

167 FERC ¶ 61,020
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

ONEOK WesTex Transmission, L.L.C.

Docket Nos. PR16-11-004
PR16-11-003

ORDER ON BRIEFS AND REQUEST FOR CLARIFICATION

(Issued April 9, 2019)

1. On November 30, 2017, ONEOK WesTex Transmission, L.L.C. (ONEOK), Atmos Energy Corporation (Atmos), and Southwestern Public Service Company (Southwestern) filed briefs in response to the Commission's October 31, 2017 order in this proceeding.¹ ONEOK also filed a revised a *pro forma* Statement of Operating Conditions (SOC) implementing the proposal in its brief. The October 2017 Order held that the Commission's policy allowing for emergency exemptions from *pro rata* curtailment for certain customers as allowed under the Natural Gas Act (NGA) applies equally to section 311 of the Natural Gas Policy Act (NGPA).² The Commission requested briefs on how this policy should apply to the ONEOK system. On November 30, 2017, ONEOK also requested clarification (or in the alternative rehearing) that the Commission will not cede authority over NGPA curtailment priority to the Texas Railroad Commission, which has authority over intrastate curtailment priority.

2. For the reasons discussed below, in order to assure high-priority consumers continuous access to needed supplies of natural gas, we find that it is fair and equitable for ONEOK to provide emergency exemptions to *pro rata* curtailment for high-priority uses in the manner described in ONEOK's brief. Further, we grant ONEOK's request for clarification of the October 2017 Order. We direct ONEOK to file an amended SOC in accordance with these determinations within 60 days of the date of this order.

¹ *ONEOK WesTex Transmission, L.L.C.*, 161 FERC ¶ 61,128, at P 32 (2017) (October 2017 Order).

² *Id.* P 31.

I. Background

3. ONEOK states that it is an intrastate pipeline extending across western Texas from the Oklahoma border in the Texas panhandle to the New Mexico border near El Paso, Texas. ONEOK's intrastate service is regulated by the Texas Railroad Commission. ONEOK also provides interstate service pursuant to section 311 of the NGPA. ONEOK further states that historically it had offered firm transportation service only on an intrastate basis. In January 2016, after completion of an expansion of its pipeline system, ONEOK filed to offer firm interstate service under NGPA section 311 for the first time, along with its existing interruptible NGPA section 311 service. ONEOK states it also proposed related changes to its SOC, including Article XI, "Priority of Transportation Service." As relevant here, ONEOK proposed to revise section 11.1(a) of its SOC to provide that firm intrastate and firm interstate service be curtailed on an equal *pro rata* basis, unless applicable regulations or orders of a governmental authority with jurisdiction over the services require a different method.³

4. Following informal settlement discussions, ONEOK filed, on April 6, 2016, a revised SOC and rate statement that it stated resolved all issues raised in this proceeding up to that point. ONEOK did not propose any changes in its proposed SOC section 11.1(a).

5. On April 27, 2016, Atmos protested SOC section 11.1(a). Atmos stated that it is a local distribution company that uses firm, intrastate transportation service on ONEOK in order to serve residential and other consumers in western Texas. Briefly, Atmos argued that its intrastate contract obligated ONEOK to curtail firm interstate service before curtailing Atmos's service. Atmos stated that its contract includes a requirement that it "follow the curtailment plan issued by the Texas Railroad Commission in Gas Utilities Division Docket No. 489," and that such curtailment plan is generally applicable to all

³ Section 11.1(a) provides:

In the event that the Company, from time to time, does not have sufficient capacity available to accommodate all nominations..., interruption of Firm Transportation Service will be pro rata, or as otherwise may be required by applicable regulations or orders of a governmental or regulatory authority having jurisdiction over the Services provided hereunder.

Texas intrastate pipelines and gives the highest priority to deliveries for residences, hospitals, schools, churches, and other human needs uses.⁴

6. On June 22, 2016, the Commission accepted ONEOK's SOC and ruled that revised section 11.1(a) was consistent with longstanding Commission policy, first

⁴ The Texas Railroad Commission's default intrastate curtailment policy states:

Until such time as the [Texas Railroad] Commission has specifically approved a [utility's] curtailment program, the following priorities in descending order shall be observed:

1. Deliveries for residences, hospitals, schools, churches and other human needs customers.
2. Deliveries of gas to small industrials and regular commercial loads (defined as those customers using less than 3,000 MCF per day) and delivery of gas for use as pilot lights or in accessory or auxiliary equipment essential to avoid serious damage to industrial plants.
3. Large users of gas for fuel or as a raw material where an alternate cannot be used and operation and plant production would be curtailed or shut down completely when gas is curtailed.
4. Large users of gas for boiler fuel or other fuel users where alternate fuels can be used. This category is not to be determined by whether or not a user has actually installed alternate fuel facilities, but whether or not an alternate fuel "could" be used.
5. Interruptible sales made subject to interruption or curtailment at Seller's sole discretion under contracts or tariffs which provide in effect for the sale of such gas as Seller may be agreeable to selling and Buyer may be agreeable to buying from time to time.

Texas Railroad Commission GUD Order No. 489 (1972), <http://www.rrc.state.tx.us/gas-services/curtailment-plan/> (2018).

established in a 1991 decision in *Transok I*,⁵ that firm intrastate and firm interstate service should be curtailed on a *pro rata* basis.⁶ The Commission also found that section 11.1(a) did not “interfere with any matters that are properly the exclusive jurisdiction of state regulatory or contract law.”⁷ The Commission found that an existing firm intrastate shipper could only be given priority over a firm interstate shipper if it had an existing firm contract that expressly gave it such a priority. The Commission found that Atmos did not have such a contract, because its contract appeared to give Atmos the same rights available to all intrastate shippers by referring to general principles of Texas Railroad Commission law.

7. On October 25, 2016, the Commission denied Atmos’s request for rehearing and reaffirmed that Atmos does not qualify for the exemption from *pro rata* curtailment for preexisting contracts.⁸ However, the October 2016 Order also clarified that it had not ruled on any Texas Railroad Commission matters.⁹

8. ONEOK sought clarification or, in the alternative, rehearing of the October 2016 Order. Among other matters, ONEOK requested that the Commission confirm that, in acknowledging Atmos’s right to seek relief from the Texas Railroad Commission or Texas courts, the Commission did not cede the Commission’s ultimate authority to determine whether the Atmos intrastate contract satisfies governing Commission policy and standards. ONEOK also filed a motion to lodge into the record an interim order issued by the Texas Railroad Commission, demonstrating that an Administrative Law Judge of the Texas Railroad Commission had placed limits on ONEOK’s rights to offer section 311 service.¹⁰

9. In its October 2017 Order, the Commission clarified the October 2016 Order. The Commission clarified that, while the October 2016 Order held that Atmos may seek to

⁵ *Transok, Inc.*, 54 FERC ¶ 61,229, at 61,673 (1991) (*Transok I*), *order on reh’g*, 56 FERC ¶ 61,275, at 62,082-83 (1991) (*Transok II*).

