

## AUSTIN ENERGY 2016 RATE REVIEW

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

## PREHEARING CONFERENCE

Thursday, May 26, 2016

BE IT REMEMBERED THAT at 3:05 p.m., on Thursday, the 26th day of May 2016, the above-entitled matter came on for hearing at Lloyd Gosselink Rochelle & Townsend, 816 Congress Avenue, Suite 1900, Austin, Texas, before ALFRED HERRERA, Impartial Hearing Examiner, and the following proceedings were reported by STEVEN STOGEL, Certified Shorthand Reporter.

AUSTIN ENERGY

2016 JUN -1 PM 3:34

## APPEARANCES

John Coffman, Independent Consumer Advocate  
(Via Telephone)

Clarence Johnson, Independent Consumer Advocate  
(Via Telephone)

Ed Latson, Austin Regional Manufacturers Association  
(Via Telephone)

Thomas Brocato, City of Austin and Austin Energy

Andrea Rose, City of Austin and Austin Energy

Hannah Wilchar, City of Austin and Austin Energy

Paul Robbins, Pro Se

Lanetta Cooper, Austin Energy Low Income Consumers

Chris Hughes, NXP and Samsung

Maria Faconti, NXP and Samsung

Betty Dunkerley, Seton

W. Scott McCullough, Data Foundry

Roger Borgelt, Homeowners United for Rate Fairness

Todd Davey, NXP

Trey Salinas, Coalition for Clean, Affordable, and  
Reliable Energy

Gary Goble, NXP and Samsung

Paul Smolen, NXP and Samsung

Marilyn Fox, NXP

Jose Carrillo, Austin Chamber of Commerce

Kaiba White, Public Citizen and Sierra Club

## APPEARANCES (CONTINUED)

Carol Birch, Public Citizen and Sierra Club

Michael Whellan, St. David's Healthcare

Barry Dreyling, Cypress Semiconductor

Cliff Wells, Bethany United Methodist Church

Cyrus Reed, Public Citizen and Sierra Club

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## P R O C E E D I N G S

THURSDAY, MAY 26, 2016

(3:05 p.m.)

JUDGE HERRERA: Who is on the phone? This is Alfred Herrera, the Hearing Examiner.

MR. COFFMAN: This is John Coffman for the Independent --

(Brief interruption)

MR. LATSON: This is Ed Latson with ARMA.

JUDGE HERRERA: Mr. Latson, remind me what ARMA is.

MR. LATSON: That's correct.

JUDGE HERRERA: Remind me what the acronym ARMA stands for.

MR. LATSON: It's the Austin Regional Manufacturers Association.

JUDGE HERRERA: And, Mr. Coffman, you're the Independent Consumer Advocate?

MR. COFFMAN: That's correct.

JUDGE HERRERA: Okay. And we've gone on the record. I'll go ahead and take -- anyone else on the phone?

MR. JOHNSON: This is Clarence Johnson. I'm also with Independent Consumer Advocate.

JUDGE HERRERA: Okay. What was your name

1 again, please?

2 (No response)

3 JUDGE HERRERA: What was your name again,  
4 please?

5 MR. JOHNSON: Clarence Johnson.

6 JUDGE HERRERA: I'm sorry, Clarence. I  
7 didn't hear you.

8 MR. JOHNSON: I had the phone on mute and  
9 then had to turn it on again.

10 JUDGE HERRERA: I'll take appearances of  
11 the parties here in the room, and we'll just start here  
12 and go around the room.

13 MR. BROCATO: I'm Thomas Brocato on behalf  
14 of City of Austin and Austin Energy. Also Andrea Rose  
15 is here with the City, and Hannah Wilchar.

16 MR. ROBBINS: I'm Paul Robbins, pro se.

17 MS. COOPER: Lanetta Cooper appearing on  
18 behalf of Austin Energy Low Income Consumers.

19 MR. HUGHES: Chris Hughes, NXP and  
20 Samsung.

21 MS. FACONTI: Maria Faconti, NXP and  
22 Samsung.

23 MS. DUNKERLEY: Betty Dunkerley, Seton.

24 MR. MCCOLLOUGH: W. Scott McCullough for  
25 Data Foundry. Did you hear that?

1 (Laughter)

2 MR. BORGELT: Roger Borgelt for Homeowners  
3 United for Rate Fairness.

4 MR. DAVEY: Todd Davey, NXP.

5 MR. SALINAS: Trey Salinas on behalf of  
6 the Coalition for Clean, Affordable, and Reliable  
7 Energy, CCARE.

8 MR. GOBLE: Gary Goble, NXP/Samsung.

9 MR. SMOLEN: Paul Smolen, NXP/Samsung.

10 MS. FOX: And Marilyn Fox, NXP.

11 JUDGE HERRERA: And let's just start over  
12 here on my left, your right, the front row.

13 MR. CARRILLO: Jose Carrillo with the  
14 Austin Chamber of Commerce.

15 MS. WHITE: Kaiba White, Public Citizen.

16 MS. BIRCH: Carol Birch, Public Citizen  
17 and Sierra Club.

18 MR. WHELLAN: Michael Whellan on behalf of  
19 St. David's Healthcare.

20 MR. DREYLING: Barry Dreyling, Cypress  
21 Semiconductor.

22 JUDGE HERRERA: Is that it? Anyone else  
23 who wants to make an appearance?

24 (No response)

25 JUDGE HERRERA: All right. This is the

1 final prehearing conference before the hearing on the  
2 merits next week. On my agenda, what I have -- and I'm  
3 going to probably save the -- what appears the more  
4 controversial issue based on pleadings -- is the  
5 procedural aspects of how we move forward with the  
6 hearing, the time allotments, the sequence of  
7 presentations, and the sequence of cross-examination. I  
8 thought I'd save that to the end and maybe give you guys  
9 an opportunity -- and maybe you've already gone through  
10 the exercise of trying to come up with an agreement on  
11 time allotments and sequence of presentations and  
12 cross-examination.

13 I have a few motions to strike -- I  
14 consider those evidentiary rulings -- and that is it.  
15 Is there anything else that's on the agenda that I'm not  
16 aware of?

17 MS. COOPER: Yes, Your Honor. I do have  
18 outstanding an objection to Mr. -- part of  
19 Mr. Dombroski's testimony, but it's not to strike. It's  
20 to add additional information.

21 JUDGE HERRERA: Right. I consider that to  
22 be an evidentiary matter.

23 Mr. Robbins?

24 MR. ROBBINS: If it's possible, I would  
25 like to get an actual time certain that the various



1 people will give testimony. Is that possible?

2 JUDGE HERRERA: We'll discuss that when we  
3 get to the procedural aspects and decide how much time  
4 Austin Energy is going to get and how much time each  
5 party is going to get. I think that's what you're  
6 asking. Are you asking for time certain for yourself?  
7 I'm not clear on your question.

8 MR. ROBBINS: I'm doing both. I'm trying  
9 to get a time certain for myself, and I'm trying to also  
10 help out my fellow intervenors.

11 JUDGE HERRERA: Let me try to get some  
12 clarification on your question. If you're asking  
13 whether we can have a time certain, for example, when  
14 Mr. Dreyfus goes on the stand or when any of -- any  
15 other witness goes on the stand, I don't know that we  
16 can do that.

