

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

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BEFORE THE CITY OF AUSTIN  
IMPARTIAL HEARINGS  
EXAMINER

## AE LOW INCOME CUSTOMERS' STATEMENT OF POSITION/PRESENTATION

COMES NOW, Texas Legal Services Center ("TLSC") on behalf of AE Low Income Customers ("AELIC"), providing a Statement of Position/Presentation, as follows:

### INTRODUCTION

The following paragraphs represent AELIC's presentation of its position on issues in this rate case that include: the reasonableness of AE's rate proposals, including rate design; whether AE has shown that the expenses, including reserves, are known, recurring, reasonable and necessary; whether its rate proposals are based on verifiable facts; whether AE has made all known and measureable changes regarding revenues and costs that are likely to occur during the year AE's proposed rates will be in effect; whether AE's has properly categorized revenues; whether AE's rate proposals are consistent with regulatory policies; whether AE's rate proposals are consistent with City policies involving energy efficiency, and affordability and competitiveness. AELIC did not address all issues set out in Hearing Examiner's Memorandum No. 11. Our silence on any issue does not constitute any statement of position on that issue. AELIC reserves the right to adopt other position statements after further review of the evidence. AELIC's statement of position is primarily based on AE's rate filing package and AE's responses to the various parties' discovery requests in this proceeding. AELIC has also relied upon the undersigned's recollection of various issues that arose before the Electric Utility Commission, the City Council and the Low Income Consumer Energy Efficiency Task Force.

### ADJUSTMENTS TO AE'S O&M

#### **1. Non-nuclear decommissioning costs.**

- a. AE's operations and maintenance ("O&M") should be reduced by \$19.4 million to exclude its requested cost recovery for non-nuclear decommissioning reserves. In a rate proceeding, the utility bears the burden of proving that the expenses it seeks to be recovered in rates are reasonable and necessary.<sup>1</sup> In this case AE not only failed in its burden of proving the largest portion of its proposed decommissioning expenses were reasonable and necessary, but AE refused to provide the very evidence needed to prove whether its estimated decommissioning expenses were reasonable and necessary. Instead, AE refused to provide the cost facts supposedly relied upon by AE to derive its level of decommissioning costs requested to be recovered with base rates in this case. Moreover, even though parties requested that AE seek an attorney general opinion on whether AE's release of this information under a confidential order in a rate hearing would waive its right to argue confidentiality in a Public Information

<sup>1</sup> See Texas Utilities Code, §36.006 (Vernon 2007).

Request<sup>2</sup> at the last prehearing before Your Honor, AE apparently did not take this step.<sup>3</sup> AE is using the Public Information Act to determine whether it has to provide discovery it deems confidential. It should be pointed out that in an AE Attorney General Public Information request concerning a discovery request about its coal contracts involving its coal plant in this case, its joint coal plant partner, LCRA, questioned why a discovery request was being challenged under the Public Information Act. A copy of the relevant portions of that letter brief is attached as Exhibit A. Lastly, public utilities have historically provided its decommissioning studies not under a confidentiality seal nor pursuant to a confidentiality order but as an open documentary record in PUC rate proceedings.<sup>4</sup> All these factors demonstrate a total unwillingness on the part of AE to meet its burden of proving the reasonableness and necessity of its decommission reserve expenses. As such these expenses should be excluded from recovery in this rate case.

- b. Even assuming AE should recover non-nuclear decommissioning expenses, it has requested a recovery rate that recovers its total level of these expenses at the “high end” within 4 years contrary to the City’s financial policies. AE has given a low to high aggregate range of decommissioning costs for three of its power plants. The utility used the high end of these costs without providing any factual evidentiary proof of the reasonableness of the low end of the range let alone the high end of the range. Moreover, AE is requesting an annual recovery of decommissioning costs that exceeds the total of the high end of the range within five years, the time period established before the next base rate case. In addition, the City’s financial policy anticipates reserves should commence four years before the planned retirement of the plant. As of the date of this filing, the City has not set any specific retirement dates for any of the power plants underlying the decommissioning reserve. AE states in its rate filing package that it assumes that two of the power plants are not to be retired until well after four years from now. As an alternative, AELIC recommends that the low end of the decommissioning costs for the one plant AE assumes will be retired within four years be established as its decommissioning costs and set the time for recovery over five years, the interval before the next base rate case. This has the effect of reducing the annual recovery of \$19.4 million in costs to \$1,834,000, a reduction of \$17,566,000 to AE’s O&M expense.

