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RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Wayne Christian
Commissioner Christi Craddick
Commissioner Jim Wright

FROM: Haley Cochran, Attorney
Office of General Counsel *HC*

THROUGH: Alexander C. Schoch, General Counsel

DATE: November 8, 2021

SUBJECT: Proposed Amendments to 16 TAC §7.455, relating to
Curtailement Standards

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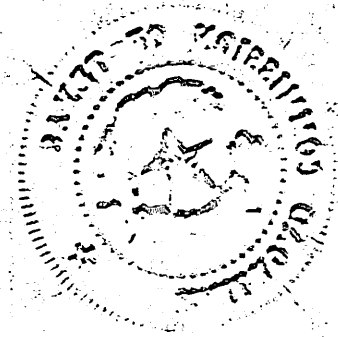
November 10, 2021		
Approved	Denied	Abstain
<i>WC</i>		
<i>CC</i>		
<i>JW</i>		

Attached is Staff's recommendation to publish proposed amendments to 16 Texas Administrative Code §7.455, relating to Curtailement Standards. The amendments are proposed to update the current curtailement priorities and programs contained in Oil and Gas Docket, Gas Utilities Division No. 20-62,505, Docket 489, commonly known as Order 489.

The proposed amendments to §7.455 are intended to fully replace and supersede Order 489 and, if adopted, will govern the delivery and sale of natural gas by gas utilities during a curtailement event. The amendments include a proposed effective date of April 1, 2022. Staff also recommends the repeal of §7.305, relating to Curtailement Program, because it references Order 489, which will be superseded by the proposed amendments to §7.455.

Staff requests the Commission's approval to publish the proposed amendments in the *Texas Register* for public comment. If approved at conference on November 10th, the proposal should appear in the November 26th issue of the *Texas Register*. The proposal and an online comment form would also be made available on the Commission's website, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Wei Wang, Executive Director
Kari French, Director, Oversight and Safety Division
Mark Evarts, Director, Market Oversight Section
Natalie Dubiel, Attorney, Office of General Counsel



1 The Railroad Commission of Texas (Commission) proposes amendments to §7.455, relating to
2 Curtailment Standards. The Commission also proposes the repeal of §7.305, relating to Curtailment
3 Program. The Commission proposes the amendments to §7.455 to update the current curtailment
4 priorities and programs contained in Oil and Gas Docket, Gas Utilities Division No. 20-62,505, Docket
5 489, commonly known as Order 489. Rule 1 of Order 489 allows gas utilities to file with the
6 Commission a specific curtailment program, unique to its operations, for approval. In the absence of a
7 filed and approved specific curtailment program pursuant to Rule 1, a gas utility must follow the Rule 2
8 priorities in Order 489 during a curtailment event. Rule 2 of Order 489 prioritizes the sale and/or delivery
9 of natural gas to a list of specific end-users and industries in the event a gas utility experiences a
10 curtailment event, with deliveries for residences, hospitals, schools, churches and other human needs
11 customers as the top priority. The Commission has, to date, approved six specific curtailment programs.
12 The priority list in Order 489 and, if applicable, an approved curtailment program, necessarily only take
13 effect when a gas utility must curtail, for one reason or another, some or all of its transportation and/or
14 sale of natural gas. In times of normal operations, a gas utility may transport and/or sell natural gas
15 pursuant to applicable Commission rules, state law, and its private contractual agreements.

16 Since Order 489 was issued by the Commission in January 1973, there have been significant
17 changes in both the natural gas and electric industries. The Commission recognizes the need to update the
18 curtailment priorities in response to those changes. Importantly, in February 2021, the Commission issued
19 an emergency order in recognition of the energy emergency due to Winter Storm Uri. The emergency
20 order temporarily modified the natural gas utility curtailment priorities in Order 489 to ensure the
21 protection of natural gas human needs customers and electric generation customers.

