

January 7, 2022

Rules Coordinator  
Railroad Commission of Texas  
Office of General Counsel  
1701 N. Congress  
Austin, Texas 78701  
[rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov)

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

South Texas Electric Cooperative, Inc. (“STEC”) 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”). The deadline for comments is January 7, 2022. These comments are timely filed.

#### **EXECUTIVE SUMMARY**

STEC appreciates the Commission’s efforts to update its curtailment priorities in light of the significant changes that have occurred in the state since Order 489’s approval in 1973, and to formalize the curtailment standards rather than relying on emergency orders as was necessary in response to the February 2021 winter storm.

Under the Proposed Rules, like in Order 489, human needs customers are appropriately listed as first in priority in a curtailment event. “Firm deliveries of natural gas to electric generation facilities” are second in priority, behind only human needs customers. STEC supports the Commission’s recognition of the importance of electric generation facilities and the determination that deliveries to electric generation facilities should be prioritized during a curtailment event. The prioritization of electric generation should, however, be included as a component of human needs in the top priority, as individuals cannot heat their homes without electricity, and the supply, treatment, and heating of water is electricity-dependent, so power generation is a critical component of human needs.

In addition, STEC requests that when extreme weather conditions or other emergency situation causes a curtailment event, that human needs customers and electric generation facilities are prioritized for natural gas deliveries regardless of whether the facilities' gas transportation service is "firm," in order to protect the public interest.

Further, the Commission should add or refine certain definitions in the Proposed Rules in order to promote clarity. For instance, the Commission should clearly define "firm deliveries" of natural gas to eliminate any uncertainty as to the meaning of the term and to provide intrastate pipeline operators with a clear directive as to what entities fall within each tier during a curtailment event. The definition should also clarify that it encompasses firm transportation, and not firm supply, as supply can be cancelled in the event of a force majeure. Moreover, the Commission may alleviate some of the risk associated with force majeure claims by providing for greater transparency for intrastate pipelines, such that public information available for intrastate pipelines is akin to interstate pipelines.

STEC also requests the Commission provide greater clarity as to what qualifies as a curtailment event, or in the alternative, to require intrastate gas pipelines to provide a definition of "curtailment event" as part of their tariffs. 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 during an emergency. In addition, the term "Electric generation facilities" should expressly include electric generation facilities.

Finally, STEC believes the Commission should clarify a few key jurisdictional issues regarding the types of pipelines and the amount of natural gas being transported within the State of Texas that are subject to the Commission's jurisdiction and, thus, potentially impacted by this rule. STEC believes that both policymakers and industry need more clarity on the Commission's view of its jurisdiction and the corresponding magnitude of natural gas flows it believes it can impact in order to fully understand how this rule plays into the overall efforts by policy and industry leaders to improve the resilience and reliability of natural gas supplies to our power fleet. Once the Commission has identified the natural gas pipelines subject to Commission jurisdiction, those pipelines should then be required to provide certain information to the

Commission in order to foster transparency and to demonstrate compliance with the curtailment rule.

## DISCUSSION

### I. Background

#### A. STEC

STEC is a generation and transmission cooperative. It was formed in 1944 to provide wholesale electric services to member distribution cooperatives, which serve over 310,042 consumers in forty-seven South Texas counties. Power provided by STEC to its member cooperatives is generated from a variety of energy sources, including natural gas, wind, lignite, diesel fuel, solar and hydroelectric. STEC's member cooperatives serve a significant number of oil and gas operations in South Texas, including serving a significant portion of the Eagle Ford region.

#### B. Order 489

In 1973, the Commission approved Order 489, which set curtailment priorities for all natural gas utilities, except for those that submitted an individual curtailment plan.<sup>1</sup> Order 489 helped to ensure natural gas utilities had curtailment priorities, with deliveries for human needs customers as the top priority.

After Winter Storm Uri, the Commission issued an emergency order that modified the natural gas utility curtailment priorities in Order 489. Under the Emergency Order, human needs customers continued to be first in priority, with deliveries to electric generation facilities which serve human needs customers as second in priority. The Proposed Rules similarly include human need uses and electric generation facilities as the top two priorities in the event of curtailment.