⁶ *ONEOK WesTex Transmission, L.L.C.*, 155 FERC ¶ 61,295, at P 15 (June 2016 Order).

⁷ *Id.* P 15.

⁸ *ONEOK WesTex Transmission, L.L.C.*, 157 FERC ¶ 61,052, at P 8 (2016) (October 2016 Order).

⁹ October 2016 Order, 157 FERC ¶ 61,052 at P 9.

¹⁰ October 2017 Order, 161 FERC ¶ 61,128 at P 13.

have the Texas Railroad Commission or a State court interpret whether its contract with ONEOK provides for a preexisting curtailment priority, the Commission has the ultimate authority to determine whether Atmos's contract, as interpreted by the Texas Railroad Commission or a state court, satisfies the standard for an exemption from *pro rata* curtailment based on a preexisting contract.¹¹

10. In the October 2017 Order, the Commission also clarified its curtailment policy applicable to NGPA section 311 pipelines. The Commission stated that it established its current policy in *Transok I* in 1991, requiring *pro rata* curtailment of firm NGPA section 311 service and firm intrastate service, subject only to an exception for preexisting intrastate contractual obligations. The Commission noted it has held that NGPA section 311 pipelines should generally curtail their firm section 311 interstate service in the same manner as NGA interstate pipelines do, and that two years after *Transok I* the Commission modified its curtailment policy applicable to interstate pipelines. In 1993, the D.C. Circuit held in *City of Mesa v. FERC* that the Commission has a duty under the NGA "to assure that consumers, especially high-priority consumers, have continuous access to needed supplies of natural gas."¹² The court accordingly remanded the Commission's approval of an interstate pipeline's pre-Order No. 636 curtailment plan, finding that the Commission had not explained why the plan only provided relief from *pro rata* curtailment to small customers serving high-priority end-users and not larger customers serving such end-users. Therefore, the October 2017 Order stated that in subsequent NGA interstate pipeline cases where a party has raised the issue of protection for priority uses, the Commission has required that NGA interstate pipelines provide an emergency exemption from *pro rata* capacity curtailment for any service that is necessary to protect against an irreparable injury to life or property.¹³ The Commission has held that such service includes deliveries to residences, small commercial establishments, schools, or hospitals and natural gas use for minimum plant protection, police protection, and certain other essential services.¹⁴

¹¹ *Id.* P 21.

¹² *City of Mesa v. FERC*, 993 F.2d 888, 895 (D.C. Cir. 1993).

¹³ *United Gas Pipeline Co.*, 65 FERC ¶ 61,006 (1993); *El Paso Natural Gas Co.*, 69 FERC ¶ 61,164 (1994), *order on reh'g*, 72 FERC ¶ 61,042 (1995); *Florida Gas Transmission Co.*, 70 FERC ¶ 61,017 (1995) (*Florida Gas*).

¹⁴ *Florida Gas*, 70 FERC at 61,082-83. Interstate pipeline tariffs contain varying methods by which shippers may demonstrate their need for such an exemption. For example, Florida Gas Transmission has a Data Verification Committee that determines in advance shipper eligibility for exemptions. Other pipelines require shippers seeking

11. The October 2017 Order also pointed out that, in providing an exemption from *pro rata* capacity curtailment for human needs uses, the Commission has required that any shipper that obtains an exemption from *pro rata* curtailment must compensate the non-emergency shippers for their increased curtailment. The Commission has held that such compensation should generally be limited to the payment of an additional reservation charge for the capacity exempted from the *pro rata* curtailment.¹⁵ Thus, the exempted shipper need not compensate the non-emergency shippers for any loss of natural gas supply they experience as a result of their increased capacity curtailment.

12. The October 2017 Order held that post-*Transok I* changes in policy concerning interstate pipelines' curtailment of firm service are reasonably applied to NGPA section 311 intrastate pipelines, because *Transok I* held that its interstate curtailment policy should generally be applied to NGPA section 311 pipelines.¹⁶ The October 2017 Order therefore stated it appears reasonable that the Commission require that NGPA section 311 intrastate pipelines provide the same opportunity for relief from *pro rata* curtailment for human needs uses where requested, as it now provides with respect to NGA interstate pipelines. The October 2017 Order noted that the court's concern about the Commission's obligation to assure high-priority users continuous access to needed natural gas supplies would appear to apply equally to interstate service under the NGPA as under the NGA. The October 2017 Order stated that, by requiring an NGPA section 311 intrastate pipeline to provide the emergency exemption from *pro rata* curtailment to both interstate firm and intrastate firm shippers making deliveries to high-priority uses, the exemption would not discriminate in favor of firm intrastate services. All similarly situated firm shippers, i.e., those making deliveries to high priority uses, would be eligible for the exemption subject to the same conditions. Moreover, interstate firm shippers who do not make deliveries to human needs customers would be compensated for their increased curtailment. The October 2017 Order noted that "[c]urtailment priorities for intrastate service would be those established by the Texas Railroad Commission."¹⁷

13. Because the parties in this case had not referred to the Commission's policy concerning exemptions from *pro rata* curtailment for interstate pipelines, the

exemptions to provide sworn statements supporting the need for an exemption during the first 24 hours of the curtailment.

¹⁵ October 2017 Order, 161 FERC ¶ 61,128 at P 30 (citing *Texas Eastern Transmission Corp.*, 91 FERC ¶ 61,105 (2000) (on remand from *Process Gas Consumers Group v. FERC*, 158 F.3d 591 (D.C. Cir. 1998))).

¹⁶ *Id.* P 31.

¹⁷ *Id.* P 31 n45.

Commission requested briefs by the parties concerning whether to apply that policy to NGPA section 311 pipelines. The Commission stated that parties should address (1) whether there are any special circumstances on the ONEOK system that would justify not applying the Commission's NGA curtailment policy to ONEOK; (2) how a shipper's eligibility for an exemption from *pro rata* curtailment to serve human needs customers should be determined, if such an exemption is allowed; (3) how shippers who do not make deliveries to human needs customers should be compensated for their increased curtailment.

II. Procedural Matters

14. The October 2017 Order also directed parties to “lodge any public documents from the Texas Railroad Commission proceedings in the instant docket.”¹⁸ The Commission received motions to lodge on December 18, 2017, December 29, 2017, February 7, 2018, and May 10, 2018. We find that all of these motions provided relevant information on the Texas Railroad Commission proceedings, and we accept the motions accordingly.

15. Commission Staff issued a data request on February 21, 2018 to ONEOK requesting further information on the operations of the ONEOK system, including detailed schematics and maps, corporate structure, curtailment data, transaction data, and scenario planning. ONEOK responded on March 3, 2018. The Commission has considered this information in its determination on the briefs.

