

**AUSTIN ENERGY 2016 RATE REVIEW**

AUSTIN ENERGY  
2016 MAY 31 AM 8:54

<b>AUSTIN ENERGY'S TARIFF</b>	<b>§</b>	
<b>PACKAGE UPDATE OF THE 2009</b>	<b>§</b>	<b>BEFORE THE CITY OF AUSTIN</b>
<b>COST OF SERVICE STUDY AND</b>	<b>§</b>	<b>IMPARTIAL HEARINGS</b>
<b>PROPOSAL TO CHANGE BASE</b>	<b>§</b>	<b>EXAMINER</b>
<b>ELECTRIC RATES</b>	<b>§</b>	

**IMPARTIAL HEARING EXAMINER'S MEMORANDUM NO. 17:**

**MEMORIALIZING PREHEARING CONFERENCE AND ESTABLISHING,  
RULING ON REMAINING EVIDENTIARY OBJECTIONS, AND  
PROCEDURES FOR HEARING ON THE MERITS**

The Impartial Hearing Examiner convened a prehearing conference on May 26, 2016 to address pending motions and procedural matters regarding the upcoming hearing on the merits. At that prehearing conference the Impartial Hearing Examiner ruled on most pending objections and motions to strike certain parties' prefiled direct presentations and testimonies and on motions regarding the procedural schedule for the hearing on the merits, including the order of the parties' presentation of their respective cases. The Impartial Hearing Examiner's rulings are set forth below.

**I. OBJECTIONS AND MOTIONS TO STRIKE TESTIMONY OR PRESENTATIONS**

**A. Austin Energy Low Income Customers' Objection to the Rebuttal Testimony of Mark Dombroski**

While styled as an objection, at the prehearing conference counsel for Austin Energy Low Income Customers ("AELIC") clarified that AELIC's motion was a request to have admitted into evidence, at the same time Mr. Mark Dombroski's rebuttal testimony is admitted into evidence, the remainder of AELIC Request for Information ("RFI") No. 1-2, including a copy of AE's study referred to in the response to AELIC

RFI No. 1-2.

Austin Energy noted it had no objection to AELIC's request. Therefore, the documents appended to AELIC's objection to the rebuttal testimony of Mr. Mark Dombroski will be admitted into the record when offered by AELIC into evidence by AELIC.

**B. Independent Consumer Advocate's Motion to Strike a Portion of AE's Rebuttal Testimony Regarding a Change to the Energy Efficiency Services Charge**

The Independent Consumer Advocate ("ICA") objected to AE's witness' testimony filed by Ms. Deborah Kimberly at p. 15, line 15 through page 16, line 14 regarding AE's proposed change to the allocation of recovery of revenue through AE's Energy Efficiency Services ("EES") charge.

At the prehearing conference AE noted that the time for its reply to the ICA's was not due until May 31, 2016 and requested the opportunity to file its reply at that time. Thus, the Impartial Hearing Examiners is not ruling on the ICA's objection at this time and will rule after AE files its reply to the ICA's objection to Ms. Kimberly's testimony.

**C. NXP/Samsung's Objection and Motion to Strike Public Citizen/Sierra Club's Position Statement and Presentations**

NXP/Samsung filed an objection to Public Citizen and Sierra Club's direct and rebuttal presentations because at the time Public Citizen/Sierra Club filed their statement of position and presentations, Public Citizen/Sierra Club had not identified a witness who would sponsor the their presentations.

The Impartial Hearing Examiner noted that for any Statement of Position or any

presentation addressing relevant issues in this proceeding that was not supported by a witness would not be considered evidence in the proceeding upon which the Impartial Hearing Examiner could or would base recommendations to the Austin City Council.

At the prehearing conference Public Citizen/Sierra Club and NXP/Samsung noted that Public Citizen/Sierra Club informed NXP/Samsung that Public Citizen/Sierra Club would indeed present a witness to support its presentation and present that witness (or witnesses) for cross-examination. Thus, no ruling by the Impartial Hearing Examiner is required on this matter.

**D. AE's Objection to Mr. Paul Robbins' Direct Testimony**

Austin Energy objected to Mr. Paul Robbins' testimony regarding what AE referred to as "Disputed Property" under Issue 1: Imprudence Due to Misuse of Property." AE contended that this portion of Mr. Robbins' testimony was irrelevant because it addressed data pre-dating the period upon which AE's proposed change in rates is based. Mr. Robbins' testimony presented data for events occurring in AE's 2009 Test Year and before AE's 2012 rate case, time frames outside the period at issue in AE's rates in this proceeding.

For the reasons noted in AE's objection and motion to strike, the Impartial Hearing Examiner **GRANTS** AE's motion to strike Mr. Robbins' testimony regarding "Disputed Property" under Issue 1: Imprudence Due to Misuse of Property."

