.B. 3 provides that emergency operations plans submitted for a report are public information except for the portions of the plan considered confidential under state or federal law. If portions of a plan are designated as confidential, the plan must be provided to the RRC in a redacted form for public inspection with the confidential portions removed.

#### **Administrative Penalties for Electric Utilities**

C.S.S.B. 3 provides that the penalty for a violation of a provision of the Public Utility Regulatory Act governing electric utilities may be in an amount not to exceed \$1,000,000 for a violation, notwithstanding the existing cap on penalties for violations of that act. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

#### **Critical Natural Gas Facilities and Entities During an Energy Emergency**

C.S.S.B. 3 amends the Natural Resources Code to require the RRC to work with the PUC to designate certain natural gas facilities and entities associated with providing natural gas in Texas as critical during an energy emergency. At a minimum, RRC rules must do the following:

- establish eligibility and designation requirements for persons who own or operate a facility under RRC jurisdiction or engage in an activity under RRC jurisdiction who must provide critical customer designation and critical natural gas supply information, as defined by the RRC, to electric cooperatives, municipally owned utilities, transmission and distribution utilities, and the certified ERCOT organization;
- require that only facilities and entities that are prepared to operate during a weather emergency may be designated as a critical customer; and
- consider essential operational elements when defining critical customer designations and critical natural gas supply information, including natural gas production, processing, and transportation and related produced water handling and disposal facilities and the delivery of natural gas to generators.

C.S.S.B. 3 amends the Utilities Code to require the PUC to work with the RRC and adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas in Texas as critical during an energy emergency. The bill requires the PUC by rule to require each electric cooperative, municipally owned utility, and transmission and distribution utility to exclude any circuits that provide power to an entity or facility designated as critical under the related Natural Resources Code provisions from participation in the cooperative's or utility's attempt to shed load in response to an applicable rolling blackout. At a minimum, the rules adopted by the PUC must do the following:

- ensure that electric cooperatives, municipally owned utilities, transmission and distribution utilities, and the certified ERCOT organization are provided with the critical gas supply information as required under the RRC rules;
- provide for a prioritization for load-shed purposes of the entities and facilities designated as critical during an energy emergency; and
- provide discretion to electric cooperatives, municipally owned utilities, and transmission and distribution utilities to prioritize power delivery and power restoration among the customers on their respective systems, as circumstances require.

### **Emergency Operations of Certain Water Utilities**

C.S.S.B. 3 amends the Water Code to establish standards of emergency operations for certain retail public utilities, exempt utilities, and providers or conveyors of potable or raw water service that are not subject to existing standards of emergency operations. The standards of emergency operations established by the bill apply to retail public utilities, exempt utilities, and providers or conveyors of potable or raw water service that furnish water service to more than one customer and are not located in a county with a population of 3.3 million or more or in a county with a population of 550,000 or more adjacent to a county with a population of 3.3 million or more. The bill requires such an affected utility to do the following:

- ensure the emergency operation of its water system during an extended power outage at a minimum water pressure of 20 pounds per square inch, or at a water pressure level approved by the Texas Commission on Environmental Quality (TCEQ), as soon as safe and practicable following the occurrence of a natural disaster; and
- adopt and submit to TCEQ for its approval an emergency preparedness plan that demonstrates the utility's ability to provide those emergency operations and a timeline for implementing the plan.

The bill sets out content requirements for emergency preparedness plans of providers of potable water and of utilities that supply, provide, or convey raw surface water. The bill requires TCEQ to review the submitted plans. If TCEQ determines that a plan is unacceptable, it must recommend changes to the plan on or before the 90th day after receiving the plan. Each affected utility must submit an emergency preparedness plan to TCEQ not later than March 1, 2022, and must implement an approved plan not later than July 1, 2022. The bill authorizes an affected utility to file with TCEQ a written request for an extension, not to exceed 90 days, of the date by which the utility is required to submit or implement its emergency preparedness plan and requires TCEQ to approve the requested extension for good cause shown. The bill requires TCEQ to inspect each utility to ensure the utility complied with the approved plan.