16. On October 12, 2016, Southwestern filed a late motion to intervene, which remains unopposed. In its brief, in addition to the substantive matters discussed below, Southwestern notes that previous Commission orders in this proceeding have not specifically addressed its motion. Southwestern is a long-term customer of ONEOK's intrastate service, and argues that it failed to file a timely intervention because it was not immediately apparent from ONEOK's initial filing that the Commission would address cross-jurisdictional matters.¹⁹

17. Rule 214 requires late intervenors to accept the record “as the record was developed prior to the late intervention.”²⁰ Southwestern agrees to this condition.²¹ We

¹⁸ *Id.* P 32.

¹⁹ Southwestern brief at 10-11.

²⁰ 18 C.F.R. § 385.214(d)(3)(ii) (2018).

²¹ Southwestern brief at 11.

note that Southwestern intervened after the first order in this proceeding, the June 2016 Order, but before the second order in this proceeding, the October 2016 Order. We also find Southwestern has “shown good cause why the time limitation should be waived,”²² given that this proceeding involves rarely addressed cross-jurisdictional matters in which, as seen below, Southwestern offers a unique perspective that aided us in our decision-making. Finding “mini[mal] potential for disruption and prejudice in this case,” we grant Southwestern’s request for late intervention.²³

III. Request for Clarification or Rehearing

A. ONEOK Filing

18. On November 30, 2017, ONEOK requested clarification of the October 2017 Order to confirm the Commission’s intention to apply the curtailment priorities across NGPA section 311 interstate and intrastate customers. According to ONEOK, an arguable ambiguity arises through the Commission’s statement in Paragraph 31 of the October 2017 Order that NGPA section 311 pipelines provide the same emergency exemption to both interstate firm and intrastate firm shippers making deliveries to high priority uses, yet stating that curtailment priorities for intrastate service would be those established by the Texas Railroad Commission.²⁴ ONEOK argues that reading these two statements together could invite the inference that the curtailment priorities established by the Texas Railroad Commission must apply uniformly to all firm transportation shippers (both interstate and intrastate) seeking an emergency exemption from *pro rata* curtailment. ONEOK suggests that this would, in effect, cede complete control to the state agency over the terms governing exemption eligibility on the ONEOK system.

19. According to ONEOK, this outcome belies the Commission’s finding that “any exceptions from the Commission’s general policy of requiring *pro rata* curtailment of firm intrastate and firm interstate transportation service must be approved by the Commission.”²⁵ Thus, ONEOK requests that the Commission clarify and confirm that the October 2017 Order is properly construed to permit similar, but not identical,

²² 18 C.F.R. § 385.214(b)(3).

²³ See *Tennessee Gas Pipeline Co., L.L.C.*, 163 FERC ¶ 61,129, at PP 67-68 (2018) (upholding grant of late intervention and rejecting request for rehearing, but clarifying that the Commission only accepts late interventions for good cause shown).

²⁴ ONEOK Request for Clarification, at 4 (citing October 2017 Order, 161 FERC ¶ 61,128 at P 31).

²⁵ *Id.* at 14-15 (citing October 2017 Order, 161 FERC ¶ 61,128 at P 21).

eligibility criteria for purposes of allowing ONEOK's firm interstate and firm intrastate shippers to seek emergency exemptions from *pro rata* curtailment.

20. ONEOK states that in an accompanying filing, it has provided proposed revisions to section 11 of its SOC reflecting similar, but not identical, eligibility criteria for firm interstate and firm intrastate shippers seeking an emergency exemption from *pro rata* curtailment. For firm interstate shippers, ONEOK's proposed eligibility criteria are modeled after criteria approved by the Commission for pipelines subject to the Commission's NGA jurisdiction and would make emergency exemptions available to a defined group of high priority uses and in instances involving threats of irreparable injury to life or property. For firm intrastate shippers, ONEOK proposes to extend exemption eligibility to shippers serving human needs requirements, as defined in Priority A of the Texas Railroad Commission's GUD No. 489 Final Order.

B. Determination

21. We grant clarification of the October 2017 Order as follows. Pursuant to the curtailment policy established in *Transok I*, the Commission requires *pro rata* curtailment of (1) the overall capacity that an intrastate pipeline has sold for firm interstate service pursuant to NGPA section 311 and (2) the overall capacity an intrastate pipeline has reserved for purely intrastate service. The only exception to this *pro rata* requirement is where the intrastate pipeline has an existing contract with a firm intrastate customer at the time it commences NGPA section 311 service that expressly provides the intrastate customer a priority.²⁶ Therefore, assuming no such contractual obligation, if 50 percent of an intrastate pipeline's total capacity is unavailable on a particular day, Commission policy requires that the pipeline curtail both its overall firm interstate service and its overall firm intrastate service by the same 50 percent amount. Curtailing the interstate service by a greater percentage than the firm intrastate service would discriminate against the firm interstate service.

22. However, once the overall categories of firm interstate and firm intrastate service have been curtailed on a *pro rata* basis, there then arises the question of how to curtail service within each of those categories. The Commission intended in the October 2017 Order to distinguish between the curtailment priorities that would apply within the interstate and intrastate categories, after the *pro rata* curtailment of the overall amounts of interstate and intrastate service has occurred. The Commission's jurisdiction only extends to the intrastate pipeline's provision of interstate service pursuant to NGPA section 311. The Commission has no jurisdiction with respect to the intrastate pipeline's purely intrastate service. Accordingly, once the intrastate pipeline has curtailed its overall firm intrastate service by the same proportional amount as its overall firm interstate service, the Commission has no jurisdiction with respect to how the intrastate

²⁶ *Transok I*, 54 FERC ¶ 61,229 at 61,676.

pipeline allocates the firm intrastate service that it can perform among its intrastate customers. Therefore, the Commission intended its statement that “[c]urtailment priorities for intrastate service would be those established by the Texas Railroad Commission”²⁷ to apply only to the allocation of ONEOK’s uncurtailed intrastate service among its intrastate customers. That statement was not intended to apply to the capacity ONEOK has sold for firm interstate service pursuant to NGPA section 311.

23. The Commission intended that its revised policy concerning exemptions from *pro rata* curtailment of firm service for high priority uses would apply to all capacity the intrastate pipeline sold for firm interstate service pursuant to NGPA section 311 but only to that capacity. Thus, the Commission intended the following statements in the October 2017 order to apply only to capacity the intrastate pipeline sold for firm interstate service under NGPA section 311:

by requiring an NGPA section 311 intrastate pipeline to provide the emergency exemption from *pro rata* curtailment to both interstate firm and intrastate firm shippers making deliveries to high-priority uses, the exemption would not discriminate in favor of firm intrastate services. All similarly situated firm shippers, i.e., those making deliveries to high priority uses, would be eligible for the exemption subject to the same conditions. Moreover, interstate firm shippers who do not make deliveries to human needs customers would be compensated for their increased curtailment.