**E. AE's Objection and Motion to Strike Portions of the NXP/Samsung's Direct Testimonies of Gary L. Goble and Marilyn J. Fox; Seton Healthcare Family's Presentation; and Public Citizen/Sierra Club's Statement of Position and Presentation**

**1. AE's Objection and Motion to Strike Portions of the NXP/Samsung's Direct Testimonies of Gary L. Goble and Marilyn J. Fox and Seton Healthcare Family's Presentation**

**a. Objection and Motion to Strike Portions of the NXP/Samsung's Direct Testimonies of Gary L. Goble and Marilyn J. Fox and Seton Healthcare Family's Presentation Regarding TCOS**

Austin Energy objected on the grounds of relevance to the following portions of NXP/Samsung's and Seton Healthcare Family's testimony or presentations:

NXP/Samsung's witness Mr. Gary L. Goble's testimony at page 4, lines 8 – 13 and page 44, lines 11 – 12;

NXP/Samsung's witness Ms. Marilyn J. Fox' testimony at page 22, line 14 through page 27, line 8; and

Seton Healthcare Family's presentation addressing adjustments to AE's transmission costs (Seton Healthcare's 4<sup>th</sup> Issue: Adjustment to Transmission Costs and Revenue).

AE argued that issues regarding its transmission costs were outside the scope of the proceeding because AE's transmission cost of service ("TCOS") are exclusively set by the Public Utility Commission of Texas ("PUCT") and also cited to the Impartial Hearing Examiner's Memorandum No. 11 at Paragraph No. 3, under "Issues Outside the Scope of the Rate Review Process," which states:

3. Except as noted above in Issue No. 23 regarding Austin Energy's Transmission Cost of Service, the reasonableness of Austin Energy's Transmission Cost of Service ("TCOS") is outside the scope of this proceeding.

NXP/Samsung argues that Mr. Goble's and Ms. Fox' testimony are within the scope of Issue Nos. 16 and 23. Memorandum No. 11 at Issue Nos. 16 and 23, states:

16. Are any costs related to costs recovered through Austin Energy's Regulatory

Charge also being recovered through base rates?

23. Are any costs related to Austin Energy's Transmission Cost of Service also being recovered through base rates?

NXP/Samsung contends there is a distinction between the expense AE recovers through its Regulatory Charge and the revenue it collects through its TCOS rates and that absent the adjustment its witnesses propose, AE's base-rate revenue requirement is overstated.

While the Impartial Hearing Examiner concluded in Memorandum 11 that the reasonableness of AE's TCOS was outside the scope of this proceeding, NXP/Samsung and Seton Healthcare's witnesses' testimonies raise sufficient questions as to whether the change by the PUCT regarding AE's TCOS leads to an overstatement of AE's base rates.

Therefore, the Impartial Hearing Examiner **OVERRULES** AE's objection to Mr. Goble, Ms. Fox, and Seton Healthcare's testimonies and presentations regarding AE's TCOS expense and revenue and **DENIES** AE's motion to strike regarding these testimonies. The Impartial Hearing Examiner cautions the parties that the extent of examination in this proceeding regarding AE's TCOS will focus on whether AE's base rates are impacted by AE's TCOS expense and revenue.

**b. Objection and Motion to Strike Portions of the NXP/Samsung's Direct Testimony of Marilyn J. Fox Regarding AE's Use of Cash Flow Method**

Austin Energy objected to Ms. Fox' testimony regarding AE's use of the cash flow methodology to set its AE's base rates. The portion of Ms. Fox' testimony objected is found at page 4, line 12 through page 10, line 17 of Ms. Fox' direct testimony.

The Impartial Hearing Examiner's Memorandum No. 11 excluded from the scope of this proceeding AE's decision to utilize a cash flow basis for determining it just and reasonable base rates in lieu of a debt service coverage method. NXP/Samsung argues that the issue of AE's use of the cash-flow method to determine its rates is within the scope of this proceeding because its use goes to the ultimate issue in this proceeding set forth in Issue No. 1 in Memorandum No. 11, that is, whether Austin Energy's proposed base-rate revenue is just and reasonable.

In effect it appears that NXP/Samsung's purpose for raising AE's use of the cash-flow method is not to use Ms. Fox' criticism of the cash-flow method to support a specific adjustment to AE's revenue. In fact, Ms. Fox expressly states that she did not calculate AE's revenue based on what she believes to be a more appropriate method for determining a municipally owned utility's revenue requirement, the Debt Service Coverage method. Instead, it appears to be NXP/Samsung's argument that Ms. Fox' criticism of the cash-flow method generally supports her testimony regarding AE's revenue requirement, and hence, is within the scope of Issue No. 4: Is Austin Energy's proposed base-rate revenue just and reasonable? To this extent, generally as support for the remainder of her testimony, the Impartial Hearing Examiner concludes that Ms. Fox' testimony regarding AE's use of the cash-flow method is within the scope of Issue No. 4.

