AUSTIN ENERGY 2016 RATE REVIEW

AUSTIN ENERGY'S TARIFF PACKAGE:	§	
2015 COST OF SERVICE	§	**BEFORE THE CITY OF AUSTIN**
STUDY AND PROPOSAL TO CHANGE	§	**IMPARTIAL HEARING EXAMINER**
BASE ELECTRIC RATES	§	

NXP SEMICONDUCTORS AND SAMSUNG AUSTIN SEMICONDUCTOR, LLCS' POST HEARING BRIEF

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I. INTRODUCTION

A. The Goals of Samsung and NXP

Samsung Austin Semiconductor, LLC (Samsung) and NXP Semiconductors (NXP) have been a part of the Austin community for decades. Historically utility rates in Austin have been near the Texas rate average for all customer rate classes. That is not the case today. Samsung and NXPs' priority in this proceeding is affordable and reliable electricity. It is important to Austin businesses, and it is important to the employees who live here. It is important to the businesses that provide groceries, goods, and services for Austinites. As presented in the opening statements at Hearing, the Austin City Council ("City Council") has an affordability goal for Austin Energy's electric rates. Samsung and NXP have a primary goal of access to the same affordable electric rates available to their competitors who manufacture elsewhere in the Electric Reliability Council of Texas (ERCOT) market.[1] Samsung and NXP believe that Austin Energy should establish rates that meet the City of Austin's own affordability goal for each customer class. To do otherwise, places Austin residents, including Austin's industrial and commercial customers, at a disadvantage and violates the City's own stated affordability mandate.

Austin's affordability goals were established in Austin Resolution 2014828-157 and called for Austin Energy to maintain its current all in (base, fuel, riders, etc.) competitive rates in the lower 50 percent of Texas rates overall.[2] Samsung and NXP are paying 24% more for electric service than they would be paying in the competitive ERCOT market.[3] Even if all of the proposals made by NXP and Samsung were accepted in this rate review, NXP and Samsung

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[1] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Tr. at 70:9-18 (Hughes Opening) (May 31, 2016).

[2] Austin, Texas Resolution No. 20140828-157 (Aug. 28, 2014).

[3] *See Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Direct Testimony and Exhibits of Gary L. Goble, NS Ex. 2 at 34-35 (large industrial primary voltage customers in competitive service areas in Texas pay rates less than 5.1 cents per kWh as compared to Austin Energy's proposed total rate in this proceeding of 6.3 cents per kWh – thus, Austin Energy's proposed rate of 6.3 cents/kWh is 1.20 cents per kWh greater than rates elsewhere in Texas, which equates to a 23.53% disparity in rates (0.0120 / 0.0510 = 0.2353 or 23.53%) and a true economic disadvantage for large, energy intensive consumers who happen to be located in the Austin Energy territory). *See also Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, NXP Semiconductors and Samsung Austin Semiconductor, LLC's Response to Austin Energy's Fifth Request for Information at 5-10 (May 16, 2016).

would still be paying 9.4% more to be served by Austin Energy than they would see if being served by the competitive ERCOT market.[4]

These percentages represent millions of dollars a month that Samsung and NXP are paying over and above what their competitors outside of Austin pay. That kind of discrepancy cannot be ignored by the management and shareholders of these two Austin Energy customers, and it should not be ignored by the City Council. These two customers alone account for almost 10% of Austin Energy's revenue, and we hope that their commercial success and competitiveness are goals they share with Austin Energy and the Austin City Council.

In an effort to assist Austin Energy and the City Council in establishing rates to meet the affordability goals, Samsung and NXP committed significant resources to determining how Austin Energy could reduce its revenue requirement to a point where rates could meet the affordability goals for each customer class rather than pitting each class against one another over cost allocation and revenue distribution. In a detailed memorandum to the City Council, Samsung and NXP laid out their recommendations and called for a $218 million reduction[5] in Austin Energy's total revenue requirement.[6] For its part, Samsung and NXP believe that only $25 million of that reduction would need to be applied to their rate class in order to bring their rates in line with their competitors in Houston, Dallas-Fort Worth, and San Antonio.

The revenue requirement that is the basis of an electric utility's base rates is determined through a calculation of the utility's total costs of providing service subtracted by deductions and revenue from sources other than retail electric customers. The number that remains is the base rate revenue requirement. The legitimacy of the final revenue requirement is therefore completely dependent upon the legitimacy of every number in the calculation and the transparency and detail of the utility's accounting practices.

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[4] NXP and Samsung can calculate the rates they have proposed in this proceeding by dividing the NXP/Samsung proposed revenue for their class, located on NS Ex. 2 at GLG-4, pg. 2, ln. 46, in the amount of $72,887,241 by the class kWh of 1,305,420,231 set forth on NX Ex. 2 at GLG-5, pg. 1, ln. 32. This equals $0.0558 per kWh (i.e., the rate proposed by NXP and Samsung for their class based on their analysis in this proceeding). Therefore, even under the proposals of NXP and Samsung, their class will still experience rates $0.0048 per kWh ($0.0558 - $0.0510 = $0.0048) higher than rates elsewhere in Texas. This correlates to a proposed rate that is 9.4% (0.0048 / 0.0510 = 0.094 or 94%) higher than would be experienced in the competitive ERCOT market.

[5] This represents a recommended total adjustment to Austin Energy's revenue requirement. NXP and Samsung understand that all reductions are not applicable here because only Austin Energy's base rates were subject to this review.

[6] Memorandum from Samsung and NXP on Potential Reductions to Austin Energy's Revenue Requirement (Apr. 6, 2016) (on file with author).

Austin Energy currently has $425 million in available cash reserves. Samsung and NXP believe this amount is excessive. It is irresponsible to continue to collect reserves from customers while rates are not competitive and affordability is an issue. Samsung and NXP believe some of Austin Energy's expenses are being improperly recognized and artificially inflating the reserve requirements.

Unfortunately it appears that the accounting practices and policies of Austin Energy and the City of Austin itself may contribute as much as anything else to higher rates and inequitable rates between customer classes. It is however hard to get to the root of the problem in this case considering the condensed timeline, limited scope, and deliberate efforts by Austin Energy to limit the legitimate discovery of relevant information.[7] This is the same type of information that is customarily available during rate cases at the Public Utility Commission of Texas (PUC).[8] We will address this issue in more detail later.

