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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

**THROUGH:** Alexander C. Schoch, General Counsel

**DATE:** April 12, 2022

**SUBJECT:** Adoption of Amendments to §7.455 and Repeal of §7.305

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

The amendments to §7.455 fully replace and supersede Order 489 and govern the delivery and sale of natural gas by gas utilities during a curtailment event. The amendments include an effective date of September 1, 2022. Staff also recommends the repeal of §7.305, relating to Curtailment Program, because it references Order 489, which is superseded by the amendments to §7.455.

On November 10, 2021, the Commission approved the publication of the proposed amendments in the Texas Register for a 30-day comment period, which ended on January 7, 2022. Staff recommends that the Commission adopt the amendments with changes to the proposed text as published in the November 26, 2021, issue of the Texas Register (46 TexReg 7941). The recommended changes are described in the attached adoption preamble.

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) adopts amendments to §7.455, relating to  
2   Curtailment Standards with changes and the repeal of §7.305, relating to Curtailment Program, without  
3   changes to the proposed text as published in the November 26, 2021, issue of the Texas Register (46  
4   TexReg 7941). The Commission adopts the amendments to §7.455 and the repeal of §7.305 to update the  
5   current curtailment priorities and programs contained in Oil and Gas Docket, Gas Utilities Division No.  
6   20-62,505, Docket 489, commonly known as Order 489.

7           The Commission received comments on the proposed amendments from seven associations and  
8   nine companies or organizations. The comments are summarized below.

9           Order 489, which is superseded by the amendments to §7.455, allowed gas utilities to file with  
10   the Commission a specific curtailment program, unique to its operations, for approval. In the absence of a  
11   filed and approved specific curtailment program pursuant to Rule 1, a gas utility was required to follow  
12   the Rule 2 priorities in Order 489 during a curtailment event. Rule 2 of Order 489 prioritized the sale  
13   and/or delivery of natural gas to a list of specific end-users and industries in the event a gas utility  
14   experiences a curtailment event, with deliveries for residences, hospitals, schools, churches and other  
15   human needs customers as the top priority. The priority list in Order 489 and, if applicable, an approved  
16   curtailment program, necessarily only took effect when a gas utility must curtail some or all of its  
17   transportation and/or sale of natural gas. In times of normal operations, a gas utility may transport and/or  
18   sell natural gas pursuant to applicable Commission rules, state law, and its private contractual agreements.

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

1           During Winter Storm Uri and since, the Commission received feedback from stakeholders  
2 impacted by the emergency order. The majority of stakeholder feedback indicated the emergency order  
3 had significant value during the storm and expressed support for the priorities in the emergency order;  
4 namely, the elevation of natural gas deliveries for electric generation to a higher priority.

5           Therefore, the amendments to §7.455 are intended to fully replace and supersede Order 489 and  
6 will govern the transportation and/or sale of natural gas by gas utilities during a curtailment event. The  
7 amendments reflect the same top two priorities as the emergency order with a few changes based on  
8 stakeholder feedback received after Winter Storm Uri and during the comment period.

9 §7.455(a) - Definitions

10           New subsection (a) includes definitions for “Commission,” “Curtailment event,” “Electric  
11 generation facilities,” “Gas utility,” and “Human needs customers.” In consideration of comments  
12 received, the Commission adopts subsection (a) with new definitions of “balancing authority,” “firm or  
13 firm deliveries,” and “interruptible or interruptible deliveries.” The Commission also adopts subsection  
14 (a) with changes to proposed definitions of “curtailment event,” “electric generation facilities,” and  
15 “human needs customers.”

16           Comments from Atmos Pipeline Texas (APT), ONEOK WesTex Transmission LLC (ONEOK),  
17 Texas LDCs (Atmos Energy Corporation’s Mid-Tex and West Texas Divisions; CenterPoint Energy  
18 Resources, and Texas Gas Service Company), the Texas Pipeline Association (TPA), the Texas  
19 Independent Producers and Royalty Owners Association (TIPRO), and the Texas Oil and Gas Association  
20 (TXOGA) requested clarification regarding what constitutes a curtailment event. Specifically, these  
21 comments asked the Commission to clarify that interruptions in service to interruptible customers do not  
22 constitute a curtailment event. The Commission agrees. This interpretation is consistent with how the  
23 Commission has historically interpreted its curtailment order, Order 489. Gas utilities interrupt deliveries  
24 to interruptible customers pursuant to contracts or tariffs. These interruptions must occur before any firm

1 customers are curtailed and, therefore, a curtailment event only applies to firm deliveries. The  
2 Commission adopts the definition of “curtailment event” with changes to reflect this position. The  
3 Commission also adopts a corresponding change in subsection (c), which is discussed further below.