24. In this language, the Commission anticipated that, once an intrastate pipeline curtails the overall amount of its firm interstate service by the same proportional amount as it curtails its firm intrastate service, the emergency exemption from *pro rata* curtailment applicable to the curtailed interstate service would be available to all the pipeline’s firm shippers serving high priority uses, both intrastate and interstate. In other words, a firm intrastate customer serving high priority uses could obtain capacity that would otherwise be allocated to firm interstate service during a curtailment pursuant to the emergency exemption set forth in the intrastate pipeline’s SOC for its interstate service. However, the firm intrastate customer would be required to show that it served high priority uses as defined in the SOC and it would be required to pay the interstate rate set forth in the SOC, because during the period of the curtailment it would be using capacity that the intrastate pipeline had originally sold to its interstate customers; in other words, the intrastate customer would temporarily become an interstate customer as well.

²⁷ October 2017 Order, 161 FERC ¶ 61,128 at P 31 n.45.

25. Thus, contrary to ONEOK's concerns, the revised policy set forth in the October 2017 Order would not cede any Commission jurisdiction with respect to interstate NGPA section 311 service.²⁸ Consistent with *Transok I*, ONEOK is still required, in the first step of its curtailment process, to curtail the overall categories of interstate and intrastate service on an equal *pro rata* basis. Any further curtailment of interstate service to allow intrastate customers to serve high priority uses would take place pursuant to terms and conditions approved by the Commission as set forth in the emergency exemption from *pro rata* curtailment in the intrastate pipeline's SOC for interstate service.

26. We now turn to the briefs requested by October 2017 Order concerning whether and how the Commission should apply its NGA curtailment policy in this case.

IV. Briefs

A. ONEOK

27. In response to the Commission's inquiry on extending its NGA curtailment policy to the ONEOK system, ONEOK proposes tariff language to allow emergency exemptions to the curtailment policy of its NGPA section 311 pipeline. ONEOK states that it has developed illustrative terms and conditions by which it would make available to its firm shippers an emergency exemption from *pro rata* curtailment. ONEOK states its *pro forma* revisions to section 11.2,²⁹ are modeled generally after provisions approved by the Commission in similar cases.³⁰

28. ONEOK proposes to retain its originally proposed SOC section 11.1, stating in relevant part:

Interruption of Firm Transportation Service will be *pro rata*, or as otherwise may be required by applicable regulations or

²⁸ See, e.g., October 2016 Order, 157 FERC ¶ 61,052 at P 9 (“the Commission only will subordinate federally-regulated section 311 service to a contract for state-regulated intrastate service in very narrow circumstances, which Atmos has not demonstrated in the instant case.”); October 2017 Order, 161 FERC ¶ 61,128 at P 25 (“the interim relief granted by the Texas Railroad Commission ALJ is not consistent with the October 25 Order.”).

²⁹ ONEOK's proposed tariff language is provided in its brief as Attachment A.

³⁰ ONEOK brief at 4 (citing *Texas Eastern Transmission Corp.*, 91 FERC ¶ 61,105 (2000)).

orders of a governmental or regulatory authority having jurisdiction over the Services provided hereunder.

29. In its brief, ONEOK proposes a new section 11.2(a) that would state:

Notwithstanding Section 11.1(a), in the event Company, for any reason, is unable to transport all confirmed nominations for Firm Transportation Service, and must curtail such service, Company shall recognize an Emergency Exemption to pro rata curtailment for Customers serving Exempt Use Requirements. For purposes of this section 11.2, Exempt Use Requirements shall mean:

(1) for Section 311 Firm Transportation Service, service requirements of residences, hospitals, schools, churches and public safety essential services, as well as small commercial and plant protection uses necessary to avoid irreparable injury to life or property, irrespective of whether the gas is consumed directly to meet Exempt Use Requirements or is used to generate electricity to service Exempt Use Requirements;

(2) for intrastate Firm Transportation Service, service requirements of end-users qualifying under Priority A of Order No. 489 of the Texas Railroad Commission.

30. Proposed sections 11.2(b), (c), and (d) detail how shippers will request Emergency Exemption status. ONEOK proposes that, upon notice of a potential curtailment, firm shippers seeking an emergency exemption from *pro rata* reductions shall provide ONEOK written notice of the required amount of capacity at specific delivery points that satisfy the eligibility criteria. ONEOK states that its proposed criteria for interstate customers is in accordance with the “high priority/irreparable injury to life/property” standard approved for NGA pipelines.

31. In order to compensate firm shippers who experience a greater than *pro rata* curtailment, ONEOK proposes an Emergency Exemption Charge. Proposed sections 11.2(e) and (f) clarify that, if Emergency Exemption customers exercise their right to an exemption from *pro rata* curtailment, the pipeline will charge the Emergency Exemption customers an “Emergency Exemption Charge [per dekatherm,] in addition to all other charges Customer is obligated to pay,” and the pipeline will disburse the entire Emergency Exemption Charge to firm shippers who experience a greater than *pro rata* curtailment. ONEOK proposes to amend its Statement of Rates to set the Emergency Exemption Charge as identical to the Maximum Daily Demand Rate. Finally, ONEOK

proposes several edits in order to conform the rest of its SOC to the new section 11.2. ONEOK states it has based this proposal on similar NGA tariff provisions.

B. Atmos

32. Atmos argues against the application of the NGA curtailment policy to ONEOK. According to Atmos, the Commission's focus on prioritizing between intrastate and interstate customers "will directly and unavoidably interfere with" the Texas Railroad Commission's prerogatives in the intrastate market.³¹ Atmos asserts ONEOK operates in a manner that is fundamentally different from and inconsistent with that of interstate pipelines. For example, Atmos notes, ONEOK does not offer shippers primary points of receipt as that term is typically used when referring to interstate service.³² Atmos argues that the Commission should not apply its own human needs policy to ONEOK at all.³³

33. At a minimum, Atmos argues, the Commission should defer to the Texas Railroad Commission's curtailment priorities in order to preserve the quality of service available to Texas intrastate shippers before ONEOK offered NGPA 311 service.³⁴ Atmos argues that curtailing capacity in accordance with Texas Railroad Commission priorities will ensure that firm intrastate customers and firm interstate customers receive service and are subject to curtailment on the basis of a single unified standard which has been appropriately defined by the Texas Railroad Commission. Atmos argues this would not conflict with Commission precedent as such a curtailment scheme would still comport with the Commission's requirement that "NGA interstate pipelines provide an emergency exemption from pro rata capacity curtailment for any service that is necessary to protect against an irreparable injury to life or property."³⁵ Atmos argues this would be simpler for ONEOK to administer than two "competing" definitions of what constitutes a human needs customer.³⁶

34. Atmos supports a compensation scheme similar to that used for NGA pipelines for emergency curtailment. Atmos proposes that affected shippers pay "the difference

³¹ Atmos brief at 8.