In order to establish revenue requirements and cost allocation methods that lead to an equitable revenue distribution and equitable rates for every customer class, proceedings like this one must be transparent and allow for a full accounting of how Austin Energy is managed operationally and financially. This requires a process that is at least as robust, impartial, and transparent as the PUC would conduct. Unfortunately, despite the best efforts and imminent qualifications of the Independent Hearings Examiner (IHE), the rate review process conducted by Austin Energy was far from transparent or impartial. The IHE has been very limited in how the case could be conducted since the scope of the case was limited by Austin Energy, the procedural rules were created by Austin Energy, and the timeline of the case was artificially condensed by Austin Energy's delay in the rate filing package, appointment of the IHE, and appointment of the Independent Consumer Advocate (ICA).

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[7] *See* City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates § 3.1(d)(1) (Procedural Rules); *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates* (Jan. 25, 2016), AE Ex. 1 at 1-2 ("Section 552.133 of the Texas Government Code exempts certain competitive information from release under the Public Information Act. In addition, in 2011, in accordance with state law, the City Council passed an ordinance that specifically exempts certain types of Austin Energy-related information from release" (internal citation omitted)).

[8] *See generally* PUC Proc. R. § 22.142 (16 Tex. Admin. Code § 22.142 (TAC)); *see also*, Public Utility Commission of Texas – Transmission & Distribution (TDU) Investor-Owned Utilities Rate Filing Package for Cost-of-Service Determination (2015) *available at* www.puc.texas.gov/industry/electric/forms/rfp/iou_rfp_inst.pdf; *see also, Petition by Homeowners United for Rate Fairness to Review Austin Rate Ordinance No. 20120607-055*, Docket No. 40627 (Apr. 29, 2013) (Austin Appeal).

B. The Process

Despite the representations and the effort made by some, the proceeding before the IHE was inherently biased. From the beginning it was represented that the process the City of Austin was to utilize was going to be "conducted like a PUC hearing." However, a PUC style hearing was not what transpired. From the outset, Intervenors were put at a disadvantage to Austin Energy. Even prior to the filing of the Tariff Package, Austin Energy made it clear they were in control of the proceeding stating on their website that "[b]ecause this rate review is an initiative of and led by the City of Austin, Austin Energy retains the right to make final approval of the procedural rules." Austin Energy took this one step further by stating in Procedural Rule § 1.1(a) that,

> [t]hese rules establish how the process related to the rate hearing on Austin Energy's proposed rates will work. The rules address: how an Austin Energy customer or an organization whose membership is comprised [of] Austin Energy customers may participate in the hearing, how a hearing participant may get information from Austin Energy or another hearing participant, and what responsibilities the participants will have.[9]

Despite protests by Intervenors, the Procedural Rules were drafted by Austin Energy with negligible input from other parties.

Additionally, unlike a PUC proceeding, where a neutral party determines the scope of the proceeding, Austin Energy has tried to limit the issues to be addressed in a way that appeared to contradict the original intent of the City Council. Despite the fact the City Council in Ordinance No. 20120607-055 stated that "Austin Energy's rates should be reviewed at least once every five years"[10] with no mention of a limitation in scope, Austin Energy was able to unilaterally dictate that this proceeding was limited to base rates and would not include the numerous fees and charges that make up more than 50% of the electric rates Austinites pay. While Austin Energy will claim the portions outside the scope of the hearing are pass-through charges, those pass-through charges include activities that Austin Energy manages, including gains and losses from

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[9] Procedural Rules § 1.1(a).

[10] An Ordinance Prescribing and Levying Rates and Charges for Sales Made and Services Rendered in Connection with the Electric Light and Power System of the City of Austin for Residential, Commercial, Public, and Other Uses of Electric Light and Power Sold and Served by the City of Austin, Ordinance No. 20120607-055, NS Ex. 7 at 2. On its face the ordinance requires Austin Energy to review **rates** every five years, which appears to be a more expansive requirement than just a review of base rates.

energy hedging and costs related to operations such as unplanned outages. Additionally, though Austin City Resolution No. 201440828-157 directed Austin Energy to "operate so as to control all-in (base, fuel, riders, etc.) rate increases to residential, commercial, and industrial customers to 2% or less per year, and to maintain [Austin Energy's] current all-in competitive rates in the lower 50 percent of Texas rates overall[,]"[11] Austin Energy limited the scope of this proceeding so that a full analysis of whether Austin Energy is meeting this affordability goal, as prescribed by Austin City Council, was prohibited.[12] Austin Energy was allowed to frame the proceeding by unilaterally drafting the procedural rules to grant them the power to determine what issues are "relevant" and "irrelevant,"[13] which is tantamount to full control.

The Procedural Rules made it clear that the proceeding was going to be run by Austin Energy by prohibiting the IHE from issuing Protective Orders[14] common in PUC proceedings and essential to the full review of ratemaking and accounting information critical to a transparent rate review. A formal rate case process fundamentally requires that all affected customers have meaningful access to Austin Energy's cost of service study and rate proposals, and an opportunity to conduct a robust review, including review of all relevant information. Unfortunately this has not occurred in this case.

Despite the considerable shortcomings of this process, NXP and Samsung have expended considerable time and resources to full participation in the review and in presenting the case below. We hope that an equitable and reasonable result is ultimately possible. We are very grateful to the IHE for his efforts to make the process as objective and meaningful as possible in spite of the obvious limits placed on his authority by Austin Energy.

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[11] Austin, Texas Resolution No. 20140828-157 (Aug. 28, 2014).

[12] It is only after these two clear directives from the City Council, are taken together that Austin Energy can prove that its **all-in competitive rates** are in the lower 50% of the Texas rates overall. If Austin Energy is not within the lower 50% of Texas rates then how can their base rates be reasonable, as defined by the Austin City Council?

[13] Procedural Rules § 6.1(a)(2).

[14] Procedural Rules § 8.1(a) ("the Impartial Hearing Examiner does not have the authority to issue protective orders or swear witnesses").

