Via email and posting

September 16, 2022

**TO:** NAESB Gas-Electric Forum and Interested Parties

**cc:** NAESB Board of Directors, Executive Committee (EC) Members, EC Alternates, Members, and Advisory Council

**FROM:** Rae McQuade, NAESB President & Jonathan Booe, NAESB Executive Vice President & COO

**RE:** NAESB Gas-Electric Forum Survey Responses - September 14, 2022 – Responses Related to Item 3c

Dear NAESB Members, GEH Forum Participants and Interested Parties,

Please find below the comments received by the NAESB Office in response to the survey/request for comments that was distributed on September 7, 2022 <https://www.naesb.org/pdf4/geh092322w1.docx>. The following responses were submitted regarding question/topic 3c:

Please provide comments and any specific recommendations for the forum attendees to consider regarding “Which entity has authority, and under what circumstances, to take emergency actions to give critical electric generating units pipeline transportation priority second only to residential heating load, during cold weather events in which natural gas supply and transportation is limited but demand is high.”

| **Responses Submitted by September 14, 2022 – 3c** | | | | |
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| **Question/Topic** | | 3c. Please provide comments and any specific recommendations for the forum attendees to consider regarding “Which entity has authority, and under what circumstances, to take emergency actions to give critical electric generating units pipeline transportation priority second only to residential heating load, during cold weather events in which natural gas supply and transportation is limited but demand is high.” | | |
| **#** | **Organization** | **Representative** | **Market/Segment** | **Comment & Specific Recommendation** |
| 1 | Aspen Environmental Group | Catherine Elder | Other/Observer | As for interstate pipeline capacity, it would be only FERC. Emergency powers could be authorized under a disaster declaration or such. Rather than take gas from industrial customers I expect it makes more sense to require those southwest and midcontinent wells be winterized. Intrastate pipelines would be state jurisdictional; perhaps each state with such a pipeline could designate its office of emergency services and public utilities commission to coordinate with FERC to issue the emergency orders for actions needed to preserve gas supply for critical services. |
| 2 | Natural Gas Supply Association | Pat Jagtiani | WGQ Producer | NGSA is not aware of any federal government authority to unilaterally abrogate private contracts in the interstate market. Such authority may exist in some states for intrastate market transactions but that is likely to vary state-by-state, and state authority would not be applicable to any interstate transactions. While it is possible that parties may want to explore the idea of agreeing to reduce contracted levels on a voluntary basis in advance of disruptive events, customer contracts cannot be altered legally by any governmental authority without the parties’ consent.  Furthermore, reprioritizing natural gas use during cold winter events runs counter to one of the key objectives of this forum: exploring ways to encourage generator contracting that is more aligned with the level of reliability they require. Redirecting other shippers’ gas in the interstate market to generators will actually reduce the incentive for generators to contract for firm fuel supplies if they know they will be prioritized in emergencies. Therefore, before pursuing this concept, we must explore how it would be possible that a “critical electric generating unit” would not have procured reliable gas supply and transportation to ensure their own priority status in the first instance.  Re-directed gas cannot be relied upon as a solution given that it disregards the potential irreparable harm caused to other customers that rely on gas supplies for essential human needs services. Further, abrogation of any energy contracts sets a bad precedent across the energy industry for gas and power, undermines confidence in the energy marketplace, and is inconsistent with judicial precedent. Redirecting a customer’s supply, when that customer has paid large sums of money for reliable uninterrupted service, to another customer that has not invested in the same level of priority of service would not only be disruptive to that customer but also to our industry’s stability, which is underpinned by contracts. Under the Commission’s Order No. 636, which was issued over three decades ago, priority end-use has been replaced in the interstate market by a competitive framework in which contracts and the sanctity of those contracts are fundamental components contributing to the successful of the wholesale natural gas markets we have today. Why would these shippers and customers continue to sign contracts if they are subject to abrogation at a time when their fuel purchases are needed the most?  Moreover, NGSA’s member companies draw on their large portfolios of assets during peak weather events to ensure as many customers get gas supplies as possible. They pull not only on their storage and transport capacity in the region, but also bring gas from other regions using their storage and transport assets across the country. In addition, NGSA members have been able to redirect LNG cargoes to regions in need during peak weather events. Inserting a new authority that can cut NGSA members’ firm capacity and redirect it to generators will disrupt NGSA member’s ability to move additional supply resources to markets in need. |
| 3 | Process Gas Consumers Group & American Forest Paper Association | Andrea Chambers | WGQ End User | Manufactures plan ahead and sign up to pay for firm pipeline capacity to ensure that their plants can operate in a reliable and safe manner even in cold weather events when pipeline capacity is constrained and demand is high and they strongly believe that electric generators should be required to do the same. The Commenters represent industrial consumers who have contracted for firm transportation and natural gas supplies, and who are reliant on the firm delivery of such natural gas to run their plants. Because Commenters are in a private contractual relationship with the respective pipelines for the transportation of their natural gas supply, the Commenters do not believe that any authority may strip their firm rights without following the pro-ration requirements of the FERC-approved tariffs.  Moreover, these companies pay for the natural gas supply that is shipped through the pipeline and believe that the government may not take away their property rights in such supply without compensation. However, in certain scenarios, manufactures or industrials may be willing to offer excess gas supply or transportation back to the market when they are able to reduce demand. In such cases, manufactures should be compensated not only for the reservation demand credits, but more importantly for replacement supply which in supply shortage situations can cost significantly more than their original contract price or not be available.  