4 APT and the Texas LDCs requested the definition of “curtailment event” be revised to clarify that  
5 a curtailment event can occur whether the gas utility pipeline provides transportation services or bundled  
6 sales. The Commission agrees but adopts a change in subsection (b) to address this concern.

7 Oxy Energy Services, Inc. (Oxy) and TIPRO asked that a curtailment event be limited to  
8 situations where an identifiable disruptive event significantly reduces the availability of natural gas.  
9 Relatedly, the South Texas Electric Cooperative (STEC) and Texas Competitive Power Advocates  
10 (TCPA) requested changes to the definition of curtailment event to prevent gas utilities from unilaterally  
11 determining whether curtailment is necessary. The Commission disagrees because circumstances that  
12 prompt a curtailment event vary and the gas utility is in the best position to determine when its ability to  
13 deliver gas to firm customers is inadequate. Additionally, the Commission is concerned that narrowing  
14 the definition of a curtailment event could inadvertently make the rule inapplicable during an event in  
15 which the rule should apply.

16 Alternatively, STEC and TCPA requested a requirement for gas utilities to define what  
17 constitutes a curtailment event in their tariffs and explain their process for allocating scarce gas supplies.  
18 TCPA recommended that gas utilities be required to make their Commission-approved curtailment plan  
19 publicly available on their websites. The Commission notes that incorporating Order 489 into §7.455 will  
20 ensure greater transparency for how gas supplies are allocated during a curtailment event and utilizing  
21 one definition of curtailment for all gas utilities increases regulatory consistency. During a curtailment  
22 event, a gas utility must allocate gas according to the priorities in subsection (c) of §7.455. A gas utility  
23 may file its own curtailment plan for approval with the Commission. However, the Commission adopts  
24 changes in §7.455(d) to incorporate notice and an opportunity for hearing when a curtailment plan is filed.

1           The Commission also received several comments requesting changes to the definition of “electric  
2 generation facilities.” APT commented that the definition is too broad. The Texas LDCs and the Texas  
3 Public Power Association (TPPA) asked that the definition include only those facilities that are actually  
4 capable of delivering electricity to the grid and exclude generation facilities that only produce electricity  
5 for a customer’s own consumption. The Texas LDCs suggested narrowing the definition to facilities that  
6 are required to register with the appropriate balancing authority because those facilities are capable of  
7 delivering electricity to the grid. The Commission agrees with these comments and adopts the definition  
8 of electric generation facilities with a change such that electric generation facilities are defined as  
9 facilities registered with the applicable balancing authority including bulk power system assets, co-  
10 generation facilities, distributed generation, and backup power systems.

11           STEC commented that electric generating facilities should be included in the definition of  
12 “electric generation facilities” and that the “or” in the proposed definition should be an “and.” The  
13 Commission adopts the definition with a change to replace “or” with “and.” The Commission interprets  
14 the term “bulk power system assets” to include electric generating facilities.

15           Due to the addition of “balancing authority” in the revised definition of “electric generation  
16 facilities,” the Commission adopts §7.455 with a new definition of “balancing authority,” which is  
17 defined as the Electric Reliability Council of Texas or other responsible entity that integrates resource  
18 plans ahead of time, maintains electricity demand and resource balance within a balancing authority area,  
19 and supports interconnection frequency in real time for a power region in Texas. The definition of  
20 “balancing authority” mirrors the definition in the North American Electric Reliability Corporation’s  
21 reliability standards.

22           The following commenters asked that the Commission add definitions of “firm” and  
23 “interruptible:” the Atmos Cities Steering Committee (ACSC), CoServ Gas, Ltd. (CoServ), the Fortifying  
24 & Bolstering Semiconductor Success Coalition (FABSS), STEC, and TCPA. The Commission agrees. It

1 is the Commission's understanding that a customer with firm service will have a contract or tariff that  
2 describes the service or delivery obligation as "firm." Therefore, the Commission adopts subsection (a)  
3 with a new definition of "firm or firm deliveries." Firm or firm deliveries are natural gas deliveries that  
4 are described as firm under a contract or tariff. The Commission also adopts subsection (a) with a new  
5 definition of "interruptible or interruptible deliveries." Interruptible or interruptible deliveries are natural  
6 gas deliveries that are not described as firm under a contract or tariff. The Commission does not have  
7 jurisdiction or authority over natural gas transportation or supply contracts and leaves it to the parties to  
8 those contracts to describe with detail the terms of their agreement.

