

PRE-CONFERENCE HEARING

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

\* \* \* \* \*

March 4, 2016

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The pre-conference hearing in the above-entitled matter came on to be heard before ALFRED HERRERA, Independent Hearing Examiner, beginning on the 4th day of March 2016, from 10:05 a.m. to 11:53 a.m. The proceedings were reported by Sandra S. Givens, Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand method, at Town Lake Center, 721 Barton Springs Road, Assembly Room, Austin, Texas 78704.

AUSTIN ENERGY  
2016 MAR -7 AM 8:25

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FOR CUSTOMERS CONCERNED ABOUT AFFORDABLE RATES  
22 IN ELECTRICITY:

23 Ms. Laurie Barker  
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25

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2 Ms. Lanetta M. Cooper  
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5 ALSO PRESENT:

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24 Private Citizen

25 Mr. Barksdale English

Regulatory & Market Policy

Austin Energy

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PROCEEDINGS

10:05 A.M.

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MR. HERRERA: Good morning. We'll convene this pre-hearing conference in the Austin rate review for 2016 of its tariff package. What I'd like to do first is take appearances of the parties. And let me introduce myself. My name is Alfred R. Herrera, the impartial hearing examiner. Let's take appearances from the parties, and I will start with Austin Energy.

MR. BROCATO: Good morning, Your Honor. Thomas Brocato with the law firm of Lloyd Gosselink. Also here with me is Hannah Wilcher, appearing on behalf of the City of Austin and Austin Energy.

MR. HUGHES: Chris Hughes appearing on behalf of NXP and Samsung, and along with me is Maria Faconti as well.

MS. BARKER: Good morning, Your Honor. I'm Laurie Barker. I'm here with the Customers Concerned About Affordable Rates in Electricity.

MR. HERRERA: Please.

MR. COFFMAN: Good morning. John B. Coffman here on behalf of the Independent Consumer

1 Advocate, and I'm here today also with Janee  
2 Briesemeister.

3 MS. COOPER: Morning, Your Honor.  
4 Lanetta Cooper on behalf of Austin Energy's Low Income  
5 Consumers.

6 MR. BORGELT: Roger Borgelt on  
7 behalf of Homeowners United for Rate Fairness  
8 representing nonCity of Austin resident customers.

9 MR. HERRERA: Any --

10 MR. REED: Cyrus Reed with the  
11 Sierra Club.

12 MS. WHITE: Morning. Kaiba White,  
13 public citizen.

14 MR. ROBBINS: Paul Robbins, private  
15 citizen.

16 MS. MELANCON: Rebecca Melancon,  
17 Austin Independent Business Alliance.

18 MR. HERRERA: Let me have that  
19 again, please. I'm sorry.

20 MS. MELANCON: Rebecca Melancon,  
21 M-E-L-A-N-C-O-N, Austin Independent Business Alliance  
22 representing locally owned business.

23 MR. McCOLLOUGH: Morning, Your  
24 Honor. Scott McCollough on behalf of Data Foundry.

25 THE REPORTER: Of Data what?

1 MR. MCCOLLOUGH: Data Foundry.

2 MS. DUNKERLEY: Betty Dunkerley,  
3 the Seton Family of Hospitals.

4 MR. HERRERA: Anyone else that  
5 wants to make an appearance? Okay. I have motions to  
6 intervene, and I am going to consider the notice of  
7 appearance by the Independent Consumer Advocate as a  
8 motion to intervene and grant that. I have motions to  
9 intervene from Austin Apartment Association; from  
10 Mr. James Roark, individually; from Data Foundry; from  
11 Cypress Semiconductor; from Applied Materials; from  
12 Greater Austin Chamber of Commerce; from Austin  
13 Regional Manufacturer's Association; from Customers  
14 Care -- and I'm forgetting what the acronym stands for,  
15 but it's Customers Care; from CCARE, which is a  
16 different acronym; from Goodwill Industries; from the  
17 Austin Association of Facility and Maintenance  
18 Engineers; from Sierra Club; and from Crown Castle.

19 With regard to all those except for  
20 Crown Castle, I am granting the motions to intervene.

21 MR. BROCATO: Actually, Your Honor,  
22 if I may?

23 MR. HERRERA: Yes.

24 MR. BROCATO: Before you do that I  
25 just want to make a couple of comments.

1 MR. HERRERA: Sure.

2 MR. BROCATO: You know, under the  
3 rules we have 10 days to file a response to motion to  
4 intervene --

5 MR. HERRERA: Yes.

6 MR. BROCATO: -- on a number of  
7 these --

8 MR. HERRERA: And Mr. Brocato, I  
9 should have asked if anyone had objections to those  
10 motions to intervene. I apologize.

11 MR. BROCATO: And I don't have a  
12 specific objection, but I would like to express a  
13 couple of comments about some of the motions.

14 MR. HERRERA: Sure.

15 MR. BROCATO: Under the rules,  
16 interested parties were directed to provide a list of  
17 their members, and a number of the movants have not  
18 done that, and I would just ask that they do that.  
19 Moreover, a couple of the intervenors have stated that  
20 they represent entities that separately are represented  
21 in the case, and so we would like some clarity as to  
22 who is going to be representing whom so that we don't  
23 have --

24 MR. HERRERA: Could you --

25 MR. BROCATO: For example, CCARE

8



1 states specifically that their clients in this case are  
2 NXP, Samsung, Seton, and a number of others who have  
3 separate counsel, and I just want to make sure that we  
4 understand who is authorized to represent whom in this,  
5 in this matter --

6 MR. HERRERA: Okay.

7 MR. BROCATO: -- so that we don't  
8 have dual representation. I do understand, however,  
9 that a number of the intervenors are associations whose  
10 interests are aligned with some of these individual  
11 parties, and I do understand that a number of these  
12 associations and coalitions, their members include the  
13 entities that have separately intervened. But since  
14 the motions are so specific in saying that "we  
15 represent" these specific entities, I just would like  
16 some sort of clarity.

17 And then lastly --

18 MR. HERRERA: You want clarity from  
19 those parties as to who, who they're representing and  
20 who they're not representing?

21 MR. BROCATO: Yes, sir.

22 MR. HERRERA: Okay.

23 MR. BROCATO: Then lastly, with  
24 respect to Crown Castle, we have confirmed Crown Castle  
25 is a customer of Austin Energy and, therefore, we do

1 not object to their intervention. However, based upon  
2 language in their pleading as well as our knowledge of  
3 Crown Castle and their interest, they have stated that  
4 they're interested in some wi-fi infrastructure issues.  
5 They have stated in their pleading that they're  
6 concerned about the lack of a franchise agreement  
7 between the City and Crown Castle.

8 MR. HERRERA: Mr. Brocato, let me,  
9 let me cut to the chase here --

10 MR. BROCATO: Sure.

11 MR. HERRERA: -- and cut this  
12 short. I read the motion to intervene by Crown Castle.  
13 One of the probably more controversial issues we'll  
14 deal with today is the scope of issues.

15 MR. BROCATO: Right.

16 MR. HERRERA: And I don't know if  
17 anyone here is here from Crown Castle, but I do not  
18 believe that the issues that Crown Castle raised in its  
19 motion to intervene are relevant to this proceeding.  
20 From my view, they're outside the scope of the  
21 proceeding. If they have an issue with regard to pole  
22 attachment agreements or the right to use a right of  
23 way, that is not within, from my view, within the scope  
24 of this proceeding. If Crown Castle wishes to address  
25 that later on, they certainly may.

1                   I was not sure whether they were or were  
2 not a customer of Austin Energy. That's one of the  
3 criterion for intervention. If they are, then  
4 obviously they have a right to intervene and address  
5 rate-related matters. But from my view, the issues  
6 that they identified in their motion to intervene are  
7 outside the scope of the proceeding.

8                   MR. BROCATO: And that's really the  
9 nature of our comments as well, as he said. Because  
10 they're a customer we're not directly opposing their  
11 opposition, but I did want to clarify that we believe  
12 those issues are beyond the scope as well. So with  
13 that, we have no other objections to the motions to  
14 intervene.

15                  MR. HERRERA: And with those  
16 comments, I would then grant Crown Castle's motion to  
17 intervene for purposes of rate-related issues.

18                  MR. COFFMAN: Your Honor?

19                  MR. HERRERA: Yes.

20                  MR. COFFMAN: If I might, I have a  
21 preliminary matter I wanted to state. The procedural  
22 rule said that in the appearances that if you're, if  
23 you're an attorney, to list your bar number, and I did.  
24 I do have a Missouri bar license. I don't have a  
25 license to practice law in Texas, but it's my

1 understanding under the procedural rules that is not a  
2 matter under the Administrative Procedure Act and it's  
3 not a requirement to be a Texas attorney. And so I  
4 just wanted to make it clear for the parties that  
5 I'm -- it's my understanding I'm not acting as an  
6 attorney in this proceeding.

7 MR. HERRERA: For my purposes you  
8 could even be licensed in Arkansas and we'd still --

9 (Laughter.)

10 MS. BARKER: Your Honor, I had a  
11 similar issue maybe related to that one. I'm also an  
12 attorney; I have a state bar. I'm not appearing as an  
13 attorney, not providing legal services. I made that  
14 clear in my motion. I don't know whether or not it is  
15 required under those circumstances to keep putting my  
16 state bar number on my pleadings, but since I'm not  
17 acting in a capacity as an attorney, I would prefer not  
18 to.

19 MR. HERRERA: And that's perfectly  
20 fine. I'm not -- we're not going to stand on those  
21 little niceties of our pleadings. There are folks here  
22 that are pro se, there are folks here that are not  
23 necessarily licensed attorneys that are acting in a  
24 capacity to represent a particular group, and that's  
25 perfectly fine for these proceedings.

1 THE REPORTER: Sir, would you  
2 remind me who you are?

3 MR. HUGHES: Chris Hughes.

4 MR. HERRERA: I'd like to turn  
5 probably to the stickier issue we have to deal with  
6 today, and that is the scope of issues, and as I see  
7 it -- and I want to take a bit more argument from  
8 essentially the two sides on these issues. As I see  
9 it, Austin Energy's position is that the power supply  
10 adjustment, the PSA, and the regulatory charge and the  
11 community benefits charge are outside the scope of the  
12 proceeding. That's my understanding of the pleadings.  
13 Do I have that right Mr. Brocato?

