



December 1, 2022

The Texas Pipeline Association (TPA) appreciates the opportunity to submit these comments related to the Gas Electric Harmonization (GEH) forum stated purpose of identifying “measures to improve the ability of generators to obtain fuel during extreme cold weather events when natural gas heating load and natural gas-fired generators are both in high demand for natural gas, at the same time that natural gas production may have decreased.”

INTRODUCTION

The TPA is the largest state trade association in the country representing solely the interests of the intrastate pipeline network and the Texas pipeline industry. The TPA consists of nearly forty members who, collectively, engage in the gathering, processing, and transmission of natural gas and liquids through pipelines across Texas. As such we believe we are in a unique position to provide context and insight to these issues. As we were made aware recently that this forum’s discussions had turned to our member’s operations within the state as well as our advocacy efforts as an association, we submit the following comments in response to the most recent November 8th call. They are no way intended to be an exhaustive list of efforts carried out since Winter Storm Uri. These comments are submitted on behalf of TPA and do not necessarily reflect the opinions of any individual TPA member.

GENERAL COMMENTS

First and foremost, it must be said that the bulk of proposals put forth by competitive generator advocacy groups both at the state level and now in this federal forum have little if anything to do with increasing the reliability of the Texas natural gas system, the electric generation fleet, or the operation of the electric grid. As discussed in more depth below, the primary barriers to obtaining fuel during extreme cold weather exist in an electric market that, by design, does not allow generators a means of recovering the costs associated with securing firm service and provides generators no certainty as to when their assets will be called upon to provide service. Neither of those issues could be remedied by upending a thriving natural gas market in Texas.

The Texas Pipeline Association (TPA) has been, and continues to engage with state regulators, legislators, electric generation counterparts as well as upstream natural gas stakeholders and downstream consumers to address any actual or perceived problems attributable to the intrastate natural gas system. Those efforts are detailed in greater depth below, but as a general matter, the TPA has stood ready and willing to serve as a resource in discussing these very technical and intricate concepts. Since the storm, however, electric industry representatives, most notably power generation advocates, have continued to push for the state of Texas to adopt policies more in line with federally regulated interstate lines, yet are seemingly unable to articulate specifically what doing so would achieve given the remarkable differences between the two market structures.

Below is a summary of responses we have given to concerned parties over the past year and a half regarding regulation and operation of intrastate pipelines, a high-level overview of the differences between the inter and intrastate natural gas markets, as well as examples of ways issues can be addressed that are the subject of NAESB Gas-Electric Harmonization (GEH) Forum Survey.

EXECUTIVE SUMMARY

1. Misconceptions regarding intrastate advocacy efforts during the past year and a half
2. High-level overview of the differences between the inter and intrastate natural gas markets
3. Issues identified by the GEH Forum Survey that *can* be addressed

RESPONSES TO NOVEMBER 8 GEH FORUM CALL

- 1. Misconceptions regarding intrastate advocacy efforts during the past year and a half**

Regarding the assertion that there is a lack of engagement or cooperation on the part of the intrastate pipelines in conversations regarding reliability of the electric grid

The Texas Pipeline Association has participated in every legislative hearing and regulatory rulemaking on these issues since the winter storm. One such rulemaking at the Railroad Commission of Texas (RRC) adopted a new curtailment rule similar to the emergency order commissioners issued during Uri to prioritize natural gas deliveries for human needs.¹ That order allowed 99.95% of residential gas utility local distribution customers to maintain natural gas service during the storm. The rule also elevates gas deliveries to electric generation facilities as high priority - higher than under the previous rule and second only to

¹ 16 Tex. Admin. Code 7.455

human needs customers and the distribution systems which serve the homes and hospitals of Texas, to name a few.

In addition to this modification, over a dozen pieces of legislation have been enacted in the state to address gas and electric reliability during extreme weather events, including increased coordination between the two industries. The following is just a sampling of the state-stewarded initiatives put into place since the conclusion of Winter Storm Uri: implementation of SB 3 directing the Designation of Critical Infrastructure facilities at both the PUC and the RRC, the adoption of weather preparedness standards at both the PUC and the RRC; Completion of the Texas Energy Supply Chain Map; and the formalization of a committee with the sole purpose was fostering communication between the gas and electric industry prior to any sort of winter event or other emergency, also known as Texas Energy Reliability Council (TERC). This council, of which intrastate pipelines are participants, has met every month since becoming operational. TPA participated in discussions in the drafting of the various pieces of legislation and commented on all major rulemakings at each of the relevant agencies.