STEC supports the adoption of the Proposed Rules, with the recommended revisions discussed herein.

### II. **Electric generation facilities should be included as a component of human needs customers.**

In response to Winter Storm Uri, and in recognition of the importance of electric generation facilities, the Commission's Emergency Order elevated natural gas deliveries for

---

<sup>1</sup> Oil And Gas Docket Gas Utilities Division No. 20-62,505 Docket No. 489.

electric generation to second in priority during a curtailment event. The Proposed Rules would likewise elevate firm deliveries to electric generation facilities as second in priority, above all other categories except for firm deliveries to human needs customers and to local distribution systems which serve human needs customers.

Electric generation facilities should, however, be included as a component of human needs in the top priority slot. As we learned from Winter Storm Uri, it is critical that electric generation facilities be able to supply power to residences and other human needs customers in order to ensure that these consumers have heat and power during emergencies. Over 60% of homes in Texas use electricity for home heating.<sup>2</sup> While over 60% of Texas homes directly rely on electric generation for heat, others rely on electricity to run their gas furnaces that are connected to thermostats and require electricity to power blowers and ignition devices. While this was probably not the case when modified Order 489 was adopted, today there is a very limited number of residences that can heat their homes solely with natural gas and without the aid of electricity. Texas residents also rely on electricity to heat water directly in electric water heaters. Electricity is also required to run both traditional and tankless water heaters that use natural gas as their heat source. This is in addition to the importance of electric generation to the supply, treatment, and transportation of water to residences to begin with. Electric generation facilities are thus a key component of meeting human needs.

STEC requests that electric generation facilities be considered as a component of human needs, and thus first in priority in a curtailment event under Section 7.455(d)(1)(A).

**III. During true emergency events, all deliveries to human needs customers and electric generation facilities should be prioritized.**

Under proposed Section 7.455(d), “firm deliveries” of natural gas to human needs customers and local distribution systems that serve such customers are given top priority, and “firm deliveries” of natural gas to electric generation facilities are listed as the second overall priority. Interruptible deliveries to human needs customers and electric generation facilities, however, are given a lower priority than all categories of firm deliveries, including firm deliveries

---

<sup>2</sup> U.S. Energy Information Administration, Texas State Energy Profile, available at [Texas - State Energy Profile Overview - U.S. Energy Information Administration \(EIA\)](#).

to industrial and commercial users. As discussed above, STEC believes it is imperative that electric generation facilities are included as a component of human needs in order to protect the public interest. It is also critical that *all* deliveries to human needs customers and electric generation facilities are prioritized in a true emergency event. Interruptible deliveries to human needs customers and electric generation facilities should be second in priority only to firm deliveries to such customers and facilities.

The purpose of the Proposed Rules appears to be two-fold: (1) to address gas utility-called curtailment events unrelated to emergency situations; and (2) true emergency situations where normal contractual provisions and market operations must be superseded in pursuit of the public interest. While it may be justifiable to prioritize firm transportation during a gas utility-called curtailment event that is not related to an emergency situation, such justification does not apply to true emergency situations. As Winter Storm Uri plainly demonstrated, Texas' most important public interest is supporting human needs, which includes the electricity generation needed to heat and power homes and supply, treat, transport and heat water throughout the state. In a true emergency situation, normal contractual provisions and market operations can and should be superseded in pursuit of the public interest.

Firm gas deliveries may not always be available to electricity generators, may not be necessary (e.g., if stored onsite fuel is available), or may just not be economical (e.g., for a gas-fired power plant that operates for less than 10% of all hours within a calendar year). Because firm delivery is not always available or economical for electric generation facilities, and these facilities rely on interruptible deliveries, the prioritization of firm deliveries over interruptible deliveries will lower the priority for many electric generation facilities, contrary to the spirit and intent of the Proposed Rules. A potentially life-threatening emergency is not an appropriate time to debate delivery terms, but rather, it is a time for Texas' critical industries to work together to keep Texans warm and safe.