14 MR. BROCATO: The only exception  
15 being the limited issue that you identified, and we  
16 concur within your scope of issues related to the  
17 allocation.

18 MR. HERRERA: And on the other side  
19 the folks who are saying no, you raise that in your  
20 tariff package; therefore, they're within the scope of  
21 the proceeding. That to me is the crux of the issue  
22 between the two parties. There are -- these are rates  
23 that customers pay; therefore, they're within the scope  
24 of the proceeding. I'm not sure if, if -- who should  
25 address that from the customer's side, whether I've

1 fairly captured the gist of the argument.

2 MS. COOPER: Well, yes, Your Honor.  
3 I mean, almost half of a utility bill is made up of  
4 these pass-through charges.

5 MR. HERRERA: I'm not looking for  
6 argument quite yet, Ms. Cooper.

7 MS. COOPER: Oh, okay. I just  
8 wanted to make sure --

9 MR. HERRERA: I just wanted to know  
10 whether I captured the issue.

11 MS. COOPER: Yes, Your Honor. And  
12 there's also the other issues of the TCOS and the  
13 nonelectric utility operations. There were two  
14 different sets of issues, one dealing with the  
15 pass-through charges and the other dealing with the  
16 TCOS and nonutility.

17 MR. COFFMAN: Your Honor, I might  
18 raise a potential issue with regard to the issues  
19 outside the scope in that -- it hasn't become a problem  
20 yet, but to the extent that RFIs are issued, in order  
21 to determine facts that are within the issues that are  
22 within the scope I can envision that there may be some  
23 questions asked that might be on this list of issues  
24 outside the scope, but in order to understand -- it  
25 might be important to understand those issues to

14

1 understand issues that would be relevant. In other  
2 words, they'd lead to relevant evidence regarding the  
3 issues that are within the scope.

4 So I don't know if that makes sense, but  
5 my understanding that the discovery can be broader than  
6 what is ultimately relevant at the hearing.

7 MR. HERRERA: Right. And that's  
8 one of the arguments that I believe Mr. Hughes raised  
9 in their motion to compel, and I, and I, I do want to  
10 say that with regard to the scope of issues, I'm not  
11 going to make a ruling on it today. I hope to have a  
12 ruling on it to you by Monday, Tuesday at the latest.

13 I do want to take more argument upon it,  
14 but before I do I had some questions with regard to  
15 what all is in the power supply adjustment, what all is  
16 in the regulatory charge, what elements are in there,  
17 and what all is in the community benefits charge. My  
18 understanding of the power supply adjustment is that it  
19 addresses net wholesale supply costs, power purchase  
20 agreements, fuel, transportation, and market-risk  
21 mitigation. And I'm going from Austin Energy's tariff  
22 filing.

23 Mr. Brocato, could you expound on what  
24 net wholesale supply costs are and how those are set?

25 MR. BROCATO: I can, but I think

1     since Austin Energy has folks here, it might be better  
2     for them to give you that level of specificity.

3                     MR. HERRERA:   That would be fine.  
4     If someone wants to come up from Austin Energy and just  
5     very briefly tell me its -- these elements are in there  
6     and this is how those costs are set.

7                     MR. BROCATO:   Because I can tell  
8     you generally at a high level, but [inaudible].

9                     MR. DREYFUS:   Good morning.   Mark  
10    Dreyfus, Vice President for Regulatory Affairs and  
11    Corporate Communications.

12                    The power supply cost that you  
13    reference, I think we refer to them as net wholesale  
14    settlement, ERCOT wholesale settlement.   So every day  
15    we have expenses and revenues related to our ERCOT  
16    wholesale market operations.   All of those are bundled  
17    together in a, in a, basically a bill that we get from  
18    ERCOT.   Some days it's a bill and some days it's a  
19    payment, and that is probably the largest component of  
20    the power supply adjustment, and we pass those costs  
21    directly through with no markup from the ERCOT  
22    settlement statement into the power supply adjustment.

23                    MR. HERRERA:   And who establishes  
24    what those billings or credits are?

25                    MR. DREYFUS:   Well, those are



1 determined according to the ERCOT protocols and the  
2 ERCOT market operations.

3 MR. HERRERA: Okay. With regard to  
4 the transportation costs, what are those?

5 MR. DREYFUS: That is a primarily  
6 railroad cost and may -- it may also include some  
7 pipeline charges for natural gas.

8 MR. HERRERA: Okay. So it's  
9 transportation of --

10 MR. DREYFUS: Of fuel.

11 MR. HERRERA: Of fuel. And I'm  
12 assuming that your purchase power contracts are  
13 essentially that. You go out and buy capacity from  
14 somebody that generates it?

15 MR. DREYFUS: That is primarily  
16 contracts for renewable power supply, but it may also  
17 include some shorter-term agreements with conventional  
18 power.

19 MR. HERRERA: And the market-risk  
20 mitigation, what is that element?

21 MR. DREYFUS: That would be hedging  
22 activities related to coal supply, natural gas, or  
23 power prices. Yes.

24 MR. HERRERA: Okay. With regard to  
25 the regulatory charge, my understanding that's the

1 ERCOT administrative fees?

2 MR. DREYFUS: Yes.

3 MR. HERRERA: The use of the  
4 transmission grid and then the Texas Reliability Entity  
5 fees as well as the, I guess --

6 MR. DREYFUS: Yes.

7 MR. HERRERA: -- the North  
8 American -- its national counterpart.

9 THE REPORTER: Its what?

10 MR. HERRERA: National counterpart.

11 MR. DREYFUS: The regulatory charge  
12 includes our pass-through of the transmission matrix  
13 expense that is identified in the annual order from the  
14 Public Utility Commission as well as the administrative  
15 fee for participating in ERCOT and the administrative  
16 fee for participating in the Texas Reliability Entity.  
17 And again, those are passed through with no markup.

18 MR. HERRERA: And I think I have a  
19 fair understanding with regard to the community  
20 benefits charge, but just to be clear, that includes  
21 energy efficiency?

22 MR. DREYFUS: The community  
23 benefits --

24 MR. HERRERA: You can go ahead --

25 MR. DREYFUS: -- charge has --

18

1 MR. HERRERA: -- and just tell me  
2 what it is.

3 MR. DREYFUS: -- three components.  
4 One is the energy efficiency budget, the second is the  
5 customer assistance program budget, and the third is  
6 street lighting, and those are set annually by the city  
7 council in the city council budget process which  
8 follows a city administrative process with notice and  
9 public hearing.

10 MR. HERRERA: What was the last?  
11 You said there are three components?

12 MR. DREYFUS: That's the cost of  
13 street lights within the city.

14 MR. HERRERA: No, no. There were  
15 three components of the community benefit charge,  
16 energy efficiency service, area lighting --

17 MR. DREYFUS: Oh, and the customer  
18 assistance program.

19 MR. HERRERA: And within the  
20 customer assistance program there are some sub-elements  
21 within that?

22 MR. DREYFUS: There are two  
23 components of the customer assistance program. One is  
24 discounts on utility bills, and the second is  
25 weatherization for qualifying low-income customers.

1                   MR. HERRERA:   And I'm, I'm, I'm  
2   struggling with the scope of the issue.   I want to be  
3   candid with the parties.   I looked at NXP/Samsung's  
4   pleadings and Ms. Cooper's pleadings and other parties'  
5   pleadings on why these issues are relevant and the  
6   material impact that they have on a customer's bill.

7                   At the same time -- and these are going  
8   to be questions for Ms. Cooper and probably  
9   Mr. Borgelt -- in my review of the settlement in Docket  
10  40627 that was entered I guess 2012 or 2013, I forget  
11  exactly when it was entered into, there was -- there  
12  are two provisions in there that I think are relevant;  
13  maybe not dispositive, but certainly relevant to the  
14  discussion we're having with regard to the scope of the  
15  issues.   And they deal with the agreement that was  
16  reached by HURF in that proceeding that PSA issues  
17  would be taken up in a public hearing at the city  
18  level.   And then with regard to CAP -- look at my notes  
19  on that one -- those would be taken up in the budget  
20  process pursuant to tariff.

21                  And I'd like to hear from Mr. Borgelt on  
22  his view as to why this proceeding is the public  
23  hearing in which PSA issues would be taken up.

24                  MR. BORGELT:   I'm not quite sure I  
25  understand your question.

1                   MR. HERRERA: Sure. In my review,  
2 Mr. Borgelt, of the settlement that was reached in  
3 Docket 40627, one of the considerations for that  
4 settlement was that the signatories agree that a public  
5 hearing would be provided prior to Austin Energy  
6 changing its PSA.

7                   MR. BORGELT: And I do recall that.

8                   MR. HERRERA: And my question is,  
9 how do you see that provision relating to these  
10 proceedings?

11                  MR. BORGELT: Well, it certainly  
12 could be incorporated into these proceedings. I guess  
13 I had not given that particular issue much thought, but  
14 I suppose it could be. Yeah.

15                  MR. HERRERA: And Ms. Cooper, I  
16 guess I have the same question for you with regard to  
17 the CAP issue. The settlement in that proceeding said  
18 the CAP charge will be set annually through the city  
19 budget process pursuant to the tariff.

20                  MS. COOPER: Well, I guess I have a  
21 couple of issues. One is, the appeal was a rate case,  
22 and as we all know about rate cases, moving forward a  
23 new rate case cancels all things.

24                  The second thing is, the jurisdiction  
25 that the PUC has over in terms of dealing with the

1 appeal only dealt with the rates outside the city  
2 limits and did not address the judicial -- the power  
3 within the city limits. So to that extent it makes for  
4 a complicated decision on whether you can bind a  
5 decision made at the PUC to residential customers who  
6 live with inside the city limits in dealing with any  
7 issue that came out of some kind of settlement.

8                   Nonetheless, I think that the -- that  
9 was the purpose of the interim decisions recognizing  
10 that all of the pass-through charges were going to be  
11 annual charges --

12                   MR. HERRERA: When you say "the  
13 interim decision," which decision are you talking  
14 about?

15                   MS. COOPER: These regulatory  
16 charges are something that's done in the interim  
17 between rate cases, and that's very similar. And if we  
18 look at the PUC, most of pass-through charges get  
19 gathered up into -- what few, excuse me, what few rate  
20 cases we still have where there are regulated  
21 monopolies, those tiny few that still go in front of  
22 the PUC, these issues get taken up. They do a fuel  
23 reconciliation proceeding. They usually combine that  
24 with the base rate decision, and they usually deal with  
25 all these other individual riders or whatnot in a major

1 base rate decision.