Commenters also note that many local distribution companies (“LDCs”) have voluntary curtailment plans in place, and the Commenters believe that the local authorities should require any such entity curtailing natural gas customers be required to have curtailment plans in place and have them approved either by the PUC or FERC under their tariff. Such tariffs should provide manufactures the ability to be included as priority facilities when curtailment of natural gas supply will result in cuts to the manufacturers and with adequate compensation when service is cut. However, in no event should curtailment of firm shippers who pay for pipeline service be viewed as the solution to inadequate planning on the part of electric generators or as a fix to flaws in the wholesale electricity market design.  However, it is also key to focus on the other root causes of the outages identified in the report as well, many of which are related to lack of weatherization of the natural gas infrastructure system and electric generators. As explained in the Report, unplanned outages of natural gas wellheads due to freeze-related issues, loss of power and facility shut-ins to prevent freezing as well as unplanned outages of natural gathering and processing, resulted in a 28% decrease in total natural gas production in the lower 48 states and a 50% reduction in natural gas production when compared to average production in January of 2021. The report finds that of the generators that experienced outages, 58% of were natural gas-fired generators. Of the outages, 75% were due to freezing issues or fuel issues. Natural gas fuel supply issues caused the majority, 87%, of the 31.4% of outages due to fuel issues. ERCOT has adopted winterization requirements for generators located in ERCOT and, according to ERCOT’s recent audits, most generators are in compliance with such requirements. However, Texas has not adopted similar requirements for natural gas infrastructure. Given the impact of these natural gas infrastructure freezing issues, FERC must work with Texas to ensure that that they take steps to protect the reliability of the electric system by requiring weatherization of natural gas facilities as is standard practice in northern regions. These steps are critical in recognition of the increasing frequency of these extreme weather events in Texas, SPP and MISO South. Additionally, FERC and Texas regulators should address issues related to dissuade pipelines from being overly dependent on electric natural gas compression stations to avoid compression station failures like those that occurred in Texas during the Uri Storm. |
| 4 | Dominion Energy | Michael Oberleitner | WEQ Generator | When addressing firm transportation priority (gas generators second to residential heating load), does this conflict with any concerns or FERC standards around allowing different levels of firm service within the same pipeline transportation rate schedule? |
| 5 | Enchanted Rock | Joel Yu | WEQ Technology or Service | With respect to the topic 3 questions for the upcoming forum, we note that for distributed technologies or other bulk-system generation located behind the Local Distribution Company’s city-gates, the most direct authority for transportation prioritization is the state-level utility commission overseeing gas distribution. In Texas, the Railroad Commission recently went through a process to revise its curtailment prioritization policy to rank electric generation just below deliveries to LDCs and their firm load. See the Railroad Commission’s Adopted Rule 16 TAC §7.455 and §7.305, April 2022. [<https://www.sos.texas.gov/texreg/archive/April292022/Adopted%20Rules/16.ECONOMIC%20REGULATION.html#95>]. In other regions, LDCs sometimes do not have tariffs in place to provide firm service to electric generation on the gas distribution system, usually due to some combination of lack of adequate capacity and lack of policy support to deploy more gas. For example, in the NYC area, LDC-connected electric generation is required to have dual fuel and placed on interruptible gas service. In California, core gas service is not allowed for LDC-connected electric generation unless it is de minimis in size. |
| 6 | Interstate Natural Gas Association of America | Christopher Smith | WGQ Pipeline | Section 215A(b) of the Federal Power Act (FPA) and the subsequent Grid Security Emergency Final Rule, 10 CFR Part 205, (January 2018), permits the Secretary of Energy to issue an order for emergency measures following a Presidential declaration of a grid security emergency (GSE). The applicability of a GSE states that “An order for emergency measures under this subsection may apply to-(A) the Electric Reliability Organization; (B) a regional entity; or (C) any owner, user, or operator of critical electric infrastructure or of defense critical electric infrastructure within the United States.” “Critical electric infrastructure” is defined as “a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.” Natural gas pipelines do not fall into this category.  Over three decades ago, priority end-use on interstate pipelines was replaced by a framework in which contracts and the sanctity of those contracts became the fundamental components that have contributed to the successful natural gas markets we have today. The contracts, however, are entered into by shippers, such as utilities, that are legally required to maintain service. Therefore, if the sanctity of contracts is undermined, shippers may not be able to provide service to their customers or operate their businesses. In addition, if the sanctity of contracts is undermined, it provides a continued incentive for generators to continue to rely on less than firm services if an entity could take emergency action to provide generator units pipeline priority ahead of those who chose to contract for pipeline firm capacity.  Shippers enter into firm contracts to ensure that heating services can be provided on peak demand days. During emergency situations, some policymakers may feel pressure to disregard a gas customer’s contract so that gas supplies can be redirected to generating units that do not hold firm pipeline transportation or storage capacity when such generators may be critical to maintaining electric reliability. Attempts to re-direct gas disregards the potential irreparable harm caused to other customers that rely on gas supplies for essential human needs services beyond residential heating and would be a violation of the pipeline tariff and FERC policies. Pipelines do whatever they are able within the tariff to support emergency recovery, but since pipelines do not own the gas that they transport, diversion of the gas puts pipelines at risk of serious liability. Prior to pursuing such extreme confiscation measures that take other customers’ gas and disregard the sanctity of contracts, we must in the first instance address how it would be possible that a “critical electric generating unit” would not be holding a firm contract for both gas supply and transportation to ensure their own reliability. |