

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

AUSTIN ENERGY  
2016 MAR -7 AM 10:42  
BEFORE THE CITY OF AUSTIN  
IMPARTIAL HEARING EXAMINER

**OBJECTION OF AUSTIN ENERGY TO  
NXP/SAMSUNG'S THIRD REQUEST FOR INFORMATION**

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

**I. PROCEDURAL HISTORY**

NXP/Samsung served its third RFI to Austin Energy on February 25, 2016. Pursuant to the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.3(c)(1), this objection is timely filed.

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

**II. GENERAL OBJECTIONS**

Austin Energy generally objects to these RFIs to the extent they are irrelevant or seek information not in Austin Energy's possession.

"Discovery is limited to relevant information that is not unduly prejudicial and can lead to the discovery of admissible evidence."<sup>1</sup> As indicated in its Tariff Package, Austin Energy is only proposing changes to its base electric rates in this proceeding. Thus, this rate review is

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

limited to Austin Energy's base electric rates. Discovery in this proceeding should, therefore, be limited to issues concerning Austin Energy's base electric rates and is irrelevant to the extent it seeks information not related to Austin Energy's base electric rates. Certain pass-through charges, including the Power Supply Adjustment, Regulatory Charge, and Community Benefits Charge, are not included in base rates and, thus, are not at issue in this proceeding. Indeed, in the Impartial Hearing Examiner's Memorandum No. 6, "the Impartial Hearing Examiner also lists as outside the scope of this proceeding, issues related to AE's pass-through charges and underlying costs pertaining to AE's Power Supply Adjustment and the prudence of Austin Energy's fuel and power supply contracts."<sup>2</sup>

Accordingly, Austin Energy objects to discovery requests seeking information that is neither relevant to the issues presented in this proceeding nor is reasonably calculated to lead to the discovery of admissible evidence.

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<sup>2</sup> Impartial Hearing Examiner's Memorandum No. 6: Statement of Issues at 2 (Feb. 16, 2016).

### **III. SPECIFIC OBJECTION**

NXP/Samsung 3-13. If line 13 relates to OSER, please explain why only the test year amounts were removed from the Austin Energy's Cost of Service, instead of incorporating the \$11,144,313 as a known and measurable change that will be in effect at the time the rates from this proceeding are in effect.

#### **Objection:**

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

Additionally, Austin Energy does not consider this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552 because this request seeks an explanation. The Texas Public Information Act does not require governmental bodies to provide answers to questions or to general inquiries, nor does it mandate the creation of new documents in response to a request. Information is subject to disclosure only if it was in existence at the time the request was made.<sup>3</sup> Explaining why only the test year amounts were removed from Austin Energy's Cost of Service would require Austin Energy to provide answers to questions and create new documents in response to a request. Austin Energy is, thus, not required to respond to this request under the Texas Public Information Act.

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<sup>3</sup> See Open Records Decision No. 555 at 1-2 (1990) (considering request for answers to fact questions).

#### IV. PRAYER

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

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &  
TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900

Austin, Texas 78701

(512) 322-5800

(512) 472-0532 (Fax)

tbrocato@lglawfirm.com

hwilchar@lglawfirm.com



THOMAS L. BROCATO

State Bar No. 03039030

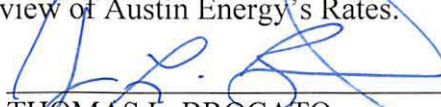
HANNAH M. WILCHAR

State Bar No. 24088631

**ATTORNEYS FOR THE CITY OF AUSTIN**

#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading has been served on all parties and the Impartial Hearing Examiner on this 7th day of March, 2016, in accordance with the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates.



THOMAS L. BROCATO