AUSTIN ENERGY'S TARIFF PACKAGE: 2015 COST OF SERVICE STUDY AND PROPOSAL TO CHANGE BASE ELECTRIC RATES 2016 FEB 18 PM 12: 01
BEFORE THE CITY OF AUSTIN
IMPARTIAL HEARING EXAMINER

AUSTIN ENERGY'S RESPONSE TO IMPARTIAL HEARING EXAMINER ORDER NO. 5

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Austin Energy ("AE") respectfully requests that the Impartial Hearing Examiner ("IHE") accept the AE-proposed timeline, identified as Schedule A in the IHE's Memorandum No. 5 ("Memo"). This timeline strikes the appropriate balance between providing the public sufficient time to engage with the proposed rate changes and allowing Austin City Council ("Council") to make a final decision before its July recess.

AE has consistently represented to Council that the body will be in a position to vote on new electric rates at its last June meeting, currently scheduled for June 23, 2016. This deadline was incorporated into the IHE's scope of work ("SOW"). Specifically, the SOW states:

Phase II [Rate Review Process] is scheduled to start January 2, 2016 and conclude by June 30, 2016. The IHE shall submit in writing the Final Recommendation no later than March 31, 201[6] (sic) to the City of Austin's Project Manager, unless a different due date is approved by the City of Austin's Project Manager.³

¹ See e.g. Mark Dreyfus presentation at June 25, 2015 Austin Energy Utility Oversight Committee (AEUOC) Meeting, Item 5, approximately 13:00 minute mark (http://austintx.swagit.com/play/06252015-532) and Mark Dreyfus presentation at January 25, 2016 AEUOC Meeting, Item 3, 10:00 minute mark (http://austintx.swagit.com/play/01252016-549).

² See Request for Qualifications Statements No. LAG0501 for Impartial Hearing Examiner, Section 5, Timeline, attached hereto as Exhibit 1.

³ In his first presentation to the Electric Utility Commission ("EUC"), the IHE acknowledged the proposed June deadline for Council action. See December 14, 2015 EUC meeting video, Item 8, Part 2 of 2 at approximately 28:00 minute mark (http://austintx.swagit.com/play/12162015-607).

AUSTIN ENERGY'S TARIFF PACKAGE:	§	
2015 COST OF SERVICE STUDY	§	BEFORE THE CITY OF AUSTIN
AND PROPOSAL TO CHANGE BASE	§	IMPARTIAL HEARING EXAMINER
ELECTRIC RATES	§	

AUSTIN ENERGY'S RESPONSE TO IMPARTIAL HEARING EXAMINER ORDER NO. 5

Austin Energy ("AE") respectfully requests that the Impartial Hearing Examiner ("IHE") accept the AE-proposed timeline, identified as Schedule A in the IHE's Memorandum No. 5 ("Memo"). This timeline strikes the appropriate balance between providing the public sufficient time to engage with the proposed rate changes and allowing Austin City Council ("Council") to make a final decision before its July recess.

AE has consistently represented to Council that the body will be in a position to vote on new electric rates at its last June meeting, currently scheduled for June 23, 2016. This deadline was incorporated into the IHE's scope of work ("SOW"). Specifically, the SOW states:

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While the Project Manager is aware of and has approved the AE-proposed schedule, if the IHE anticipates pursuing Schedule B outlined in the Memo, it will first be necessary to seek permission to change the due date for the Final Recommendation.

AE most recently reiterated its proposed timeline in a February 1, 2016 memo to Council.⁴ While the memo does acknowledge that AE could develop an alternative schedule, to date AE has received no direction from Council to change the proposed schedule. Absent any such instructions, AE does not believe it is appropriate to change the final Council action date.

One of the major driving forces behind setting the AE timeline is Council's own meeting schedule. As the attached ordinance shows, Council has only one meeting scheduled in July: on July 27 for a budget work session.⁵ In order to comply the schedule proposed by the IHE, Council will be forced amend its own meeting schedule.

