

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
2016 FEB 18 PM 12:01

**OBJECTIONS OF AUSTIN ENERGY TO
NXP/SAMSUNG'S FIRST REQUEST FOR INFORMATION**

Austin Energy ("AE") files these Objections to NXP Semiconductors' and Samsung Austin Semiconductor, LLC's (collectively, "NXP/Samsung") First Request for Information ("RFI"), and respectfully shows as follows:

I. PROCEDURAL HISTORY

NXP/Samsung served its first RFI to Austin Energy on February 4, 2016. Pursuant to an agreement between the parties to extend the deadline in the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.3(c)(1), these objections are timely filed.

Counsel for Austin Energy and NXP/Samsung conducted good faith negotiations that failed to resolve the issues. While Austin Energy will continue to negotiate with NXP/Samsung regarding these and any future objections, Austin Energy files these objections for preservation of its legal rights under the established procedures. To the extent any agreement is subsequently reached, Austin Energy will withdraw such objection.

II. GENERAL OBJECTIONS

Austin Energy generally objects to these RFIs to the extent they are irrelevant, seek information concerning confidential competitive matters, seek publicly available information or seek information not in Austin Energy's possession.

"Discovery is limited to relevant information that is not unduly prejudicial and can lead to the discovery of admissible evidence."¹ As indicated in its Tariff Package, in this proceeding

¹ City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.1(a).

Austin Energy is only proposing changes to its base electric rates. Thus, this rate review is limited to Austin Energy's base electric rates. Discovery in this proceeding should, therefore, be limited to issues concerning Austin Energy's base electric rates and is irrelevant to the extent it seeks information not related to Austin Energy's base electric rates. Certain pass-through charges, including the Power Supply Adjustment, Regulatory Charge, and Community Benefits Charge, are not included in base rates and, thus, are not at issue in this proceeding. Austin Energy objects to discovery requests seeking information that is neither relevant to the issues presented in this proceeding nor is reasonably calculated to lead to the discovery of admissible evidence.

As indicated in § 3.1(d) of the Procedural Rules, "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."

The Public Information Act ("PIA" or "Act") provides that information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body must be available to the public upon request.² However, the Texas Government Code specifically provides that municipally owned utilities, such as Austin Energy, are excepted from the disclosure requirements of the PIA regarding competitive matters.³

² Tex. Gov't. Code §§ 552.002(a), 552.021 (Vernon 2004 & Supp. 2008).

³ Tex. Gov't. Code § 552.133.

The Act exempts information reasonably relating to competitive matters of “public power utilities.”⁴ AE qualifies as a “public power utility.”⁵

Section 552.133 of the Texas Government Code provides an exception to the Texas Public Information Act for documents containing certain information relating to competitive matters, the disclosure of which would give advantage to Austin Energy’s competitors in the electric market.

As a public power entity, Austin Energy is governed by the Texas Public Information Act and treats most information it maintains as public in nature. As a result, AE will release nearly all of its corporate and operating information in the Tariff Package and in response to requests submitted during the Impartial Hearing Examiner process. However, Section 552.133 of the Texas Government Code exempts certain competitive information from release under the Public Information Act. The Public Information Act authorizes AE to protect competitively sensitive information, such as generator unit cost data. Release of this type of data would give advantage to Austin Energy’s competitors in the wholesale electric market. Finally, pursuant to state and local law, Austin Energy does not normally release confidential customer information without the express permission of the impacted customer.

⁴ Tex. Gov’t Code § 552.133.

⁵ A “public power utility” is defined as “an entity providing electric or gas utility services that is subject to the provisions of this chapter.” Tex. Gov’t Code § 552.133(a)(1). The City of Austin is subject to the provisions of the Act under § 552.003(1)(A).

III. SPECIFIC OBJECTIONS

NXP/Samsung 1-8. Please provide the fully working versions of all schedules and exhibits included in each witness's testimony/or narrative in electronic (MS Excel, MS Word, etc.) format.

