

April 8, 2020

Via Email Docket Services

Hearings Division Railroad Commission of Texas 1701 North Congress Avenue Austin, Texas 78711; RRCconference@rrc.texas.gov

Re: Oil & Gas Docket No. OG-20-00003167;

To Consider the Motion for Commission Called Hearing on the Verified Complaint of Pioneer Natural Resources U.S.A. Inc. (665748) and Parsley Energy Inc. (642652) to Determine Reasonable Market Demand for Oil in the State of Texas Dear Chairman Christian, Commissioner Craddick, and Commissioner Sitton:

Joint Comments of the Sierra Club and the Western Environmental Law Center (WELC)

The Sierra Club is the nation's largest and oldest conservation organization. Our Texas state chapter, the Lone Star Chapter has approximately 30,000 members and 180,000 supporters. Our organization has been concerned for decades with the consequences of the boom and bust cycle of oil and gas production, the resulting air, water and climate impacts, and the current policy of the RRC to issue oil and gas drilling permits without regard for existing infrastructure and storage capacity.

The Western Environmental Law Center ("WELC") uses the power of the law to defend and protect the American West's treasured landscapes, iconic wildlife and rural communities. WELC combines legal skills with sound conservation biology and environmental science to address major environmental issues in the West in the most strategic and effective manner. WELC works at the national, regional, state, and local levels; and in all three branches of government. WELC integrates national policies and regional perspective with the local knowledge of our 100+ partner groups to implement smart and appropriate place-based actions.

While as organizations we do not have an official position on the policy of "proration" to provide price support, essentially a quota of production for oil producers, we believe that the Commission can and must explore new limits and regulations to provide for a more orderly and managed production of both oil and gas. Indeed a simplistic proration of for example cutting back everyone's production by 10 or 20 percent will not solve the

problems facing the industry, and the public. Even without the current “double” crisis of a war on oil production and prices between Russia, Saudia Arabia and the U.S, and the impacts of COVID-19, the shale boom throughout Texas is unsustainable.

We urge the Commission to consider a number of options to help better manage Texas’ boom and bust cycle and to manage an overall decline in production which we believe will last into the foreseeable future. As our electric market moves increasingly toward renewable energy and storage, and transportation begins to electrify, Sierra Club believes that we collectively must manage this transition in an economically and environmentally just manner. We recognize fully the important role that oil and gas provides in terms of local and state revenues, direct and indirect jobs and economic development, but in a world constrained by limited water supplies, and by the reality of climate change, business as usual in Texas means air and water pollution and strains on our transportation, water and electric grid, and a warming planet.

Thus, while we do not have a position on “proration” to limit supply in an attempt to increase prices, we do offer these comments about how the RRC could better manage growth, and limit production of both oil and gas to a more manageable level.