Finally, pushing Council's adoption action beyond June creates potential financial challenges for AE and the City. Although an overall rate reduction is being proposed, without knowing what rates Council will adopt, AE will lack the necessary financial information to develop the most accurate budget possible. Additionally, as a City department, AE's budget is inherently tied to that of the entire City of Austin's budget planning. Leaving AE's rates unresolved after the date by which the City Manager must present his budget to the Council leaves significant ambiguity in the Council's consideration of the fiscal year 2016 budget development process.

According to the City of Austin Charter, ⁶ the City Manager must submit a budget within thirty days prior to October 1, the beginning of the fiscal year. This means that the Manager

⁴ See February 1, 2016 Memo from Mark Dombroski to Council, attached hereto as Exhibit 2.

⁵ See Ordinance No. 20151015-013, attached hereto as Exhibit 3.

⁶ See City of Austin Charter, Article VII, Finance, Subsection 6.

must present the budget to City Council by no later than September 1st. The budget must be adopted by September 27 and in order to allow for Council have sufficient time to adequately consider the budget, the City Manager will release the FY 2016 – 2017 on July 27. To have the most complete information available to establish the budget, it is critically important that Council takes final action on the proposed electric rates by the end of June.

For these reasons, AE requests that the IHE adopted Schedule A.

Respectfully submitted,

Andrea D. Rose

408/6/5

State Bar Number

7/10/2016

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 the Procedural Rules, on the 18th day of February, 2016.

Andrea D. Rose

1. PURPOSE

The City of Austin seeks responses to this Request for Qualifications Statements ("RFQS") from qualified, independent individuals experienced in performing highly advanced, senior-level administrative hearing work. The City of Austin seeks the services of an Impartial Hearing Examiner to assist the Austin City Council in establishing fair and balanced electricity rates during Austin Energy's upcoming cost of service and rate review. The Contractor selected to serve as the Impartial Hearing Examiner ("IHE") shall, at the direction of the Austin City Council, preside over any hearing addressing the cost of service and rate schedule proposed by Austin Energy. The IHE shall receive written and oral testimony and evidence. Then, operating within the public policy framework developed by Austin City Council and considering all relevant facts and laws, the IHE shall make independent recommendations to Council regarding Austin Energy's cost of service and rate schedule. The Impartial Hearing Examiner will work under minimal supervision, with extensive latitude for the use of initiative and independent judgment.

2. BACKGROUND

Austin Energy ("AE") is the municipal electric utility, owned and operated by the City of Austin, Texas, and is engaged in the generation, distribution, and transmission of electricity to over 450,000 residential, commercial and industrial customers in Travis and Williamson counties, Texas. AE's governing body is the Austin City Council. The Austin City Council also serves as AE's primary regulator, having the authority to establish retail rates for all customers served by the utility.

In 2012, the Austin City Council set new retail rates for AE customers for the first time in more than 18 years. Reflecting on that process, the Austin City Council passed Ordinance No. 20120607-055, enabling the City of Austin to hire an IHE to assist with the rate review and make recommendations for the City Council's consideration during AE's next cost of service and rate review process. Based on this guidance, the City will hire an IHE whose primary responsibilities would be to preside over certain hearings and proceedings during the rate review on and to make recommendations to the Austin City Council.

Beginning in Fall 2015, AE will conduct a cost of service update, will revise its revenue requirement, and may alter rate design structures. While the project schedule is still in development, AE expects to initiate the cost of service study and subsequent rate review in Fall 2015 and expects to present the findings to and undergo an administrative review before the Austin City Council from January 2016 through June 2016. These dates are subject to change.

3. QUALIFICATIONS

The Contractor selected to serve as the IHE ("Contractor") shall possess the experience and qualifications necessary to perform the objectives outlined in Section 4 (Scope of Work).

- A. The Contractor shall have the following minimum qualifications:
 - 1. Graduation from an accredited four year college or university and graduation from an accredited law school with a Juris Doctorate degree.
 - 2. At least five years of experience as a licensed attorney preparing for, participating in, and reviewing formal hearings or trials involving litigation and/or administrative law at the Federal. State or local level.
 - 3. Licensed by the State Bar of Texas as a member in good standing.

