PUBLIC CITIZEN
309 East 11th St., Suite 2 • Austin, Texas 78701 • 512.477.1155 • www.citizen.org

April 8, 2020

The Honorable Wayne Christian
The Honorable Christi Craddick
The Honorable Ryan Sitton
Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711-2967
Submitted via email to RRCconference@rrc.texas.gov.

RE: Comments by Public Citizen on Verified complaint of Pioneer Natural Resources U.S.A. Inc. and Parsley Energy Inc to determine reasonable market demand for oil in the state of Texas

Public Citizen appreciates the opportunity to provide these comments. We would welcome the opportunity to discuss our recommendations further. Please contact Texas office director Adrian Shelley at ashelley@citizen.org, 713-702-8063.

I. Current Market Forces Demand A Cut in Production

The Railroad Commission must act now to curtail production through proration. We join Environment Texas and others in calling for proration to occur based on company waste through flaring and other pollution emissions.

Proration to curtail oil production in Texas is now necessary due to current market forces. Texas and the nation are experiencing historic surplus and low prices. Supply now exceeds demand and will continue to do so for the foreseeable future. There are a number of reasons why.

a. Global supply surplus

There is a global supply surplus caused by an ongoing war for market share between Saudi Arabia and Russia. Railroad Commissioner Ryan Sitton estimates a global market surplus of 10 to 15 percent, roughly 10 to 15 million barrels/day.[1]

Petitioners assert that a production surplus could overwhelm the handling, processing, and storage industries. This risk to certain industry participants is one reason petitioners ask for proration.

b. Global demand shortage

There is a global demand shortage being caused by the COVID-19 pandemic and resulting economic slowdown. Commissioner Sitton estimates the decrease in demand at 5-10 million barrels/day.[2]

---

[1] *See* https://www.bloomberg.com/opinion/articles/2020-03-20/oil-price-war-is-u-s-s-chance-to-protect-free-markets?sref=5F8Ao01j.
[2] *See* https://www.bloomberg.com/opinion/articles/2020-03-20/oil-price-war-is-u-s-s-chance-to-protect-free-markets?sref=5F8Ao01j.

309 East 11th St., Suite 2 • Austin, Texas 78701 • 512.477.1155 • www.citizen.org

Some lifestyle changes that have occurred due to the pandemic response may be permanent. Teleworking, online shopping, and virtual gatherings will increase in popularity. Commutes to work and for personal reasons may decrease. Some physical offices and retail outlets may close permanently or operate only online. Vehicle miles traveled may decrease or at least slow in their rate of growth. These factors could permanently decrease demand for energy and especially fuel for vehicles.

c. The oil and gas industry is at risk

Petitioners assert that these market forces could destroy the Texas oil industry. They point to a significant storage shortage in the United States[3] and to recent requests by pipeline operators to curb production.[4] Petitioners conclude:

> Reflecting these global conditions, market demand for Texas oil is experiencing a massive collapse that threatens to destroy the state's oil industry. Many Texas oil producers very likely will be forced to abandon current and planned production in this price environment. Many may not survive. Rig lay-downs and employee layoffs already are ripping through the industry.

Tom Sanzillo of the Institute for Energy Economics and Financial Analysis points out in comments to the commission dated April 7, 2020 that some of the pressures felt by the oil and gas industry today are not new. Sanzillo cites (1) longterm market oversupply (including due to fracking in the U.S.) and (2) a global deterioration in market cooperation led by OPEC.

II. Energy Demand is Changing Forever

There is ample evidence that global demand for energy is changing forever, trending away from dirty fossil fuel sources such as coal, oil, and gas and toward clean energy sources such as wind and solar, bolstered by energy storage. Global demand is shifting irrevocably for a number of reasons, many highlighted below.

a. COVID-19 Pandemic

The COVID-19 pandemic has led to orders across the nation to close nonessential businesses, limit movement of people, and require people to stay at home. This has led to a dramatic decrease in energy demand that will continue while the orders are in place.

The trajectory of the coronavirus pandemic is uncertain. Recurrent COVID-19 outbreaks or other similar widespread public health crises would result in future demand slumps.

Finally, as explained above in section I.b, many of the changes in demand that have occurred as a result of the COVID-19 pandemic crisis could lead to permanent lifestyle changes that reduce energy demand over the long term.

b. Climate crisis

---

[3] *Petitioners citing* https://www.nytimes.com/2020/03/26/business/energy-environment/oil-storage.html; https://www.eia.gov/dnav/pet/pet_stoc_wstk_dcu_nus_w.htm.