While some claim that they are yet to have any meaningful dialogue or engagement from the intrastate pipelines, such statements are categorically false. The Texas Pipeline Association and several of its member companies have met with these advocacy groups and its members on several occasions since the February 2021 storm. Respectfully, it is not a lack of engagement from the pipelines, but rather an unwillingness on the part of the generators to accept our responses to their proposals. Those responses, and the reasoning behind them, will be detailed in more depth below. However, to assert that the industry as a whole has been unwilling to come to the table is blatantly misleading, if not a demonstration of an inability or unwillingness to engage in good faith.

The contention that the only level of response given was “you just need to get firm fuel” is also false. While we agree that securing contracts for firm supply, transport and storage is the most reliable method of ensuring natural gas delivery to a generator, we do not, nor have we ever stated that it is the only remedy to the generator’s concerns. We *do* recognize that in one instance, there is a pipeline serving a power generation plant that is dedicated to serving local distribution companies (LDCs), i.e. human needs customers, and therefore is unable to offer firm service.² This line was built specifically for, and is dedicated to, LDC service. It was built out from those LDCs to producing regions many decades ago and has never

² LDCs are understandably prohibited from offering firm service to other non-human needs customers, even if some of those customers may provide electricity to some human needs consumers as well as commercial, industrial, and other sorts of end users.

offered firm service to any third parties. Those who have built facilities on that line, and those purchasing plants built on that line, did so with that knowledge from the beginning. To make a blanket statement insinuating that a single circumstance is somehow applicable to all operations in the state, and then using that single circumstance as some form of justification for a complete overhaul of an otherwise successful system, profoundly misconstrues the actual state of operations in Texas.

That information notwithstanding, there are a number of intrastate pipeline operators who are willing to build lines out to that area and have offered to do so in return for securing firm transportation contracts. Those generation facilities have had ample opportunity since the time of building or purchasing facilities on that line to do so, but to date, have not.

If, for whatever reason, a generator does not want to enter into firm service contracts in order to ensure availability of firm service to their facility, it should be noted that other mitigation mechanisms exist to help those operators stay up and running, even if their deliveries of gas get curtailed or otherwise interrupted. Traditionally, interruptible service customers either maintain internal storage sources or have an alternative source of fuel as interruptible contracts, if not expressly, then impliedly require installation of an alternative fuel capability.³ That is to say, that even in the single instance where firm transportation service is not currently offered, it is well-established that there are other ways of bolstering reliability.

The assertions that certain generation groups are eager to work with the TPA on these issues, but that our response has been “there is not a problem,” is also false. As stated above, we have engaged with all stakeholders and regulators every step of the way, and as stated above it appears that the problems identified by those generators are ones that can only be rectified by the PUC and ERCOT, not ones that could or should be addressed by turning the natural gas industry in Texas upside down or by asking government regulators to interfere with the free market principles that make doing business in Texas so desirable. It is clear that some generators do not share this vision of what the competitive market should look like.

Regarding the assertion that the Texas intrastate market lacks transparency

It has been stated on more than one occasion that there is no transparency when it comes to intrastate pipelines in Texas. One such assertion is that “pricing,” i.e. the rates for transportation and storage, are not posted anywhere by intrastate pipeline and/or storage operators.

³ 49 FPC at 911-12, cited in *Arkansas Power & Light Co. v. Federal Power Commission*, 517 F.2d 1223, 1230 (1975).

Contrary to these statements, both transportation and storage rates are required to be posted in Railroad Commission tariffs to the extent that the facilities are gas utilities- that is, that they are part of an intrastate pipeline system.⁴ Currently, under 16 Tex. Admin. Code 7.315, the following are just some of the provisions a gas utility is required to include in their tariff filings:

- a list of services the utility provides under the tariff (including transportation, underground storage, residential sales, sales for resale, electric generation sales, and “other.”);
- the current rate detailing all charges that may apply under the contract as well as a description of the components used in calculating that rate, including any penalties, fees or taxes; any rate adjustment provisions; and
- the effective date of both the original agreed rate and that of any amendments.

There are additional requirements for gas utility distribution system services or sale, transportation and exchange services or rates, and transaction by a gas utility with another utility including filing contractual points of delivery and indicating whether the transaction is between affiliates. Note, while the customer’s name is required to be filed in the tariff with the Commission, one or both parties may request that information be kept confidential. Often, the customer is the one who requests their name be kept confidential.

