

PRE-CONFERENCE HEARING

AUSTIN ENERGY'S TARIFF § BEFORE THE
PACKAGE: UPDATE OF THE 2009 § CITY OF AUSTIN
COST OF SERVICE STUDY AND §
PROPOSAL TO CHANGE BASE § IMPARTIAL HEARING
ELECTRIC RATES § EXAMINER

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January 14, 2016

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The pre-conference hearing in the
above-entitled matter came on to be heard before ALFRED
HERRERA, Independent Hearing Examiner, beginning on the
14th day of January 2016, from 10:34 a.m. to 11:55 a.m.
The proceedings were reported by Sandra S. Givens,
Certified Shorthand Reporter in and for the State of
Texas, reported by machine shorthand method, at Town
Lake Center, 721 Barton Springs Road, Room 100, Austin,
Texas 78704.

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1 ALSO PRESENT:

2 Ms. Lanetta M. Cooper
3 Texas Legal Services Center
4 Austin, Texas
5 Mr. Barksdale English
6 Regulatory & Market Policy
7 Austin Energy
8 Ms. Kaiba White
9 Public Citizen

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PROCEEDINGS

10:34 A.M.

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MR. HERRERA: My name is Alfred R. Herrera. I am the impartial hearing examiner assigned by the City of Austin and Austin Energy to preside over the proceedings leading up to their change in rates probably in 2016 -- yes, 2016. I'm still stuck in 2015.

Today is the first prehearing conference that we hold, and what I would like to do today, and we'll take appearances in just a few minutes, is to go over the procedures. I know that there's been some -- the City has published procedural rules applicable to these proceedings, and I have seen comments submitted by a couple of folks, a couple of parties; not everyone.

So for the moment let's go ahead and take appearances of the parties, and I think we'll just start on my left and go around the table, and then we'll go around the room. There's someone else that is not represented.

MS. ROSE: Andrea Rose, Assistant City Attorney representing the City of Austin.

1 MR. PERNY: Andy Perny, Assistant
2 City Attorney, City of Austin.

3 MS. DUNKERLEY: Betty Dunkerley,
4 the Seton Family of Hospitals.

5 MS. FOX: Marilyn Fox with NXP and
6 Samsung.

7 MR. SMOLEN: Paul Smolen with NXP
8 and Samsung.

9 MR. REED: Cyrus Reed with Sierra
10 Club.

11 MR. BORGELT: Roger Borgelt with
12 the Barton Creek North Property Owners Association.

13 MS. COOPER: Lanetta Cooper with
14 Texas Legal Service Center.

15 MS. FACONTI: Maria Faconti with
16 Husch Blackwell representing NXP and Samsung.

17 MR. REEDER: Chris Reeder also with
18 Husch Blackwell also representing NXP Semiconductors
19 and Samsung Austin Semiconductors.

20 MR. HERRERA: Anyone else that's
21 not at the table that wants to make an appearance?
22 Okay. Thank you.

23 One of the first things that I'd like to
24 discuss with the group is the extent of the authority
25 that I have, and it is limited by whatever the rules

1 are that the City of Austin has published. The City
2 has provided an opportunity for folks to provide
3 comments on the proposed procedural rules. I have a
4 set of comments from Mr. Reeder and from Ms. Cooper.
5 I've not received comments from other folks. Have
6 other folks submitted comments on the rules?

7 MR. BORGELT: Roger Borgelt with
8 Barton Creek North Property Owners Association. I did
9 submit a very brief set of comments also.

10 MR. HERRERA: Okay. I will look
11 for those. I have not received a copy of those. If
12 they were sent to me, I apologize. As most of y'all
13 do, I get hundreds of emails a day, but I will look
14 through those.

15 The -- in terms of the authority that I
16 have, I am constrained by those rules. Just as an ALJ
17 at the PUC or an ALJ at SOAH would be constrained by
18 the rules that are adopted by, if you will, the agency
19 involved, I am constrained as well.

20 What I would like to do is to go through
21 your comments, and we'll address those next, and then
22 what I intend to do is to prepare my thoughts and put
23 those in writing and send them to the City of Austin.
24 My sense is that I would send them to Austin Energy and
25 to the city manager with my thoughts on what the

1 procedural rules are. I do not have the authority to
2 change the rules. They are what they are as written,
3 but I would certainly provide my input on what I think
4 the rules should be.

5 MR. REEDER: Can I ask you a
6 question about that?

7 MR. HERRERA: Sure.

8 MR. REEDER: Or should I save my
9 questions until you're done?

10 MR. HERRERA: Let me, let me just
11 go ahead and say that we'll get through the procedural
12 rules.

13 MR. REEDER: Thank you, sir.

14 MR. HERRERA: And one of the things
15 that I also will ask Austin Energy to do -- if they
16 would do that today, and then we would follow up with
17 something in writing and also post it on the
18 website -- is to give us an idea of what they view the
19 schedule to be so that parties can have an idea of what
20 specific dates are for specific items that are going to
21 be filed. And we can do that after we discuss the
22 procedural rules.

23 Those are the topics of conversation
24 that I have for today. If you have other items that
25 you want to discuss, once we get through those we can

1 come back to see what those other items are. So the
2 first thing I'd ask is for folks to provide me your
3 comments on the procedural rules that were posted on
4 the City's website. And I'm think -- when I say "the
5 City" I'm talking about what Austin Energy has posted
6 on its website.

7 And I know I've got some very detailed
8 input from Mr. Reeder, and I greatly appreciated the
9 red-lining of them so I can easily identify where the
10 changes were that you were proposing. So Mr. Reeder,
11 if you would want to address those, or if you have
12 anything else to add to your comments, I'd greatly
13 appreciate it.

14 MR. REEDER: Sure. First of all,
15 since we're making a record, let me say a couple of
16 introductory things. First of all, thank you for
17 convening this hearing. I know that you had to inquire
18 about your scope of work to do that, so we appreciate
19 you doing that. We think it's important that all the
20 parties have an equal opportunity to have input with
21 you.

22 Second of all, let me just briefly
23 introduce the clients that I'm representing here along
24 with Ms. Faconti. They are two semiconductor
25 manufacturers that are among the largest customers in

1 the Austin Energy system. They have participated in
2 prior, the prior Austin Energy rate effort. They're
3 going to be engaged in this one. Energy costs, like
4 other customers throughout the Austin Energy system,
5 are very important to them. So they have a significant
6 interest in what we're doing today. So another reason
7 we're very thankful and grateful that you're overseeing
8 this proceeding.

9 Let me just turn now to the topic that
10 you've identified, which is the procedural rules. You
11 mentioned that you're bound by the rules that the City
12 issues. We observe, however, that Austin Energy, which
13 is the entity whose decisions are going to be examined
14 by the city council, that Austin Energy has issued a
15 set of procedural rules.

16 Our view is that it's, it's
17 fundamentally unfair, it's not consistent with the city
18 council's admonition that this should be a rate case,
19 one which should follow known rate-case procedures and
20 norms such as are employed at the PUC, for effectively
21 for the utility to establish the procedural rules that
22 will govern the proceeding. The power to set the
23 procedures is effectively the power to dictate the
24 result.

25 So when you say you're bound by the

1 rules that are adopted by the City, I know that the
2 Austin Energy, who is proposing the set of rates, has
3 issued a set of procedural rules. So I'm hoping you
4 can clarify: Does that mean that Austin Energy decides
5 what the procedural rules are, or has Austin Energy set
6 forth a set of draft rules which some other entity, be
7 that the impartial hearings examiner, the city council,
8 has the final say on what the content of those rules
9 are?

10 Our hope, as we have expressed, is that
11 a neutral party, not Austin Energy, have the final say
12 over the content of those rules for reasons that we've
13 expressed, to instill public confidence in the
14 rate-setting process primarily, but to ensure that all
15 parties have -- are fairly and equally treated.