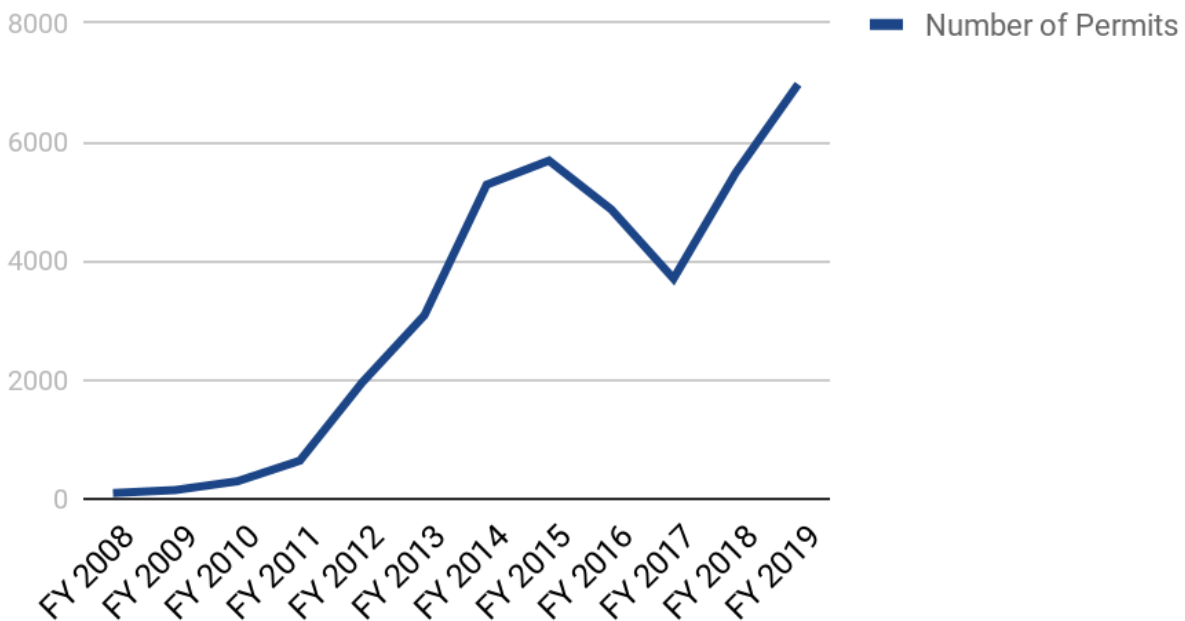
The Commission has Broad Authority to Act

First of all, the Commission has broad authority to act on “waste,” including the physical waste of product such as occurs through flaring, venting and the failure to capture methane and other pollutants.

The complainants focus on the glut of oil production which is well in excess of reasonable market demand, and therefore defined in TNRC §85.046(10) as “waste,” and the ability of the RRC “to issue such rules or orders as are necessary “to correct, prevent or lessen the waste.”

While this is true, we would also encourage the RRC to address prorationing in this proceeding to begin to reverse the policy enacted by the RRC which has led to millions of cubic feet of wasted natural gas. Indeed, over the last 10 years, the number of permits to allow the flaring or in rare cases venting of gas has grown by an order of 65 times, growing from only 107 “exceptions” in FY 2007 to 6,972 in FY 2019.

Exceptions to Statewide Rule 32 (Flaring Exceptions)



While a recent report written by Commissioner Sitton stated: “Texas oil and gas operators’ total flare volumes were in the 650,000 Mcf/d range in 2018, ” other data shows much greater volumes of flaring and of methane releases in general. Indeed, most recently the Environmental Defense Fund and collaborators released a website and related studies indicating a methane leak rate in the Permian study area three times EPA’s national average (3.5%), and estimated annual methane emissions of 1.4 million metric tons. Information on the study can be found at www.PermianMAP.org

Indeed, we encourage the RRC -- in conjunction with the Texas Commission on Environmental Quality -- to be as concerned with methane waste as they are with waste that may result from oversupply due to the current supply and demand crisis. Prior to the large oil shale plays, Texas and the RRC routinely denied exception to Statewide Rule 32 and took a conservative approach, only allowing oil and gas development where infrastructure was in place. Over the last decade, however, the RRC has shifted priorities to favor oil production over preventing natural gas waste, allowing operators to routinely apply for -- and then extend -- the exception to Statewide Rule 32.

The widespread use of flaring, and illegal unlit and improperly lit flares, venting and the failure of the industry in general to prevent leaks has led to not only an increase in methane waste itself, but emissions of numerous other dangerous air pollutants such as soot, formaldehyde and other, highly reactive Volatile Organic Compounds (VOCs), and

nitrogen oxides. The latter combine with VOCs and sunlight to form ground-level ozone (or smog).

While TCEQ lacks sufficient air quality monitoring in the Permian Basin, data shows that pollution from soot, ozone and sulfur dioxide have increased exponentially, in large part because of the oil and gas boom.

Thus, one potential response to both the current crisis and resource waste that should be explored by the Commission is, rather than relying on an industry-wide proration, return to a conservative policy of limiting the use of flaring and venting and requiring adequate infrastructure in-place before granting permits. In addition, the Commission could also consider using the amount of waste from excessive flaring to allocate production -- this is in line with the commission's charge of reducing waste, stewarding natural resources and the environment, and protecting personal and community safety. This would be a way to both curtail production and reduce threats to public health and the climate.

Other states and the federal government have adopted policies to tie production to cleaner and less wasteful production

The RRC may wish to look to action taken by other states and even by the federal government to limit production when there was not a plan in place to reduce physical waste. Most recently, the Bureau of Land Management adopted new waste prevention rules in November of 2016 that created requirements and expectations for producers that include potential limits on production for those leases unable to have a plan to store, process or treat their products and waste streams. Specifically, under the Waste Prevention, Production Subject to Royalties, and Resource Conservation (43 CFR Parts 3100, 3160 and 3170 [17X.LLWO310000.L13100000.PP0000] RIN 1004-AE14), the BLM states in § 3179.11(a) and (b),

§ 3179.11 Other waste prevention measures.

(a) If production from an oil well newly connected to a gas pipeline results or is expected to result in one or more producing wells already connected to the pipeline being forced off the pipeline, the BLM may exercise its authority under applicable laws and regulations, as well as its authority under the terms of applicable permits, orders, leases, and unitization or communitization agreements, to limit the production level from the new well until the pressure of gas production from the new well stabilizes at levels that allow transportation of gas from all wells connected to the pipeline.

(b) If gas capture capacity is not yet available on a given lease, the BLM may exercise its authority under applicable laws and regulations, as well as its authority under the terms of applicable permits, orders, leases, and unitization or communitization agreements, to delay action on an APD for that lease, or approve the APD with conditions for gas capture or limitations on production. If the lease for which an APD is submitted is not yet producing, the BLM may direct or grant a lease suspension under 43 CFR 3103.4–4.

While this adopted rule is currently being challenged in court, the concept of limiting production for those entities that can not reasonably take care of their product and waste streams is one well established in federal law.

Perhaps an even more relevant case is that of the State of North Dakota. In 2014, the State of North Dakota -- which was experiencing unprecedented oil (and to a lesser extent gas) development as a result of the Bakken Pool discovery -- brought together a diverse group of stakeholders and approved new rules around the capture of methane and flaring that specifically tied oil development to cleaner production processes.

Under the 2014 rules adopted by the North Dakota Industrial Commission, Order No. 24685, the State required producers to have a Gas Capture Plan, and set overall targets for reducing flaring and gas waste in the state. Producers were required to have capture and transmission plans in place and the failure to have a plan in place could lead to denial or delays of permits. Further, the rule created an enforcement mechanism for curtailing production among producers that vent or flare in excess of their allowed amounts.

Thus, among other provisions, the 2014 order states:

“Well payout and economics should not be used to determine production restrictions.”

Instead,

“...wells shall be allowed to continue to produce at a maximum efficient rate if the well or operator meets or exceeds the Commission approved gas capture goals. The gas capture percentage shall be calculated by summing monthly gas sold plus monthly gas used on lease plus monthly gas processed in a Commission approved beneficial manner, divided by the total monthly volume of associated gas produced by the operator. The operator is allowed to remove the initial 14 days of flowback gas in the total monthly volume calculation. The Commission will accept compliance with the gas capture goals by well, field, county, or statewide by operator. If such gas capture percentage is not attained at

maximum efficient rate, the well(s) shall be restricted to 200 barrels of oil per day if at least 60% of the monthly volume of associated gas produced from the well is captured, otherwise oil production from such wells shall not exceed 100 barrels of oil per day.”

Furthermore the order states:

Some Bakken Pool spacing units are being developed where the operator is aware that the existing gas gathering infrastructure is insufficient to allow surplus gas to be processed through the gas gathering system. In instances where significant amounts of surplus gas is flared due to the insufficient collection system, production should be restricted unless significant amounts of surplus gas is captured for beneficial consumption, or utilized in a value-added process.

