

**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'S RESPONSE TO AUSTIN ENERGY LOW INCOME
CUSTOMERS' MOTION TO COMPEL AUSTIN ENERGY REGARDING
SEVENTH REQUEST FOR INFORMATION**

Austin Energy ("AE") files this Response to Austin Energy Low Income Customers' ("AELIC") Motion to Compel Austin Energy in response to Austin Energy's Objections to AELIC's Seventh Request for Information.

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

I. Procedural History

AELIC served its Motion to Compel Austin Energy in response to Austin Energy's Objections to AELIC's Seventh Request for Information on April 14, 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

AELIC 7-24 What are the termination dates for each of the coal supply contracts to which AE is a joint signatory with LCRA that are either in operation now or were in operation during the TY 2014. (Reference: AE response to AELIC RFI No. 4-15).

As stated in its objection, Austin Energy has determined this request seeks information that is related to utility competitive matters and, thus, not subject to disclosure pursuant to the Texas Public Information Act ("PIA"), Tex. Gov't Code § 552.133, Confidentiality of Public Power Utility Competitive Matters. As a department of the City of Austin, AE is subject to the City's public information protocol, which mandates compliance with the PIA. The City's interest in upholding its duty as a public entity to provide equal, fair, and impartial access to

public information, while also protecting the City's competitive advantage, prohibits the City from disclosing information in violation of Section 552.133. Further, the Impartial Hearing Examiner ("IHE") is not authorized to override the Public Information Act by ordering production of this information. The Attorney General has sole jurisdiction to decide whether information is subject to an exception or must be disclosed.¹ Therefore, Austin Energy cannot be compelled to produce the requested information absent a determination from the Attorney General that such information is not entitled to protection under Section 552.133.

Additionally, despite AELIC's contrary argument, Austin Energy maintains the requested information is irrelevant and beyond the scope of this proceeding. The reasonableness of AE's coal supply contracts is not an issue in this case as outlined in the IHE's Memorandum No. 11, Statement of the Issues. These costs are included in AE's Power Supply Adjustment ("PSA"), which the IHE has stated are outside the scope of this proceeding except with respect to determining whether costs recovered through the PSA are also being recovered through base rates or should be. Specifically, according to Memorandum No. 11, "regarding Austin Energy's Power Supply Adjustment, the prudence of Austin Energy's fuel and power supply contracts is outside the scope of this proceeding." Therefore, because it is included in the PSA, the reasonableness of AE's coal supply contracts is outside the scope of this proceeding and irrelevant. Rule 7.1(a) of the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates establish that "discovery is limited to relevant information." Accordingly, this request for irrelevant information does not warrant a response.

¹ Tex. Gov't Code § 552.301(a) "A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions."

Lastly, AELIC claims that this RFI is relevant because it addresses the reasonableness of AE's non-nuclear decommission reserve. This is incorrect. The terms and conditions of any fuel contracts is irrelevant to the reasonableness of AE's non-nuclear decommissioning reserve request. However, to the extent this request is limited to whether AE had long-term contracts and not learning specific termination dates, please see AE's Response to AELIC RFI No. 4-15.

AELIC 7-32 Please explain how AE's transmission O&M expenses went from a Texas Public Utility Commission finding of \$10,884,465 in 2006 (Reference: PUC Docket No. 31462, Final Order, FOF No. 12A) to \$145,698,897 (characterized as nonfuel O&M) in this rate filing? (Reference: Schedule A, Bates Stamp p. 767). In your explanation please identify cost elements that were not included in both the transmission O&M expenses determined in PUC Docket No. 31462 and the amount included as nonfuel transmission O&M expenses in this rate filing.

The requested information is irrelevant to this proceeding. AELIC claims the reasonableness of AE's transmission nonfuel O&M must be viewed in comparison to what the Public Utility Commission ("PUC") found to be transmission O&M. However, this comparison has no bearing on AE's base electric rates, the exclusive subject of this proceeding. In fact, AE's transmission O&M expenses are not included in base electric rates and are not included in the scope of this proceeding as set forth in the IHE's Memorandum No. 11, which states, "the reasonableness of Austin Energy's Transmission Cost of Service ("TCOS") is outside the scope of this proceeding." The PUC has exclusive jurisdiction over transmission related costs. Therefore, the IHE and the Austin City Council are not authorized to examine transmission issues. Accordingly, transmission related costs are appropriately reviewed as part of a TCOS filing at the PUC. Indeed, the PUC has determined AE's transmission O&M expenses are reasonable by approving AE's TCOS filing in PUC Docket No. 31462. Therefore, this issue is precluded from review in this proceeding. Thus, this request seeks information outside the scope of this proceeding and does not warrant a response.

AELIC 7-33 For each cost element identified in RFI No. 7-32, please explain why it was not included in both O&M amounts.

AELIC incorporates by reference its argument in response to AE's objection to this request as to AELIC RFI No. 7-32. Accordingly, AE incorporates by reference its response to AELIC's motion to compel RFI No. 7-32 above.

Additionally, AE notes it is not double counting certain elements of its transmission O&M as AELIC suggests. To reiterate, AE's transmission costs are outside the scope of this proceeding and are solely under the PUC's jurisdiction. These costs have been deemed reasonable by approval of AE's TCOS filing in PUC Docket No. 31462 and AE is not seeking recovery of these costs in its base rates.

III. Conclusion

For the reasons discussed above, Austin Energy respectfully requests the IHE sustain AE's objections to AELIC's discovery requests seeking information not subject to disclosure under the PIA or outside the scope of discovery in this proceeding.

Respectfully submitted,

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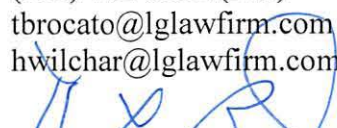
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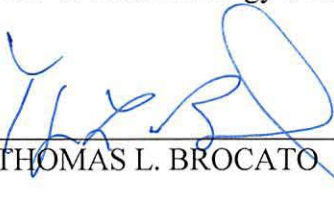
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ATTORNEYS FOR AUSTIN ENERGY

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 19th 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