2. **Bad Debt** The level of bad debt AE has included in its O&M expenses should be reduced by \$8,343,640 to match FY 2015’s level of \$8,462,938. As a result of implementing a new billing system, AE experienced high levels of bad debt similar to its

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<sup>2</sup> See Texas Government Code, Chapter 552 (Vernon , Vernon’s Supp. )

<sup>3</sup> AE did include in its procedural rules a prohibition of the Independent Hearing Examiner to issue a confidentiality order throwing another road block in parties’ attempts to verify the reasonableness and necessity of its aggregated decommissioning expense request.

<sup>4</sup> See, for instance, re: *Application of Southwestern Public Service Company For Authority to Change Rates*, Pre-filed Testimony of SPS witness Francis Seymore, Bates Stamp pp. 01678-01768, PUC Docket No. 43695 (Filed December 8,2014)

experience the last time it implemented a new billing system. The level of bad debt has been declining. There have also been amendments to the city code addressing deferred payment arrangements in July, 2015. Consequently, FY 2015's bad debt level which came before and after the code amendments is a conservative adjustment to AE's Cost of Service ("COS").

3. **Reserves.** Because O&M expenses have been reduced, the reserve levels that are based on non-fuel O&M should also be reduced, accordingly and as follows:
  - a. Working Capital should be reduced by \$3,194,339 or \$3,420,449 depending upon whether the non-nuclear reserve is removed from the O&M or the alternative adjustment is made.
  - b. Contingency Reserve level should be reduced by \$4,259,119 or \$4,560,598 depending upon the non-nuclear decommissioning reserve level adjustment chosen.
  - c. Emergency Reserve level should be reduced by \$4,259,119 or \$4,560,598 depending upon the non-nuclear decommissioning reserve level adjustment chosen.
  - d. Total Reserve level reduction is \$11,712,577 or \$12,541,645 depending upon the non-nuclear decommissioning reserve level chosen.
  - e. Effect on COS. Because the interval between rate cases is five years, AELIC has used a five-year period of reserve annual payments. This and coupled with the reduced reserve levels reduces the annual reserve expense in the COS by \$6,978,796 or \$7,144,610 depending upon the non-nuclear decommissioning reserve level chosen.

#### ADJUSTMENTS TO AE'S REVENUES

##### 1. **Residential base rate revenue adjustments**

- a. Residential customer charge revenue should be increased by \$5,065,800 and base energy rate charges should be increased by \$3,894,831 to impute the value of the Customer Assistance Program ("CAP") discount that is funded under the community benefit charge. The CAP bill discount program was established for low income residential customers. The discount pays for the customer charge and provides a 10% discount to the base energy rates. Unlike the special contract customers who's under recoveries caused by their below cost rates were recovered out of the utility's surplus, AE realized revenues under the community benefit charge to cover the CAP discounts costs. Just as AE did for the special contract customers in its rate filing package appealed to the PUC, AELIC is imputing the revenues relating to the CAP bill discounts. This will not result in an under recovery because AE did realize these revenues. Without this adjustment, AE will over recover these costs—1<sup>st</sup> in the community benefit charge; and second in showing an under recovery in residential base rates in relation to this discount amount.
- b. The residential customer count should be increased to 391,000 representing the number of customers at the end of FY 2014. AE by an email received in September 2015 provided the number of customers to be 391,410 residential customers at the end of FY 2014. This represents an adjustment to customer charge revenues because AE will realize at least this increase in customer charges during the time the FY 2017 rates will be in place. It is a known and measureable

adjustment. This amounts to an additional \$707,040 in customer charge base revenues.

## 2. **Operating Balance**

- a. AE's COS operating balance should be increased to reflect the additional \$29 million it will realize from the recovery of reserve funds used to fund the under recoveries of transmission-related costs in its FY 2016 regulatory charges. The City Council approved a FY 2016 budget that included a regulatory charge rate increase to recover \$29 million in under recoveries of costs from previous FY's regulatory charges. This rate increase is intended not to pay for costs AE is incurring in FY 2016 but to repay AE for using its reserves in those previous FYs to cover those previous costs that were not but were supposed to be recovered by the regulatory charge. Consequently, these revenues should be considered a known and measureable adjustment because AE will start its FY 2017 with an additional \$29 million in operating reserves.
- b. AE's COS operating balance should be increased to reflect the \$14.5 million it realized in the first quarter of FY 2016 for the sale of land related to its Seaholm retirement. These funds flow from AE's ownership, operation, and decommissioning of Seaholm power plant. These funds would be an excellent source for the non-nuclear decommissioning reserve AE contends it needs because the sale of the Seaholm land flows from AE's decommissioning activities which include the sale of any valuable assets relating to the retired facility. As such, they should be added to AE's COS operating balance.

### COST ALLOCATION

**AE should offset the costs of its Decker power plant with the revenues it realizes from its Black start activities for ERCOT.** AE receives revenues for its Black Start activities that help ERCOT energize the grid in the event of an uncontrolled black out on the system grid.<sup>5</sup> These revenues are therefore realized from activities that are for purely reliability purposes. As such, these revenues should be used to offset the operation costs of Decker and not as an off set to purchase power supply costs.

### RATE DESIGN

1. **AE's position that its distribution and customer costs are fixed costs is inconsistent with its cost of service analysis in part and in part not based on the common meaning of fixed versus variable.**
  - a. Bad debt referred to by AE as uncollectable is not a fixed cost but is an estimate. Utility companies have allocated uncollectable expenses not on customer count but on sales. An allocation based on sales reflects a variable factor, not a fixed factor. The amount of bad debt can change based on a utility's prudent management of its accounts. The original amount of a fixed cost does not change based on future activity, although the amount to recover on that original amount of fixed cost may change due to factors such as depreciation and prepayment. How prudent a utility manages its accounts affecting the level ("original amount") of a utility's bad debt is an example of a lack of correlation between the addition of an AE residential customer and an additional amount of "fixed" bad debt. Lastly, as brought out above, policy and technological changes affect the level of bad debt; once again showing no

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<sup>5</sup> See p.3-22 of AE's rate filing package.

correlation between the addition of one more AE customer and an additional amount of “fixed” bad debt.

- b. The amount of “fixed” distribution costs caused by the addition of one more AE customer is not existent; instead the amount of “fixed” distribution costs per AE residential customer is caused by a combination of usage (load characteristics) and dwelling characteristics. In its rate filing package AE admits that the residential customer class was allocated a greater percentage of the systems distribution costs not because of an increase in the number of customers but because its load characteristics (how it used electricity) changed from the last rate case. Load characteristics are a function of energy usage. Further, AE responses to discovery in this case show that in general residential consumers living in larger houses cause AE to incur more costs in infrastructure construction and maintenance. In other words, AE is taking a cost allocated to residential customers on usage characteristics and is simply dividing that cost by the total number of customers causing residential customers in multi-family dwellings or in small single family dwellings to subsidize the distribution costs of residential customers in large residential dwellings.
  - c. The amount of “fixed” meter cost per residential customer is inconsistent with the residential population and ignores the change in City policy. AE has several types of electric meters that are aggregated into one “fixed” meter cost to be allocated by simply dividing that number by the number of residential customers regardless of what meter or meters a residential customer has. The cost per meter used by AE residential customers range from a low of \$18 to a high of \$396. Consequently, there is not a direct correlation between the addition of another AE customer and a “fixed” meter cost. Moreover, the City of Austin has a new policy that requires customers, directly, or through developers to pay for meters when a new service is requested. Consequently, meter costs will not be increasing by a “fixed” amount with the addition of a residential customer, but will diminish as the number of residential customers increases.
2. **AE’s position that its production costs are fixed is inconsistent with its cost of service analysis.** Just as in Subsection 1(b) in this paragraph points out production costs are not fixed by the addition of an AE customer; but by usage characteristics of residential customers. Consequently, energy charge residential tariffs should reflect the fact that residential usage characteristics affect the costs AE must incur to provide services. AE’s current rate design does this.
  3. **AE agrees that rate design “should provide incentives for energy conservation, promote the efficient use of resources, and encourage consumer investment in energy efficiency”<sup>6</sup> but its residential rate design proposal hinders that policy.** Energy efficiency reduces the cost of production by either delaying the construction of new power plants, or not having to build a new power plant to replace one being retired. An inverted block rate design promotes energy efficiency. The design of an inverted block rate requires the initial block or first two blocks, depending upon the number of rating tiers, to be priced below average cost because AE’s revenue recovery is limited to its embedded costs. Subsequent blocks are priced at increasingly higher prices to reflect

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<sup>6</sup> See Appendix B, Bates Stamp p. 191, of the rate filing package.