2 So I don't think it is unreasonable, in  
3 fact, it's very normal, for this Court to take into  
4 consideration all of the rates. And what makes it  
5 even -- underlying that is the fact that Austin Energy  
6 filed their rate case totally commingling all of their  
7 rates, and we cannot -- that's one of the points I made  
8 in our response, is that it's very hard for us to  
9 separate out these costs.

10 And then the next question, the more  
11 important question, the more costs we move out of the  
12 base rates the more tenacity all the parties have to  
13 try to determine whether what's only remaining are  
14 truly costs related to the base rates, or have there  
15 been some costs included that really are also being  
16 recovered in the other, other charges; in other words,  
17 a concern about double dipping.

18 And I won't address the TCOS or the  
19 other charges.

20 MR. HERRERA: You're welcome to if  
21 you want to.

22 MS. COOPER: Okay. And the double  
23 dipping, we have some additional arguments for the TCOS  
24 and the nonelectric, but it's the same concern that we  
25 have. You know, customers should only pay once for a

1 cost that's incurred to provide them a service, and one  
2 of the concerns we have because of the commingled  
3 status of this rate case is trying to determine what  
4 costs really are supposed to be recovered in base  
5 rates.

6                   So regardless of whether Your Honor  
7 decides that we should look at the reasonableness of  
8 the rates that are set for these pass-through charges,  
9 nonetheless, we should be having the right, through  
10 discovery, to examine the cost to make sure all of the  
11 reasonable and necessary costs that have been -- that  
12 should go with these pass-throughs are really truly  
13 taken out of the cost of service so we can really see  
14 what actual costs remain to set the base rates on.

15                   And that's very important for the  
16 nonutility, because that's creating subsidy issues as  
17 well as the TCOS. An example I can give you of the  
18 TCOS for -- to keep, to keep the TCOS issues in -- just  
19 for discovery. I concede that the PUC sets the TCOS  
20 rate, but the underlying costs are extremely relevant  
21 to this rate case. Like, in one portion of the rate  
22 case filing they identified the TCOS, the transmission  
23 costs, about 130.7 million, and then later on they  
24 identified them as 116 million, and they -- all of it  
25 all still adds up for the same, but two different



1 graphs added up to the same 1.217 cost of service.

2                   So what happened to that 15 million  
3 dollars? We have a right to check, and even though  
4 there is a contention that the general fund transfer  
5 should not factor into the TCOS, the general fund  
6 transfer does come into consideration in the underlying  
7 TCOS filings. And whether Austin Energy has kept up a  
8 timely filing of their transmission costs to get  
9 recovery through their TCOS dockets at the PUC is  
10 really irrelevant to determining here what transmission  
11 cost have been included in this cost of service and  
12 should be removed, because those are the types of costs  
13 that are supposed to go in front of the PUC. Including  
14 general fund transfer. The general fund transfer is a  
15 responsibility that's also incorporated into the TCOS  
16 rates.

17                   The second argument to show why the TCOS  
18 and the TCOS filings are relevant at -- in their  
19 rate-filing package, they use as a justification for a  
20 methodology for their cost allocation of their  
21 administrative cost what they do in the TCOS filing.  
22 So of course the TCOS filing has an additional  
23 relevancy in terms of is the methodologies and  
24 allocation procedures they're using there consistent  
25 with the allocation and methodology procedures they're

1 using in this rate case. It's a test of

2 reasonableness. It helps us in terms of verifying.

3 So we've got two reasons for the TCOS  
4 trans filing. Not only the traditional verifying that  
5 all of the relevant costs have been excluded for  
6 purposes of this rate case, but second, whether the  
7 methodologies used before the PUC are consistent with  
8 these here, and if not, why not? What rationale?

9 The nonelectric -- a second point with  
10 the TCOS but with the nonelectric, and that is the  
11 concern about subsidization. The TCOS -- because we  
12 have the TCOS filings, the underlying reason, is  
13 because we are now serving customers that are not  
14 Austin Energy retail customers. So then we have a  
15 concern of subsidization. Like, are we keeping more  
16 costs and within this cost of service filing and ending  
17 up charging Austin Energy ratepayers for costs that  
18 should be recovered through the rates of people  
19 who -- the other wholesale customers? That's another  
20 question. So that's a --

21 MR. HERRERA: I want to make sure I  
22 understand where you think the subsidization could be,  
23 and that's with regard to charges that are levied  
24 against a wholesale customer? Is that --

25 MS. COOPER: Yes.

26

1 MR. HERRERA: -- what you're  
2 suggesting?

3 MS. COOPER: The whole purpose of  
4 the TCOS and the TCOS matrix is to set up a statewide  
5 or an ERCOTwide cost distribution of transmission  
6 costs. And I'm getting beyond my expertise here, but  
7 the underlying theory is that we are now setting a rate  
8 to serve not only Austin Energy customers, but  
9 nonAustin Energy customers. And so to that extent  
10 there's a concern about subsidization of nonAustin  
11 Energy customers that lends itself into the TCOS.

12 It's kind of like the difference between  
13 the wholesale and retail jurisdictions. Like, you want  
14 to make sure all of the wholesale costs are removed  
15 from a retail base rate case to make sure, you know,  
16 customers, base rate customers aren't subsidizing the  
17 wholesale jurisdiction. It's the same kind of argument  
18 now with TCOS. It's, it's not the exact same, but it's  
19 similar.

20 Have I answered your question, Your  
21 Honor?

22 MR. HERRERA: I think you have. I  
23 think the characterization of nonelectric --

24 MS. COOPER: Retail, Austin Energy  
25 retail customers.

1                   MR. HERRERA: And as you described  
2 it initially, honestly, I thought you were talking  
3 about nonutility functions --

4                   MS. COOPER: Oh.

5                   MR. HERRERA: -- that maybe the  
6 utility captures through rates, but the issue you've  
7 described is --

8                   MS. COOPER: That's on --

9                   MR. HERRERA: -- materially  
10 different --

11                  MS. COOPER: But there is one --

12                  MR. HERRERA: -- from what I had in  
13 mind.

14                  MS. COOPER: -- on their nonutility  
15 operations, Your Honor. We have a large concern, and  
16 let me just give you one example of why this issue is  
17 relevant as an issue in this rate case.

18                  MR. HERRERA: Now you're not  
19 talking about the wholesale issue?

20                  MS. COOPER: We're talking about  
21 the nonutility. They're called chillers. I think it  
22 was called something else. I referred to it in my  
23 brief. I've never heard that term, it doesn't mean  
24 anything, but I know them as the chillers, the  
25 nonelectric utility business.

28

1                   Schedule A of the rate-filing package  
2   shows that they had a operating loss. Now, the  
3   operating loss is significant, because Austin Energy  
4   incurs debt costs with this nonutility business, and so  
5   the financial costs that are involved in this rate case  
6   are directly related and affected by the fact that they  
7   have suffered a financial loss in this operation and  
8   whether they have actually removed these cash costs as  
9   well.

10                   And let me give you one example, is the  
11   debt service coverage. One of the things that Austin  
12   Energy will probably be asking you, Your Honor, is to  
13   make sure that they receive enough revenues that they  
14   will be able to offer a two-times debt service coverage  
15   ratio. Well, I can tell you right now that with a  
16   negative income, that they're not going to even be able  
17   to get one times the debt service coverage ratio, and I  
18   think we have a right to know whether -- how they have,  
19   how they have addressed that cost deficiency. Have  
20   they removed that cash cost, that cash cost for two  
21   times the debt coverage from this?

22                   Not to mention we should have a right to  
23   verify that they truly have taken out all costs related  
24   to the nonutility business. I think that that's just  
25   something that we should have a right to, and that does

1 include not a detailed explanation of their business  
2 activities, but something where the intervenors can  
3 basically understand what type of costs this operation  
4 should incur, where those are located in the cost of  
5 service and take those out. Because once again, these  
6 costs are all commingled.

7 MR. HUGHES: Your Honor --

8 MR. HERRERA: I'm going  
9 to -- everyone's going to get a chance to speak.

10 MR. HUGHES: Okay.

11 MR. HERRERA: I'm going to stick  
12 over here since I'm on the right-hand side of the table  
13 and go back.

14 MR. HUGHES: I'm just trying to  
15 move away from some of the granularity there and maybe  
16 get to something -- some more basic arguments as to  
17 what the scope involves rather than --

18 MR. HERRERA: Okay.

19 MR. HUGHES: -- having to argue --

20 MR. HERRERA: And I appreciate  
21 that.

22 MR. HUGHES: -- each fine point of  
23 what should be in the scope. So . . .

24 MR. HERRERA: Mr. McCollough?

25 MR. MCCOLLOUGH: Thank you, Your

30

1 Honor. If I may, I'd like to address very briefly the  
2 question you posed to Mr. Borgelt. Data Foundry was in  
3 the PUC Environs case, and since this was a matter that  
4 arose from negotiations, any settlement -- please  
5 understand I'm not making any representations about  
6 things the utility said, but I can tell you from Data  
7 Foundry's perspective one of, one of the main reasons  
8 we ultimately chose not to oppose the settlement was  
9 because of the PSA wording that you asked about.

10 And I can tell you that we came away  
11 from that case thinking that the language in that case  
12 would involve a proceeding at the city level that looks  
13 just like this one. And that is particularly so since  
14 Data Foundry in that case was not only an Environs  
15 customer but also an inside-the-city customer, and one  
16 of the big debates at the Environs case was the extent  
17 to which people inside the city could raise issues  
18 dealing with rates inside the city.

19 So our intent when we chose to not  
20 oppose the settlement was that there would be a  
21 proceeding here that looks just like this one. Thank  
22 you.

23 MR. HERRERA: I appreciate that,  
24 Mr. McCollough, and I do recall you were in that  
25 proceeding. And where I'm, where I'm getting tripped

1 up with that particular provision is the reference to  
2 public hearing and just my understanding from a  
3 municipal law perspective what a PUC hearing is, and  
4 from my perspective this isn't a public hearing. A  
5 public hearing is something that the city council holds  
6 under the Open Meetings Act and notice and all that  
7 other -- all those other requirements that they have to  
8 meet to hold a public hearing.

