

**RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL**

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

COMMENTS OF COSERV GAS, LTD.

CoServ Gas, Ltd. (CoServ) is a natural gas local distribution company subject to the Commission’s jurisdiction. It provides natural gas service principally in areas north and east of Dallas and Fort Worth. The company provides natural gas service in Denton, Collin, Dallas, and Kaufman Counties, serving over 145,000 customers in 33 separate incorporated areas and in unincorporated areas. Approximately 98 percent of CoServ’s customers are residential customers. CoServ Gas has earned a reputation for safety, reliability, and unsurpassed customer service.

CoServ commends the Commission for proposing amendments to the Commission’s curtailment rules. As noted in the preamble to the amendments, “[s]ince Order 489 was issued by the Commission in January 1973, there have been significant changes in both the natural gas and electric industries.” An update to the rules is in order.

CoServ submits the comments that follow in order to assist the Commission in adopting a new rule that, among other things, addresses issues that have arisen since the adoption of Order 489 and prevents unnecessary disputes over the rule.

I. Priorities for deliveries by pipelines to local distribution systems

The proposed rule would address one of the principal shortcomings of Order 489 and the company-specific curtailment plans adopted under Order 489. This is the failure of Order 489 to adequately deal with the issue of priorities for deliveries of gas by transmission pipelines to local distribution systems. The current rule structure is focused

on deliveries to end-users and does not address deliveries by pipelines to LDCs. Although this issue was in part addressed by the Commission's February 12, 2021, emergency order, refinement would be helpful.

The proposed rule amendments go part-way to remedy the shortcoming by including in the first priority "deliveries of natural gas to local distribution systems which serve human needs customers." CoServ supports this concept and suggests that one additional provision is needed in order to help insure that in times of curtailment gas is directed to the priorities under the rule.

As worded, a local distribution system that serves primarily large industrial and commercial users, but had a few residential customers, would be treated by a pipeline the same as local distribution system with the reverse situation, namely primarily residential customers with a handful of large industrial and commercial customers. This result would be at odds with the stated purpose of the rule to ensure the priority of deliveries to human needs customers and others. Deliveries to local distribution companies during times of curtailment should take into account both the types and *extent* of customers to whom the gas would be redelivered and their demands for gas.

This situation could be addressed by adding the following language at the beginning of subsection (d)(2) that would require the flow-through of priorities between local distribution systems and pipelines:

(2) Deliveries of natural gas to local distribution systems shall be given priority for human needs and other customers as if such deliveries were direct deliveries to the customers of the local distribution system.

II. The term "firm" needs to be defined.

As used in the natural gas industry, in contracts and otherwise, the term "firm" means different things in different contexts. For instance, one contract may specify that firm means a delivery obligation subject only to interruption for traditional force majeure reasons, such as tornados and hurricanes. Another contract may say that firm means a

delivery obligation subject to interruption for any number of reasons, including “prior commitments” to other firm customers or “economic factors,” such as in favor of another “firm” customer paying a higher rate.

In order to address this concern, CoServ suggests adding the following definition under subsection (a):

“Firm” or “firm deliveries” -- service or deliveries under contractual provisions that describe the service or delivery as “firm,” regardless of contractual qualifying provisions. If the service in a contract is not described as either “firm” or “interruptible,” for purposes of this rule it shall be considered to be firm.

III. The phrase “on an equal basis” in subsection (d)(2) should be clarified to specify what “equal” means in the curtailment context.

Subsection (d)(2) on priorities states that “[c]ustomers within a priority class which is subject to curtailment shall be curtailed to the extent practicable on an equal basis.” It does not specify what “an equal basis” means – whether it’s an equal absolute amount, or an equal pro-rata or percentage amount based on a factor, such as historical usage during a comparable period. For this reason, CoServ recommends modifying the language to read:

Customers within a priority class which is subject to curtailment shall be curtailed on an equal percentage basis, based on the estimated consumption that would occur without curtailment.

IV. The provision for alternative curtailment plans in subsection (e) on curtailment plans should be modified to require notice and opportunity for hearing.

