

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

AUSTIN ENERGY
2016 MAR 28 AM 10:20

**OBJECTIONS OF AUSTIN ENERGY TO
NXP/SAMSUNG'S FOURTH REQUEST FOR INFORMATION**

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

I. PROCEDURAL HISTORY

NXP/Samsung served its fourth RFI to Austin Energy on March 16, 2016. Pursuant to the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.3(c)(1), these objections are 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 these and any future objections, Austin Energy files these objections 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 competitive information not subject to disclosure under the Texas Public Information Act.

III. SPECIFIC OBJECTIONS

NXP/Samsung 4-1. Regarding the overhaul schedule for the South Texas Project (STP), in what year did the last (three year scheduled) overhaul occur? Please provide the actual amounts charged to accounts 517 through 532 in Fiscal Year (FY) 2015 and the amount budgeted for STP maintenance in 2016.

Objection:

Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks information regarding generation pricing information and unit operating characteristics that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters.

NXP/Samsung 4-2. Please provide the same information as requested above for the maintenance schedule described in Austin Energy's (AE's) cost of service WP D-1.2.2. for the Sand Hill Energy Center.

Objection:

Austin Energy considers this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552. Austin Energy has determined the request seeks information regarding generation pricing information unit operating characteristics that is related to competitive matters and, thus, not subject to disclosure pursuant to Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters.

NXP/Samsung 4-7. Please provide the amount of Customer Assistance Program (CAP) revenue received in FY 2014 and 2015.

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, the scope of this proceeding is limited to Austin Energy's base electric rates. The Impartial Hearing Examiner's Memorandum No. 10 limited the issues inside the scope of this rate review process to whether costs related to costs recovered through AE's Community Benefit Charge are being recovered through base rates and, if so, how should such costs be allocated to the customer classes, and whether such costs are more appropriately recovered through base rates. The amount of CAP revenue received in FY 2014 and 2015 does not pertain to these issues. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy is processing this request as a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552.

NXP/Samsung 4-39. Figure 6.25, Regulatory Charges by Customer Class. Please provide Regulatory Charges for P4.

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, the scope of this proceeding is limited to Austin Energy's base electric rates. The Impartial Hearing Examiner's Memorandum No. 10 limited the issues inside the scope of this rate review process to whether costs related to costs recovered through AE's Regulatory Charge are being recovered through base rates or are more appropriately recovered through base rates. The Regulatory Charges for the P4 customer class do not pertain to these issues. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy is processing this request as a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552.

NXP/Samsung 4-41. Please add the following allocation factors for Demand Related Distribution Plant on Schedule G-6 of AE's class cost of service file, "AECostof ServiceModelv2" provided on Austin Energy's web site, and further allow changes to be made on worksheet "Schedule G-6", Excel lines 46, 47 and 50 so that the new allocation factors may be employed in addition to the already available allocation factors. The new allocation factors are:

- A. "Sum of Summer NCP Primary"; and
- B. "Sum of Summer NCP Secondary", where "Sum of Summer NCP Primary" is equal to an allocation factor developed using the sum of primary NCP demands during the months of June through September provided on AE's WP F-2.4, and "Sum of Summer NCP Secondary" is developed in the same manner using secondary voltage class NCP demands.

Objection:

Austin Energy objects to this request because it seeks information Austin Energy does not possess. Pursuant to City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.3(c)(2)(F), a party does not need to produce a document or tangible thing unless that party has constructive or actual possession, custody, or control of the requested item. A party has possession, custody or control of a document or tangible thing if the party can get the document or tangible thing with reasonable effort. Therefore, Austin Energy is not required to add allocation factors to its class cost of service file pursuant to this request.

Additionally, Austin Energy does not consider this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552 because it requests the creation of new documents. 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.¹ Adding the requested allocation factors to its class cost of service model would require Austin Energy to 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.

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

NXP/Samsung 4-46. Please rerun AE's class cost of service model (all schedules) using the allocation factors described above and provide the resulting Excel file that allows users to modify the allocation factors for Distribution Demand costs in Schedule G-6 to include the additional Summer NCP kW allocation factors describe above.

Objection:

Austin Energy objects to this request because it seeks information Austin Energy does not possess. Pursuant to City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.3(c)(2)(F), a party does not need to produce a document or tangible thing unless that party has constructive or actual possession, custody, or control of the requested item. A party has possession, custody or control of a document or tangible thing if the party can get the document or tangible thing with reasonable effort. Therefore, Austin Energy is not required to rerun its class cost of service model pursuant to this request.

Additionally, Austin Energy does not consider this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552 because it requests the creation of new documents. 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.² Rerunning its class cost of service model as requested would require Austin Energy to 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.

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

NXP/Samsung 4-48. Please update AE's class cost of service file, "AECostof ServiceModelv2" provided on Austin Energy's web site as modified pursuant to NXP/Samsung RFI 4-2 above to include the cost and revenue impacts in Docket No. 45382.

Objection:

Austin Energy objects to this request because it seeks information Austin Energy does not possess. Pursuant to City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.3(c)(2)(F), a party does not need to produce a document or tangible thing unless that party has constructive or actual possession, custody, or control of the requested item. A party has possession, custody or control of a document or tangible thing if the party can get the document or tangible thing with reasonable effort. Therefore, Austin Energy is not required to update its class cost of service file pursuant to this request.

Additionally, Austin Energy does not consider this request a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552 because it requests the creation of new documents. 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.³ Updating its class cost of service file as requested would require Austin Energy to 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.

³ 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 these objections be sustained. Austin Energy also requests any other relief to which it may show itself justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading has been served on all parties and the Impartial Hearing Examiner on this 28th 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