STEC requests that when extreme weather conditions or other emergency situations cause a curtailment event, that human needs customers and electric generation facilities are prioritized for natural gas deliveries regardless of the facilities' transportation service. The Commission should make clear that, in the event of an emergency, interruptible deliveries to

human needs customers, to local distribution systems which serve human needs customers, and to electric generation facilities should be prioritized over all other deliveries, aside from firm deliveries to such customers and facilities.

**IV. Certain definitions should be added to or refined in the Proposed Rules.**

A. Definition of “Firm Deliveries”

STEC requests that the Commission define the phrase “firm delivery” to eliminate uncertainty and to provide intrastate pipeline operators with a clear directive as to which entities fall within each prioritization tier during a curtailment event. “Firm delivery” may be defined differently in individual contracts. While the term is most commonly used to describe transportation service that is not interruptible except in cases of force majeure, it is sometimes given other meanings, such as deliveries covered by a long-term contract. A clear definition should be provided in the rules and the Commission should make clear that its references to “firm delivery” in the Proposed Rules are limited to firm transportation and do not encompass supply. Neither Order 489 nor the Emergency Order address firm deliveries, or even use the term “firm.” The Proposed Rules are thus injecting a new concept into the Commission’s curtailment rule, and should not impose a requirement relating to firm deliveries that could be interpreted to include supply. The burden *cannot* be on having firm supply of natural gas, as supply can be always cancelled as a result of a force majeure event.

The Commission could and, we respectfully submit, should alleviate risks associated with firm delivery being compromised by force majeure claims by providing for greater transparency for intrastate pipelines, such that public information available for intrastate pipelines is more like interstate pipelines. Specifically, STEC recommends that all pipelines be required to publicly post on a daily basis the capacities of, and volumes flowing through, receipt and delivery points and mainline segments, so that all flows of natural gas throughout Texas may be tracked. In addition, intrastate pipelines should be required to provide gas flow data and trading prices for a period surrounding a force majeure event – e.g., beginning 48 hours before the claimed force majeure event and ending 48 hours after the interruption caused by the force majeure ceased.

B. Definition of “Curtailment Event”

The Proposed Rules defines the term “curtailment event” to mean “[w]hen 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 provides little guidance to shippers and end users, instead providing gas utilities the discretion to determining whether a curtailment event is occurring.

Rather than allowing gas utilities to unilaterally determine on a case-by-case basis whether a curtailment event is occurring, STEC requests the Commission either: (1) provide a clear definition of curtailment event, or (2) require intrastate gas pipelines to provide a publicly-available definition of curtailment event. Either alternative would promote clarity as to the specific conditions under which a curtailment event will occur.

Moreover, the State of Texas should consider issuing a disaster declaration in a weather emergency or other emergency situation that triggers a curtailment event under which the priorities in the Proposed Rules must be followed.

When curtailment events do occur, the Commission should require gas utilities to follow reporting procedures, detailing the customers to whom gas was delivered and the amount of gas delivered to each customer, to ensure that the Proposed Rules were followed.

C. Definition of “Electric generation facilities”

The definition of Electric generation facilities presently provides for only “bulk power system assets, co-generation facilities, distributed generation, or backup power systems.” This definition should be revised to list electric generating facilities connected to the bulk power system” prior to the terms that the definition also includes to be sure that the key component of the definition is included. In addition, the “or” in the sentence should be changed to an “and” to denote that all of these collectively are considered electric generation facilities for purposes of the rule.

**VII. Needed Clarity Regarding Jurisdictional Issues Impacting the Scope and Impact of this Rulemaking.**

STEC believes the Commission should clarify a few key jurisdictional issues regarding the types of pipelines and the amount of natural gas being transported within the State of Texas that are subject to the Commission's jurisdiction and, thus, potentially impacted by this rule. STEC believes that both policymakers and industry need more clarity on the Commission's view of its jurisdiction and the corresponding magnitude of natural gas flows it believes it can impact in order to fully understand how this rule plays into the overall efforts by policy and industry leaders to improve the resilience and reliability of natural gas supplies to our power fleet. Without an understanding of the amount of gas subject to the Commission's curtailment rule, it is impossible to predict the impact the Proposed Rules might have in an emergency situation.