II. REVENUE REQUIREMENT

A. Residential Base Revenue Customer Assistance Program Adjustment

NXP and Samsung urge the IHE to adopt Austin Energy Low Income Customers' position regarding this issue, which was adopted in the rebuttal testimony of Austin Energy witness Mark Dombroski.[15]

B. Decommissioning Funding

Austin Energy has requested $19,442,308 in Operations and Maintenance (O&M) for decommissioning costs for Decker Creek, Fayette Power Plant, and Sandhill Energy Center.[16] In developing their request, Austin Energy relied upon a report produced by NewGen Strategies & Solutions ("NewGen") entitled *NewGen Strategies & Solutions Decommissioning Report* (NewGen Report), and adopted the maximum amounts identified for decommissioning by the NewGen Report.[17] The total costs established by Austin Energy, based on the NewGen Report are: $28 million for Decker Creek; $30 million for Fayette Power Plant; and, $22 million for Sand Hill Energy Center.[18] This is despite the fact that the only units actually scheduled for retirement at the time of the creation of the NewGen Report were Decker Creek Units 1 & 2.

NXP and Samsung recommend the IHE only allow decommissioning costs associated with units that are scheduled for retirement and that those costs be paid from reserves rather than treated as an expense. At this time the only units where retirement is near are Decker Creek Units 1 & 2. Despite the fact a 2018 retirement date was contemplated for Decker Creek Units 1 & 2, during the pendency of this review Austin Energy announced that it is delaying plans for construction of the desired 500 MW gas plant that was intended to replace Decker Creek Units 1 & 2, thereby resulting in the delayed retirement of these units.[19] There are no retirement dates

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[15] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Rebuttal Testimony of Mark Dombroski, AE Ex. 2 at 9-10.

[16] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, AE Ex. 1 at 4-63 (Fig. 4.3).

[17] AE Ex. 1 at 4-71 and Appendix I: *NewGen Strategies & Solutions, Non-Nuclear Decommissioning Cost Study – Austin Energy* at Tbls. 1-3 (Final Report – Jul. 27, 2015).

[18] AE Ex. 1 at Appendix I, Tbls. 1-3.

[19] Tr. at 103:21 – 104:2 (Dombroski Cross) (May 31, 2016).

authorized by City Council for Fayette Power Plant and Sand Hill Energy Center.[20] Additionally, Mr. Dombroski confirmed that Austin Energy will not be expending cash for decommissioning in fiscal year 2017.[21]

Despite the delay in the retirement of Decker Creek Units 1 & 2, NXP and Samsung recommend total decommissioning expense be reduced to $12,632,400, which is intended to cover the decommissioning of the Decker Creek Units 1 & 2 only. Additionally, these costs should be treated as a reserve, and paid out of excess reserve spread over three years, not as an expense in the base rate revenue requirement. NXP and Samsung are opposed to treating decommissioning cost as an expense in the base rate revenue requirement because this will have the unnecessary result of increasing the amount of funding required for the working cash, contingency, and emergency reserves.[22]

Austin Energy maintains that they followed the recommendation of the NewGen Report when including the cost as an expense.[23] NXP and Samsung disagree with Austin Energy's approach which equates the NewGen Report's general discussion of recognizing the decommissioning expense as an annual operating expense over the life of the asset to recognizing the expense over the remaining life of the asset.[24] Instead, NXP and Samsung take a more standard interpretation of the NewGen Report, which would be in line with including the decommissioning expense as a part of the depreciation rate.[25] It is important to note that Mr. Dombroski acknowledged that the NewGen Report did not mention the term "expense" in any of its final recommendations regarding the non-nuclear decommissioning reserve.[26]

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[20] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Austin Energy's Response to NXP Semiconductors' and Samsung Austin Semiconductor, LLC's Fourth Request for Information at 4-3 and 4-4 (Mar. 28, 2016).

[21] Tr. at 118: 12-19 (Dombroski Cross) (May 31, 2016).

[22] Tr. at 105: 20 – 108: 5 (Dombroski Cross) (May 31, 2016). Mr. Dombroski contradicts his earlier testimony by stating that he doesn't know what the impact would be of this choice on working cash reserve, despite the fact he sponsored WP C-3.2.1, which clearly shows the impact and calculation of amounts. *See* AE Ex. 1 at WP C-3.2.1; Tr. at 120: 1-5 (Dombroski Cross) (May 31, 2016).

[23] AE Ex. 1 a 4-64 and WP D.1.2.5.

[24] Tr. at 119: 12-19 (Dombroski Cross) (May 31, 2016) (Dombroski agreed that the NewGen report generally recommended Austin Energy "should collect [decommissioning expense] over the life of the asset").

[25] AE Ex. 1 at Appendix I, I-61.

[26] Tr. at 118: 8-9 (Dombroski Cross) (May 31, 2016).

NXP and Samsung therefore encourage the IHE to include only the cost related to the decommissioning of Decker Units 1 & 2 in rates at this time, despite the fact that during the hearing it came out that the decommissioning of these units is currently speculative. Additionally, due to the impact of treating these costs as an expense, NXP and Samsung recommend the IHE adopt the policy that these costs should be paid for from excess reserves and not treated as an expense.[27]

C. Internally Generated Funds for Construction

Austin Energy proposed an adjustment to its test year amount for Internally Generated Funds for Construction (IGFC) to reflect the amounts Austin Energy expects to fund in FY 2017 from cash derived from rates. Austin Energy's cash funded construction expenditure was $86,102,972 in the FY 2014 test year.[28] Austin Energy is proposing an adjustment to the test year of $2,238,482.[29] Therefore, Austin Energy's proposed amount to be included in their total cost of service is $88,341,455, before consideration of Contributions in Aid of Construction (CIAC).[30] NXP and Samsung urge the IHE to reduce the amount of IGFC to $50 million.

NXP and Samsung recommend only $50,000,000 be included in Austin Energy's total cost of service, before consideration of CIAC, as this is the proper amount that represents cash funding for construction from customers.[31] The differences in approach between Austin Energy and NXP/Samsung in calculating the appropriate amount to be included in Austin Energy's total cost of service for construction expenditures financed with cash can be summarized as follows:

- Austin Energy assumed a 56% cash funding ratio be applied to total construction expenditures,[32] while, in contrast, NXP/Samsung witness Ms. Fox applied a 40% cash funding ratio.[33]

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[27] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Corrected Direct Testimony and Exhibits of Marilyn J. Fox, NS Ex. 1 at 28.