17 MR. ROBBINS: Okay.

18 JUDGE HERRERA: We can certainly  
19 accommodate -- I believe we can accommodate witnesses  
20 that may have a conflict in their schedule and need to  
21 appear on a particular day or time. That's one thing.  
22 But in terms of coming up with a schedule that's so  
23 detailed that identifies when during the day and on  
24 which day a witness takes the stand, that is a  
25 challenge.

1 MR. ROBBINS: Judge, I am doing this  
2 pro se, and I would -- it would be a great burden to my  
3 other work if I had to sit through three solid days of  
4 testimony while waiting my turn. If I could get at  
5 least a relative sense of when I am testifying, that  
6 would be helpful.

7 JUDGE HERRERA: We can come back to that.

8 MR. ROBBINS: Okay.

9 JUDGE HERRERA: If we get to that -- when  
10 we get to that point on procedural aspects.

11 In terms of the evidentiary rulings, what  
12 I have is -- I'm going to call it an objection that Low  
13 Income Customers, Texas Legal Services has with respect  
14 to Mr. Dombroski's rebuttal testimony. I see that more  
15 as an issue of optional completeness --

16 MS. COOPER: Yes, sir, it is.

17 JUDGE HERRERA: -- and something we take  
18 up during the hearing when the witness is on the stand.  
19 And if you want to offer the remainder of it and if it's  
20 relevant to what he's testified to, then we'll deal with  
21 it then.

22 MS. COOPER: All right, Your Honor. I was  
23 just worried about the timeliness because of the  
24 prefiled testimony.

25 JUDGE HERRERA: I'm sorry.

1 MS. COOPER: I don't have a problem with  
2 that, Your Honor.

3 MR. BROCATO: And for what it's worth,  
4 Your Honor, we view it, as you do, as really a motion  
5 for optional completeness, and we do not object to that.

6 JUDGE HERRERA: There you go. Then it's  
7 resolved. And we'll turn to the procedures -- what I'm  
8 expecting the parties to do during the hearing when we  
9 get to the procedural aspects of today's discussion.

10 The next item I have is the Independent  
11 Consumer Advocate's objection to Austin Energy's  
12 rebuttal testimony regarding the energy efficiency  
13 service charges.

14 Mr. Coffman, that is your objection. I  
15 have not received -- I think the pleading was filed on  
16 the 23rd, so there has nothing been filed in response.  
17 And, Mr. Brocato, I wasn't sure if you wanted to respond  
18 to that today or you were going to respond to  
19 something -- going to respond in writing.

20 MR. BROCATO: We have, according to my  
21 interpretation of the Rules, until the 31st to file a  
22 response, so we have not filed anything at this time,  
23 but we can endeavor to get something filed so that you  
24 can make your ruling timely.

25 JUDGE HERRERA: So, Mr. Coffman, I'm going

1 to defer ruling on your objection on the energy  
2 efficiency service charges.

3 MR. COFFMAN: Understood. Thank you.

4 JUDGE HERRERA: Okay. Thank you.

5 (Discussion off the record)

6 THE REPORTER: I'm passing around a paper  
7 for an appearance page. Please sign in if you want to  
8 appear. I think I heard you, but it's safer to get you  
9 on paper, please. And if you have a card, there's a  
10 paperclip on there as well. Thank you, Judge.

11 MS. COOPER: And "appear" means if you're  
12 a party, you should probably say your appearance. So I  
13 saw Mr. Wells come in late, and he's a party, so --

14 THE REPORTER: Thank you.

15 JUDGE HERRERA: The next item I have in  
16 terms of evidentiary rulings is NXP/Samsung's motion to  
17 strike the position statement and cross-rebuttal  
18 presentation by Public Citizen and Sierra Club. And as  
19 I understand the objection, it is that there is no  
20 identified witness that supports the presentation. And  
21 I read Public Citizen and Sierra Club's response is that  
22 they will identify one at the appropriate time, and I  
23 can tell you what my sense is on those types of  
24 presentations. If there is not a witness that is going  
25 to be available for cross-examination to explain,

1 support, subject themselves to cross-examination, then  
2 I'm not considering that to be evidence in this  
3 proceeding.

4 I will accept it as a statement in the  
5 case, but it is not something upon which I would base a  
6 recommendation to Counsel within the case. So to the  
7 extent that Public Citizen and Sierra Club do not have a  
8 warm body, let's say, to support the presentation,  
9 whether it's cross-rebuttal or direct, then it is a  
10 comment much as you would file a statement of protest  
11 before the Public Utility Commission in a protested case  
12 there. But if you have a warm body, I think it would be  
13 good to know sooner than later who that will be.

14 MR. HUGHES: Your Honor, they did provide  
15 a list of sponsors, and so I'm not sure that they're all  
16 experts or not, so we'll delve into that later on. But  
17 they did identify sponsors for individual portions of  
18 their statements, and so we'll just deal with it at the  
19 hearing and go to the -- you know, if there's any weight  
20 that's going to be given to it or not at the hearing.

21 JUDGE HERRERA: Thank you.

22 MR. ROBBINS: Question or clarification.  
23 I have -- during a conference a few days ago, I made it  
24 plain that I would be the witness, and I was told that  
25 there was nothing formal that I had to do. I did not

1 have to send you a letter saying "I am the witness." Is  
2 that correct?

3 JUDGE HERRERA: You're fine, Mr. Robbins.  
4 That would be fine.

5 MR. ROBBINS: Okay.

6 MR. BROCATO: It would be helpful, Your  
7 Honor, to us, at least, to definitively list the  
8 witnesses. I have a list of what I think -- I have a  
9 list that I think is comprehensive. I'm happy to read  
10 that out, but whatever you think is --

11 JUDGE HERRERA: What I would propose,  
12 Mr. Brocato, is if you would send that to me in an  
13 email --

14 MR. BROCATO: All right.

15 JUDGE HERRERA: -- I'll circulate it to  
16 the parties, obviously, and folks can comment on it on  
17 whether it's accurate or not.

18 MR. BROCATO: Okay.

19 JUDGE HERRERA: Or we can -- during a  
20 break, you can share it with folks and say, "Are these  
21 your witnesses?"

22 I, too, would like a list of who the folks  
23 are that are going to be testifying during the hearing.

24 MR. HUGHES: Your Honor, Chris Hughes  
25 again. That was what I was going to make a comment with

1 regards to the discussion that we'll probably break up  
2 and have with regards to the procedures and how the  
3 hearing will go, it would be helpful if there's some  
4 requirement that whoever was going to cross-examine, ask  
5 questions, or appear formally at the hearing and, you  
6 know, take action at the hearing, that we know that so  
7 we can take that into account when we're having  
8 discussions about time allotment.

9 JUDGE HERRERA: And I'm going to ask the  
10 parties to let me know who your witness is by Tuesday  
11 noon.

12 MS. COOPER: And, Your Honor, one of the  
13 concerns I have -- and I did raise it in our response to  
14 Austin Energy's motion -- was that there's 20 -- about  
15 25 people who have intervened. Far less have been  
16 active participants. And so to the extent for -- I have  
17 the list of people, and --

18 JUDGE HERRERA: Does this go to the  
19 evidentiary issues, Ms. Cooper, or are we dealing with  
20 procedures?

21 MS. COOPER: No. It goes to procedures.

22 JUDGE HERRERA: Let's wait until we get to  
23 the procedural aspects of it, and we'll deal with it  
24 then.

25 MS. COOPER: I'm sorry, Your Honor. I

1 apologize for jumping the gun.