9           STEC requested that the definition of "firm" clarify that it applies only to firm transportation, not  
10 firm supply, as firm supply can be cancelled in the event of a force majeure. It is the Commission's  
11 understanding that both firm supply and firm transportation can be cancelled in the event of a force  
12 majeure, so the Commission declines to make this change.

13           Relatedly, ACSC asked that the Commission explain how force majeure clauses in contracts fit  
14 into §7.455. The Commission declines to address this concern. Interpreting private contractual  
15 agreements is outside the Commission's authority. Whether a force majeure is properly issued under a  
16 contract is a question for the district courts of this state.

17           The Commission received three comments on the proposed definition of "human needs  
18 customers." First, the City of Houston requested that the definition be revised to include water and  
19 wastewater services. The Commission agrees and has revised the definition as requested.

20           TPPA asked whether the language "locations where people may congregate in an emergency" in  
21 the proposed definition of human needs customers includes city and county shelters. The Commission  
22 interprets this language to include city and county shelters and other places where people may congregate  
23 in an emergency.

24           The Texas LDCs asked that the definition of human needs customers include small commercial

1 customers that the LDCs cannot practically curtail without curtailing human needs customers. The  
2 comments stated that because residential, commercial, governmental, and industrial customers are all  
3 generally served off the same pipelines, there may be circumstances where an LDC is not able to curtail  
4 its non-residential customers without curtailing human needs. The Commission agrees and adopts the  
5 definition of “human needs customers” with the requested change.

6 Subsection (b) – Applicability

7 Subsection (b) explains who is subject to the rule’s requirements and when the requirements  
8 apply. The Commission recognizes that the new curtailment standards may take time to implement, and  
9 therefore, the Commission adopts subsection (b) with a change to the proposed effective date. The new  
10 effective date is September 1, 2022. After September 1, 2022, when any gas utility operating in Texas  
11 experiences a curtailment event as defined in the rule, the gas utility shall curtail deliveries according to  
12 the priorities listed in proposed subsection (c) unless and until the gas utility has an approved curtailment  
13 plan pursuant to subsection (d).

14 Oxy and TPA requested changes to subsection (b). Oxy asked the Commission to clarify that  
15 §7.455’s requirements only apply for the duration of a curtailment event and only to the extent necessary  
16 to protect human needs and public safety. TPA asked that the term “protecting” be replaced with  
17 “serving,” and that the Commission remove language requiring a utility to serve human needs “to  
18 whatever extent necessary” because the priorities adopted in subsection (c) address how human needs  
19 shall be prioritized. The Commission understands the proposed language could be interpreted too  
20 broadly and adopts subsection (b) with changes to address Oxy’s and TPA’s concerns.

21 As discussed in the next section of the preamble, several commenters raised questions about  
22 proposed language in subsection (c), particularly regarding the Commission’s jurisdiction and which gas  
23 deliveries are subject to §7.455. As discussed below, the Commission removed proposed subsection (c) in  
24 the adopted version of §7.455. Therefore, the Commission has addressed concerns about proposed

1 subsection (c) with changes to subsection (b). First, the Commission adopts subsection (b) with a change  
2 to clarify that §7.455 applies only to intrastate service on a gas utility's intrastate natural gas pipelines.  
3 The Commission has no jurisdiction over interstate pipelines. Second, the Commission adopts subsection  
4 (b) with new language stating that §7.455 applies to gas sales of natural gas owned by a gas utility and/or  
5 deliveries utilizing a gas utility's transportation capacity. The Texas LDCs asked that the Commission  
6 clarify that curtailments apply to transportation as well as sales. Oxy suggested language stating that the  
7 curtailment priorities in the rule apply only to natural gas volumes and transportation capacity that is  
8 owned by a gas utility and shall not be applied to redirect natural gas volumes owned by unregulated  
9 entities. The Commission agrees with the Texas LDCs and agrees in part with Oxy. The rule applies to  
10 deliveries of utility-owned gas as well as deliveries utilizing a gas utility's transportation capacity.  
11 Therefore, when a curtailment event occurs, a gas utility that owns the gas molecules in the pipeline must  
12 ensure its sales are made in accordance with the priorities in adopted subsection (c). If a curtailment event  
13 causes insufficient capacity on a gas utility pipeline and the capacity can only be used to deliver gas to  
14 certain firm customers, the rule would require that transportation capacity be utilized in accordance with  
15 the priorities in subsection (c).