Objection:

Austin Energy objects to this request in part because it seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing the requested pass-through charges information.

Additionally, Austin Energy has determined the request seeks certain information that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested competitive information until instructed to do so by the Attorney General.

NXP/Samsung 1-10. Please provide the Austin Energy coincident peak (CP) load and the ERCOT CP load in each month of the test year and the nine previous years by customer class. Provide the date and time of the peak load in each of the months and identify any peak loads that occurred on Saturdays, Sundays, or holidays. If fewer than nine years of historical data are available, provide the requested information for as many years as it is available.

Objection:

Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks certain information regarding system load characteristics and customer usage information that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-11. Please provide all supporting workpapers and materials that were employed or relied upon by Austin Energy to develop demands by customer class.

Objection:

Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks certain information regarding customer billing , contract, and usage information that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-12. Please identify the source(s) of demands estimates by class. If load research studies were employed, please provide the following information for each class: (a) a definition of the class; (b) the time period from which the load research data was obtained; (c) the number of load research meters employed in the sample by load research strata; (d) a narrative description of the manner by which load research data was expanded to represent the class population; (e) any and all workpapers employed in developing these class demands; and (f) the source of the load research data if not specific to Austin Energy consumers.

Objection:

Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined part (e) of the request seeks certain information regarding customer billing , contract, and usage information that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-15. Please provide a list of Austin Energy's test year energy efficiency programs, the classes eligible to participate in each program, and the amount of money Austin Energy spent by program in the test year.

Objection:

Austin Energy objects to this request because it seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's energy efficiency programs are pass-through charges. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing the requested information.

NXP/Samsung 1-16. What does Austin Energy plan (or budget) to spend in FY 2015-2016 by rate class for energy efficiency programs?

Objection:

Austin Energy objects to this request in part because it seeks certain information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's energy efficiency programs are pass-through charges. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing the requested information.

NXP/Samsung 1-17. Are any costs related to the Company's GreenChoice program subsidized by rates, charges or fees collected from any other rate class, rider, or tariff schedule? If yes, please identify the amounts of such subsidies, and the sources and uses of such subsidies by rate class.

Objection:

Austin Energy objects to this request in part because it seeks certain information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's GreenChoice program is a pass-through charge. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing the requested information.

NXP/Samsung 1-25. Please provide the annual class non-coincident peak (NCP) load by customer class in the test year and the nine previous years. For each class, provide the date and time of the NCP load and identify any peak loads that occurred on Saturdays, Sundays, or holidays. If fewer than nine years of historical data are available, provide the requested information for as many years as it is available.

Objection:

Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks certain information regarding system load characteristics and customer usage information that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-30. Please provide monthly energy by rate class at the meter and at the generator for the test year, the five previous years. To the extent available, please provide monthly energy by customer class by time period in the time periods that Austin Energy uses for time-of-use rate schedules (i.e., on-peak 2am to 8pm June-September weekdays, mid-peak all remaining hours from 6 am to 10 pm year-round, and off-peak all other hours).

Objection:

Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks certain information regarding customer usage information that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-31. Please provide the total system megawatts of generation installed or contracted for, megawatts of forced outage, megawatts on maintenance outage, and megawatts unavailable due to lack of wind power in the peak hour of each month in the test year and the five previous years.

Objection:

Austin Energy objects to this request because it seeks information publicly available on the Austin Energy website. Pursuant to City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.3(c)(2)(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. Therefore, notwithstanding this objection, Austin Energy has described where the information can be found in its response.

NXP/Samsung 1-32. Please identify the timing of all alerts or rotating blackouts affecting ERCOT in the test year and the five previous years.

Objection:

Austin Energy objects to this request because it seeks information publicly available on the ERCOT website. Pursuant to City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.3(c)(2)(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. Therefore, notwithstanding this objection, Austin Energy has described where the information can be found in its response.

NXP/Samsung 1-33. Please provide hourly load by customer class for all classes of customers.

