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AUSTIN ENERGY'S TARIFF PACKAGE: §
2015 COST OF SERVICE STUDY §
AND PROPOSAL TO CHANGE BASE §
ELECTRIC RATES §

BEFORE THE CITY OF AUSTIN
IMPARTIAL HEARING EXAMINER

AUSTIN ENERGY'S FILING OF REVISED PROCEDURAL RULES

On February 3, 2016, Austin Energy filed a revision to the procedural rules that will govern the proceedings before the Impartial Hearing Examiner. The rules will be served on all parties that attended the January 14, 2016 prehearing conference as well as on all parties that have filed a motion to intervene as of 7:00 am February 3, 2016. In addition, the rules will be posted on Austin Energy's rate review website at rates.austinenergy.com.

Respectfully submitted,



(Signature of Party or Party's Authorized Representative)

Andrea D. Rose

(Printed Name of Party or Party's Authorized Representative)

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2/3/2016

(Date Submitted)

CITY OF AUSTIN PROCEDURAL RULES
FOR THE INITIAL REVIEW OF AUSTIN ENERGY’S RATES

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CHAPTER A. GENERAL PROVISIONS AND DEFINITIONS.

§1.1. Scope.

- (a) These rules establish how the process related to the rate hearing on Austin Energy's proposed rates will work. The rules address: how an Austin Energy customer or an organization whose membership is comprised Austin Energy customers may participate in the hearing, how a hearing participant may get information from Austin Energy or another hearing participant, and what responsibilities the participants will have.
- (b) These rules do not change the jurisdiction, powers, or authority of the City Council, City of Austin staff, or the substantive rights of any Person.
- (c) If any part of these rules conflicts with any resolution or ordinance adopted by the City Council, the resolution or ordinance shall control.
- (d) If an issue arises that is not addressed by these rules, the Impartial Hearing Examiner shall decide such issue fairly and impartially. In addressing any issues arising under these rules, the Impartial Hearing Examiner will consider the Parties' respective levels of sophistication.

§1.2. Definitions.

- (a) Austin Energy — The City of Austin department which oversees the day-to-day operation of the municipally owned and operated utility which provides electric service to the City of Austin, adjoining areas of Travis County and certain adjacent areas of Williamson County.
- (b) Authorized Representative — A Person who enters an appearance on behalf of a Party, or on behalf of a Person who wants to be a Party or otherwise to participate, in a Proceeding. The appearance is made by signing any Pleading filed on behalf of the Party or Person who wants to be a Party or otherwise to participate in the Proceeding. The Authorized Representative shall be an Authorized Representative until a statement or Pleading stating otherwise is filed.
- (c) Business Day — A day when the City Clerk's office is open for business.
- (d) City — City of Austin, Texas.
- (e) Days — Calendar days, unless these rules indicate or a City Council order says something different.
- (f) Hearing — Any meeting of the Parties before the Impartial Hearing Examiner at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

- (g) Impartial Hearing Examiner — The individual hired by the City to conduct Hearings and Proceedings related to the Tariff Package and to make recommendations to the City Council about the Tariff Package.
- (h) Independent Consumer Advocate — The individual or group of individuals hired by the City to represent the interests of the residential and small commercial customer classes and Houses of Worship in the electric rate setting process.
- (i) Intervenor — A Person who is permitted by these rules or by ruling of the Impartial Hearing Examiner to become a Party to a Proceeding, not including the Independent Consumer Advocate.
- (j) Model — The Austin Energy cost of service model. Certain information in the Model may be redacted or password protected in order to adequately protect Austin Energy and customer confidential information.
- (k) Party — A Party under Chapter D of these rules.
- (l) Person — An individual, partnership, corporation, association, governmental subdivision, entity, or public or private organization.
- (m) Pleading — A written document submitted by a Party or a Person who wants to participate in a Proceeding, outlining the facts, claims, requests for relief, legal arguments, or other matters relating to a Proceeding.
- (n) Prehearing conference — Any conference or meeting of the Parties, prior to the Hearing on the Tariff Package, on the record and presided over by the Impartial Hearing Examiner.
- (o) Proceeding — Any Hearing, investigation, inquiry or other fact-finding or decision-making procedure conducted by the City Council or the Impartial Hearing Examiner.
- (p) Rate — Any tariff, charge, or fee, charged or collected by Austin Energy, and any rules, regulations, practices, or contracts affecting the tariff, charge or fee.
- (q) Rate Ordinance — The ordinance approved by the City Council, adopting electric rates for Austin Energy customers.
- (r) Rate Website — The public website where all information about the Tariff Package, Proceedings, Pleadings and documents will be located.
- (s) Request for Admission — A written request that asks the receiving Party to admit that particular statement is true or false. The statement must be about a topic or piece of information that is at issue in this process. The statement may be a statement of opinion

or of fact, or about the law as it applies to a certain fact, or about the authenticity of any document produced.