The Commission will recognize the following as surplus gas being utilized in a beneficial manner:

- *Equipped with an electrical generator that consumes surplus gas from the well;*
- *Equipped with a system that intakes the surplus gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting the propane and heavier hydrocarbons; and*
- *Equipped with other value-added processes as approved by the Director which reduce the volume or intensity of the flare by more than 60%.*

While the experience in North Dakota and Texas are not the same, the Commission has broad authority and could work with stakeholders on a plan that does not limit production based solely on market share and economics, but also on their ability to cleanly produce oil and gas, have infrastructure in place, and capture methane and eliminate flaring or venting.

Thus we believe that this proceeding creates a real opportunity for the Commission to put policies in place that could lead to production allowances and restrictions that would provide for the effective and efficient recovery of oil and gas from Texas plays, allow for some further development, but avoid the drilling of unnecessary wells, and prevent waste and air pollution in a manner that will protect private property rights.

The Commission must consider the impacts on storage facilities and infrastructure

The Commission has broad authority over pipelines and above-ground storage tanks. We are very concerned that unmitigated production in a time of reduced demand could lead to situations where those storage tanks are overflowing, and proper Volatile Organic Compound and other emissions and waste mitigation technologies are not properly used. We already know from TCEQ fly-overs and individual violations of air quality rules that there are vast problems with failing above-ground storage tanks, and the Commission must have a plan in place to assure that as demand for these fossil fuel products drop and producers are increasingly stressed financially, there are adequate procedures to inspect storage facilities. We call on the RRC to as part of its annual strategic enforcement plan to specifically address how it will address this aspect of the oil glut. The RRC might also consider curtailing producers who can not show they have adequate off-takers or above-ground or underground storage facilities for their product and condition continued production on waste prevention and environmental compliance.

The Commission must work -- in cooperation with the TCEQ - on compliance and enforcement and use enforcement to curtail production

Over the last several years, the Sierra Club in particular has advocated for increases in RRC's budget to increase the numbers of oil and gas and pipeline inspectors, often supporting the Commission's request to the legislators. While we are pleased that the RRC has increased inspectors over the last four years, the current enforcement plan only allows RRC to cover each producing well with an onsite inspection once every four or five years. Even as oil and gas production decreases, the Commission must have robust inspection, compliance and enforcement procedures in place to guard against producers allowing products to be wasted either through illegal vents, unlit flares or product not being properly stored.

The Commission has broad enforcement authority and through the threat and use of "Severance" can literally cut off the spigot of those operators who are not following the law. We urge the Commission to exercise this authority even in these challenging economic times. The RRC should utilize this authority to limit production and provide an impetus to the industry to clean up its act.

While enforcement of the oil and gas industry is split between RRC and TCEQ, and the current MOU is being revised between the two agencies, there must be better cooperation on air quality issues in regards to flaring and air pollution.

With the economic crisis, we fear that industry will cut corners on environmental protection, and only if we have eyes and ears on the ground, and the political willingness to enforce the law can we better protect public health and the environment.

Time to work on a broad flaring and methane rule

While outside the scope of this particular petition, we believe the Commission should work on statewide methane waste prevention rules in coordination with the Texas Commission on Environmental Quality. Other states -- from North Dakota, to Ohio, to Colorado, to Pennsylvania, among others -- have adopted updated methane waste prevention rules that have helped reduce waste, lower emissions, and led to better development practices, while New Mexico is currently developing rules on methane emissions. As the leading oil and gas producing state, the RRC now has an opportunity to adopt rules that assure more orderly development and reward cleaner production.

Conclusions

As should be clear from our comments on this proration petition, we believe that the RRC has broad authority to not only prorate production but to fine tune the approach to enable company-specific curtailments based on gas waste, compliance with environmental rules and having the necessary infrastructure in place both to capture the product and store or move it. Ultimately, whatever the decision on proration, we believe the Commission should be exploring additional policies -- including a new rulemaking on flaring and gas capture policies - that provide longer-term tools to manage the widely-forecast coming decline of the oil and gas industry.

Sincerely,

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