[4] *Petitioners citing* https://finance.yahoo.com/news/pipelines-ask-u-oil-drillers-174638410.html.

309 East 11th St., Suite 2 • Austin, Texas 78701 • 512.477.1155 • www.citizen.org

As the climate crisis is worsens, public concern and demand for action is growing. Personal lifestyle adjustments made during the coronavirus pandemic will likely continue among many people who make lifestyle decisions designed to limit their own personal contribution to the climate crisis.

Climate action is becoming very politically popular. Texas' oil and gas industry—and its market regulators—should manage this crisis and the following recovery in a way that anticipates the global economic shift that global climate action is precipitating.

c. Electric vehicles

Electric vehicles are beginning to capture the attention of the mainstream market. Demand is impacted today by concerns about the access to charging, available vehicle types and up-front price. However, even with low oil prices, electric vehicles' total cost of ownership is less than most conventional internal combustion engine vehicles. By 2023 EVs will be cheaper than fossil fueled cars and efforts to expand charging infrastructure will be well into the implementation phase, mitigating concerns about range anxiety. By 2023, over 200 models (including 10 pickup trucks) will be available on the market. Heavy Duty Truck EVs cost 60-75% less to fuel and the freight industry—led by large fleet owners—will soon undertake a mass transition to electric trucks. Cities, transit agencies, and even some large private fleet owners are already transitioning their fleets to all electric vehicles.

d. Clean energy and battery storage

As the oil and gas industry suffers mightily during the current crisis, the renewable energy industry continues to gain ground.[5] The reliability of the renewable energy industry prompted the Wall Street Journal to describe wind and solar farms as a "haven" during the coronavirus pandemic.[6] Just as electric vehicles will reduce demand for fuel, renewable energy coupled with battery storage will suppress demand for fossil electricity generation.

In his comments, Mr. Sanzillo puts it plainly, "fossil fuels will be a less desirable investment opportunity post-recession for utilities than renewable energy."[7] Oil and gas producers must face this reality. Their industry may rebound after the present crisis, but in the long term fossil fuels will continue to lose market share until they become obsolete and are almost completely replaced. The Railroad Commission and the industry must be mindful of this reality in their response to this crisis.

III. The Market is Creating Waste and the Commission Must Act

a. Market forces are creating waste

[5] *See, e.g.*, https://www.nytimes.com/2020/04/07/business/energy-environment/coronavirus-oil-wind-solar-energy.html.
[6] *See* https://www.wsj.com/articles/wind-solar-farms-are-seen-as-havens-in-coronavirus-storm-11585656003.
[7] *Comments of Tom Sanzillo at p.5 (citing* IHS Markit and National Journal, Coronavirus Crisis: Could Fuel Move to Renewable Energy? April 6, 2020).

309 East 11th St., Suite 2 • Austin, Texas 78701 • 512.477.1155 • www.citizen.org

Texas defines "waste" to includes the "production of oil in excess of transportation or market facilities or reasonable market demand."[8] As explained above, waste is now occurring in Texas as a result of global and local market forces. Commissioner Sitton asserts that a global surplus of 1.5 billion bbl/day could arrive within months and "far exceed available storage[.]"[9] In the United States, a global surplus could depress production from 13 million bbl/day to 5-6 million bbl/day within a few years.[10]

b. Existing Commission practices create waste

Longstanding practices by the Railroad Commission also create waste. The Commission is in the habit of granting thousands of exceptions to Rule 32, which is designed to prevent wasteful flaring of natural gas. Over the last seven years, 27,000 requests for flaring exceptions have been asked for and granted.[11] Last November, Williams MLP Operating, LLC and Mockingbird Midstream Gas Services, LLC petitioned the Railroad Commission not to grant wasteful flaring exceptions.[12]

Estimates of waste through flaring vary. The EPA estimated methane leaks nationwide between 2012-2018 at 8 million metric tons. The Environmental Defense Fund conducted a detailed study that estimated this figure at 13 million metric tons—60% more than EPA's estimate.[13]

Whatever the true number, it is apparent that waste is rampant in the oil and gas drilling industry. Now the industry is threatened by major shifts in supply and demand. This would seem to be an excellent time for the Commission to increase industry efficiency (and profitability) by eliminating waste. For this reason, we agree with the strategy (below) of curtailing production based on a company's history of waste through flaring and other wasteful pollution.

c. The Commission must act to curtail production

Petitioners requested a market demand hearing which the Commission has scheduled for April 14. If the Commission determines that waste is occurring, it is required to act. Specifically, "If the commission finds at the hearing that waste is taking place or is reasonably imminent, it shall adopt a rule or order in the manner provided by law as it considers reasonably required to correct, prevent, or lessen the waste."[14]

d. Cutting production through proration is a proven strategy

---

[8] Natural Resources Code § 85.046(a)(10).

