

AUSTIN ENERGY 2016 RATE REVIEW

AUSTIN ENERGY'S TARIFF
PACKAGE UPDATE OF THE 2009
COST OF SERVICE STUDY AND
PROPOSAL TO CHANGE BASE
ELECTRIC RATES

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BEFORE THE CITY OF AUSTIN
IMPARTIAL HEARINGS
EXAMINER

2016 FEB 16 AM 8:26

AUSTIN ENERGY

IMPARTIAL HEARING EXAMINER'S MEMORANDUM NO. 5: PROCEDURAL SCHEDULE

The Impartial Hearing Examiner has received proposed schedules for this proceeding from Austin Energy and NXP Semiconductors (f/k/a Freescale Semiconductor, Inc.) ("NXP") and Samsung Austin Semiconductor, LLC ("Samsung") (collectively, "NXP/Samsung").

Austin Energy proposed a procedural schedule leading to a decision by the City Council of Austin, Texas by June 23, 2016. NXP/Samsung proposed three procedural schedules – two of which assume that the City Council must make a decision on Austin Energy's rates by no later than June 23, 2016, and a third option comparable to the schedule that the Public Utility Commission of Texas ("PUCT") adopted for the appeal of City of Austin's rates approved in 2012. NXP/Samsung recommended its third option, which calls for a final decision by the City Council on July 24, 2016. Appended to this Memorandum as "Attachment A," is a side-by-side comparison of AE's proposed schedule and NXP/Samsung's proposed schedules (denoted as "Options A," "Option B," and "Option C").

Pursuant to City of Austin Procedural Rules §§ 5.1(b); 6.1(b) and (c); and 8.1(a), the Impartial Hearing Examiner is authorized to establish a procedural schedule in this proceeding. In particular, §8.1(a) grants the Impartial Hearing Examiner "broad discretion in establishing the course, conduct, and scope of the Proceedings," including

the authority to issuing “discovery, procedural, and scheduling orders; and taking any other action which is necessary for an efficient and fair hearing and [that] is not prohibited by law or by City Council rule.”

As the Impartial Hearing Examiner noted in his Memorandum No. 1, concluding these proceedings by June 23, 2016 as proposed by AE is a challenging proposition and raises serious concerns with the quality of the parties’ presentations, which ultimately will affect the Impartial Hearing Examiner’s report to the City Council. Further, the Impartial Hearing Examiner is concerned that such a compressed schedule could lead to undermining the integrity of the process the City of Austin established.

The Impartial Hearing Examiner is cognizant of AE’s position that the end date of June 23, 2016 is a “hard-stop” date, but in reviewing more closely the Procedural Rules, the Impartial Hearing Examiner finds no reference to an end date of June 23, 2016 in the Procedural Rules, or a “statutory deadline” similar to the one applicable to a rate case before the PUCT.¹ The Impartial Hearing Examiner does not in any manner intend to minimize AE’s rationale for wanting, or perhaps needing, a decision by the City Council by June 23, 2016. But the Impartial Hearing Examiner does not find a reference in the Procedural Rules to a requirement that the proceeding be concluded by June 23, 2016.

Given the number of issues that arise in a rate case and their complexity, the Impartial Hearing Examiner is inclined to adopt a schedule that more closely approximates a schedule that would be applicable in a rate case before the PUCT, with an end date of 185 days after the utility files its rate filing package. Here that date would be July 28, 2016. Further, as of the date of this Memorandum, the Impartial Hearings

¹ See Public Utility Regulatory Act (“PURA”) § 36.108(a)(2), which generally provides the PUCT 185 days within which to issue a final order in a major rate case.

Examiner is not aware that the Independent Consumer Advocate has been engaged. It is the Impartial Hearing Examiner's view that the Independent Consumer Advocate is integral to these proceedings.

Nevertheless, before the Impartial Hearing Examiner adopts a schedule that places the end date of these proceedings beyond June 23, 2016, the Impartial Hearing Examiner requests that AE, or any other party who wants to provide their input, to identify any City Council Ordinance or Resolution that affirms the end date of June 23, 2016 for these proceedings, or any provision in the City's Procedural Rules that dictates such an end date.

Further, to provide some sense of certainty regarding the schedule, the Impartial Hearing Examiner proposes two schedules set forth below. The first schedule, "Schedule A," is contingent on AE establishing by way of City Ordinance, City Resolution, or the City's Procedural Rules, that this proceeding is to be concluded by June 23, 2016 (or at the latest, June 30, 2016).

