

**Oxy Energy Services, LLC Comments**  
**on Proposed Revisions to Rule 7.455**

**I. INTRODUCTION**

Oxy Energy Services, LLC (“Oxy”) appreciates the opportunity to provide comments on the proposed revisions to 16 Tex. Admin. Code § 7.455. Oxy understands that significant work and stakeholder feedback has gone into the proposed rule, and Oxy thanks Staff and the Commission for their work on this important issue. Oxy’s comments are primarily aimed at tightening the rule standards and clarifying the circumstances when curtailment requirements would apply. This will help avoid unnecessary curtailments and related disputes and will hopefully provide additional clarity to the utilities implementing this rule. Oxy has provided a redline reflecting its proposed changes as Attachment A and provides a narrative explanation for the proposed changes below. Oxy would welcome the opportunity to discuss any questions on these comments with the Commission.

**II. COMMENTS ON PROPOSED RULE LANGUAGE**

- A. The definition of “curtailment events” should be limited to situations where an extreme weather event limits the availability of natural gas such that a curtailment is necessary to serve human needs customers and protect public safety.**

Oxy understands that this curtailment rule is meant to protect the public safety by prioritizing human needs, electric generation, and certain safety processes during extraordinary extreme weather events resulting in widespread reductions in gas availability. Consistent with this understanding, Oxy is concerned that the proposed definition of a “curtailment event” is overly broad, as it includes any situation where a gas utility determines, in its sole discretion, that gas supply “may” be insufficient to deliver “continuous” service and the utility reduces deliveries to at least one customer. Under this proposed definition, a gas utility could theoretically declare a curtailment event any time it suspects that gas supply *could* be an issue and deliveries may potentially be reduced to any one customer, even without an extraordinary disruptive event.

Oxy recommends limiting the definition of “curtailment events” to situations where an identifiable disruptive event significantly reduces the availability of natural gas and curtailment is necessary to serve human needs customers and promote public safety. In Attachment A, Oxy has suggested limiting the applicability to an extreme “weather event” to ensure that curtailments are

not used outside of extraordinary circumstances. Oxy has proposed revisions to the definition of “curtailment event” that incorporates these concepts in Attachment A at § 7.455(a)(2) and has made several other conforming changes throughout the proposed rule.

**B. Subsection (b) (“Applicability”) should be revised to clarify the intended scope of the proposed rule.**

Consistent with Oxy’s proposed changes to the definition of a “curtailment event,” the Applicability language in § 7.455(b) should be revised to clarify the scope of the rule. As drafted, §7.455(b) creates ambiguity regarding when and how the rule should be applied. For instance, the sentence “This section applies when *any* gas utility experiences a curtailment event”<sup>1</sup> could be interpreted to require all gas utilities statewide to apply the rule if any one gas utility experiences a curtailment event. Additionally, the draft language requires gas utilities to engage in curtailments “to whatever extent and for whatever periods necessary”, which is an ambiguous and overly broad. Oxy is concerned that this language does not provide any reasonable parameters on the actions of a gas utility and could lead gas utilities to unnecessarily declare curtailment events or extend curtailments beyond what is necessary. In Attachment A, Oxy has proposed changes that would tighten up the first three sentences of the Applicability section by clarifying that the rule only applies (i) for the duration of a curtailment event, and (ii) to the extent necessary to protect human needs and public safety.

The Applicability section should also explicitly recognize that the scope of the rule is coextensive with the Commission’s jurisdiction over intrastate transportation provided by regulated gas utilities, and natural gas volumes that are owned by those utilities. Oxy understands this is consistent with the Commission’s intent but believes it is beneficial to make it explicit in the rule language. Oxy has added language to this effect in § 7.455(b) of Attachment A.

**C. Subsection (c) (“Standards”) should clarify that gas utilities have a duty to use commercially reasonable efforts to secure additional gas supplies before instituting curtailments.**

Curtailments should be an extraordinary, last resort tool. To that end, Oxy proposes to add language in subsection (c)(1) (under “Standards”) to clarify that a gas utility should use commercially reasonable efforts to secure additional natural gas supplies before implementing

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<sup>1</sup> Emphasis added.

curtailments. Oxy has proposed similar conforming changes to section (c)(2) and (c)(3) to clarify that the gas utilities should make use of any natural gas that they own or can acquire to meet the purposes of the rule.

