

**PROPOSED AMENDMENTS TO 16 §
TAC § 7.455, RELATING TO §
CURTAILMENT STANDARDS §**

**BEFORE THE
RAILROAD COMMISSION
OF TEXAS**

**THE TEXAS PIPELINE ASSOCIATION'S COMMENTS TO PROPOSED AMENDMENTS TO
16 TAC § 7.455, RELATING TO CURTAILMENT STANDARDS**

The Texas Pipeline Association (TPA) hereby submits these comments to the Railroad Commission of Texas (Commission) regarding the proposed amendments to 16 TAC § 7.455, relating to curtailment standards, presented during the November 10, 2021, open meeting. These comments are submitted on behalf of the TPA and do not necessarily reflect the opinions of any individual TPA member. Commission Staff requested comments by January 7, 2022; therefore, these comments are timely filed.

I. INTRODUCTION

The Texas Pipeline Association (TPA) appreciates the opportunity to submit these comments and looks forward to working with the Commission to address the issue of prioritized delivery and sale of natural gas by gas utilities during a curtailment event.

The TPA is the largest state trade association in the country representing solely the interests of the intrastate pipeline network and the Texas pipeline industry. The TPA consists of more than forty members who, collectively, engage in the gathering, processing, and transmission of natural gas and liquids through pipelines across Texas.

The TPA commends the work of the Commission and its Staff in developing these proposed amendments. Through our interactions with them we know firsthand that Commission Staff have worked carefully and diligently with stakeholders to understand the many and varied facets of the curtailment process. The proposed amendments are the product of this diligence, and an improvement on the existing curtailment regime¹ and better reflect the modern state of natural gas transportation in Texas. In furtherance of these efforts, the TPA offers the following comments, considerations, and recommendations to help improve upon the rule as written to ensure proper implementation of the rule.

II. EXECUTIVE SUMMARY

The TPA comments generally concern the following:

A. Jurisdiction of intrastate v. interstate pipelines

¹ Currently known as Order 489.

- B. Basis and obligations of verification of information**
- C. Acknowledgement and consideration of the distinction between firm and interruptible services**
- D. Recognition of contractual provisions governing interruptible service**
- E. Need for clarification of multiple ambiguities**

III. BACKGROUND

As noted in the Commission’s memorandum on the proposed amendments, there have been significant changes in both the natural gas and electric industries since the issuance of Order 489. This was felt never more keenly than with the onset of Winter Storm Uri in February 2021 when the Commission issued an emergency order temporarily modifying the natural gas utility priorities found in existing Order 489. This Emergency Order retained the 1st priority of deliveries to natural gas utilities and local distribution companies (LDCs) serving human needs customers, while elevating deliveries to electric generation customers to 2nd priority during extraordinary weather events. The issuance of this order proved to have significant value throughout the storm and the TPA applauds the effort of the Commission in making those difficult decisions under such emergency conditions.

With the proposed Rule § 7.455 largely reflecting the provisions of that emergency order, the TPA offers the following comments, considerations, and recommendations to help improve upon the rule as written and enable proper implementation of the rule.

IV. COMMENTS

A. Intrastate and interstate pipelines; Coordination of Federal and State Jurisdiction

While many of the TPA’s member companies are similarly situated to other intrastate transmission pipelines – providing firm and interruptible transportation services between physical and virtual market points, some have particular and unique interest in the curtailment standards promulgated by the Railroad Commission. For years, pipeline industry operators sought guidance from the Federal Energy Regulatory Commission (FERC) and the Railroad Commission (RRC or Commission) about whether intrastate interests may affect interstate interests in the event curtailment of service priorities is deemed necessary by a regulator, and if so, how. At the conclusion of that process, FERC clarified that even when a state regulator may determine curtailment priorities are necessary to protect human needs, the state regulator’s jurisdiction may not impede FERC’s jurisdiction over interstate service.²

² One commentor noted the need for additional clarity on how to define pipeline capacity reserved for RRC vs. FERC movements, suggesting it should be “as contracted.”

