



January 7, 2022

Rules Coordinator
Railroad Commission of Texas
Office of General Counsel
1701 N. Congress
Austin, Texas 78701

Re: Proposed Amendments to 16 TAC §7.455 and Repeal of 16 TAC §7.305, relating to Curtailment Standards.

Texas Competitive Power Advocates (“TCPA”) respectfully submits these comments in response to the Railroad Commission of Texas’s (“RRC” or “Commission”) Proposed Amendments to 16 Texas Admin. Code (“TAC”) §7.455 and Proposed Repeal of 16 TAC §7.305 (the “Proposed Rules” or the “Curtilment Rules”). The deadline for comments is January 7, 2022. These comments are timely filed.

TCPA is a trade association representing power generation companies and wholesale power marketers with investments in Texas and the Electric Reliability Council of Texas (“ERCOT”) wholesale electric market. TCPA members¹ and their affiliates provide a wide range of important market functions and services within ERCOT, including development, operation, and management of power generation assets, power scheduling and marketing, energy management services, and sales of competitive electric service to consumers. TCPA members participating in this filing provide nearly ninety percent (90%) of the non-wind electric generating capacity in ERCOT, representing billions of dollars of investment in the state and employing thousands of

¹ TCPA member companies participating in these comments include: Calpine, Cogentrix, EDF Trading North America, Exelon, Luminant, NRG, Shell Energy North America, Talen Energy, Tenaska, TexGen Power, and WattBridge.

Texans. TCPA members collectively operate over 39,000 MW of natural gas fired generation and are therefore among the largest natural gas consumers in the state with peak gas demand requiring flows in the range of 15 bcf/day. TCPA appreciates the opportunity to submit comments on the Proposed Rules.

EXECUTIVE SUMMARY

TCPA applauds the Commission for recognizing the need to update the curtailment priorities to reflect the significant changes that have occurred in the industry since 1973 when Order 489 was approved. Moreover, it is a positive step to formalize the Commission's efforts to provide clear and consistent curtailment standards rather than relying on temporary relief via emergency orders as was necessary last February in response to Winter Storm Uri.

It is crucially important that the rule include a methodology and directive to estimate the total supply that is curtailable (i.e., the jurisdictional gas). Without this baseline, it is impossible to understand whether this rule is sufficient to solve for emergencies or whether there is, in fact, *de minimis* gas covered. This should include the following requirements:

- A. The Commission should identify and publish which pipeline operators and gas utilities are subject to the Curtailment Rules and which are not;
- B. Those pipeline operators and gas utilities identified as subject to the Curtailment Rules should map out their systems to designate flow paths and volumes by criticality (similar to the mapping of critical natural gas facilities that the electric utilities are performing);
- C. Those pipeline operators and gas utilities identified as subject to the Curtailment Rules should submit an estimate of curtailable demand by criticality tier to the RRC, which shall be posted publicly. If the total curtailable gas is found to be an insignificant volume, then the Commission should explore other options, including seeking

expanded jurisdiction over all intrastate pipelines if needed, to ensure the delivery of natural gas to as many customers as possible during Curtailment Events; and; and

- D. When curtailment events do occur or following an event, the Commission should require the curtailing pipeline operators and other gas utilities to provide sufficient data on the quantity of gas curtailed and gas delivered to ensure that the Proposed Rules were followed, and the gas volumes posted publicly.

TCPA also requests the Commission provide greater clarity as to what qualifies as a curtailment event, or in the alternative, for intrastate gas pipelines to provide a definition of what they consider a curtailment event to be part of their tariff. This will allow shippers and end users to know the specific conditions under which a curtailment event will occur instead of relying on a subjective interpretation.

The prioritization in the Proposed Rules should include both firm deliveries of natural gas to an entity and entities that have firm transportation capacity. This is crucial because the onus cannot be having firm supply of the natural gas commodity. This is because from a practical standpoint, firm supply has proven illusory. Experience has shown that supply can be cancelled due to a Force Majeure claim, regardless of the claim's validity. This risk can be at least disciplined by requiring that the intrastate gas markets have the same transparency found on interstate markets. There must also be a mechanism to ensure that the Force Majeure claim was legitimate by requiring that entities that declare Force Majeure and their affiliates submit the details of all gas transactions in the vicinity of the receipt point to ensure no other sales were made.

Finally, the Proposed Rules create a stand-alone position in the list of curtailment priorities specific to electric generation facilities and elevates them to the second priority tier during a curtailment event. One benefit is that intrastate pipelines and gas utilities now have clarity on how

to treat gas-fired generators connected to their systems during curtailments. While TCPA supports the Commission's determination that electric generation facilities should be one of the top priorities during a curtailment event, we believe placing electric generation facilities into the same priority tier as other human needs customers listed in §7.455(d)(1)(A) is the best approach. This is especially true during curtailment events that see supply shortfalls and delivery failures coincide with peak gas and electric demand from consumers, in which risks to the electric generation supply chain could threaten both electric generation adequacy and gas supply adequacy (which in turn also depends on electric power).

DISCUSSION

I. Background

In 1973 the Commission approved Order 489 in which it determined that all natural gas utilities must either submit a curtailment plan for Commission approval or follow the curtailment priorities set out in Rule 2 of the Order. The purpose of Order 489 was, in part, to ensure natural gas utilities had a clear set of transportation priorities during curtailment events, with deliveries for human needs customers as the top priority.

Since the adoption of Order 489, the Commission has approved only six individual curtailment programs. Thus, the vast majority of gas utilities currently follow the priorities set out in Rule 2 of Order 489, which will be superseded by the new curtailment rules established in this proceeding. And as recognized in the Proposed Rules any gas utility still has the option to file its own curtailment plan for approval with Commission, but such plan must be consistent with the first three priorities listed in subsections (d) (1) (A) – (C) and (d)(2) of §7.455.

In response to Winter Storm Uri, the Commission issued an emergency order that modified the natural gas utility curtailment priorities in Order 489 to ensure the protection of natural gas human needs customers as well as electric generation customers. The Commission states that the

modified curtailment priorities in the emergency order were well received by stakeholders who “expressed support for the priorities in the emergency order; namely, the elevation of natural gas deliveries for electric generation to a higher priority.”

Based on that widespread support for the modified curtailment priorities found in the emergency order, as well as additional stakeholder feedback received after Winter Storm Uri, the Commission developed the Proposed Rules which include human need uses and electric generation facilities as the top two priorities in the event of curtailment.

TCPA echoes the support expressed for the modifications to the curtailment priorities provided in the emergency order and also reflected in the Proposed Rules. While we support the adoption of the Proposed Rules generally, we also have provided the following suggested revisions below that are designed to enhance the effectiveness of the Proposed Rules.

II. Efficacy and Transparency

It is TCPA’s understanding that not all gas on the intrastate pipeline system may actually be subject to the Commission’s curtailment rule (“jurisdictional gas”). While it is unambiguously good to set clear priorities for curtailment ahead of an emergency with a rational basis, it is crucially important to evaluating the rationality of the curtailment plan that the Commission and stakeholders have clear line of sight to the actual volumes of gas that would actually be subject to the curtailment rule in a given circumstance. The rule therefore should include a method for estimating the total supply that is curtailable (i.e., the jurisdictional gas). Without this understanding, it is impossible to understand whether this rule is sufficient to solve for emergencies. Accordingly, the rule should include the following requirements:

- A. The Commission should identify and publish which natural gas pipeline operators and other gas utilities are subject to the curtailment rule and which are not.

- B. Those pipeline operators and gas utilities identified as subject to the Curtailment Rules should map out their systems to designate flow paths and volumes by criticality (similar to the mapping of critical natural gas facilities that the electric utilities are performing);
- C. Those pipeline operators and gas utilities identified as subject to the Curtailment Rules should submit an estimate of curtailable gas demand by criticality tier to the RRC, which shall be posted publicly. If the total curtailable gas is found to be an insignificant volume, then the Commission should explore other options, including seeking expanded jurisdiction over all intrastate pipelines if needed, to ensure the delivery of natural gas to as many customers as possible during Curtailment Events; and;
- D. When curtailment events do occur or following an event, the Commission should require the curtailing pipeline operators and other gas utilities to provide sufficient data on the quantity of gas curtailed and gas delivered to ensure that the Proposed Rules were followed, and the gas volumes posted publicly.

III. Clear Definition of “Curtailment Event”

In the Proposed Rules, the term “curtailment event” is defined as “when a gas utility determines that its ability to deliver gas may become inadequate to support continuous service to its customers on its system and it reduces deliveries to one or more customers.” This definition allows individual gas utilities to unilaterally determine when a curtailment event is or is not occurring.