Therefore, the Impartial Hearing Examiner **OVERRULES** AE's objection to Ms. Fox' testimony at page 4, line 12 through page 10, line 17 and **DENIES** AE's motion to strike such testimony. However, any evidence regarding the specific effect of using a method other than the cash-flow method in this proceeding is outside the scope of this

proceeding. Whether AE ultimately changes or does not change how it calculates its rates is a decision to be made by Austin's City Council, and that is the crux of Ms. Fox' testimony regarding the cash-flow method, and it is so limited.

**2. AE's Objection and Motion to Strike Public Citizen/Sierra Club's Statement of Position and Presentation Regarding the Level of EES Revenue**

Austin Energy objected to pages 27 – 32 of Public Citizen and Sierra Club's Position Statement and Presentation of the Issues (related to Issue No. 6) regarding Austin Energy Efficiency Services ("EES") fee and contended that, while the issues of whether the EES fees should be recovered in AE's base rates, and the allocation of recovery of those fees was within the scope of this proceeding, the overall level of revenue attributed to EES functions was outside the scope of the proceeding as noted in the Impartial Hearing Examiner's Memorandum No. 11.

Public Citizen/Sierra Club argued that the level of the EES, the amount of money it raises, and how it is allocated to different rate classes are important issues that should be discussed as part of the present rate case, and that because Austin Energy proposed to change both the allocation and the rates, all issues related to EES were within the scope of this proceeding.

In Memorandum No. 11, the Impartial Hearing Examiner set out issues regarding fees that are part of AE's Community Benefit Charge were limited as follows:

16. Are any costs related to costs recovered through Austin Energy's Regulatory Charge also being recovered through base rates?
17. Are any costs related to costs recovered through Austin Energy's Regulatory Charge more appropriately recovered through base rates?

With regard to issues outside the scope of this proceeding Memorandum No. 11, and particularly with regard to AE's Community Benefit Charge, the Impartial Hearing Examiner set out as outside the scope of this proceeding, the following issues:

2. Except as noted above in Issue Nos. 16 and 17 regarding Austin Energy's Regulatory Charge, level of the Regulatory Charges is outside the scope of this proceeding.

The Impartial Hearing Examiner **SUSTAINS** AE's objection and **GRANTS** AE'S motion to strike pages 27 – 32 of Public Citizen and Sierra Club's Position Statement and Presentation of the Issues (related to Issue No. 6) regarding Austin Energy Efficiency Services ("EES") fee to the extent Public Citizen/Sierra Club's presentation addresses the overall level of revenue or costs recovered through AE's EES charge. Issues related to AE's EES charge are limited as noted in Paragraph Nos. 16 and 17, under Issues Within the Scope of the Rate Review Process.

## **II. HEARING ON THE MERITS**

### **A. Hearing Dates and Start Times**

The hearing on the merits will convene on Tuesday, May 31, 2016 at 9:00 AM, CDT, and will continue through Thursday, June 2, 2016, and reconvene on Saturday, June 4, 2016, beginning at 9:00 AM, CDT each day unless otherwise noted during the hearing.

### **B. Sequence of Presentations**

Based on agreement of the parties, the sequence of presentations of a party's direct case and cross-examination of witnesses' direct and rebuttal testimonies or



presentations, and the approximate amount of time each party will have to present its case, including opening statements, closing statements, presentation of testimony, cross-examination, and re-direct, will be as follows:

**DIRECT:**

Austin Energy (6.0 hours)

Austin Regional Manufacturers Association (0.17 hours, i.e., 10 minutes)

James Rourke

Paul Robbins (0.5 hours)

Greater Austin Chamber of Commerce (0.25 hours)

Data Foundry (1.75 hours)

Bethany United Methodist Church (0.5)

Homeowners United for Rate Fairness (0.5)

Austin Energy Low Income Customers (3.5 hours)

Public Citizen/Sierra Club (6.0)

NXP/Samsung (7.0 hours)

Independent Consumer Advocate (5.0 hours)

**REBUTTAL:**

Austin Energy

The Impartial Hearing Examiner observes that the sequence of presentations and cross-examination noted above is based on the Impartial Hearing Examiner's notes from the pre-hearing conference and not the Court Reporter's transcript. So, the Impartial Hearing Examiner asks the parties to correct any errors or omissions in the sequence noted above.

**C. Copies of Testimony and Exhibits**

The Impartial Hearing Examiner requested that the parties bring to hearing two printed copies of their pre-filed testimonies and/or presentations and 15 copies of any exhibit a party intended to offer into evidence.

**D. Official Notice**

Data Foundry requested that the Impartial Hearing Examiner take official notice of the “NARUC Manual” and the PUCT’s Substantive Rules. The Impartial Hearing Examiner requests that Data Foundry identify with more specificity what precisely and perhaps which edition of the “NARUC Manual” Data Foundry seeks official notice of, as well as which of the PUCT’s Substantive Rules Data Foundry wants officially noticed.

Lastly, the Impartial Hearing Examiner thanks the parties for their cooperation and commends the parties for their ability to reach agreement on the time allotments and sequence of presentation of the parties’ presentations.

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Alfred R. Herrera  
Impartial Hearing Examiner

**DATE: MAY 27, 2016**

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