C.S.S.B. 3 requires TCEQ by rule to create a template for use by an affected utility when submitting an emergency preparedness plan and sets out requirements for the content of the template. The bill requires TCEQ to provide an affected utility with access to its financial, managerial, and technical contractors to assist the utility in complying with the applicable plan submission deadline and makes information provided by an affected utility confidential and exempt from disclosure under state public information law. The bill authorizes an affected utility to adopt and enforce limitations on water use while the utility is providing emergency operations.

C.S.S.B. 3 provides the following with respect to these provisions regarding standards of emergency operations:

- "emergency operations" means the operation of a water system during a power outage lasting for more than 24 hours that impacts the operating affected utility;
- TCEQ must adopt rules to implement the provisions as an alternative to any rule requiring elevated storage;
- TCEQ must coordinate with the PUC in the administration of the provisions; and
- TCEQ may grant a waiver of the requirements of the provisions to an affected utility if TCEQ determines that compliance will cause a significant financial burden on the utility's customers.

C.S.S.B. 3 makes provisions governing the coordination of emergency operations for certain affected utilities applicable also to an those affected utilities that will now be required to submit an emergency preparedness plan to TCEQ under the bill's provisions. The bill requires those newly affected utilities, not later than November 1, 2021, to submit the following information to the PUC, each electric utility that provides transmission and distribution service to the utility, each retail electric provider that sells electric power to the utility, the office of emergency management of each county in which the utility has water and wastewater facilities that qualify for critical load status under rules adopted by the PUC, and TDEM:

- information identifying the location and providing a general description of all water and wastewater facilities that qualify for critical load status; and
- emergency contact information for the utility, including the persons who will serve as the utility's point of contact and the alternative point of contact, those persons' telephone numbers, and the utility's mailing address.

### **Billing for Water or Sewer Services Provided During an Extreme Weather Emergency**

C.S.S.B. 3 requires a retail public utility that is required to possess a certificate of public convenience and necessity or a district and affected county that furnishes retail water or sewer utility service to defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over and to work with customers to establish a pay schedule for deferred bills. The bill requires TCEQ by rule to establish a classification system to be used by a court for violations of that requirement that includes a range of penalties that may be recovered for each class of violation based on the following criteria:

- the seriousness of the violation;
- the history of previous violations;
- the amount necessary to deter future violations;
- efforts to correct the violation; and
- any other matter that justice may require.

The bill defines "extreme weather emergency" for this purpose as a period when the previous day's highest temperature did not exceed 10 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service reports.

### **State Energy Plan Advisory Committee**

C.S.S.B. 3 establishes the 12-member State Energy Plan Advisory Committee and requires the governor, lieutenant governor, and speaker to each appoint four members. The bill requires the committee to prepare and submit to the legislature a comprehensive state energy plan not later than September 1, 2022, and requires that the plan do the following:

- evaluate and provide recommendations for removing barriers in the electricity and natural gas markets that prevent sound economic decisions;
- evaluate and provide recommendations for using methods to improve the reliability, stability, and affordability of electric service in Texas; and
- evaluate the electricity market structure and pricing mechanisms used in Texas, including the ancillary services market and emergency response services.

### **Conflicts of Interest Report**

C.S.S.B. 3 requires the PUC and the certified ERCOT organization to annually review statutes, rules, protocols, and bylaws that apply to conflicts of interest for commissioners and for members of the organization's governing body and submit to the legislature a report on the effects the statutes, rules, protocols, and bylaws have on the ability of the PUC and the organization to fulfill their duties.

### **Repeal**

C.S.S.B. 3 repeals Section 13.1396(a)(1), Water Code.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 3 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

Both the engrossed and the substitute establish entities with duties relating to the preparation for, prevention of, and response to weather emergencies and power outages. The engrossed established the Texas Energy Reliability Council to do the following:

- ensure that the energy and electric industries in Texas meet high priority human needs and address critical infrastructure concerns;
- enhance coordination and communication in the energy and electric industries in this state;
- foster communication and planning to ensure preparedness for making available and delivering energy and electricity in Texas to ensure that high priority human needs are met and critical infrastructure needs are addressed;
- foster communication and coordination between the energy and electric industries in Texas;
- map the natural gas supply chain for Texas in order to designate priority service needs during extreme weather events, including electric generation facilities powered by natural gas; and
- identify and designate the sources in the supply chain necessary to operate critical infrastructure.