9 MR. MCCOLLOUGH: It says public  
10 hearing, not open meeting.

11 MR. HERRERA: That is correct, and  
12 Mr. McCollough, just so you know where I'm coming from,  
13 to me open meeting is something that's in the  
14 Administrative Procedures Act but applies to a state  
15 agency like the Public Utility Commission, and there's  
16 a distinction that I see -- I'm not saying this is  
17 dispositive or anything. I just want to let you know  
18 my thought processes. There's a distinction between a  
19 public hearing and an open meeting.

20 MR. MCCOLLOUGH: I agree.

21 MR. HERRERA: Mr. Borgelt?

22 MR. BORGELT: I think now that I've  
23 had a chance to try to remember some of this, Your  
24 Honor, it's --

25 MR. HERRERA: It's only been two



1 years.

2 (Laughter.)

3 MR. BORGELT: I understand that,  
4 but I had to do a little recollecting, and I apologize.  
5 The gray matter does not move as fast as maybe it once  
6 did.

7 But this particular provision I think  
8 was a way, at least we as a party envisioned it, to  
9 deal with the PSA issue between rate proceedings. So  
10 that's not to say that in my mind it's something that  
11 would necessarily be binding on this proceeding,  
12 because we're now in a new rate proceeding, and so the  
13 PSA could be dealt with in that way or it could be  
14 dealt with in any way that the parties to this  
15 proceeding agree upon or that you rule that it should  
16 be dealt with.

17 So I'm not sure in that sense that it  
18 ought to be binding beyond the next rate case, if you  
19 follow me.

20 MR. HERRERA: Okay. Mr. Coffman,  
21 did you have anything to add?

22 MR. COFFMAN: No, but I do share a  
23 lot of the concerns Ms. Cooper raised.

24 MS. COOPER: Your Honor, I  
25 just -- Mr. Reed wants to speak, and let me move out of

1 the way for Mr. Reed.

2 MR. REED: Yes. Thank you, your  
3 Honor. Cyrus Reed with the Sierra Club. We are in  
4 favor of keeping the community benefit charge in this  
5 rate proceeding. While it is true that the rate  
6 itself on the community benefit charge can be set  
7 each year before city council in a public meeting, in  
8 this particular rate proceeding Austin Energy is  
9 changing -- and the particular fee we're concerned with  
10 is the energy efficiency service fee, which sets the  
11 budget for the energy efficiency programs.

12 But they are changing the -- they are  
13 proposing changing the rates and who actually gets  
14 charged those rates. So it seems to me that's a,  
15 that's a fundamental issue on how we raise money for  
16 the energy efficiency programs. And I would also point  
17 out that in their determination of the production  
18 costs, which sets the basic rates, they included  
19 \$33 million to run that energy efficiency program.

20 So they have it in their determination  
21 of production costs, and even though they're paying for  
22 it, I believe with the energy efficiency service fee,  
23 it's a little bit of commingling of those issues. So  
24 it seems to me to make sense to include the community  
25 benefit charge as part of the issues that can be raised

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1 in this proceeding, because again, they are changing  
2 fundamentally who -- how much and who is going to be  
3 charged that fee which customers are going to be  
4 charged at. So it seems like a change in how it was  
5 done before.

6 MR. HERRERA: Okay. Thank you.  
7 Mr. Hughes?

8 MR. HUGHES: I want to make two  
9 what I think are very important points here. One is  
10 regarding the PUC, the previous PUC case. I think it's  
11 important to point out that, one, that was a  
12 settlement; and two, it was an appeal that was limited  
13 to ratepayers outside of the city of Austin, which I  
14 think the vast majority of the intervenors in this case  
15 are not. So I'm not sure what the bearing on this  
16 case, what bearing that case should have on this one.

17 I think if we want to look to guidance  
18 as to how to conduct this proceeding, the only formal  
19 actions I see that the city council has taken are its  
20 rate ordinance and its affordability resolution. And  
21 if you look at those two documents, it's fairly clear  
22 that they asked for a rate review, they do not limit  
23 the scope of that rate review, there are goals in the  
24 resolution, in the affordability resolution that  
25 clearly require that as much information be accumulated

1 and reviewed in this process to make sure that we are  
2 on path to meet those goals.

3 So I just would kind of like to -- I  
4 want to make sure we direct it back to where what we're  
5 doing in this case so that we focus on how best we're  
6 going to actually do a rate review, which has not been  
7 limited by city council, as far as I know. They have  
8 given, actually, authority to your office to -- or your  
9 position to actually kind of determine what that scope  
10 should be, and I would just point to the city ordinance  
11 and to the city's resolution on affordability as to --

12 MR. HERRERA: And the city  
13 ordinance you're referring to is that 2012 --

14 MR. HUGHES: Yes.

15 MR. HERRERA: -- [obscured by  
16 crosstalk] --

17 MR. HUGHES: And in the  
18 resolution --

19 MR. HERRERA: -- 55, I think, in  
20 that ordinance.

21 MR. HUGHES: One ends in 055 and  
22 the other one ends in 157. So, and one of them came  
23 after the resolution, came after the PUC case as well.  
24 So I think in order to -- if you combine those two  
25 official actions that have been taken by the city

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1 council, that kind of should give us some direction as  
2 to where we ought to go.

3 And I think also in addition to that,  
4 their own procedure -- Austin Energy's own procedural  
5 rules have indicated that we need to treat this like a  
6 proceeding that would occur, it may not be under the  
7 APA, but a proceeding that would -- like a proceeding  
8 that we would be conducting over at SOAH or, I guess,  
9 the PUC.

10 So I'd set aside the PUC case, the  
11 appeal case that was decided that had a very limited  
12 number of participants, and certainly not most of the  
13 participants that are in this case, and I think in  
14 order to meet the requirements of the city council's  
15 ordinance on a rate review, which was not limited in  
16 scope, and then combine that with the goals in the  
17 affordability resolution, I think, I think it calls for  
18 a full-blown review of the rates and the rate that the  
19 ratepayers should pay. So . . .

20 MR. HERRERA: Mr. Hughes, let me  
21 ask you a question, and this also goes to something  
22 Ms. Cooper raised.

23 MR. HUGHES: Um-hm.

24 MR. HERRERA: Is it your view that,  
25 for example, with regard to the net wholesale supply

1 cost, that the council could somehow change that, what  
2 the dollar amount that Austin Energy pays or receives?

3 MR. HUGHES: I don't know. I think  
4 that, I think that if it's, if it's not information  
5 that's going to be revealing, then it certainly can be  
6 set aside, but I don't believe that there's a reason to  
7 avoid producing it.

8 MR. HERRERA: And I guess I'd ask  
9 you the same question with regard to TCOS, transmission  
10 cost of service for Austin Energy.

11 MR. HUGHES: Well, since TCOS and  
12 the PUC is usually handled in a different proceeding, I  
13 mean, I think, again, I think if it's not revealing,  
14 then it can be set aside, but I think --

15 MR. HERRERA: When you say "not  
16 revealing" I'm not sure what you mean by that.

17 MR. HUGHES: Well, the reason we  
18 need -- if you want to -- if we want to review the  
19 rates, we want to get as much information as we  
20 possibly can to review those rates and to know where  
21 the costs are coming from and how they were determined.  
22 We can't do that unless we can just look at them.

23 If, if they are as what they are, if  
24 it's just a pass-through or if there's no adder or  
25 there's no -- there's nothing that could be changed by

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1 the city council, well, then that certainly will be  
2 evident, and I don't know how avoiding producing it is  
3 a burden, in other words.

4 MR. HERRERA: Ms. Barker, did you  
5 want to add anything?

6 MS. BARKER: I just wanted to echo  
7 kind of comments that have been made. I certainly was  
8 not a party to the earlier rate case and was not bound  
9 by any settlement that anyone in here entered into. It  
10 was an Environs case, it was not a City of Austin case,  
11 an inside-city customer. This is, you know, de novo.  
12 It starts fresh, this proceeding, and we should be able  
13 to look at every issue.

14 And I'm concerned with limiting from the  
15 outset issues that clearly make up a residential  
16 customer's bill. Residential customers are concerned  
17 with the amount of money that they pay per month,  
18 whether that be in a base rate charge or a pass-through  
19 charge, and the City can certainly argue that these  
20 rates are set by some other regulatory authority or  
21 some other body, and if that's true, then I'm sure that  
22 would be persuasive, but that doesn't mean that it's  
23 not relevant or that we shouldn't be able to look at  
24 it.

25 MR. HERRERA: Anyone else before

1 Austin Energy addresses the issue? Mr. Robbins?

2 MR. ROBBINS: I'm kind of new to  
3 this. I've never been an intervenor before. A couple  
4 things, issues that I have. It is my understanding  
5 that if a pass-through charge -- that every time any  
6 charge is made, any change to a rate at all, any change  
7 to a bill at all, that is technically grounds for  
8 appeal to the PUC.

9 Now, that doesn't mean the PUC will  
10 accept it but that the PUC has the option to accept and  
11 hear it. And while Austin Energy can make a very  
12 cogent case about why the cost of service would be set  
13 in a rate case and the pass-through charges are not,  
14 the likelihood of appeal will be higher this time. I  
15 can't imagine that any of the parties would appeal,  
16 would go through the time and the trouble of appealing,  
17 for instance, the energy efficiency charge if that were  
18 the only thing that was being discussed.

19 But if the cost of service is appealed,  
20 then people that are unhappy with the energy efficiency  
21 charge are going to say, Well, as long as we're  
22 appealing cost of service, we'll appeal energy  
23 efficiency and the PSA and anything else. I mean, they  
24 may technically be two different appeals, but they will  
25 be done for the same reason.

40



1 Am I making sense, Your Honor?

2 MR. HERRERA: You are mostly.

3 (Laughter.)

4 MR. HERRERA: I guess I just --

5 MR. ROBBINS: Do you have a

6 question?

7 MR. HERRERA: I don't. I

8 understand what you're saying. I'm just --

9 MR. ROBBINS: You're just messing

10 with me. Okay.