16         However, as Oxy's comment noted, the rule does not require that gas utility pipelines redirect gas  
17 that is owned by unregulated entities (i.e., third party marketers) according to the priorities in subsection  
18 (c). As stated in *Railroad Commission of Texas v. City of Austin*, "the Commission has jurisdiction to  
19 regulate and apportion the sales and disposition of gas owned by each gas utility, so as to protect the  
20 public interest. This does not mean that all the gas in Texas is under the full control of the Commission. It  
21 may not deprive a person or a corporation which is not a gas utility of gas owned by such person or  
22 corporation. The fact that gas owned by someone or some entity other than the gas utility is being  
23 transported in a pipeline owned by a utility does not subject that gas to a disposition by the Commission.  
24 It may not determine title to gas, nor may it operate retroactively upon a transfer of title to gas." *R.R.*



1 *Comm'n of Tex. v. City of Austin*, 524 S.W.2d 262, 280–81 (Tex. 1975). To clarify this concept, the  
2 Commission adopts subsection (b) with new language at the end of the subsection, including language  
3 stating that the term “deliveries” in §7.455 includes sales and/or transportation service.

#### 4 Subsection (c) – Standards

5 STEC and TCPA asked the Commission to clarify the types of natural gas pipelines that are  
6 required to comply with §7.455. TPA and TPPA commented that proposed subsection (c) conflicts with  
7 the priorities outlined in proposed subsection (d). TPA suggested removing proposed subsection (c).  
8 TPPA requested clarification regarding the meaning of “feasible” in proposed subsection (c). ONEOK,  
9 TXOGA, and TPA requested that “intrastate” be added in subsection (c) to clarify the Commission’s  
10 jurisdiction.

11 As mentioned above, the Commission agrees that proposed subsection (c) created a potential  
12 conflict. Therefore, the Commission removes proposed subsection (c) (“Standards”) and adopts  
13 subsection (b) (“Applicability”) with several changes to address commenters’ concerns.

#### 14 Subsection (d) – Priorities

15 Due to comments, the Commission removed proposed subsection (c) and adopts proposed  
16 subsection (d) as subsection (c). The priorities contained in proposed subsection (d) are now found in  
17 §7.455(c).

18 Section 7.455(c) contains the priorities, listed in descending order, for use by gas utilities during a  
19 curtailment event. The priorities are largely incorporated from the emergency order issued during Winter  
20 Storm Uri. One notable difference between the emergency order and the priorities in subsection (d) is the  
21 inclusion of “firm” at the beginning of each category. This language is added to clarify that the  
22 requirements of §7.455 apply to firm deliveries of natural gas and the rule does not apply to interruptible  
23 deliveries, which are interrupted pursuant to mutually agreed upon contracts or tariffs prior to a  
24 curtailment event.

1           The Commission received several comments on the proposed priorities. Oxy commented that the  
2 rule should focus on prioritizing human needs, electric generation for human needs, and processes for  
3 public safety. Oxy asked that proposed subsections (d)(1)(D)-(F) be eliminated because they make the  
4 hierarchy overly complex and difficult to administer. The Commission disagrees. The priorities in  
5 adopted (c)(1)(D)-(F) have been administered by gas utilities for almost 50 years. The Commission  
6 concludes including the categories in (c)(1)(D)-(F) assists gas utilities in prioritizing the top three  
7 categories.

8           STEC and TCPA requested that electric generation facilities be elevated to the first priority  
9 alongside human needs customers. The Commission disagrees. Including both electric generation  
10 facilities and human needs customers in the top priority would place too many customers in the top  
11 priority and risk curtailment of residential natural gas customers. Preventing curtailment of residential  
12 natural gas customers is essential because a residential customer's gas must be shut-off and re-lit in  
13 person. Gas utility personnel must visit each individual home at least twice if a gas distribution system  
14 becomes inoperable—once to shut off the gas valve at the home and again to re-start the gas service. Loss  
15 of gas to residential customers also increases the likelihood that individuals will attempt to relight  
16 appliances and turn valves at their homes without proper safety precautions, presenting a significant  
17 public safety risk. If residential customers are curtailed because they are not exclusively top priority, it  
18 could take gas utilities months or longer to relight pilot lights and restore service to a significant portion  
19 of the over 4.5 million residential customers (households) with natural gas service in Texas.

20           STEC commented that in a true emergency or in extreme weather, interruptible deliveries to  
21 human needs and electric generation should be second only to firm deliveries to human needs and electric  
22 generation. Similarly, TPPA commented that interruptible supply to human needs customers, electric  
23 generation customers, and for plant protection should be prioritized above the other firm customers.  
24 Golden Spread Electric Cooperative, Inc. requested that the Commission include interruptible deliveries

1 to electric generation facilities alongside firm deliveries to electric generation facilities. FABSS requested  
2 including interruptible deliveries below each priority. For example, FABSS proposed including  
3 interruptible deliveries to human needs customers below firm deliveries to human needs customers but  
4 above firm deliveries to electric generation facilities.

