

# **TPA & TXOGA Joint Trade Comments to ERCOT'S Framework for Firm Gas Firm Fuel Supply Service Phase 2 Proposal**

**December 9, 2022**

## **INTRODUCTION**

The Texas Pipeline Association (“TPA”) and the Texas Oil and Gas Association (“TXOGA”), collectively the “Commenters,” appreciate the opportunity to submit these comments related to the proposed Firm Fuel Supply Service and the role intrastate pipelines play in serving gas powered electric generation.

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 nearly forty members who, collectively, engage in the gathering, processing, and transmission of natural gas and liquids through pipelines across Texas. As such we believe we are in a unique position to provide context and insight to these issues. These comments are submitted on behalf of TPA and do not necessarily reflect the opinions of any individual TPA member.

TXOGA is a statewide trade association representing every facet of the Texas oil and gas industry including small independents and major producers. Collectively, the membership of TXOGA produces in excess of 80 percent of Texas’ crude oil and natural gas, operates over 80 percent of the state’s refining capacity, and is responsible for the vast majority of the state’s pipelines. In fiscal year 2022, the oil and natural gas industry supported more than 422,000 direct jobs and paid \$15.8 billion in state and local taxes and state royalties, funding our state’s schools, roads and first responders.

While the current Electric Reliability Council of Texas (“ERCOT”) Framework for Firm Gas Firm Fuel Supply Service Phase 2 Proposal (the “Proposal”) seems to be limited in its applicability, the Commenters would take this opportunity to discuss the issues that we anticipate will be common to all firm gas supply proposals.

## **GENERAL COMMENTS**

The Proposal sets out requirements for firm gas storage agreements and for firm transportation agreements which provide for the transportation of gas from the storage facility to the generator. It is not clear whether the Proposal also applies to firm gas transportation agreements for other sources of supply. As noted below, intrastate natural gas pipelines provide both firm gas supply and transportation services. If the Proposal only includes the transportation function, then the Proposal should recognize that there is no obligation to deliver gas to a generator if the generators' supply is not delivered to the pipeline by the generators' supplier. While this may not be an issue most of the time, we have seen cases in extreme weather events where the transportation service was available, but the generator had no supply to be delivered.

Any Proposal finally adopted must be consistent with the way pipeline systems operate. A product also needs to be consistent with the common commercial practices of the oil and gas industry. If inconsistent, the product will not attract enough participation to achieve what ERCOT wishes to accomplish. The Proposal for example sets out requirements for the terms of the force majeure provision yet fails to describe what occurrences qualify as a force majeure event. The force majeure provision is one of the most important and one of the most commonly litigated contract provisions. Most companies have a force majeure provision, tailored to the gas industry, that is used across their contracts and may not be willing to change it if the FFSS requires a different provision. Similarly, gas transportation contracts will have operational requirements such as ratable flows and volume balancing over a period of time. Any Proposal needs to recognize or at least not be inconsistent with those operational requirements and how Texas intrastate natural gas pipelines and storage facilities operate in a competitive market, in order to actually create a product that works.

Additionally, the Proposal's requirement that: (i) the generator be provided with the right to monitor daily balances of storage capacity and flowing natural gas; and (ii) the pipeline and storage facility operator make available a detailed accounting indicating a reasonable estimate of daily and month-to-month; receipts is vague, overly broad and could result in the release of competitively sensitive information for both the pipeline and its customers.

## **Reliability Requirements**

Gas supply reliability requires three component parts: (1) access to multiple sources of supply such as gas production in more than one area or one field (2) gathering, processing and firm transportation agreements - or in the case where firm service is not offered, interruptible service with risk mitigating redundancies<sup>1</sup> and (3) the ability to store and withdraw gas as needed. For example, gas distribution systems in Texas use these components to create a firm gas supply plan which is why during Uri they managed to serve over 99.95% of their customers without interruption.

Both Texas intrastate and interstate pipelines offer reliable services but there are some differences. Texas intrastate pipelines are capable of providing all three components in one package- known as bundled service. Interstate pipelines on the other hand are prohibited from selling gas directly to customers connected to their pipeline. The Proposal classifies pipelines which can provide gas as inherently unreliable (intrastate natural gas utilities) but pipelines with no direct role in gas supply (interstate pipelines) as inherently reliable. The two systems operate very differently, no one fundamentally more reliable than the other.

The history of extreme cold weather events shows that such events cause fluctuations in the amount of production available on a given day for a variety of reasons. Although we expect that the Railroad Commission's new weatherization rules will aid in reducing production losses, it is unrealistic to expect an elimination of reductions. The potential shortfall in supply can be mitigated for those customers who have contracted to store natural gas or have contracted for the right to buy gas from storage when needed. Weather related fluctuations in production do not prevent storage gas from being delivered to those customers, thus making the fuel supply to those customers more reliable. The joint-trades support and appreciate ERCOT's recognition of the role storage can play in creating a firm fuel supply plan.