22 During Winter Storm Uri and since, the Commission received feedback from stakeholders
23 impacted by the emergency order. The majority of stakeholder feedback indicated the emergency order
24 had significant value during the storm and expressed support for the priorities in the emergency order;

1 namely, the elevation of natural gas deliveries for electric generation to a higher priority.

2 Therefore, the proposed amendments to §7.455 are intended to fully replace and supersede Order
3 489 and, if adopted, will govern the delivery and sale of natural gas by gas utilities during a curtailment
4 event. The proposed amendments reflect the same top two priorities as the emergency order with a few
5 changes based on stakeholder feedback after Winter Storm Uri. The amendments and any changes to the
6 emergency order are described below.

7 New subsection (a) includes proposed definitions for “Commission,” “Curtailment event,”
8 “Electric generation facilities,” “Gas utility,” and “Human needs customers.” The proposed definition for
9 “curtailment event” describes the circumstances that would trigger application of proposed §7.455. The
10 definition for “electric generation facilities” clarifies that the term includes bulk power system assets,
11 backup power systems, co-generation facilities, and distributed generation. The definition of “human
12 needs customers” is added to give gas utilities more guidance as to the customers that are included in the
13 top priority in a curtailment event.

14 New subsection (b) explains who is subject to the rule’s requirements and when the requirements
15 apply. The Commission recognizes that the new curtailment standards may take time to implement, and
16 therefore, proposed subsection (b) includes an effective date of April 1, 2022. After April 1, 2022, when
17 any gas utility operating in Texas experiences a curtailment event as defined in the rule, the gas utility
18 shall curtail deliveries according to the priorities listed in proposed subsection (d) unless and until the gas
19 utility has an approved curtailment plan pursuant to subsection (e).

20 New subsection (c) contains proposed standards for gas utilities required to comply with §7.455.
21 Proposed subsection (c)(1) incorporates authority from Texas Utilities Code §121.151(6) regarding the
22 Commission’s jurisdiction to prescribe fair and reasonable rules requiring pipelines to augment their
23 supply of gas.

24 New subsection (d) contains the proposed priorities, listed in descending order, for use by gas

1 utilities during a curtailment event. The priorities are largely incorporated from the emergency order
2 issued during Winter Storm Uri. One notable difference between the emergency order and the priorities in
3 subsection (d) is the inclusion of “firm” at the beginning of each category. This language is added to
4 clarify that firm deliveries have priority over interruptible deliveries during a curtailment event and to
5 increase the reliability of natural gas supply and delivery to natural gas human needs customers and
6 electric generation customers during a curtailment event. Prioritizing firm deliveries over interruptible
7 deliveries will help ensure reliable gas supply.

8 The language in the second priority, found in proposed subsection (d)(1)(B), is also different from
9 the emergency order. The emergency order included as the second priority deliveries of natural gas for
10 electric generation facilities which serve human needs customers. In proposed (d)(1)(B), the Commission
11 includes all electric generation facilities, not just those which serve human needs. This change is due to
12 stakeholder feedback after Winter Storm Uri that it is almost impossible to distinguish between electric
13 generation that serves human needs and that which does not. As noted above, the definition of electric
14 generation facilities clarifies that the term includes co-generation facilities and distributed generation. The
15 Commission understands, based on informal stakeholder feedback, that co-generation facilities are
16 generating facilities that produce electricity and another form of useful thermal energy (such as heat or
17 steam). Specifically, most co-generation facilities generate steam that can be put to some other productive
18 use on-site or downstream of the facility, while the power produced at the facility can be utilized by the
19 greater electric grid. Distributed generation is the generation of electricity from generators connected to
20 the electric distribution system, as opposed to traditional electric generation from a large, centralized
21 facility (such as a natural gas fired power plant, or a nuclear or coal-fired plant) connected to the electric
22 transmission system. The Commission is aware that during an event in which there may be load shed or
23 the potential for load shed, co-generation and distributed generation are important suppliers of electricity
24 to the grid, and therefore should be included in the definition of electric generation for purposes of this

1 rule.