The Texas Pipeline Association appreciates the Railroad Commission’s care in recognizing that several pipeline operators are subject to both intrastate and interstate regulation.³ Consistent with this approach, the TPA requests additional clarity within proposed §7.455(c)(3), which currently requires gas utilities to utilize “all” transportation capacity in a manner directed by the Texas Administrative Code.⁴

To best address this concern, the TPA requests the directive of (c)(3) be modified to make clear that the Commission is providing direction concerning “all intrastate” transportation capacity.

B. Basis and obligations of verification of information

Several member companies submitting comments noted that while the proposed amendments provide for service priority based on a variety of characteristics that are known to the *user* of natural gas, this information is not always known or verifiable by a pipeline operator. When an operator delivers supply to a meter operator who in turn provides service that is further divided among multiple users downstream, the pipeline operator neither knows which customer downstream is using what amount of delivered gas or for what purpose that gas is being used.

Similarly, that operator has no information about, and would not be able to verify with any certainty, claims from a user about how much natural gas is needed to “prevent physical harm and/or ensure critical safety” to plant facilities as identified in priority (1)(C),⁵ or whether natural gas is being used in lieu of available alternate fuels as described in priorities (1)(E) and (F).⁶

To ensure seamless service during a curtailment event like that experienced during Uri,⁷ the TPA asks that the Commission specify that during such events, the pipeline is entitled to rely on representations by its customers about their priority status and has no obligation to conduct investigation into those representations before prioritizing service.⁸ The TPA believes the following would fit most naturally as follows:

³ See e.g., “Existing language in §7.455 is removed because interstate pipelines and Natural Gas Policy Act §311(b) pipelines are subject to the jurisdiction of the Federal Energy Regulatory Commission.” November 8, 2021, Memorandum on Proposed Amendments (Memo) at page 5, lines 8-9.

⁴ See Memo at page 8, line 17.

⁵ See, Memo page 9, line 3.

⁶ See, *id.* at lines 8-13.

⁷ The coordination between pipelines and end users would not be feasible in a URI type event unless pre-defined. In a normal single-point curtailment, this is feasible, but it is the TPA’s understanding that the intent is to provide for service during *emergency* curtailment events like those seen in February 2021.

⁸ To some extent, some members commented that they already have similar language in their transportation agreements discussing the nature of Intrastate Warranties. However, for the sake of continuity and clarity in an emergency event, the TPA believes this could be an important addition to curtailment standards.

§7.455(d)(1)(I) When applying the Standards and Priorities of this Section a gas utility may rely solely on the representations of its customers and/or their end users regarding the nature of customers' deliveries. A gas utility has no duty to investigate such representations.

C. Overbreadth of the definition of “Curtailed Event;” Further acknowledgement of the distinction between firm and interruptible services; Interruption is not Equivalent to Curtailed Event

All commenting members expressed concern that, as proposed, the definition of “Curtailed event” is overly broad and appears to apply to *all* circumstances of allocation or exceedance of capacity. The TPA believes it is the intent of the Commission to limit curtailment to events outside of the gas utilities’ control, such as extreme weather events. Additionally, the proposed rule seems to negate contractual arrangements where parties have previously agreed to various levels of service and relies on the curtailment standards in all circumstances when pipeline capacity is limited, even for isolated maintenance events or nominations in excess of capacity.

