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***For filing in Project No. 56000**:*

Chairman Thomas Gleeson
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty
Commissioner Kathleen Jackson
Commissioner Courtney Hjaltman
Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, Texas 78701

Re: Proposed Revisions to Firm Fuel Supply Service for Phase III RFP

Dear Chairman and Commissioners:

Kinder Morgan, Inc. Enterprise Products, NRG Texas Power LLC (NRG), and Calpine (collectively "Joint Commenters") submit this letter to the Public Utility Commission of Texas ("Commission") through the undersigned counsel to urge the Commission to expand the Firm Fuel Supply Service ("FFSS") requirements for the Phase III RFP to include Generation Resources ("GRs") that demonstrate fuel security through firm gas storage agreements at off-site facilities and firm gas transportation on intrastate gas utility pipelines. The absence of these attributes in the Phase II elements of the FFSS resulted in zero GRs offering to supply the FFSS under the Phase II qualifications.[1] This means that the FFSS fails to take advantage of the most available source of supply to the most prevalent Generation Resources in ERCOT – 85% of ERCOT GRs are served by intrastate gas pipelines. It also means that the FFSS is overly reliant on more expensive fuel oil, and results in a far less competitive product, because it limits the participation of GRs like those owned by NRG and Calpine that rely on natural gas fuel supply. Accordingly, the Joint Commenters urge the Commission to consider expanding the FFSS qualifications for the reasons described below.

[1] *See Wholesale Electric Market Design Implementation*, Project No. 53298, ERCOT Report of the Second Procurement of the Reliability Product, Firm Fuel Supply Service (FFSS), at 2 (Sept. 21, 2023), *available at* https://interchange.puc.texas.gov/Documents/53298_49_1331829.PDF.

I. TAC-approved NPRR 1169 established a reliable and accountable FFSS

In April 2023, the Technical Advisory Committee ("TAC") of ERCOT voted to recommend that the ERCOT Board approve a version of NPRR 1169 that provided a framework for firm fuel service from off-site gas storage that would have opened the FFSS to a greater, and more geographically diverse, number of Generation Resources. It would have done so while ensuring gas delivery through requirements that assured both reliability and accountability from gas storage and transportation providers like Enterprise and Kinder Morgan. Ultimately, following direction from the Commission at the May 25, 2023, open meeting, the ERCOT Board of Directors (and subsequently the Commission) approved a modified version of NPRR 1169 that deviated from the TAC-recommended version. The Joint Commenters believe that future ERCOT RFPs for FFSS beginning with the winter 2025-2026 procurement and beyond should include the following elements from the TAC-recommended version of NPRR 1169 to expand participation and improve the quality of the product.

II. Reliability Elements of the Proposed Expansion of FFSS to Include Firm Intrastate Gas Storage and Transportation

A. Joint Commenters urge expansion of FFSS eligibility to include firm gas storage and transportation agreements with intrastate gas pipelines

The principal fuel security requirements for an expanded FFSS are a firm gas storage agreement and a firm gas transportation agreement on a *qualifying* intrastate gas pipeline. A firm contract provides the highest level of contracted service, which cannot be interrupted or curtailed for service to anyone else for any reason except in the event of force majeure – literally an unforeseeable event that prevents the party from fulfilling its contractual commitments.[2] Both NRG and Calpine received every molecule of gas subject to their firm gas storage and transportation agreements with Enterprise and Kinder Morgan during Winter Storm Uri[3] – the same was also true for Winter Storm Elliott. The firm storage and transportation agreements with those GRs worked precisely as intended. And here past performance *does* portend future results because these gas pipeline companies performed at this level *without* the additional reliability and accountability features that would be added if the elements of the TAC-recommended version of

[2] When the Railroad Commission issued its curtailment rule, 16 T.A.C. § 7.455, it specifically stated in its accompanying press release that the priorities in the curtailment rule were designed to "ensure the availability of gas for human needs customers, and *electricity generation facilities powered by natural gas*" (emphasis added). See "RRC Commissioners Vote to Ensure Supply for Texans Relying on Natural Gas in Emergencies (Apr. 12, 2022), https://www.rrc.texas.gov/news/041222-curtailment-rule/

[3] *See Review of Wholesale Electric Market Design*, Project No. 52373, Comments of Kinder Morgan, Inc. Regarding Proposed Firm Fuel Supply Service and NPRR 1120 (Feb. 23, 2022), *available at*: https://interchange.puc.texas.gov/Documents/52373_342_1189435.PDF, and Project No. 52373, Firm Fuel Supply Service "Qualifying Pipeline" Presentation on Behalf of Kinder Morgan, Inc. and Enterprise Products (Jan. 31, 2023), *available at*:https://interchange.puc.texas.gov/Documents/52373_396_1268278.PDF.

NPRR 1169 were adopted for the next phase of the FFSS. These additional reliability features include:

1. *Past performance representation.* A pipeline must affirmatively represent in its agreements with the Generation Resource (GR) that it did not curtail gas deliveries to GRs with firm gas storage and transportation contracts during Winter Storm Uri.

2. *Present performance representation.* A pipeline must further represent and certify to the GR in its agreements that it has sufficient capacity on the transportation path to the GR from the storage facility to meet its firm delivery requirements to the GR, irrespective of the presence of local distribution company ("LDC")/human needs customers on such path.