Objection:

Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks information regarding customer usage information that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-34. Please provide hourly generation by power plant in the test year.

Objection:

Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks information regarding generation unit operating characteristics that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-35. Please provide hourly generation provide through purchased power agreements in the test year.

Objection:

Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks information regarding purchased power agreements that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-36. Please provide ERCOT day-ahead and hour-ahead prices for energy on an hourly basis for the test year.

Objection:

Austin Energy objects to this request because it seeks information publicly available on the ERCOT website. Pursuant to City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.3(c)(2)(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. Therefore, notwithstanding this objection, Austin Energy has described where the information can be found in its response.

NXP/Samsung 1-37. Please refer to Footnote 45 on page 3-18 of the rate filing package. Please list the amount and frequency that Austin Energy has offered resources from any type of generation and purchase power agreements at below cost during the Test Year.

Objection:

Austin Energy objects to this request because it seeks certain information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's generation and purchase power agreements are pass-through charges. Thus, this request seeks information outside the scope of this proceeding.

Austin Energy also objects to this request because it seeks information publicly available on the ERCOT website. Pursuant to City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.3(c)(2)(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. Therefore, notwithstanding this objection, Austin Energy has described where the information can be found in its response.

Additionally, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks certain information regarding purchased power agreements that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-38. Please provide daily spot gas prices in the test year.

Objection:

Austin Energy objects to this request because it seeks information publicly available from various sources. Pursuant to City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.3(c)(2)(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. Therefore, notwithstanding this objection, Austin Energy has described where the information can be found in its response.

NXP/Samsung 1-39. Please provide the Equivalent Forced Outage Rate and Equivalent Availability Factor of each power plant on the Austin Energy system in excess of 50 MW for the test year and each of the five previous years.

Objection:

Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks information regarding generation unit operating characteristics and outage scheduling that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-40. Please provide the maintenance schedules for each power plant in excess of 50 MW owned or contracted for by Austin Energy for 2010 through the latest available date in 2015 actual and the remainder of 2015 through-2017 forecast.

Objection:

Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks information that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-41. For each power plant owned by Austin Energy, please provide the in-service date, gross plant, an estimate of depreciation reserve as of the end of the test year, non-fuel Operations and Maintenance expense during the test year and the four previous years, and fuel expense during the test year and the four previous years.

Objection:

Austin Energy objects to this request in part because it seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's fuel expense is a pass-through charge. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing the requested information.

NXP/Samsung 1-42. Please identify any firm sales contracts in force in the test year and after the test year, with MW of capacity, MWh by month, and revenue by month. If any sales are from a specific generating unit, identify the unit.

Objection:

Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks information regarding bidding and pricing information for generation that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-43. Please list any of the purchase power agreements that are “take or pay” contracts by type of power purchased in terms of MW of capacity, MWh by month, and cost by month.

Objection:

Austin Energy objects to this request because it seeks certain information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy’s Tariff Package and Impartial Hearing Examiner’s Memorandum No. 6, the scope of this proceeding is limited to Austin Energy’s base electric rates and issues related to Austin Energy’s pass-through charges are outside the scope of this proceeding. Austin Energy’s purchased power is a pass-through charge. Thus, this request seeks information outside the scope of this proceeding.

Additionally, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov’t Code Ch. 552. Austin Energy has determined the request seeks information regarding purchased power agreements that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov’t Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-51. Please identify the gross revenue from short-term (hourly up to 3 month) firm or non-firm power sales (including sales into ERCOT) in the test year and the fuel cost associated with making those sales. Identify the extent to which that gross revenue is included in the Power Supply Adjustment. If any portion of the gross revenue is not included in the Power Supply Adjustment, identify it by FERC account and explain how that revenue is allocated to customer classes.

Objection:

Austin Energy objects to this request because it seeks certain information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's power sales and fuel costs are pass-through charges. Thus, this request seeks information outside the scope of this proceeding.