the additional costs AE will bear with increased usage. The first tier and perhaps a second tier reflect inelastic usage—that is, price changes in those tiers will not affect usage. Subsequent higher priced tiers reflect usage that can be affected by price. Under an inverted block rate design the average price to a customer is smoothed because each price tier is incrementally added to the bill. A rate design promoting energy efficiency requires low fixed charges so that the inverted block rate design is not transmuted into a flat rate or even a declining block rate design that promotes consumption. AE is proposing to increase the first tier rates and lower the rates for the higher priced tiers. Moreover, AE appears to be interested in increasing fixed charges. AELIC opposes AE's proposals to the extent they seek to increase the overall revenues realized from the first tier and appear to intend to increase fixed costs sometime in the future. AE's first tier represents the most inelastic usage tier. Rates should be significantly below cost. While AELIC takes no position on whether the seasonal rate adjustment should be abolished, AELIC would recommend that the first tier be rearranged so that AE will realize the same revenues. This would seem to be done by taking a weighted average of the summer and winter rates, weighted by kWh usage. The same should be done with the second tier. OPC would note that this would appear to result in an increase in revenues from AE's proposal. The remaining tiers should also be adjusted accordingly. No change should be made to the current level of fixed charges in the residential base rates tariff.

4. **Rate design for Street Area Lighting Tariff.** AE's proposed rate design for Street Area Lighting should be adjusted to replace residential and business customers with the City of Austin as customer.
  - a. Charging residential and business customers for a City's area street lighting is contrary to standard industry practices as evidenced in rate cases before the Texas Public Utility Commission.
  - b. AE is treating its residential and business customers differently depending upon whether their service locations are within or outside the city limits of Austin. Outside the city limits of Austin, AE currently charges cities in its service territory and not its residential and business customers located in those areas. This is discriminatory ratemaking contrary to the Public Utility Regulatory Act.
  - c. Charging residential and business customers for street area lighting as opposed to the municipality results in exacerbating affordability concerns involving utility services and also results in creating less competitive rates for its business customers contrary to rate policies that the City Council has addressed.
5. **PSA rates should not have seasonal adjustments nor should AE's overearnings accruing under its PSA rates be used to fund reserves instead of being refunded to its customers.**
  - a. Adding a seasonality adjustment to the PSA is inappropriate. The volatility of fuel costs and market costs are not limited to seasonal time periods. Second, AE is already allowed to adjust its PSA rates when costs are expected to increase or decrease. Third, AE's incurrence of higher purchase power costs should be offset by its production portfolio. Fourth, an unplanned plant outage or an unexpected weather event when a plant is down for maintenance causes purchase power price changes. These unplanned events don't always occur in the summer but in the winter as well such as the rolling blackouts in the winter

AE experienced a few years ago. These non-seasonal factors negate a need for a reasonable adjustment to the PSA rates.

- b. Failure to refund overearnings to customers under a pass-through cost tariff such as the PSA violates state law. PSA or fuel factor rates were first established in Texas to address the volatility of fuel prices. Regulatory authorities were allowed to provide utilities a quick adjustment to fuel-related tariffs, but the costs and the revenues realized were subject to reconciliation.<sup>7</sup> Reconciliation means that a new fuel factor/PSA rate is set based on adjustments to costs and revenues forming the basis to the old rate to reflect the costs that actually incurred and the revenues that were actually realized. Reconciliation is reflected in the current PSA formula. AE is proposing to be allowed to continue to re-adjust PSA rates upward when it experiences an under recovery; but that AE would not be required to adjust its rates downward when it experiences an over recovery of its costs. This violates the state law authorizing AE's PSA factor.

6. **AE should not charge residential customers late payment penalty fees.** AE charges a late payment penalty fee of 5% of the bill if payment is not received by AE's due date. The Texas Public Utility Commission's customer protection rules do not allow late payment penalty fees to be assessed to residential customers who are still served by regulated monopoly utilities like AE. This fee is not cost based and therefore punitive given the fact that AE customers cannot choose when their electric bills are due and customer payments to AE through third party agents such as HEB have a delay in AE payment receipt of at least a business day.
7. **AE should delete the pilot prepayment rate tariff from its rate filing package because it is currently being offered and will terminate at the end of the current FY and not be provided until data is evaluated.** At the City of Austin Electric Utility Commission meeting held on April 18, 2017, Mr. Dombrowski speaking on behalf of Austin Energy stated that the current Prepayment rate tariff pilot would be expiring at the end of FY 2016 and will then be evaluated to see what changes, if any, should be made including whether it should remain discontinued. In response to questions from Commission members, Mr. Dombrowski stated that there would be lots of data to be gathered after the pilot project is expired before any report could be made. Consequently, this tariff should not be included in the tariff package. The current pilot project raises many unanswered customer protection questions and was developed in the absence of a dialogue within the community as reflected in AE's responses to parties' discovery requests including AE's responses to AELIC's 2<sup>nd</sup> RFIs to AE provided in this case.