- (t) Request for Information — A written request that asks the receiving Party to answer a specific question, either in writing or by providing responsive documents, or asks the receiving Party to share certain documents.
- (u) Serve and Service — Sending a document that is being filed with the City Clerk to all other Parties using the Parties' email addresses of record identified in the Parties' motions to intervene or as updated subsequently.
- (v) Statement of Issues — The issues related to the Tariff Package that have been identified to be reviewed by the Impartial Hearing Examiner.
- (w) Tariff Package – Schedule of Rates, Model, and accompanying explanations presented by Austin Energy for review by the Impartial Hearing Examiner and adoption by the City Council.
- (x) Texas Rules for Civil Procedure — The rules that generally apply to all civil cases filed in Texas state courts. The rules are publicly available at <http://www.txcourts.gov/media/1055394/trcp-20150901.pdf>.
- (y) Texas Rules of Evidence – The rules that govern civil and criminal proceedings in all courts of Texas, except small claims court. The rules are publicly available at <http://www.txcourts.gov/media/921665/tx-rules-of-evidence.pdf>.

§1.3. Standards of Conduct.

- (a) **Standards of Conduct for Parties.** Every person appearing before the Impartial Hearing Examiner shall behave with dignity, courtesy and respect. Professional representatives shall observe and practice the standard of ethical and professional conduct prescribed for their professions.
- (b) **Communications.**
 - (1) **Ex parte communications.** Unless specifically authorized by law, the Impartial Hearing Examiner cannot communicate, directly or indirectly, about any issue of law or fact related to the Proceeding with any Person or Party, or their Authorized Representatives, unless all Parties know about and have an opportunity to participate in the communication.
 - (2) **Contract Manager.** The Impartial Hearing Examiner does not need to provide notice to all of the Parties before the Impartial Hearing Examiner communicates with the City of Austin employee designated by the City Manager as the contract manager about the administration of the Impartial Hearing Examiner's contract.

§1.4. Computation of Time.

- (a) **Counting days.** When determining the length of a time period outlined in these rules, the period begins on the day after the act, event, or default in question. The period ends on the last day of the designated period unless that day is not a Business Day. If the last day is not a Business Day, the designated period ends on the next Business Day. For example, a response to a discovery request is due 10 days after the Party receives the discovery request. If that ten day period ends on a Saturday or Sunday, the response is due on Monday.
- (b) **Extensions.** Before a time period expires, a Party may ask the Impartial Hearing Examiner to extend the time period. The Party must file a motion that explains why the extension is needed and shows that the neglect, indifference, or lack of diligence of the Party asking for the extension is not the reason for the extension. The Impartial Hearing Examiner shall rule on the request for extension in a timely manner.

CHAPTER B. NOTICE.

§2.1. Notice for Rate Proceedings.

- (a) Austin Energy shall present its Tariff Package to the public during at least one Electric Utility Commission meeting and at least one City Council Austin Energy Utility Oversight Committee meeting. Public comment at these meetings will be governed by Commission and Committee rules. During these meetings, Austin Energy shall present information about how members of the public may intervene in the Proceeding.
- (b) Austin Energy shall publish notice of its statement of intent to change rates in a newspaper having general circulation in each county containing territory affected by the proposed rate change. The notice shall contain information about how to access the Tariff Package through the City Clerk's office and the Rate Website. It shall also include information on how to intervene. The notice shall be published once a week for four consecutive weeks in the month prior to the release of the Statement of Issues.
- (c) Austin Energy shall include its statement of intent to change rates in the edition of its PowerPlus Newsletter sent out in the month prior to release of the Statement of Issues. The notice shall contain information about how to access the Tariff Package through the City Clerk's office and the Rate Website. It shall also include information on how to intervene.
- (d) The Tariff Package and information on how to intervene shall also be on the Rate Website, including a form Parties may use to intervene.
- (e) The process for intervening is described in §4.2 of these rules.
- (f) The Tariff Package shall include the Model.

CHAPTER C. PLEADINGS AND OTHER DOCUMENTS.

§3.1. Filing of Pleadings, Documents, and Other Materials.

- (a) **File with the City Clerk.** All Pleadings and documents shall be filed with the City Clerk, either as a hard copy or in electronic form.
 - (1) If filing a hard copy of the Pleading or document, an individual shall bring a copy to the City Clerk's office at 301 W. 2nd Street, Austin Texas, 78701. The Clerk's Office will receive the document, review the document to ensure that it is properly formatted, time and date stamp it, scan it, and upload it to the Rate Website.
 - (2) If filing a Pleading or document electronically, an individual shall email the document to rate.review@austinenenergy.com. Austin Energy shall review the document and, provided that it is properly formatted, shall time and date stamp it and then forward it to the Clerk's office. The Clerk will upload it to the Rate Website.
 - (3) If a document is not properly formatted, it will not be accepted for filing. The Person trying to file the document will be notified of the problems. The Person will be able to fix the formatting and then submit it again for filing.
 - (4) If the City Clerk accepts a document that is filed outside of the timeframes outlined in these rules, the Impartial Hearing Examiner will determine whether the document and the information in it can be presented.
- (b) **Service.** Unless otherwise specified in these rules, all filings shall be served on all Parties and the Impartial Hearing Examiner using the email address on record. The Impartial Hearing Examiner should be served using the following three email addresses: ihe@herreraboyle.com; ihe-ll@herreraboyle.com; and ihe-mw@herreraboyle.com. Parties shall serve all documents to the Impartial Hearing Examiner in native format, meaning, for example, a Microsoft Word document would be served in .doc or .docx format and not converted to a PDF.
- (c) **Copies of filings.** All members of the public can download copies of all documents located on the Rate Website. The City will not charge anyone anything to download the documents. Individuals may also request hard copies of documents from the City Clerk. The City Clerk will charge \$0.10 per page to provide hard copies that are greater than 50 pages long.
- (d) **Confidential material.**
 - (1) Because this review process is designed to be open and accessible to all members of the public, no confidential materials should be involved in any filings. However, Austin Energy may be required to rely on certain confidential