Additionally, Austin Energy considers this request in part a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks information regarding bidding and pricing information for purchased power, generation and fuel that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

However, to the extent this request seeks an explanation, Austin Energy does not consider this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. The Texas Public Information Act does not require governmental bodies to provide answers to questions or to general inquiries, nor does it mandate the creation of new documents in response to a request. Information is subject to disclosure only if it was in existence at the time the request was made.⁶ Explaining how revenue is allocated to customer classes would require Austin Energy to provide answers to questions and create new documents in response to a request. Austin Energy is, thus, not required to respond to this request under the Texas Public Information Act.

⁶ See Open Records Decision No. 555 at 1-2 (1990) (considering request for answers to fact questions).

NXP/Samsung 1-52. Please provide Austin Energy's best estimate of the capital and fixed and variable non-fuel operations cost, heat rates, and coal costs of new coal-fired, combined cycle, and combustion turbine generating plants. Provide supporting source documentation if available.

Objection:

Austin Energy objects to this request because it seeks certain information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's power supply adjustment is a pass-through charge. Thus, this request seeks information outside the scope of this proceeding.

Additionally, Austin Energy considers this request in part a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks information regarding generation unit specific fixed and variable costs that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

Austin Energy has received information responsive to this request from third parties with whom non-disclosure agreements have been executed. These agreements impose legal restrictions that have implications under the Public Information Act. Specifically, the non-disclosure agreements impact Austin Energy's ability to release certain third-party proprietary information. Austin Energy is following the appropriate steps pursuant to the Public Information Act related to this information.

However, to the extent this request seeks an estimate, Austin Energy does not consider this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. The Texas Public Information Act does not require governmental bodies to provide answers to questions or to general inquiries, nor does it mandate the creation of new documents in response to a request. Information is subject to disclosure only if it was in existence at the time the request was made.⁷ Estimating the capital and fixed and variable non-fuel operations cost, heat rates, and coal costs of new coal-fired, combined cycle, and combustion turbine generating plants would require Austin Energy to provide answers to questions and create new documents in response to a request. Austin Energy is, thus, not required to respond to this request under the Texas Public Information Act.

⁷ See Open Records Decision No. 555 at 1-2 (1990) (considering request for answers to fact questions).

NXP/Samsung 1-53. Please provide the amount of fixed costs from Purchased Power Agreements included in the Power Supply adjustment during the test year and included in the estimated Power Supply Adjustment to be considered in the 2016-2017 Budget process.

Objection:

Austin Energy objects to this request because it seeks certain information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's purchased power agreements and power supply adjustment are pass-through charges. Thus, this request seeks information outside the scope of this proceeding.

Additionally, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks information regarding purchased power agreements that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-60. Please provide an estimate of the number of poles serving (a) primary distribution lines only; (b) secondary distribution lines only; (c) primary distribution lines and secondary distribution lines simultaneously; (d) serving only streetlights.

Objection:

Austin Energy objects to part (d) of this request because it seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's streetlight costs are pass-through charges. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing the requested information. Although the request seeks an estimate, and the Texas Public Information Act does not require governmental bodies to provide answers to questions or to general inquiries, nor does it mandate the creation of new documents in response to a request, Austin Energy already possesses the requested information and will, therefore, provide it.

NXP/Samsung 1-61. How are power poles that are used exclusively by street lights assigned in the cost of service study?

Objection:

Austin Energy objects to this request because it seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's streetlight costs are pass-through charges. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing the requested information.

NXP/Samsung 1-74. Please provide the amount of “margin” included in Austin Energy’s TCOS most recent filing listed by General Fund Transfer, transfers to Reserves and Debt Services.

Objection:

Austin Energy objects to this request because it seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy’s Tariff Package and Impartial Hearing Examiner’s Memorandum No. 6, the scope of this proceeding is limited to Austin Energy’s base electric rates and issues related to Austin Energy’s pass-through charges are outside the scope of this proceeding. Austin Energy’s TCOS is a pass-through charge. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov’t Code Ch. 552, and is accordingly providing the requested information.