5           The Commission disagrees that interruptible deliveries should be elevated because, as adopted,  
6 §7.455 only applies in a curtailment event and does not govern interruptions in service to interruptible  
7 customers made pursuant to contracts or tariffs. The Commission notes that prioritizing firm service over  
8 interruptible service incentivizes customers that want firm service to seek out and contract for firm  
9 service and incentivizes gas utilities to make additional investment in storage and pipeline capacity to  
10 provide firm service. The direct costs of firm service are incurred by the customers that purchase firm  
11 service. Elevating interruptible customers above customers who have purchased firm service weakens the  
12 incentives of this construct. In Texas, the costs of firm service to natural gas LDC customers are directly  
13 passed through to LDC customers who benefit from reliability resulting from firm service.

14           The Commission's proposal included language in proposed subsection (d)(1)(H) that instructed  
15 gas utilities how to interrupt their interruptible deliveries. The Commission does not adopt this language  
16 in §7.455. APT, the Texas LDCs, and TPA explained in their comments that interruptible deliveries are  
17 conducted in accordance with the governing contract or tariff, and that proposed (d)(1)(H) interfered with  
18 customers' ability to receive the level of service for which they have contracted and paid. Confusion  
19 about whether interruptible deliveries constitute a curtailment event created more support for removing  
20 proposed (d)(1)(H).

21           Regarding the second priority in subsection (c)(1)(B), Enchanted Rock, LLC's comment noted  
22 that firm fuel delivery options for distributed generation or backup power systems are sometimes not  
23 offered by local distribution companies. Enchanted Rock asked that the Commission consider elevating  
24 interruptible deliveries of natural gas to electric generation when firm delivery service is not offered.

1 FABSS's comment requested that interruptible deliveries to human needs customers, electric generation  
2 facilities, and for plant protection be elevated alongside firm deliveries when firm deliveries are not  
3 available on a commercially reasonable basis.

4 It is the Commission's understanding that firm service is not offered to certain customers for two  
5 reasons: (1) because pipeline capacity is insufficient to support firm service; and/or (2) because the  
6 customer is located at the end of the pipeline such that pipeline pressure is insufficient to support firm  
7 service. The Commission declines to elevate deliveries to these customers because granting them a higher  
8 priority would only be artificial – during a curtailment event, the pipeline capacity and/or pressure would  
9 still be insufficient to support prioritizing these customers.

10 The language in the third priority (§7.455(c)(1)(C)) addresses human safety concerns over the  
11 unplanned shut down of certain industrial and commercial plants due to natural gas curtailment.  
12 Specifically, there are large industrial and commercial plants located throughout the state that, without at  
13 least a minimum flow of natural gas, are unable to safely shut down operations without putting on-site  
14 staff and the surrounding public in potential danger. Therefore, subsection (c) requires prioritizing  
15 deliveries of a minimum amount of natural gas required to prevent physical harm and/or ensure critical  
16 safety to plant facilities, to plant personnel, or the public when such protection cannot be achieved  
17 through the use of an alternate fuel. APT and the Texas LDCs noted that this provision will be difficult to  
18 administer and may require new tariff provisions requiring customers to certify their plant protection  
19 needs so the gas utility knows how to prioritize those needs in a curtailment event. The Commission  
20 understands that gas utilities may need to propose new tariff provisions or otherwise implement new  
21 procedures to ensure they have correct information from customers. Similarly, ONEOK, TPA, and  
22 TXOGA commented requesting clarification that a gas utility may rely on the representations of its  
23 customers and/or their end users regarding the nature of the customers' deliveries. The Commission  
24 agrees and has included that language in (c)(3).

1           FABSS requested that the third priority include language regarding preventing personal injury in  
2 addition to preventing physical harm and ensuring critical safety. The Commission interprets the term  
3 “physical harm” to include personal injury and declines to adopt (c)(1)(C) with that change.

4           TXOGA requested a new provision to prioritize deliveries to motor fuel producers supporting  
5 critical infrastructure or emergency response. The Commission finds this provision would be difficult to  
6 administer. It is unclear how much gas would be necessary to support motor fuel producers and what is  
7 intended by “critical infrastructure or emergency response.” Also, it is the Commission’s understanding  
8 that motor fuel was generally available during Winter Storm Uri such that a changing the priorities in  
9 effect during Uri to address this issue is unnecessary.

