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February 8, 2016

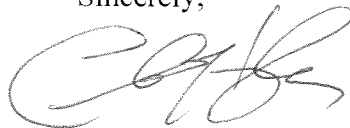
VIA COURIER

City Clerk's Office
301 W. Second Street
Austin, Texas 78701

Dear Impartial Hearing Examiner

Today, NXP and Samsung filed *NXP Semiconductors and Samsung Austin Semiconductor, LLC's Response to the Impartial Hearing Examiner's Memorandum No. 2*. However, a footnote was mistakenly not removed. Additionally, NXP and Samsung have modified their proposed second schedule. Therefore, NXP and Samsung file this *Amended NXP Semiconductors and Samsung Austin Semiconductor, LLC's Response to the Impartial Hearing Examiner's Memorandum No. 2*.

Sincerely,



J. Christopher Hughes
Partner

Attachment

AUSTIN ENERGY 2016 RATE REVIEW

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

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Amended NXP Semiconductors and Samsung Austin Semiconductor, LLCs' Response to the Impartial Hearing Examiner's Memorandum No. 2

NXP Semiconductors (f/k/a Freescale Semiconductor, Inc.) ("NXP") and Samsung Austin Semiconductor, LLC ("Samsung"), files this Response to the Impartial Hearing Examiner's Memorandum No. 2. On January 14, 2016 the Impartial Hearings Examiner (IHE) convened a prehearing conference in this proceeding at which he noted that he did not have the authority to modify the start date or the end date for these proceedings. Additionally, at the prehearing conference, stakeholders expressed concern regarding the procedural schedule that was proposed by Austin Energy. In response, on January 31, 2016, the IHE issued *Impartial Hearing Examiner's Memorandum No. 2: Granting Motion to Intervene and Request that Interested Stakeholders Submit a Proposed Procedural Schedule* (Memo 2), requesting that any interested stakeholder intending to intervene in the proceeding file a proposed procedural schedule by February 8, 2016. Therefore, this response is timely filed.¹ In addition, Austin Energy filed its own revised procedural schedule on February 1, 2016. NXP and Samsung propose three different procedural schedules below, two in response to the IHE's request and the schedule proposed by Austin Energy, and another proposal using PURA § 33.054(c).

I. Proposed Procedural Schedule using June 23, 2016 as the end date

The IHE's Memo 2 directed interested stakeholders to file a proposed procedural schedule assuming a June 23, 2016 date for Final Council Decision. The IHE also requested the proposed schedule include the following fixed dates: March 28, 2016 to April 1, 2016 for the Hearing; April 8, 2016 for Initial Written Closing Statements; and, April 15, 2016 for Reply

¹ NXP and Samsung are treating Memo 2 as if it was an order from an administrative law judge, though the role of the IHE in this proceeding is still ambiguous. Clarity regarding the power of the IHE to issue orders that party's must respond to needs to be clarified.

Written Closing Statements. Under this direction and only under this direction, NXP and Samsung propose the following schedule:

Action	Date
Tariff Package made available	January 25, 2016
Intervention Deadline (except good cause shown)	February 24, 2016
Statement of Issues Finalized	February 26, 2016
Presentations Due by Intervenors and Consumer Advocate	March 4, 2016
First Day Austin Energy may submit discovery requests	March 4, 2016
Rebuttal and Cross-Rebuttal Testimony	March 16, 2016
Closing of Discovery	March 16, 2016
Pre-Hearing Conference	March 25, 2016
Hearing	March 28 – April 1, 2016
Closing Briefs	April 8, 2016
Reply to Closing Briefs	April 15, 2016
Impartial Hearings Examiner Determination	May 16, 2016
Exceptions to Impartial Hearings Examiner Determination (to focus Council Position on Relevant Points)	May 25, 2016
Austin City Council Work Session	June 7, 2016
Austin City Council Meeting	June 9, 2016
Austin City Council Work Session	June 21, 2016
Austin City Council Meeting	June 23, 2016

II. Proposed Procedural Schedule using no fixed dates but ending June 23, 2016

Though the IHE did not inquire into an alternative schedule that only fixes the end date at June 23, 2016, in response to *Austin Energy's Filing of Procedural Rules and Proposed Revised Schedule*, which does not follow the fixed dates the IHE requested be used in Memo 2, Samsung and NXP propose the following schedule, which is more consistent with PUC style cases, including PUC Docket 40627²:

Action	Date
Tariff Package made available	January 21, 2016
Intervention Deadline (except good cause shown)	February 19, 2016
Statement of Issues Finalized	February 25, 2016
Pre-Filed Testimony Due by Intervenors and Consumer Advocate	March 25, 2016
Rebuttal and Cross-Rebuttal Testimony	April 1, 2016
Closing of Discovery	April 1, 2016
Pre-Hearing Conference	April 15, 2016
Hearing	April 18 – 22, 2016
Closing Briefs	May 5, 2016

² *Petition by Homeowners United for Rate Fairness to Review Austin Rate Ordinance No. 20120607-055*, Docket No. 40627, SOAH Order No. 3 (Dec. 20, 2012).