2 JUDGE HERRERA: I was trying to address  
3 NXP's concerns with regard to --

4 MS. COOPER: I apologize.

5 JUDGE HERRERA: -- no witness, and we kind  
6 of delved off --

7 MS. COOPER: Chased that rabbit, yeah.

8 JUDGE HERRERA: -- into some procedural  
9 aspects.

10 MS. COOPER: Okay.

11 MR. BROCATO: Your Honor, if I may.  
12 Actually, you are asking that parties identify their  
13 witnesses no later than noon on Tuesday, and of course  
14 we'll be in the hearing at that point.

15 JUDGE HERRERA: You're right. I kept  
16 thinking it was Friday.

17 MR. BROCATO: My request would be that we  
18 identify them right now, because we've got a weekend of  
19 preparation -- so do the parties, I think -- although  
20 they certainly know our witnesses, but I think it's  
21 useful for everyone to know.

22 JUDGE HERRERA: I think that's perfectly  
23 fine. Have the parties had these discussions already?

24 MR. BROCATO: Well, we've seen the  
25 testimony, and we did have a meeting on Monday to talk



1 about some of the issues, and at that time, the  
2 parties -- there were some parties who said they wanted  
3 their presentation to be a statement of position, and  
4 other parties stated who their witnesses were going to  
5 be. And as Mr. Hughes stated, parties also responded to  
6 some discovery on that very point.

7 So my suggestion would be that I just read  
8 out the list that I have, and if anyone feels that it's  
9 incorrect in any way, please speak up.

10 JUDGE HERRERA: That's fine, Mr. Brocato.  
11 Let's do it that way. And I would still like a written  
12 version of what you're going to read out because I can't  
13 scribble very quickly.

14 MR. BROCATO: Sure. Sure. So what I  
15 have -- and this is actually corrected to the pleading  
16 that we filed. In that pleading, I did not identify  
17 Ms. Elaina Ball, although we had previously identified  
18 her in our RFI responses. So Austin Energy's direct  
19 case consists of five witnesses that are each sponsoring  
20 a portion of the rate filing package, and those  
21 witnesses are Elaina Ball, Mark Dombroski, Mark Dreyfus,  
22 Kerry Overton, and Debbie Kimberly.

23 MS. DUNKERLEY: Who was the last one?

24 MR. BROCATO: Debbie Kimberly. Now, as  
25 you all know -- or many of you know -- we have proposed

1 to have them cross-examined as a panel. I know not  
2 everyone agrees. We're certainly willing to talk about  
3 that. So we have not identified an order at this point,  
4 but if we are required to present them individually, we  
5 can certainly do that, and I can do that today following  
6 any ruling.

7 For Intervenors, I show the following:  
8 For AELIC I show Lanetta Cooper and Carol Szerszen.

9 For the Independent Consumer Advocate, I  
10 show Clarence Johnson.

11 For NXP and Samsung I show Marilyn Fox and  
12 Gary Goble.

13 For Paul Robbins, I show Paul Robbins.

14 For Public Citizen and Sierra Club, I show  
15 four witnesses: Paul Chernick, Leslie Libby, Mark  
16 Kapner, and Cyrus Reed.

17 For Bethany United Methodist Church, I  
18 show Cliff or Clifford Wells.

19 All of those individuals that I just  
20 listed, to my understanding, are offering testimony into  
21 evidence and are subjecting themselves or making  
22 themselves available for cross-examination.

23 Jim Rourke has confirmed to me that he is  
24 offering his presentation as a statement of position and  
25 is not, therefore, making himself available for

1 cross-examination.

2 A number of other parties have filed  
3 presentations as well, and to my understanding each of  
4 those, including ARMA, Data Foundry, Chamber of  
5 Commerce, Seton, HERF, and probably another one or two  
6 that I may have left out, all are submitting their  
7 presentations as statements of position and are not  
8 offering up a witness.

9 Before I move on to our rebuttal case, it  
10 might be good at this time to ask: Is that consistent  
11 with the understanding of everyone else in the room?

12 MR. HUGHES: Yes. I would want to, at  
13 some point when we get into more detail on the timing,  
14 clarify that may be the witness list, folks who will be  
15 available for cross-examination or to take questions --  
16 who -- it might help for us also to know who of the  
17 other intervenor that may not have filed anything will  
18 ask questions or intend to cross anybody.

19 MS. COOPER: That's part of a concern I  
20 have.

21 JUDGE HERRERA: We'll deal with that when  
22 we get to the procedural aspects. I think that's an  
23 important question so we know how much time we need.

24 MS. COOPER: I do have one concern,  
25 Mr. Brocato. I don't recall Mr. Overton being

1 identified as a witness on direct, and one of the things  
2 I had asked is who sponsors -- and I could be wrong. I  
3 don't have my book here to double-check, and so --  
4 because I had identified what portions of, for lack of a  
5 better concept, direct testimony he or she was going to  
6 cover.

7 MR. BROCATO: He is. And I believe, off  
8 the top of my head, it's 3.1 --

9 MS. COOPER: I'll check back home, and I  
10 can call you. I'm not --

11 (Simultaneous discussion)

12 THE REPORTER: I'm sorry. One at a time.

13 MS. COOPER: I apologize. I can get with  
14 you, Tom.

15 MR. BROCATO: Oh, thank you. Yes, Kerry  
16 Overton -- yeah, I got it wrong. He is sponsoring  
17 Sections 3.6.5 --

18 MS. COOPER: Okay.

19 MR. BROCATO: -- and 3.6.6.

20 MS. COOPER: All right. Sorry about that.  
21 Bad memory.

22 MR. BROCATO: All right. If there's  
23 nothing more on that, then I'll close with our rebuttal  
24 witnesses. We have eight rebuttal witnesses, and we  
25 have proposed to make them available in the following

1 order: Mark Dombroski, Joe Mancinelli, Ed Van Eenoo,  
2 Greg Canally, Kerry Overton, Debbie Kimberly, Russell  
3 Maenius, and Mark Dreyfus.

4 JUDGE HERRERA: Are those all the  
5 witnesses?

6 (No response)

7 JUDGE HERRERA: Okay. Thank you,  
8 Mr. Brocato. The next objection I have is Austin  
9 Energy's objection to Mr. Robbins' testimony regarding  
10 what I'll call --

11 MR. ROBBINS: Regarding what?

12 JUDGE HERRERA: I haven't said yet --

13 (Laughter)

14 JUDGE HERRERA: -- regarding costs and  
15 assets that relate to 2009 and 2012, which predate what  
16 I'll call the test year that Austin Energy is using in  
17 this case, and I am going to sustain that objection.

18 The next objection that I have is Austin  
19 Energy's objection to NXP's testimony on use of updated  
20 TCOS rates and revenue. I'm using a very shorthand to  
21 describe your objection -- if I mischaracterize it,  
22 please correct me, but that's my characterization of  
23 it -- with regard to Mr. Goble's and Ms. Fox's  
24 testimony. And what I'd like is a bit more explanation  
25 from NXP regarding how those particular TCOS rates and

1 revenues affect base rates in this proceeding.

2 MR. HUGHES: What it is is an over --  
3 we're trying to determine what their base rates are, and  
4 if they are -- if what they will ultimately collect in  
5 TCOS is more than what they have indicated in their rate  
6 filing package, then it's a misstatement of what's going  
7 to be applied to base rates, and it also doesn't give  
8 ratepayers the benefit of the upside of the most recent  
9 PUC order.