As detailed more below, Texas is a competitive market and in a competitive market you do not publish your customer’s private contracts. Further, doing so would do nothing to enhance reliability.

Regarding the GEH forum being the appropriate venue for discussions involving state regulatory policy

It was asserted during the last GEH call that this is not the appropriate forum for these discussions to take place, and the TPA must agree. While we understand what a crucial role Texas natural gas plays in supplying other states as well as other countries, it cannot be overstated how unique Texas is in comparison, even to other states that have intrastate lines like California and Pennsylvania. Whatever reforms are recommended as a byproduct of these discussions will undoubtedly affect other states differently than they will in Texas. No blanket recommendation can be made that, if implemented, would achieve a uniform result.

The state has been working non-stop since the storm to bolster reliability between the two industries and we expect those efforts to continue into the upcoming legislative session. The Chairman of the Texas PUC and the CEO and president of ERCOT have stated publicly, on multiple occasions, that the reforms put in place since last session are more than sufficient to ensure that we as a state never again experience a

⁴ There are slightly less than 10,000 negotiated rate tariffs currently on file at the Railroad Commission.

reliability crisis like the one we saw during Winter Storm Uri.⁵ While it is well-known that FERC has no jurisdiction over intrastate gas utility pipelines, the state regulatory bodies that *do* oversee them sit on TERC and have been engaging in substantively similar conversations to those in the GEH Forum for over a year now. As established below, the unique scenarios Texas markets and their participants face require particular regulatory insight and are best served by the subject matter experts who have been helping navigate these new and ever-evolving issues since the passing of the storm. Duplicating these conversations efforts at both levels of government is inefficient, illogical, and unnecessary given the immense amount of effort that has already gone into implementing these reforms at the state level.

While we continue our willingness and dedication to serve as a resource to those less familiar with the unique operations of intrastate natural gas utility pipelines, and how they affect supply to other parts of the country, it is unclear what this Forum believes it can recommend that is not already being done extensively at the state level.

INFORMATION FOR CONSIDERATION

2. High-level overview of the differences between the inter and intrastate natural gas markets

While there are a number of interconnections between the federally and state-regulated pipes, the two systems were developed under entirely different regulatory constructs and serve different (albeit complementary) needs. Intrastate pipelines run into several discrete problems that don't exist commonly in the interstate transport market. Areas in which those differences exist primarily include commercial operations and logistical/physical operations.

A. Commercial Considerations

i. Differences in the markets - Competitive v. Cost of Service.

There are more than 210 intrastate gas utility pipeline companies currently operating in Texas's commercially driven and highly competitive intrastate market. These utility pipelines are businesses that compete to serve customers, and the business on those lines is proprietary. As such, the accessibility of information is driven by commercial considerations in addition to regulatory ones.

⁵ An example of these reforms already working is the use of the recently adopted supply chain map during the February 2022 winter season. On one particular occasion, the mapping committee, chaired by the PUC Executive Director and vice- chaired by the Executive Director of the Railroad Commission, used the data for the 65,000 plus mapped facilities to mitigate a potential gas-electric disruption within 10 minutes of being notified. The PUC and Railroad Commission worked together, ultimately preventing a loss of power to that facility. The committee held a meeting as recently as November 18th where they discussed legislative recommendations that are aimed at improving communication and information sharing with regard to the map and the critical infrastructure on it.

Under this competitive, contract-based structure, the pipeline company assumes the financial risk in building the line and needs some assurance from the other party (such as firm contracts commitments), that they will be able to recoup their costs.⁶ A recent successful example of this concept can be found in the final investment decision to move forward with the construction of the Matterhorn Express Pipeline from Waha to Katy, after having secured sufficient firm transportation agreements with shippers based on the pipeline's own risk assessment.⁷

This contractual relationship allows every customer the opportunity to customize the service they receive to their needs at competitive market rates, as compared to FERC regulated interstate lines, where pipelines are afforded recovery through rates collected under the cost-of-service model after demonstrating public convenience and necessity for pipeline. If a customer would like to contract on an intrastate line but wants that line to operate like a FERC regulated line, they can structure their contract that way. Just as there is a large universe of intrastate gas utility pipelines⁸- with thousands of receipt and delivery points- there are equally many end-users contracting with those utilities. It is for this reason that maintaining flexibility in contracting is so important. It is also what makes contracting for service in Texas so desirable. Sophisticated parties can tailor agreements to suit their particular needs, and not be hamstrung by prescriptive and inflexible mandatory terms.