[9] *See* https://www.bloomberg.com/opinion/articles/2020-03-20/oil-price-war-is-u-s-s-chance-to-protect-free-markets?sref=5F8Ao01j.

[10] *See* https://www.bloomberg.com/opinion/articles/2020-03-20/oil-price-war-is-u-s-s-chance-to-protect-free-markets?sref=5F8Ao01j.

[11] *See* Rebecca Elliott, Texas Showdown Flares Up Over Natural Gas Waste, WALL ST. J. (July 17, 2019) ; see also, Flaring Regulation, Railroad Commission of Texas, available at https://www.rrc.state.tx.us/aboutus/resource-center/faqs/oil-gas-faqs/faq-flaring-regulation/ (showing that from Fiscal Year 2013 through Fiscal Year 2019, the Commission approved over 35,000 total venting and flaring permits).

[12] *See* https://assets.documentcloud.org/documents/6566801/Williams-RRC-Lawsuit-112019.pdf.

[13] *See* https://www.edf.org/climate/methane-studies.

[14] Natural Resources Code § 85.051.

309 East 11th St., Suite 2 • Austin, Texas 78701 • 512.477.1155 • www.citizen.org

Commissioner Sitton asserts that Texas could cut production by 10%.[15] If Saudi Arabia and Russia follow along, Sitton says this would "return the market to pre-crisis levels."[16]

The Commission last used its proration authority in 1973. Past success shows that proration can effectively modulate production and stabilize prices in times of surplus. Proration is also a fair means to allocate available business among market participants (although, as we describe below, we believe that a company's flaring record should also factor in to their allocation.) Finally, it will assuage lenders and potentially limit bankruptcies among vulnerable companies.

IV. More Public Participation Opportunities are Needed

Attorneys for petitioners have requested waiver of certain public notice requirements on the grounds that, "imminent peril to the public health, safety, or welfare requires adoption of the rule on fewer than 30 days' notice."[17] The COVID-19 pandemic clearly meets this definition and the Governor has suspended certain open meeting requirements during the state's response.

Petitioners, however, have not demonstrated how the market pressures that prompted their petition present an imminent peril to public health, safety, or welfare. As commenters, we are concerned about the limited opportunity to provide written and oral comment. We suggest the extension of the written comment period and additional opportunities for oral comment through telephony. This additional public process could occur in accordance with the Governor's telework order, provide more opportunity for essential public input, and present no additional risk to public health, safety, or welfare.

V. Conclusion

Public Citizen urges the Railroad Commission to use its authority to curb oil and gas production through proration. We further urge the commission to take this opportunity to reevaluate Texas's role as a global fossil fuel producer in light of permanent shifts in global demand. We agree with the conclusion of Mr. Sanzillo of IEEFA that the Railroad Commission should adopt production cuts.

We joined many of our allies in signing a letter submitted today by Luke Metzger of Environment Texas to the Commissioners with the subject, "RE: Verified complaint of Pioneer Natural Resources U.S.A. Inc. and Parsley Energy Inc to determine reasonable market demand for oil in the state of Texas." We affirm this letter in full and its recommendation that oil production be curtailed in accordance with company flaring records.

---

[15] https://www.bloomberg.com/opinion/articles/2020-03-20/oil-price-war-is-u-s-s-chance-to-protect-free-markets?sref=5F8Ao01j

[16] https://www.bloomberg.com/opinion/articles/2020-03-20/oil-price-war-is-u-s-s-chance-to-protect-free-markets?sref=5F8Ao01j

[17] *See* https://bakerbotts.com/insights/publications/2020/march/oil-prorationing-in-the-spotlight-at-texas-railroad-commission.

309 East 11th St., Suite 2 • Austin, Texas 78701 • 512.477.1155 • www.citizen.org

Again, we appreciate the opportunity to provide these comments. We would like to request that either Mr. Shelley or Mr. Smith be invited to provide oral comments as well. If you wish to discuss this request or the issues raised in our comments, please contact Adrian Shelley at ashelley@citizen.org, 713-702-8063.

Respectfully,

Adrian Shelley
Director, Public Citizen's Texas Office

Tom "Smitty" Smith
Special Projects Director