**D. The curtailment hierarchy in subsection (d) (“Priorities”) should be simplified to focus on human needs, electric generation, and public safety.**

Oxy believes that some of the legacy priorities from Order No. 489 should be removed and the rule should focus on prioritizing human needs, electric generation (for human needs), and processes needed for public safety.<sup>2</sup> Consistent with Oxy’s position that this rule should be limited in scope to events that create widespread natural gas availability issues, gas utilities should be required to prioritize human needs and the public safety and, aside from safety needs, should not be required to sub-prioritize among various industrial or commercial users. Oxy believes that subsection (D) through (F) make the priority hierarchy overly complex and difficult to administer given the current purpose of this rulemaking. Accordingly, Oxy suggests eliminating draft §§ 7.455(d)(1)(D)-(F) in its attached redline.

Further, Oxy appreciates the attempt to clarify that interruptible contracts will be curtailed first, regardless of use. However, Oxy is still concerned that some entities may try to use the curtailment hierarchy to “jump the line” in an emergency, or that the hierarchy may create a disincentive for certain users to secure firm natural gas supplies or transportation capacity that should be obtained by a prudent operator. Oxy proposes adding the following language at the beginning of subsection (d): “Nothing in this Section 7.455 shall relieve an electric utility or industrial or commercial users from any duty to secure (or any liability for its failure to secure) firm supplies of natural gas and firm transportation capacity prior to a curtailment event.”

**E. Subsection (d)(2) (under “Priorities”) should specify that gas utilities will curtail customers within each priority class on a *pro rata* basis relative to historical deliveries.**

As drafted, § 7.455(d)(2) states that “[c]ustomers within a priority class that is subject to curtailment shall be curtailed to the extent practicable *on an equal basis*.”<sup>3</sup> Oxy believes that the language is ambiguous and subjective. For instance, “equality” could be interpreted to mean that each customer should receive the same curtailment level in terms of absolute volumes. Oxy

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<sup>2</sup> These sections reflect the default curtailment priorities established decades ago in Order No. 489, Rule 2, Sections (B)-(D). See <https://www.rrc.texas.gov/gas-services/curtailment-plan/>.

<sup>3</sup> Emphasis added.

believes that the intent of the rule was to ensure that within each priority class, curtailments will be conducted on an equitable, *pro rata* basis relative to customers' historical deliveries. This approach is more objective and aligns with the Commission's historical approach to curtailment. Oxy has proposed language to clarify this issue in section (d)(2) (under "Priorities") in Attachment A.

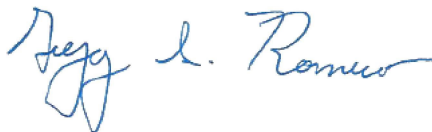
**F. Subsection (e) ("Curtailment Plans") should require certain information to be filed with a proposed plan and affected customers should have the right to protest curtailment plans.**

It is important that curtailment plans are fair and equitable and that users of gas utility systems understand how gas utilities will make curtailment decisions. The proposed rule only provides that the Commission "may" initiate a hearing upon its own motion or the motion of an affected customer.<sup>4</sup> Oxy has proposed new language that would give gas utility customers the right to protest inequitable curtailment plans. Oxy has proposed certain requirements based on Order No. 489<sup>5</sup> in a new subsection (e)(3) to require utilities to file information that will be necessary for the Commission and any affected customers to meaningfully review a proposed curtailment plan. Given the significant impact that inequitable or discriminatory curtailment policies can have on particular customers, Oxy believes it is appropriate to give customers who may be impacted by gas utility curtailment plans a right to protest such plans before the Commission.

### III. CONCLUSION

Oxy appreciates the work that Staff and the Commission have put into this draft rule and looks forward to its continued participation in this rulemaking process.

Respectfully submitted,



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<sup>4</sup> See <https://www.rrc.texas.gov/gas-services/curtailment-plan/>.

<sup>5</sup> See Attachment A at § 7.455(e).

## EXHIBIT A – OXY REDLINES TO PROPOSED RULE

### § 7.455. Curtailment Standards.

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

(1) Commission—The Railroad Commission of Texas.

(2) Curtailment event—~~When an extreme weather event that significantly reduces the availability of natural gas and which makes it necessary for a gas utility determines that its ability to deliver gas may become inadequate to support continuous service~~curtail deliveries of natural gas to its customers ~~on its system and it reduces deliveries to one or more customers~~for the purpose of prioritizing human needs and public safety in accordance with this Section 7.455.

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

(4) Gas utility—An entity that operates a natural gas transmission pipelines system or a local distribution company that is subject to the Commission’s jurisdiction as defined in Texas Utilities Code, Title 3.

(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.