16 MR. HERRERA: Okay. And I will
17 respond to your questions to the extent that I can.

18 MR. REEDER: Thank you.

19 MR. HERRERA: Ms. Cooper, do you
20 have anything else to add to your written comments?

21 MS. COOPER: Just, what we could
22 talk about is the -- I do have some substantive
23 differences between Austin Energy's proposed rules and
24 Mr. Reeder's changes, but the whole purpose of this
25 hearing was to create a more open and transparent

1 process.

2 And so when I started with that goal, I
3 want to first applaud Austin Energy for coming up with
4 the concept of forms. I think that is a very
5 transparent process for people with few -- with very
6 little legal sophistication and few resources will be
7 able to effectively participate.

8 And the only change I made was I made it
9 a mandatory kind of filing. I know maybe us attorneys
10 might not like it. We get less billing hours, maybe,
11 but it would really help, and the information that's
12 contained on the form would be all of the substantive
13 requirements of each of the various kinds of pleadings
14 that we would participate.

15 The second big thing I did is I
16 reformatted the rules; in my opinion, make them a
17 little bit easier to understand, and I also used very
18 plain English. For instance, I didn't use the word
19 "business day." I used the words "when the city
20 clerk's office is open." We don't need to define
21 "business day" to be "city clerk's office is open." We
22 just need to keep the rules, in my opinion, so
23 everybody can effectively participate, given the time
24 constraints, as clear and as forward as possible.

25 One of the key areas that I disagree

12

1 with Austin Energy and I disagree just in part with
2 Samsung's rules, and that is that I do think that
3 confidentiality, a protective order consistent with
4 what they had -- what Austin Energy recommended on the
5 appeal. I have seen no state law or no PUC rules that
6 give the PUC any added authority than what Your Honor
7 would have if you were to issue a protective order.

8 The difference I have with Samsung is
9 that there's a requirement that every party has to sign
10 a protective order, and I think that we don't want to
11 encourage people to have access to confidential
12 information. We really want to make sure that the
13 people that get access really need it, and so I would
14 keep -- that's why I like the protective order, because
15 it creates a little bit more formalistic process of
16 having access to confidential information. I just
17 don't think that everybody should have a requirement
18 that they have to sign a protective order giving them
19 access to confidential --

20 MR. HERRERA: If I'm understanding
21 what you're saying is that you don't believe that it's
22 necessary just because you decide to intervene in the
23 case --

24 MS. COOPER: Yes.

25 MR. HERRERA: -- that that comes

1 with it an obligation to automatically sign a
2 protective order?

3 MS. COOPER: Yes.

4 MR. HERRERA: You sign a protective
5 order only if you want to view confidential
6 information?

7 MS. COOPER: Yes. Because I would
8 rather have a system set up where we have the
9 availability to people that need it and that the
10 process winnows it to those people that need it. So I
11 don't want to encourage people to just go get it
12 willy-nilly.

13 Instead of having a court reporter -- or
14 we could have a court reporter in addition, but I would
15 like to see audio and video recordings of the
16 proceedings. I think that is the best way for the
17 public to be able to participate. People who are blind
18 or visually impaired, it would behoove them to be able
19 to listen to it on their TV.

20 We also have, Austin Energy has the
21 resources through the city's audio/video department, or
22 whatever it's called, they've already got a system set
23 up to be able to do that, and that way I think that
24 would maximize people's ability to participate, not
25 necessarily as a party, but to be informed, and it also

1 would help people in terms of if they're handicapped.

2 I would like to see a better
3 understanding of how we are going to post, post these
4 proceedings. It wasn't clear in Austin Energy's rules,
5 but I would like the index of documents that's
6 maintained at the city clerk's office to be
7 interactive. That way -- just like at the PUC, so
8 everybody will have access to the pleadings. They can
9 go in, click, and get a copy. I mean, except for
10 confidential information; don't get me wrong.

11 My big difference, at least for the
12 Samsung one, is I didn't really use business days for
13 response time. I just used calendar times. I know I
14 myself as an attorney in practicing, it gets a little
15 confusing when you mix up calendar days and business
16 days, and so I think if we just used calendar days that
17 it would be easier for people to participate.

18 My response times were a little bit
19 shorter. I think that that's something that we could
20 look at in terms of the extent of the hearing. I mean,
21 if we have a hearing in a month's time, we're not going
22 to have 10 days to answer and to object and to all that
23 stuff. So we may need to -- and also a big thing is I
24 ensured that Your Honor would have the discretion to
25 amend the rules in the public interest, and we do that

1 all the time at the PUC. We change, we modify
2 procedural rules to fit the needs of hearings, and that
3 was the purpose of that, that kind of substantive rule
4 change that I made.

5 And with that I do have copies. I sent
6 Your Honor a copy.

7 MR. HERRERA: I do have your
8 written remarks.

9 MS. COOPER: Because it also
10 includes my draft of the proposed rules.

11 MR. HERRERA: It does.

12 MS. COOPER: And basically, I mean,
13 you can tell they're a little bit simpler. I mean,
14 they're basically half of what other people's rules
15 are, and I even used bigger, bigger type, so somebody
16 who's not an attorney is going to be able to sit down
17 and read those and understand. And I think that we
18 need to balance our procedural rights with the needs of
19 parties who may not be so sophisticated.

20 I mean, due process in a disciplinary
21 proceeding in a high school is, a student has a right
22 to give his version of the facts, and that's due
23 process. And I'm not trying to say we should be that
24 simplistic, but we should certainly be as clear using
25 plain English as much as possible so everybody can

1 effectively participate and people aren't hindered or,
2 or actually end up not being able to be a participant
3 because the rules are too hard to understand and
4 follow.

5 MR. HERRERA: Thank you.
6 Mr. Borgelt?

7 MR. BORGELT: Well, since you have
8 not seen my comments I'll just go over them very
9 briefly, because I don't think it will take too long.
10 Roger Borgelt again for Barton Creek North Property
11 Owners Association. And while I'm at it I should add
12 that I fully expect that other entities and
13 associations will be added to that client list; the
14 common thread being that they are entities and
15 associations that are customers who are not residents
16 of the city of Austin.

17 MR. HERRERA: Okay.

18 MR. BORGELT: But they're --

19 MR. HERRERA: Outside city
20 ratepayers?

21 MR. BORGELT: The outside city
22 ratepayers of various kinds. So . . .

23 First of all, I have read and concur
24 entirely with both the letter of December 30th and the
25 comments of NXP and Samsung as far as the recommended

1 changes to the rules. I've gone through all of that
2 and am completely on board with all of those
3 suggestions.

4 We have a particular concern about
5 Austin Energy compiling the list of issues to be
6 addressed. I understand from a response that I
7 received that that was not the intent of the rules, but
8 that is what the rules seem to say. So I still, I
9 still have a concern with that being changed.

10 The rule on the membership of parties to
11 me is a bit unclear in terms of the listing of
12 memberships. I'm -- I would like some clarification to
13 that in terms of whether individual members of property
14 owners associations are intended to be listed. As I
15 read it it's not intended, but I'm not sure that it's
16 entirely clear.

17 MR. HERRERA: So, for example, your
18 concern is if there is a --

19 MR. BORGELT: Yeah. Yeah.

20 MR. HERRERA: -- outside city
21 ratepayer neighborhood association --

22 MR. BORGELT: Right.

23 MR. HERRERA: -- does the
24 neighborhood association have to list every --

25 MR. BORGELT: And every time

1 someone joins or leaves do I have to update the list,
2 and then I would really rather not have to do that for
3 obvious reasons.

4 And then finally, it seems to me, as the
5 draft rules are written, the timing of the filing of
6 motions to intervene and the final statement of issues
7 is unclear in that the intervention deadline should
8 come before the statement of issues is created. So
9 that -- because that doesn't seem to be how the current
10 rules are. So --

11 MR. HERRERA: Say that again for
12 me, please.

13 MR. BORGELT: That the intervention
14 deadline should be before the statement of issues is
15 created so that we're -- so that everyone who
16 intervenes has a chance to participate in that process.
17 And that's really -- as I said, it was very brief, and
18 I'm sure you'll get a copy of it, and that's really all
19 I have to say about it.

