



# TAKING THE BULL BY THE HORNS

Texas's response to Snowpocalypse

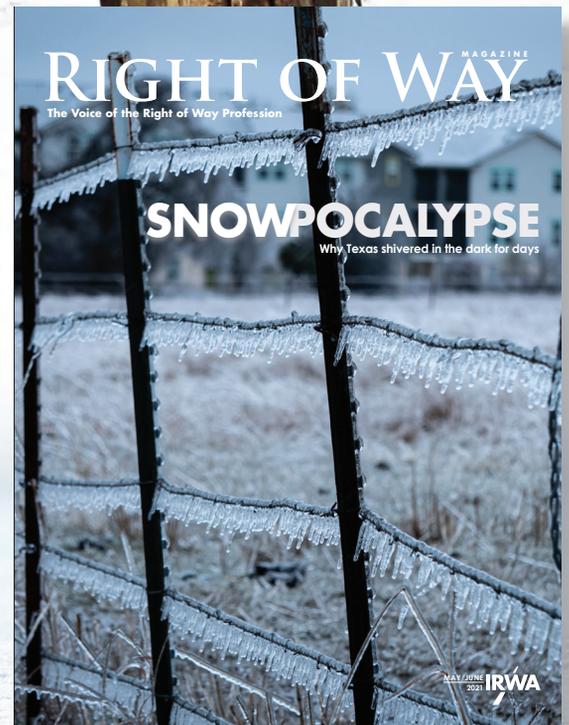
**BY JORDAN A. MILLER**

*This is a follow-up article, written one year after the publication of the original piece entitled "Snowpocalypse," which was the cover story of May/June 2021 issue.*



**W**inter Storm Uri (aka Snowpocalypse) claimed the lives of somewhere between 246 and 702 Texans. Between February 13 and February 17, a series of severe winter storms swept across the United States. In Texas, the temperature reached  $-2^{\circ}$  F at DFW Airport, the coldest in 72 years. 4.5 million homes and business were without power for days, causing approximately \$24 billion in damages. Meanwhile, just about everything that could have gone wrong with Texas's energy infrastructure did. Outages were predominantly caused by freezing issues, but fuel issues (mostly gas and wind generating units) and mechanical issues were also largely to blame, as explained by the joint report published in November 2021 by the Federal Energy Regulatory Commission, the North American Electric Reliability Corporation and Regional Entities. According to ERCOT's former director (who lost his job because of Snowpocalypse), the state was 4 minutes and 37 seconds from a catastrophic blackout that could have lasted months.

The \$1.2 trillion U.S. Infrastructure Investment and Jobs Act passed on November 5 by the U.S. House and Senate and signed into law on November 15 by President Biden has, according to a White House fact sheet, earmarked \$50 billion to \$65 billion for upgrading and weatherizing America's energy infrastructure. How much of that will find its way to Texas remains to be seen, but the Texas legislature has taken the bull by the horns and passed legislation aimed at preventing another Snowpocalypse.



There are two key pieces of legislation likely to have the biggest impact on Texas’s energy infrastructure and governance — SB 2 and SB 3. But first, there were numerous other Snowpocalypse bills passed in 2021 worth mentioning, including:

Bill	Description
HB 16	prohibits wholesale indexed products for residential/small commercial customers
HB 17	stops local governments from banning a particular energy sources
HB 1510	securitization financing for weatherization and system restoration costs
HB 1520	securitization financing for gas utilities to recover excessive Snowpocalypse costs
HB 3648	designating certain gas entities/facilities as critical during an energy emergency
HB 4492	authorizes \$800 million from Rainy Day Fund to repay ERCOT default balance
SB 415	spurs growth in back-up battery storage for Texas grid participants
SB 1281	expands CCN exceptions for electric utilities
SB 1580	securitization financing for electric co-ops to recover Snowpocalypse costs
SB 2154	updates eligibility for PUC Commissioners and creates new lobbying restrictions

### Senate Bill 2

SB 2 changes the governance of the state’s main grid operator — Electric Reliability Council of Texas (“ERCOT”). It shrinks the numbers of seats on ERCOT’s board of directors from 16 to 11, each of whom must reside in Texas, and adds significant direct involvement of politicians in determining the makeup of the board. The governor already appoints the board members of the Public Utility Commission (“PUC”), which oversees ERCOT, but SB 2, thanks to a revision made without public debate right before the ultimate vote on the bill, creates a new ERCOT Board Selection Committee made up of three people — one appointed by Governor Greg Abbott (millionaire GOP donor and Buc-ee’s founder Arch “Beaver” Aplin, III), one by the Lieutenant Governor Dan Patrick (millionaire GOP donor G. Brint Ryan) and one by the Speaker of the House Dade Phelan (Austin attorney and chairman emeritus of the Texas A&M University System Board of Regents Bill Jones).

Before, ERCOT board members were selected in a variety of ways. Some were chosen by ERCOT’s nominating committee, others were appointed by companies and consumers participating in the electricity market. Now, an “outside consulting firm” is used by the committee to select eight of the 11 members. The other three members are predetermined — the ERCOT CEO, the public counsel of the Office of Public Utility counsel and the PUC chairman. Nine of the 11 board seats are voting members, while the ERCOT CEO and PUC Chair are nonvoting directors.