³² *Id.* at 14.

³³ *Id.* at 6.

³⁴ *Id.* at 15.

³⁵ *Id.* at 17 (quoting October 2017 Order, 161 FERC ¶ 61,128 at P 29).

³⁶ *Id.* at 17.

between the quantity received by the customer requesting the emergency exception from *pro rata* curtailment for human needs load and the quantity that the shipper would have received pursuant to *pro rata* curtailment [] multiplied by the weighted average actual demand charges for the affected firm NGPA section 311 shippers.”³⁷

C. Southwestern

35. Southwestern argues against any human needs policy at the NGPA section 311 level, instead favoring the standard firm-is-firm policy requiring *pro rata* curtailment without any exemption for high priority uses. Southwestern argues ONEOK’s proposal “could also result in negative, unintended consequences for the human needs customers it is designed and intended to protect.”³⁸ Southwestern states it does not believe the Commission could give equal footing to intrastate and interstate customers if it employs Texas Railroad Commission rules for one and not the other. According to Southwestern, application of the Texas Railroad Commission’s curtailment plan, which curtails service to electric generation first, “could lead to increased electric power outages, causing residential and other human needs customers to lose the electric power needed to actually use the gas delivered to their homes and facilities, and impede ONEOK’s ability to control and operate its electrically-controlled gas compression facilities to move gas through its system.”³⁹

36. Southwestern claims that under ONEOK’s plan, a Texan electric provider using intrastate natural gas such as Southwestern would be the lowest priority, while a Mexican electric provider using NGPA section 311 interstate natural gas would potentially qualify as high priority. Southwestern argues this potential disparity in treatment shows that the proposed exemption could have an unduly discriminatory effect against firm intrastate shippers. Under these circumstances, Southwestern argues for a policy to curtail all firm service on a *pro rata* basis, and to develop another way of ensuring natural gas supply for high priority uses.

D. Determination

37. For the reasons discussed below, the Commission accepts ONEOK’s revised SOC providing for emergency exemptions from *pro rata* curtailment, subject to several revisions. First, ONEOK must clarify that, in the first step of its curtailment process, it will curtail the overall categories of interstate and intrastate service on an equal *pro rata*

³⁷ *Id.* at 19.

³⁸ Southwestern brief at 2.

³⁹ *Id.*

basis. Second, it must clarify that the provisions in the SOC establishing a process for obtaining emergency exemptions from *pro rata* curtailment apply only to curtailed NGPA section 311 interstate service. Third, it must clarify that both interstate and intrastate customers seeking to obtain capacity that would otherwise be allocated on a *pro rata* basis to NGPA section 311 firm service during a curtailment must satisfy the standard set forth in proposed SOC section 11.2(1) for obtaining an exemption from *pro rata* curtailment “for Section 311 Firm Transportation Service.”⁴⁰

1. Acceptance of ONEOK’s Proposal, Subject to Conditions

38. Our prior orders in this proceeding have resolved issues concerning our jurisdiction concerning the curtailment of firm NGPA section 311 service provided by ONEOK. As the Commission explained in the October 2017 Order, NGPA section 311(a)(2) requires that any firm interstate transportation service provided by an intrastate pipeline be authorized by the Commission, and NGPA section 311(c) requires that any such authorization “shall be under such terms and conditions as the Commission may prescribe.” Accordingly, while the Commission does not require intrastate pipelines offering interstate transportation service to offer such service on a firm basis,⁴¹ such service is subject to the Commission’s NGPA jurisdiction to the extent that an intrastate pipeline chooses to offer it.⁴² Therefore, the Commission must approve the terms and conditions under which firm service is offered, including how any curtailment of that service is implemented. As the Commission explained in *Peoples*, when an intrastate

⁴⁰ That standard requires shippers to show that they need additional capacity to satisfy the “service requirements of residences, hospitals, schools, churches and public safety essential services, as well as small commercial and plant protection uses necessary to avoid irreparable injury to life or property, irrespective of whether the gas is consumed directly to meet Exempt Use Requirements or is used to generate electricity to service Exempt Use Requirements.”

⁴¹ 18 C.F.R. § 284.7(a)(2) (2018) (“An intrastate pipeline that provides transportation under Subpart C *may* offer such transportation on a firm basis.”) (emphasis added). *Transok I*, 54 FERC ¶ 61,229 at 61,673, *aff’d*, *Transok II*, 56 FERC ¶ 61,275 at 62,082. *Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol*, Order No. 436-A, 33 FERC ¶ 61,372, at 31,693 (1985). *Peoples Gas Light & Coke Co.*, 118 FERC ¶ 61,203, at P 19 (2007) (*Peoples*).

⁴² See *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1002-1003 (D. C. Cir. 1987).

pipeline chooses to provide interstate firm service, “it must do so consistent with the Commission’s regulations.”⁴³

39. In addition, the Commission previously found that an intrastate pipeline must generally curtail its overall firm NGPA section 311 interstate service on a *pro rata* basis with its overall firm intrastate service, and held that Atmos does not qualify for the narrow exception from *pro rata* curtailment allowed under our *Transok* policy. Under that exception, a firm intrastate shipper may be exempted from *pro rata* curtailment, if it had a preexisting contract at the time the intrastate pipeline first offered firm interstate service that “expressly provided a curtailment priority above other firm services.”⁴⁴ As the Commission found in its June 2016 Order,⁴⁵ and reaffirmed in its October 2016 Order,⁴⁶ Atmos’s contract “contains no such provision, but appears to give Atmos the same rights available to all intrastate shippers, by referring to general principles of TRC law.” Although the October 2016 Order also clarified that the Commission had not interpreted Atmos’s contract “as a matter of Texas law,” and clarified that the Texas Railroad Commission or Texas courts retain their jurisdiction to interpret the contract,⁴⁷ Atmos has not informed the Commission of any contrary interpretation of its contract by the Texas Railroad Commission or Texas courts.

40. Thus, the only issue currently before us is whether to accept ONEOK’s proposal to provide an emergency exemption from *pro rata* capacity curtailment for any service that is necessary to protect against an irreparable injury to life or property. We find that ONEOK’s proposal is generally consistent with the Commission’s policy concerning emergency exemptions from *pro rata* curtailment with respect to interstate pipelines regulated under the NGA. As discussed further below, we find no reason not to apply that same policy to an intrastate pipeline’s curtailment of firm interstate service subject to our NGPA section 311 jurisdiction. Accordingly, we conditionally accept ONEOK’s proposal, subject to revisions. The primary purpose of these revisions is to ensure that the boundary between our jurisdiction with respect to NGPA section 311 interstate service and the Texas Railroad Commission’s jurisdiction with respect to intrastate service is properly respected.

