

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

AUSTIN ENERGY
2016 APR 32 AM 7:48
BEFORE THE CITY OF AUSTIN
IMPARTIAL HEARING EXAMINER

**OBJECTION OF AUSTIN ENERGY TO NXP SEMICONDUCTORS' AND
SAMSUNG AUSTIN SEMICONDUCTOR, LLC'S
SEVENTH REQUEST FOR INFORMATION**

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

I. PROCEDURAL HISTORY

NXP/Samsung served its seventh RFI to Austin Energy on April 19, 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 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.

III. SPECIFIC OBJECTION

NXP/Samsung 7-2 Please provide a functionalized asset retirement schedule for FY 2016-2017 and the subsequent three years.

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 retirement schedule.

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 Providing the requested retirement schedule 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).

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Austin Energy requests this objection be sustained. Austin Energy also requests any other relief to which it may show itself justly entitled.

Respectfully submitted,

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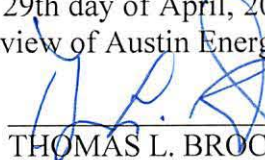
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ATTORNEYS FOR THE CITY OF AUSTIN

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 29th 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