10 JUDGE HERRERA: I understood that from  
11 your pleading. I'm trying to understand how it directly  
12 impacts the base rates that Austin Energy will charge.

13 MR. HUGHES: Well, it goes to the just and  
14 reasonableness of those rates. If the revenue  
15 requirement or rates could be reduced based on a higher  
16 collection of transmission revenues than what they've  
17 estimated currently, then that goes to the relevance of  
18 whether the base rates are just and reasonable.

19 JUDGE HERRERA: Let me see if I can  
20 understand what your argument is. I believe your -- I  
21 believe your argument is that --

22 MR. HUGHES: The amount of TCOS revenue  
23 was a deduction to the revenue requirement; so,  
24 therefore, the TCOS rates do affect the base rates.

25 JUDGE HERRERA: Right. And I'm trying to

1 understand how that relationship would work. If I'm  
2 understanding your argument, what you're saying is if  
3 they overcollect on their TCOS side, then that's revenue  
4 that Austin Energy has -- could use to reduce its base  
5 rates?

6 MR. HUGHES: Correct.

7 JUDGE HERRERA: Mr. Brocato, what's your  
8 response?

9 MR. BROCATO: We can't do that. It  
10 reduces the transmission rates, but it doesn't affect  
11 the base rates. You can't just take dollars from the  
12 transmission side and you send the -- make the base  
13 rates be whatever NXP or any other party would like them  
14 to be.

15 JUDGE HERRERA: And, Mr. Hughes, that's  
16 where I'm kind of getting stuck is that the Commission  
17 establishes -- the Commission establishes, Mr. Hughes,  
18 the TCOS rates, and we're not dealing with those rates  
19 here.

20 MR. HUGHES: But apparently they've left  
21 \$62 million of TCOS revenue in the base rates in their  
22 filings. So, I mean, they put the TCOS revenue into  
23 their base rates -- in their rate filing, so --

24 JUDGE HERRERA: Okay. We've been through  
25 the argument about the presentation of an item in the

1 rate filing package and whether it's within the scope of  
2 the proceeding or not. Just because it's presented in  
3 there isn't --

4 MR. HUGHES: Okay. And so stated another  
5 way, we believe it will allow them to overstate their  
6 base rates.

7 JUDGE HERRERA: Mr. Brocato, did Austin  
8 Energy present rebuttal testimony on this point?

9 MR. BROCATO: We did out of an abundance  
10 of precaution, simply because our motion had not been  
11 ruled on.

12 JUDGE HERRERA: I'll tell you what I'm  
13 going to do. I'm going to look at your pleading again  
14 and your testimony on it and then rebuttal, and I will  
15 rule first thing Tuesday morning.

16 MR. MCCOLLOUGH: Your Honor, let me help  
17 out Mr. Robbins really quick. You have stricken some of  
18 his testimony --

19 JUDGE HERRERA: I've already ruled on  
20 that, Mr. McCollough.

21 MR. MCCOLLOUGH: Yes. Would you please  
22 allow him to offer the stricken portion as a statement  
23 of position rather than evidence?

24 JUDGE HERRERA: Absolutely.

25 MR. MCCOLLOUGH: Thank you.



1 MR. ROBBINS: Thank you, Scott.

2 JUDGE HERRERA: The next objection that I  
3 have is Austin Energy's objection to Public  
4 Citizen/Sierra Club's statement of position and  
5 presentation regarding energy efficiency service  
6 charges.

7 And as I understand it, the argument that  
8 Austin Energy makes is that those charges are relevant  
9 only for purposes of recovery, whether they should be  
10 recovered in base rates and, if so, how they should be  
11 allocated amongst the customer classes, but that the  
12 level of the EES charges are not relevant to this case.  
13 And I'm going to sustain that objection.

14 MS. COOPER: Your Honor, I do want to  
15 speak and join Public Citizen on that. One of the  
16 issues that we did leave open was the change in their  
17 rate design. And I don't know if -- if I'm not directly  
18 approaching the issue that they're wanting to strike, I  
19 apologize.

20 But it's -- the issue that, I think,  
21 Public Citizen has raised is dealing with Austin  
22 Energy's -- we were going to be able to, as part of this  
23 rate case, address the change in the tariff forms. So  
24 that issue is in controversy. And I think what  
25 Austin -- what Public Citizen was doing in their

1 testimony was addressing the form of the tariff.

2 JUDGE HERRERA: My understanding of the  
3 pleadings that I reviewed was that Public Citizen/Sierra  
4 Club were concerned with the level of funding for EES,  
5 and not --

6 MS. COOPER: That's a different matter. I  
7 apologize, Your Honor.

8 JUDGE HERRERA: -- and not the issue of  
9 whether it's recovered in the base rates or to be  
10 recovered through a rider.

11 MS. COOPER: Or the form of the rider.  
12 Because Austin Energy, on several of their pass-through  
13 charges, had changed the form of their tariffs. They  
14 were recommending a different way to collect it, and  
15 that was something that we had agreed would be --

16 JUDGE HERRERA: I'm going to let the folks  
17 that filed the motion address the motion.

18 MS. COOPER: Okay.

19 MR. REED: Yes. Mr. Herrera, there  
20 were --

21 THE REPORTER: Could you state your name,  
22 please?

23 MR. REED: Cyrus Reed with Sierra Club,  
24 and I'm the one, along with some other colleagues, that  
25 helped prepare that initial position.

1                   So we actually raised a couple of issues.  
2 One was the total amount of money that would be raised  
3 through the EES service fee. So that is one issue that  
4 I believe you're addressing. But the other issue was  
5 the amount of how that fee is allocated among different  
6 customer classes and whether it should be essentially  
7 the same amount to every customer class or whether  
8 different customer classes should be charged different  
9 amounts for that fee.

10                   And so there were a couple of different  
11 issues we were raising, not just the total amount of the  
12 fee. And if you read the Independent Consumer  
13 Advocate's issue with Austin Energy's proposed EES that  
14 was brought up in cross-rebuttal, it was also not really  
15 on the total amount that would be raised, but how that  
16 fee is allocated between the different customer classes;  
17 commercial, large commercial, industrial, residential.

18                   So it was really two separate issues, the  
19 total amount that was raised, but also how it was raised  
20 among the different customer classes.

21                   JUDGE HERRERA: Mr. Brocato?

22                   MR. BROCATO: Our motion to strike speaks  
23 to their proposal to increase the EES fee by \$9 million.  
24 That, in our opinion, has already been established as  
25 being beyond the scope of the case.

1                   While we understand and admit and agree  
2                   that the change in the structure would be in play, our  
3                   motion goes towards their proposed increase.

4                   JUDGE HERRERA:   And that's how I  
5                   understood the motion.

6                   MS. COOPER:   I apologize.

7                   JUDGE HERRERA:   And to that extent, I am  
8                   sustaining the objection.

9                   MR. REED:   So may I ask a follow-up  
10                  question, if that's all right?

11                  JUDGE HERRERA:   Yes.

12                  MR. REED:   So you're saying we can  
13                  continue to raise the issue of how the EES is allocated  
14                  among different customers?

15                  JUDGE HERRERA:   How it's allocated among  
16                  its customer classes and whether it should be covered in  
17                  base rates.