The substitute instead establishes the Texas Electricity Supply Chain Security and Mapping Committee to do the following with respect to the electricity supply chain in Texas:

- map the electricity supply chain, comprising facilities and methods used for producing, treating, processing, pressurizing, storing, or transporting natural gas for delivery to electric generation facilities and critical infrastructure necessary to maintain electricity service, to identify those critical infrastructure sources in order to designate priority electricity service needs for, respond to, and recover from extreme weather events;
- identify and designate the sources in the supply chain necessary to operate critical infrastructure;
- develop a communication system between critical infrastructure sources, the PUC, and the certified ERCOT organization to ensure that electricity and natural gas supplies in the supply chain are prioritized to those sources during an extreme weather event; and
- establish best practices to prepare facilities that provide electric service and natural gas service in the supply chain to maintain service in an extreme weather event and recommend oversight and compliance standards for those facilities.

The substitute also revises provisions of the engrossed regarding weatherization of certain gas pipeline facilities to account for the change in scope of the mapping requirements.

The substitute includes provisions not in the engrossed establishing the Texas Energy Disaster Reliability Council.

The substitute revises the provisions of the engrossed providing for the weatherization of gas supply chain facilities as follows:

- limits the facilities to which the provisions apply to those included in the electricity supply chain map created under the bill's provisions; and

- excludes from the definition of "gas supply chain facility" a facility that is 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.

Regarding the customer awareness provisions in the engrossed, the substitute does the following:

- expands the scope of the provisions to include a "critical load industrial customer" among the special classes of customers and defines that term;
- expressly defines the term "critical care residential customer," whereas the engrossed provided that the term has the meaning assigned by PUC rules; and
- omits the requirement for the PUC by rule to require each retail electric provider to do the following:
  - provide to its customers clear and understandable information about the requirements for voluntary load shedding participation before the provider accepts a customer's agreement to volunteer to participate in voluntary load shedding;
  - inform its transmission and distribution utilities whether the provider serves customers willing to voluntarily participate in load shedding during an energy emergency; and
  - coordinate with its transmission and distribution utilities regarding the potential total amounts of electricity that may be available if voluntary load shedding is needed.

The substitute omits the provision from the engrossed requiring the PUC to require intermittent generation resources in the ERCOT power region to purchase ancillary services and replacement power sufficient to manage net load variability. The substitute instead includes the following provisions not in the engrossed:

- a requirement for the PUC to do the following:
  - review the type, volume, and cost of ancillary services to determine whether those services will continue to meet the needs of the electricity market in the ERCOT power region;
  - evaluate whether additional voluntary seasonal, month-ahead, or other forward products would enhance reliability in the ERCOT power region while providing adequate incentives for dispatchable generation; and
  - ensure that all generation resources, energy storage resources, and loads in the ERCOT power region are allowed to provide ancillary services on a voluntary basis and that the ancillary services are procured and costs recovered on an equitable and nondiscriminatory basis; and
- an authorization for the PUC to require the certified ERCOT organization to modify the design, procurement, and cost allocation of ancillary services for the ERCOT power region in a manner consistent with cost-causation principles and on a nondiscriminatory basis.

The substitute includes provisions not in the engrossed requiring the PUC to allow the design and operation of a load management program by a transmission and distribution utility for nonresidential customers to be used during extreme weather where the certified ERCOT organization has declared an emergency, requiring the utility to be permitted to recover the reasonable and necessary costs of the load management program through its rates, and providing that a load management program operated under these bill provisions is not considered a competitive service.

The substitute includes provisions not in the engrossed requiring the PUC to work with the RRC and to adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas in Texas as critical during an energy emergency.

