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April 8, 2020

VIA EMAIL: RRCconference@rrc.texas.gov

Chairman Wayne Christian
Commissioner Christi Craddick
Commissioner Ryan Sitton
Railroad Commission of Texas
1701 North Congress Avenue
Austin, Texas 78711

Re: **Comments – XTO Energy Inc., An ExxonMobil subsidiary**
Motion by Pioneer Natural Resources U. S. A., Inc. and Parsley Energy Inc.
Requesting a Market Demand Order; *Oil and Gas Docket No. OG-20-00003167*

Dear Chairman Christian, Commissioner Craddick, and Commissioner Sitton:

We respectfully submit these comments, in lieu of testimony, opposing the referenced motion for a market demand order leading to a potential prorationing of production. The motion requests that the Commissioners issue a market demand order under circumstances that do not meet the requirements imposed by the Texas Natural Resources Code for entry of such an order. Moreover, the motion asks the Commissioners to take actions that would unquestionably interfere with the free market.

Free markets are most effective and efficient when there is stability and are best able to recover from periods of instability in supply and demand when government does not try to restrain or manipulate market forces. The operation of the free market is the most efficient means of sorting out the extreme supply and demand imbalances we are now experiencing. Indeed, the best manner in which to allow our economy to be fully restored is by addressing the public health crisis confronting us.

Market surplus and reduced prices are nothing new. This is not the first time, nor will it be the last time, that the oil and gas industry has confronted market surpluses and reduced market prices. Significant market downturns have occurred since 1973 (the last year of crude oil proration in Texas); examples include 1986 -1990, 1998, 1999, 2002, 2009, 2016, and 2020. The Railroad Commission did not institute oil proration as a response to any of those downturns.

Proposals to impose quotas or mandatory production cuts will lead to unintended consequences for the State to the benefit of competing states in the U.S. and countries abroad. When government has intervened in energy markets historically, as it did in the 1970s by imposing price controls on crude oil and gasoline, that action interrupted the market's response; it contributed to supply shortages and long lines for gasoline across the country.

The Commission should also deny the motion because it fails to offer adequate analysis to prove how much oil from each field in Texas would be needed to meet market demand, as required by Section 85.054 of the Texas Natural Resources Code. It does not purport to offer either allegations or evidence about the reasonable market demand for any individual field, or, for that matter, for the state of Texas. Rather, the

motion and the attached marketing reports discuss only national demand and storage. This fails to meet, or even address, the mandatory requirements of Section 85.054 of the Texas Natural Resources Code. The plain wording of Subsection (b) of Section 85.054 requires that the “the reasonable market demand of one pool shall not be discriminated against in favor of another pool” when the Commission is “ascertaining the reasonable market demand for the entire state.” Additionally, Subsection (c) of Section 85.054 authorizes the Commission to “determine the reasonable market demand of the respective pool … so that discrimination may be prevented.”

The petitioners also fail to prove there is a wasteful excess of production, which is required under Texas law to enact the market demand order. The motion states, “[w]hen there is little or no storage, there is no place for oil shipments to go and production will be shut in.”

This undisputed fact – that production will be shut in by the operator – is critically important because it precludes any risk that production could ever exceed transportation and storage facilities or market demand. Subsection (10) of Code Section 85.046 defines waste as “production **in excess of** transportation or market facilities or reasonable market demand.” Only if that excess production were to occur would the Commission have any authority to enter a market demand order.

With today’s modern operating methods, the wasteful excess production that is the mandatory prerequisite for a market demand order will not happen. When originally adopted, the definition of waste in Subsection (1) of Section 85.046 addressed the then common operating practice in which operators would produce excess oil into earthen pits dug to hold oil until it might be transported to market. In modern times, that practice has been prohibited. That is no longer the way that wells and lease equipment are configured and no longer the way that producers conduct their operations. Instead, as correctly described by the motion, in the modern setting **“production will be shut in.”** There is no authority for a Commission market demand order if the lack of transportation, storage, or market will prevent excess production. Without excess production as specified by the definition of waste in the Code, there is no legally valid basis for the Commission to enter a market demand order.

Although the motion fails to address the Code’s definitions and requirements, it broadly asserts, without any supporting evidence or explanation that an unregulated shut in by producers would occur across the state in an “*ad hoc* and haphazard manner.” However, there is no explanation of why this would, as the motion contends, “heighten industry disruption and cause economic waste.” *Ad hoc* simply means done for a particular purpose as necessary, or when necessary or needed. Given the qualifications and experience of Texas oil producers, it is reasonable to expect each operator to devote extreme care to ensure that its wells are shut in in an orderly manner, as necessary or needed, and for the particular purpose of not producing more oil than the market can take. In other words, *ad hoc* correctly describes the automatic way in which operators will already act to prevent excess production, without any intervention by the Commission.

The very last thing that can be expected from such producers is that they would act in a “haphazard manner” given the value of the properties involved. The motion, however, goes on to assert that a shut in might somehow be haphazard, although it offers no evidence that any operator or producer might act haphazardly in shutting in its production. In fact, the normal expectation would be to the contrary. Haphazard does not describe how Texas operators conduct their business.

The motion also attempts to raise supposed risks of industry disruption and economic waste, again without any supporting evidence or explanation. No doubt, there will be unavoidable disruption in the production, sale, and transportation of oil. That disruption will occur automatically when production is shut in by producers, as described above. A market demand order would not stop that disruption.

In fact, a market demand order could itself cause disruption and economic waste by voluntarily renouncing Texas' share of the crude oil market. A market demand order will disrupt Texas oil production – an intentional regulatory action to surrender market share for crude oil. It is certain that other states will take up the slack created by any reduction in Texas production. The current situation faced by our industry is demand-driven, and it may be resolved only by improving demand over time.

We ask that you deny the motion for a market demand order.

Respectfully submitted,



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