2 Proposed §7.455(d)(1)(C) was not included in the emergency order. Stakeholder feedback during
3 and after Winter Storm Uri included potential human safety concerns over the unplanned shut down of
4 certain industrial and commercial plants due to natural gas curtailment. Specifically, there are large
5 industrial and commercial plants located throughout the state that, without at least a minimum flow of
6 natural gas, are unable to safely shut down operations without putting on-site staff and the surrounding
7 public in potential danger. Therefore, the Commission proposes prioritizing deliveries of a minimum
8 amount of natural gas required to prevent physical harm and/or ensure critical safety to plant facilities, to
9 plant personnel, or the public when such protection cannot be achieved through the use of an alternate
10 fuel.

11 The remaining priorities in proposed subsection (d)(1) align with those in the emergency order.

12 Proposed §7.455(d)(2) clarifies that customers within a priority class which is subject to
13 curtailment shall be curtailed to the extent practicable on an equal basis. If a customer's end-use
14 requirements fall under two or more priorities, then such requirements must be treated separately when
15 applying the priorities.

16 Proposed §7.455(e) explains the effect of the proposed amendments to §7.455 on Order 489 and
17 existing curtailment plans. Currently, the Commission has six approved curtailment plans on file with the
18 Commission. The Commission proposes that on April 1, 2022, §7.455 supersedes Order 489 and any
19 existing curtailment plans. Proposed subsection (e) would allow a gas utility to file its own curtailment
20 plan for approval with the Oversight and Safety Division. The first three priorities in any individual
21 curtailment plan must be consistent with the first three priorities listed in subsection (d)(1)(A) - (C) and
22 (2) of this section. A gas utility would be required to follow the priorities listed in subsection (d) unless
23 and until the gas utility has an approved curtailment plan on file with the Commission.

24 Proposed subsection (f) requires that gas utilities file a tariff with the Commission to include the

1 curtailment standards proposed in §7.455 or the gas utility's curtailment plan if a plan is approved by the
2 Commission. This requirement ensures customers have information regarding the gas utility's curtailment
3 plan.

4 Finally, proposed subsection (g) requires that utilities subject to §7.455 keep current emergency
5 contact information on file with the Commission. It is essential that Commission staff have current
6 emergency contact information to allow communication with utilities during emergencies like Winter
7 Storm Uri.

8 Existing language in §7.455 is removed because interstate pipelines and Natural Gas Policy Act,
9 §311(b) pipelines are subject to the jurisdiction of the Federal Energy Regulation Commission.

10 The Commission also proposes the repeal of §7.305, relating to Curtailment Program, because
11 §7.305 requires utilities to follow Order/Docket 489, which is superseded by the proposed amendments to
12 §7.455.

13 Kari French, Director, Oversight and Safety Division, has determined there will not be a cost to
14 the Commission. Ms. French has determined that for the first five years the proposed amendments and
15 repeal will be in effect, there will be minimal fiscal implications, if any, for local governments as a result
16 of enforcing the amendments.

17 Ms. French has also determined that the public benefit anticipated as a result of enforcing or
18 administering the amendments and repeal will be a more clearly defined natural gas curtailment priority
19 list, which gives priority to both natural gas and electric human needs customers and better reflects the
20 current natural gas and electric industries.

21 Ms. French has determined that for each year of the first five years that the proposed amendments
22 and repeal will be in effect, there will be no additional economic costs for persons required to comply as a
23 result of Commission adoption of the proposed amendments.

24 In accordance with Texas Government Code, §2006.002, the Commission has determined there

1 will be no adverse economic effect on rural communities, small businesses or micro-businesses resulting
2 from the proposed amendments and repeal. As discussed above, there will be no additional economic
3 costs for persons required to comply as a result of adoption of the proposed amendments and repeal;
4 therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility
5 analysis required under §2006.002.

6 The Commission has determined that the proposed rulemaking will not affect a local economy;
7 therefore, pursuant to Texas Government Code, §2001.022, the Commission is not required to prepare a
8 local employment impact statement for the proposed rules.