18                  MR. REED:   Okay.

19                  MR. COFFMAN:   Your Honor, this is John  
20                  Coffman.   I just want to make it -- ask for  
21                  clarification, Your Honor.   You haven't yet ruled on our  
22                  motion, though, regarding the change in position in  
23                  Austin Energy's rebuttal, though?

24                  JUDGE HERRERA:   I have not.   Thank you for  
25                  bringing that up.   I missed that objection earlier.

1                   Your objection was that the new charge, if  
2 you will, is not really rebuttal but is, instead,  
3 additional direct. Am I understanding your objection  
4 correctly?

5                   MR. COFFMAN: That is correct, yes.

6                   JUDGE HERRERA: And, Mr. Brocato, what is  
7 your response to that?

8                   MR. BROCATO: This is the one we talked  
9 about earlier. I thought we had stated earlier that we  
10 were going to put something in writing, but this is the  
11 exact same issue. It is not a new charge that's being  
12 proposed by Austin Energy in any way. This is a change  
13 in the allocation in response to the testimony that was  
14 presented.

15                   Ms. Kimberly's rebuttal testimony proposes  
16 changing the allocation to a three-year average of -- by  
17 looking at the actual rebates paid by residential class  
18 versus the non-residential classes, and then using that  
19 three-year average to determine the rate going forward,  
20 and adjusted for voltage.

21                   JUDGE HERRERA: Mr. Coffman, since it's  
22 your motion, I'll let you close on it.

23                   MR. COFFMAN: Yes. What Austin Energy did  
24 not do is it did not -- instead of responding to the  
25 Public Citizen/Sierra Club position, they dramatically

1 changed the reallocation, shifting millions of dollars  
2 onto the residential class. So it isn't really directly  
3 responsive, and, in fact, it is a new allocation that  
4 was not included in the direct case.

5 JUDGE HERRERA: Explain to me how it's not  
6 responsive.

7 MR. COFFMAN: Well, instead of addressing  
8 the overall increase, they raised a new issue, and this  
9 is they would now like to reallocate the energy  
10 efficiency surcharge, putting significantly more cost on  
11 the residential class.

12 JUDGE HERRERA: Well, I'm getting confused  
13 here, Mr. Coffman. I heard Sierra Club saying, "We want  
14 to address the issue of allocation of these costs," and  
15 it seems to me that's what Austin Energy has done. You  
16 may disagree with the allocation. So I'm a bit  
17 confused --

18 MR. COFFMAN: They didn't address the --  
19 to the extent that Sierra Club proposed reallocation,  
20 they didn't address that reallocation but came up with a  
21 brand-new reallocation that went dramatically the other  
22 direction.

23 JUDGE HERRERA: Okay. Thank you. I am  
24 going to overrule Independent Consumer Advocate's  
25 objection.

1                   In my agenda, unless I'm missing  
2 something, the only thing we have left to discuss are  
3 the procedural aspects of the hearing.

4                   MR. HUGHES: There was another objection  
5 within Austin Energy's -- Austin Energy filed another  
6 objection within the same motion with regards to our  
7 testimony, and it was related to analysis of the cash  
8 flow basis.

9                   JUDGE HERRERA: Yes. Thank you.

10                  MR. HUGHES: And I can address that.

11                  JUDGE HERRERA: Let me find my notes on  
12 that first.

13                  MR. HUGHES: Okay. Because it's --  
14 they're somewhat related.

15                  JUDGE HERRERA: Okay. Go ahead,  
16 Mr. Hughes.

17                  MR. HUGHES: So, Your Honor, this -- both  
18 of those questions -- the questions that were in these  
19 motions and in our response go to Your Honor's Memo  
20 No. 11, which actually specifically stated that costs  
21 related to transmission cost of service were included  
22 within the scope of the proceeding, going back to the  
23 other objection.

24                  In addition, you specifically outlined  
25 that with regards to the cash flow basis, that any

1 analysis or comparison of the cash flow basis or using  
2 the cash flow basis in lieu of the debt service coverage  
3 was outside of the scope of the proceeding.

4                   However, that's not what we're doing. So  
5 we're trying to get at how EA arrived at their rates.  
6 An analysis of the method that they chose and how AE  
7 allocates costs and distributes revenue is entirely  
8 within the scope, and so analyzing how they used the  
9 cash flow basis is perfectly -- should be within the  
10 scope. We're not making an argument that they should  
11 not have used the cash flow basis or they should have  
12 used the debt service covering in lieu of the cash flow  
13 basis. We're basically taking the method they used,  
14 analyzing it, and showing the deficiencies.

15                   JUDGE HERRERA: When I read the pleadings  
16 on this issue, I read it precisely how you -- that it  
17 was Ms. Fox's testimony that the debt service coverage  
18 ratio would produce something differently, and it's  
19 something that the counsel should consider using, that  
20 the Public Utility Commission wasn't favorable to the  
21 cash flow method of EA-owned utilities.

22                   MR. HUGHES: Well, those --

23                   JUDGE HERRERA: And, to me, that seemed to  
24 be outside the scope of this proceeding in that Austin  
25 Energy had elected to use a cash flow method,



1   irrespective of what anyone may think or even what the  
2   PUC may think about whether that method is good, bad, or  
3   indifferent.

4                   MR. HUGHES:   Well, there are specific  
5   provisions in her testimony that are on Page 9, Line 14,  
6   to Page 10, Line 17, and if you were going to rule to  
7   strike any portions of that testimony, we would ask that  
8   it be limited to those sections and those provisions,  
9   which were -- go more specifically to the comparison  
10  between cash flow and debt service coverage.

11                  JUDGE HERRERA:   Mr. Brocato?

12                  MR. BROCATO:   Well, her testimony is at  
13  odds with what Mr. Hughes is arguing she says.   I mean,  
14  as he noted, the debt service coverage methodology would  
15  have been more appropriate, and that the using of cash  
16  flow method to determine return should be fully vetted  
17  by the Austin City Council.   He does not like and  
18  opposes Austin Energy's use of the cash flow method, and  
19  as you noted in Memorandum No. 11, that is beyond the  
20  scope.

21                  I don't have her testimony here in front  
22  of me, so there's sort of an alternative argument about  
23  limiting what is stricken to a smaller part of the  
24  testimony I would have to look at, but the entire  
25  discussion goes toward her objection to the cash flow

1 methodology and her advocacy for the use of the debt  
2 service coverage methodology.

3 MR. HUGHES: Okay. So Mr. Brocato  
4 actually just read directly from the provisions I just  
5 talked to you about.

6 JUDGE HERRERA: Yes.

7 MR. HUGHES: But Ms. Fox's testimony goes  
8 far beyond that one comparison between the two methods.  
9 It's an analysis of the method they used.

10 And if we're going to get to whether these  
11 rates are just and reasonable, we have to have the  
12 ability to analyze the methods they used to get to these  
13 rates. So if the -- and in your order, it specifically  
14 says, "The comparisons of cash flow method in lieu of  
15 the debt service coverage."

16 And so Mr. Brocato has just read from the  
17 provisions I outlined here. So what we would ask is  
18 that the broader analysis of how they used the cash flow  
19 method and the conclusions they arrived at, we would  
20 suggest that those do not need to be stricken, and, you  
21 know, a full analysis of the base rates -- of the rates,  
22 you know, requires it.