[28] AE Ex. 1 at WP C-3.4.

[29] AE Ex. 1 at WP C-3.4.1.

[30] AE Ex. 1 at Schedule A, col. J, ln. 19.

[31] NS Ex. 1 at 20.

[32] NS Ex. 1 at 17-19; AE Ex. 1 at WP C-3.4.1.

[33] NS Ex. 1 at 20 & 22.

- Austin Energy used the FY 2015 estimated total construction budget (less NEPA),[34] while, in contrast NXP/Samsung witness Ms. Fox used Austin Energy's *average level* of construction expenditures for the period FY 2012-2015, giving a greater snapshot of historic practice in order to determine the amount reasonably necessary to be included in Austin Energy's cost of service.[35]

Austin Energy has asserted that it is following a policy of funding its total eligible construction expenditures with 50% cash funding and 50% debt funding.[36] However, the numbers and amounts they are proposing in this case do not follow that policy. Referring to WP C-3.4.1 of the Tariff Package, Austin Energy appears to be performing a calculation that supports a 50% cash funding level, however, despite this, the calculation itself is incorrect and/or misleading:[37]

No.	Description	Actual FY 2015
62	2015 Capital Spending Less NEPA	$158,169,688
63	Cash Funding Assumption (Non-CIAC Portion)	50%
64		
65	Test Year Cash Funding of Capital Costs Less NEPA	$88,341,455

A simple math check shows that dividing Test Year Cash Funding amount of $88,341,455 by the 2015 Capital Spending of $158,169,688 produces a cash funding percentage of 56%.[38] Refusal or failure to recognize and correct basic calculation errors calls into question the competence or motives of Austin Energy.

In an attempt to seek clarification on the apparent inconsistency between Austin Energy's supposed use of a 50% cash funding policy and the 56% calculation above, the representative for NXP and Samsung asked Mr. Dombroski to explain Austin Energy's requested IGFC calculations. Mr. Domboski provided the following explanation and calculations:[39]

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[34] AE Ex. 1 at WP C-3.4.1.

[35] NS Ex. 1 at 19.

[36] AE Ex. 1 at 4-57.

[37] AE Ex. 1 at WP C-3.4.1, col. D, ln. 62-65.

[38] NS Ex. 1 at 18.

[39] Tr. at 634: 5-20 (Dombroski Cross) (Jun. 1, 2016).

Dombroski Cross

2015 Capital Spending Less NEPA	$	158,169,688
Less CIAC		18,513,221
Capital Less CIAC	$	139,656,467
Cash Funding %		50%
Cash Included in Rates	$	69,828,234
Plus CIAC		18,513,221
Total Cash Funding	$	88,341,455

From these calculations, it is clear that Mr. Dombroski deducted Austin Energy's proposed CIAC (from customers) from the total construction requirement, and then applied a 50% funding rate to this amount in order to derive the amount of cash funding that Austin Energy is seeking from customers through base rates in this proceeding. It then appears he added back the cash funding provided from CIAC to reflect the total amount of cash funding included in Austin Energy's total cost of service. NXP and Samsung disagree with the approach Mr. Dombroski used to determine the appropriate cash funding ratio, and recommends the IHE reject Austin Energy's method of calculation. The problem with this method of calculation is that CIAC is a *cash funding source* and thus not debt. Austin Energy and other utilities use cash from customer rates and cash from contributions to fund the construction of utility assets, the remainder is funded using debt.

It is true that if you exclude cash funding from CIAC and compare that amount to the amount of cash funding from rates (ignoring CIAC) you will get a 50% ratio. However, Austin Energy has chosen to the use the cash flow method, so if you use Austin Energy's total construction amount and compare that to the total amount of equity funding from both customers rates and CIAC the result is a 56% ratio.

NXP/Samsung has prepared the following chart to clarify the difference in calculations supporting Austin Energy's proposed amount of cash funding to be included in cost of service from those the IHE should adopt.

Description	Reference	Amount	Amount	
AE's Internally Generated Cash for Construction				
Cash Funding				
Cash Funding through rates		$ 69,828,234		
Cash Funding through CIAC	Schedule A, Column J, Line 25	18,513,221		
Total Cash funding	Schedule A, Column J, Line 19		$ 88,341,455	56%
Debt Funding			$ 69,828,233	44%
Total Funding for Contruction (Less NEPA)	AE RFP WP C-3.4.1		$ 158,169,688	
NXP Samsung Internally Generated Cash for Contruction				
Cash Funding				
Equity Funding through rates		$ 31,486,779		
Equity Funding through CIAC		18,513,221		
Total Cash Funding	Fox testimony Page 20, Line 1-7		$ 50,000,000	40%
Debt Funding	Fox testimony Page 20, Line 1-7		75,000,000	60%
Total Funding for Contruction	Fox testimony Page 20, Line 1-7		$ 125,000,000	

In her testimony Ms. Fox points out that over the last four fiscal years Austin Energy has funded its total construction expenditures with 46% debt and 54% from cash funding.[40] It appears this history has contributed in part to Austin Energy's balance sheet debt equity ratio of 45% debt and 55% equity.[41] NXP and Samsung do not disagree with Austin Energy's stated policy of a 50% debt, 50% equity financing over the long term, but at this point in time a 40% cash and 60% debt equity ratio is needed to balance Austin Energy's recent heavy reliance on cash funding.[42] Further, on cross examination, Mr. Dombroski agreed that Ms. Fox's proposed 40% cash funding recommendation was within the range established by City Council.[43]

With respect to which period should be used in determining the total construction expenditure level needed by Austin Energy when applying a debt/equity funding percentage, NXP and Samsung urge the IHE to find that it is not appropriate to take a one year snapshot of the construction budget, but rather a better practice is to look at the level of expenditures over several years or a historical period of time.[44]

[40] NS Ex. 1 at 18.

[41] NS Ex. 1 at 22.