- B. In the response to this RFQS, respondents shall demonstrate that they possess knowledge of:
 - 1. Legal principles, practices, and proceedings related to the electric utility industry in Texas:
 - 2. Trial and administrative hearing procedures and laws; and
 - 3. Laws and agency regulations and rules related to the electric utility industry in Texas, including the Texas Public Utility Regulatory Act, the rules of the Public Utility Commission of Texas, and the wholesale market in the Electric Reliability Council of Texas.
- C. In the response to this RFQS, respondents shall demonstrate that they possess the ability to:
 - 1. Consider objectively the testimony of parties involved in the review process;
 - 2. Apply relevant rules and statutes;
 - 3. Use reasoning and logic to identify solutions and develop possible approaches to contested issues:
 - 4. Use judgment to make recommendations to City Council;
 - 5. Communicate effectively; and
 - 6. Comply with ethical standards.
- D. The Contractor shall attest in writing that the Contractor is free from all conflicts of interest that would interfere with, or call into question, the ability of the Contractor to preside independently over the review process.

Additionally, respondents to this RFQS shall identify all areas of possible conflicts of interest. At a minimum, respondents to this RFQS shall disclose any prior or current experience, client, or relationship which may create the perception of a conflict of interest, including, but not limited to any representation of the City of Austin, Austin Energy, or any of AE's customers or groups of customers.

- E. An individual shall not serve as the IHE if, at the time the contract is awarded that individual:
 - 1. Is an employee or paid consultant of a Texas trade association which seeks to promote a business or professional interest related to the electric utility industry;
 - Has been registered at some point in the last two years as a lobbyist under Chapter 4-8
 of the Austin City Code working on behalf of a business or professional interest related to
 the electric utility industry; or
 - 3. Is currently or has been in the past two years a member of the City of Austin's Electric Utility Commission, Resource Management Commission, or City Council.

4. SCOPE OF WORK

A. Objectives

The objective of the IHE is to preside over hearings and proceedings to gather testimony and evidence that address AE's recommended rate proposals. At the close of the hearing/proceeding, the IHE shall deliver a written recommendation to the Austin City Council which identifies pertinent issues of related law, findings of fact, and proposals for the Austin City Council to consider. Throughout the review, the IHE shall have the following responsibilities and authority:

- 1. Schedule and preside over hearings.
- 2. Conduct hearings involving legal, procedural, and technical issues.
- 3. Examine witnesses and rule on evidence.
- 4. Analyze testimony and evidence.
- 5. Rule on discovery disputes, scheduling requests, and motions.
- 6. Compile and maintain records of evidence and ensure proper handling for confidentiality.
- 7. Prepare opinions, proposals for decision, or orders.
- 8. Prepare reports.
- 9. Perform related work as assigned.

B. Phase 1: Preparation

- 1. In preparation for the Rate Review Process, the IHE shall:
 - a. Review relevant, AE-related Austin City Council ordinances, resolutions, and policies;
 - b. Develop a comprehensive understanding of the nuances of how Texas municipally owned utilities operate;
 - c. Review and recommend revisions, as necessary, to proposed hearing procedures; and
 - d. Help develop a draft procedural schedule.
- 2. The IHE shall present an overview of the rate review process to the Austin City Council at the November 2015 meeting of the Austin Energy Utility Oversight Committee (date to be announced). The presentation shall include discussion of:
 - a. Fundamental ratemaking principles;
 - b. The separate roles of the City Council and the IHE;

- c. Major milestones of the review process;
- d. Opportunities for public participation in the review process; and
- e. Any other important issue(s) deemed relevant to the review process by the IHE.
- 3. The IHE shall attend the December 2015 meeting of the City of Austin Electric Utility Commission and be available to make comments and answer questions about the administrative rate review process (date to be announced).