9 The Commission has determined that the proposed amendments and repeal do not meet the
10 statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225;
11 therefore, a regulatory analysis conducted pursuant to that section is not required.

12 During the first five years that the rule would be in effect, the proposed amendments would not:
13 create or eliminate a government program; create or eliminate any employee positions; require an increase
14 or decrease in future legislative appropriations; increase fees paid to the agency; create a new regulation;
15 increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal
16 an existing regulation; or affect the state's economy. As discussed above, the proposed amendments
17 incorporate an existing order into Commission rules and make changes to that order to reflect changes in
18 the regulated industry since the original order was adopted. Although § 7.305 is proposed for repeal, the
19 requirements of that rule are being incorporated into §7.455.

20 Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel,
21 Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
22 <https://rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings/>; or by electronic
23 mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5 p.m. on Friday,
24 January 7, 2022. The Commission finds that this comment period is reasonable because the proposal and

1 an online comment form will be available on the Commission's web site more than two weeks prior to
2 *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze,
3 draft, and submit comments. The Commission encourages all interested persons to submit comments no
4 later than the deadline. The Commission cannot guarantee that comments submitted after the deadline
5 will be considered. For further information, call Ms. French at (512) 463-8559. The status of Commission
6 rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

7 The Commission proposes the amendments and repeal under Title 3 of the Texas Utilities Code,
8 which gives the Commission jurisdiction over gas utility pipelines in Texas.

9 Statutory authority: Title 3 of the Texas Utilities Code, including §102.001, §102.003, and
10 §121.151.

11 Cross-reference to statute: Texas Utilities Code, Chapters 101-105 and Chapter 121.

12
13 §7.455. Curtailment Standards.

14 (a) Definitions. The following words and terms, when used in this section, shall have the
15 following meanings, unless the context clearly indicates otherwise.

16 (1) Commission--The Railroad Commission of Texas.

17 (2) Curtailment event--When a gas utility determines that its ability to deliver gas may
18 become inadequate to support continuous service to its customers on its system and it reduces deliveries
19 to one or more customers.

20 (3) Electric generation facilities--Includes bulk power system assets, co-generation
21 facilities, distributed generation, or backup power systems.

22 (4) Gas utility--An entity that operates a natural gas transmission pipeline system or a
23 local distribution company that is subject to the Commission's jurisdiction as defined in Texas Utilities
24 Code, Title 3.

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

4 (b) Applicability. This section takes effect on April 1, 2022. This section applies when any gas
5 utility experiences a curtailment event. Each gas utility shall operate its systems and facilities to
6 accomplish the purpose of protecting human needs customers to whatever extent and for whatever periods
7 necessary. When a gas utility experiences a curtailment event, the gas utility shall curtail deliveries
8 according to the priorities listed in subsection (d) of this section unless and until the gas utility has an
9 approved curtailment plan pursuant to subsection (e) of this section.

10 (c) Standards. During a curtailment event, each gas utility subject to this section shall operate its
11 systems and facilities in accordance with the following:

12 (1) gas utilities engaged in the purchase of natural gas for resale shall augment their
13 supply of natural gas where it is feasible to do so;

14 (2) gas utilities engaged in the purchase of natural gas for resale shall direct all available
15 natural gas supplies purchased for resale to serve human needs customers until the needs of those
16 customers have been met; and

17 (3) gas utilities shall utilize all of the transportation capacity within their control to
18 provide service to human needs customers until such needs have been met if such capacity is necessary or
19 useful to meet those needs.

20 (d) Priorities.