information in compiling its Tariff Package. Because Austin Energy considers this information to be competitive matters under Government Code, §552.133, Austin Energy will provide such information only if ordered to do so by the state attorney general's office. Individuals seeking this information will be required to use the public information process as set forth in Government Code, Chapter 552.

- (2) If a Party believes that the filing of confidential material is vital to the presentation of the Party's position, the Party shall comply with the following requirements:
 - (A) A Party providing confidential materials shall deliver them in person to the City Clerk in a sealed and labeled envelope ("Confidential Envelope"). The Confidential Envelope shall not include any non-confidential materials unless it is directly related to the confidential material. The envelope shall have a label which includes the following information:
 - (i) The word "CONFIDENTIAL" in bold print;
 - (ii) The name of the submitting Party;
 - (iii) Brief description of contents (i.e., "Response to {Name of RFI requestor}'s First RFI No. 1-1");
 - (iv) Page number range of documents enclosed; and
 - (v) Number and quantity of envelopes (i.e., one of one or one of two, two of two).
 - (B) The confidential materials shall:
 - (i) Include a cover sheet explaining the reason the Party believes the information is confidential;
 - (ii) Have each page of the confidential material marked "confidential;" and
 - (iii) Have each page, including any cover letters or divider pages, sequentially numbered.
- (3) The City Clerk shall accept the Confidential Envelope and shall give it to the City Law Department which will provide it to the Impartial Hearing Examiner. The Impartial Hearing Examiner will review the Confidential Envelope and documents to make sure that all the rules have been followed. If the rules have not been followed, the Confidential Envelope or documents will be returned to the submitting Party. The submitting Party will have to fix the problems and make sure that the Confidential Envelope or materials comply with the rules and to resubmit the Confidential Envelope and materials through the City Clerk. Any issue regarding timeliness of the filing shall be addressed by the Impartial Hearing Examiner.
- (4) The Impartial Hearing Examiner will decide if the information submitted is in fact confidential. If the Impartial Hearing Examiner decides that the information is confidential, the Impartial Hearing Examiner will direct the producing Party to

share the information only with Parties and their Authorized Representatives, if any, by providing them a copy of the confidential material. The producing Party may email the confidential material, mail it, or hand deliver it to all other Parties. It will not be uploaded to the Rate Website.

While the Parties will be instructed to keep the information confidential, Austin Energy and the Impartial Hearing Examiner cannot control the actions of the Parties once they receive the confidential information.

- (5) If the Impartial Hearing Examiner concludes that the information is not confidential, the Party will be instructed to either withdraw the information or file it publicly with the City Clerk for uploading to the Rate Website.
 - (6) The Party filing the confidential material shall file with the City Clerk a document which identifies (1) the filing Party, (2) the type of document submitted (e.g., application, exception, reply, motion, etc.) and (3) a 250 or less character description of the document. The document title will include the word "Confidential." The purpose of this filing to inform the Parties and the public that confidential filing has been made.
- (e) **Filing deadline.** All documents shall be filed by 12:00 p.m. on the due date, unless otherwise ordered by the Impartial Hearing Examiner.

§3.2. Form and Format Requirements of Pleadings and Documents to be Filed.

- (a) The front page of documents filed in a Proceeding shall include: (1) the name of the Party submitting it and (2) the title of the document submitted (e.g., George Washington's Motion to Intervene, The Continental Congress' Presentation, etc.). The title of the document shall not be longer 250 characters. The last page of the document (excluding attachments) shall include the signature of the Party or Authorized Representative and their email address. If the Person signing the Pleading or document is an attorney licensed in Texas, the attorney's state bar number shall be provided.
- (b) Hard copy documents filed with the City Clerk shall be printed on standard 8.5 by 11 inch paper or 8.5 by 14 inch paper. If any larger log, graph, map, drawing, or chart is referenced or discussed in a filing, the larger document will be made available for inspection at a mutually convenient time and location. Any filing that includes or references larger document that must be viewed separately must clearly identify the document and state that it will be available for viewing.
- (c) Hard copy documents shall be filed without bindings, staples, tabs or separators. All pages, starting with the first page of the document, shall be consecutively numbered through the last page of document, including attachments, if any.
- (d) The Impartial Hearing Examiner may allow any Party to amend a filing if the Impartial Hearing Examiner determines that the amendment will not unreasonably harm any Party.