NXP/Samsung 1-91. Please explain the Company's justification for subsidizing the cost of Service Area Lighting through the Community Benefit Charge. If the Company does not have any justification for subsidizing the cost of Service Area Lighting through the Community Benefit Charge, please provide documentation from the Austin City Council giving this instruction to the Company and its justification.

Objection:

Austin Energy objects to this request because it seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's community benefit charge is a pass-through charge. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing the requested information.

NXP/Samsung 1-92. Please explain, in detail how the Company determines where and what facilities are used to provide service under Service Area Lighting inside and outside the city limits.

Objection:

Austin Energy objects to this request because it seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's service area lighting costs are pass-through charges. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing the requested information.

NXP/Samsung 1-93. Please explain how the cost to developers for street lighting installations is determined and provide the amount of payments to Austin Energy for street lighting installations during the Test Year and the previous five years.

Objection:

Austin Energy objects to this request because it seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's street lighting installation payments relate to pass-through charges. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing the requested information.

NXP/Samsung 1-102. Was Decker Creek Power Plant used to sell power into the DAM during the Test Year? If so, how much revenue did Decker produce during the test year and in the previous five years?

Objection:

Austin Energy objects to this request because it seeks certain information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's generation costs are pass-through charges. Thus, this request seeks information outside the scope of this proceeding.

Additionally, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks certain information regarding generation unit operating characteristics and pricing information for generation that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

NXP/Samsung 1-105. Please rerun the cost of service using 4CP and A&E 4CP and provide the resulting spreadsheets in Excel format.

Objection:

Austin Energy objects to this request because it seeks documents not in Austin Energy's possession. Pursuant to City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.3(c)(2)(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. This request seeks Austin Energy to produce documents not in Austin Energy's possession because Austin Energy would have to rerun its cost of service to create new documents. Rerunning the model would require more than reasonable effort because the task would be timely and laborious. Further, Austin Energy has publicly provided its working cost of service model to give parties the ability to rerun the model on their own.

Additionally, Austin Energy does not consider this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. The Texas Public Information Act does not require governmental bodies to provide answers to questions or to general inquiries, nor does it mandate the creation of new documents in response to a request. Information is subject to disclosure only if it was in existence at the time the request was made. *See* Open Records Decision No. 555 at 1-2 (1990) (considering request for answers to fact questions). Rerunning the cost of service using 4CP and A&E 4CP and providing the resulting spreadsheets in Excel format would require Austin Energy to create new documents in response to a request. Austin Energy is, thus, not required to respond to this request under the Texas Public Information Act.

NXP/Samsung 1-106. Please identify any filing before the PUC in which a 12 coincident peak allocation method was approved for use in Texas.

Objection:

Austin Energy objects to this request because it seeks information publicly available on the PUC Interchange. Pursuant to City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.3(c)(2)(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. Therefore, notwithstanding this objection, Austin Energy has described where the information can be found in its response.

Additionally, Austin Energy does not consider this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. The Texas Public Information Act does not require governmental bodies to provide answers to questions or to general inquiries, nor does it mandate the creation of new documents in response to a request. Information is subject to disclosure only if it was in existence at the time the request was made. *See* Open Records Decision No. 555 at 1-2 (1990) (considering request for answers to fact questions). Identifying any filing before the PUC in which a 12 coincident peak allocation method was approved for use in Texas would require Austin Energy to create a new document in response to a request. Austin Energy is, thus, not required to respond to this request under the Texas Public Information Act.

NXP/Samsung 1-108. Please provide copies of all bond ratings issued by rating agencies and all correspondence between AE and bond rating agencies.

Objection:

Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks information related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information until instructed to do so by the Attorney General.