Impartial Hearings Examiner Determination	May 25, 2016
Exceptions to Impartial Hearings Examiner Determination (to focus Council Position on Relevant Points)	June 1, 2016
Austin City Council Work Session	June 7, 2016
Austin City Council Meeting	June 9, 2016
Austin City Council Work Session	June 21, 2016
Austin City Council Meeting	June 23, 2016

Samsung and NXP find the above schedule to not only be more consistent with the timing at a PUC held hearing, but also notes that this schedule gives Parties more time to fully develop their direct case, while not sacrificing any time for the City Council to consider the IHE's recommendation. Additionally, Samsung and NXP would request clarification as to what procedural schedule is currently in operation. Austin Energy's filing seems to indicate that the procedural schedule they filed on February 1, 2016 is currently in place. This contradicts the IHE's Memo 2 that seems to indicate no final procedural schedule has been set. NXP and Samsung urge the IHE to adopt its own procedural schedule and take the authority to control this proceeding away from Austin Energy, who is a party and should be treated as such.

III. Proposed Procedural Schedule using PURA § 33.054(c)

NXP and Samsung continue to reiterate its position that the City Council and the Electric Utility Commission have indicated that there is no need to have final rates in place by June 30th. As previously expressed, rate filing is highly voluminous and complex, involving potentially dozens of highly detailed schedules, spreadsheets, and electronic files, in addition to any narrative explanation. Even so, it often omits highly critical information that the utility relied upon to shape its recommendations, necessitating a discovery process to uncover this information. To illustrate, in this proceeding, NXP and Samsung have already submitted over one hundred Requests for Information to Austin Energy and Austin Energy only provided working spreadsheet on February 5, 2016, several days after the Tariff Package was made available.

NXP and Samsung urge the adoption of a schedule that is not compressed but follows a schedule that this proceeding would have if at the PUC. A non-compressed schedule is the only way this rate case will be anything but futile and a "rate case" in name only, not a truly inclusive and deliberative process in which Customers have an authentic opportunity to participate.

Therefore, NXP and Samsung recommend the adoption a procedural schedule that is based off of the procedural schedule adopted in *Petition by Homeowners United for Rate Fairness to Review Austin Rate Ordinance No. 20120607-055*, PUC Docket No. 40627.³ In that proceeding, the PUC determined that the Public Utility Regulatory Act (PURA) § 33.054(c) established a 185-day statutory deadline.⁴ Because Austin Energy has indicated a PUC style proceeding should be used, NXP and Samsung urge the adoption of the following procedural schedule, which would utilize the 185-day deadline found in PURA § 33.054(c):

Action	Date
Tariff Package made available	January 21, 2016
Intervention Deadline (except good cause shown)	February 19, 2016
Statement of Issues Finalized	February 25, 2016
Pre-Filed Testimony Due by Intervenors and Consumer Advocate	May 5, 2016 ⁵
Rebuttal and Cross-Rebuttal Testimony	May 13, 2016
Closing of Discovery	May 13, 2016
Pre-Hearing Conference	May 20, 2016
Hearing	May 23-27, 2016
Closing Briefs	June 6, 2016
Impartial Hearings Examiner Determination	July 6, 2016
Exceptions to Impartial Hearings Examiner Determination	July 13, 2016
185 th Day	July 24, 2016

IV. Conclusion

NXP and Samsung continue to request the IHE have the authority to conduct a truly impartial hearing that instils public confidence in the process. The only way the IHE will be able to do this is if he truly runs the proceeding, in all regards. NXP and Samsung continue to urge the IHE to embrace his authority to run this proceeding, which would include the authority to establish a fair procedural schedule. Therefore, NXP and Samsung urge the IHE to adopt NXP and Samsungs' third procedural schedule which utilizes the deadline established by PURA § 33.054(c), which has set 185-days as an appropriate time period to conduct an evaluation of

³ In PUC Docket 40627, Austin Energy submitted a rate filing package in support of the City of Austin rate ordinance on November 1, 2012.

⁴ PURA § 33.054(c) states: "In a proceeding involving the rates of a municipally owned utility, the commission must enter a final order on or before the 185th day after the date the appeal is perfected or the utility files a rate application as prescribed by Section 33.104."

⁵ In PUC Docket 40627, Staff's testimony was due the 105th day after the rate filing package was filed – May 5, 2016 is 105 days after January 21, 2016.

municipal rates. If the IHE feels bound to have final rates established by June 23, 2016, NXP and Samsung urge the adoption of the second procedural schedule presented.

Date: February 8, 2016

Respectfully submitted,


By: 

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**ATTORNEYS FOR NXP SEMICONDUCTORS
(F/K/A FREESCALE SEMICONDUCTOR, INC.) AND
SAMSUNG AUSTIN SEMICONDUCTOR, LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading has been served on all Parties and the Impartial Hearing Examiner, in accordance with Austin Energy Instructions, on the 8th day of February, 2016.


J. Christopher Hughes