C. Phase 2: Rate Review Process

- 1. AE will present its rate recommendations in a formal process before the Austin City Council. Using a similar procedural schedule to that traditionally used by the Texas State Office of Administrative Hearings, the review process will include the following steps:
 - a. AE briefing to the Electric Utility Commission;
 - b. AE presentation to the Austin City Council;
 - c. Issuance of briefs by interested parties advising City Council on Issues to be deliberated in the administrative review process;
 - d. Order from the City Council assigning the case to the IHE and giving direction on Issues to be deliberated in the administrative review process;
 - e. Establishment of the procedural schedule;
 - f. Parties' filing of testimony and rebuttal testimony;
 - g. Parties' filing of and response to Requests for Information submitted by other parties;
 - h. Oral hearings, at the discretion of the IHE;
 - i. Parties' filing of final arguments;
 - j. IHE's development of a Final Recommendation;
 - k. IHE's delivery of a Final Recommendation to the Austin City Council;
 - I. Deliberations of the Austin City Council; and
 - m. Final decision by the Austin City Council
- 2. The IHE shall develop a Final Recommendation to be delivered in writing to the Austin City Council. The Final Recommendation shall be based on the IHE's understanding of the policies, laws and rules that regulate AE and be supported by evidence and/or testimony presented in the administrative review process. At a minimum, the Final Recommendation shall include:
 - a. Discussion of Issues deliberated as directed by the Austin City Council

- b. Findings of fact that inform the IHE's recommendations
- c. Explanations of law that form the foundation of the IHE's recommendations
- d. Description of each recommendation

D. General Requirements

- 1. The Contractor may not conduct any *ex parte* communications with any interested parties once the review has been assigned to the Contractor by the Austin City Council and until the Council has rendered its final decision.
- The Contractor shall not release or cause the release of information protected by the Texas Public Information Act, Chapter 552 of the Texas Government Code, or other confidential information to any non-City party or to any City party who is not entitled to access to certain confidential information.
- 3. The Contractor shall attend meetings and make presentations to the Austin City Council or the City Manager's Office as required by the City of Austin's Project Manager. Information provided in these meetings shall be subject to ex parte rules.
- 4. The Contractor shall conduct status meetings with the City of Austin's Project Manager on the first and third Mondays of each month, unless a different scheduled is approved by the City of Austin's Project Manager. Such meetings need not be in person. Topics to be covered may include a summary of work accomplished, to-date spending and remaining contract balance, concerns which may have an effect on schedule or cost of the project, and recommendations for project improvements.
- 5. The following criteria are applicable to all deliverables, except as mutually agreed upon. The Contractor shall:
 - a. Deliver each deliverable free from error (including, but not limited to: formatting, spelling, grammar, typographical).
 - Submit each written report electronically in a format compatible with Microsoft Word 2007 or later.
 - c. Provide all spreadsheets used to conduct analysis and to arrive at any conclusion in "live" Microsoft Excel 2007 or later worksheets.
 - d. Submit each written presentation electronically in a format compatible with Microsoft Power Point 2007 or later.

5. TIMELINE

The City of Austin anticipates engaging the Contractor by October 31, 2015. Phase I is scheduled to start by November 1, 2015 and conclude by December 31, 2015. Phase II is scheduled to start January 2, 2016 and conclude by June 30, 2016. The IHE shall submit in writing the Final Recommendation no later than March 31, 2015 to the City of Austin's Project Manager, unless a different due date is approved by the City of Austin's Project Manager.

6. CONFIDENTIALITY AGREEMENT

Upon nomination of contract award and prior to commencement of the work, the City of Austin will require the Contractor to execute a Confidentiality Agreement due to competitive business and technical information that may be provided by Austin Energy to the Contractor.



TO:

Mayor and City Council

CC:

Marc A. Ott, City Manager

FROM:

Mark Dombroski, Interim General Manager

DATE:

February 1, 2016

SUBJECT:

Schedule and Procedural Rules for Ongoing Rates Process

This memorandum is in response to the discussion and requests made during the January 25, 2016 Austin Energy Utility Oversight Committee meeting about alternative options for the rate-setting process schedule. It also briefly addresses the proposed procedural rules.