⁴³ *Peoples*, 118 FERC ¶ 61,203 at P 19.

⁴⁴ *Mid Continent Market Center, Inc.*, 72 FERC ¶ 62,274, at 64,841 (1995).

⁴⁵ June 2016 Order, 155 FERC ¶ 61,295 at P 17.

⁴⁶ October 2016 Order, 157 FERC ¶ 61,052 at P 8.

⁴⁷ *Id.* P 9.

41. First, we direct ONEOK to revise SOC sections 11.1 and 11.2 to clarify that its curtailment of firm NGPA section 311 interstate service is a two-step process. In the first step of its curtailment process, ONEOK should curtail (1) the overall capacity that its NGPA section 311 firm shippers have nominated for interstate service up to their contract demand and (2) the overall capacity that its firm intrastate shippers have nominated for purely intrastate service up to their contract demand on an equal *pro rata* basis. This first step will ensure that ONEOK's firm interstate service is not subordinated to its firm intrastate service, contrary to Commission policy,⁴⁸ and that the two types of firm service are treated equally in curtailment situations. Such *pro rata* curtailment is also consistent with our holding that, when ONEOK commenced providing firm interstate service under NGPA section 311, no intrastate firm shipper had a contract expressly providing for a priority over other shippers in a curtailment situation.

42. In the second step of the curtailment process, ONEOK should allocate among its firm shippers the capacity remaining available for firm NGPA section 311 service after the first step of the curtailment process. That allocation must follow the priorities set forth in ONEOK's SOC for NGPA section 311 service, including the emergency exemption from *pro rata* capacity curtailment for any service that is necessary to protect against an irreparable injury to life or property. In this second step of the curtailment process, ONEOK should also allocate among its intrastate shippers the capacity remaining available for purely intrastate service after the first step of the curtailment process. ONEOK's allocation of the intrastate capacity is outside the Commission's jurisdiction, and therefore ONEOK would allocate that capacity pursuant to whatever requirements the Texas Railroad Commission establishes.

43. Finally, ONEOK must clarify that both interstate and intrastate firm customers seeking to obtain relief from a curtailment by obtaining capacity that would otherwise be allocated to NGPA section 311 firm service during a curtailment must satisfy the standard set forth in proposed SOC section 11.2(1) for obtaining an exemption from *pro rata* curtailment "for Section 311 Firm Transportation Service." That standard requires shippers to show that they need additional capacity to satisfy the "service requirements of residences, hospitals, schools, churches and public safety essential services, as well as small commercial and plant protection uses necessary to avoid irreparable injury to life or property, irrespective of whether the gas is consumed directly to meet Exempt Use Requirements or is used to generate electricity to service Exempt Use Requirements." This standard for an exemption from *pro rata* curtailment is similar to the standard the Commission previously approved in *Florida Gas*⁴⁹ for exemptions from *pro rata* curtailment provided by an interstate pipeline regulated under the NGA.

⁴⁸ *Transok II*, 56 FERC ¶ 61,275 at 62,082.

⁴⁹ *Florida Gas*, 70 FERC ¶ 61,017 at 61,057.

44. The Commission finds that it is reasonable to permit all firm shippers on an intrastate pipeline serving high priority uses, whether the shipper is interstate or intrastate, to obtain relief from a curtailment by purchasing capacity that would otherwise be allocated to an NGPA section 311 firm shipper on a *pro rata* basis. This does not subordinate the interstate service to the intrastate service, but rather allows both interstate and intrastate shippers serving high priority needs to purchase the capacity that would otherwise be allocated to an NGPA firm shipper on a not unduly discriminatory basis. However, because the capacity in question is under contract to an NGPA section 311 firm shipper for interstate service, any reallocation of that capacity to another shipper, whether interstate or intrastate, is subject to our jurisdiction under NGPA section 311 and therefore must take place under terms and conditions approved by the Commission. Thus, a firm intrastate shipper seeking to obtain the NGPA section 311 shipper's capacity in order to serve high priority uses during a curtailment must satisfy the standard for obtaining an exemption from *pro rata* curtailment "for Section 311 Firm Transportation Service."

45. We approve ONEOK's proposed sections 11.2(b) through (f), subject to one clarification discussed in the next section. Sections 11.2(b), (c), and (d) detail how shippers will request Emergency Exemptions and how ONEOK will process those requests. Proposed sections 11.2(e) and (f) provide that, if Emergency Exemption customers exercise their right to bump other firm customers, the pipeline will charge the Emergency Exemption customers an "Emergency Exemption Charge [per dekatherm,] in addition to all other charges Customer is obligated to pay," and the pipeline will disburse the entire Emergency Exemption Charge to firm customers who are curtailed by more than a *pro rata* amount. ONEOK proposes to amend its Statement of Rates to set the Emergency Exemption Charge as identical to the Maximum Daily Demand Rate for NGPA section 311 firm service. These provisions are consistent with similar provisions the Commission has approved for interstate pipelines.⁵⁰ The Commission also finds it appropriate that the Emergency Exemption Charge to be paid by any firm interstate or intrastate shipper that obtains capacity during a curtailment that would otherwise be allocated to an NGPA section 311 shipper to be equal to the rate for firm NGPA section 311 service. That is because the capacity in question is contracted for NGPA section 311 service and thus subject to the Commission's jurisdiction.

⁵⁰ *Texas Eastern Transmission Corp.*, 91 FERC ¶ 61,105 at 61,377 (requiring that "the emergency shipper must not only continue to pay the full reservation charge required by its service agreement, it must also pay a further reservation charge for the privilege of using its contract demand during the curtailment," but rejecting additional penalties or compensation when emergency shippers supply their own natural gas).

2. Rejection of Atmos's and Southwest Gas's Protests

46. Consistent with the discussion above, we reject Atmos's contention that we should grant ONEOK an exemption from our curtailment policy and "apply ... the priorities established by the" Texas Railroad Commission to interstate, as well as intrastate service.⁵¹ We disagree with Atmos's argument that application of the Commission's curtailment policy will subvert the Texas Railroad Commission's curtailment scheme for intrastate service. As explained above, under the two-step curtailment process we are requiring, once the overall categories of nominated firm intrastate service and firm NGPA section 311 interstate service have been curtailed on an equal *pro rata* basis, the remaining available intrastate capacity will be allocated among intrastate shippers pursuant to the priorities established by the Texas Railroad Commission. Thus, the Texas Railroad Commission will continue to regulate the curtailment of purely intrastate service, which we recognize is outside the Commission's jurisdiction. Atmos's proposal would subordinate NGPA section 311 firm interstate service to intrastate service during a curtailment, by allowing capacity to be allocated first to firm intrastate service before capacity is allocated to interstate service. However, as discussed above, such a subordination of NGPA section 311 firm interstate service would be contrary to the Commission's *Transok* curtailment policy.