Curtailment plans can very much affect the rights of customers to receive gas during curtailment periods, including rights under contracts.¹ As proposed, the rule would allow

¹See, for example, *Houston Lighting & Power Co. v. Railroad Commission*, 529 S.W.2d 763, 766 (Tex. 1975): “A provision in the contract contrary to the superior regulatory authority would have been of no effect, because the statutes could not be nullified and because of the common law rule that a public service corporation cannot deprive itself of its duties to the public by means of contract.” (citations omitted)

administrative approval of company-specific alternative curtailment plans without notice or hearing. Notice and opportunity for hearing is necessary and appropriate in such situations, just as it is for the adoption of field rules for specific fields in lieu of statewide rules, changes in field rules, or exceptions to field rules such as Rule 37 exceptions. For this reason, the proposed rule should be revised to require notice to all of a utility's customers should it seek approval of an alternative plan and a requirement for hearing upon receipt of a timely complaint by an affected customer. Without notice and opportunity for hearing, the validity of alternative curtailment plans would, at best, be subject to dispute.

Accordingly, the proposed language in subsection (e), beginning on p. 10, line 4, should be revised to read:

Following notice to a gas utility's customers and opportunity for hearing, the Oversight and Safety Division may administratively approve the curtailment plan if no complaint or request for hearing is filed within thirty days of such notice.

V. The proposed removal of existing language in §7.455 regarding certain sales and assignments to the interstate market by intrastate pipelines is based on the incorrect premise that the pipelines so engaged “are subject to the jurisdiction of the Federal Energy Regulatory Commission.”²

The provisions currently found in Section 7.455 are there to help protect Texas gas consumers. Section 7.455 requires that Texas intrastate pipelines “provide adequate service” to existing customers in order to make NGPA §311(b)³ sales to the interstate market. This is consistent with the structure of §311(b) and the provisions of the Natural Gas Policy Act of 1978 (NGPA). Section 7.455 also applies to assignments of rights to surplus gas by intrastate pipelines to interstate pipelines or local distribution companies under §312⁴ of the NGPA.

² Preamble to proposed amendments, p. 5, lines 8 and 9.

³15 U.S.C. § 3371(b)

⁴15 U.S.C. § 3372(a)

Section 311(b) NGPA applies to *intrastate pipelines*, i.e., those *not subject to the jurisdiction of the Federal Energy Regulatory Commission*. Under this section, intrastate pipelines, such as those subject to the jurisdiction of and regulated by the Railroad Commission, are allowed to make certain sales to *interstate pipelines* and local distribution companies served by interstate pipelines without becoming subject to FERC jurisdiction under the Natural Gas Act of 1938.⁵ That is the central purpose of Section 311(b) – to allow intrastate pipelines to make such sales without becoming subject to FERC jurisdiction under the Natural Gas Act. While certain terms of such sales are subject to regulation by the FERC under the NGPA, that is far different than saying that these pipelines are generally subject to the jurisdiction of the FERC.

Similarly, Section 312(a) allows intrastate pipelines to assign certain gas rights to interstate pipelines without becoming subject to the FERC jurisdiction under the Natural Gas Act.⁶ As with Section 311(b), the purpose of this provision was to facilitate a greater movement of gas between intrastate pipeline markets and interstate markets. And as with Section 311(b) sales, while 312(a) assignments are subject to certain FERC requirements, the intrastate pipelines making those assignments are not generally subject to the jurisdiction of the FERC; they remain intrastate pipelines.

The provisions currently found in Section 7.455 help insure the availability of gas to customers of Texas intrastate pipelines in times of curtailment. Especially as the deletion of these provisions in the proposed new Section 7.445 was based on the incorrect premise that pipelines engaged in NGPA Section 311(b) or Section 312(a) sales or assignment transactions are generally subject to FERC jurisdiction, these provisions should be retained and not deleted.

⁵ See NGPA §601(a)(1) (15 U.S.C. 3431(a)(1)(B)), which reads in pertinent part: “The provisions of the Natural Gas Act and the jurisdiction of the Commission [FERC] shall not apply by reason of any sale of natural gas – (i) authorized under section 302(a) or 311(b); or (ii) pursuant to any assigned [sic; assignment] authorized under section 312(a).”

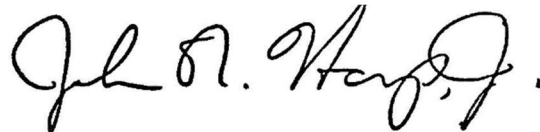
⁶ *Id.*

VI. Conclusion

CoServ submits that the changes suggested above are entirely within the spirit of the proposed rule amendments and would largely work to clarify certain points and avoid unnecessary disputes.

CoServ appreciates the opportunity to submit these comments and would welcome to discuss them further.

Respectfully submitted,



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