23 JUDGE HERRERA: I'm inclined to sustain  
24 the objection, but I want to know what parts of  
25 Ms. Fox's testimony you believe alternatively should be

1 included that would be within the scope of --

2 MR. HUGHES: If you'll look --

3 JUDGE HERRERA: -- Memorandum 11. I don't  
4 have her testimony in front of me.

5 MR. HUGHES: No. I'm going to just -- if  
6 you'll look at our response to the objection -- you may  
7 not have it with you either. But the response to the  
8 objection on Page 5, Footnote No. 18, it says, "Though  
9 NXP and Samsung find all testimony to be relevant, if  
10 the IHE feels certain portions of the discussion  
11 regarding AE's use of cash flow method to be outside the  
12 scope of this proceeding, NXP and Samsung urge him to  
13 limit his ruling to only strike Page 9, Line 14, to  
14 Page 10, Line 17, from Ms. Fox's direct testimony."

15 So those are the specific provisions that  
16 Mr. Brocato is referring to where there's a comparison  
17 or a suggestion of using the debt service coverage as  
18 opposed to the cash flow method.

19 JUDGE HERRERA: Just so I'm clear,  
20 Pages 9, Line 14, to Page 10, Line 17 --

21 MR. HUGHES: Yes, Your Honor.

22 JUDGE HERRERA: -- is that the  
23 testimony --

24 MR. HUGHES: Yes, Your Honor.

25 JUDGE HERRERA: -- Mr. Brocato just read?

1 MR. HUGHES: Yes, Your Honor.

2 JUDGE HERRERA: And is that the limit of  
3 your objection?

4 MR. BROCATO: No. The objection goes  
5 beyond that. What Mr. Hughes is doing is he's  
6 identifying the specific language where Ms. Fox says  
7 that she objects to the cash flow methodology and  
8 recommends the full vetting of that issue before  
9 council, but he wants to have left in the more general  
10 discussion about cash flow methodology, but it's all the  
11 same thing. It's all Ms. Fox's arguments for why the  
12 cash flow methodology --

13 MR. HUGHES: Your Honor --

14 MR. BROCATO: -- should not be used  
15 here -- if I may.

16 JUDGE HERRERA: Yes.

17 MR. BROCATO: And part of the sections  
18 that he's left in are where she quotes from Staff  
19 testimony, Darryl Tietjen in a prior case where that  
20 issue was on table, but as I've said, it's not on the  
21 table here.

22 So I don't know how keeping here arguments  
23 against the cash flow methodology would be useful in  
24 this proceeding, and certainly it's beyond the scope, as  
25 council and Austin Energy are not going to change the

1 use of cash flow methodology. And her raising the  
2 perception that base rates are somehow inflated because  
3 of the use of that methodology I think is inappropriate  
4 as well.

5 MR. HUGHES: Your Honor, we're not asking  
6 you to strike -- if you're going to rule -- or sustain  
7 the objection, to just strike those portions just out  
8 of -- just on a whim. We're doing it to tie it back to  
9 your specific -- the language in your specific memo  
10 related to what was outside the scope of this  
11 proceeding. And that is to determine just and  
12 reasonable rates in lieu of whether -- to utilize the  
13 cash flow basis to determine just and reasonable rates  
14 in lieu of debt service coverage.

15 So, yes, he's correct I'm taking out the  
16 specific language, but that specific language was  
17 related back to your previous memo on scope of the  
18 proceeding.

19 JUDGE HERRERA: And I'm trying to find  
20 that point.

21 MR. HUGHES: It's No. 4 in the last -- on  
22 Page 4 of 5 in your order -- in your memo order. March  
23 11th.

24 JUDGE HERRERA: Mr. Hughes, I'm trying to  
25 be receptive to your argument, but I'm just not

1 understanding how discussing use of the debt service  
2 coverage ratio as something better -- or debt service  
3 coverage approach --

4 MR. HUGHES: But that's where --

5 JUDGE HERRERA: -- as a better approach to  
6 cash flow method --

7 MR. HUGHES: So if you struck the  
8 discussion of where we discussed the debt service  
9 coverage and compare it to the cash flow, what we do is  
10 we analyze the cash flow method and what's wrong with  
11 the cash flow method.

12 Now, if we can't criticize -- if we're  
13 saying that anything critical of a method that was used  
14 is outside the scope --

15 JUDGE HERRERA: Let me see if I can state  
16 what I'm understanding you're saying. You want the  
17 ability to tell the council, "The cash flow method is  
18 the wrong method to use. Perhaps you ought to consider  
19 using a debt service coverage method"?

20 MR. HUGHES: No. I'm -- you can strike --  
21 if you strike the mention of the debt service method --  
22 I mean, we are criticizing how they arrived -- the  
23 numbers they arrived at based on the cash flow method.  
24 So essentially if we -- it's just like the production  
25 cost analysis on 4CP versus 12CP. We're going after the

1 methods that they want to use in cost -- in how they've  
2 arrived at the cost of service and the allocation of  
3 cost. This is no different.

4 JUDGE HERRERA: Let me ask it this way:  
5 Do you think they applied the cash flow method  
6 incorrectly?

7 MR. HUGHES: We didn't go -- our testimony  
8 doesn't go to whether they applied it incorrectly.

9 JUDGE HERRERA: And that's why I was  
10 asking my question of you. Is it your contention that  
11 you should have the ability to discuss whether Austin  
12 Energy ought to be using the cash flow method versus the  
13 debt service coverage method?

14 MR. HUGHES: Well, I think it could be.  
15 Otherwise, it -- with all due respect, the order would  
16 have said -- might have said "to utilize the cash flow  
17 basis to determine just and reasonable rates," whether  
18 that -- whether using the cash flow method was a wise  
19 thing to. But it does say, "In lieu of the debt service  
20 coverage," and that's why we're -- if you're going to  
21 strike anything, you should strike the comparison to  
22 debt service coverage. Because there are other methods  
23 of accounting, so -- there are other ways to do it, not  
24 just the debt service coverage or the cash flow basis.

25 So it seems to be -- we took it as there

1 seems to be a specific prohibition against comparing  
2 those two. And with regards to, you know, the other  
3 parts of the testimony referencing back to previous  
4 issues and previous testimony, well, it was the -- yes,  
5 it was previous testimony. It was previous testimony in  
6 their rate case that ended up at the Public Utility  
7 Commission.

8                   So, I mean -- so I would -- we would  
9 just --

10                   JUDGE HERRERA: I'm inclined to sustain  
11 the objection, but let me defer ruling until Tuesday  
12 morning so I can look at this issue more closely and  
13 review Ms. Fox's testimony and your pleadings more  
14 closely. But I'm inclined to sustain the objection,  
15 because I see the argument -- I would be okay if you  
16 wanted to have a discussion that perhaps in the next  
17 proceeding Austin Energy should consider -- the council  
18 should consider directing Austin Energy to use the debt  
19 service coverage method to set its rates. That's one  
20 thing. But I can't get beyond that step and say,  
21 "Austin Energy should have used something else, and here  
22 is the result of that something else," whatever that may  
23 be.

