

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

AUSTIN ENERGY
2016 MAR -1 PM 2:04
BEFORE THE CITY OF AUSTIN
IMPARTIAL HEARING EXAMINER

**AUSTIN ENERGY'S RESPONSE TO NXP SEMICONDUCTORS'
AND SAMSUNG AUSTIN SEMICONDUCTOR, LLC'S
MOTION TO COMPEL AUSTIN ENERGY**

Austin Energy ("AE") files this Response to NXP Semiconductors' and Samsung Austin Semiconductor, LLC's (collectively, "NXP/Samsung") Motion to Compel Austin Energy in response to Austin Energy's Objections to NXP/Samsung's First Request for Information.

For the reasons discussed in AE's initial objections and in this response, NXP/Samsung's motion to compel should be denied.

I. Procedural History

NXP/Samsung served its Motion to Compel Austin Energy in response to Austin Energy's Objection to NXP/Samsung's First Request for Information on February 25, 2016. Pursuant to the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates, this response is timely filed.

II. Response to Motion to Compel

In its Motion to Compel, NXP/Samsung presents a curious interpretation of the scope of discovery in this proceeding. According to NXP/Samsung's logic, any matter referenced in Austin Energy's Tariff Package is within the scope of discoverable material. This is not true. City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.1(a) sets forth the scope of discovery in this rate review: "Discovery is limited to relevant information that is not unduly prejudicial *and* can lead to the discovery of admissible evidence."¹ This is a

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

two-prong test. Discovery must satisfy both prongs to come within the scope of this proceeding. Austin Energy indicated in its Tariff Package that this rate review is limited to Austin Energy's base electric rates. Indeed, the very style of this proceeding states clearly that this case is a "proposal to change base electric rates." Additionally, while the plain text of Ordinance No. 20120607-055 may not specify that only Austin Energy's base rates should be reviewed, the Ordinance's context and history evidence Austin City Council's intent for the review to be limited to AE's base rates. Specifically, Council has made adjustments to the pass-through rates during the budget process in each of the past three years. Accordingly, it is inappropriate to suggest that Council intended to overturn that process in Ordinance No. 20120607-055. By definition, discovery that is beyond the scope of the proceeding (i.e., is irrelevant) is not capable of leading to the discovery of admissible evidence.

In contrast, NXP/Samsung takes a hyper-technical interpretation of § 7.1(a). Under their view, literally anything associated with everything contained in the Tariff Package is subject to discovery. If adopted, this overly-broad understanding would turn this proceeding into a full examination of all of AE's pass-through charges simply because they are mentioned in the Tariff Package. Such a reading of the rules is illogical and burdensome. Furthermore, acceptance of NXP/Samsung's argument would lead to an inefficient situation where AE's pass-through rates would be examined in this case and then again as part of the budget process in August.

Austin Energy's 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. Information regarding pass-through charges is, therefore irrelevant. Thus, discovery regarding pass-through charges is outside the scope of discovery in this proceeding and is objectionable. Contrary to NXP/Samsung's assertions, Austin Energy

does not make information regarding pass-through charges discoverable by simply referencing pass-through charges in its Tariff Package. Austin Energy's reference to pass-through charges in its Tariff Package should not be mistaken for intent to bring pass-through charges within the scope of discovery of this proceeding, but rather intent to present a comprehensive, transparent Tariff Package.

As Austin Energy has repeatedly stated throughout this process, the appropriate venue to discuss AE's pass-through charges is the City Council-driven budget process, not this review of base rates. Indeed, the parties in PUC Docket No. 40627 specifically agreed as part of the settlement agreement that any change to the Power Supply Adjustment must be considered as part of the City's annual budgeting process after a public hearing is conducted.

Although NXP/Samsung argues otherwise, this proceeding is not a fuel reconciliation case. Similarly, it is neither a transmission cost of service case nor an energy efficiency cost recovery factor case. This proceeding is a base rate case. Separating an examination of base rates from other charges is common and is consistent with the Public Utility Commission's process whereby base rates are reviewed separately from fuel cost recovery. This is done because the rates are, in fact, *not* inherently tied, as NXP/Samsung claims. Austin Energy's pass-through charges collect certain expenses, while its base rates collect other expenses. One does not influence the other. Accordingly, Austin Energy respectfully urges the Impartial Hearing Examiner to maintain his initial position that issues related to AE's pass-through charges and underlying costs pertaining to AE's Power Supply Adjustment and the prudence of AE's fuel and power supply contracts are outside the scope of this proceeding.

Additionally, Austin Energy refutes the allegation that it has used the Public Information Act (“PIA” or “Act”) “as a shield to hide relevant information from discovery.”² Austin Energy’s treatment of discovery requests as PIA requests has been appropriate and in compliance with the Act. As a public entity, AE is subject to the PIA. Under the Act, AE is required to provide certain documents to the public in response to a properly submitted PIA request. AE must comply with the Act regardless of whether the information requested is relevant to the issues in this proceeding. Information is not deemed relevant or admissible as evidence in this proceeding simply because it was produced by Austin Energy in response to a PIA request, which was also a discovery request.

In addition, Austin Energy is a buyer and seller in the Electric Reliability Council of Texas competitive wholesale market. Certain customer and generation information related to AE’s participation in that market place must be maintained confidentially. The Texas Legislature understood this concern when it modified the Public Information Act. The Act specifically provides that certain utility competitive matters are not subject to disclosure.³ It does not, however, give AE the unilateral right to declare what information may be withheld. Instead, the Act provides that information AE determines is confidential must be provided to the Attorney General for a final determination. In response to NXP/Samsung’s discovery, Austin Energy identified certain NXP/Samsung requests as seeking information related to such competitive matters and is processing those requests pursuant to the City’s PIA process to ensure compliance with the Act.

² NXP Semiconductors and Samsung Austin Semiconductor, LLC’s Motion to Compel Austin Energy at 7 (Feb. 25, 2016).

³ See Tex. Gov’t Code § 552.133, Confidentiality of Public Power Utility Competitive Matters.

III. Conclusion

The scope of discovery in this proceeding is limited to Austin Energy's base electric rates. Pass-through charges are irrelevant to AE's base electric rates and, thus, discovery seeking information on pass-through charges is outside the scope of discovery in this proceeding. For these reasons, Austin Energy objected to NXP/Samsung's discovery requests seeking irrelevant information regarding pass-through charges. Nevertheless, when appropriate, Austin Energy provided such information in response to treating the discovery requests as PIA requests. However, certain requests seek information AE identified as utility competitive matters not subject to disclosure under the PIA. Austin Energy is processing such requests accordingly. Austin Energy respectfully requests the Impartial Hearing Examiner sustain AE's objections to NXP/Samsung's discovery requests seeking information outside the scope of discovery in this proceeding or otherwise not subject to disclosure under the PIA.

Respectfully submitted,

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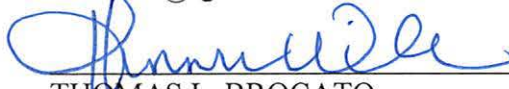
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CERTIFICATE OF SERVICE

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 1st day of March, 2016, in accordance with the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates.



HANNAH M. WILCHAR