Procedural Schedule

Today, staff is releasing a revised schedule. This schedule addresses comments offered to Austin Energy by City Council and stakeholders by incorporating three major sets of changes:

- adding nearly three weeks to the schedule for the public's and interested parties' initial review of Austin Energy's proposed tariff package and adjusting all other dates accordingly;
- 2) adding three Council Work Sessions during the month of May as proposed by Mayor Pro Tem Tovo; and
- 3) extending the due date for the Impartial Hearings Examiner's report by two and one-half weeks. The revised schedule does not change the end of June target date for the final Council decision on base rates.

The three work sessions suggested by the Mayor Pro Tem are included in the schedule after the conclusion of the hearings before the Examiner, but prior to the release of the Examiner's report. Staff anticipates that the work sessions would provide background on the three recommended topics and afford the Council an opportunity to review current policies and options. Staff recommends that Council defer exploration of specific proposals and alternatives during these workshops, as those detailed issues will still be pending before the Examiner.

Key dates of the schedule include:

- Monday, January 25—Release of proposed tariff package
- Thursday, February 25—Independent Consumer Advocate considered by Council
- Wednesday, March 23—All parties submit responses to proposed tariff package
- Wednesday, April 13—Beginning of hearings before Impartial Hearings Examiner
- Monday, May 2—City Council Work Session No. 1 (proposed by the Mayor Pro Tem)
- Monday, May 9—City Council Work Session No. 2 (proposed by the Mayor Pro Tem)
- Monday, May 16—City Council Work Session No. 3 (proposed by the Mayor Pro Tem)
- Monday, May 23—Impartial Hearings Examiner releases report
- Late May to Late June—3 City Council Work Sessions and 2 Public Hearings (recommended)
- Thursday, June 23—Final Council decision on electric rates

At Council's direction, an alternative schedule could be developed that provides several additional weeks for review of Austin Energy's tariff package by further delaying the Examiner's report to the first week in June. Council could then conduct work sessions considering the report during June prior to the July recess. Several meetings could be scheduled in the first two weeks of August for public hearings and final Council consideration.

As discussed at the Monday committee meeting, staff does not recommend the alternative of pushing the Council's decision on rates to August, as it conflicts with the FY 2017 budget development schedule. The City Manager's budget proposal is scheduled for release on July 27th. Four budget work sessions and public hearings are already scheduled for the first weeks in August. In addition to the practical time constraints, this alternative schedule would require that the City's budget proposal be developed with place holder numbers until the Council's deliberations are completed. The budget would then be revised in mid to late August to reflect Council's action on the base rates. These revisions would not only affect Austin Energy's proposed budget, but the General Fund budget and many other departments due to their electric costs and other services linked to Austin Energy.

Procedural Rules

The revised procedural rules released today have been modified for greater approachability and where possible to reflect the comments of stakeholders (<u>link to rules</u>). As an additional measure to provide accessibility to the rules and process, a short summary of key provisions of the rules will also be posted, allowing members of the public to more readily review and understand the process. These procedures will govern the rates review process going forward, unless Council directs otherwise in the future.

We look forward to continuing discussion with Council on the rates and processes. In the meantime, please do not hesitate to let me know if you have any questions or concerns.

ORDINANCE NO. 20151015-013

AN ORDINANCE SETTING THE COUNCIL MEETING SCHEDULE FOR CALENDER YEAR 2016.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Except as otherwise provided by council action, the council shall hold its regular meetings and work sessions in 2016 as provided in Exhibit A attached to this ordinance and incorporated in this ordinance for all purposes. In order to allow recesses for holidays, and to allow time for the conduct of other City business, meetings are cancelled as set forth in Exhibit A.

PART 2. Section 2-5-24(A) of the City Code is waived to the extent of any conflict.

PART 3. This ordinance takes effect on October 26, 2015.