With Senate Bill 2, the 87th Texas Legislature has reshaped ERCOT. Senate Bill 3, on the other hand, has reshaped the Texas energy industry as we know it.

### Senate Bill 3

If Snowpocalypse revealed the bull in the china shop, the Texas Legislature grabbed that proverbial bull by the horns with Senate Bill 3.

This broad-sweeping piece of legislation requires power generation and transmission line facilities to be “weatherized.” The Texas Railroad Commission and ERCOT will inspect facilities required to be weatherized, and failure may result in penalties of up to \$1 million. The bill has been met with controversy, however, at least in part because it allows natural gas companies to opt out of weatherization requirements if they do not voluntarily declare their facilities to be “critical infrastructure” with the Texas Railroad Commission. According to the proposed rule, operators can pay a \$150 fee to apply for an exemption from weatherizing a facility, which according to a report by the Federal Reserve Bank of Dallas, could cost \$20,000 to \$50,000 per wellhead (reportedly over 250,000 wellheads across the state). This “loophole,” described by Senator Lois Kolkhorst as “the Achilles heel” of the current plan to reform the grid, along with timelines established by the bill, have been widely criticized since being passed in June.

Even so, President of the Texas Oil & Gas Association Todd Staples has stated that since February 2021, there has been a 2000% increase in the number of natural gas supply chain systems that have signed up as critical infrastructure. Critics argue companies would rather pay the \$150 application fee, but dollars make sense, and if the ability to continue production during extreme weather events will reap profits greatly in excess of the costs to weatherize facilities, companies will do just that. Final weatherization requirements are not expected from the Railroad Commission until March 2023.

As for power plants and transmission providers, the Public Utility Commission on October 21 unanimously passed new weatherization standards that took effect December 1 (although violators were given a “reasonable amount of time” to comply with these new rules). ERCOT inspected 302 generating units and 22 transmission facilities in December 2021, and all but three generators met mandatory thresholds for winter weatherization. Additionally, 98% of the 847 generating resources filed their reports on winter preparations by the



# Texans are hoping its legislators have hit the bullseye with these legislative efforts.



December deadline. The eight generation companies that missed the deadline face \$7.5 million in administrative penalties.

SB 3 also requires power generators and transmission providers must provide a “notarized attestation” that anything that broke during Snowpocalypse was fixed. They must also receive training on winter weather preparations, submit to ERCOT-conducted inspections, conduct monthly testing from November to March, and upgrade equipment, including insulation of critical components, heat tracing on pipes and thermal enclosures and windbreaks around sensitive equipment. Penalties have yet to be defined by the PUC, and enforcement language is vague. The second part of the PUC’s rulemaking process calls for the creation of a more comprehensive, year-round set of weather emergency preparedness reliability standards that will be dictated by an ongoing weather study being conducted by ERCOT and the Office of the Texas State Climatologist.

On February 25, 2022, the PUC adopted more comprehensive Emergency Operations Plan (“EOP”) requirements, including strategies for improved communications, robust supply chains, cold weather events and cyberattacks. 2022 EOPs were due April 15. Moving forward, EOPs will be due March 15 each year.

Additionally, SB 3 creates a 25-member Texas Energy Reliability Council which must meet at least twice per year and, no later than November 1 of each even-numbered year, submit a report to the Legislature on the reliability and stability of the electric supply chain in Texas. The bill also creates the State Energy Plan Advisory Committee made up of 12 members — four appointed by the governor, four by the lieutenant governor and four by the speaker of the house. By September 1, 2022, this committee must prepare a comprehensive plan that (1) evaluates and provides recommendations for removing barriers in the electricity and natural gas markets that prevent sound economic decisions; (2) evaluates and provides recommendations for using methods to improve the reliability, stability and affordability of electric service in Texas; and (3) evaluates the electricity market

structure and pricing mechanisms used in Texas, including the ancillary services market and emergency response services.

SB 3 also includes a requirement to study and implement an emergency alert system to warn Texas of weather emergencies and power outages, and calls for the creation of yet another committee (executive directors of the PUC and Railroad Commission, the president/CEO of ERCOT and the chief of Texas Division of Emergency Management) to map out the state’s energy infrastructure by September 2022, then gives the Railroad Commission 180 days to finalize its weatherization rules. This legislation includes requirements for informing customers about involuntary load shedding procedures, provides for more robust planning and oversight of load shedding during rolling blackouts, including geographic seasonal use variations, requires utility providers to defer collection of bills during an extreme weather emergency and to work with customers to establish pay schedules, and directs the creation of a State Energy Plan.

One final key aspect of SB 3 includes a plan to help companies recover the financial losses caused by Snowpocalypse by allowing \$6.5 billion in State-approved bonds backed by the State’s assurance that there will be an extra charge on customers’ utility bills to pay back the bonds. The Texas Tribune has reported that these additional charges will amount to “at least a few dollars a month for the next two decades.” No such direct financial assistance for consumers, 98% of which were on a fixed-rate plan during the storm, was included in SB 3.

Texas may have picked up the pieces scattered by the raging bull that was Snowpocalypse 2021, but to avoid an encore, Texans are hoping its legislators have hit the bullseye with these legislative efforts. Time will tell.

The views, thoughts, and opinions expressed in this article belong solely to the author — Jordan A. Miller — and not necessarily to the author’s law firm or its clients, or any organization, committee, or other group of which the author is a member. ⚡



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