Additionally, Austin Energy has received information responsive to this request from third parties. There are legal restrictions on Austin Energy's ability to release the information that have implications under the Public Information Act. Austin Energy is following the appropriate steps pursuant to the Public Information Act related to this information.

NXP/Samsung 1-109. Will AE issue bonds for proposed gas units or use its reserve funds?

Objection:

Austin Energy objects to this request because it seeks information that is speculative and neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates. This request seeks information that does not exist and is outside the scope of this proceeding.

Additionally, Austin Energy does not consider this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. The Texas Public Information Act does not require governmental bodies to provide answers to questions or to general inquiries, nor does it mandate the creation of new documents in response to a request. Information is subject to disclosure only if it was in existence at the time the request was made.⁸ Answering whether AE will issue bonds for proposed gas units or use its reserve funds would require Austin Energy to provide answers to questions and create new documents in response to a request. Austin Energy is, thus, not required to respond to this request under the Texas Public Information Act.

⁸ See Open Records Decision No. 555 at 1-2 (1990) (considering request for answers to fact questions).

NXP/Samsung 1-114. Please provide the workpapers supporting the PSA and Regulatory charges adopted in FY 2015-2016 budget.

Objection:

Austin Energy objects to this request because it seeks certain information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's power supply adjustment and regulatory charges are pass-through charges. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing some of the requested information. However, Austin Energy has determined the request seeks certain information that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. Austin Energy is seeking an Attorney General Open Records Letter Ruling regarding this request and will not disclose the requested information related to competitive matters until instructed to do so by the Attorney General.

NXP/Samsung 1-117. Please provide the workpapers supporting the estimated PSA and Regulatory charges to be considered in the FY 2016-2017 budget.

Objection:

Austin Energy objects to this request because it seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates and issues related to Austin Energy's pass-through charges are outside the scope of this proceeding. Austin Energy's power supply adjustment and regulatory charges are pass-through charges. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing the requested information.

NXP/Samsung 1-118. Identify any and all non-utility costs included in the cost of service, including debt service associated with non-utility facilities.

Objection:

Austin Energy objects to this request because it seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates. Non-utility costs included in the cost of service include district cooling systems operations costs, which are not included in Austin Energy's base electric rates. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing the requested information.

NXP/Samsung 1-119. Identify how non-utility revenue is reflected in the cost of service.

Objection:

Austin Energy objects to this request because it seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates. Non-utility revenue includes district cooling systems operations costs, which are not included in Austin Energy's base electric rates. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing the requested information.

NXP/Samsung 1-120. Please provide the following for the downtown District Cooling systems operations:

- A. Amount of investment in infrastructure with related accumulated depreciation.
- B. Amount and source of funding for the investment at the end of the test year (bonds, short term debt, internally generated cash and AE reserves.
- C. Number of customers using the system from 2010 through the end of the test year.
- D. Profit and loss statements since 2009 through the end of the test year.
- E. Operating and maintenance costs directly or indirectly incurred by providing services from the system.

Objection:

Austin Energy objects to this request because it seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. As indicated in Austin Energy's Tariff Package and Impartial Hearing Examiner's Memorandum No. 6, the scope of this proceeding is limited to Austin Energy's base electric rates. District cooling systems operations costs are not included in Austin Energy's base electric rates. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552, and is accordingly providing the requested information.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Austin Energy requests these objections be sustained. Austin Energy also requests any other relief to which it may show itself justly entitled.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &
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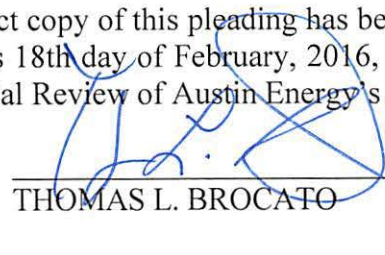
HANNAH M. WILCHAR

State Bar No. 24088631

ATTORNEYS FOR THE CITY OF AUSTIN

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 on this 18th day of February, 2016, in accordance with the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates.



THOMAS L. BROCATO