

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 §

**OBJECTION OF AUSTIN ENERGY TO DATA FOUNDRY'S  
FIRST REQUEST FOR INFORMATION**

Austin Energy ("AE") files this Objection to Data Foundry's ("Data Foundry" or "DF") First Request for Information ("RFI"), and respectfully shows as follows:

**I. PROCEDURAL HISTORY**

Data Foundry served its first RFI to Austin Energy on April 13, 2016. Pursuant to the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 7.3(c)(1), this objection is timely filed.

Counsel for Austin Energy and Data Foundry conducted good faith negotiations that failed to resolve the issues. While Austin Energy will continue to negotiate with Data Foundry regarding this and any future objections, Austin Energy files this objection 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.

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### **III. SPECIFIC OBJECTION**

DF 1-1        Please provide the cost of service by class that would result from using the generation production cost allocation method that was approved by the City Council in 2012.

#### **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 cost of service.

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 cost of service 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.

**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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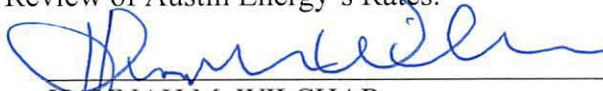
HANNAH M. WILCHAR

State Bar No. 24088631

**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 25th day of April, 2016, in accordance with the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates.



HANNAH M. WILCHAR