20 MR. HERRERA: Okay. And Ms. Rose
21 handed me a copy of, I think it was an email that you
22 may have sent.

23 MR. BORGELT: Yeah. It was just
24 about a half-page email. Yes.

25 MR. HERRERA: Okay. Mr. Reed?

1 MR. REED: (Shakes head.)

2 MR. HERRERA: Ms. Dunkerley? If
3 you have comments, that's fine. If you don't, that's
4 fine too.

5 MS. DUNKERLEY: I don't, I don't
6 really have a comment right now other than I'd like to
7 have the ability, as you said, to change these policies
8 if they're warranted during the process. And the other
9 concern I have is just the group of policies, whether
10 financial policies that were discussed and all of that
11 group of policies in general that AE has, some of them
12 have really not been vetted yet by the council, at
13 least the ones that came out in September or October of
14 this year, I guess for 2016.

15 And I just wondered if there was a
16 process there that, how is the council going to play in
17 those policies? Are they all just out there for us to
18 kind of pick and choose? Do we use the ones that were
19 in place in 2015 or -- not very technical, I know, but
20 I was just confused by it.

21 MR. HERRERA: Okay. I didn't --

22 MS. DUNKERLEY: Somebody can help
23 me.

24 MR. HERRERA: I'm sorry,
25 Ms. Dunkerley. I didn't mean to cut you off.

20

1 MS. DUNKERLEY: I said it's not
2 very technical, but I was just confused by in general
3 what policies are going to be in place that will help
4 guide you in your decisionmaking.

5 MR. HERRERA: Okay.

6 MR. SUTTON: Hello. I'm John
7 Sutton. I'm representing BOMA, the Building Owners and
8 Managers Association; also a member of CCARE. And I'm
9 just here to be on record that we're in support of the
10 recommendations for Mr. Reeder and Samsung and NXP.

11 MR. HERRERA: Okay. If you would
12 get the court reporter a business card, that would be
13 very helpful, or at least your contact information.

14 MR. SUTTON: Okay.

15 MR. HERRERA: Before we get to
16 Austin Energy, anyone else that wants to address the
17 issue of procedural rules and the process itself that
18 hasn't already spoken?

19 MS. WHITE: I just wanted to
20 respond to the --

21 MR. HERRERA: If you would identify
22 yourself.

23 MS. WHITE: Kaiba White, public
24 citizen.

25 MR. HERRERA: Okay.

1 MS. WHITE: This idea that the
2 deadline for intervention should come before the issues
3 makes sense, but I would argue that maybe there should
4 be an opportunity for a late intervention in case an
5 issue that is raised is of particular concern to
6 somebody who wishes to participate.

7 MR. HERRERA: And let me have your
8 name again.

9 MS. WHITE: Kaiba, K-A-I-B-A.

10 MR. HERRERA: Kaiba. Kaiba, you
11 and I have spoken on the phone, and I had no visual for
12 you. I apologize.

13 MS. WHITE: Nice to meet you.

14 MR. HERRERA: An unrelated matter,
15 so . . .

16 MR. REEDER: Can --

17 MR. HERRERA: Yeah, Mr. Reeder?

18 MR. REEDER: I'm sorry. I don't
19 mean to go twice.

20 MR. HERRERA: No, no. That's fine.

21 MR. REEDER: And I'm sorry to
22 interrupt before you go. I didn't talk about the
23 content of our specific comments on the procedural
24 rules, as Ms. Cooper and Mr. Borgelt did. Let me just
25 commend our written comments to you as well as our

22

1 letter. I feel we fleshed that out. Our primary
2 concerns are the workability of classification of
3 confidential information was one issue.

4 Another critical issue was who exactly
5 identifies the relevant issues to be considered in the
6 case. That was something else that we discussed in our
7 comments, but we set forth our substantive comments I
8 think fairly extensively. So we just commend those to
9 you.

10 MR. HERRERA: And again, I do
11 appreciate them.

12 MR. REEDER: Sorry.

13 MR. HERRERA: I read through them
14 and I found them very helpful.

15 MR. REEDER: Thank you. And I'm
16 sorry for interrupting.

17 MS. ROSE: That's fine. So I'm
18 Andrea Rose on behalf of Austin Energy and the City of
19 Austin. Just a couple comments sort of at the
20 beginning to frame the process that we're engaged in
21 here so that everyone's sort of on the same page,
22 because I think that that framing informs Austin
23 Energy's response specifically to some of the
24 confidentiality concerns that all of the parties have
25 raised.

1 When Austin Energy set out to design
2 this process based on the experiences in the 2012 rate
3 case and with some guidance from council to consider
4 hiring an impartial hearings examiner, Austin Energy
5 and the City considered the PUC process in its full
6 extent and determined that as a municipal utility,
7 imposing the full PUC structure on itself as part of a
8 voluntary procedure was excessive and would be unduly
9 burdensome. And so the City concluded that they would
10 extend this process to make it broader than it was in
11 2012 to give parties more opportunities to get involved
12 but to not create additional rights than would have
13 existed had the same process been used as was used in
14 2012.

15 So that really informed our drafting of
16 the initial set of rules. So when we started from
17 looking at the PUC rules, some of the things that
18 experienced PUC participants will notice were
19 explicitly excluded or done in recognition of the fact
20 that this is not the same type of proceeding as would
21 go before the PUC. We're not operating within the
22 bounds of the Administrative Procedures Act.

23 And so that's sort of how we got to the
24 rules that we put together, and we also tried to draft
25 the rules with an eye to having them be more user

1 friendly. I appreciate that they're not completely
2 user friendly and not completely accessible, but that
3 was a second goal of ours, was to try and make them as
4 accessible as they could be to the average citizen in
5 Austin who is not well versed in administrative and
6 procedural rules. So that's sort of where we started
7 from.

8 And on the recommendation of some
9 internal discussions that we had we decided that
10 instead of just on the day we all started decreeing,
11 These are the rules, here are the rules and now we're
12 going to play by them, we felt that it would in the
13 inclusive spirit that we're hoping that this process
14 will operate under to provide those rules to the
15 parties so people had an idea of what kind of universe
16 they would be stepping into.

17 So to that end I've been looking through
18 Samsung's and NXP's comments and Ms. Cooper's comments,
19 and I believe that there are some -- you can always
20 edit in a document. So there are definitely some
21 suggestions that Austin Energy, based on the
22 recommendation or additionally based on your comments,
23 Mr. Herrera, that the City is open to examining and
24 considering and looking at making some modifications to
25 the rules.

1 However, given the overarching framework
2 that this is not a PUC proceeding, this is not a
3 proceeding subject to the Administrative -- the APA,
4 there are some changes that we are not -- we do
5 not -- we're not in a position to accept. And
6 specifically with respect to confidentiality, and we
7 can sort of get into that at a separate moment if we
8 want to, but I think that that is one area where,
9 unfortunately, I don't believe we're going to be able
10 to find a great deal of common ground.

11 I understand that Samsung and Ms. Cooper
12 and y'all have expressed an interest in having a
13 protective order and having some sort of nondisclosure
14 agreement. We do not perceive that the City has the
15 authority to issue a protective order, and thus,
16 Mr. Herrera does not have the authority to issue a
17 protective order, and we cannot guarantee the
18 confidentiality of that information. And given the
19 highly competitive market in which Austin Energy
20 operates, we cannot expose ourselves; we cannot release
21 that confidential information in a way that would be
22 detrimental to the city in reality.

23 With respect to the statement of issues,
24 I know that concerns have been raised about that as
25 well, and we will go back and work on making the rules

26

1 clearer on that point. It is not Austin Energy's
2 intention to set the outer limits of what can be
3 considered by the hearing examiner. Austin Energy is
4 going to identify the issues that we believe must be
5 considered by the hearing examiner based on input that
6 we receive from the EUC and from council, but the
7 hearings examiner has the authority to identify
8 additional issues that he believes should be
9 considered, based on his review of the rate-filing
10 package and the parties' input.