PASSED AND APPROVED

October 15

, 2015

Steve Adler

Mayor

APPROVED:

Anne L. Morgan
Interim City Attorney

Jannette S. Goodall

City Clerk

2016 AUSTIN CITY COUNCIL MEETING DATES

umcil Work Session	Budget Work Session	Council Meetings	 Cancelled Dat
			January 7, 2016
			January 14, 201
			January 21, 201
January 26, 2016		January 28, 2016	January 21, 201
		February 4, 2016	
February 2, 2016			
February 9, 2016		February 11, 2016 (Zoning)	F 1 10 20
			February 18, 20
February 23, 2016		February 25, 2016	
March 1, 2016		March 3, 2016	
	·		March 10, 2010
			March 17, 2010
March 22, 2016		March 24, 2016 (Zoning)	
March 29, 2016		March 31, 2016	
April 5, 2016		April 7, 2016 .	
April 12, 2016		April 14, 2016 (Zoning)	
April 19, 2016	11.55.004	April 21, 2016	
	April 27, 2016		A = 20 2017
	(9:00 AM - 12:00 PM)		April 28, 2016
Mr 2 0017	May 4, 2016	Mary F. 2017	
May 3, 2016	(9:00 AM - 4:30 PM)	May 5, 2016	<u> </u>
M 10 2016	May 11, 2016	Mars 12, 2016 (Zanina)	
May 10, 2016	(9:00 AM - 4:30 PM)	May 12, 2016 (Zoning)	
May 17, 2016	May 18, 2016	May 19, 2016	
Way 17, 2010	(9:00 AM - 4:30 PM)	May 19, 2010	
	May 25, 2016		May 26, 2016
	(9:00 AM - 4:30 PM) June 1, 2016		1viay 20, 2010
	(9:00 AM - 4:30 PM)		June 2, 2016
June 7, 2016	(9.00 AM - 4.50 FM)	June 9, 2016	June 2, 2010
			<u> </u>
June 14, 2016		June 16, 2016 (Zoning)	-
June 21, 2016		June 23, 2016	
			June 30, 2016
			July 7, 2016
			July 14, 2016
		,	July 21, 2016
	July 27, 2016		
	(9:00 AM - 12:00 PM)		July 28, 2016
	August 3, 2016		
August 2, 2016	(9:00 AM = 4:30 PM, Includes Setting	August 4, 2016	
A-4-4-A-4-4-A-4-4-A-4-4-A-4-4-A-4-A-4-A	the Proposed Maximum Tax Rate)		
	August 10, 2016		
August 9, 2016	(9:00 AM - 4:30 PM)	August 11, 2016 (Zoning)	
	August 17, 2016	August 18, 2016	
August 16, 2016	(9:00 AM - 4:30 PM)	(Includes Budget/Tax Rate Hearing)	
	August 24, 2016		
	(9:00 AM - 4:30 PM)		August 25, 201
4 20 2017	August 31, 2016	September 1, 2016	
August 30, 2016	(9:00 AM- 4:30 PM)	(Includes Budget/Tax Rate Hearing)	
			September 8, 20
		September 12,13, & 14	
		(Budget Readings and Tax Rate Adoption - 9:30 AM)	September 15, 20
September 20, 2016		September 22, 2016 (Zoning)	
			September 29, 20
October 4, 2016		October 6, 2016	
October 11, 2016		October 13, 2016 (Zoning)	
October 18, 2016		October 20, 2016	
0,00000		October 20, 2010	October 27, 201
NT1 001/		N. 1. 2.0047	October 27, 201
November 1, 2016		November 3, 2016	` <u>.</u>
November 8, 2016		November 10, 2016 (Zoning)	
		<u> </u>	November 17, 20
			November 24, 20
November 29, 2016		December 1, 2016	
December 6, 2016		December 8, 2016 (Zoning)	
December 13, 2016		December 15, 2016	
December 13, 2016		December 10, 2010	D1 00 000
			December 22, 20
			December 29, 201