47. Atmos complains that ONEOK's definition of high priority uses includes the generation of electricity to be used by high priority users, such as schools, hospitals, churches, and residences. Atmos points out that the Commission approved inclusion of such electric generation among high priority uses in *Florida Gas*,⁵² but it states that the Texas Railroad Commission does not include electric generation in the category of high priority uses. Atmos contends that, although it may be appropriate to include electric generation among high priority uses in the state of Florida where a high percentage of electric generation is fueled by natural gas, ONEOK has failed to show that allowing electric utilities to qualify for relief from *pro rata* curtailment is appropriate in Texas. Atmos further asserts that ONEOK will be providing substantial NGPA section 311 firm transportation service to the Comision Federal de Electricidad, a Mexican electric utility, which will use the service to obtain natural gas to "serve foreign customers."⁵³ Atmos contends that, in these circumstances, applying ONEOK's proposed definition of high priority uses will "consume the definition of human needs, rendering worthless the

⁵¹ Atmos brief at 15.

⁵² 70 FERC ¶ 61,017 at 61,057.

⁵³ Atmos brief at 12.

[Texas Railroad Commission's] curtailment scheme designed to protect intrastate customers in emergency situations.”⁵⁴

48. Southwestern raises different concerns. It states that it is among ONEOK's largest intrastate customers and that almost all the natural gas it transports on ONEOK goes towards providing electricity to Texas communities. Southwestern asserts that application of the Texas Railroad Commission's curtailment plan, which excludes electric generation from the category of high priority uses, could lead to increased electric power outages in Texas. Southwestern states that this would cause residential and other human needs customers in the Texas communities it serves to lose the electric power necessary to use the natural gas delivered to their homes. Southwestern states that it would also impede ONEOK's ability to control and operate its electric gas compression facilities to move natural gas through its system.⁵⁵ Southwestern, whose firm service on ONEOK is limited to intrastate service, is concerned that ONEOK's proposal to make natural gas used for electricity eligible for Exempt Use at the NGPA section 311 level will leave its Texas electricity end users worse off than before, as they would now be not only behind Texas Railroad Commission human needs customers, but also behind non-Texas electricity end users. Southwestern therefore proposes that the Commission not adopt a human needs policy at all for NGPA section 311 firm shippers.

49. The Commission finds that ONEOK's proposal to include within the definition of high priority use the generation of electricity to be used by high priority users, including residences, is reasonable. As discussed above, the Commission has previously approved interstate pipeline proposals to include such electric generation among high priority uses eligible for relief from *pro rata* curtailment. Also, Southwestern explains that human needs customers, including in Texas, may need electric power to operate natural gas-fired equipment such as furnaces.

50. We reject Atmos's contention that ONEOK's inclusion of electric generation in the definition of high priority uses will “consume the definition of human needs, rendering worthless the [Texas Railroad Commission's] curtailment scheme designed to protect intrastate customers in emergency situations.” As discussed above, under the two-step curtailment process we are requiring, once the overall categories of firm intrastate service and firm NGPA section 311 interstate service have been curtailed on an equal *pro rata* basis, the remaining available intrastate capacity will be allocated among

⁵⁴ *Id.*

⁵⁵ Southwestern brief at 2. However, Atmos argues that there is no factual record to support a claim that natural gas used for electricity should be afforded the same Exempt Use protections as natural gas used for domestic heating, and argues instead for deference to the Texas Railroad Commission policy of favoring heating over electric use. Atmos brief at 12.

intrastate shippers pursuant to the priorities established by the Texas Railroad Commission. Those priorities do not include any mechanism by which an NGPA section 311 firm shipper could bump a firm intrastate shipper, and therefore, Southwestern's concern that ONEOK's proposal would allow such bumping is unfounded. Thus, the Texas Railroad Commission's curtailment scheme is not "rendered useless," but rather continues to govern the allocation of ONEOK's intrastate capacity.

51. Southwestern is concerned that, as a firm intrastate shipper, it will not be eligible to obtain capacity that would otherwise be allocated to NGPA section 311 firm service during a curtailment. However, ONEOK's curtailment proposal, as modified in this order, allows firm intrastate shippers serving high priority uses to obtain such NGPA section 311 capacity during curtailments under the same terms and conditions as NGPA section 311 firm shippers can obtain such capacity. Thus, during curtailments, Southwestern will have the same ability to access NGPA section 311 interstate capacity in order to supply natural gas to electric generators serving Texas high priority users, as NGPA section 311 firm interstate shippers have to serve their high priority users. ONEOK's curtailment plan for its NGPA section 311 interstate capacity, as modified in this order, will not discriminate against firm intrastate shippers. The Commission recognizes that the Texas Railroad Commission curtailment plan applicable to ONEOK's intrastate service does not provide a priority for firm shippers serving electric generators similar to the curtailment plan applicable to ONEOK's NGPA section 311 firm interstate capacity. However, that is a matter outside the Commission's jurisdiction, and Southwestern may raise its concerns about the curtailment priorities applicable to ONEOK's intrastate capacity with the Texas Railroad Commission.

52. With regard to Atmos's concern that the Comisión Federal de Electricidad may be eligible for relief from *pro rata* curtailment of ONEOK's NGPA section 311 interstate capacity because it is transporting natural gas destined to supply electric generators in Mexico, it appears that the Comisión Federal de Electricidad does not currently have a contract for NGPA section 311 firm interstate service on ONEOK.⁵⁶ In any event, imposing different curtailment priorities based solely on the fact that natural gas is destined for export to a country with which the United States has a free trade agreement, rather than for domestic consumption, would be unduly discriminatory. NGA

⁵⁶ ONEOK does not itself deliver natural gas directly to Mexico. However, in October 2015, the Commission authorized ONEOK's affiliate, Roadrunner Gas Transmission, LLC (Roadrunner) to construct and maintain border crossing facilities from El Paso County, Texas, to Mexico. *Roadrunner Gas Transmission, LLC*, 153 FERC ¶ 61,041 (2015). Roadrunner also planned to construct an intrastate pipeline subject to the jurisdiction of the Texas Railroad Commission that would interconnect with ONEOK.

section 3(b)(2) expressly provides that the Commission shall not, on the basis of national origin, treat any natural gas imported from a country with which the United States has a free trade agreement in an unjust, unreasonable, or unduly discriminatory basis. Similarly, we find that natural gas destined for export to a country with which the United States has a free trade agreement, such as Mexico, should not be treated in an unjust, unreasonable, or unduly discriminatory basis. As the Commission has previously stated, the export of natural gas promotes national economic policy and is in the public interest.⁵⁷

53. Atmos and Southwestern both list various differences between ONEOK and interstate pipelines, including that ONEOK does not provide defined primary point rights to its firm intrastate shippers, a right of first refusal to extend firm contracts (ROFR), capacity release rights, general terms and conditions applicable to firm intrastate services, and public capacity and flow information.⁵⁸ However, Atmos and Southwestern do not explain how any of these differences would render ONEOK's curtailment proposal, as modified in this order, unworkable. In the first step of the curtailment process outlined above, ONEOK's *pro rata* curtailment of (1) the overall capacity that ONEOK's NGPA section 311 firm shippers have nominated and (2) the overall capacity its intrastate shippers have nominated up to their contract demands on an equal *pro rata* basis would be based on shipper nominations on the date of the curtailment. Atmos and Southwestern do not allege that these two categories of shippers do not submit nominations of service up to their mainline contract demands. Such matters as the lack of posted maximum intrastate rates, lack of secondary point rights, absence of capacity release, or lack of ROFR rights are irrelevant to this process.