11 I think my understanding is that the
12 confidentiality and the statement of issues were the
13 two big overarching concerns. I also understand their
14 concerns with respect to the schedule. Austin Energy
15 presented several times now to the Austin Energy
16 Electric Utility Commission and to the EUC and has
17 explained that it is Austin Energy's intention to have
18 council -- or hope that Austin Energy -- that council
19 will complete the rates by the end of June before their
20 summer break and before the budget process so that this
21 information can inform the budget process that will
22 then begin in the fall.

23 Working from that June date we have
24 backed out to, and working with trying to understand
25 the time constraints that everyone will have, have

1 requested that the impartial hearings examiner provide
2 his report to council at the beginning of May, which
3 will give council May and June to consider, to hold
4 additional meetings as they see fit, to receive
5 additional input from all of the parties here in the
6 room.

7 I know I was just looking through the
8 comments this morning Mr. Reeder submitted, and I know
9 I think you had discussed submitting exceptions to the
10 hearings examiner's report. We would anticipate that
11 that would be something that would be raised directly
12 with council, since they are the final decisionmaker
13 and so we wouldn't add an additional layer of filings
14 at the hearings examiner level.

15 But in Austin Energy's perspective, from
16 when we file the hearings package/package to when
17 Mr. Herrera issues his decision, there's some play
18 within that timeframe. So we are open to discussing
19 with people to try and make that schedule within that,
20 roughly now, four-month timeframe as workable as
21 possible for people.

22 MR. REEDER: May I interrupt? Can
23 I ask you to repeat when you said you would propose
24 that Mr. Herrera submit a report to the council? Was
25 that the end of May?

28

1 MS. ROSE: No. The beginning of
2 May --

3 MR. REEDER: And you're going to --

4 MS. ROSE: -- I believe is the
5 time.

6 MR. REEDER: -- file your tariff
7 when?

8 MS. ROSE: We anticipate filing our
9 tariff package next week and presenting it to the
10 Electric Utility Commission and the EUC on Monday,
11 January 25th.

12 MR. PERNY: [Inaudible.]

13 MS. ROSE: The committee. The
14 committee's meeting on the 25th, and then the EUC is
15 also meeting on the 25th, and then we could potentially
16 discuss it as well on the council meeting that Thursday
17 the 28th if necessary.

18 MS. COOPER: And if I may, why do
19 you think that -- I mean, I understand that you do have
20 a concern with confidentiality, I'm not trying to
21 dissuade you on that, but I don't understand why you
22 think that you will be waiving confidentiality if we
23 have a protective order when I know that y'all
24 understand that you can utilize through contracting the
25 protection confidential information, that you use

1 consultants that sign confidentiality agreements.

2 And what a protective order is, is
3 essentially a contract, and I would even be open to
4 narrowing the ability to get access to confidential
5 that was even Austin Energy offered on appeal. But the
6 fundamental concept, the very fundamental, one of the
7 fundamental concepts of due process is that you have a
8 right to address evidence, and if evidence is
9 confidential information, like if the rate-filing
10 package -- I know the rate-filing package that went to
11 the PUC had confidential information. That's evidence
12 that you want to put in the record and you would be
13 asking the judge to make a decision on, and fundamental
14 due process requires that all the parties be able to
15 confront that evidence and make -- either disagree with
16 the fact or make alternative factual statements that
17 contradict your conclusion, your summary decisionmaking
18 that you use based on those facts. It's a very
19 essential thing.

20 So I am very interested why you don't
21 think a protective order that's essentially a
22 contract --

23 MR. HERRERA: And let me interject
24 here. I appreciate the --

25 MS. COOPER: Okay. And I do

30

1 apologize, Your Honor.

2 MR. HERRERA: No, no, no.

3 MS. COOPER: I did not address you.
4 That's true.

5 MR. HERRERA: I do appreciate that,
6 but just based on my experience, if we go down that
7 road, then it could become very unproductive. I
8 understand y'all's position with regard to the need for
9 access to confidential information and some mechanism
10 by which to access that. I also understand the concern
11 that Austin Energy has expressed in terms of that
12 information inadvertently becoming public.

13 I think we all understand that I don't
14 have the authority to say the procedural rules will be
15 changed such that we will have a protective order along
16 the lines that we're accustomed to seeing at the Public
17 Utility Commission. What I would propose . . .

18 And before we get there I do want to
19 have more specific dates from Austin Energy on how they
20 perceive the proceeding moving forward in terms of
21 filing dates and things like that. I know there's
22 something on their website that identifies that, but I
23 think it would be good to lay that out and then within
24 the next few days, and we can talk about what a
25 respectable period amount of time is, for folks to

1 comment on those.

2 From my view, we are constrained by the
3 June 23rd council meeting. Now I have a better
4 appreciation for why it is that administrative law
5 judges at SOAH want so much time to prepare what it is
6 they're going to prepare. I used to think, Why do they
7 need so much time?

8 So for my -- my constraint is, I back up
9 from that date and I come up with an early May date,
10 May 5th, May 6th, somewhere in there, for when I would
11 prepare a report to the world, and particularly to the
12 council for it to do with it as it wishes. So between
13 now and May 6th and then June 23rd I would expect to
14 see some kind of schedule with identified dates for
15 specific tasks to be accomplished.

16 In terms of the procedural rules that
17 we're discussing today, what I intend to do is to take
18 your comments, take Ms. Cooper's comments and
19 Mr. Borgelt's comments, Mr. Reeder's comments and
20 Austin's comments, and prepare a written document that
21 identifies what I think should occur. And I will
22 submit that to Austin Energy and to the world, and then
23 it's probably up to the city manager and the city
24 council to answer your question, Mr. Reeder, on who has
25 the final say. That's where I believe the final say

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1 lies, is with the council and with the city manager's
2 office.

3 I agree with Austin Energy that this is
4 not an APA proceeding. The APA does not apply to
5 municipalities. But I also agree with what Ms. Cooper
6 is saying, is that we have to have something that is
7 not near as formal as what we have at the PUC so that
8 John Doe can walk in and participate if Don or Jane Doe
9 wishes to do so, but we still have to have procedural
10 rules that are discrete enough to let parties know
11 what's going on here and how they're going to take
12 action.

13 I do like -- Mr. Reeder, again I commend
14 you for your written comments and the red-lining of it.
15 I do like that aspect of it. That is what I intend to
16 do, is to put together a written proposal from me to
17 the city manager's office, to Austin Energy, and
18 ultimately, I guess, to the city council on what I
19 believe the procedural rules should look like. But the
20 decision to change those rules is beyond my authority
21 within the constraints that I have.

22 MS. ROSE: Mr. Herrera?

23 MR. HERRERA: Yes.

24 MS. ROSE: One other point that I
25 wanted to respond to was the question about how the

1 website was going to look and whether --

2 MS. COOPER: Yes.

3 MS. ROSE: -- it is going to be

4 like, it is going to be like a PUC docket.

5 MS. COOPER: Okay.

6 MS. ROSE: So all documents --

7 MS. COOPER: Interactive?

8 MS. ROSE: -- will be linked and --

9 MS. COOPER: That'd be good.

10 MS. ROSE: -- the clerk, we've been

11 working with the clerk's website to make it as

12 user-friendly as possible. So each document will have

13 its own document ID number so you can refer back to

14 document 1, which will likely be the rate-filing

15 package. And anyone who wants to, whether or not

16 they're a participant in the proceeding, will be able

17 to access those documents --

18 MS. COOPER: That's great.

19 MS. ROSE: -- through the website.

20 MS. COOPER: That's great.

21 MR. HERRERA: And --

22 MS. COOPER: We don't have an

23 identification of the website yet? I mean, I know we

24 don't have a pleading to file in it yet, but . . .

25 MS. ROSE: It will be hosted off of

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1 the clerk, the city clerk's website.

2 MS. COOPER: Okay.

3 MS. ROSE: And it will be
4 accessible next week.

5 MS. COOPER: Okay. That sounds
6 terrific.

7 Your Honor, I would like to raise an
8 issue given the compressed schedule. We don't even
9 have what the PUC usually gives for a rate hearing, and
10 you usually get more. There are alternative forms of
11 discovery that could be speeded up. I know when we set
12 broader rates at the City of Austin one time we used
13 technical conferences to allow the consultants to meet
14 in a recording and get quicker answers. It's not quite
15 a deposition, but it saves all of the resources of
16 writing out the questions and getting the questions,
17 and if it's recorded, then we would have the answers.

18 I'm very concerned that we're squashed
19 like a June bug, so to speak. We're just not going to
20 have a lot of movement for the parties to get
21 information given the constrained timelines.

22 MR. REEDER: If I could, I'd like
23 to pick up on our definitely being squashed like a bug.
24 I wasn't at the meeting. I understand that
25 Councilwoman Tovo has pushed back against this notion

1 that we have to have rates in place for the City to set
2 its budget. I understand that the discussion, I
3 believe it was with Mr. Dreyfus, and I think the
4 hearing records will reflect that Councilwoman Tovo
5 indicated that the City would be fine with doing some
6 sort of mid-year budget correction, and as a
7 consequence of that, rates do not have to be in place
8 by this June date.

9 Because I wasn't at the hearing I'm just
10 reporting what I understand the statements to be. I
11 would strongly suggest that to the extent you can
12 explore whether we are bound to have final rates by
13 June that you do so, because I would suggest that the
14 procedural suggestions that are coming out will result
15 in what is effectively not a real rate case. It would
16 be a superficial at best, cursory examination of a
17 bunch of data, but not enough time to meaningfully pore
18 through complicated and extensive data, provide
19 analysis, and to reflect that in a meaningful hearing.

20 Whether this is an APA hearing or not,
21 the reason we're here is because of, quite frankly, the
22 public distrust, quite frankly, some of the public
23 dissatisfaction with how rates were set last time. The
24 council intended that this be a meaningful rate-case
25 exercise, whether it entirely 100 percent conforms to

1 what the PUC's rules are. And I would suggest to you
2 that an unnecessarily abbreviated accelerated hearing
3 would not serve that broader purpose.

4 MR. HERRERA: And Mr. Reeder, if I
5 could ask you to -- and not today, but if you could
6 provide the parties and myself what you would perceive
7 to be --

8 MR. REEDER: I'd be --

9 MR. HERRERA: -- a workable
10 schedule.

11 MR. REEDER: We'd be happy to do
12 that.

13 MR. HERRERA: That would be
14 helpful, helpful.

15 MS. COOPER: And Your Honor, we
16 haven't even seen the rate-filing package yet. I don't
17 know --

18 MR. HERRERA: Ms. Cooper, if you
19 could hold your comments.

20 MS. COOPER: Sure. Yes, Your
21 Honor.

22 MR. HERRERA: And we've been here
23 for 45 minutes, and I think our court reporter needs a
24 short break.

25 MS. COOPER: Okay. Yes, Your

1 Honor.

2 (At 11:13 a.m. the proceedings
3 recessed, continuing at 11:21 a.m.)

4 MR. HERRERA: Thank you. Let's go
5 back on the record. Before we get started, did anyone
6 enter the room that has not made an appearance that
7 wants to make an appearance?

8 MR. WHELLAN: Yes. Michael Whellan
9 on behalf of St. David's Healthcare.

10 MR. HERRERA: Thank you.
11 Ms. Cooper, I interrupted your comments.

12 MS. COOPER: Well, I hope I don't
13 have a senior moment and forget what I was thinking
14 about, but --

15 MR. HERRERA: Well, I have. That's
16 why I'm asking you.

17 MS. COOPER: I just wanted to bring
18 to the Court's attention that we don't even have a
19 rate-filing package yet. We had thought it was going
20 to be this Monday, but we're not clear exactly when it
21 will be, and I think a lot of what we see in the
22 rate-filing package would shape discovery as well as
23 the list of issues and the timeline. And so I was just
24 raising that as a concern when you asked Mr. Reeder to
25 share his comments about what a good procedural

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1 schedule would be, and if the rest of us could be able
2 to chime in. You know how lawyers are: Give us a
3 moment, we'll take the stage.

4 MR. REEDER: Well, I tell you what
5 I'll propose. I'll be happy to kind of knock out a
6 draft and circulate it and get comments from parties,
7 see if any consensus could be had and maybe file that
8 after Austin Energy files its rate-filing package, if
9 that would be acceptable to you. And if we can't agree
10 on something, we can just submit alternative proposals.

11 MR. HERRERA: Yeah. What I'd
12 suggest is that whoever wants to file a proposed
13 procedural schedule do so. As we sit here today, I am
14 operating under the assumption that we have to be done
15 by June 30th, and I believe there's a council meeting
16 June 23rd. So that's a constraint under which I will
17 move forward.

18 MS. COOPER: Um-hm.

19 MR. HERRERA: But I do welcome
20 input on what you believe, given the concerns that
21 you've expressed, a more workable schedule would be and
22 that you circulate it to everyone.

23 Ms. Rose, if you could identify for us
24 the dates when Austin Energy will file what I believe
25 it's calling its tariff package -- as opposed to a

1 rate-filing package -- its tariff package, when you
2 believe a statement of issues would be due and when the
3 intervention deadline would be, when parties would have
4 to submit their what at the PUC would in effect be
5 their prefiled direct testimony report, to address
6 Ms. Cooper's concerns. It doesn't have to be in a Q&A
7 form prefiled testimony as what we're accustomed to
8 seeing, but it can simply be in narrative report form.
9 So if you could go through that, that would be very
10 helpful.

11 MS. ROSE: I'm happy to. One point
12 that's sort of an overarching concern, I understand,
13 Mr. Reeder, that you believe that Councilmember Tovo
14 suggested that she did not believe that rates needed to
15 be set by the budget. If we receive direction from the
16 city manager or from the majority of council that that
17 is the direction they want us as a department of the
18 City to take, we are happy -- we will obviously take
19 that direction. We are, however, currently operating
20 under specific direction to have the rates done by the
21 end of June.

22 MR. REEDER: Well, see, that's
23 what's a little troubling. All of these discussions --

24 MR. HERRERA: And I don't want to
25 get into a --

1 MR. REEDER: Sorry.

2 MR. HERRERA: -- he said/she said
3 and argue about -- we understand the format we have.
4 These are the rules that we have at the moment. I'm
5 hopeful that there's a mechanism to address the
6 concerns that you have, you have raised.

7 MR. REEDER: Well, I just hope
8 Ms. Cooper's motion can be considered, because I'm
9 hearing a lot of discussions between the Utility and
10 the City that no one else is a part of and has any
11 ability to have any participation in. It's very
12 troubling, and I think Ms. Cooper's motion goes to
13 that.

14 MR. HERRERA: And I'm, and I'm
15 hopeful that I -- I don't know that I can resolve that
16 for you, but I am hopeful that I can serve as a medium
17 to address those issues.

18 Okay. Go ahead, Ms. Rose.

19 MS. ROSE: So it is Austin Energy's
20 intention to file our rate-filing package on no later
21 than January 21st, on January 21st, and we will be
22 presenting that rate package to the -- we'll be doing a
23 presentation related to the rate package to the EUC
24 that following Monday, which is January 25th, which is
25 the next scheduled EUC meeting, and we'll also be

1 presenting it that day to the Austin Energy Electric
2 Utility Commission.

3 And so once that the tariff package has
4 been filed, motions to intervene are then -- the
5 website will also be live and everyone can begin filing
6 on the 21st. It is not Austin Energy's intention to
7 have an end date for motions to intervene. However, if
8 people choose to intervene late in the process, they
9 are entering the existing universe. So we will not
10 then sort of restart the discovery timelines and push
11 everything back.

12 But if, for example -- I think,
13 Ms. White, you raised a concern with if someone later
14 on down the road decides that, Oh, I didn't realize the
15 beginning of this was in -- there is not a deadline for
16 motions to intervene so that people will still be able
17 to participate in the process, I think is something
18 that we had discussed.

19 Mr. Herrera, you may be able to change
20 that if you find that to be unworkable if your
21 preference is that there is a deadline for motions to
22 intervene. However, with the idea of trying to make
23 this as transparent a process as possible, we're trying
24 to work with the community in that respect.

25 Austin Energy anticipates releasing a

1 statement of issues on or around the first week of
2 February that will outline what the issues that we
3 have -- the input that we have received from the
4 community.