The second schedule, "Schedule B," extends the end date for a final decision by City Council to July 28, 2016, and approximates a schedule based on a timeline for a final decision that is 185 days after the date of publication of AE's Tariff Package.

The Impartial Hearing Examiner hereby directs AE, and any other party that wants to provide its input, to identify any City Ordinance, City Resolution, or a provision of the City's Procedural Rules, that this proceeding is to be concluded by June 23, 2016. Further, the Impartial Hearing Examiner requests that such pleadings be filed no later than Thursday, February 18, 2016.

Pursuant to Procedural Rule § 8.1(a), the Impartial Hearing Examiner establishes the following alternative schedules: Assuming AE establishes that, based on City Ordinance, City Resolution, or the Procedural Rules, this proceeding is to be concluded by no later than June 23, 2016 (or at the latest June 30, 2016), then Schedule A shall apply. Should AE not be able to establish that this proceeding is to be concluded by June 23, 2016, then Schedule B shall apply.

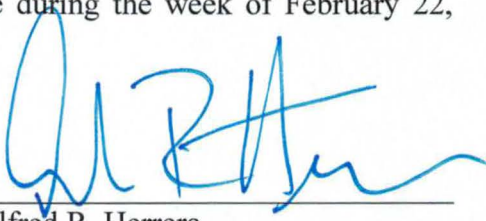
SCHEDULE A

IHE FINAL PROCEDURAL SCHEDULE - JUNE 23, 2016 END DATE	
Action	Date
Austin Energy Releases Tariff Package; Motions to intervene accepted; and Discovery begins	1/25/16
Austin Energy files preliminary Statement of Issues	2/8/16
Impartial hearing Examiner files final procedural schedule	2/12/16
Impartial Hearing Examiner files final Statement of Issues (§ 6.1(a)(2)) (2/15/16-City Offices Closed)	2/16/16
Deadline to file a motion to intervene (§ 4.2(b)(2))	3/2/16
Intervenor Party Presentations or Pre-filed Direct Due (§ 6.1(b))	3/25/16
First day Austin Energy may submit discovery requests to other Parties	3/25/16
Last day to submit discovery request to Austin Energy.	3/25/16
Cross Rebuttal by Intervenors & Independent Consumer Advocate on other Intervenors' & Independent Consumer Advocate's Party Presentations Austin Energy files Rebuttal to Intervenors' and ICA's Party Presentations (§ 6.1(c))	4/1/16
Last day to submit discovery requests to Intervenors & Independent Consumer Advocate.	4/6/16
Pre-Hearing Conference (if requested by the parties)	4/11/16
Austin Energy files Rebuttal to Intervenors' and ICA's Party Presentations	
Hearing 3-day hearing	4/13/16
Intervenors & Independent Consumer Advocate file Closing Briefs (§ 8.3(e))	4/22/16
Austin Energy files Closing Brief (§ 8.3(e))	4/29/16
IHE issues final recommendation	5/31/16
Austin City Council Work Session	TBD
Austin City Council Meeting	TBD
Austin City Council Work Session	TBD
Austin City Council Meeting	TBD
Final Decision by City Council	6/23/16

SCHEDULE B

IHE FINAL PROCEDURAL SCHEDULE - 185-DAY PERIOD	
Action	Date
Tariff Package made Available	1/25/16
Statement of Issues Filed	2/8/16
Statement of Issues Finalized (§6.1(a)(1) & (2)) (2/15/16-City Offices Closed)	2/16/16
Intervention Deadline (except for good cause) (§ 4.2(b)(2))	3/2/16
Pre-Filed Testimony Due by Intervenors & Consumer Advocate	4/21/16
Rebuttal & Cross-Rebuttal Testimony	4/29/16
Closing of Discovery	4/29/16
Pre-Hearing Conference (if requested by the parties)	5/6/16
Hearing on Merits	5/9/16
Intervenor and Consumer Advocate Closing Briefs (§ 8.3(e))	5/20/16
Austin Energy Closing Brief (§ 8.3(e)) (or 7 days after close of hearing if hearing ends before 5/13/16)	5/27/16
IHE Determination	6/27/16
Exceptions to IHE Determination	7/5/16
Austin City Council Work Session	TBD
Austin City Council Meeting	TBD
Austin City Council Work Session	TBD
Austin City Council Meeting	TBD
185 th Day	7/28/16

Lastly, should any party believe a prehearing conference would be of assistance to the efficient prosecution of these proceedings, and in particular, to address the schedules proposed by the Impartial Hearing Examiner, the Impartial Hearing Examiner asks that a party request a prehearing conference by no later than Tuesday, February 16, 2016 and that such a prehearing conference be held on a date during the week of February 22, 2016.