[42] *Id.*

[43] Tr. at 121: 6 (Dombroski Cross) (May 31, 2016); *See also* NS Ex. 7.

[44] NS Ex. 1 at 19.

The other significant difference between the total construction expenditure used by Austin Energy and that proposed by NXP and Samsung relates to expenditures for power production. In its FY 2015 construction budget Austin Energy has included $25 million for power production. Comparing the total amount of $158,169,688 million used by Austin Energy in this case[45] versus the $125 million recommended by NXP and Samsung, it is obvious that the treatment of power production is the main difference.[46] Part of Austin Energy's proposed cash funding for construction is approximately $14 million for "power production" (56% times $25 million). NXP and Samsung recommend the IHE exclude any amounts for power production from his recommendation, thereby excluding the amount from Austin Energy's cost of service.

NXP and Samsung urge the IHE to exclude any amount for power production because the amount needed to construct power production facilities in the near term is too speculative. At this time the City Council has not determined or approved Austin Energy's next power supply incremental or the level of construction expenditure needed to support it; there has been no final determination as to the type or amount of generation to construct in the near term. This is especially relevant given the previously mentioned plans that have been put on hold to construct a 500 MW gas plant to replace Decker Creek Units 1 & 2. Austin Energy witness Ms. Elaina Ball affirmed that Austin Energy has postponed indefinitely the start of construction on this planned gas-fired unit until Austin Energy is able to better evaluate the current market situation.[47] Because the City Council has not made a decision with respect to near term power supply, it is not prudent to include construction expenditures for power production in this proceeding.

Further, to the extent that the City Council approves a purchased power contract or contracts with a third party to provide renewable power, it is very likely that Austin Energy will pass-through the costs of these contracts through their PSA, and thus Austin Energy itself will not incur significant construction expenditures.[48] To the extent that the City Council does make a decision in the near term and Austin Energy is subject to significant construction expenditures, NXP and Samsung recommend Austin Energy use debt funding for such power supply resources.

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[45] AE Ex. 1 at WP C-3.4.1.

[46] NS Ex. 1 at 20-21.

[47] Tr. at 184: 23 – 185: 19 (Ball Cross) (May 31, 2016).

[48] NS Ex. 1 at 20-21.

As has been the case historically, Austin Energy has funded its expenditures for power supply construction with even higher levels of cash funding; Austin Energy has used a 79% cash funding ratio on power supply expenditures over the last four fiscal years.[49] For these reasons, NXP and Samsung urge the IHE to remove any "power production" amount from Austin Energy's total cost of service for construction expenditures.

D. Transmission Costs and Revenues

Transmission costs and revenues have been a hotly debated issue in this case between NXP/Samsung and Austin Energy. NXP and Samsung have recommended a line item reduction in the base rate revenue requirement of $14,479,686 due to excess recovery of Austin Energy's PUC approved wholesale transmission revenue.[50] Austin Energy has argued that transmission costs and revenues are outside the scope of the proceeding because they are set by the PUC and Austin Energy therefore has no control over them. NXP and Samsung have never questioned the role of the PUC in determining costs and revenues associated Austin Energy's transmission activities.[51] Rather, it is the intent of NXP and Samsung, to assure that Austin Energy is properly recognizing appropriate "known and measurable adjustments" to Austin Energy's transmission costs and revenues for proper ratemaking, and that they are accounting for those adjustments properly in the proposed base rate revenue requirement. As has been shown, Austin Energy is set to collect over $14 million more than their stated cost of service and has chosen not to apply that revenue to the same base revenue requirement they applied their transmission costs to. We believe this type of base revenue accounting practice is by definition within the scope of this proceeding. Ironically, had Austin Energy applied the excess revenue as an offset to the regulatory charge, it would have likely been outside the scope of this review. Instead, it is unclear where this money has gone.

Austin Energy has proposed two adjustments in this case related to transmission costs and revenues. These adjustments are reflected on Austin Energy's WP D-1.2.11 –**Transmission by Others** and WP E-5.1.1 –**Transmission Other Revenues**.[52]

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[49] NS Ex. 1 at 21.

[50] NS Ex. 1 at 27.

[51] AE Ex. 1 at WP E-5.1.1.

[52] AE Ex. 1 at WP D-1.2.11 & WP E-5.1.1.

There are two separate categories of costs associated with these transmission activities; this is supported by the testimony of Mr. Dombroski on cross examination.[53] Austin Energy records an expense associated with their payment to other transmission service providers (TSPs). This payment is recalculated annually based on Austin Energy's latest 4CP and the updated PUC approved total postage stamp rate.[54] The payment due from Austin Energy (distributed to other TSPs) is shown as a line item on the matrix attached to the annual PUC Order (Docket 45382).[55] This expense is recorded in Federal Energy Regulatory Commission (FERC) Account 565, as shown on Austin Energy's WP D-1.2.11.[56] It is Austin Energy's position in this case, that the amount assessed to Austin Energy for transmission cost by the PUC, and recorded in FERC Account 565, are "*retail transmission costs*" (emphasis added).[57]

Austin Energy also has costs associated with its own ownership and operation of transmission assets that are used by all transmission distribution utilities (TDUs) or distribution utilities in ERCOT serving loads throughout the ERCOT region.[58] Austin Energy recovers the costs associated with its ownership and operation of transmission assets through its PUC approved access fee, which is charged to all entities serving load in ERCOT as reflected on the same annual transmission matrix.[59] These costs are direct and allocated expenses and include operations and maintenance, depreciation, and return. These costs are then offset by other non-operating transmission revenue.[60]

Austin Energy takes the position that the transmission costs it incurs from its ownership and operation of transmission assets are "*wholesale transmission costs*" (emphasis added).[61] Likewise, they define transmission revenue in support of this function as "*wholesale transmission revenue*," since this revenue is derived from the PUC's approval of Austin Energy's

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[53] Tr. at 132: 7-13 (Dombroski Cross) (May 31, 2016).

[54] NS Ex. 1 at 22-23; PUC Subst. R. § 25.192(b)(1) (16 TAC § 25.192(b)(1))

[55] PUC Subst. R. § 25.192 (16 TAC § 25.192); *Commission Staff's Application to Set 2016 Wholesale Transmission Service Charges for the Electric Reliability Council of Texas*, Docket No. 45382, Final Order (Mar. 25, 2016), NS Ex. 39.

[56] AE Ex. 1 at WP D-1.2.11.

[57] TR. at 994: 10 (Maenius Cross) (Jun. 2, 2016).

[58] AE Ex. 1 at 4-64.

[59] NS Ex. 39; *See also* PUC Subst. R. § 25.192(b) (16 TAC § 25.192(b)).

[60] AE Ex. 1 at WP E-5.1.1.; Tr. at 132: 7-13 (Dombroski Cross) (May 31, 2016).

[61] Tr. at 997: 17-20 (Maenius Cross) (Jun. 2, 2016).

access fee, which is applied to the loads of all TDU's or distribution utilities using Austin Energy's transmission assets.

Austin Energy recovers the costs associated with the expense Austin Energy incurs and is charged to FERC Account 565 through the regulatory charge.[62] As discussed throughout this case, the regulatory charge is a pass-through assessment to Austin Energy's customers.[63] Austin Energy records the transmission revenue it receives through the application of its PUC approved access fee in "Other Revenues."[64] Austin Energy's adjusted "Other Revenues" are reflected on as an offset to Austin Energy's Total Cost of Service.[65] These transmission revenues then are not "pass-through" revenues but are recognized as a reduction to total cost of service in determining Austin Energy's retail electric revenue requirements.

To this end, NXP and Samsung propose adjustments to transmission expense recoverable through the regulatory charge as well as an adjustment to the transmission (Other) revenue identified as an offset, which is necessary in the determination of Austin Energy's actual total retail revenue requirement.[66] And, in recognition of the PUC's role and authority to establish the appropriate transmission expense and revenue amounts, this recommendation relies on the latest PUC approved transmission matrix.[67] NXP and Samsung recommend the following transmission amounts be recognized in Austin Energy's total cost of service and revenue requirement:[68]

NXP/Samsung - Transmission by Others (recovered thru Regulatory Charge)	$126,825,202
NXP/Samsung - Transmission Other Revenue	$76,609,559

1. Transmission by Others – FERC Account 565

As noted in Ms. Fox testimony

> AE did not use the most recent ERCOT statewide postage stamp rate approved by the PUC. AE used the 2015 ERCOT statewide postage stamp rate approved March 2015 in PUC Docket No.

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[62] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Rebuttal Testimony of Russel H. Maenius, AE Ex. 8 at 8.

[63] AE Ex. 1 at 3-28 & 6-32.

[64] AE Ex. 1 at WP E-5.1.1.

[65] *See* AE Ex. 1 at Schedule A, col. J, rows 30, 33, and 36.

[66] NS Ex. 1 at 24.

[67] *See* NS Ex. 39.

[68] NS Ex. 1 at 24.

> 43881, *Commission Staff's Application to Set 2015 Wholesale Transmission Service Charges for the Electric Reliability Council of Texas* (associated with the 2015 transmission expense matrix). Subsequently, the PUC has approved an updated ERCOT statewide postage stamp rate for 2016 in PUC Docket No. 45382, *Commission Staff's Application to Set 2016 Wholesale Transmission Service Charges for the Electric Reliability Council of Texas* (2016 transmission matrix, approved March 25, 2016). The spreadsheet (matrix) attached to the PUC order clearly identifies AE's ERCOT transmission expense responsibility to be $126,825,202, based on the updated ERCOT statewide postage stamp rate of $50.48097 and AE's previous summer 4 CP of 2,512,336 kW. Thus AE's known and measurable ERCOT transmission expense should be $126,825,202 rather than $116,855,952.[69]

It is the position of NXP and Samsung that the most recent PUC Order establishing Austin Energy's ERCOT transmission costs and revenues reflects a "known and measurable" adjustment to Austin Energy's test year amount and therefore should be approved as such. It is important to recognize that NXP and Samsung understand that in proposing this adjustment, they recognize that Austin Energy's regulatory charge recovery will be nearly $10 million more than the amount recommended by Austin Energy. NXP and Samsung find it important to consistently apply known and measurable adjustments whether affecting revenue requirements in a positive or negative direction and therefore recommend this adjustment as more indicative of Austin Energy's costs.

2. Transmission Other Revenue

As noted above, Austin Energy has taken the position that the costs it incurs due to its ownership and operation and maintenance of its transmission system are "wholesale transmission costs."[70] Further, the revenue it receives for this function is characterized by Austin Energy as "wholesale transmission revenue."[71] Austin Energy witness Mr. Maenius testified that Austin Energy completely eliminated wholesale transmission costs and wholesale transmission revenue

[69] NS Ex. 1 at 23-24.

[70] AE Ex. 8 at 8.

[71] Tr. at 999: 9-17 (Maenius Cross) (Jun. 2, 2016).

when it deducted $62,219,919 and other deductions from the $1.3 billion in total cost of service in order to get to the $614 proposed base rate revenue requirement.[72]

NXP and Samsung continue to believe Austin Energy is *understating* the amount of its "wholesale transmission costs" and "wholesale transmission revenue" by $14,479,686, resulting in Austin Energy overstating their base rate revenues by $14,479,686.[73] Consistent with its above treatment of Transmission by Others, NXP and Samsung propose $76,609,559 is the appropriate amount to be included in this proceeding for transmission revenue derived as a result of Austin Energy's ownership and operation of transmission assets[74] as this amount is the amount most recently approved by the PUC in Docket No. 45382 in 2016.[75]

Ms. Fox's testimony highlights the fact that Austin Energy has included a much lower amount in its cost of service for this proceeding stating that

> [r]eferring to AE Tariff Package WP E-5.1.1, AE has reduced its FY 2014 transmission revenue of $68,974,261 by $6,844,343 to a test year amount of $62,129,919. The WP explanation is that the approximately $6.8 million reduction is "an adjustment to set Wholesale Transmission Revenue equal to Wholesale Transmission COS." The WP sets forth a calculation of transmission cost of service of $62,129,919. In NXP and Samsung's' Fourth Request for Information to Austin Energy, RFI 4-17, NXP and Samsung asked AE why it was stating that its transmission revenue was $62,129,919 despite the fact that in FY 2014 AE's recorded transmission revenue was $68,974,261 and reported in its FY 2014-15 Fourth Quarter Report that it expected to receive $74.3 million from this revenue source in FY 2015. In response, AE once again stated that the approximately $62 million is the amount required to offset test year transmission revenue requirements appropriately recovered from load entities within ERCOT. This response is baffling given that AE itself recognizes that it expects to receive $74.3 million in FY 2015 and the 2016 PUC Order identifies that AE is entitled to collect $76.6 million from the date of that Order. Finally, AE staff member Russell H. Maenius filed testimony in AE Docket No. 42385, *Application of City of Austin dba Austin Energy for Interim Update of Wholesale*

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[72] TR. at 1015: 15-18 (Maenius Cross) (Jun. 2, 2016).