3. *No LDC service.* To limit any impact of curtailment in favor of human needs customers, a qualifying intrastate pipeline must make a contractual representation to the GR that it provides only transmission (not distribution) service.[4] Note that the risk of curtailment in favor of human needs customers has been consistently overstated. For example, only 15% of Kinder Morgan's total gas load is for human needs, while 32% is for GRs. More than 50% of Kinder Morgan's total load could be curtailed during a force majeure event before it would have to curtail service to a GR.

4. *Critical natural gas facility and weatherization requirements.* Another consideration that should provide greater confidence in the reliability of intrastate gas transportation to a GR is that any pipeline that delivers gas to a GR must be a critical natural gas facility as defined in 16 Tex. Admin. Code § 25.52. This requires the pipeline to make a critical infrastructure filing with the Railroad Commission, ERCOT, and its TDU, ensuring that the pipeline's electricity service, including compression, will not be subject to a load shed event.[5] In addition, such facilities are now required to attest to the steps the pipeline and storage company have taken to weatherize the facility in the event of a heat- or cold-weather related emergency and are subject to inspection of those measures.[6] These preventive measures did not exist during Winter Storm Uri, and should help provide the Commission with greater comfort regarding the reliability of intrastate gas delivery to GRs in a weather emergency.

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[4] Misunderstanding of the Railroad Commission's Curtailment Rule, 16 T.A.C. § 7.455, has caused a significant obstacle to reliance on intrastate gas pipelines. Specifically, in prior discussions regarding the FFSS, the Commission has indicated that the curtailment rule, which elevates gas service to human needs customers above service to electric generation facilities in the event of a curtailment, operates specifically when invoked by the Railroad Commission. That is not true. By design, the curtailment rule adopted after Winter Storm Uri is permissive, allowing a utility confronted with an inability to meet its firm requirements due to an emergency to invoke the curtailment priorities. Consequently, a weather emergency in one part of the state would not necessarily impact gas delivery in other parts of the state. And irrespective of location, if, like Enterprise and Kinder Morgan, the gas storage and pipeline systems were sufficiently robust, there would be no need for a curtailment to GR customers in a weather emergency.

[5] 16 TEX. ADMIN. CODE § 3.65.

[6] *Id.* § 3.66.

III. Accountability Elements of FFSS with Intrastate Gas Storage and Transportation Already Adopted

A. Accountability in qualifying firm storage and transportation agreements. The Board and Commission-approved version of NPRR 1169 required that qualifying gas storage and transportation contracts include a right for the GR to monitor daily balances of storage capacity or transportation volumes and to require the storage provider to make a detailed accounting indicating a reasonable estimate of receipts and deliveries of natural gas.

B. Accountability in a qualifying force majeure provision. The qualifying force majeure provision in the Board/Commission-approved version of NPRR 1169 was designed specifically to ensure accountability in the one instance in which a pipeline can contractually suspend gas delivery to the GR. Key features of the qualifying force majeure provision include:

1. *Reasonable diligence and expense.* To claim force majeure under the contract, the pipeline or storage provider must exercise due diligence and incur reasonable cost to minimize the extent and duration of the event of force majeure.

2. *No force majeure for price difference or maintenance failure.* Suspension of performance under force majeure will not be available to a service provider due to the ability to provide the service or sell gas at a higher fee and will not be available for failures of facilities or equipment caused by a failure to maintain such facilities as required by applicable law or satisfy applicable weatherization requirements.

3. *Notice and particular details*. Upon declaring force majeure, the pipeline or storage provider must provide notice and reasonably full details of the event of force majeure to the GR.

4. *Audit.* Within 10 days of notice, the GR shall have the right to audit and examine copies of the relevant records of the service provider to the extent reasonably necessary to verify the details of the event of force majeure.

As with other elements of NPRR 1169 (including those in the TAC-recommended version described above), the inclusion of all of these features of a qualifying force majeure provision is unprecedented in Texas intrastate storage and transportation agreements. Adoption of these provisions represents a sizeable step taken by the Commission to ensure that only supply arrangements providing the very highest level of reliability are eligible to participate in FFSS. However, absent the modifications requested by the Joint Commenters herein to adopt additional elements from the TAC-recommended version of NPRR 1169, substantially all gas-fired generation in ERCOT is effectively rendered incapable of providing FFSS, even if it were to acquire the most reliable gas supply arrangements possible. The changes proposed by the Joint Commenters, which would reinstate key elements of the TAC-recommended version of NPRR 1169, are thus needed to ensure that the state can access FFSS from these additional resources.

IV. Conclusion

For the reasons described above, the Joint Commenters respectfully request that the Commission direct ERCOT to modify the scope of the FFSS consistent with the TAC-approved version of NPRR1169 for future procurements beginning with the winter of 2025-2026 to make it a more competitive service while ensuring that it achieves the level of service reliability and accountability that the Legislature and the Commission expect. The Joint Commenters look forward to discussing this issue with the Commission and thank the Commissioners for their attention to this important issue.

Sincerely,



John K. Arnold
On behalf of Joint Commenters