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<sup>1</sup> Traditionally, interruptible service customers either maintain internal storage sources or have an alternative source of fuel as interruptible contracts, if not expressly, then impliedly require installation of an alternative fuel capability.

## **Definition of “qualifying pipeline”<sup>2</sup>**

The ERCOT Proposal essentially defines “Qualifying Pipeline” as an interstate line falling under FERC jurisdiction, or an intrastate line that either 1) is not a gas utility pipeline or 2) is a gas utility but one that does not serve either human needs customers or local distribution companies (“LDCs”) that serve human needs customers.

Regarding the exclusion of gas utility pipelines in general, this requirement effectively eliminates all Texas intrastate gas transmission lines, all gas distribution lines and about half of the gathering lines in the state. All that is left are those gathering lines which qualify as “non-utilities” because they only connect wells to gas plants or transmission pipelines. That is to say they do not connect to power plants or any end-use customer.

The Commenters respectfully suggest ERCOT consult the gas supply chain map to determine whether there is any substantial amount of electric generation connected to gas transmission lines which *do not* serve a distribution company or human needs customers before excluding those major pipelines from being designated as a “qualifying pipeline.” Intrastate pipeline operators serve more than 80% of the state’s electric generation fleet.<sup>3</sup> To effectively exclude them from participating in this service would be doing a great disservice to Texans who are counting on reliable service.

## **The Railroad Commission’s curtailment rule**

The Proposal misunderstands the effect of the Railroad Commission’s (“RRC”) new curtailment rule.<sup>4</sup> This recently adopted rule is similar to an emergency order commissioners issued during Uri to prioritize natural gas deliveries for human needs. The RRC rule awards electric generation

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<sup>2</sup> “Qualifying Pipeline” will mean a pipeline that is (a) (i) a natural gas pipeline subject to the jurisdiction of FERC under the Natural Gas Act (15 U.S.C. Section 717 *et seq.*), (ii) an intrastate natural gas pipeline that is not a “gas utility” under Title 3 of the Texas Utilities Code, or (iii) an intrastate pipeline that is a “gas utility” under Title 3 of the Texas Utilities Code that has certified to the Generation Entity that it does not have any contracts with human needs customers or local distribution systems that serve human needs customers; and (b) a critical natural gas facility, as defined in PUC Substantive Rule 25.52(c)(2).

<sup>3</sup> There are 132 natural gas fired generators in the state of Texas. 118 of those are served by wholly intrastate pipelines. 10 are served by systems comprised of both inter and intrastate lines. 4 plants are served by purely interstate lines.

<sup>4</sup> In April 2022, the RRC adopted a new rule that sets priorities for firm gas supplies and transportation during emergencies like what we experienced in February 2021 with Winter Storm Uri.

with firm commitments the second highest priority after human needs customers and the distribution systems<sup>5</sup> which serve the homes and hospitals of Texas.

There are provisions in place regarding curtailment at the FERC level for regulated interstate pipelines that prioritize curtailment by class of service, *not* by type of customer. An electric generator which arranges for firm service from an interstate pipeline often shares that priority with all other customers, such as commercial and industrial customers, that contract for the same level of service. Under the Texas Railroad Commission's curtailment rule, however, those industrial and commercial customers with firm service will always be curtailed before electric generators with firm service.

It is important to acknowledge there are two points of possible curtailment- one at the gas supply level (the actual molecules), and one at the transportation capacity level. Because interstate pipelines do not directly sell gas, unlike most intrastate gas utility pipelines, the Railroad Commission curtailment rule provides a different level of protection for electric generators with regard to the actual fuel supply.

## CONCLUSION

All in all, the Proposal as drafted excludes pipeline facilities that are more than capable of providing reliable gas service particularly during extreme weather events, and in fact excludes most of the facilities that are connected to gas generation.

Firm service, both gas supply and transportation, individually or bundled, is available in Texas but it requires planning ahead and making the necessary contractual commitments. The Commenters appreciate ERCOT's interest and attention to these issues. We hope our comments help clarify the issues raised by the proposal and look forward to the discussion regarding the proposed rule and to participating when given the opportunity to do so.

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<sup>5</sup> Electric generation is second to LDCs because there is no such thing as a "rolling blackout" on a gas system. If service is lost on an electric system, the lights come back on as soon as the electricity flows again. By contrast, if service is lost on a LDC system, specialized service technicians must go to every meter at every home or business, shut off the meter, clear the line and then add gas back to restore pressure. When pressure is restored, the technicians must go inside every home or business, relight the pilot light and ensure any open valves are closed before the gas can be turned back on. Someone must be home or the service will not be restored. The loss of an LDC for even a small town can take weeks to completely restore - losing a large city would be catastrophic.