[73] NS Ex. 1 at 24.

[74] *Id.*

[75] *Id. See also* NS Ex. 39; *Application of City of Austin dba Austin Energy for Interim Update of Wholesale Rates Pursuant to PUC Subst. R. § 25.192(h)(1)*, Docket No. 42385, Notice of Approval (Jun. 3, 2016), NS Ex. 41.

Transmission Rates Pursuant to PUC Subst. R. §25.192(h)(1), before the PUC supporting a requested transmission revenue requirement of $75,697,440. The PUC approved AE's request setting a transmission revenue requirement of $75,697,440 and AE's proposed transmission rate of $1.160111.[76]

As the representative for NXP and Samsung argued at the Hearing, this difference in treatment of Transmission Revenue received by Austin Energy has a dollar for dollar impact on the base rate revenues, and therefore the base rate requirement Austin Energy is proposing in this case. To the extent that the Other Revenues recognized by Austin Energy as an offset to their total Cost of Service in this proceeding is ***understated***, the retail revenue requirement in this proceeding is ***overstated***. And since the other elements of Austin Energy's proposed revenue sources are either direct pass-through regulatory charges or revenues for Green Choice programs, the overstatement is obviously in base revenues, directly affecting base rates for all customers.

Early on in its search for the almost $13 million in phantom revenue (which was associated with the original PUC pricing matrix in 2014[77] as opposed to the $14 million that is associated with the current matrix), NXP and Samsung thought that perhaps Austin Energy had credited the difference between the Transmission Revenues approved by the PUC in June 2014 of almost $76 million and the $62 million it is recognizing in this case through the regulatory charge; that is as a credit of almost $14 million to the regulatory charge. This however is not the case as pointed out by Ms. Fox:

Q. IS IT POSSIBLE THAT AE IS OFFSETTING ITS ERCOT TRANSMISSION EXPENSE, RECOVERED THROUGH THE REGULATORY ADJUSTMENT CLAUSE, WITH A PORTION OF THE TRANSMISSION REVENUE IT RECEIVES?

A. This is possible, however, if that were the case, it would be fairly easy to provide that explanation in response to NXP/Samsung's' RFI 4-17. Further, I believe if this were the case, AE would have identified an offsetting revenue credit to its proposed recovery of transmission expense on Schedule G-7 line 23. This appears to be a transparency problem.[78]

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[76] NS Ex. 1 at 25-26 (internal citations omitted).

[77] *Commission Staff's Application to Set 2014 Wholesale Transmission Service Charges for the Electric Reliability Council of Texas*, Docket No. 42062, Final Order (Mar. 28, 2014).

[78] NS Ex. 1 at 26.

This question and answer confirms that Austin Energy is not crediting any of the Transmission Revenue it receives to its pass-through regulatory charge. It is doubtful that Austin Energy would consider this revenue as "production related," making NXP and Samsung confident that Austin Energy would not credit this additional revenue to its PSA. There is little doubt that by ***understating*** the Other Revenues Austin Energy expects to receive from its PUC approved access charges by almost $14 million during the time these rates are in effect, Austin Energy is simultaneously ***overstating*** its base rate revenue requirement by the same amount. The following chart illustrates this point.

Description	AE Rate Filing Reference	FY 2014 AE Proposed Cost of service and Revenue Distribution (A)	Impact of Transmission Revenue Understatement (B)	NXP Samsung With AE Transmission Revenue Adj. (C)	
Total AE Cost of Service	Schedule A, Col. J, Line 30	$ 1,298,929,899		$ 1,298,929,899	
Less					
Recoverable Fuel and Purchased Power	WP G-7, Col. A, Line 18	$ 411,649,196		$ 411,649,196	
Green Choice	WP G-7, Col. A, Line 12	$ 22,772,679		$ 22,772,679	
Regulatory Charge	WP G-7, Col. A, Line 35	$ 123,670,242		$ 123,670,242	
Community Benefit Charge	WP G-7, Col. A, Line 52	$ 44,731,029		$ 44,731,029	
Less					
Other Revenue					
Transmission Revenue	WP E-5.1	$ 62,129,919	$ 13,567,521	$ 75,697,440	Note 1.
Other revenue	WP E-5.1	19,572,669		19,572,669	
Total Other Revenue		$ 81,702,588		$ 95,270,109	
Proposed Base Rate Revenue	WP G-10.2 Col. A, Line 4	$ 614,404,165	$ (13,567,521)	$ 600,836,644	

Note 1. AE TCOS (PUC Docket No.42385) Approved June 2014

Note 2. NXP/Samsung Proposed Adjustment

Proposed Transmission Revenue	(Transmission Matrix PUC Docket No. 45382)	$ 76,609,599
AE Transmission Revenue		62,129,919
NXP Samsung Adjustment		$ 14,479,680

The amounts reflected on the chart above represent the revenues recognized and proposed by Austin Energy to be utilized to meet its total cost of service, as shown on Schedule A, Column J, Row 30 of the Tariff Package. By replacing Austin Energy's proposed Transmission Revenue of $62 million with Austin Energy's interim Transmission Cost of Service (TCOS) Transmission Revenue of more than $76 million, the proposed base rate revenues in this case is reduced from more than $614 million to almost $601 million. This chart is provided to highlight the fact that increases or decreases to any "non-pass-through revenue" source has the effect of decreasing or increasing base revenues "dollar for dollar."

