

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

AUSTIN ENERGY  
2016 APR -7 AM 10:51  
BEFORE THE CITY OF AUSTIN  
IMPARTIAL HEARING EXAMINER

**OBJECTIONS OF AUSTIN ENERGY TO  
ICA'S FOURTH REQUEST FOR INFORMATION**

Austin Energy ("AE") files these Objections to the Independent Consumer Advocate's ("ICA") Fourth Request for Information ("RFI"), and respectfully shows as follows:

**I. PROCEDURAL HISTORY**

The ICA served its fourth RFI to Austin Energy on March 28, 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 the ICA conducted good faith negotiations that failed to resolve the issues. While Austin Energy will continue to negotiate with the ICA 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**

ICA 4-7      With respect to Austin Energy Generation and Climate Protection Plan through 2025, provide the expected or estimated cost per kw-year acquisition or construction cost for the following options discussed in the plan: (i.) highly efficient combined cycle gas units; (ii.) storage connected to distribution; (iii.) large scale storage; (iv.) demand response programs; (v.) wind generation; (vi.) solar generation. If AE does not have internal estimates for these options, this answer can refer to representative costs incurred by other entities or published reference material.

#### **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 provide the requested costs.

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. Providing the requested expected or estimated costs per kw-year acquisition or construction costs 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.

ICA 4-8        What was the actual net of salvage value minus decommissioning cost for the Holly Power Plant? What percentage of Holly total gross plant did this represent?

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 Holly 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 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 the 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 this request as a formal request under the Texas Public Information Act, Tex. Gov't Code Ch. 552.

**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 &  
TOWNSEND, P.C.**

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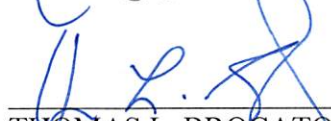
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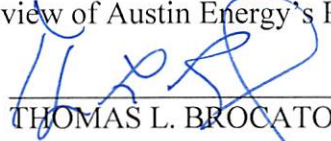
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**ATTORNEYS FOR THE CITY OF AUSTIN**

**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 7th day of April, 2016, in accordance with the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates.



THOMAS L. BROCATO