24                   MR. HUGHES: We're just trying to do it  
25 before five years from now, so -- I mean, because the



1 next rate case would be in five years, so I think -- you  
2 know, there's a lot of ways -- there's a lot of areas in  
3 which we believe the scope is, you know, artificially  
4 limited in this case, so --

5 JUDGE HERRERA: Like I said --

6 MR. HUGHES: We'll wait until Tuesday. No  
7 problem.

8 JUDGE HERRERA: Thank you. And thanks for  
9 pointing this issue out for me. I had forgotten about  
10 it.

11 Okay. The next thing I have is a  
12 discussion on procedural aspects of how we move forward  
13 next week. And I know that Mr. Brocato filed something  
14 on behalf of Austin Energy splitting the time basically  
15 in half. Austin Energy gets 11 and a half hours,  
16 assuming we have 23 hours, and the remaining parties get  
17 the remaining 11 and a half. Ms. Cooper filed something  
18 that said, "We don't like that."

19 What I would like for the parties to do is  
20 we'll take a break and see if you can come up with an  
21 allocation of the time, sequence of the witnesses for  
22 cross-examination, how you present your witnesses -- I'm  
23 almost indifferent -- bless you. I'm almost indifferent  
24 so long as you guys agree.

25 Austin Energy opens. Austin Energy

1 closes. In between, how you guys want to move forward  
2 is up to you guys. You guys know better -- the parties  
3 know better who is most aligned and least aligned, and  
4 if we follow the procedural practice at the PUC -- or at  
5 SOAH, those that are most aligned are grouped together  
6 so that the guy that's most opposed doesn't get the  
7 short end of the stick for cross-examination purposes.

8 So what I'd like to do is take a 15- or  
9 20-minute break and give you guys the opportunity to see  
10 if you can work that out.

11 MR. BROCATO: Before we do that, Your  
12 Honor, may I make one request?

13 JUDGE HERRERA: Sure.

14 MR. BROCATO: Can you tell me the dates  
15 and times of our hearing so we know how much time we  
16 have to deal with?

17 JUDGE HERRERA: You had -- was there a  
18 request also not to hold a hearing on --

19 MR. BROCATO: Next Friday.

20 JUDGE HERRERA: -- the 3rd? I'm assuming  
21 we would start on the 31st. That's Tuesday.

22 MR. BROCATO: At what time?

23 JUDGE HERRERA: And I was assuming  
24 9:00 a.m.

25 MR. BROCATO: Okay.

1 JUDGE HERRERA: Only because it's a pain  
2 to get into downtown Austin by 8:00. That is the only  
3 reason.

4 So I was assuming we'd start at 9:00 a.m.  
5 every day and go until parties didn't want to go any  
6 further. If you want to stay until 7:00, I'm perfectly  
7 fine doing that. If you want to stop at 4:00, I'm  
8 perfectly fine doing that as well. I'll leave that up  
9 to the parties, but I'm willing to stay as late as you  
10 guys want to stay.

11 MR. ROBBINS: Judge, will there be a  
12 PowerPoint projector available for presentation?

13 JUDGE HERRERA: That I do not know.  
14 That's not really within my control.

15 MS. COOPER: Your Honor, just -- moving  
16 back again, we actually have 25 parties. I did find the  
17 service list. And I just wanted some direction from you  
18 in terms of, like, how many exhibits we need to prepare.  
19 Because usually you have to have a copy for --

20 JUDGE HERRERA: Yeah. And I was going to  
21 get to that, Ms. Cooper.

22 MS. COOPER: Okay. We can do it later.

23 JUDGE HERRERA: I'll tell you that right  
24 now. All I need is one hard copy. Everyone has  
25 electronic copies of everyone's file. In the interest

1 of saving trees, I just want one hard copy so that when  
2 I get back to my office I have something to look at.  
3 I'm still old school in that fashion. I can't read it  
4 on the screen as well as I can read it on paper. So  
5 everyone that has a piece of testimony to offer, one  
6 hard copy. If you have an exhibit you want to to offer,  
7 one hard copy.

8 I can make copies for you.

9 MR. BROCATO: Okay. And just -- are you  
10 done?

11 JUDGE HERRERA: Let's go off the record  
12 real quick.

13 (Discussion off the record)

14 JUDGE HERRERA: Let's go back on the  
15 record and discuss the procedural -- the days of  
16 hearing. We'll start with Austin Energy on the  
17 procedural schedule with regard to the days for hearing  
18 and what it is Austin Energy prefers, and then we'll  
19 hear from the other parties.

20 MR. BROCATO: Well, Austin Energy  
21 originally established a three and a half day hearing.  
22 We are not trying to reduce the total hours of hearing  
23 time. We identified a conflict with next Friday, and we  
24 threw out a couple of options. One would have been to  
25 have a hearing tomorrow, but some people apparently have

1 conflicts, which we understand, and then we also  
2 suggested going long on the days that we do have the  
3 hearing and then also, of course, having the prehearing  
4 today as opposed to next week.

5 As I mentioned earlier, using a 9:00 to  
6 7:00 or even a 9:00 to 6:00 schedule results in the same  
7 or more hearing time than was originally contemplated.

8 Candidly, we've got fewer pieces of  
9 testimony than I thought we would originally have and  
10 fewer participants. We had 23 intervenors, but we've  
11 got -- what is it -- seven that have filed testimony and  
12 a total of 14 that may ask cross, but it looks like it  
13 will be significantly less than that.

14 MR. HUGHES: Your Honor?

15 JUDGE HERRERA: We'll start over here.

16 MR. HUGHES: So we've got 25 intervenors.  
17 We've got -- how many witnesses? 12 or 14 witnesses.  
18 As of right now, I've probably got 130 cross questions.  
19 Now, I don't expect that I'm going to be able to get to  
20 all of those questions, so I'm working diligently to  
21 cull the herd.

22 But we didn't set the schedule. The  
23 schedule was -- well, we discussed the schedule. In  
24 fact, we had quite a robust discussion about the  
25 schedule. We were up against a deadline by the City

1 Council. So all of this process is a condensed process  
2 because of deadlines; and, therefore, planning has gone  
3 on for several months with regard to the hearing date  
4 being from Tuesday to Friday, and with all due respect  
5 to Thomas and the assertion that they planned on three  
6 and a half days -- I guess he assumes that because he  
7 was assuming that there might be a prehearing conference  
8 on Tuesday, but it says very specifically here if  
9 requested. Well, one was requested, and we're in it  
10 right now. So I guess if no one had requested a  
11 prehearing conference, does that mean we would have  
12 started at noon? That's not stated here.

13               So if we all look at the four corners of  
14 what we've been given and what we've discussed over the  
15 last several months, I think most of the parties in here  
16 probably planned for a four-day hearing. We do need to  
17 sit down and have a discussion, especially among the  
18 intervenors, about, you know, what sort of -- what they  
19 think they've got, how many questions they think they've  
20 got, how much time it's going to take them.

21               I know that Austin Energy has put forth a  
22 proposal that would give them 11 and a half hours and us  
23 11 and a half hours, I guess based on their  
24 three-and-a-half-day hearing schedule, but it's just  
25 a -- it's very late in the game to force everybody to

1 condense even further a schedule that is pretty  
2 condensed already.

3 So I don't -- I mean, frustration, I  
4 guess, is the best word I would use. So -- and I'll let  
5 somebody else chime in.