Toward that end, STEC poses below questions to the Commission to hopefully provide additional information and clarity to the regulated community regarding the types of pipelines and the amount of natural gas being transported within the State of Texas that are subject to the Commission's jurisdiction. STEC respectfully requests that the Commission address each of the following questions in the preamble to the final rule:

- A. Please clarify, as part of this rulemaking, the types of natural gas pipelines that are subject to Railroad Commission jurisdiction.
- B. Please clarify, as part of this rulemaking, the types of natural gas pipelines that are required to comply with the curtailment rule. Or in the converse, please describe the types of natural gas pipelines that are not subject to the curtailment rule.
- C. During emergency events, does the Commission have jurisdiction to regulate the flow of all natural gas within intrastate natural gas pipelines in Texas?

In addition to providing responses to these three items in the preamble to the final rule, STEC respectfully requests that that the natural gas pipelines identified by the Commission as being subject to the curtailment rule be required to: (1) estimate curtailable gas demand by criticality tier; and (2) subsequent to a curtailment event, submit data to the Commission concerning the quantity of gas curtailed and gas delivered in order to demonstrate compliance with the Proposed Rules.

## CONCLUSION

STEC appreciates the opportunity to comment on this rulemaking. With the suggested revisions to the Proposed Rules discussed above and shown on the attached, and with the Commission's attention to the other items STEC has requested be a part of the preamble to the final rule, STEC supports the adoption of the Proposed Rules.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Nasi", is positioned above the printed name.

Michael J. Nasi

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

(RRC amendment in single underline and STEC's proposed edits in double-strikethrough and double-underline):

(a)(3) Electric generation facilities-~~electric generation facilities connected to the bulk power system, including Includes bulk power system assets, co-generation facilities, distributed generation and or backup generation.~~

(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 and deliveries to electric generation facilities;

(i) In the event of an energy emergency declaration by an electricity reliability coordinator that coincides with a gas utility curtailment, all deliveries, including interruptible deliveries, of natural gas to human needs customers, to local distribution systems which serve human needs customers, and to electric generation facilities shall be prioritized over all deliveries in Subsections (d)(1)(B)-(H).

(ii) Firm deliveries of natural gas to human needs customers, local distribution systems which serve human needs customers, and electric generation facilities shall be prioritized over all other deliveries of natural gas to such customers and facilities.

**STEC Note:** *If the Commission amends the Proposed Rules as indicated above, section (d)(1)(B) should be deleted and the remaining sections renumbered. If the Commission chooses not to amend (d)(1)(A) as indicated above, STEC requests modification of Subsection (d)(1)(B) as follows:*

(B) firm deliveries of natural gas to electric generation facilities

(i) In the event of an energy emergency declaration by an electricity reliability coordinator that coincides with a gas utility curtailment, all deliveries, including interruptible deliveries, of natural gas to electric generation facilities shall be prioritized over all deliveries in Subsections (d)(1)(C)-(H).

(ii) Firm deliveries of natural gas to electric generation facilities shall be prioritized over all other deliveries of natural gas to electric generation facilities.

(H) interruptible deliveries of natural gas made subject to interruption or curtailment under mutually agreed upon contracts and/or tariffs, except as provided in [Subsection (d)(1)(A) or Subsection (d)(1)(B)]. Interruptible deliveries shall be made according to the priorities as listed in subparagraphs (A) - (G) of this paragraph.

(2) For purposes of this section, the term “firm deliveries” shall mean a transaction for delivery of natural gas to a customer as agreed to by contract on a guaranteed basis, wherein the pipeline or third party supplier warrants that it will make the service available on every day of the contract unless prevented by an act of force majeure. A customer shall be considered to have “firm delivery” if it has a contract for firm transportation.

(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).