10           The Commission adopts §7.455(c)(1)(A)-(G) with changes to remove references to “natural gas”  
11 in each priority. With the new definition of “firm or firm deliveries” in §7.455(a), including “natural gas”  
12 in each priority is redundant. The Commission also adopts non-substantive changes in subsection  
13 (c)(1)(E) and (F) to ensure language is consistent.

14           Section 7.455(c)(2) clarifies how customers within the same priority shall be curtailed. The  
15 proposed amendments indicated that customers within a priority class shall be curtailed to the extent  
16 practicable on an equal basis. ACSC noted that the term “priority class” did not appear elsewhere in the  
17 proposed rule and asked that the term be defined or changed to “priority.” The Commission agrees and  
18 adopts subsection (c)(2) with a change to remove “class.” APT noted that curtailment should only apply  
19 to customers within the same priority on the portion of the system subject to curtailment. Similarly, the  
20 Texas LDCs and TPA requested clarification that if a curtailment event is limited to a specific segment or  
21 LDC, then the gas utility is not required to apply the priorities to segments or systems that are not  
22 experiencing a curtailment event. The Commission agrees and adopts subsection (c)(2) with changes to  
23 address these concerns.

24           Coserv, Oxy, and TPA requested the Commission clarify what “on an equal basis” means. Oxy

1 and Coserv suggested that curtailment of customers within the same priority be conducted on a pro rata  
2 basis. The Commission agrees and adopts subsection (c)(2) with a change to require curtailment of  
3 customers within the same priority on a pro rata basis according to scheduled quantities.

4 ONEOK, TXOGA, and TPA requested language clarifying that a pipeline has no obligation to  
5 conduct an investigation into its customers' representations about which priority a customer falls under.  
6 The Commission agrees that when applying the priorities of §7.455, a gas utility may rely on the  
7 representations of its customers and/or their end users regarding the nature of customers' deliveries. The  
8 Commission adopts new subsection (c)(3) to address this issue.

9 Subsection (d) – Curtailment Plans

10 Section 7.455(d) explains the effect of the proposed amendments to §7.455 on Order 489 and  
11 existing curtailment plans. Currently, the Commission has six approved curtailment plans on file. On  
12 September 1, 2022, §7.455 supersedes Order 489 and any existing curtailment plans. Subsection (d)  
13 allows a gas utility to file its own curtailment plan for approval with the Oversight and Safety Division.  
14 The first three priorities in any individual curtailment plan must be consistent with the first three priorities  
15 listed in subsection (c)(1)(A) - (C) and (2) of this section. A gas utility would be required to follow the  
16 priorities listed in subsection (c) unless and until the gas utility has an approved curtailment plan on file  
17 with the Commission.

18 Regarding the proposed language on curtailment plans, the City of Houston requested that LDCs  
19 be required to submit a specific curtailment plan that identifies customers that provide critical public  
20 safety services rather than allowing LDCs to use the priorities as a default plan. The Commission declines  
21 to adopt a change to address this comment because it is more appropriately addressed in the City of  
22 Houston's franchise agreement with its gas utility.

23 Coserv, Oxy, and TPPA requested that the Commission require notice of a curtailment plan filing  
24 and opportunity for a hearing. The Commission agrees and adopts subsection (d) with a change to require

1 gas utilities to provide notice of a curtailment plan to their customers. A curtailment plan can only be  
2 approved administratively if no request for hearing is submitted within thirty days of the date of notice.  
3 Subsection (d) requires notice to be made in the form prescribed by the Commission. Prior to September  
4 1, 2022, the Commission will develop and post on its website a notice form for gas utilities to use in  
5 accordance with the requirements of this subsection.

6 Subsection (e) – Required tariff filings

7 Section 7.455(e) requires that gas utilities file a tariff with the Commission to include the  
8 curtailment priorities in §7.455 or the gas utility’s curtailment plan if a plan is approved by the  
9 Commission. This requirement ensures customers have information regarding the gas utility’s curtailment  
10 plan. The Texas LDCs recommended changing “curtailment standards” to “curtailment priorities.” The  
11 Commission agrees and adopts subsection (e) with “curtailment priorities.”

12 Subsection (f) – Curtailment emergency contact information

13 Subsection (f), proposed as subsection (g), is adopted without changes to the proposed text.

14 Removal of language related to the Natural Gas Policy Act of 1978

15 Existing language in §7.455 is removed because interstate pipelines and Natural Gas Policy Act,  
16 §311(b) pipelines are subject to the jurisdiction of the Federal Energy Regulation Commission (FERC).