Texas Pipeline Association members offer their customers different schedules of service based on the customer’s assessment of its own needs and economic interests. A customer may elect and contract for *firm* service, reserving to that customer a portion of that operator’s capacity, subject to curtailment events beyond that operator’s control. This type of service is not subject to a prior claim by another customer who obtained a lesser class of service. This lesser class, known as *interruptible* service, affords the customer a limited claim on the operator’s capacity, subject not only to curtailment events beyond that operator’s control, but also interruptions based on events within their control. It is important to note that the operator determines not only when it will offer interruptible service, but also when it will interrupt customers who have elected such service, at its discretion, based on events that may be within its control. That is to say that it is a service that may be interrupted at any time, and from time to time, for any reason, whether caused by an event of force majeure or not, and may be done so without liability to the pipeline.⁹

An example of this would be if every interruptible customer on a particular pipeline tried to nominate the maximum quantity of gas that their contracts allowed for transportation, such demand would result in them not having their nominations confirmed, causing an interruption. This type of situation is specifically contemplated in an interruptible contract (or an interruptible tariff). Contrast this with firm service, which typically can only be interrupted in an event of Force Majeure or in accordance with the Commission’s

⁹ Each circumstance is fact specific and outcomes subject to the terms of the contract between the parties.

approved curtailment priority for that utility. The former is a possibility known by the parties at the time of contract. The latter is an unknown event not ever having been contemplated by either party. The TPA believes it is the intent of the Commission to address these latter, emergency types of events.

The TPA would also like to clarify that a Curtailment Event can be localized to a certain geographic region or functional area, and the mere inability of a pipeline to effectuate transportation or deliveries on one part of its system would not necessarily result in the disruption of lower priority services if such disruption would not impact that utility's ability to serve higher priority customers.

Finally, the TPA would like to point out that not all gas utilities are responsible for the delivery of supply. Some provide distinct functions within the midstream sector, from gathering, to processing, to potentially multiple stages of transfer and transport. For those lines responsible solely for the transport of natural gas (as opposed to ultimate delivery to the end-user), the TPA recommends including verbiage in the definition of "Curtailment event" that reflects these functions.

The TPA believes the Commission has considered these different schedules of services in its proposed amendments,¹⁰ but believes further clarity would be beneficial within the definition of Curtailment Event. To account for the concerns laid out above, the TPA suggests one of the following proposed definitions in §7.455(a)(2):

Proposal 1: Curtailment event – When a gas utility determines that its ability to transport or deliver gas it was contractually required to deliver may become inadequate to support continuous service to its firm customers on its system and it reduces deliveries to one or more firm customers. A decision to not offer or schedule interruptible service to interruptible customers does not constitute a curtailment event.

Proposal 2: Curtailment event – When a gas utility determines that its ability to transport or deliver gas may become inadequate to support continuous service to its firm customers on its system and it reduces deliveries to one or more firm customers. A decision to not offer or schedule interruptible service to interruptible customers does not constitute a curtailment event.

D. Recognition of Contractual Provisions Governing Interruptible Service

Some member companies expressed concern regarding priorities in proposed Section 7.455(d), which reads as follows:

¹⁰ See, e.g. Memo at page 3, lines 3-7.

(H) interruptible deliveries of natural gas made subject to interruption or curtailment under mutually agreed upon contracts and/or tariffs. Interruptible deliveries shall be made according to the priorities as listed in subparagraphs (A) - (G) of this paragraph.

Depending upon the ultimate determination of the definition of “Curtailment Event” (*see* “Interruption is not Equivalent to Curtailment” *above*), and what dates these priorities are in effect, the second sentence in §7.455(d)(1)(H) could have dramatic impacts on certain local distribution companies’ (LDCs’) customers, contracts, and rates.

Currently, interruptible customers pay rates commensurate with the priority level specified in their contracts and tariffs. If a Curtailment Event were to be in effect anytime a local distribution company determined that its ability to transport or deliver gas may become inadequate to support continuous service to any customer on its system, it would fundamentally alter the value of services received by the various classes of customers enumerated in this rule. As a result, for example, any interruptible service to an electric generator would be a higher priority, and thus, more valuable, than any interruptible service to an industrial customer.

Implicit in the agreement of any customer to subscribe to an interruptible service is the recognition that service may be interrupted.¹¹ Interruptible services should not have their priority determined by the Commission’s Proposed Curtailment Standards. Rather, they should all collectively be the lowest priority of service, exactly as they are now, and their priority should be determined by the agreements made by the contracting parties or assigned to that service in the applicable tariffs. To do otherwise would have the Proposed Curtailment Standards effectively dictating the value of interruptible services. This may inhibit the ability of parties to enter into interruptible contracts, as opposed to letting the free market dictate the rate at which interruptible services are contracted for.