11 MR. HERRERA: I am.

12 MR. ROBBINS: Okay.

13 MR. COFFMAN: Your Honor -- I'm

14 sorry. I didn't know you weren't done.

15 MR. ROBBINS: And the other

16 thing -- and this is more of a question than an

17 assertion -- is, I am concerned about misuse of some of

18 the money in these pass-through charges, and I'm not

19 sure if the term "imprudence" applies, because

20 imprudence is often referred to in the context of

21 capital, but if operation and maintenance pass-through

22 charges are misspent, then is that imprudence, or is

23 there another term that, that my concern is justified

24 by?

25 Do y'all want to chime in here? They're

1 both nodding their head, but they're not saying  
2 anything.

3 MR. HERRERA: Mr. Coffman, let me  
4 see how good that license is you have.

5 MR. ROBBINS: Okay. Those are the,  
6 those are the -- I would like to hold open the option  
7 to appeal the pass-through charges if there is money  
8 that is being misspent.

9 MR. HERRERA: As I understand the  
10 issues that you've raised, Mr. Robbins, they're similar  
11 to what Ms. Cooper has raised. Ms. Cooper has raised  
12 the issue of whether there are, for lack of a better  
13 term, mixing of revenues and costs between, for  
14 example, transmission costs that are set by the  
15 commission and base rates that are being addressed in  
16 this proceeding.

17 And the issue that you raised is whether  
18 the expenses that are actually being recovered through  
19 these separate charges are just and reasonable, the  
20 standard that's typically used for expenses --

21 MR. ROBBINS: Correct.

22 MR. HERRERA: -- in the Public  
23 Utility Regulatory Act. That is --

24 MR. ROBBINS: Is imprudence --

25 MR. HERRERA: -- sort of the

1 counterpart to --

2 MR. ROBBINS: Is imprudence the  
3 working term here?

4 MR. HERRERA: I think that it could  
5 be. You are right, that typically the issue of an  
6 imprudent expenditure is usually related to an  
7 investment, a rate-based item, and whether something is  
8 reasonable and necessary is associated with operating  
9 expenses. But from my experience, you can also have  
10 imprudent actions leading to unreasonable expense.

11 So I think we're all in the ballpark on  
12 that.

13 MR. ROBBINS: Okay. Do you have  
14 any questions?

15 MR. HERRERA: I do not.

16 MR. ROBBINS: Thank you.

17 MR. HERRERA: Anyone else before  
18 Austin Energy?

19 MR. COFFMAN: Your Honor, if I  
20 could just clarify from the perspective of the  
21 Independent Consumer Advocate, we join in the concerns  
22 about the items that are outside the scope, especially  
23 with regard to making sure there isn't double counting  
24 or that the methodology doesn't in some way make the  
25 charges that are relevant to this proceeding overlap

1     those charges.

2                     Also want for the record to be clear  
3     that the Independent Consumer Advocate does believe  
4     that the regulatory charge, the community benefit  
5     charge, and the customer assistance program should be  
6     within the scope of this proceeding.

7                     MR. HERRERA:   Mr. Brocato?  Oh,  
8     there's one more person.

9                     MR. REED:   I'm sorry to raise this.  
10    I don't mean to be a pest.  Cyrus Reed, Sierra Club.  I  
11    would also point out in the PSA there is one  
12    fundamental change they're making, which is currently  
13    we set the PSA once per year.  Within this rate package  
14    they are suggesting changing it to twice a -- you know,  
15    having two separate PSAs.  So that seems to me a change  
16    in the way we do the PSA.

17                    MS. COOPER:   Your Honor, just to  
18    add a little clarification, what Austin Energy is  
19    proposing that seems to be different, they're adjusting  
20    the rate design itself of the PSA.  They're changing  
21    from an all-year average fuel factor allocated among  
22    the customer classes adjusted only for line losses, to  
23    a summer differential rate for four summer months and  
24    then a winter rate for the full recovery --

25                    MR. REED:   I'm not even a caveman

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1 lawyer. So thank you.

2 MS. COOPER: Well, no. That's  
3 okay.

4 MR. HERRERA: Mr. Brocato?

5 MR. BROCATO: Thank you, Your  
6 Honor. At the end of the day Austin Energy is  
7 accountable to its ratepayers for every dollar they're  
8 including in the revenue requirement. We understand  
9 that and we accept that.

10 UNIDENTIFIED: Can you use the mic?

11 MR. BROCATO: Our issue is really  
12 one of timing. As you know, Austin Energy is proposing  
13 changes to the base rates. None of the other rates  
14 that have been discussed by the parties are being  
15 changed as a part of this case.

16 The second preliminary comment I'd like  
17 to make is that we fully understand the need of  
18 interested parties to be able to demonstrate that  
19 Austin is not double collecting or double dipping, as  
20 it was referred to, with respect to any cost.

21 But just as is done over at the PUC, you  
22 can verify that without turning a base rate case into a  
23 fuel REC or a TCOS case or an EECRF case or a case that  
24 simply looks at specific riders, such as the CBC by the  
25 regulatory charge.

1                   And I'll give you a couple of examples,  
2   although I know you're familiar with this. For  
3   example, in a, in a fuel -- in a base rate case the  
4   parties are able to determine that the company has not  
5   included fuel O&M in base rates, and the utility must  
6   demonstrate that they have pulled out all fuel costs.  
7   Conversely, we used to have a portion of energy  
8   efficiency costs included in base rates following when  
9   the Legislature adopted the provision that provided for  
10  a separate charge for EECRF. Utilities had to  
11  demonstrate that they had pulled out all energy  
12  efficiency-related costs from base rates so that they  
13  were not double collecting.

14                   We have no objection to satisfying the  
15  parties and the counsel and Your Honor that Austin is  
16  not collecting these costs through two different  
17  separate charges, but as I said, that does not mean  
18  that this has to become a fuel rate case or a TCOS case  
19  or any of these other things. So those are the two  
20  sort of high-level preliminary comments.

21                   I'd also like to make a few specific  
22  comments about some of the things that were stated, and  
23  I'll start with the discussion of 40627. I do remember  
24  that case well, and I remember Mr. Borgelt saying at  
25  the time that they were concerned that the City did not

1    have a separate public hearing when they changed the  
2    PSA, and as a result, he proposed language that is  
3    included in the settlement that the parties may not  
4    feel like they're bound by. But the City does feel  
5    bound by that, and indeed, over the last two years,  
6    pursuant to the language that's in the settlement,  
7    which I'm reading, "The signatories agree that a PSA  
8    change will be considered as part of the city of  
9    Austin's annual budgeting process," and that there  
10   would be a public hearing.

11                   Now, as you know, under the APA -- or  
12   under the law, cities --

13                   MR. HERRERA: Mr. Brocato, where  
14   are you reading from?

15                   MR. BROCATO: I'm looking at the  
16   commission's final order.

17                   MR. HERRERA: Okay.

18                   MR. BROCATO: But it also  
19   is -- that language is the exact same as in the  
20   settlement agreement, which I believe is attached to  
21   that order. This is Finding of Fact 43.

22                   "The agreement provides that a public  
23   hearing will be conducted prior to Austin Energy  
24   changing its charges for fuel purchase power and  
25   related costs via the PSA approved by council in June

1 of '12. Signatories agree that a PSA change, if any,  
2 must be considered as part of the City of Austin's  
3 annual budgeting process."

4 So not only did they ask that the City  
5 have a public hearing, they specifically said that it  
6 must be part of the annual budgeting process, and  
7 that's what the City has done each of the last two  
8 years.

9 Now, under the law, cities have broad  
10 latitude as to what constitutes a public hearing. With  
11 regard to the PSA, the City has established a public  
12 outreach process where interested parties can meet with  
13 the staff and give input. Now, parties may not feel  
14 like that's the type of hearing that they contemplated,  
15 but when we discussed it during 40627 and when we  
16 reduced it to writing and in each of the last two years  
17 when the City has implemented that language, I'm not  
18 aware of anyone complaining about that process.

19 MR. HERRERA: Let me ask a question  
20 here before I forget it.

21 MR. BROCATO: Sure.

22 MR. HERRERA: Is there -- in that  
23 process is there a hearing before council to address  
24 the change in PSA, whether it be the elements recovered  
25 through the PSA or whether it be the level of costs



1 recovered through the elements of a PSA?

2 MR. BROCATO: Admittedly, the  
3 budget process includes many issues that go way beyond  
4 utility issues. So there's a discussion of lots of  
5 issues, but with respect to the PSA, parties have an  
6 opportunity to present comments to the, to the council,  
7 and they --

8 MR. HERRERA: In what forum is  
9 that?

10 MR. BROCATO: In an open meeting  
11 forum where they're, they're provided an opportunity to  
12 make limited comments. Now, I'm not aware of parties  
13 asking for additional time or some other mechanism, so  
14 it remains to be seen whether the council would be  
15 willing to entertain sort of a broader process, but I  
16 do know in each of the last two years there have been  
17 individuals that have come forward and made comments  
18 about it.

19 MR. HERRERA: And let me, let me  
20 tell you why I ask. When I saw the words "public  
21 hearing," and I expressed this earlier to Mr. Borgelt  
22 and Mr. McCollough, I am familiar, for example, with  
23 the process that the City undertakes to approve, for  
24 example, Atmos Energy's rates.

25 MR. BROCATO: Right.

1 THE REPORTER: What Energy's?

2 MR. HERRERA: Atmos Energy's rates.  
3 They have to do it by ordinance, and they have to hold  
4 a public hearing. Some cities do it differently.  
5 Austin Energy holds a public hearing in order to change  
6 that.

7 So my question is, is that, is that the  
8 type of procedure that you are describing with regard  
9 to changes to the PSA?

10 MR. BROCATO: Yes. Now, having  
11 said that, as I mentioned, they do have a public  
12 outreach process prior to that where interested parties  
13 can voice their concerns with a -- and as I've said,  
14 I'm not aware of parties asking for a more detailed  
15 process, you know, one that, you know, allows for  
16 discovery and testimony, anything along those lines.