§3.3. Motions.

- (a) **General requirements.** A motion shall be made in writing. The motion shall state the relief sought and the specific reasons supporting a grant of relief. In other words, the motion will explain what the Party is asking the Impartial Hearing Examiner to do and will support the Party's argument with as many specific facts as possible.
- (b) **Time for response.** Unless otherwise provided for in these rules or by ruling of the Impartial Hearing Examiner, Parties shall have five Business Days after a motion is filed to respond to the motion in writing.
- (c) **Rulings on motions.** All rulings made by the Impartial Hearing Examiner shall be in writing and shall be Served upon all Parties via the email addresses provided to the City Clerk.
- (d) **Continuances.** The Impartial Hearing Examiner may grant extensions for responses to motions or continuances for Hearings after being asked to do so by a Party.

CHAPTER D. PARTIES.

§4.1. Representative Appearances.

- (a) **Generally.** Any Party may appear before the Impartial Hearing Examiner in a Hearing in person or through an Authorized Representative. All Authorized Representatives shall file a notice of appearance. The notice of appearance shall identify the particular persons or classes of persons represented. It shall also include the following information: the Authorized Representative's name and email address. If the Authorized Representative is an attorney, the notice of appearance shall include the attorney's state bar number. A notice of appearance shall be filed with the City Clerk for all Authorized Representatives, including any new or replacement Authorized Representatives.
- (b) **Lead Representative.** A Party represented by more than one Authorized Representative shall be required to designate a lead Representative who is authorized to act on behalf of all of the Party's Authorized Representatives, but all other attorneys or Authorized Representatives for the Party may take part in the Proceeding in an orderly manner, as ordered by the Impartial Hearing Examiner.
- (c) **Change in information required for notification or service.** Any Party or Authorized Representative shall file with the City Clerk and shall Serve on the Parties notification of any change in their email address.

§4.2. Rules for Intervention.

- (a) **Standing to intervene.** A Person can intervene if that Person is a customer of Austin Energy receiving electric service.

(b) **Motions to intervene.**

- (1) Anyone who wants to intervene in the Proceeding shall file a motion with the City Clerk. The motion to intervene shall:
 - (A) State that the Person is an Austin Energy customer;
 - (B) Include a list identifying the Party's questions and concerns related to Austin Energy's Tariff Package that the Party believes should be addressed by the Impartial Hearing Examiner and Council; and
 - (C) Designate an email address to be used for Service.
- (2) Any association or organized group shall include in its motion a list of the members that will be represented by the association or organized group in the Proceeding. The group or association shall supplement the list at any time a member is added or deleted.
- (3) Motions to intervene shall be filed within 30 Days from February 1, 2016. The motion shall be Served on all Parties and on all Persons that filed a motion to intervene, even if the Impartial Hearing Examiner has not yet ruled on the motion.
- (4) The Impartial Hearing Examiner may grant untimely motions to intervene. If Party intervenes after the deadline, the Party will accept the schedule and record as it exists at the time the Party intervenes.
- (5) Until and unless the Impartial Hearing Examiner denies a person's motion to intervene, a Person who has filed a motion to intervene shall have all the rights and obligations of a Party.
- (6) A sample Motion to Intervene will be available on the Rate Website.

§4.3. Classification of Parties.

- (a) **Parties.** Parties shall be classified into the following categories:
- (1) Austin Energy;
 - (1) Intervenors; and
 - (2) Independent Consumer Advocate. The appointment of an Independent Consumer Advocate does not prevent residential, small commercial or House of Worship customers from participating as Intervenors if they file a motion to intervene.

- (b) **Rights of Parties.** Subject to the alignment of Parties pursuant to paragraph (d), all Parties have the right to present a direct case, submit discovery requests to other Parties, make oral or written arguments, cross-examine other parties' witnesses in the case, and otherwise fully participate in any Proceeding. Parties may only cross-examine a Party that is not aligned with them as to the position being questioned about. Parties that have been aligned into one group by the Impartial Hearing Examiner may not cross-examine one another.
- (c) **Protestors.** Any Person that has not intervened in a Proceeding, or who has been denied permission to intervene, shall be considered a Protestor. The Impartial Hearing Examiner shall allow Protestors to file written comments with the City Clerk outlining why they should be considered a Party and detailing their concerns with the Tariff Package.
- (d) **Alignment of Parties.** If appropriate, the Impartial Hearing Examiner may align Intervenors, except for the Independent Consumer Advocate, for the purposes of participating in a Hearing or portions of a Hearing if the Impartial Hearing Examiner determines the Parties have the same positions on issues of fact. This means that the Impartial Hearing Examiner may group together several Intervenors who have similar concerns about Austin Energy's Tariff Package. If Intervenors are aligned, they will need to coordinate their efforts. The Impartial Hearing Examiner shall order alignment of at the earliest reasonable opportunity in order to avoid unnecessary duplication of effort and to allow aligned Intervenors enough time to prepare for a Hearing.

CHAPTER E. PREHEARING PROCEEDINGS.

§5.1. Prehearing Proceedings.

- (a) **Prehearing conferences.** The Impartial Hearing Examiner may schedule any necessary prehearing conferences. The Impartial Hearing Examiner may schedule a prehearing conference after being asked by one of the Parties to do so or if the Impartial Hearing Examiner determines that a prehearing conference is necessary. The Impartial Hearing Examiner will inform the Parties about the prehearing conference at least five days before the prehearing conference is scheduled to be held. The notice will tell the Parties what will be discussed at the prehearing conference and will include the time and location of the prehearing conference. A court reporter will attend all prehearing conferences and will transcribe the proceedings.
- (b) **Preliminary orders.** The Impartial Hearing Examiner may issue written preliminary orders covering procedural and discovery matters, and other matters as needed. No preliminary order shall conflict with these procedural rules.

CHAPTER F. INITIAL FILINGS

§6.1. Initial Filings.

- (a) **Statement of Issues.** Austin Energy shall review granted motions to intervene, including the list of questions and concerns identified by Parties to be reviewed during the Proceeding. Austin Energy shall then prepare and file the preliminary Statement of Issues, a Pleading that outlines which topics, at a minimum, the Impartial Hearing Examiner shall examine and on which the Impartial Hearing Examiner shall make a recommendation. The Statement of Issues will also identify those topics Austin Energy believes are outside the scope of the Impartial Hearing Examiner's review.
 - (1) Austin Energy shall file the preliminary Statement of Issues no later than five Business Days following the release of the final procedural rules.
 - (2) Within five Business Days after Austin Energy files the preliminary Statement of Issues, the Impartial Hearing Examiner will file the final Statement of Issues. The final Statement of Issues will include all items from the preliminary Statement of Issues and will also include any other additional issues that the Impartial Hearing Examiner believes should be addressed.
- (b) **Party Presentation.** In accordance with the procedural schedule, all Parties, except Austin Energy, shall file an initial position statement ("Party Presentation"). This document will, at a minimum, present the Party's position on the issues identified in the Statement of Issues and will clearly state what course of action the Party believes the Impartial Hearing Examiner should recommend to City Council. To the extent possible, the document will contain factual and legal support for the Party's position. The Party Presentation may use a pre-filed testimony question and answer format or may use a more narrative format.
 - (1) If in the Party Presentation, or any subsequent filing, a Party modifies the Model, the Party shall identify by spreadsheet, row, and column what cells in the Model have been changed. Similarly, if Austin Energy files an updated Model, it shall identify which spreadsheets, rows and columns have been changed.
- (c) **Rebuttals.**
 - (1) In accordance with the procedural schedule, Austin Energy will file a rebuttal position statement ("Rebuttal"). The Rebuttal will contain Austin Energy's response to the issues and concerns outlined in the Party's Presentations.
 - (2) If they so choose, Intervenors and the Independent Consumer Advocate may rebut a Party's Presentation filed by other Intervenors or the Independent Consumer Advocate ("Cross Rebuttal"). Any such Cross Rebuttal shall be due in accordance with the procedural schedule.

CHAPTER G. DISCOVERY PROCEDURES.

§7.1. Forms and Scope of Discovery.

- (a) **Scope.** Discovery is the formal process by which Parties can ask each other for information related to the Tariff Package, Statement of Issues, and the Parties' Presentations. Discovery is limited to relevant information that is not unduly prejudicial and can lead to the discovery of admissible evidence. In other words, Parties can ask for information that would not unnecessarily hurt another Party's position. Parties can ask for information that would help the Party find information that the Party can use at a hearing in accordance with the Texas Rules of Evidence.

During a Proceeding, Parties may obtain information through discovery. A Party does not need to produce a document or tangible thing unless that Party has constructive or actual possession, custody, or control of the requested item. A Party has possession, custody or control of a document or tangible thing if the Party can obtain possession of the document or tangible thing with reasonable effort.

- (b) **Discovery methods.** Parties may obtain discovery by Requests for Information and Requests for Admission (collectively, "Requests").

§7.2. Limitations on Discovery.

- (a) **Limitation of discovery requests.** The Impartial Hearing Examiner may limit the number of Requests to a Party for good cause. If the Impartial Hearing Examiner does limit the number of requests, each subpart shall count as one Request. The Impartial Hearing Examiner may place limits on discovery in order to protect a Party against unreasonable Requests, including for the following purposes:
 - (1) Prevention of undue delay in the Proceeding;
 - (2) Protection from a request to provide information which is readily available to the requesting Party at a reasonable cost;
 - (3) Protection from unreasonably cumulative or duplicative discovery requests; or
 - (4) Protection of a Party from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights.
- (b) **Denial of right to discovery requests.** The Impartial Hearing Examiner may, by signing an order, deny a Party the right to continue discovery if there is proof that the Party has misused the discovery process.

§7.3. Requests for Information and Requests for Admission.

- (a) In accordance with the procedural schedule and any rulings made by the Impartial Hearing Examiner, at any time after the Tariff Package is filed and a Person has filed a motion to intervene, any Party may Serve upon any other Party, including Austin Energy, written Requests. For all Requests, the requesting Party must use enough detail so that the Party receiving the Request will know what is being asked for.
- (b) **Making Requests.**
 - (1) **Contents.** A Request shall identify the information, documents or material sought. A Request asking for documents shall describe the documents to be produced and shall set forth the items to be inspected by individual item or by category. The Party making the Request will include enough information in the Request so that the Party receiving the Request will know what the Party is supposed to produce.
 - (2) **Service.** The requesting Party shall Serve any Requests on the Party from which the requesting Party is asking for information. Additionally, the requesting Party shall file the Requests with the City Clerk.
- (c) **Responding to Requests.**
 - (1) **Time for response.** The responding Party shall respond in writing to the Request within 10 Days of Service. The Impartial Hearing Examiner, on motion, may extend the time for providing responses. The responses shall be filed with the City Clerk and Served on the Parties and the Impartial Hearing Examiner.
 - (2) **Requirements of response.**
 - (A) Each response shall identify the individual responsible for the response. The individual responsible for the response may be asked to provide additional clarification at any time through the Proceeding.
 - (B) Each Request shall be answered separately. When answering the Request, the responding Party shall first restate the Request then provide the response.
 - (C) If a response is voluminous, as defined below in (h), instead of producing the requested documents, property or other items, a Party may offer to make them available for review at a mutually convenient time at the location where the documents, property or other items are maintained. The requesting Party will be allowed to examine, audit, and inspect the records and will be allowed to make copies, compilations, abstracts or summaries of the records.

When making the information available for inspection and copying, the responding Party will answer the Request in enough detail so that that requesting Party will be able to find the answers it is looking for in the documents provided. The responding Party may provide the documents in the format that the documents are maintained; the responding Party does not need to create a new document to respond to a Request.

- (D) If the answer to a Request can be found in publicly available documents, the Responding Party does not need to produce the documents. Instead, the Party only has to describe where the information can be found.
- (E) All Requests shall be answered truthfully and as if under oath.
- (F) A Party does not need to produce a document or tangible thing unless that Party has constructive or actual possession, custody, or control of the requested item. A Party has possession, custody or control of a document or tangible thing if the Party can get the document or tangible thing with reasonable effort.

(d) **Objections to Requests.** Parties shall work together to try and resolve any discovery dispute prior to filing an objection. If negotiation fails, objections to Requests, if any, shall be filed 10 Days from receipt of the Requests. The objections shall include a statement that the Parties conducted good faith negotiations that failed to resolve the issues.

- (1) The objections shall be a separate Pleading with the title: "Objections of (name of responding Party) to (title of Request objected to)." The responding Party will restate the Request that it is being objected to and will state the specific grounds for the objection. If the responding Party is only objecting to part of the Request, the responding Party will identify that part. The responding Party will present all facts and arguments supporting its position in the objections. In order to minimize discovery disputes, the responding Party may provide some of the information sought by a Request while objecting to providing other information sought by the same request.
- (2) If the responding Party objects to a Request and claims that the information is protected from disclosure either because it is privileged or because it is exempt under the Texas Rules of Evidence, the Texas Rules of Civil Procedure, other law or by §3.1(d) of these rules, the responding Party shall file an index, listing for each document: the date and title of the document; the preparer or custodian of the information; if applicable, who sent the document and who received the document; and the privilege or exemption claimed ("Privilege Index"). A full and complete explanation of the claimed privilege or exemption shall also be provided. The Privilege Index shall be sufficiently detailed to enable the Impartial Hearing Examiner to identify the documents from the list provided. The

Privilege Index and explanations shall be public documents and shall be filed concurrently with the objections.

- (3) If the responding Party objects to a Request because the Request asks for information that is not relevant to the Proceeding and also objects to the Request because the Request asks for information that is privileged or exempted, the responding Party does not need to include that information in the Privilege Index. A Party may instead include an objection to the filing of the Privilege Index. The objections shall explain why the filing to the Privilege Index can be postponed. If the Impartial Hearing Examiner overrules the objection, a Privilege Index shall be due within two Business Days of receipt of the order.
- (e) **Motions to compel.** If the requesting Party believes that the responding Party is unreasonably objecting to the Requests, the requesting Party shall file a motion to compel no later than three Business Days after the objection is received. If granted, the motion to compel requires the responding Party to produce the disputed information.

Responses to a motion to compel shall be filed within three Business Days after receipt of the motion, and shall include all factual and legal arguments the responding Party wants to present regarding the motion. The Impartial Hearing Examiner may rule on the motion to compel based on written Pleadings without allowing additional argument.