Whereas the engrossed included a provision expressly prohibiting retail electric providers from offering a wholesale indexed product to residential or small commercial customers, the substitute instead establishes certain consumer protections and conditions with which a retail electric provider must comply to be allowed to enroll a residential or small commercial customer in such a product.

The substitute omits provisions of the engrossed requiring the PUC by rule to establish an emergency pricing program for the wholesale electric market by which generators are compensated based on their actual costs of generation that would take effect when the high system-wide offer cap has been in effect for 12 hours within a 24 hour period after initially reaching the high system-wide offer cap and establishing limits on the cap exceeding any nonemergency high system-wide offer cap, limits on the price of ancillary services, limits on any wholesale pricing procedure with a low system-wide offer cap from exceeding the high system-wide offer cap, and requiring the PUC to review each adopted system-wide offer cap program at least once every five years.

The substitute includes provisions not in the engrossed regarding dispatchable generation and requiring the PUC to ensure that the certified ERCOT organization establishes requirements to meet the reliability needs of the ERCOT power region and the provision of ancillary or reliability services necessary to ensure appropriate reliability during extreme heat and extreme cold weather conditions and during times of low non-dispatchable power production in the ERCOT power region.

The substitute revises the provisions of the engrossed regarding RRC weather emergency preparedness reports to do the following:

- narrow the scope of the reporting requirement by:
  - changing the entities whose emergency operations plans the RRC is required to analyze from gas supply chain facilities and gas pipeline facilities, as in the engrossed, to facilities that produce, treat, process, pressurize, store, or transport natural gas and are included on the electricity supply chain map created under the bill; and
  - clarifying that the weather emergency preparedness report must include only information regarding the weatherization preparedness of those facilities, rather than on the entirety of the natural gas supply chain as in the engrossed;
- replace the requirement for the RRC, in preparing the report, to analyze and determine the ability of the natural gas supply chain to withstand extreme weather events in the upcoming year with a requirement for the RRC to analyze and determine the ability of the mapped electricity supply chain to withstand such events, which reflects the change from the requirement in the engrossed to develop a natural gas supply chain map to the requirement in the substitute to develop an electricity supply chain map; and
- specify that the requirement in the engrossed for the RRC, in preparing the report, to make recommendations on improving emergency operations plans and procedures in order to ensure the continuity of natural gas service is for purposes of the mapped electricity supply chain.

Whereas the engrossed removed a population-based limitation in the definition of "affected utility" for purposes of current statutory provisions establishing certain emergency operations standards, the substitute instead retains that definition, but establishes a new statutory section establishing emergency operations standards for utilities that do not meet those population-based limitations that are similar to the existing standards but differ with respect to the required minimum water pressure required of a water system during an extended power outage and the required elements of an emergency preparedness plan submitted to the PUC for review relating to water storage capabilities and the delivery of water supplies from outside the service area of the affected utility. The substitute makes additional changes to reflect and conform to the effect of the new statutory section, including by repealing a provision of the Water Code.

The substitute revises the provisions in the engrossed establishing certain consumer protections with respect to billing for water and sewer utility service during an extreme weather emergency to remove conditions related to a period for which the National Weather Service issues a heat advisory. For purposes of those provisions, whereas the engrossed provided that a period constituted an extreme weather emergency if the previous day's highest temperature did not exceed 32 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service reports, the substitute provided for a period to constitute an extreme weather emergency if the previous day's highest temperature did not exceed 10 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service reports.

The substitute does not include provisions in the engrossed increasing the maximum penalty authorized to be imposed for a violation of those consumer protections from a \$5,000 civil penalty for each violation and a \$5,000-per-day administrative penalty to a \$1,000,000 civil penalty for each violation and a \$1,000,000-per-day administrative penalty. The substitute does not include provisions in the engrossed providing that such a civil penalty that exceeds \$5,000 may be recovered only if the violation is included in the highest class of violations in the classification system required to be established by the PUC for use by a court. The substitute does not include a provision in the engrossed providing that such an administrative penalty that exceeds \$5,000 may be assessed only if the PUC determines it is justified based on the seriousness of the violation as classified under current statutory administrative penalty enforcement provisions.