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

23 (A) firm deliveries of natural gas to human needs customers and firm deliveries
24 of natural gas to local distribution systems which serve human needs customers;

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

2 (C) firm deliveries of natural gas to industrial and commercial users of the
3 minimum natural gas required to prevent physical harm and/or ensure critical safety to the plant facilities,
4 to plant personnel, or the public when such protection cannot be achieved through the use of an alternate
5 fuel;

6 (D) firm deliveries of natural gas to small industrials and regular commercial
7 loads that use less than 3,000 Mcf per day;

8 (E) firm deliveries of natural gas to large industrial and commercial users for
9 fuel or as a raw material where an alternate cannot be used and operation and plant production would be
10 curtailed or shut down completely when natural gas is curtailed;

11 (F) firm deliveries of natural gas to large industrial and commercial users for
12 fuel or as a raw material where an alternate fuel can be used and operation and plant production would be
13 curtailed or shut down completely when natural gas is curtailed;

14 (G) firm deliveries of natural gas to customers that are not covered by the
15 priorities listed in subparagraphs (A) - (F) of this paragraph; and

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

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

23 (e) Curtailment plans. Order 489 and any curtailment plan approved by the Commission prior to
24 the effective date of this section is superseded by this section. A gas utility may file its own curtailment

1 plan for approval with the Oversight and Safety Division. A gas utility shall follow the priorities listed in
2 subsection (d) of this section unless and until the gas utility has an approved curtailment plan on file with
3 the Commission. The first three priorities in any individual curtailment plan must be consistent with the
4 first three priorities listed in subsection (d)(1)(A) - (C) and (2) of this section. The Oversight and Safety
5 Division may administratively approve the curtailment plan or the Commission may set the matter for a
6 hearing on its own motion or on the motion of any affected customer of the gas utility.

7 (f) Required tariff filings. Within 90 days of the effective date of this section, each gas utility
8 shall electronically file with the Commission, in the manner prescribed by the Commission, tariffs that
9 shall include either:

10 (1) the curtailment standards as specified in this section; or

11 (2) a curtailment plan approved by the Commission as specified in section (e)
12 of this section.

13 (g) Curtailment emergency contact information. Each gas utility shall maintain current
14 curtailment emergency contact information with the Commission and shall submit curtailment emergency
15 contact information on or before November 1 of each year.

16 ~~[The following category shall be included as the lowest priority category on all curtailment plans~~
17 ~~of public utilities subject to the jurisdiction of the Commission: deliveries of natural gas or sales of~~
18 ~~natural gas to the interstate market under the provisions of the Natural Gas Policy Act, §311(b) and §312,~~
19 ~~and 18 Code of Federal Regulations §§284.122 and 284.142.]~~

20 ~~[(1) No sales pursuant to §311(b) shall be made unless a public utility is able to provide~~
21 ~~adequate service to all of its existing intrastate customers. Adequate service includes all requirements of~~
22 ~~existing customers, notwithstanding contractual limitations, and gas needed to fill storage reservoirs for~~
23 ~~anticipated peak usage or to build up "line pack" to fill expected customer requirements.]~~

24 ~~[(2) No deliveries of natural gas which have been determined to be surplus pursuant to~~

1 ~~§312 shall be made except to the extent a public utility continues to comply with the requirements,~~
2 ~~including service to existing customers, imposed in the Commission order determining the amount of the~~
3 ~~surplus or in the contract of assignment of gas reserves from which the deliveries are being made.]~~

4 ~~[(3) No sales of natural gas pursuant to 18 Code of Federal Regulations §284.142 shall be~~
5 ~~made except to the extent a public utility continues to comply with the requirements, including service to~~
6 ~~existing customers, contained in the contract under which deliveries are being made or in any report~~
7 ~~required to be filed with the Commission.]~~

8

9 §7.305. Curtailment Program. [REPEAL]

10 ~~[All gas utilities within the state shall file curtailment programs with the Commission. Curtailment~~
11 ~~programs shall comply with the order issued in Gas Utilities Docket Number 489, as that order is hereby~~
12 ~~incorporated into this section, or the applicable curtailment order by the Commission for a specific gas~~
13 ~~utility.]~~

14

15 This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within
16 the agency's authority to adopt.

17 Issued in Austin, Texas on November 10th, 2021.

18 Filed with the Office of the Secretary of State on November 10th, 2021.



Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas