

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

**AUSTIN ENERGY
2016 MAY 23 PM 12:26
BEFORE THE CITY OF AUSTIN
IMPARTIAL HEARING EXAMINER**

**INDEPENDENT CONSUMER ADVOCATE'S MOTION TO STRIKE
A PORTION OF AUSTIN ENERGY'S REBUTTAL TESTIMONY PROPOSING
A NEW CHANGE TO THE ENERGY EFFICIENCY SERVICES CHARGE**

COMES NOW the Independent Consumer Advocate ("ICA") and hereby submits this Motion to Strike a Portion of Austin Energy's ("AE" or "Utility") Rebuttal Testimony filed on Friday, May 20, 2016 that proposes a significantly different allocation of the EES charge than AE initially proposed in this proceeding. ICA specifically requests that the Impartial Hearing Examiner ("IHE") strike the following testimonial discussion and accompanying table that proposes a brand new AE position regarding customer class allocations for the Energy Efficiency Services Charge ("EES"):

- The portion of the Rebuttal Testimony of Deborah Kimberly starting at page 15, line 15 through page 16, line 14.

Included in this portion of AE's written "rebuttal" testimony is a table showing a "corrected proposal" that would increase the initial proposed residential EES rate from \$0.00246 to \$0.00470, a nearly doubling of this charge for residential customers. Comparatively, the new AE table shows that the initial proposed EES charge for the P1, P2, and P3 customer classes would decrease by nearly half in this new AE proposal, from \$0.00240 down to \$0.00125. AE claims that this new proposal would not increase spending on energy efficiency programs; however, it would cause a material and dramatic shift in customer class cost responsibility onto residential electric customers (perhaps

shifting millions of dollars). AE's rebuttal testimony does not quantify the cost shift that would occur as a result of this new proposal. ICA contends that this is not a "correction", but rather it is a brand new and different position on an issue that would have a material impact on the monthly bills of AE's residential customers.

The AE rebuttal testimony in question purports to respond to issues raised by Public Citizen / Sierra Club ("PCSC") regarding a proposal for an overall \$9 million increase in the EES charge to fund energy efficiency programs.¹ The AE rebuttal testimony in question opposes the PCSC proposal to increase the overall funds collected through the ESS charges, but then proceeds to propose a reallocation of its original proposal for FY17 EES charges to include a dramatic shift from the largest customers to the residential customer class. The AE rebuttal testimony in question states that its new proposal would have no impact on aggregate funding for programs.² The new AE position is not responsive to the issues raised by PCSC; rather it is a new direct rate case position that is inappropriate for AE to adopt for the first time in its rebuttal testimony.³

It is not proper for AE to propose such a significant class allocation issue in rebuttal testimony, because at this late stage in the procedural schedule the intervening parties such as the ICA will not have an adequate opportunity to provide written rebuttal on the new AE position. Such a position could have been included in AE's original class cost of service and rate design proposal at the onset of this proceeding, but the utility failed to do so. Minor corrections that are responsive to the testimony of other parties may be

¹ See PCSC May 3, 2016 Position Statement/Party Presentation, pp. 27-32.

² Kimberly Rebuttal Testimony, p. 16, line 12.

³ It is also interesting to note that if AE prevails on its own motion to strike PCSC testimony, then there would be no testimony to which it may "respond" on the issue of the EES charge. Either way, the PCSC testimony arguing for an increase in the EES charge overall is a tenuous justification for AE to supplement the record with a dramatic shift in cost allocations within the EES charge.

appropriate in rebuttal, but the new position in question here is not minor, it is not responsive to earlier testimony, and it is unfair for AE to supplement the record through rebuttal testimony with a wholly different allocation methodology, depriving the ICA from an adequate opportunity to investigate and respond to this new methodology prior to the hearing.

Section 6.1(c)(1) of the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates states that AE may file rebuttal testimony that contains a "response to the issues and concerns outlined in the Party's Presentations", but the rules do not say that AE may use its rebuttal to make entirely new proposals to shift class cost responsibility. The nature of the testimony in question is not that of a minor "correction", but rather a significantly new and different method of allocating EES costs.

The procedural rules of the Texas Public Utility Commission ("PUC") contain guidance regarding how far a utility may go to supplement its original prefiled testimony:

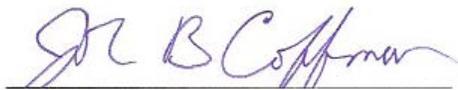
Oral or written supplementation of prefiled testimony and exhibits may be allowed prior to or during the hearing provided that the witness is available for cross-examination. **The presiding officer may exclude such testimony if there is a showing that the supplemental testimony raises new issues or unreasonably deprives opposing parties of the opportunity to respond to the supplemental testimony [emphasis added]. . .**⁴

The AE rebuttal testimony in question supplements its original proposal on EES rates, by developing a new a new position on the issue for which the ICA will not have an opportunity to address in written prefiled testimony. The new AE proposal for EES rates deviates far too much from its original position to be considered a "correction", and it has been proposed too late in this proceeding to fairly allow intervening parties to respond.

⁴ PUC Procedural Rules, Subchapter L, Section 22.225(c).

WHEREFORE, the ICA respectfully requests that the Impartial Hearing Examiner strike the identified portion of the rebuttal testimony of AE witness Kimberly and instruct Austin Energy that it is too late to propose their new position on the reallocation of EES costs in this proceeding.

Respectfully submitted,

A handwritten signature in blue ink that reads "John B. Coffman". The signature is written in a cursive style and is positioned above a horizontal line.

John B. Coffman
Independent Consumer Advocate

Submitted this date: May 23, 2016

CERTIFICATE OF SERVICE

The forgoing filing has been served upon all of the email addresses contained on the official Service List for this proceeding as found on the website for the Office of the City Clerk's website on this 23rd day of May, 2016.