The public policy on which these practices is premised is to let the open market, and not the state – be it agency or legislature- dictate the economic and commercial decisions between gas utility pipelines and their customers.

ii. What information is made available

Generators in Texas have repeatedly called for the implementation of Electronic Bulletin Boards (EBBs) on intrastate pipelines, citing the existence of similar boards on the interstate system. Past testimony by generators in state legislative hearings allege that the information they are asking for is publicly available on interstate boards and so too should be required on intrastate boards.

This not only underscores the continued lack of comprehension of the difference in the two markets, but it also highlights a misconception about what certain data points might tell you. There seems to be an idea that intrastate pipelines should be required to post volumes and pressures at points along the systems because the interstates do so, however interstate pipelines are not required to post real-time volumes or

⁶ With the exception of intrastate LDCs, who *do* operate under a rate and tariff structure.

⁷ “Matterhorn Express Pipeline Reaches Final Investment Decision.” *Business Wire*. May 19, 2022. <https://www.businesswire.com/news/home/20220519005711/en/Matterhorn-Express-Pipeline-Reaches-Final-Investment-Decision>. (Last accessed October 27, 2022).

⁸ Approximately 200.

pressures on their websites for public view. The assertion is that these EBBs reflect real-time flows and capacity, which they do not. Contrary to the claims of the generators, this data would not “track the flow” of gas in Texas.⁹

Information about available intrastate capacity can be secured in real time via instant messaging, email, or phone calls to pipeline companies. Any posting of that information would nearly immediately be stale, misleading market participants as rapidly conducted transactions keep available capacity constantly in flux. EBBs are not a market clearinghouse for shippers to identify capacity available for contracting and they shouldn't be implemented to do so in Texas.

What many interstates *do* do is “path” (or map the infrastructure available to move product) how gas flows from point A to point B. At the interstate level, this is that straightforward. A more or less straight shot, or soda straw model, from one point to another with little or no stops along the way. In Texas, it looks more like cobwebs with thousands of receipt and delivery points throughout, and gas coming on or off the system. Knowing a pressure or volume at any one point will in no way be indicative of where the gas came from or is going. What's more, the fact that gas is reported at a certain point on an intrastate line does not mean gas or transportation is actually available (uncontracted) at that point at the time it was reported.

Additional information some seem to be seeking is the identity of shippers and specific information about the capacity they hold on a particular pipeline. As referenced above, this information is proprietary. Historically this information has been held to be excepted from disclosure under the categorization of being a trade secret.¹⁰ While this is a rebuttable presumption, meaning it is not a blanket protection, any compilation of information such as customer names which is used in one's business, and which gives it an opportunity to obtain an advantage over competitors who do not know or use it, have been protected by law time and again.

Often shippers do not want their competitors to know this private information, nor is that information necessary for generation customers to contact pipelines and arrange transport service for their own use. It should be noted that the purpose of current filing requirements is not to serve as “free discovery.” Nor are

⁹ An interstate customer's flow information is used for imbalance management purposes and is for customer view only; it is not a public posting. Intrastate pipelines often provide similar access to customer flow information for the same purpose. Interstate pipelines report system design information, but such information is deemed critical infrastructure information and is held confidential.

¹⁰ Texas Atty. Gen. has determined that the protection of pipelines customer information (names and delivery points) a trade secret and not subject to Texas Open Records Requests - *see* Open Records Decision Nos. 552 (1990) and 5059 (2009).

they designed to be a negotiation tool or a litigation aide. The tariff requirements are designed to be as transparent as possible, stopping short of infringing on confidential competitive business information.

B. Logistics and Physical Operations

As discussed above, much of the way interstate lines are regulated is based on a very straightforward, one entity ‘soda straw’ style design. Intrastate lines, in contrast, contract across multiple pipeline operators on a unitized basis. The system itself is very much non-linear. There are multiple physical paths for gas flow and attempting to map out all points would severely limit operational flexibility while simultaneously restricting the optimal leveraging of the pipeline asset.

Capacity on interstate lines is essentially a fungible commodity in that the product starts in one location and typically travels only in one direction, passing a handful of receipt and delivery points. Its value is the same to all customers. Intrastate utility lines on the other hand allow transportation service to be customized to distinct locations on a directional basis. That location, however, may not have the same value to another customer as it does for other customers with different needs and regional demand. Recognizing this difference between the inter and intrastate systems is crucial to understanding why imposing a one-size fits all approach to a fluid market would disproportionately affect some companies more than others. Creating this level of uncertainty in the market ultimately disincentivizes the building of new generation, the building of new pipelines, and engaging firm contracting in Texas.