5 MR. HERRERA: What date was that?
6 I'm sorry?

7 MS. ROSE: February 3rd. I
8 believe that we had discussed setting the beginning of
9 March as the deadline to sort of file your initial
10 presentation -- your response, your prefiled testimony,
11 however you want to consider it -- your initial
12 response to the Austin Energy rate-filing package. We
13 have --

14 MR. HERRERA: What was that date
15 again? I'm sorry?

16 MS. ROSE: We have been working
17 from a date, proposing a date of March 4th for that.
18 We're proposing to close discovery on March 18th, which
19 would be approximately two months after the opening of
20 the filing of the tariff package, with the hearing
21 scheduled the final week of March, March 28th through
22 April 1st.

23 MR. HERRERA: I'm sorry. I missed
24 that.

25 MS. ROSE: I'm sorry. March 28th

1 through April 1st, and then the parties would file
2 their closing briefs on April 8th.

3 And to the concerns that this procedure
4 is significantly shorter than the PUC procedure, if you
5 look at the process from the date that the tariff
6 package will be filed to the date that counsel will
7 ultimately be making a decision, it is not that much
8 shorter than the actual PUC process. And also, the
9 process does not involve reply briefs, exceptions,
10 responses to exceptions.

11 So we've attempted to sort of eliminate
12 some of the briefing with the understanding that once
13 Mr. Herrera makes his recommendation to council, the
14 parties will be engaged in the normal public process
15 and as citizens of Austin are able to go speak to their
16 council members about their concerns. So it is not
17 Austin Energy's opinion that sort of once this -- that
18 Mr. Herrera's decision represents the final conclusion
19 of this rate process, and so it continues for two
20 additional months, during which people will be able to
21 express their concerns.

22 So that's sort of --

23 MR. HERRERA: Okay. Am I --

24 MS. ROSE: Does that make sense?

25 Did that answer your questions?

1 MR. HERRERA: Yes. Am I clear that
2 the events that you have identified and the dates that
3 you've proposed do not include a rebuttal filing by
4 Austin Energy to whatever the intervenors file?

5 MS. ROSE: They do not. We would
6 anticipate making our rebuttal to council, and it is
7 possible that -- yeah.

8 MR. HERRERA: And in terms of the
9 scope of the hearing itself, the issues to be
10 addressed, I think I heard you say earlier that the
11 fact that you identify certain issues that Austin
12 Energy wishes to address when it files its statement of
13 issues does not constrain any ratepayer entity from
14 identifying other issues that affect rates.

15 MS. ROSE: Austin Energy would
16 anticipate that ratepayers would identify issues that
17 they believe would be considered -- should be
18 considered, and then you as the impartial hearings
19 examiner would set the scope of the hearing.

20 MR. HERRERA: And the schedule that
21 you identified, you identified that Austin Energy would
22 file a statement of issues. Are you, are you
23 anticipating that other parties would do the same?

24 MS. ROSE: On the form motion to
25 intervene that we have developed it includes a space

1 for people to identify the issues they believe that
2 should be considered. We can also look and we would
3 anticipate that -- and it says on the form that people
4 may update and amend that at any time. And so we would
5 anticipate that entities and individuals would be
6 filing statements of issues as well.

7 MR. HERRERA: Okay. And I know
8 that I've seen something that resembles this on the
9 website. What I would ask you to do is, just like I
10 asked Mr. Reeder, if you could, if you could provide
11 that to me and then also post it on the website.

12 MS. ROSE: That being the
13 procedural schedule?

14 MR. HERRERA: What you just went
15 through.

16 MS. ROSE: Okay.

17 MR. HERRERA: Yeah. That would be
18 very helpful also so that we all have an idea of what
19 Austin Energy views the procedural schedule in process
20 to look like and what folks have expressed concern with
21 that schedule believe it should look like.

22 MS. ROSE: And just to clarify
23 comments that I made that Austin Energy would be
24 making -- would be communicating with council with
25 respect to Austin Energy's rebuttal to the IAG's

1 recommendation, that would be through the course of the
2 work sessions and the council meetings, the public
3 meetings that we are proposing to council that they
4 schedule to address this.

5 MR. HERRERA: And just so that
6 there are no surprises, what I would also suggest when
7 I issue my written recommendations is I would include
8 a date, then, in there back when parties that think I
9 got something wrong could say I got it wrong, similar
10 to what the commission has or the SOAH ALJs do -- SOAH
11 is an acronym for State Office of Administrative
12 Hearings -- with regard to exceptions to the proposal
13 for decision that they issue.

14 MR. REEDER: I don't know if we
15 heard clearly whether Austin Energy intends to file
16 rebuttal testimony preliminary to the hearing that it's
17 proposed for March 28th.

18 MS. ROSE: Under the current
19 procedural schedule we do not. We anticipate
20 addressing concerns that we have with presentations
21 filed by ratepayers at the hearing itself.

22 MR. REEDER: Is that through live
23 rebuttal testimony or just through cross examining our
24 witnesses?

25 MS. ROSE: Through the rules

1 per -- and contemplate cross examination. And we would
2 also be presenting, potentially presenting Austin
3 Energy staff that would be reiterating the positions
4 that we have articulated in our filing package and our
5 initial presentation.

6 MR. REEDER: So you want to have
7 live rebuttal testimony?

8 MS. ROSE: We will be utilizing the
9 process that I just explained.

10 MS. COOPER: I can't hear her.

11 MR. HERRERA: I think what I'm
12 hearing is that it would be live rebuttal. Can you not
13 hear over there? Is that what's going on?

14 UNIDENTIFIED: No. We cannot hear.

15 MS. ROSE: I apologize. I'll talk
16 louder.

17 UNIDENTIFIED: Thank you.

18 MR. REEDER: It's live rebuttal
19 testimony.

20 MS. ROSE: Okay.

21 MR. REEDER: Are you going to
22 have --

23 MR. HERRERA: I think, I think that
24 is the effect --

25 MS. ROSE: I mean, I --

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1 MR. HERRERA: -- of what we're
2 talking about. Yeah.

3 With regard -- Ms. Cooper raised the
4 idea of a technical conference. Those can be helpful.
5 I've also been to technical conferences that have been
6 just a waste of time, but I am -- I think that would be
7 something for the parties and Austin Energy to
8 consider, and we'll work it into the schedule
9 somewhere.

10 MS. ROSE: Okay.

11 MR. HERRERA: I don't have anything
12 else on my agenda to discuss. Is there anything else
13 that the parties want to address? Mr. Reed?

14 MR. REED: Really just a question.
15 You had mentioned --

16 MR. HERRERA: And identify
17 yourself, please.

18 MR. REED: Oh, sorry. Cyrus Reed
19 with Sierra Club. You had mentioned the presentation
20 to the EUC on the 25th. What is the role of the EUC in
21 this, in this process in terms of coming up with
22 issues, and is their role only on that, the meeting of
23 the 25th? Or how does, how does Austin Energy see the
24 role of the EUC in this process?

25 MS. ROSE: We anticipate that the

1 EUC will be regularly briefed during the process,
2 during their regularly scheduled meeting so that they
3 will be apprised as to what is going on. We will be
4 making presentations to them about the impartial
5 hearings examiner recommendation. Mr. Herrera has
6 spoken to them once, and I anticipate that when he
7 issues his decision he would be available to
8 potentially make a presentation to them as well.

9 We also anticipate they will be
10 submitting a memo to council on their opinion about the
11 impartial hearings examiner recommendation, and they
12 will also at their meeting on the 25th be able to take
13 input from the public about what issues the EUC should
14 consider and should recommend that they be considered.

15 MR. REEDER: Does anyone else get a
16 chance to brief the EUC?

17 MS. ROSE: My understanding is
18 there's a portion for citizens communication at the
19 EUC.

20 MR. PERNY: The EUC -- sorry. Andy
21 Perny with the City of Austin. The EUC is a council
22 advisory body. So ultimately, they're going to decide.
23 If someone wants to brief them, that's up to the
24 commission. We don't, we don't set their agenda.

25 MR. REEDER: So maybe we can sign

1 up to go to the mic, have a couple of minutes?

2 MR. HERRERA: And I'm going to ask
3 that you direct your comments to me.

4 MR. REEDER: Certainly.

5 MR. HERRERA: I'd appreciate that,
6 and I think it will make the process more productive.
7 One last thing that I'm going to ask --

8 MS. COOPER: Your Honor?

9 MR. HERRERA: I'm sorry.

10 MS. COOPER: I did have two other
11 issues that -- I thought we were supposed to brief the
12 list of issues, so I just want to let the parties know
13 that I did draft them. I started with the list of
14 issues that was approved at the PUC at the appeal, PUC
15 appeal of Austin Energy rates, and added a few things.
16 I just want to just share that. I know we're not going
17 to decide it. I don't really want to make a big deal
18 of it right now, but I did send that to Your Honor --

19 MR. HERRERA: Okay.

20 MS. COOPER: -- and the rate review
21 committee and the people that I knew had intended to
22 participate, and if it's Your Honor's pleasure, I would
23 be more than willing to try to send it to the rest of
24 the folks once we have interventions.

25 The second thing, which is a serious

1 thing, and especially in light of what I've heard from
2 Austin Energy's intent to carry through the procedure
3 after Your Honor makes your recommendation to the
4 council, and that is the issue of ex parte. I filed a
5 motion. I know I'm not officially a party yet, so I
6 would ask Your Honor to look at this in terms of
7 something that has been a matter that has been brought
8 to the attention of the Court and ask you to issue a
9 motion sua sponte, since we really have no things.

10 But it is phrased as a motion, and we're
11 asking Your Honor to direct Austin Energy not to
12 communicate or contact with the council member and
13 their aides or the EUC. I think one of the things that
14 caused a lot of consternation last year was people who
15 had been trying to actively participate in the rate
16 hearings having very limited time to participate. And
17 even sitting through work sessions where there's no
18 public comment is taken in work sessions, and
19 even -- and we didn't even have a consumer advocate at
20 the time.

21 But I would like Your Honor -- what I
22 basically say is that we really don't want them to keep
23 going and going and constantly saying their version of
24 how the rates should be over and over and over again.
25 We think that fundamentally prejudices our rights to be

1 heard on these issues.

2 And what we just heard Austin Energy say
3 is that they're going to constantly go to every EUC
4 meeting, and if they're going to repeat what they did
5 last year, they will go to every Austin Energy general
6 meeting, committee meeting, and work session and break
7 their cases down and educate the council. And
8 basically what they're doing is advocating their
9 position on how the rates should be set without a
10 framework where other parties have an opportunity to be
11 heard.

12 Now, I do not have a problem with them
13 being able to do that as long as they fulfill the
14 ex parte rule dictate, which means other parties are
15 notified and have an opportunity to participate; a
16 reasonable opportunity, not three minutes. At the last
17 EUC meeting I can tell you, Your Honor, that Austin
18 Energy spent two hours discussing cost of service in
19 their proposed rate case, and other people were limited
20 to three minutes, and that is not a reasonable
21 opportunity to be heard.

22 And I know it's difficult for Austin
23 Energy, because they do see themselves as a staff
24 position, but Austin Energy by state -- I mean the city
25 council by state law is the decisionmaker on the

1 reasonableness and fairness of these rates. They take
2 on a regulatory obligation, and if we want an open and
3 transparent process, then we need to make sure that
4 everybody has a meaningful right to be heard in the
5 final decisionmaker.

6 I'm not saying parties get equal time.
7 That is not what I'm saying. But if we have a
8 situation where one party is constantly going and
9 communicating their position, it creates fundamental
10 unfairness to the other parties, and Austin Energy
11 recognized that, their draft rules proposed ex parte
12 rule in their draft rule in this hearing. So they
13 understand the underlying public policy of why we
14 prohibit ex parte contacts.

15 MR. HERRERA: Ms. Cooper, let me
16 ask you. What if a council member contacts Ms. Rose or
17 Mr. Perny and says "I need a briefing" on whatever
18 aspect of rates it may be?

19 MS. COOPER: Then I would suggest
20 that the process be that Austin Energy ensure that
21 other parties have an opportunity to comment.

22 UNIDENTIFIED: To attend?

23 MS. COOPER: To attend and comment.

24 MR. HERRERA: There's a hand up in
25 the back. I don't know who you are.

1 MR. SALINAS: If I could, thank
2 you, Your Honor. I'll introduce myself. I'm Trey
3 Salinas representing the Coalition for Clean,
4 Affordable, and Reliable Energy --

5 MR. HERRERA: Okay.

6 MR. SALINAS: -- which is many of
7 Austin's largest employers, commercial and industrial
8 users. I'd just like to go on record that we
9 absolutely are in strong support of Ms. Cooper's
10 comments and request, and I think she's right, if staff
11 is going to have to continue to brief council, if we
12 can all be notified so that we can have equal access as
13 well just to keep it fair and transparent.

14 MR. HERRERA: Okay. I'm going to
15 take your -- everything we've talked about here under
16 advisement, and we'll issue a --

17 MS. COOPER: I hear you, Your
18 Honor.

19 MR. HERRERA: -- ruling. Ms. Rose,
20 would you like to respond?

21 MS. ROSE: I think Mr. Perny has
22 some comments with respect to this motion.

23 MR. PERNY: Well, I just -- one is
24 a point of clarification, because we seem to be talking
25 about two different things. We seem to be talking

1 about ex parte communications, which is sort of sidebar
2 or, you know, in-the-back-room-type communications
3 where no one else is involved, versus public meetings
4 which are subject to the Open Meetings Act and things
5 like that.

6 And so the way I read the motion
7 originally it seemed to be talking about what we
8 traditionally think of as ex parte communications, and
9 we would object to that primarily because I think it
10 misunderstands the nature of the city council. You
11 know, the PUC is a, is an independent agency that
12 serves in a judicial function. That's -- you know, the
13 judicial area is where ex parte communications are
14 traditionally forbidden. Council is a political
15 legislative body that actually has responsibility for
16 the operation of the utility.

17 To get back to your point, I can't
18 commit to not having ex parte communications with my
19 client, because the city council is my client. If I'm
20 called upon to give them advice, I will do that, and I
21 will do that under the attorney/client privilege if
22 that's what's required.

23 Getting to the other aspect of what I
24 seem to be hearing now is that we seem to be talking
25 about prohibitions on how the council and how the

1 Electric Utility Commission handle their meetings, and
2 I would point out that the Electric Utility Commission,
3 as I was trying to say earlier, they set their agenda,
4 and if you want more than a couple of minutes at the
5 mic, that's certainly up to the Electric Utility
6 Commission and how they set their agenda. That's not
7 our -- that's not the scope of our responsibility.

8 I would point out that the council
9 meetings are subject to Open Meetings Act, public
10 notice is required, and council sets their agenda,
11 council sets their procedures, and I can't
12 control -- we can't control how council runs its
13 meetings. They have, they have procedures that are set
14 by ordinance; we can't change those.

15 So again, I'm a little bit concerned
16 about the part of this motion that seems to be talking
17 about us reaching out and exercising control over how
18 the council and the Electric Utility Commission runs
19 their meetings, because that's their prerogative, but
20 we don't affect that any more than anyone else in this
21 room does.

22 MR. HERRERA: Okay. Thank you. I
23 appreciate those comments.

24 MS. COOPER: Your Honor, I would
25 just add it would be like the PUC staff at every open

1 meeting discussing their position in rate cases to the
2 PUC while the case is pending. We're not asking Austin
3 Energy to stop talking to the council about billing
4 problems that are going on now or what business is
5 operating. We're asking them to -- and it's true that
6 you would be only making a recommendation for the
7 council, because the council will make the ultimate
8 decision, Your Honor, but we just believe it's a
9 fundamentally unfair process that maybe not even the
10 council has even considered.