#### RESERVATION OF RIGHTS

As mentioned in the opening paragraph, AELIC reserves the right to change its position on the issues in the case as further review occurs.

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<sup>7</sup> See Public Utility Regulatory Act, Texas Utilities Code, §36.203.

Respectfully Submitted

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Attorneys for AE Low Income Consumers

### **CERTIFICATE OF SERVICE**

The undersigned certifies that TLSC has served a copy of the attached document upon all known parties of record by email and to the Impartial Hearing Examiner on the 2<sup>nd</sup> day of May 2016

/S/ Lanetta M. Cooper  
Lanetta M. Cooper





Exhibit A-

April 26, 2016

**VIA HAND DELIVERY**

Amanda Crawford - Chief  
Open Records Division  
Office of the Attorney General of Texas  
Price Daniel Sr. Bldg. — Suite 600  
209 West 14<sup>th</sup> Street  
Austin, Texas 78701

Re: ***Request by Texas Legal Services/AE Low Income Customers RFI filed with Austin Energy Requesting Certain Coal Supply Contracts***

Dear Ms. Crawford:

On April 12, 2016, the Lower Colorado River Authority (LCRA) received a third-party notification from the City of Austin/Austin Energy ("the City") regarding a request for information (RFI) under the City's electric rate proceeding discovery process.<sup>1</sup> (See **Exhibit A**) The City states that two of the RFI's can be answered by providing Austin Energy's coal supply contracts and that the responsive contracts relate to competition and to public power utility competitive matters of Austin Energy and would provide an advantage to its competitors in the public power market.<sup>2</sup> A copy of responsive contracts are provided again for your convenience. (See **Exhibit B**, consisting of **Exhibits B-1 and B-2**)

LCRA questions whether the RFI's received by the City trigger the Public Information Act (the Act) as the RFI's were submitted as part of discovery in what seems to be a litigation or administrative hearing before a hearings examiner. Section 552.0055 of the Act states that a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under the Act. If the matter at hand constitutes an administrative hearing or a request submitted under the rules of civil procedure, then the RFI's should not be considered an open records request under the Act.

Notwithstanding, if the RFI's are considered requests under the Act, then, as discussed below, LCRA concurs with the City's conclusions. Furthermore, LCRA has determined that the responsive contracts are the type of information that is excepted from disclosure because the release of the contracts, and the terms therein, would negatively

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<sup>1</sup> See, Page 2 of the City's Third Party Notification.

<sup>2</sup> Id.

impact LCRA's rights and competitive interests in the public power market. Therefore, LCRA seeks to protect its third party interests and protect any information that is responsive to the RFI's received by the City that would impact or jeopardize LCRA's ability to compete in the public power market.

Specifically, LCRA has determined that the contracts that are responsive information to RFI's 7-24 and 7-25 consist of competitive electric information and competitive bidding information, the release of which will impact LCRA's ability to compete in the public power market. Therefore, the information requested is excepted from disclosure under §§ 552.104 and 552.133 of the Texas Public Information Act, Chapter 552, Texas Government Code.

**Exhibit B-1-** [REDACTED]

**Exhibit B-2 -** [REDACTED]

Exhibit B, consisting of representative documents in Exhibits B-1 through B-2, consists of information containing or reflecting the terms and conditions LCRA and the City have agreed to and entered into for the purchase of coal to fuel certain power plants that are separately owned and operated or co-owned by LCRA and the City.

The representative sample of documents in Exhibit B include pricing and cost terms and provisions and descriptions of those pricing and cost provisions. As discussed further below, the release of the type of information represented in Exhibit B would jeopardize LCRA's position in the competitive wholesale public power electric market and provide an advantage to its competitors in that market.

### **Exceptions to Disclosure**

#### **Section 552.133 Exception - Competitive Electric Exception**

Section 552.133(b) of the Act states that "Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiple certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter."