

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

AUSTIN ENERGY
MAY 6 AM 11:15
BEFORE THE CITY OF AUSTIN
IMPARTIAL HEARING EXAMINER

**AUSTIN ENERGY'S OBJECTION AND MOTION TO STRIKE PORTIONS OF
THE DIRECT TESTIMONIES OF GARY L. GOBLE AND MARILYN J. FOX ON
BEHALF OF NXP AND SAMSUNG, THE SETON HEALTHCARE FAMILY
PRESENTATION ON THE ISSUES, AND PUBLIC CITIZEN'S AND SIERRA
CLUB'S POSITION STATEMENT/PRESENTATION OF THE ISSUES**

COMES NOW Austin Energy ("AE") and files this Objection and Motion to Strike Portions of the Direct Testimonies of Gary L. Goble and Marilyn J. Fox on behalf of NXP Semiconductor, Inc. and Samsung Austin Semiconductor, Inc., the Seton Healthcare Family Presentation on the Issues, and Public Citizen's and Sierra Club's Position Statement/Presentation of the Issues.

The City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 9.1(a) provides that "[i]rrelevant ... evidence shall be excluded." Texas Rule of Evidence 401 states, "[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Therefore, evidence that has no tendency to make a fact more or less probable than it would be without the evidence, or is of no consequence in determining the action, is irrelevant. Irrelevant evidence burdens the record of the proceeding and obscures the issues to be properly addressed. Austin Energy, therefore, objects and moves to strike from the record irrelevant testimony and presentations on the issues. AE details its objection and the basis for striking such testimony and presentations as follows:

**I. OBJECTION TO TESTIMONY AND PRESENTATIONS ON ADJUSTMENTS
TO TRANSMISSION COSTS**

AE objects to page 4, lines 8-13 and page 44, lines 11-12 of the Direct Testimony of Gary L. Goble on Behalf of NXP and Samsung; page 22, line 14-page 27, line 8 of the Direct

Testimony of Marilyn J. Fox on Behalf of NXP and Samsung; and page 2, 4th Issue, of the Seton Healthcare Family Presentation on the Issues regarding adjustments to AE's transmission costs. This testimony is irrelevant because it has no tendency to make a fact more or less probable than it would be without the evidence and is of no consequence in determining an action in this proceeding. Therefore, the testimony should be stricken from the record.

On page 4 of his Direct Testimony, Gary L. Goble on behalf of NXP and Samsung states, "I recommend that AE's transmission cost of service be revised to comport with the Order issued by the PUC in Docket No. 45382. In that Order, the ERCOT Postage Stamp Rate was increased for AE's transmission payments and revenues. As a result, AE's revenues for transmission provided for others and expenses for transmission provided by others both increased." On page 44 of his testimony, Mr. Goble recommends that AE "[u]se the most recent TCOS information from PUC Docket No. 45387 for purposes of adjusting transmission costs." Ms. Fox also testifies on page 23 of her testimony that "AE should use the most recent PUC approved ERCOT statewide postage stamp rate," and recommends that AE increase its transmission service revenue to reflect an amount stated in PUC Docket No. 45382 on page 24. Additionally, page 2 of the Seton Healthcare Family Presentation on the Issues states, "Seton recommends that the Revenue Requirement be reduced by approximately \$14 million, resulting from net changes in transmission costs and revenue."

This testimony and presentation on the issues should be stricken because transmission issues are outside the scope of this proceeding and, therefore, they have no bearing on the case and burden the record. AE's transmission costs are not within the scope of this proceeding as set forth in the Independent Hearing Examiner's ("IHE") 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 pursuant to Tex. Utilities Code § 40.004. 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 costs are reasonable by approving AE's TCOS filing in PUC Docket No. 31462. Therefore, transmission costs are precluded from review in this proceeding and testimony and presentation of the issues bearing on them are irrelevant.

II. OBJECTION TO TESTIMONY ON AE'S USE OF THE CASH FLOW METHOD

AE objects to pages 4, line 12-10, line 17 of the Direct Testimony of Marilyn J. Fox on Behalf of NXP and Samsung regarding Austin Energy's use of the cash flow methodology. This testimony is irrelevant because it has no tendency to make a fact more or less probable than it would be without the evidence and is of no consequence in determining an action in this proceeding. Therefore, the testimony should be stricken from the record.

On page 8 of her testimony, Ms. Fox addresses whether the cash flow method is preferable to other methods to determine return for a municipally-owned utility and quotes statements made by the PUC's Director of the Rate Regulation Division during the PUC appeal of AE's last rate case. On page 9, Ms. Fox testifies that the cash flow method "does not incentivize prudent financial practices or cost savings," which "highlight[s] the unreasonable nature of a municipally-owned utility using a Cash Flow method," and that "[t]he Debt Service Coverage methodology would have been more appropriate." Ms. Fox also states on page 10 of her testimony, "[t]he Impartial Hearings Examiner determined that the issue of what methodology should be used to determine return was not within the scope of this proceeding..." Despite this recognition, Ms. Fox proceeds to recommend "...that the use of a Cash Flow method to determine return should be fully vetted by the Austin City Council."

This testimony is irrelevant because AE's use of the cash flow method is not at issue in this proceeding. Indeed, according to the IHE's Memorandum No. 11, "Austin Energy's decision to utilize a cash flow basis to determine just and reasonable base rates in lieu of debt

service coverage is outside the scope of this proceeding.” This testimony should therefore be stricken to avoid burdening the record with irrelevant testimony that risks confusing the issues. Ms. Fox’s comments regarding PUC Staff’s testimony against AE’s use of the cash flow method in PUC Docket No. 31462 obscures the fact that the Commission approved AE’s use of the cash flow method. Further, Ms. Fox’s testimony that the cash flow method is “unreasonable” for a municipally-owned utility (“MOU”) contradicts P.U.C. SUBST. R. 25.192(c)(2), which states that an MOU may follow the cash flow method in determining its revenue requirements. Including this irrelevant testimony in the record risks confusing the issues and obscuring Ms. Fox’s relevant testimony.

III. OBJECTION TO PRESENTATION ON INCREASING AE’S EES FEE

AE objects to pages 27-32 (i.e., Issue #6) of Public Citizen’s and Sierra Club’s (“Public Citizen/Sierra Club”) Position Statement/Presentation of the Issues regarding increasing Austin Energy’s Energy Efficiency Services (“EES”) Fee.

On page 30 of its Position Statement/Presentation of the Issues, Public Citizen/Sierra Club states, “the EES fee should be increased to \$0.00280 per kilowatt-hour to make sure there is sufficient monies to reach our important policy goals, and which is closer to the actual cost of service for several customer classes.” Public Citizen/Sierra Club further discusses increasing AE’s EES fee on page 31 by stating, “while our proposal would generate a similar amount to the amount generated in FY 2015 under the current EES, the amount generated by Austin Energy’s proposal would be approximately \$9 million less. We are concerned that Austin Energy is setting the EES rate too low to generate sufficient funds to reach the solar and energy efficiency goals set by City Council.”

These position statements regarding increasing AE’s EES fee are outside the scope of this proceeding and, therefore, irrelevant. AE’s EES Fee is included in its Community Benefit Charge (“CBC”). According to the IHE’s Memorandum No. 11, the only issues within the scope

of this proceeding regarding the CBC are whether costs related to costs recovered through AE's CBC should be recovered through AE's rates and, if so, how should such costs be allocated to the customer classes, and whether costs recovered through AE's CBC are also being recovered through base rates. However, whether such costs included in the CBC should be increased or decreased is *not* included within the scope of this proceeding. Therefore, Public Citizen/Sierra Club's statements regarding increasing AE's EES Fee are irrelevant to this proceeding, burden the record, and obscure the issues to be properly addressed and, thus, should be stricken from the record.

IV. CONCLUSION AND PRAYER

For the foregoing reasons, AE respectfully requests that the specified portions of the above-referenced testimony and presentation on the issues be stricken, and requests any other relief to which it may be entitled.

Respectfully submitted,

LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800
(512) 472-0532 (Fax)
tbrocato@lglawfirm.com
hwilchar@lglawfirm.com



THOMAS L. BROCATO
State Bar No. 03039030

HANNAH M. WILCHAR
State Bar No. 24088631

ATTORNEYS FOR AUSTIN ENERGY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by fax, e-mail, hand-delivery and/or regular, first class mail on this 6th day of May 2016, to the parties of record.



HANNAH M. WILCHAR