17 But the City has felt bound by that,  
18 that order and has abided by each of the last two  
19 years, and indeed, I need to share with you they have  
20 it scheduled to do the same thing this August, and  
21 indeed, if Your Honor decides to make recommendations  
22 on these issues, there's nothing that -- it's certain  
23 that the City won't continue to simply say, Well, we're  
24 going to take up those issues separately as a part of  
25 our budget process, which will be going on at the same

50

1 time as some of the discussions as to -- their  
2 discussions about the base rate issues that are part of  
3 this case. So that's sort of a logistic issue that is  
4 going to have to -- would have to be confronted as  
5 well.

6 But as I said, the City's view is they  
7 signed the agreement, the commissioner approved that  
8 settlement, and they've agreed to a certain process  
9 that they have abided by. The Austin Energy is not  
10 proposing as part of this case that any of those  
11 charges be changed as a part of this.

12 Now, if I may mention a couple of other  
13 things as well: The commingling issue. As Mr. Hughes  
14 stated and others are aware, affordability is an  
15 important issue to the City of Austin. We also  
16 understand that while this is a base rate change,  
17 parties are interested in seeing the impacts of these  
18 changes on their overall bill, because at the end of  
19 the day they pay bills, not base rates or PSAs  
20 separately.

21 And as a result, Austin presented  
22 comprehensive numbers with respect to a revenue  
23 requirement, but they made it very clear in the filing  
24 that with respect to these regulatory charges and PSA  
25 and CBC, that these were forecast and that they were

1 subject to change as part of the budget process. So  
2 they put parties on notice that, We're giving you these  
3 notice -- these numbers so that you can get an idea of  
4 what this is going to do to your overall bills and so  
5 that council will be aware of the impacts of this  
6 change with respect to the consideration of  
7 affordability more generally.

8 But these are not hard numbers. We're  
9 not proposing to change the numbers and that they will  
10 be changed and could be different in the budget  
11 process. And so that's the only reason why those  
12 numbers were presented. But I would add, any time a  
13 vertically integrated utility files a rate case, even  
14 if it's solely a base rate case, they're going to give  
15 the entire revenue requirement number.

16 And in response to Mrs. Cooper's  
17 comments, yes. Sometimes a base rate case is done with  
18 a fuel REC, but that's when the utility wants to do it  
19 at the same time. They are often done separately as  
20 well. But the point is, the numbers are not tied in  
21 such a way that they can't be examined separately.

22 With respect to TCOS, I mean, we have no  
23 problem with parties verifying that we're not  
24 collecting through base rates transmission costs, but  
25 neither Your Honor or council have any jurisdiction to

1 change those rates. You could -- if you did find that  
2 there were costs that were in base rates that should be  
3 in TCOS, the response would be to disallow them out of  
4 base rates in this proceeding. Or if you felt like  
5 something needed to be in TCOS, then again, you can  
6 disallow them out of base rate, and when the City files  
7 a TCOS case there would be an examination of those  
8 rates.

9 MR. HERRERA: Let me ask you a  
10 question with regard to a couple of comments you made.

11 MR. BROCATO: Okay.

12 MR. HERRERA: One was that there  
13 are no changes to the other rates, and I'm assuming  
14 "the other rates" you meant the pass-through rates, and  
15 then you said there was no change to the PSA charges.  
16 Ms. Cooper said that there were some what I would, what  
17 I would characterize as rate design changes. Could you  
18 expound on that, please?

19 MR. BROCATO: Yes. She's correct  
20 about that, and I mentioned that at the beginning. I  
21 think you'd referred to it as an allocation issue, but  
22 it's really, like you said, a rate design change. And,  
23 yes, that is correct. The one change that would occur  
24 as a result of AE's filing with respect to these rates  
25 would be that rate design change, which, of course, has

1 no impact on the overall amount to be collected through  
2 those charges.

3 So that's why I said at the outset, and  
4 I'll state again and we always state it in our  
5 pleading, we don't object to that issue being addressed  
6 in this proceeding.

7 MR. HERRERA: So it's not your  
8 position that issues of rate design with regard to what  
9 I'll characterize as pass-through charges is outside  
10 the scope? Those would be within scope of the  
11 proceeding?

12 MR. BROCATO: Actually, it would be  
13 a bit more limited to just that one change to the PSA.

14 MR. HERRERA: Well, let me, let me  
15 ask it this way. Let's say fuel, for example. If  
16 there was a change in the rate design for recovery of  
17 fuel, is it Austin Energy's position that the change in  
18 the rate design, irrespective that it may recover the  
19 same amount of dollars, just a pass-through, is outside  
20 the scope of the proceeding?

21 MR. BROCATO: Let me make sure I  
22 understand your question. Did you say that the amount  
23 to be collected would be outside the scope of this  
24 proceeding?

25 MR. HERRERA: No. My question is

1 if there's a change in the rate design that nonetheless  
2 recovers the same amount of dollars --

3 MR. BROCATO: Correct.

4 MR. HERRERA: -- is it Austin  
5 Energy's position that the issue of the change in the  
6 rate design is outside of the proceeding?

7 MR. BROCATO: No. The change in  
8 the rate design is within the scope of the proceeding.

9 MR. HERRERA: Okay.

10 MR. HUGHES: Your Honor, if I might  
11 just make one point, procedural point with regard to  
12 the PSA discussion. I appreciate Mr. Brocato's  
13 alluding to the fact there is a process in a public  
14 participation or petitioning process before the city  
15 council. We all know that that can sometimes be  
16 cumbersome. Under the new procedural schedule that is  
17 even proposed by Austin Energy --

18 MR. HERRERA: And we'll get to the  
19 procedure schedule.

20 MR. HUGHES: Well, these, but these  
21 questions are running in parallel to the budget  
22 process. So it seems to me that it would be easier for  
23 participants in this case to just vet the PSA in that  
24 rather than having to spend a lot of time and energy  
25 petitioning the city council or public commenting

1 before the city council. If we could maybe  
2 just -- it'd be easier to handle it in one case though.

3 MS. BARKER: And Your Honor, I'd  
4 like to also add something on that PCS argument. I  
5 don't think that you can argue that a settlement is  
6 binding you to only consider an issue one place and  
7 then take part of that issue and bring it into this  
8 case. I don't find that to be a consistent argument.  
9 If the City of Austin's argument is that they're bound  
10 by the settlement and 40627, which we do not agree  
11 with, but if that is their argument, then I don't, I  
12 don't understand how they can take the rate design  
13 element of that issue and put it into this case if  
14 their argument is this isn't the proper forum to  
15 address that issue. I find that to be an inconsistent  
16 legal argument.

17 But more importantly, again, that was an  
18 Enviroins case. I think it would be ludicrous to expect  
19 a settlement between parties in an Enviroins case to  
20 carry on in perpetuity and to bind everyone. I don't  
21 find that to be reasonable, and I don't think the  
22 Public Utility Commission would find themselves to be  
23 bound should there be another appeal of this case.

24 MR. HERRERA: Okay. And folks, I  
25 think we need to take a short break here and give our



1 court reporter a slight break here.

2 (At 11:11 a.m. the proceedings  
3 recessed, continuing at 11:22 a.m.)

4 MR. HERRERA: All right.

5 Ms. Dunkerley indicated she wanted to make a comment,  
6 and Mr. Hughes is grabbing his microphone as if he has  
7 a comment as well. Ms. Dunkerley, go ahead.

8 MS. DUNKERLEY: I'm assuming that  
9 people can hear me. I have a difficult time hearing in  
10 this room because of hearing aids.

11 But I wanted to make a couple of  
12 comments. One is about the budget review, and in the  
13 budget process, unless they've changed it drastically  
14 since I was there, there is a public hearing on all of  
15 the rate changes in the -- as part of the budget  
16 process.

17 However, as far as I know, we never did  
18 any detailed review of how the PSA got together  
19 or -- we just approved the budget, and frankly, I  
20 always assumed those things were hashed out in these  
21 rate review cases. And if that wasn't the case, it was  
22 my ignorance, not anybody else's. So I do think that  
23 those three elements really should be considered in  
24 review here.

25 And just an overall comment, I think

1    what I was trying to get at is some way to begin to  
2    reduce the revenue requirements so that we saw some  
3    sustainable changes and moving toward a better cost of  
4    service status. And when you look at -- we're very  
5    grateful for the changes that are recommended this  
6    year, but if you look at them, the 18 million is from a  
7    change in the debt service schedule. That may be a  
8    one-year change and it may be a two-year change, and it  
9    may go up the future. I don't know.

10               The other blessing that we have is that  
11    the cost of fuel has gone down. So we're going to see  
12    those adjustments. But those, neither of those are  
13    what I would consider permanent changes that would be  
14    sustainable in the future as far as reducing the  
15    revenue requirements for the utility.

16               For example, one of the things that I  
17    have thought of for awhile that we should consider is  
18    having -- we can't tell the City to do it, but have the  
19    City pick up part of the street lighting fee. And  
20    maybe they can't do it all in one year, but to phase it  
21    in, and that is a permanent reduction in our revenue  
22    requirements for the utility if you have -- if you  
23    shift some of those costs over there.

24               And so we can't talk about those things  
25    unless we talk about the pass-throughs, and right now I

1 think we need to really focus on trying to make Austin  
2 Energy as sustainable as they can be, and if that means  
3 that the City of Austin has to pick up more costs, you  
4 know, well, so be it. I know they won't like it in  
5 your budget process, but --

6 MR. HERRERA: Ms. Dunkerley, as I  
7 understand what you're suggesting is that with respect  
8 to lighting you would, you would like to see that moved  
9 to the general fund instead of --

10 MS. DUNKERLEY: Or at least maybe  
11 not all in one year. Yeah.

12 MR. HERRERA: I'm not, I'm not --

13 MS. DUNKERLEY: I would like to  
14 see --

15 MR. HERRERA: -- arguing the point  
16 with you. I just want to --

17 MS. DUNKERLEY: -- it go into the  
18 general fund, and I was not able to do that when I was  
19 there.

20 MR. HERRERA: Okay. Thank you.

21 MS. DUNKERLEY: Thank you.

22 MR. HERRERA: Mr. Brocato?

23 MR. BROCATO: Yeah. Thanks, Your  
24 Honor. There was just a couple additional points I was  
25 going to make to some of the things that were stated

1 previously, and one is with respect to the rate review  
2 ordinance that council passed, a couple things about  
3 that.

4 Yes, it's true, council didn't say a  
5 base rate review or a PSA or fuel review. They just  
6 said a rate review, but a couple of points. Number  
7 one, they've been handling base rates separately from  
8 fuel as far back as anyone can remember. In '12 they  
9 changed it from a fuel adjustment clause to a PSA, but  
10 it's always been done separately. Moreover, subsequent  
11 to the adoption of that ordinance they did agree to the  
12 language in 40627.

13 So my point is, it could be reasonably  
14 assumed that council knew that they had separate  
15 processes for base rates and fuel when they adopted it;  
16 moreover, they confirmed that they had separate  
17 processes when they signed the agreement in 40627.

18 And then the last point is, Mr. Hughes  
19 went on at some length about whether it would be  
20 burdensome or -- is there any harm to allowing them to  
21 do discovery on these other issues. That kind of plays  
22 into their "can it lead to" language. We understand  
23 that that's -- that there's a different standard for  
24 asking discovery versus admissibility, but it does not  
25 go so far as to allow them to ask questions on issues

1     that are not relevant or are beyond the scope of the  
2     case.

3                     And so to the extent that Your Honor  
4     determines that there are issues that are beyond  
5     the scope of the case, then discovery is not  
6     allowable, because it cannot by definition lead to  
7     discoverable -- or excuse me, to admissible evidence.

8                     MR. HUGHES:   Your Honor?

9                     MR. HERRERA:   Just a minute.

10                    MR. HUGHES:    Okay.

11                    MR. BROCATO:   And it is burdensome  
12     to the extent that Austin Energy employees who have  
13     other obligations to keep the lights on get diverted  
14     away in answering the questions on issues that are more  
15     appropriately addressed in this other process that has  
16     been going on for many -- like I said, as far as anyone  
17     can remember.

18                    MR. HERRERA:   And just --

19                    MR. BROCATO:   It was kind of more  
20     crystalized in the 40627 settlement.

21                    MR. HERRERA:   And just so the  
22     attorneys in the room know, I am not seeing a material  
23     distinction between "can lead to admissible evidence"  
24     and "reasonably calculated to lead to admissible  
25     evidence."   I suspect if we took this issue to the

1 Third Court of Appeals, we'd have to argue that there  
2 is a difference because somebody said -- used a  
3 different word, but we're not there.

4 So I am, I am not viewing them as a  
5 material difference in my assessment of what is within  
6 the scope of discovery and what is not. Mr. Hughes?

7 MR. HUGHES: Well, first of all,  
8 obviously, the scope of issues is directly related to  
9 the discovery and what's available. And as far as  
10 burdensome, it doesn't seem that it would be any more  
11 burdensome to just provide the information as opposed  
12 to sending it over to the Attorney General's Office  
13 outside of -- and asking for a review or claiming that  
14 it is somehow confidential or highly sensitive, which  
15 begs the question as to why, why we're not using a  
16 protective order format in this proceeding.

17 I know, I know in their procedural rules  
18 I think it, I think it -- but I'm still not even sure  
19 who approved the procedural rules. So, but it would be  
20 much simpler just to provide the information and, as I  
21 said, we could -- if it's not, if it does -- if it  
22 isn't relevant or it's not -- it doesn't provide any  
23 further evidence, then that's fine, but -- all right.

24 MR. HERRERA: With regard  
25 to -- this has been extremely helpful in crystallizing

1 the issues in my mind and in what ruling I'll make on  
2 the -- I thought I was going to be prepared to make a  
3 ruling on the discovery issues today and give you an  
4 answer, but I'm not. This has been very helpful in  
5 assessing, from my perspective, what I think is  
6 within the scope of discovery versus what's within the  
7 scope of the hearing itself and is -- for the attorneys  
8 in the room, you all know that there's a -- those are  
9 two distinct matters. Something may be within the  
10 scope of discovery but yet not be relevant to the  
11 proceeding itself.

12 So I will be issuing a ruling on that  
13 soon. I want to talk about the schedule in just a  
14 minute, but I want to express a concern that I  
15 expressed, I think, on day one on this. I'm still very  
16 troubled by the assertion that -- not that, not -- I'm  
17 not saying Austin Energy is claiming information to be  
18 competitively sensitive unnecessarily. I'm not saying  
19 that at all. I don't want anyone to have that idea or  
20 get that idea.

21 My concern is with the process by which  
22 a party can gain access to that through the Public  
23 Information Act process going through the AG. That is  
24 still very troubling to me. There is nothing I can do  
25 about that, Mr. Hughes. That's what's in the rules,

1     that's what the council has established.

2                     I would much prefer if the parties could  
3     come up with some mechanism that would allow discrete,  
4     limited number of parties that truly want to and have a  
5     need to see the information that's competitively  
6     sensitive to do so without having to go through the AG  
7     process, along the lines of what we use at the PUC. I  
8     understand the arguments that Austin Energy has made  
9     through a city attorney and why that's there, but I do  
10    want to express my concerns about the particular  
11    process.

12                    As you mentioned, Mr. Brocato, it's an  
13    issue of timing. The AG may have to -- may be required  
14    to provide an opinion with an X date. I've never  
15    requested an opinion from the Attorney General's Office  
16    when that date was met, so I have serious reservations  
17    about that process. I'm just stating that so that  
18    folks are aware of my concerns, particularly Austin  
19    Energy. It is beyond my ability to do anything about  
20    it.

21                    MR. BROCATO: May I say something  
22    about that?

23                    MR. HERRERA: Absolutely.

24                    MR. BROCATO: We share those same  
25    concerns, and as you know and as you stated, the city



1 attorney's legal position is that because of the  
2 restrictions on the Public Information Act they're not  
3 able to resolve this problem through your entering a  
4 protective order in this proceeding.

5                   Having said that, we've received 305  
6 questions thus far. We've sent 16 of them to the  
7 attorney general for competitive matters. Almost all  
8 of them were in one of the first sets that went out.  
9 But I will tell you, before the City sends anything to  
10 the attorney general there's a thorough discussion  
11 about: Is this simply something that, you know, is  
12 theoretically competitive, or does this -- would the  
13 release of this information specifically harm Austin  
14 Energy as a participant in the ERCOT wholesale market.

15                   So just, you know, I would put it out  
16 there and let parties know that there is that  
17 discussion and not an attempt to simply withhold  
18 information and hide behind the competitive language.

19                   MR. HERRERA: And again, I'm not  
20 suggesting --

21                   MR. BROCATO: I know you're not,  
22 but I do want to put that out there. People can  
23 interpret it however they will, but those conversations  
24 do go on each and every single time one of these  
25 questions comes up.

1                   MR. HUGHES: Your Honor, I do want  
2 to for the record make it clear that it's my  
3 understanding that when the City is sending these to  
4 the Attorney General's Office they're not necessarily  
5 referencing that it is an RFI, that it is a -- it's  
6 been a request for information. And I want to make  
7 sure and point out that the Public Information Act's  
8 exceptions to require public disclosure, they don't  
9 create privileges from discovery of documents in  
10 administrative proceedings. So the fact that if  
11 they're not indicating that these are requests for  
12 information, that's an important distinction.

13                   MR. HERRERA: And I, I would just,  
14 Mr. Hughes, remind you that this is not an  
15 administrative proceeding under the APA. That puts us  
16 in a quandary.

17                   MS. COOPER: Your Honor, I would  
18 only add that this has been troubling to me. I don't  
19 know why Austin Energy hasn't asked for an attorney  
20 general opinion asking whether information, discovery  
21 that they allege is confidential done in a protective  
22 order in a proceeding that is under their own rules is  
23 following the Texas Rules of, of the Rules of Civil  
24 Procedure as well as Texas Rules of Evidence, why  
25 these -- this is considered an exception to the Public

1 Information Act.

2                   There is no state law that requires the  
3 PUC to enter into confidentiality orders, but the  
4 Public Information Act is not set up to be a discovery  
5 vehicle. And I agree with Mr. Hughes that I think at  
6 the very least if the legal department is concerned,  
7 that they should actually make an attorney general  
8 request.

9                   Now, I do believe that Mr. Brocato has  
10 been working in utmost good faith to try to release as  
11 much information as possible, and we appreciate that,  
12 but we think the bigger issue is why hasn't the City of  
13 Austin -- because they're making an equitable argument.  
14 They're making an equitable argument, and if you make  
15 an equitable argument, we all know the maxim: He who  
16 asks for equity must do equity. And we think that they  
17 should be asking for an attorney general opinion as  
18 laying out these factual frameworks of how this  
19 protective order would be entered into and ask, is this  
20 considered something that would be considered a public  
21 release of information?

22                   You know, so that's just our concern, is  
23 that we think there should be something done about  
24 that, because we think it is confidential information  
25 that we should actually also have access to, but it

1     should be under a protective order.

2                     MR. HERRERA:   Mr. Brocato, you had  
3     a quizzical look on your face as if you wanted to say  
4     something.

5                     MR. BROCATO:   Oh, the only thing I  
6     would add is that, I mean, we're not asking -- this is  
7     not an equitable argument, it's a legal interpretation  
8     from the City's legal department.  I don't know if they  
9     have ever sought to get verification of that position  
10    from the attorney general.  I'm not even sure if that's  
11    the proper forum to do it, but I will endeavor to reach  
12    out to them and explore that question and get back to  
13    Ms. Cooper about it.

14                    MS. COOPER:   That'd be great.

15                    MR. HERRERA:   Any other comments,  
16    questions, concerns regarding the scope of the issues  
17    or the discovery disputes?

18                    MS. COOPER:   Judge, I would  
19    only -- it's my understanding, and that's why I just, I  
20    don't -- Mr. Brocato, it's -- Austin Energy doesn't  
21    disagree that we should be able to look at as issues  
22    the change in rate designs for the pass-throughs?  I  
23    mean, I wanted to have that clear.

24                    MR. BROCATO:   Yes.  That's, that's  
25    correct.

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1 MS. COOPER: Okay. I thought I had  
2 seen that, so I wanted to bring that to your attention,  
3 Your Honor. It's not just the power supply adjustment,  
4 but all pass-throughs, almost all pass-throughs have  
5 rate design changes.

6 MR. BROCATO: She's correct.

7 MR. HERRERA: Okay. And before I  
8 get to you, Ms. White, Mr. Hughes, I did have a  
9 question for you. With regard on the discovery  
10 dispute, and specifically with regard to NXP/Samsung  
11 1-52 -- and I'll let you get that in front of you.