(b) Applicability. This section takes effect on April 1, 2022. This section applies ~~when any gas utility experiences only for the duration of a curtailment event. Each gas utility shall operate its systems, and facilities only to accomplish the purpose of protecting human needs customers to whatever the extent and for whatever periods~~that curtailments are necessary to prioritize human needs and public safety. When a gas utility experiences a curtailment event, the gas utility shall curtail deliveries according to the priorities listed in subsection (d) of this section ~~unless and until the gas utility has any~~ approved curtailment plan pursuant to subsection (e) of this section. ~~Consistent with the Commission’s jurisdiction, the curtailment~~

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priorities in this rule apply only to natural gas volumes and transportation capacity that is owned by a gas utility, and shall not be applied to redirect natural gas volumes owned by unregulated entities.

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

(1) gas utilities engaged in the purchase of natural gas for resale shall ~~augment their supply~~ use commercially reasonable efforts to acquire additional supplies of natural gas where it is feasible to do so ~~prior to implementing curtailments on their systems;~~

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

(3) gas utilities shall utilize all of the transportation capacity within their control to provide service to human needs customers ~~in accordance with the priorities set forth in subsection (d)~~ until such needs have been met if such capacity is necessary ~~or useful~~ to meet those needs.

(d) Priorities.

(1) ~~Unless a~~Nothing in this Section 7.455 shall relieve an electric generator or industrial or commercial user from any duty to secure (or any liability for its failure to secure) firm supplies of natural gas ~~utility has an approved curtailment plan pursuant to subsection (e) of this section~~ and firm transportation capacity prior to a curtailment event. To the extent reasonably necessary, a gas utility shall apply the following priorities in descending order during a curtailment event ~~consistent with any approved curtailment plan:~~

(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;

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

(C) firm deliveries of natural gas to industrial and commercial users of the minimum natural gas required to prevent physical harm and/or ensure critical safety to the plant facilities,

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to plant personnel, or the public when such protection cannot be achieved through the use of an alternate fuel;

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

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

~~(F) — firm deliveries of natural gas to large industrial and commercial users for fuel or as a raw materials where an alternate fuel can be used and operations and plant productions would be curtailed or shot down completely when natural gas is curtailed;~~

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

~~(H)(E)~~ 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) - ~~(GD)~~ of this paragraph.

(2) Customers within a priority class which is subject to curtailment shall be curtailed on a pro rata basis relative to historical deliveries, 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.

~~(e)~~ Curtailment plans.

~~(1)~~ Order 489 and any curtailment plan approved by the Commission prior to the effective date of this section is ~~replaced and~~ superseded by this section.

~~(2)~~ A gas utility may file its own curtailment plan for approval with the Oversight and Safety Division. A gas utility shall follow the priorities listed in subsection (d) of this section ~~unless and until the gas utility has any~~ approved curtailment plan on file with the Commission. ~~The first three~~

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~~priorities in any~~ Any individual curtailment plan ~~must be consistent with the first three priorities listed in subsection (d)(1)(A) - (C) and subsection (d)(2)~~

(3) ~~A curtailment plan shall include (i) a summary of this section—the natural gas demand on a gas utility’s system and the natural gas demand associated with human needs customers, electric power generation and minimum safety requirements of industrial and commercial users consistent with the first three priorities listed in subsection (d)(1)(A)-(C), including at peak day and average daily deliverability on an annual basis, (ii) the capacity and locations of each underground storage facility, if any, attached to its system with a statement of whether the company’s storage balance is above or below its desired level and, if below, what plans the gas utility has to restore the balance, (iii) peak day and average daily deliverability on an annual basis of any natural gas from wells, gas plants and underground storage facilities attached to its system, (iv) peak day capacity on its system, (v) steps taken in past years, being taken at the present, and to be taken to alleviate curtailments, (vi) details regarding firm and interruptible components of the gas utility’s supply portfolio (including transport, purchases and storage), and (vii) any other information reasonably requested by the Commission. A gas utility shall update and resubmit its curtailment plan for approval with the Oversight and Safety Division annually.~~

~~(e)(4) The Oversight and Safety Division may administratively approve the curtailment plan if no protest is filed, or the Commission may set the matter for a hearing on its own motion or on the motion of. The commission shall set the matter for a hearing if it receives a protest of the curtailment plan from any affected customer of the gas utility.~~

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

- (1) the curtailment standards as specified in this section; or
- (2) a curtailment plan approved by the Commission as specified in section (e) of this section.



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(g) Curtailement emergency contact information. Each gas utility shall maintain current curtailement emergency contact information with the Commission and shall submit curtailement emergency contract information on or before November 1 of each year.

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

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

~~(2) — No deliveries of natural gas which have been determined to be surplus pursuant to §312 shall be made except to the extent a public utility continues to comply with the requirements, including service to existing customers, imposed in the Commission order determining the amount of the surplus or in the contract of assignment of gas reserves from which the deliveries are being made.~~

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

§ 7.305. Curtailement Programs [REPEAL]

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