TCPA requests the Commission provide greater clarity as to what qualifies as a curtailment event, or in the alternative, for intrastate gas pipelines to provide a definition of what they consider a curtailment event to be made publicly available. This will allow shippers and end users to know the specific conditions under which a curtailment event will occur instead of relying on the subjective decisions of individual gas utilities.

In a localized situation, it seems appropriate that individual gas utilities should be able to determine when it is or is not able to provide continuous service to its customers. However, individual gas utilities should define what constitutes a curtailment event in their tariff and explain their process for allocating scarce gas supplies, particularly if those differ in any way from the Commission's Curtailment Rule. And each gas utility should also be required to make their Commission approved curtailment rules and procedures publicly available on their websites and/or their Statement of Operating Conditions.

Furthermore, it may be appropriate for ERCOT to order a load shed event (e.g. controlled outages) or State of Texas to issue a power outage alert² immediately prior to or during an extreme weather event or other emergency situation that would also likely trigger wide-spread gas curtailment events, thereby requiring gas utilities to follow the Commission's Curtailment Rules. In such coincident emergency conditions, additional considerations may be warranted to reflect the public interest objective of minimizing firm load shed and avoiding a potential black start event.

TCPA requests that the Commission amend the proposed definition of "curtailment event" to include a more objective standard that is not reliant solely on the subjective decisions of individual gas utilities and that the Commission require gas utilities to comply with reporting requirements to ensure compliance with the Commission curtailment rules.

IV. Clarify the Term "Firm Deliveries"

The prioritization in the curtailment order must include both firm deliveries of natural gas to an entity and entities that have firm transportation. This is crucial because the onus cannot be having firm supply of the natural gas commodity. This is because from a practical standpoint, firm

² See Government Code Chapter 411, Subchapter K-1.

supply has proven illusory. Supply can be cancelled due to a Force Majeure claim, regardless of the claim's validity. This risk can be at least disciplined by requiring that the intrastate gas markets have the same transparency found on interstate markets. There must also be a mechanism to ensure that the Force Majeure claim was legitimate by requiring that entities that declare Force Majeure submit gas operator reports reflecting the flow paths of any similar transactions and especially any affiliate transactions to ensure no improper sales were made.

The terms “firm service,” “firm transportation,” “delivered firm”, “firm supply”, and “firm delivery” are often used interchangeably within the natural gas transportation and electric generation industries; however, each can carry important nuances and there is no clear regulatory definition provided in the Proposed Rule. “Firm delivery” may be defined differently in individual contracts between individual electric generation facilities and its fuel suppliers. For example an electric generation facility may arrange for natural gas to be transported and delivered to its plant by a third-party supplier such as a marketer, producer, or a pipeline affiliate. Or an electric generator may elect to self-supply its facility by purchasing natural gas in a production area and transporting that natural gas on its own transportation capacity contracted with its connected gas utilities along the flow path.

To the extent that “firm delivery” can be compromised by Force Majeure claims, there are two levers that the Commission can and should utilize to ensure that such claims are legitimate. First, the Commission can leverage market discipline to discourage such risks by eliminating current information asymmetries that exist in the natural gas markets. TCPA recommends, at a minimum, the following measures:

- Require that intrastate pipelines and storage facilities post daily the capacities of, and volumes flowing through receipt and delivery points and mainline segments on Electronic Bulletin Boards in order to make available the information needed to

track daily flows of natural gas throughout Texas (consistent with interstate practices);

- Require that intrastate pipelines and storage facilities publish an index of shippers and corresponding customers showing transportation agreement details (maximum daily quantities, receipt and delivery points);
- Require gas pipelines to establish tariff provisions permitting shippers and their agents to offset imbalances accruing on different contracts and to trade imbalances where such imbalances have similar operational impact on the pipeline's system; and
- Require intrastate pipelines to follow Federal Energy Regulatory Commission affiliate rules³ that are designed to prevent affiliated entities from gaining an advantage over their competitors through relationships with their affiliated pipeline, as well as adopt codes of conduct for interactions between such entities, such as but not limited to: arms-length transactions; separate staff and facilities; and the offering of same terms, information, and services to all shippers.

Second, TCPA recommends that the Commission require that entities that declare Force Majeure submit the details all gas transactions in the vicinity of the impacted locations for review to ensure there were no improper sales made.

V. Electric Generation Facilities Should be Treated as a Component of Human Needs

As we learned from Winter Storm Uri, it is critical that electric generation facilities be able to supply power to residences, hospitals, churches, and schools in order to ensure that these consumers have heat and power during the worst types of weather events. In response to Winter Storm Uri, the Commission modified Order 489 to elevate natural gas deliveries for electric generation to the second highest priority during a curtailment event. The Proposed Rules reflect the same top two priorities as the emergency order.

TCPA applauds the Commission for recognizing the importance of ensuring that natural gas can be supplied to electric generation facilities and incorporating this policy into its Proposed Rules. This is a critical step that makes progress towards reflecting the growing dependence of Texas consumers on natural-gas fired electric generation. However, the Proposed Rules should be

³ 18 CFR Part 358 - STANDARDS OF CONDUCT

further modified to reflect the reality that electric generation should be included as a “human needs customer.” A significant portion of the heating infrastructure in Texas requires electricity, and as such many individuals cannot heat their homes without electricity and power generation is, thus, a critical component of meeting human needs.

Over 60% of homes in Texas use electricity for home heating.⁴ While these homes directly rely on electric generation for heat, it should be noted that natural gas furnaces which heat the rest of Texans’ homes are also dependent on electricity to operate necessary components such as blower motors, connected thermostats, and electronic ignition devices and valves. Without power, a gas furnace cannot perform its intended function.

Texas residents also rely on electricity to heat water, not only in electric water heaters but also to power electronic components needed to operate hybrid and tank-less water heaters. And beyond the residential thermal needs of heating their homes and water, the electricity provided by generation facilities serves the power demands of other human needs customers as defined in the Proposed Rules.⁵ Therefore, TCPA requests that electric generation facilities be considered as part of the category listed under (d)(1)(A), on equal footing with other “human needs” priorities.

⁴ U.S. Energy Information Administration, Texas State Energy Profile, available at [Texas - State Energy Profile Overview - U.S. Energy Information Administration \(EIA\)](#).

⁵ Under the Proposed Rule, in (a)(5) “human needs customers” is defined as “residences and other locations where people may congregate in an emergency, such as schools and places of worship, and hospitals, police, fire, military, and civil defense facilities.”

CONCLUSION

TCPA recognizes the difficult task presented to the RRC with respect to prioritizing customers during a curtailment event and appreciate the opportunity to comment on this rulemaking. With the suggested revisions to the Proposed Rules discussed above, TCPA supports the adoption of the Proposed Rules and the Commission's efforts to develop an update to Order 489.

Sincerely,



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PROPOSED REDLINES TO RRC'S INITIAL PROPOSED AMENDMENT TO 7.455.

(RRC amendment in single underline and our proposed edits in double-strikethrough and double-underline):

(a)(5) Human needs customers--Residences and other locations where people may congregate in an emergency, such as schools and places of worship, and hospitals, police, fire, military, and civil defense facilities; and electric generation facilities.

(d)(1) Unless a gas utility has an approved curtailment plan pursuant to subsection (e) of this section, a gas utility shall apply the following priorities in descending order during a curtailment event:

(A) firm deliveries of natural gas to human needs customers and firm deliveries of natural gas to local distribution systems which serve human needs customers [*if "electric generation facilities is not added to the definition of "human needs customers," and "firm deliveries" is not defined as proposed below, then in the alternative amend (d)(1)(A) here with and firm deliveries of natural gas to electric generation facilities and supply to electric generation facilities with firm transport*];

(2) For purposes of this section, the term "firm deliveries" shall mean delivered gas or a customer with firm transport.

(3) Customers within a priority class which is subject to curtailment shall be curtailed to the extent practicable on an equal basis. If a customer's end-use requirements fall under two or more priorities, then such requirements must be treated separately when applying this schedule of priorities. Transportation customers have equivalent end-use priorities as sales customers.

(h) Monitoring and reporting. A gas utility must notify the commission and the Texas Energy Reliability Council when a curtailment is implemented. The gas utility must provide a report to the commission and the Texas Energy Reliability Council within 30 days of a curtailment event that provides sufficient information to confirm implementation of the curtailment plan, including volumes of curtailed gas by prioritization tier. The commission will aggregate and publish data sufficient to determine curtailed volumes by hour, day, region, and the priorities in subsection (d).