

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

**BEFORE THE CITY OF AUSTIN
IMPARTIAL HEARING EXAMINER**

2016 MAR 8 PM 12 00

AUSTIN CITY CLERK
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**AUSTIN ENERGY'S RESPONSE TO NXP SEMICONDUCTORS'
AND SAMSUNG AUSTIN SEMICONDUCTOR, LLC'S
MOTION TO COMPEL AUSTIN ENERGY REGARDING SECOND
REQUEST FOR INFORMATION**

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

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

I. Procedural History

NXP/Samsung served its Motion to Compel Austin Energy in response to Austin Energy's Objections to NXP/Samsung's Second Request for Information on March 3, 2016. Pursuant to the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates, this response is timely filed.

II. Response to Motion to Compel

Austin Energy maintains its position that this rate review is limited to Austin Energy's base rates, discovery is limited to relevant information that is not unduly prejudicial and can lead to the discovery of admissible evidence, and discovery regarding pass-through charges and non-utility operations is outside the scope of discovery in this proceeding and is objectionable. Because this issue has already been significantly addressed, and the parties await the Independent Hearing Examiner's ruling on the scope of this case, Austin Energy incorporates by

reference the arguments made in its March 1, 2016 Response to NXP/Samsung's first Motion to Compel and at the March 4, 2016 Prehearing Conference.

In addition, Austin Energy disputes the allegation that City Resolution No. 20140828-157 and Ordinance No. 20120607-055 constitute a City Council directive to Austin Energy "that a full rate review needs to occur as this is the only way to determine that Austin Energy's all-in competitive rates are in the lower 50% of the Texas rates overall."¹ NXP/Samsung has ignored the history behind these regulations and taken choice provisions out of context to craft a misrepresentation of Council's directive. First, Resolution No. 20140828-157 is a resolution to reduce greenhouse gas emissions and mitigate the effects of climate change. It is not a directive from Council to AE to conduct a full rate review. In fact, Resolution No. 20140828-157 has no relation whatsoever to how Austin Energy is to set its electric rates. Resolution No. 20140828-157 is a Council directive to the City Manager to implement various initiatives through Austin energy to reduce and reverse the City's negative impacts of global warming and harmful emissions. The resolution's final paragraph, which calls on AE to maintain all-in competitive rates in the lower 50% of Texas, simply ensures that these environmental initiatives do not result in extraordinarily high rates. Because the resolution specifically directs the City Manager to perform tasks "necessary to make Austin the leading city in the nation" in its environmental efforts, it was necessary for Council to address the resolution's cost implications by stating that the resolution will not conflict with Council's affordability goal approved on February 17, 2011. However, the resolution is silent as to how or when AE is to set its rates.

¹ NXP Semiconductors and Samsung Austin Semiconductor, LLCs' Motion to Compel Austin Energy Regarding Second Request for Information and NXP Semiconductors and Samsung Austin Semiconductor, LLCs' Response to Austin Energy's March 1, 2016 Filing at 4 (March 3, 2016).

Further, as Austin Energy has continuously explained, Council intended the review prescribed in Ordinance No. 20120607-055 to be limited to Austin Energy's base rates. Council's historical practice of adjusting AE's pass-through rates during the budget process in each of the past three years evidences Council's desire for pass-through rates to be determined during the budget process, which Austin Energy has explained will happen as usual this year. Therefore, it is inappropriate to suggest Council intended for Ordinance No. 20120607-055 to conflict with its process.

Understood in their correct history and context, Resolution No. 20140828-157 and Ordinance No. 20120607-055 do not indicate Council's desire for AE to undergo a full rate review in this proceedings as NXP/Samsung suggests. On the contrary, Council intended for this proceeding to review only Austin Energy's base electric rates, as Austin Energy indicated in its Tariff Package.

III. Conclusion

The scope of discovery in this proceeding is limited to Austin Energy's base electric rates. Austin Energy objected to NXP/Samsung's discovery requests seeking irrelevant information regarding pass-through charges. Austin Energy respectfully requests the Impartial Hearing Examiner sustain AE's objections to NXP/Samsung's discovery requests seeking information outside the scope of discovery in this proceeding.

Respectfully submitted,

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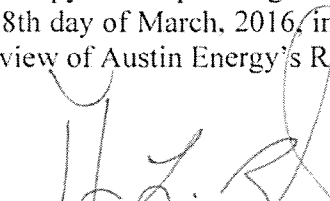
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ATTORNEYS FOR AUSTIN ENERGY

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 8th 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