- (f) **Samples.** Sample copies of Requests, Responses to Requests, and motions to compel are available on the Rate Website.
- (g) ***In camera* inspection.** With the exception of a claim of confidentiality made by Austin Energy pursuant to §3.1(d) of these rules, if an objection is based on a claim of privilege or an exemption, the burden is on the objecting Party to request an *in camera* inspection by the Impartial Hearing Examiner and to provide the documents for review. The request for *in camera* review shall be filed as part of the Party's objections and shall contain the factual and legal basis to support the claimed exemption or privilege.

The objecting Party shall provide the documents to the Impartial Hearing Examiner, under seal, at the same time it files its *in camera* inspection request. Documents submitted for *in camera* review shall not be filed with the City Clerk. The sealed container shall identify the name of the Proceeding, name of the submitting Party, and be marked "IN CAMERA REVIEW" in bold print. Each page for which a privilege is asserted shall be marked "privileged."

- (h) **Production of voluminous material.** The following procedures shall apply to production of voluminous materials:
- (1) Responses to particular questions that consist of less than 100 pages are not voluminous and shall be filed in full.

- (2) The responding Party shall make available all voluminous material provided in response to a Request at a mutually convenient location.
- (i) **Duty to supplement.** If a responding Party gets more information which makes a previous response to a Request incorrect or incomplete, the responding Party shall supplement its response by adding the new information. This supplement shall be completed within three Business Days of receiving the new information.
- (j) **Requests for Admission.** Requests for Admission shall be made in accordance with the Texas Rules of Civil Procedure, Rules 198.1 – 198.3.
- (k) **Modifications of deadlines by Parties.** The impacted Parties may agree to modify the deadlines for responses, objections, and motions to compel. Despite any such modifications, the Parties shall adhere to the procedural schedule set by the Impartial Hearing Examiner. A copy of the agreement or letter outlining the modified deadline shall be filed with the City Clerk.

CHAPTER H. HEARINGS.

§8.1. Impartial Hearing Examiner.

- (a) **Authority of Impartial Hearing Examiner.** The Impartial Hearing Examiner has broad discretion in establishing the course, conduct, and scope of the Proceedings. The Impartial Hearing Examiner's authority includes, but is not limited to, calling and examining witnesses; receiving evidence and testimony; ruling upon the admissibility of evidence and amendments to Pleadings; issuing discovery, procedural, and scheduling orders; and taking any other action which is necessary for an efficient and fair hearing and is not prohibited by law or by City Council rule. Notwithstanding the above, the Impartial Hearing Examiner does not have the authority to issue protective orders or swear witnesses.
- (b) **Conduct of hearings.** The Impartial Hearing Examiner shall rule as quickly as possible on all motions and objections made at the Hearing. The Impartial Hearing Examiner shall conduct the Hearing in a way that secures fairness in administration, eliminates unjustifiable delay, and promotes the development of the record consistent with the applicable laws. The Impartial Hearing Examiner shall endeavor to limit the presentation of evidence that creates an unfair prejudice, confuses the issues, or causes undue delay or needless presentation of cumulative evidence, and may:
 - (1) Set reasonable times for a Party to present evidence and ask questions, including cross-examination of other Party's witnesses;
 - (2) Establish the order in which Parties will present evidence and conduct cross-examination;

- (3) Limit the number of witnesses to avoid cumulative or repetitious testimony;
- (3) Limit the time allowed for cross-examination;
- (4) Prevent Parties from preventing cumulative evidence, i.e. the same evidence that has already been introduced;
- (5) Align Parties for purposes of cross-examination; and
- (6) Propose that witnesses appear in panels.

§8.2. Notice of Hearings.

- (a) The Impartial Hearing Examiner shall provide written notice to the Parties at least five Days in advance for any scheduled hearing or prehearing conference. Notice of a hearing shall include:
 - (1) A statement of the time, place, and nature of the hearing; and
 - (2) A short, plain statement of the matters to be addressed at the hearing.

§8.3. Order of Procedure for Hearing on Tariff Package and Statement of Issues.

- (a) Parties may make opening statements. Following opening statements, Austin Energy shall proceed with its direct case addressing the final Statement of Issues. The Impartial Hearing Examiner may ask any questions of Austin Energy and all Parties, relevant to the final Statement of Issues, Austin Energy's Tariff Package, any Party's Presentation or Rebuttal. All other Parties shall then present their cases and the Impartial Hearing Examiner may ask questions.
- (b) Each Party may ask questions of any witness in the Proceeding relevant to the final Statement of Issues, the Party's Presentation or Rebuttal. Parties may only cross-examine a Party that is supporting a position that is not in line with the questioning Party. Parties that have been aligned into one group by the Impartial Hearing Examiner may not cross-examine one another.
- (c) The Impartial Hearing Examiner may question any witness. A Party may raise an evidentiary objection to any question asked by the Impartial Hearing Examiner, and the Impartial Hearing Examiner shall rule on any such objection.
- (d) After Parties have completed the presentation of evidence, and the Impartial Hearing Examiner and Parties have been afforded the opportunity to question the witnesses, closing statements shall be allowed.
- (e) After the close of the Hearing, in accordance with the procedural schedule, Parties shall submit written briefs summarizing their position on the Statement of Issues and

addressing any issues raised by the other Parties (“Closing Briefs”). Austin Energy’s Closing Brief will be submitted 5 Business Days following the submission of the last Closing Brief submitted by any Intervenor or the Independent Consumer Advocate.

- (1) Closing Briefs are subject to the same formatting rules as Pleadings. Additionally, Closing Briefs that are longer than 10 pages shall include a table of contents with page numbers stated. The Impartial Hearing Examiner may require Parties to address certain issues, or address issues in a specific order or format. The Impartial Hearing Examiner may require Parties to provide a copy of the legal authority cited in the Closing Brief, either at or after the time of filing.
- (f) Subject to the requirements of any applicable federal, state or city law or regulation, the Impartial Hearing Examiner may call upon any Party to provide further material or relevant evidence on any issue before issuing a final recommendation to City Council. The additional evidence shall not be admitted without an opportunity for inspection and objection by all Parties and rebuttal by Austin Energy.
- (g) Except as otherwise expressly provided regarding discovery and the offering of evidence in this proceeding, these proceedings are not subject to the Administrative Procedure Act, Government Code, Title 10, Chapter 2001. The Impartial Hearings Examiner may use the Texas Rules of Civil Procedure as a guide in these proceedings.

§8.4. Transcript and Record.

- (a) **Preparation of transcript.** The City will ensure that an official reporter selected and compensated by the City shall make a stenographic record of all Proceedings, including all Prehearing Conferences, before the Impartial Hearing Examiner in any prehearing conference or hearing.
- (b) **Copies of transcript.** Copies of the transcript will be available on the Rate Website. Additionally, a Party may purchase a copy of the transcript from the City Clerk at rates established in §3.1(c) of these Rules.
- (c) **Corrections to transcript.** Proposed written corrections of potential errors in a transcript shall be filed and Served on each Party, the official reporter, and the Impartial Hearing Examiner within a reasonable time after the discovery of the error. The Impartial Hearing Examiner may establish time limits for proposing corrections. If no Party objects to the proposed corrections within five Days after the request for corrections are made, the Impartial Hearing Examiner may direct that the official reporter correct the transcript as appropriate. In the event that the Impartial Hearing Examiner or a Party disagrees on suggested corrections, the Impartial Hearing Examiner may hold a posthearing conference and take evidence and argument to determine whether, and in what manner, the record shall be changed.

CHAPTER I. EVIDENCE AND EXHIBITS IN PROCEEDINGS.

§9.1. Rules of Evidence.

- (a) **Rules of civil evidence apply.** Generally, the Texas Rules of Civil Evidence as applied in nonjury civil cases shall be followed. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.
- (b) **Rules of privilege and exemption.** The rules of privilege and exemption recognized by Texas law shall apply.
- (c) **Objections.** A Party may object to evidence being offered by another Party. The Impartial Hearing Examiner will note the objection on the record and will rule on it.
- (d) **Formal exceptions not required.** Formal exceptions to rulings made by the Impartial Hearing Examiner during a hearing are not required. It shall be sufficient that the Party notified the Impartial Hearing Examiner of the grounds for the objection and desired ruling.

§9.2. Documentary Evidence.

A copy of a document may be admitted as evidence if authenticity is not questioned or is established by competent evidence. On request, Parties shall have the opportunity to compare the copy with the original, unless it is not practicable or reasonable to do so. When numerous documents of a similar nature are offered, the Impartial Hearing Examiner may limit those admitted to a number of documents which are representative, provided no Party's rights are prejudiced by that decision. The Impartial Hearing Examiner may require a Party to abstract or summarize data from documents and to present the abstract or summary in exhibit form. All Parties shall have the opportunity to examine the documents from which the abstract or summary is prepared. Such abstract or summary shall be admitted into evidence in lieu of the documents from which it was prepared only if all Parties agree that the abstract or summary is accurate.

CHAPTER J. DECISION.

§10.1. Impartial Hearing Examiner Decision.

- (a) After reviewing the Parties' Presentations and Rebuttal, conducting all necessary Hearings and reviewing the Closing Briefs, the Impartial Hearing Examiner will draft a final recommendation to City Council addressing the Statement of Issues and Austin Energy's Tariff Package. The final recommendation shall:
 - (1) Summarize the Hearing process;

- (2) Organize the issues in a structured framework which can be used by the City Council to conduct an efficient decision making process for the final adoption of the Rate Ordinance;
- (3) Discuss the Parties' positions on the Statement of Issues and any other issue deemed relevant by the Impartial Hearing Examiner;
- (4) Present a recommendation on each issue identified in the Statement of Issues and on other issues as deemed appropriate by the Impartial Hearing Examiner, and explain the rationale for arriving at that recommendation;
- (5) Be based on the public policy framework developed by Austin City Council through its ordinances and resolutions and consider all relevant facts and laws; and
- (6) Include any other facts, analysis, opinions, rules, laws, or other information materially significant to the formation of any recommendation included in the report.