NEXT STEPS

3. Issues identified by the GEH Forum Survey that *can* be addressed

There are a number of ways reliability can be enhanced and some of generator concerns can be addressed, including keeping infrastructure construction expeditious; not upending a natural gas market that overall operates very well; mandating the coordination and communication between generators and their regulatory authorities; and continuing to study and implement potential changes to the electric market.

C. Keep infrastructure construction expeditious.

As pointed out in the GEH Forum Survey, there is an increasing need for more pipeline infrastructure. TPA agrees. In both the state of Texas and in others that there is a critical need for additional natural gas pipelines. One constraint that federally regulated interstate pipelines have that Texas regulated intrastate lines do not is the gauntlet of bureaucratic paperwork and permitting processes that significantly hamper the ease and ability of getting these lines built out.

In Texas, intrastate natural gas utility pipelines can be built with relative ease and in an expeditious manner. As mentioned during the November 8th GEH Forum call, construction and contracting in Texas is not permission based, and no need must be demonstrated for pipeline approval. Those wanting to build an intrastate pipeline file a notice to the Railroad Commission of their intent to build, and subject to meeting certain pipeline safety requirements and having the capital to build, operators can begin putting steel in the ground. The flexibility afforded industry participants by virtue of the competitive market is what attracts business to Texas and allows this infrastructure to be constructed and contracted for in a timely fashion to respond to market demands.

The reforms that competitive generators seek would undermine the risk-based investments made by pipeline companies and shippers by removing Texas' nimble and successful intrastate natural gas pipeline system in preference of one which has historically expanded much more slowly due to burdensome regulatory frameworks with increasingly lengthy permitting timelines. With the state already seeing bottlenecks in high production areas,¹¹ now is the time to be aiding in the safe but expeditious building out of natural gas infrastructure, not attempting to emulate a system that would do nothing but stymie this development.

D. Mandate coordination between generators and their regulatory authorities

It has been established time and again that intrastate pipeline operators serving electric generators in Texas already provide their customers with notice of planned outages well in advance - sometimes months in advance. Why the generators do not share that information with their regulatory body (ERCOT) we don't know, but it seems that is something they could easily do. ERCOT has acknowledged the need for this sharing of information at a number of different legislative hearings, although their proposal has always been for gas utility pipeline operators to provide that information to ERCOT directly.

Reforms to regulations mandating this sharing of information between the generators and their state regulatory body is far more likely to aid in grid reliability than any of those proposed by state generation advocates to date.

E. Electric market reforms

Just days after this forum's November 8th meeting, the PUC released the market design analysis commissioned by the state to address electric reliability and capacity concerns, in which the consulting firm recommended implementation of something similar to the capacity market design used by the rest of the ISOs/RTOs in the country. During the November 17th Texas Senate Business and Commerce hearing

¹¹ "Natural Gas Flaring Is Set to Rebound in Permian Basin," Yahoo Finance, November 14, 2022. <https://finance.yahoo.com/news/natural-gas-flaring-set-rebound-150000373.html?guccounter=1>

discussing difficulties in incentivizing generators to build new capacity to ensure reliability and dependability, the committee extensively asked electric regulators about the analysis itself, as well as the pros and cons of implementing such a design. While the discussions are still ongoing at the PUC and with the state legislature as to whether the consultant's recommended design should be implemented, the outcomes of these discussions could significantly influence generator abilities and incentives to achieve greater reliability. It is anticipated that a decision will be made before the state's regular legislative session commences on January 10, 2023.

Another recent development with potential reliability effects is ERCOT's release of a draft proposal of their Firm Fuel Supply Service (FFSS) product allowing certain natural gas generation facilities to qualify as an FFSS Resource and thereby be compensated for meeting a higher resiliency standard. The TPA is currently reviewing this proposal and plans on submitting comments on how it might affect intrastate pipelines, but notes that this is another example of ongoing discussions at the state level geared toward enhancing reliability during extreme cold weather.

CONCLUSION

At the end of the day, the Texas competitive generators have an electric rate design problem that makes it difficult for them to recover the cost of firm service in certain instances. This is a problem that cannot be solved by upending the entire intrastate gas industry and attempting to shoehorn federal regulatory mechanisms into a competitive market and to do so simply to appease a relatively small percentage of the market participants is irresponsible and illogical.