E. Need for clarification of multiple ambiguities

Some TPA members submitted comments regarding the following ambiguities.

¹¹ This is recognized in the current general curtailment priority in Docket Order No. 489, where the lowest priority is: Interruptible sales made subject to interruption or curtailment at Seller's sole discretion under contracts or tariffs which provide in effect for the sale of such gas as Seller may be agreeable to selling and Buyer may be agreeable to buying from time to time.

Section 7.455(b) regarding Applicability. Subsection (b) potentially conflicts with the priority orders as written. Protecting human needs to whatever extent does not read that interruptible human needs should be in section (H) of priorities.¹²

Instead of:

(b) Applicability. This section takes effect on April 1, 2022. This section applies when any gas utility experiences a curtailment event. Each gas utility shall operate its systems and facilities to accomplish the purpose of protecting human needs customers to whatever extent and for whatever periods necessary.

The TPA recommends the following:

(b) Applicability. This section takes effect on April 1, 2022. This section applies when any gas utility experiences a curtailment event. Each gas utility shall operate its systems and facilities to accomplish the purpose of *servicing* human needs customers *in the manner described in subsection (d) of this section.*

Section 7.455(c) regarding Standards.¹³ The following standards set forth in subsection (c) are ambiguous and could conflict with the provisions of subsequent subsection (d).

(1) “gas utilities engaged in the purchase of natural gas for resale shall *augment* their supply of natural gas where it is *feasible* to do so” is ambiguous and unclear. Commentors request clarification on both the words augment and feasible, asking if the intent is for this to be a directive. (Obligation to buy more? At any price? From specific locations?)

(2) “until the needs of those customers have been met” is not only ambiguous but should also be read while remembering that the pricing associated with selling gas or the utilization of transportation capacity will continue to be subject to market rates negotiated and agreed upon at the time of contract.

(3) “transportation capacity within their control...” could be more clearly written as “transportation capacity not nominated for use by firm or NGPA Section 311 transportation customers.”¹⁴ Also, one or more commentor stated that “until such needs have been met if such capacity is necessary or useful to meet those needs” is ambiguous, and suggested more clarity be provided.

¹² Note, (H) is only feasible if the definition of curtailment event is limited; otherwise, curtailing interruptible service in these categories as a daily occurrence is not feasible and negates gas utilities’ contracted priorities for interruptible service in the normal course of business.

¹³ Commentors suggested that one or more of the below do not appear to be necessary if the pipeline is obligated to serve customers in accordance with the priorities set forth in subsection (d) and under the general obligations of subsection (b). It was further suggested that subsection (c) could be removed to avoid conflicts and the gas utility still retains the same obligation to serve as set forth in (b) and (d).

¹⁴ This is assuming subsection (c) is maintained as written.

Section 7.455(d) regarding Priorities.


One or more member(s) commented that in 7.455(d)(1), it appears that the provision is meant to apply to direct human needs customers and LDCs (not other pipelines), and thus should be stated as such in the rule. Further, in (d)(1)((E) and (F) comments were made that because gas utilities must rely on statements of industrial and commercial users for applicability, it is recommended that after the word “alternate,” the verbiage read “alternative fuel or raw material...”

One or more member(s) commented that in (d)(2), curtailment to the extent possible “on an equal basis” is ambiguous. It was recommended that instead it read “pro rata based on criteria applied by the gas utility on a non-discriminatory basis.”

V. CONCLUSION

The TPA is available to discuss any questions the Commission may have about its comments. We appreciate the collaborative leadership the Commission has shown on this important issue.

Respectfully submitted on January 7, 2022

By:  _____

Thure Cannon - President
Texas Pipeline Association