

AUSTIN ENERGY'S TARIFF PACKAGE: §  
2015 COST OF SERVICE § BEFORE THE CITY OF AUSTIN  
STUDY AND PROPOSAL TO CHANGE § IMPARTIAL HEARING EXAMINER  
BASE ELECTRIC RATES §

**OBJECTIONS OF AUSTIN ENERGY TO PAUL ROBBINS'S  
FIRST REQUEST FOR INFORMATION**

Austin Energy ("AE") files these Objections to Paul Robbins's First Request for Information ("RFI"), and respectfully shows as follows:

**I. PROCEDURAL HISTORY**

Paul Robbins served its first RFI to Austin Energy on March 23, 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 Paul Robbins conducted good faith negotiations that failed to resolve the issues. While Austin Energy will continue to negotiate with Paul Robbins 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.

AUSTIN ENERGY  
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### **III. SPECIFIC OBJECTIONS**

Paul Robbins 1-2.1    1-2.1    Value of Property and Land Assets.

Please provide information related to the Seaholm Power Plant.

- 1-2.1.1.        The most recent appraisals for the land and property before sale or transfer;
- 1-2.1.2        The documentation for the transfer of ownership from Austin Energy to the City of Austin;
- 1-2.1.3.        Reason or justification for ownership transfer;
- 1-2.1.4.        Payments that have been made or that are intended to be made to Austin Energy for the land and property at the Seaholm site.

#### **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 value of property and land assets related to the Seaholm Power Plant is not included in base electric rates. Indeed, this issue is not included in the scope of this proceeding as set forth in the Impartial Hearing Examiner's Memorandum No. 11. Thus, this request seeks information outside the scope of this proceeding.

In addition, the information requested relates to activity that occurred prior to end of the test year in the last rate case (i.e. September 30, 2009). Specifically, the Seaholm plant was transferred on March 14, 2007. Accordingly, issues addressed by the discovery in question could have been addressed in the 2012-2013 rate review. Any attempt to address the prudence of Austin Energy's actions with respect to the requested information was required to occur in that case. As a result, these issues are now moot.

Notwithstanding this objection, Austin Energy is processing subparts 2.1.1, 2.1.2, and 2.1.4 as formal requests under the Texas Public Information Act, Tex. Gov't Code Ch. 552. However, Austin Energy does not consider subpart 2.1.3 of this request a formal request under the Texas Public Information Act 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.<sup>1</sup> Providing the requested reason or justification 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.

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

Paul Robbins 1-2.2 Please provide information related to the Holly Street Power Plant.

- 1-2.2.1. Appraisals for the value of the land and property;
- 1-2.2.2 The actual date of ownership transfer or anticipated time of transfer of ownership if known;
- 1-2.2.3 The new owner or intended new owner if known;
- 1-2.2.4 Whether or not the owner or new intended owner paid or intends to pay Austin Energy for this land and how much;
- 1-2.2.5 The reason or justification for ownership transfer or intended transfer.

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. Costs related to the value of property and land assets of the Holly Street Power Plant are not included in base electric rates. Indeed, this issue is not included in the scope of this proceeding as set forth in the Impartial Hearing Examiner's Memorandum No. 11. Further, all costs related to the Holly Street Power Plant, including decommissioning, were appropriately removed from AE's last rate case, Docket No. 40627, since the Holly Street Power Plant ceased operating in September 2007. The information requested relates to activity that occurred prior to end of the test year in the last rate case (i.e. September 30, 2009). Because issues related to these costs could have been raised during Docket No. 40627, but were not, it is appropriate to preclude examination of such costs in this rate review. Thus, this request seeks information outside the scope of this proceeding. Additionally, ownership of the Holly Street Power Plant was not transferred because Austin Energy is a department of the City of Austin, thus, ownership remained within the same entity.

Notwithstanding this objection, Austin Energy is processing subparts 2.2.1-2.2.4 as formal requests under the Texas Public Information Act, Tex. Gov't Code Ch. 552. However, Austin Energy does not consider subpart 2.2.5 of this request a formal request under the Texas Public Information Act 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.<sup>2</sup> Providing the requested reason or justification 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.

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

Paul Robbins 1-2.6 Please provide information related to the land that Austin Energy owns or owned at 3701 Grooms.

- 1-2.6.1. Appraisals for the value of the land and property;
- 1-2.6.2. The actual date of ownership transfer or anticipated time of transfer of ownership;
- 1-2.6.3. The new owner or intended new owner;
- 1-2.6.4. Whether or not the new owner paid or intends to pay Austin Energy for this land and property and how much;
- 1-2.6.5. The reason or justification for ownership transfer.

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. Costs related to the value of property and land assets of the 3701 Grooms property are not included in base electric rates. Indeed, this issue is not included in the scope of this proceeding as set forth in the Impartial Hearing Examiner's Memorandum No. 11. Further, all costs related to the 3701 Grooms property were not at issue in AE's last rate case, Docket No. 40627. The information requested relates to activity that occurred prior to end of the test year in the last rate case (i.e. September 30, 2009). Because issues related to these costs could have been raised during Docket No. 40627, but were not, it is appropriate to preclude examination of such costs in this rate review. Thus, this request seeks information outside the scope of this proceeding.

Notwithstanding this objection, Austin Energy is processing subparts 2.6.1-2.6.4 as formal requests under the Texas Public Information Act, Tex. Gov't Code Ch. 552. However, Austin Energy does not consider subpart 2.6.5 of this request a formal request under the Texas Public Information Act 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.<sup>3</sup> Providing the requested reason or justification 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.

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

Paul Robbins 1-2.7 Please provide information related to other transferred and property assets or intended transferred land and property owned or formerly owned by Austin Energy.

- 1-2.7.1. Appraisals for the value of the land and property;
- 1-2.7.2. The actual date of ownership transfer or anticipated time of transfer of ownership;
- 1-2.7.3. The new owner or intended new owner;
- 1-2.7.4. Whether or not the new owner paid or intends to pay Austin Energy for this land and property, and how much;
- 1-2.7.5. The reason or justification for ownership transfer.

Objection:

Austin Energy objects to this request for information before September 30, 2009 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. Costs related to the value of property and land assets of other transferred and property assets or intended transferred land and property owned or formerly owned by Austin Energy before September 30, 2009 are not included in base electric rates. Indeed, this issue is not included in the scope of this proceeding as set forth in the Impartial Hearing Examiner's Memorandum No. 11. Further, such costs were not at issue in AE's last rate case, Docket No. 40627. The information requested relates to activity that occurred prior to end of the test year in the last rate case (i.e. September 30, 2009). Because issues related to these costs could have been raised during Docket No. 40627, but were not, it is appropriate to preclude examination of such costs in this rate review. Thus, this request seeks information outside the scope of this proceeding. Additionally, because this request is not limited in any way and implicates a vast number of transactions since AE's founding, this request is overly burdensome if not limited to a reasonable timeframe.

Notwithstanding this objection, Austin Energy is processing subparts 2.7.1-2.7.4 as formal requests under the Texas Public Information Act, Tex. Gov't Code Ch. 552. However, Austin Energy does not consider subpart 2.7.5 of this request a formal request under the Texas Public Information Act 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.<sup>4</sup> Providing the requested reason or justification 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.

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<sup>4</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 these objections be sustained. Austin Energy also requests any other relief to which it may show itself justly entitled.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &  
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**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 4th day of April, 2016, in accordance with the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates.

  
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THOMAS L. BROCATO