6 MR. COFFMAN: John Coffman for Independent  
7 Consumer Advocate. I just want to lodge our opposition  
8 to that idea.

9 We did rely on the order, which was based  
10 on the City Council decision of going through June 3rd.  
11 I don't know that I have that many questions yet, but I  
12 am concerned, just given the number of issues that we  
13 have and the fact that we're considering Austin Energy  
14 having both a direct and a rebuttal case, that we might  
15 need that last day. Hopefully not, but I'm afraid that  
16 does kind of constrain --

17 MR. HUGHES: And we might finish early.

18 MR. COFFMAN: That's all.

19 MS. COOPER: And I've already stated in my  
20 response, Your Honor -- I've already stated in my  
21 response that we don't object to not having the June  
22 3rd, but we would want another day, whether it's -- and  
23 we don't have an objection to Saturday other than  
24 personal. But in terms of the hearing, we could slug it  
25 out on Saturday.

1                   It's just the stamina issue. People -- I  
2 think it's not very efficient to have very long hearing  
3 days. And we've been under very tight schedules as it  
4 is, having to do a lot of things very quickly, and I'm  
5 concerned that the quality of the hearing will diminish  
6 if we try to squeeze in extra long days. But I don't  
7 object to taking Friday off, if that's what we have to  
8 do, as long as we get that day back.

9                   MR. HUGHES: And no doubt at the end of  
10 each day after a hearing there's -- most parties -- a  
11 lot of parties have to go and regroup and assess the  
12 next day and make adjustments on what they may or may  
13 not have been doing the following day.

14                   Lanetta, just so I'm clear.

15                   MS. COOPER: Yes, sir.

16                   MR. HUGHES: When you say Saturday, are  
17 you talking about Saturday, June 4th, as opposed to the  
18 3rd?

19                   MS. COOPER: Yes.

20                   MR. HUGHES: Well, that -- I'm happy to  
21 take a poll and figure out if that's an option.

22                   JUDGE HERRERA: There's an argument over  
23 here. Ms. Birch?

24                   MS. BIRCH: Your Honor, I agree with  
25 Mr. Hughes and Ms. Cooper. I mean, we all planned for a



1 four-day hearing. We have 24 or 25 issues and 20  
2 something intervenors, seven or eight of whom are  
3 actively taking part, I believe, and entitled -- or  
4 more. There's 14, I guess, entitled to  
5 cross-examination.

6 I mean, I thought the point of this was to  
7 have a full and fair hearing, and I don't know how you  
8 do that by cutting out a full day. I'm not -- I've  
9 never been unreasonable about accommodating other  
10 parties' needs, but this was Austin Energy's schedule,  
11 and all of a sudden at the last minute they're not  
12 available on Friday. Well, we need another day. The  
13 Independent Consumer Advocate is not available the next  
14 week. I mean, that only leaves Saturday. But I don't  
15 think you can just say we can crowd it all into three  
16 days and achieve what was intended to be achieved by  
17 this hearing.

18 People have put in a lot of effort and  
19 time, and now we may not have any -- I -- you know,  
20 according to Mr. Brocato's proposal, I get an hour and  
21 two minutes to do everything I have to do, and that's  
22 simply impossible.

23 JUDGE HERRERA: Okay. We're going to go  
24 off the record, and I want each of you to write down how  
25 much cross-examination time you need for each of the

1 witnesses that Mr. Brocato listed out. Then we can  
2 determine how much time we're going to need for the  
3 hearing.

4 My experience has been that folks are  
5 usually overestimating how much time they need for  
6 cross-examination. So what I want you to do is to tell  
7 me how much time you need to cross-examine each of the  
8 witnesses that were identified by Mr. Brocato. And for  
9 those parties or entities that aren't here today to  
10 speak their peace on how much time they wanted, they  
11 should have been here today.

12 Mr. Robbins?

13 MR. ROBBINS: Not having a degree in law,  
14 I'm going to ask -- what I'm about to say is a little  
15 naive, but I was planning on -- I was not planning on  
16 attending the entire three or four days. I was hoping  
17 to accomplish what I needed to within the span of my  
18 testimony and within the cross of those who challenged  
19 it.

20 I was going to speak to the rebuttals of  
21 Austin Energy in my testimony. Would that obviate the  
22 need for me to cross them in an official rebuttal?

23 JUDGE HERRERA: I'm not here to advise you  
24 on how to prosecute your case, Mr. Robbins. The  
25 witnesses will take the stand when they take the stand.

1 Folks will cross-examine them at that point. We will  
2 accommodate people's schedules as much as possible in  
3 terms of conflicts that they may have, but that's about  
4 the extent that I can do.

5 I can't tell you, "You're going to get to  
6 address all your issues and cross-examine all the  
7 witnesses you want to cross-examine on the issues you  
8 may be adverse with them on a particular date and time."  
9 I'm sorry.

10 MR. ROBBINS: And I'm not asking --

11 MR. COFFMAN: Your Honor.

12 MR. ROBBINS: Excuse me. Let me --

13 MR. COFFMAN: Your Honor, a quick question  
14 that might help with time.

15 JUDGE HERRERA: I'm sorry, Mr. Robbins.

16 MR. COFFMAN: Can you provide any guidance  
17 as to what you're expecting for opening statements?  
18 Will there be a time limit and so forth?

19 JUDGE HERRERA: I think it depends on how  
20 much time you guys want to take for cross-examination.

21 MR. BROCATO: I mean, that's a good point.  
22 Oftentimes people dispense with openings and closings.  
23 If you've got a brief, well, you just saved three hours  
24 right there.

25 MR. ROBBINS: I need to clarify. If I can

1 present my rebuttals within my testimony, then I won't  
2 need to cross-examine them again. Am I making sense?

3 JUDGE HERRERA: I'm bit confused by it  
4 because parties had the opportunity to prefile their  
5 rebuttal and cross-rebuttal.

6 MR. ROBBINS: Right.

7 MR. McCOLLOUGH: But not to AE.

8 MR. HUGHES: Your Honor, I think one thing  
9 that might help Mr. Robbins is that you won't be --

10 JUDGE HERRERA: Let's go off the record.

11 (Recess from 4:23 p.m. to 5:42 p.m.)

12 JUDGE HERRERA: We took a lengthy break to  
13 allow the parties to come up with a proposal for the  
14 proceeding next week and came up with a schedule for the  
15 hearings. They will be held on Tuesday through  
16 Thursday, starting at 9:00 each day and going late if  
17 parties feel like going late. We will not have a  
18 hearing on June 3rd, and we will have a hearing on  
19 Saturday, starting at 9:00, and conclude on that  
20 Saturday.

21 Mr. Brocato also read the order of  
22 presentation of the witnesses -- of the parties, rather,  
23 for the intervenors. I'm not going to go through that.  
24 Mr. Brocato, could you perhaps just make a final of that  
25 and send it so all the parties can have it so we all

1 know who's on first and all that?

2 MR. BROCATO: I'd be glad to.

3 JUDGE HERRERA: Is there anything else  
4 that we need to discuss on the record?

5 (No response)

6 JUDGE HERRERA: All right. Then from my  
7 perspective this hearing is concluded. I will issue  
8 some rulings Tuesday morning on the outstanding  
9 evidentiary objections, and we'll start the hearing  
10 Tuesday morning at 9:00.

11 Thank you, everyone.

12 (Proceedings concluded at 5:44 p.m.)

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## C E R T I F I C A T E

STATE OF TEXAS )

COUNTY OF TRAVIS )

I, Steven Stogel, Certified Shorthand Reporter  
in and for the State of Texas, do hereby certify that  
the above-mentioned matter occurred as hereinbefore set  
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I FURTHER CERTIFY THAT the proceedings of such  
were reported by me or under my supervision, later  
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