12 MR. HUGHES: Okay.

13 MR. HERRERA: Could you just  
14 briefly tell me how you see that to be of relevance to  
15 this proceeding using the discovery standard?

16 MR. HUGHES: We're looking for the  
17 actual question, not the --

18 MR. HERRERA: Did you find it,  
19 Mr. Hughes? If not, I can look for mine.

20 MR. HUGHES: Yes. And the question  
21 is would we -- how do we think it would lead to  
22 admissible evidence?

23 MR. HERRERA: Yes. Well, the  
24 relevance standard under discovery rules.

25 MR. HUGHES: Well, I think it's

1 relevant to this case because it's a major component of  
2 their rates. I mean, when you say -- I'm not following  
3 what the -- it says, "Please provide Austin Energy's  
4 best estimate of the capital and fixed and non -- and  
5 variable nonfuel operation costs, key rates and coal  
6 costs of new coal-fired combined cycle and combustion  
7 turbine generating plant and supporting documentation."  
8 That's designed to get to the --

9 MR. HERRERA: No. I can --

10 MR. HUGHES: It's a [obscured]  
11 question.

12 MR. HERRERA: -- read the question,  
13 Mr. Hughes. I was just wondering if you could expound  
14 on the -- help me understand why that is relevant. But  
15 that's fine.

16 MR. HUGHES: Okay.

17 MR. HERRERA: I was just hoping to  
18 get more guidance from you on that. Ms. White?

19 MS. WHITE: Yes. I just wanted to  
20 speak to the issue that Austin Energy objected to on  
21 our filing, which was inclusion of monies required to  
22 repay debt associated with the Fayette Power Project,  
23 and our approach is that this is relevant because it is  
24 a cost-of-service issue that has been a commitment that  
25 was made in the 2014 Austin Energy Resource Generation

1 and Climate Protection Plan, and if it is not included  
2 in the nonnuclear decommissioning fund, we would like  
3 to know where, if anywhere, that money is being placed  
4 and how that repayment is to take place.

5 MR. HERRERA: Okay. Thank you.

6 MS. WHITE: And this is relevant to  
7 that commitment to retire the coal plant that was made  
8 in the generation plant in 2014.

9 MR. HERRERA: Okay. Thank you. I  
10 don't have anything else or more questions on the scope  
11 or discovery issues. Yes, identify yourself?

12 MR. WHELLAN: Yes. Michael Whellan  
13 on behalf of St. David's Healthcare. I did have one  
14 other -- you asked if there were any other issues.

15 I noticed in your -- what issues are  
16 going to be included, excluded, you had under rate  
17 design issues you were including would the house of  
18 worship customers better fit in a class by themselves,  
19 and I may not have done as good of a job as I could  
20 have to express the need for the hospitals. I think, I  
21 think a similar question, would the hospital customers  
22 better fit in a class by themselves, given the factors  
23 I outlined in ours and I know that Seton through Betty  
24 Dunkerley outlined in her motion to intervene.

25 So I would ask some consideration be

1 given, especially since -- and you've already seen the  
2 factors, I don't need to repeat them -- 24/7 we don't  
3 have an ability to move load, and the over --

4 MR. HERRERA: Let me, let me just  
5 address the scope of issues in a very -- from a very  
6 high level.

7 MR. WHELLAN: Okay.

8 MR. HERRERA: And I cited this in  
9 the memorandum, I think it was number 6, where I  
10 identified the scope of issues, and frankly, I made  
11 some bad cuts in there and I made some good cuts, and  
12 we're going to get to cut them again given the new  
13 schedule that we're going to talk about here very soon.

14 When I reviewed the list of issues that  
15 Austin Energy had presented, that list of issues, from  
16 my mind, captured just about any rate-related issue  
17 that you wanted to address. If a party thought that  
18 there should be a special rate for tiny houses, they  
19 could propose that within the scope of issues that  
20 Austin Energy had presented.

21 I in retrospect, from my thought  
22 processes, mistakenly included a very highly detailed  
23 list of issues that the parties had been presented,  
24 because I thought that's what issues the parties wanted  
25 to more discretely address. In retrospect, knowing now



1     what I know today, I wouldn't have done that, because  
2     the issues that Austin Energy identified were stated  
3     broadly enough to include just about any revenue  
4     requirement issues.

5                     Then we come to the bucket of issues  
6     that Austin Energy said are excluded, and that's really  
7     where the tension is between Austin Energy and the  
8     ratepayers, and that's something that we'll address, I  
9     will address, given today's discussion. But issues  
10    like a special rate for a particular type of customers,  
11    a low-load-factor customer -- I'm thinking churches and  
12    baseball parks -- if that's what you think you want to  
13    do, then present that to me. Let me see what  
14    documentation and data you have to support that and  
15    I'll make a cut on it. Just because it's not expressly  
16    identified doesn't mean it's excluded unless it's  
17    expressly excluded.

18                    So I don't know if that raises your  
19    comfort level, makes you more anxious. Whichever it  
20    is, but again, my view, the issues broadly stated as  
21    Austin Energy did, from my perspective suffice to  
22    capture the universe of issues, and then we can argue  
23    about what Austin Energy believes are excluded. And  
24    that's kind of what the discussion we've been having  
25    today for the most part.

1                   MR. WHELLAN: The only thing I  
2 noticed is that under your issues outside the scope of  
3 the proceeding in your memorandum number 6, 32 and 33  
4 relate directly to the uncompensated care that the  
5 hospitals provide and --

6                   MR. HERRERA: And let me tell you  
7 why I did that. To me that is a rationale for why you  
8 want a particular type of rate design.

9                   MR. WHELLAN: Right.

10                  MR. HERRERA: It is not necessarily  
11 identifying what the issue is.

12                  MR. WHELLAN: So long as we'll be  
13 able to present information and evidence related to  
14 that, that would be great.

15                  MR. HERRERA: Yes.

16                  MR. WHELLAN: Okay. Thank you.

17                  MR. BROCATO: And if I may add to  
18 that just as really a point of clarification, I agree  
19 with your statement, Your Honor, and while we have  
20 talked about base rates as being in the scope of this  
21 case, we were aware that Austin has a number of other  
22 tariffs, time of use [inaudible] solar, a number of  
23 others --

24                  THE REPORTER: Could you repeat  
25 those, please?

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1                   MR. BROCATO: I'm sorry. We  
2 understand that Austin has a number of other tariffs,  
3 and several examples include value of solar, thermal  
4 energy storage, time of use, and a number of others,  
5 and we've taken the position that those are inbounds,  
6 since those are not addressed in a separate process,  
7 i.e., they're not addressed by council as the other  
8 pass-through rates are.

9                   And so similarly, Mr. Whellan or other  
10 entities want to propose additional riders or tariffs  
11 of some sort -- for example, for the hospitals or  
12 houses of worship -- we don't object to that and we  
13 have not objected to the discovery along those lines.

14                  MR. HERRERA: Okay.

15                  MR. HUGHES: Your Honor, I just  
16 want to clarify with regards to your question on our  
17 discovery request 152. Because the components that  
18 were asked for go directly to the base rates, we just  
19 think it's likely that that information is likely to  
20 lead to relevant and admissible evidence, and it  
21 is -- you know, those are the primary components of  
22 their base rates. So . . .

23                  MR. HERRERA: Thank you. All  
24 right. Let's talk schedule.

25                  MR. BROCATO: Sure.

1 MR. HERRERA: And I have, I have  
2 looked at it, and obviously it's better than it was and  
3 I appreciate that. If folks can live with the filing  
4 dates and the hearing date, I'm good. I would ask for  
5 four days additional on the -- when my report, my final  
6 recommendation is due just to get the full 31 days from  
7 the date that Austin Energy files its brief, and that  
8 would be the only change that I --

9 And we can probably have this discussion  
10 off the record. Let's go off the record.

11 (At 11:47 a.m. the proceedings went  
12 off the record, continuing at 11:51 a.m.)

13 MR. HERRERA: We discussed off the  
14 record the procedural schedule. I did not hear anyone  
15 that had any material objections to that particular  
16 schedule. I asked for more time to prepare the  
17 impartial hearing examiner final recommendation, and I  
18 will issue a memorandum that identifies that date as  
19 July 15th, 2016 instead of July 14th, 2016. Otherwise,  
20 I'll issue a memorandum that incorporates these dates.

21 Anything else on any issue that any  
22 party wishes to raise?

23 MR. COFFMAN: Well, just following  
24 down from that, that meaning the work sessions and that  
25 the city council works at these meetings, those are to

1 be determined because the council still has to  
2 determine when they -- I thought maybe they were  
3 specified in the resolution.

4 MR. DREYFUS: We are working to  
5 schedule the council meetings on the dates that were  
6 discussed with council yesterday. So barring some  
7 conflict emerging on those dates, those will be the  
8 dates scheduled --

9 MR. HUGHES: Okay.

10 MR. DREYFUS: -- for the work  
11 sessions and public hearings.

12 MR. HERRERA: Ms. Barker?

13 MS. BARKER: Yes, Your Honor.

14 Thank you. I have a small procedural request. Under  
15 the procedural rules documents have to be signed. This  
16 creates a burden for residential customers who don't  
17 have scanning equipment. That means we either have to  
18 go someplace and pay money to have it scanned or drive  
19 down to the clerk's office every time we want to do a  
20 document. I've already discussed this with  
21 Mr. Brocato. I would like permission to have my  
22 signature be a slash-S-slash on my documents so that I  
23 can just email them, and I would appreciate that.

24 MR. HERRERA: That is fine.

25 MS. BARKER: Thank you, Your Honor.

1 MR. HERRERA: Okay. Anything else?

2 Thank you very much, everyone. This hearing is  
3 adjourned.

4 (At 11:53 a.m. the proceedings  
5 recessed for the day.)

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## REPORTER'S CERTIFICATION

[illegible]

I, Sandra S. Givens, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the above and foregoing 79 pages contain a full and true transcript of my shorthand notes taken upon the occasion set forth in the caption hereof, as reduced to written form by me.

I further certify that this transcription of my notes truly and correctly reflects the exhibits offered into evidence, if any.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 7th  
day of March 2016.

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SANDRA S. GIVENS, CSR  
Certification No. 5000  
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