54. Once the first step of the curtailment process has been completed, the intrastate capacity remaining available for service would be allocated based on the Texas Railroad Commission priorities. The NGPA section 311 interstate capacity remaining available for service would first be allocated on a *pro rata* basis among NGPA section 311 firm shippers, with all shippers serving high priority uses as defined in ONEOK's SOC, including Atmos and Southwestern, eligible to purchase the right to use that capacity during the curtailment.

55. Southwestern is concerned that the requirement that shippers obtaining relief from curtailment compensate NGPA section 311 firm shippers for their loss of capacity may cause commercial harm to intrastate shippers. Southwestern asserts that the rates firm intrastate shippers pay are non-public. However, ONEOK's proposal will not require a

⁵⁷ See *Kinder Morgan Border Pipeline LLC*, 162 FERC ¶ 61,066 (2018) ("border crossing facilities ... promote international energy trade between the United States and Mexico and further the goals of the North American Free Trade Agreement.")

⁵⁸ Atmos brief at 13-15; Southwestern brief at 23-24.

firm intrastate shipper's rates to be made public. If a firm intrastate shipper purchases NGPA section 311 capacity that would otherwise be allocated to firm interstate shippers during a curtailment, ONEOK's proposal requires the intrastate shipper to pay an Emergency Exemption Charge equal to the maximum reservation charge for NGPA section 311 service. Thus, the firm intrastate shipper does not need to reveal its intrastate rate in order to obtain curtailment relief, because it does not pay that rate for its curtailment relief. In addition, as discussed above, the curtailment of the firm intrastate shippers' own capacity is governed by the Texas Railroad Commission, which does not have a compensation methodology. Therefore, firm intrastate pipelines do not sell any of their capacity to NGPA section 311 firm shippers under ONEOK's proposal, and therefore are not eligible for any compensation that would require disclosure of their firm intrastate rates.

56. Southwestern contends that the eligibility determination for an exemption from *pro rata* curtailment should include a vigorous process to ensure that exemptions are granted in a fair and not unduly discriminatory manner. In particular, Southwestern argues that a mere finding that a shipper serves human needs customers should not be enough to trigger the right to an exemption. Rather, Southwestern argues, the SOC should "require the exemption-seeking shipper to demonstrate that under emergency conditions, the service is necessary to avoid irreparable injury to life or property,"⁵⁹ which Southwestern argues is the standard for NGA pipelines offering human needs exemptions.⁶⁰ Southwestern also urges that exemptions be limited to service that cannot be achieved through other pipelines, and be subject to regular review to ensure continued eligibility.⁶¹

57. We find that ONEOK's proposed process for obtaining relief from curtailment is generally reasonable, but we do require one change. Proposed section 11.2 defines Exempt Uses as "service requirements of residences, hospitals, schools, churches[,] and public safety essential services, as well as small commercial and plant protection uses necessary to avoid irreparable injury to life and property." Southwestern is concerned that the phrase "necessary to avoid irreparable injury to life and property" only modifies "small commercial and plant protection uses" and does not modify "residences, hospitals, churches and public safety essential uses." However, we find that the entire service requirements of residences, hospitals, schools, churches, and public safety essential

⁵⁹ Southwestern brief at 25.

⁶⁰ *Id.* at 14 (citing *United Gas Pipeline Co.*, 65 FERC ¶ 61,006 (1993); *El Paso Natural Gas Co.*, 69 FERC ¶ 61,164 (1994), *order on reh'g*, 72 FERC ¶ 61,042 (1995); *Florida Gas*, 70 FERC ¶ 61,017).

⁶¹ *Id.* at 26.

services are reasonably treated as necessary to avoid irreparable injury to life and property without the need to limit those service requirements to only that portion necessary to avoid irreparable injury to life and property.⁶²

58. As proposed in section 11.2(b) and (d), a shipper requesting relief must submit a written notice of the amount of capacity needed to serve exempt uses within 24 hours after ONEOK's notice of a curtailment event. Within 24 hours of the notice, the shipper must submit a sworn statement attesting to the need for the exemption, including "a detailed explanation of Customer's anticipated capacity needs" and that "no alternate fuel could be utilized or is available to meet Customer's Exempt Use Requirements." In this sworn statement, the shipper will need to provide detailed evidence that the amount of capacity it is requesting is needed to serve Exempt Uses, as requested by Southwestern. However, we find that the requirement that the shipper attest that "no alternate fuel could be utilized" must be clarified. That requirement can be interpreted as only requiring that the shipper attest that no fuel other than natural gas can be used. We find that it is also reasonable to require the shipper to attest that it cannot use capacity on another pipeline to obtain the natural gas necessary to serve its Exempt Uses, as requested by Southwestern.

59. Atmos argues that "ONEOK could have avoided the conflict between its intrastate and interstate obligations had it filed a curtailment plan with the [Texas Railroad Commission],"⁶³ and that it "would be simpler for ONEOK to administer" a single unified curtailment plan.⁶⁴ Southwestern makes similar points. Our ruling here does not preclude ONEOK from filing a curtailment plan with the Texas Railroad Commission if it so chooses. We do not find it necessary to have a single unified curtailment plan, given an initial proration of capacity between firm NGPA section 311 interstate service and firm intrastate service.

60. We direct ONEOK to file a revised SOC for Commission review within 60 days of the date of this order.

⁶² The Commission accepted analogous language from Florida Gas, which grants exempt status to "any use in a residence...where gas is used predominantly for residential purposes," and to any facility meeting the definition of "School or Hospital" without further limitation, but only covers gas-fired plants "for a minimum plant protection when operations are shut-down." Florida Gas Transmission Company, LLC - Fifth Revised Volume No. 1, [GT&C Section 17., Curtailments and Other Operational Controls, 6.0.0](#) at § (A)(2)(m).

⁶³ Atmos brief at 10.

⁶⁴ *Id.* at 17.

The Commission orders:

ONEOK shall submit a revised SOC, as discussed above, within 60 days of the date of this order.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.