17 Coserv commented that this language should not be removed because these pipelines are not  
18 subject to FERC jurisdiction and the language is needed to ensure availability of gas to customers of  
19 Texas intrastate pipelines in times of curtailment. ONEOK and TPA support the removal of this language  
20 and asked the Commission to further clarify this concept by adding “intrastate” transportation capacity in  
21 proposed subsection (c). The Commission agrees with ONEOK and TPA and clarifies this concept in  
22 subsection (b) (“Applicability”). The Commission disagrees with CoServ that the Commission has the  
23 applicable jurisdiction related to this rulemaking over Section 311(b) pipelines.

24 Additional Comments

1           STEC and TCPA requested a requirement that natural gas pipelines estimate curtailable gas  
2 demand by criticality tier and, subsequent to a curtailment event, submit data to the Commission  
3 regarding the amount of gas curtailed and delivered. STEC also asked that information regarding  
4 intrastate pipelines be made available similar to information on interstate pipelines. The Commission  
5 disagrees with these comments. First, criticality tier is not a term addressed in the rule. Second, estimating  
6 curtailable gas in advance of a curtailment event would be difficult without prior knowledge of the  
7 pipeline segment or segments that might be subject to curtailment, the cause of the curtailment event,  
8 and/or the duration of the curtailment event, all of which could vary widely. Third, posting gas volumes  
9 curtailed could lead to disclosure of sensitive customer information. Customer and delivery point  
10 information has been deemed confidential by the Office of the Attorney General (Tex. Att’y Gen. ORD-  
11 552 (1990)). In addition, it is the Commission’s understanding that information on interstate pipelines is  
12 made available because interstate pipelines are required to offer available capacity on an open access  
13 basis at cost-of-service rates. Posting available capacity is important for the interstate system because the  
14 interstate regulatory construct allows potential shippers to subscribe to and swap capacity if it is available.  
15 However, Texas law does not require pipelines to offer unbundled capacity. Texas law allows pipelines to  
16 negotiate their rates instead of requiring cost-of-service rates. Finally, the Commission concludes its  
17 proposal did not indicate to those required to comply with the amendments that extensive reporting  
18 requirements could be implemented. Therefore, the Commission views this suggestion as outside the  
19 scope and improper to implement without further opportunity for notice and comment.

20           FABSS requested a new curtailment scheme in which an application process allows qualified  
21 customers to register with their natural gas utility or LDC to be prioritized during a curtailment event. The  
22 Commission concludes its proposal did not indicate to those required to comply with the amendments that  
23 a new curtailment scheme could be implemented. Therefore, the Commission views this suggestion as  
24 outside the scope and improper to implement without further opportunity for notice and comment.



1           TIPRO asked the Commission to clarify that the curtailment rules only apply under an order by  
2 the Commission. The Commission disagrees. Section 7.455 applies during a curtailment event, which is  
3 triggered by a gas utility's determination that its ability to deliver gas may become inadequate to support  
4 continuous service to firm customers on its system.

5 Section 7.305 – Curtailment Program

6           The Commission repeals §7.305, relating to Curtailment Program, because §7.305 requires  
7 utilities to follow Order/Docket 489, which is superseded by the amendments to §7.455.

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

10           Statutory authority: Title 3 of the Texas Utilities Code, including §102.001, §102.003, and  
11 §121.151.

12           Cross-reference to statute: Texas Utilities Code, Chapters 101-105 and Chapter 121.  
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) Balancing authority--The Electric Reliability Council of Texas or other**  
17 **responsible entity that integrates resource plans ahead of time, maintains electricity demand and**  
18 **resource balance within a balancing authority area, and supports interconnection frequency in real**  
19 **time for a power region in Texas.**

20                   (2) Commission--The Railroad Commission of Texas.

21                   (3) Curtailment event--When a gas utility determines that its ability to deliver gas may  
22 become inadequate to support continuous service to **firm** ~~its~~ customers on its system and it reduces  
23 deliveries to one or more **firm** customers. **For the purposes of this section, an interruption of delivery**  
24 **or service to interruptible gas customers does not constitute a curtailment event. Prior to reducing**

1 **deliveries to one or more firm customers, a gas utility interrupts deliveries to interruptible**  
2 **customers pursuant to mutually agreed upon contracts and/or tariffs.**

3 **(4) Electric generation facilities--Facilities registered with the applicable balancing**  
4 **authority including ~~includes~~ bulk power system assets, co-generation facilities, distributed generation,**  
5 **and ~~or~~ backup power systems.**

6 **(5) Firm or firm deliveries--Natural gas deliveries that are described as firm under a**  
7 **contract or tariff.**

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

11 **(7) Human needs customers--Residences, hospitals, water and wastewater facilities,**  
12 **police, fire, military and civil defense facilities, and ~~other~~ locations where people may congregate in an**  
13 **emergency, such as schools and places of worship, and ~~hospitals, police, fire, military, and civil defense~~**  
14 **facilities. A human needs customer also includes small commercial customers that cannot**  
15 **practicably be curtailed without curtailing human needs.**

16 **(8) Interruptible or interruptible deliveries--Natural gas deliveries that are not**  
17 **described as firm under a contract or tariff.**

18 **(b) Applicability. This section takes effect on ~~September 1~~ April 1, 2022. This section applies**  
19 **when any gas utility experiences a curtailment event **affecting intrastate service on any of its intrastate****  
20 **natural gas pipelines. Each gas utility shall operate its systems and facilities to accomplish the purpose**  
21 **of protecting human needs customers to whatever extent and for whatever periods necessary. When a gas**  
22 **utility experiences a curtailment event, the gas utility shall curtail deliveries according to the priorities**  
23 **listed in subsection (c)~~(d)~~ of this section unless and until the gas utility has an approved curtailment plan**  
24 **pursuant to subsection (d)~~(e)~~ of this section. The curtailment priorities in this section apply to sales of**

1 **natural gas owned by a gas utility and/or deliveries utilizing a gas utility's transportation capacity.**

2 **The priorities in this section do not apply to sales of gas owned by an entity that is not a gas utility.**

3 **The term "deliveries" in this section includes sales and/or transportation service.**

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

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

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

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

14 ~~(c) (d) Priorities.~~

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

18 ~~(A) firm deliveries of natural gas to human needs customers and firm deliveries~~  
19 ~~of natural gas to local distribution systems which serve human needs customers;~~

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

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

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

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

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

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

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

14 (2) Deliveries to customers ~~Customers~~ within the same a priority on the portion of the  
15 system~~class~~ which is subject to curtailment shall be curtailed to the extent practicable on a pro rata basis  
16 according to scheduled quantities ~~an equal basis~~. If a customer's end-use requirements fall under two or  
17 more priorities, then such requirements must be treated separately when applying this schedule of  
18 priorities to the extent practicable. Transportation customers have equivalent end-use priorities as sales  
19 customers.

20 (3) When applying the priorities of this section, a gas utility may rely on the  
21 representations of its customers and/or their end users regarding the nature of customers'  
22 deliveries.

23 (d)(e) Curtailment plans. Order 489 and any curtailment plan approved by the Commission prior  
24 to 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 (c)(~~d~~) of this section unless and until the gas utility has an approved curtailment plan on file  
3 with the Commission. The first three priorities in any individual curtailment plan must be consistent with  
4 the first three priorities listed in subsection (c)(~~d~~)(1)(A) - (C) and (2) of this section. **A gas utility shall**  
5 **provide to its customers notice of an application for a curtailment plan. A gas utility shall provide**  
6 **notice on the same day the gas utility files its application with the Commission. The gas utility may**  
7 **provide notice by hand delivery, by first class, certified, registered mail, commercial delivery**  
8 **service, electronic methods, or by such other manner as the Commission may require. The notice**  
9 **shall be in the form prescribed by the Commission. The Oversight and Safety Division may**  
10 **administratively approve the curtailment plan if no request for hearing is filed within thirty days of**  
11 **such notice. The Commission shall set the matter for hearing if it receives a timely request for**  
12 **hearing from a customer of the gas utility. ~~The Oversight and Safety Division may administratively~~**  
13 ~~approve the curtailment plan or the Commission may set the matter for a hearing on its own motion or on~~  
14 ~~the motion of any affected customer of the gas utility.~~

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

18 (1) the curtailment **priorities** ~~standards~~ as specified in this section; or  
19 (2) a curtailment plan approved by the Commission as specified in **subsection**  
20 **(d)(~~e~~)** of this section.

21 (f)(~~g~~) Curtailment emergency contact information. Each gas utility shall maintain current  
22 curtailment emergency contact information with the Commission and shall submit curtailment emergency  
23 contact information on or before November 1 of each year.

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

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

9                   ~~[(2) No deliveries of natural gas which have been determined to be surplus pursuant to~~  
10 ~~§312 shall be made except to the extent a public utility continues to comply with the requirements,~~  
11 ~~including service to existing customers, imposed in the Commission order determining the amount of the~~  
12 ~~surplus or in the contract of assignment of gas reserves from which the deliveries are being made.]~~

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

17  
18  
19 §7.305. Curtailment Program. [REPEAL]

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

24

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This agency hereby certifies that the rules as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on 4/12/2022, 2022.

Filed with the Office of the Secretary of State on April 12th, 2022.

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