11 And I'm not trying to say that we want
12 equal time, but it was hours last year. Austin Energy
13 broke down --

14 MR. HERRERA: Ms. Cooper, I
15 understand the issues --

16 MS. COOPER: All right. I'm sorry,
17 Your Honor.

18 MR. HERRERA: -- that you're
19 concerned about.

20 MS. COOPER: I am getting carried
21 away. I apologize.

22 MR. HERRERA: And --

23 MS. ROSE: May I make one point?

24 MR. HERRERA: Yes.

25 MS. ROSE: I would, I would hope

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1 that if -- I share Mr. Perny's concerns, obviously,
2 that this would affect the operations of the City, as
3 it's preventing a City department from speaking to
4 another part of the City.

5 However, the way I read the motion it
6 would only prohibit Austin Energy from communicating
7 with council members and their aides with respect to
8 the rate case, and we would assume that if this is an
9 issue that goes forward, it would be addressed so that
10 no representatives and none of their clients or any of
11 the citizens of the . . .

12 And so I think it gets very dicey, as
13 you can see, if you're trying to prevent a citizen
14 who's a member of a homeowners association that is a
15 participant from -- preventing them from speaking to
16 their council member about an issue that they feel is
17 important. It becomes complicated, and I don't think
18 you could issue an order in such a way that it would
19 only apply to one party.

20 So those are just some of our concerns.

21 MR. REEDER: Can --

22 MR. HERRERA: The one thing that is
23 clear on the ex parte rules is that the discussions
24 outside of an open setting like this with me are
25 prohibited. The issue that you have raised are

1 discussions with either commissions that the City has
2 established or with council members themselves, and
3 that is a different issue that we -- that I will
4 address. Ms. Dunkerley?

5 MS. DUNKERLEY: I'm going to speak
6 as a council member and not as a rate intervenor. When
7 I was on council, and even before then, when we had
8 controversial issues coming to council where we were
9 being inundated with various lobbyists, et cetera, like
10 I am now, we would get a note from the procurement
11 office that says this is the quiet time, no lobbying,
12 blah-blah-blah.

13 Why couldn't we reiterate right now that
14 the council has requested that we do an open process,
15 and since they are going to be serving as the
16 rule-maker, just put them on notice that specific
17 details relating to the rate hearing themselves would
18 be off limits until the rate case is heard. That
19 doesn't limit AE from discussing management issues or
20 purchasing issues or something like that. Why wouldn't
21 something as simple as that?

22 I can tell you from my experience of
23 lobbying the council in the summer that most of them
24 were very adamant that they wanted a very open,
25 unbiased process and -- I don't know if that would

1 help, but, you know, if I had some direction -- or not
2 direction, just some information along those lines that
3 since we're the rule-makers -- or we're going to be the
4 rate-makers, that we need to be cautious in this area,
5 and I certainly would have followed them. It might be
6 an idea.

7 MR. HERRERA: Thank you.

8 MR. REEDER: We would fully support
9 that. We would fully support that no other party would
10 have the opportunity to go directly lobby on issues
11 pertaining to this case. Whether the APA applies or
12 not, the marching orders that we all took on good faith
13 was that this was going to be a rate case, which is
14 inconsistent with the idea that the utility gets to go
15 office to office to office to discuss the issues
16 without all the other parties having the opportunity to
17 participate in those discussions.

18 MR. HERRERA: All right. I
19 understand the issue, and thank you for your comments.
20 The -- if there's anything else -- is there anything
21 else as a matter of procedure or substance that folks
22 want to address before I address my last point? And
23 I'll start over here with Ms. White.

24 MS. WHITE: Yes. Thank you. I
25 just wanted to inquire about the timeline of getting

1 the consumer advocate hired and part of this process.

2 MR. HERRERA: I don't have any
3 information on that.

4 MS. WHITE: Okay. Is there any
5 intention of waiting for that party?

6 MR. HERRERA: As far as I know,
7 this process is moving forward while the issue with
8 regard to the consumer advocate is resolved.
9 Ms. Biedrzycki?

10 MS. BIEDRZYCKI: Yes. I have a
11 question. My name is Carol Biedrzycki, and I am
12 currently a member of Electric Utility Commission, and
13 I'm here today to observe this process. And in
14 observing it, one item that has not come up that
15 concerns me is that I do not believe that these
16 procedural rules make any provisions for, like, a
17 citizens-type communication.

18 I know that in a, in a SOAH proceeding
19 before the proceeding starts that there is a time
20 period when customers can make statements to the
21 hearings examiner, and that happens sometimes. I know
22 that the hearings examiner is not required to consider
23 it, you know, like in evidence. It's sort of a pretty
24 lightweight process, and I was hoping that here in this
25 type of a setting that customers who did have issues

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1 that wanted them to be heard could, you know, have some
2 time to talk.

3 I mean, we look at who's around this
4 table now, the people who are coming into this
5 proceeding are all representing the large customers and
6 the businesses and the industry, and, you know, there
7 just aren't the consumer resources.

8 So my question is, is how, how is this
9 process going to take, you know, citizens'
10 communication, like, into account? And I don't think
11 that's been addressed.

12 MR. HERRERA: I believe I saw a
13 hand down there.

14 MR. REED: I only -- I always have
15 questions. What is the correct way for us if we wanted
16 to submit ideas on either issues to be considered or
17 the procedural timeline, what is the correct way so we
18 don't violate any rules to -- are we sending -- I just,
19 I don't know what --

20 MR. HERRERA: And that was the last
21 thing I was going to address.

22 MR. REED: Okay.

23 MR. HERRERA: I think first the
24 short answer is you file with the city clerk.

25 MS. ROSE: Starting next week. In

1 the interim submit them to rate.review@
2 austinenergy.com.

3 MR. HERRERA: And what I'm going to
4 ask the parties to do is when you file something with
5 the city clerk and it's something that you want all the
6 parties in the world to see, that you email them to me,
7 and I'm going to give you a different email address so
8 that it doesn't get lost with my regular email address.

9 And that email address is I, the letter
10 I, H-E, the acronym for impartial hearing examiner,
11 @herreraboylelaw.com. Herrera is spelled
12 H-E-R-R-E-R-A, Boyle is B as in boy, O-Y-L-E-L-A-W.com.
13 That's one email address. And I'm going to ask you to
14 include two other email addresses in there so that in
15 case I miss it, my assistants will not. The other two
16 email addresses will be ihe-ll, same domain; the next
17 one is ihe-mw@ same domain. L-L is Leslie Lindsey, my
18 office manager. M-W is Maryann Wood, our paralegal,
19 legal assistant, and many other chores.

20 And if you would include in the subject
21 line "Austin Energy 2016," that would be very helpful.
22 So that's how you send stuff to me, but officially it
23 has to be filed with the city clerk.

24 MS. COOPER: You're not asking us
25 to send you discovery requests and all that stuff

1 unless there's a dispute, right?

2 MR. HERRERA: That's correct.

3 MS. COOPER: So you really meant
4 that you only want the things that we should be filing
5 that you need to act on?

6 MR. HERRERA: If you want to
7 intervene, if you have something for me to act on.

8 MS. COOPER: Something that you
9 want to act on.

10 MR. HERRERA: That's right.

11 MS. COOPER: Okay.

12 MR. REEDER: So for next time can
13 we get a bigger room?

14 MR. HERRERA: I would suggest the
15 convention center. I leave it up to Austin Energy on
16 the accommodations.

17 Is there anything else that folks need
18 or want to address? All right. We are adjourned, and
19 thank you very much for coming in and your interest.

20 (At 11:55 a.m. the proceedings
21 recessed for the day.)

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REPORTER'S CERTIFICATION

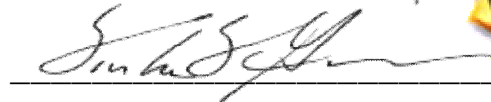
THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

I, Sandra S. Givens, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the above and foregoing 66 pages contain a full and true transcript of my shorthand notes taken upon the occasion set forth in the caption hereof, as reduced to written form by me.

I further certify that this transcription of my notes truly and correctly reflects the exhibits offered into evidence, if any.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 19th day of January, 2016.

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SANDRA S. GIVENS, CSR
Certification No. 5000
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