Alfred R. Herrera
Impartial Hearing Examiner

DATE: FEBRUARY 12, 2016

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IHE Memorandum No. 5
Comparison of Parties' Proposed Procedural Schedules

AE Proposed Schedule		NXP/Samsung June 23, 2016 Schedule A		NXP/Samsung June 23, 2016 Schedule B		NXP/Samsung June 23, 2016 Schedule C (185 days)	
Action	Date	Date	Action	Action	Date	Action	Date
Austin Energy Releases Tariff Package; Motions to intervene accepted; and Discovery begins	1/25/16	1/25/16	Tariff Package made Available	Tariff Package made Available	1/25/16	Tariff Package made Available	1/25/16
Austin Energy files preliminary Statement of Issues	2/8/16	2/8/16	Parties that Intervened Filed Statement of Issues	Parties that Intervened Filed Statement of Issues	2/8/16	Parties that Intervened Filed Statement of Issues	2/8/16
Impartial hearing Examiner files final procedural schedule	2/12/16		Impartial hearing Examiner files final procedural schedule	Impartial hearing Examiner files final procedural schedule	2/12/16	Impartial hearing Examiner files final procedural schedule	
Impartial Hearing Examiner files final Statement of Issues	2/15/16	2/26/16	Statement of Issues Finalized	Statement of Issues Finalized	2/26/16	Statement of Issues Finalized	2/25/16
Deadline to file a motion to intervene	3/2/16	2/24/16	Intervention Deadline (except for good cause)	Intervention Deadline (except for good cause)	2/24/16	Intervention Deadline (except for good cause)	2/19/16
All Parties to file Party Presentations	3/25/16	3/4/16	Presentations Due by Intervenor and Consumer Advocate	Pre-Filed Testimony Due by Intervenor & Consumer Advocate	3/25/16	Pre-Filed Testimony Due by Intervenor & Consumer Advocate	5/5/16
First day Austin Energy may submit discovery requests to other Parties	3/25/16	3/4/16	First Day AE may Submit Discovery Requests	Rebuttal & Cross-Rebuttal Testimony	4/1/16	Rebuttal & Cross-Rebuttal Testimony	5/13/16
Last day to submit discovery request to Austin Energy.	3/25/16	3/16/16	Closing of Discovery	Closing of Discovery	4/1/16	Closing of Discovery	5/13/16
Cross Rebuttal by Intervenor & Independent Consumer Advocate on other Intervenor's & Independent Consumer Advocate's Party Presentations	3/30/16	3/16/16	Rebuttal & Cross-Rebuttal Testimony				
Last day to submit discovery requests to Intervenor & Independent Consumer Advocate.	4/6/16	3/25/16	Pre-Hearing Conference	Pre-Hearing Conference	4/15/16	Pre-Hearing Conference	5/20/16
Austin Energy files Rebuttal to Intervenor's and ICA's Party Presentations	4/7/16				4/22/16		
Hearing 3-day hearing	4/13/16	3/28/16	Hearing on Merits-5-day Hearing	Hearing on Merits - 5-day hearing	4/18/16	Hearing on Merits - 5-day hearing	5/23/16
Intervenor & Independent Consumer Advocate file Closing Briefs	4/22/16	4/8/16	Closing Briefs	Intervenor & Independent Consumer Advocate Closing Briefs (§ 8.3(e))	5/5/16	Closing Briefs	6/6/16
Austin Energy files Closing Brief	4/29/16	4/15/16	Reply to Closing Briefs	Reply to Closing Briefs			
IHE issues final recommendation	5/23/16	5/16/16	IHE Determination	IHE Determination	5/25/16	IHE Determination	7/6/16
		5/25/16	Exceptions to IHE Determination (to focus Council Position on Relevant Points)	Exceptions to IHE Determination (to focus Council Position on Relevant Points)	6/1/16	Exceptions to IHE Determination	7/13/16
		6/7/16	Austin City Council Work Session	Austin City Council Work Session	6/7/16	Austin City Council Work Session	
		6/9/16	Austin City Council Meeting	Austin City Council Meeting	6/9/16	Austin City Council Meeting	
		6/21/16	Austin City Council Work Session	Austin City Council Work Session	6/21/16	Austin City Council Work Session	
		6/23/16	Austin City Council Meeting	Austin City Council Meeting	6/23/16	Austin City Council Meeting	
						185 th Day	7/24/16

HOM on 79th Day after Tariff Package filed

HOM on 63rd Day after Tariff Package

HOM on 63rd Day after Tariff Package

HOM on 119th Day after Tariff Package