Austin Energy should have recognized the PUC's approval in 2014 of its interim TCOS case[79] by inserting $75.7 million as an Other Revenue in its proposed cost of service as shown in Column C of the chart above. Surely Austin Energy's inclusion of almost $76 million in transmission revenue would qualify as a "known and measurable" adjustment as the increased transmission revenue was approved by the PUC on June 4, 2014[80] and Austin Energy's test year in this proceeding is the fiscal year ended, September 30, 2014.[81]

Austin Energy, through its proposed wholesale transmission cost and revenue adjustment in this case, is stating that since its wholesale transmission costs in support of the statewide grid are $62 million, as evidenced by its proposed cost allocation in this case, then its wholesale revenues in support of its cost must then be an equal amount ($62 million). Austin Energy would have the IHE believe that its cost of service and proposed allocations of costs and rate of return by class in this proceeding should be demonstrative of its wholesale transmission revenue, rather than the PUC's Order in Docket No 42385, which established Austin Energy's cost of service and revenue to be collected.[82]

Austin Energy has not disputed that current transmission revenues are significantly higher than those from 2014. In fact, Austin Energy reported in its FY 2014-15 Fourth Quarter Report that it expected to receive $74.3 million from this revenue source. This higher revenue is attributed mostly to Austin Energy's filing and approval of its PUC interim TCOS case, PUC Docket 42385. On cross Austin Energy witness Mr. Maenius agreed that he supported testimony in PUC Docket 42385, and testified in that docket that Austin Energy's 2014 cost of service was $75,697,440.[83] He also agreed that in June the PUC approved Austin Energy's requested updated access fee and cost of service of $75,697,440.[84]

When questioned by the representative of NXP and Samsung about the apparent inconsistency between the transmission cost of service portrayed in PUC Docket 42385, or more

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[79] *See* NS Ex. 41.

[80] *Id.*

[81] AE Ex. 1 at 1-1.

[82] NS Ex. 41.

[83] Tr. at 991: 4-18 (Maenius Cross) (Jun. 2, 2016); *See also Application of City of Austin dba Austin Energy for Interim Update of Wholesale Rates Pursuant to PUC Subst. R. § 25.192(h)(1)*, Docket No. 42385, Direct Testimony of Russel H. Maenius (Apr. 11, 2014), NS Ex. 40 at 7.

[84] Tr. at 992: 5-15 (Maenius Cross) (Jun. 2, 2016).

than $75 million and the transmission cost of service reflected in this case of $62 million, Mr. Maenius offered the following thoughts:

> Q. So if your revenue is 76 -- your wholesale generation revenue is 76 million and you've told the commission that your cost is over 75 million instead of 62, if your cost was 75 million would you have put it in that line instead of 62 to eliminate all the wholesale costs from retail electric rates?
>
> A. Now, ask your question again? I'm sorry.
>
> Q. So if the actual number that you asked for was 75,697,440 -
>
> A. The revenue requirement in docket?
>
> Q. Um-hm. If that's the number, why is that not in the 62 million place?
>
> A. Oh, the return function.
>
> Q. The return function again?
>
> A. Right. On Schedule B of this rate-filing package the rate of return, the return Austin Energy is requesting results in rate of return of 5.8 percent. The return that Austin Energy gets on its transmission function is 15 percent of rate base. If you were to take that 15 percent and multiply it by the transmission rate base that's included in this case, results in over 50 million dollars. Actually, you would show that we are under-recovering if you use these numbers.[85]

It appears Austin Energy has determined that the difference between the higher return earned by it by virtue of its wholesale transmission function (15% rate of return) should not be used to reduce retail revenue requirements (5.8% rate of return), because this would result in Austin Energy's wholesale transmission activities subsiding Austin Energy's retail customers.[86]

Mr. Maenius and Austin Energy must be under some illusion that Austin Energy is an unbundled utility holding company, consisting of regulated and unregulated affiliates governed by PUC affiliate transaction rules and a code of conduct. NXP and Samsung believe that Austin Energy's line of reasoning in support of its ratemaking treatment of transmission revenue in this case demonstrates a serious lack of understanding of generally applied and approved ratemaking principles, especially as these principles relate to municipally-owned utilities. First, it must be

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[85] Tr. at 1015: 24 – 1016: 22 (Maenius Cross) (Jun. 2, 2016).

[86] Tr. at 994: 14-16, 1016: 13-22, and 1017: 22-23 (Maenius Cross) (Jun. 2, 2016).

recognized that all of Austin Energy's transmission expenses, whether it's the transmission expense recorded in FERC Account 565 and recovered through the regulatory charge or Austin Energy's costs of owning, operating, and maintaining its own transmission system, are reflected in the *total cost of service* in this case. The only costs excluded from this case are the costs associated with Austin Energy's heating and cooling activities which have been eliminated as reflected on Schedule A, Column B of the Tariff Package.[87] Thus, to exclude any (wholesale) transmission revenue from recognition in this case does the exact opposite of what Austin Energy suggests; Austin Energy's customers are then burdened with paying costs associated with Austin Energy's transmission system on top of the $126 million they are already paying for related to statewide transmission costs recovered by Austin Energy through the pass thru regulatory charge.

The chart below illustrates this issue. Austin Energy is arguing, as reflected in the testimony provided by Mr. Maenius during cross examination, that the PUC approved a rate of return of 15% in Austin Energy's interim TCOS case and since Austin Energy's retail rate of return is 5.8% the difference in return should not be passed on to retail customers because this action would be a subsidy.[88] For clarification, Austin Energy's total rate of return is 5.8%,[89] but the amount allocated to transmission is 5% as show in the chart below. NXP/Samsung prepared the chart below from amounts reflected in Schedules A and B of the tariff Package, WP E-5.1.1, and the testimony of Mr. Maenius in PUC Docket 42385. As can be seen, the difference between Austin Energy's cost of service in this proceeding and the cost of service in PUC Docket 42385 is almost $14 million. Additionally, as Mr. Maenius testified on cross in this proceeding, the difference between the two wholesale transmission revenue amounts (over $62 million v. over $75 million) is primarily the result of the difference in return (based on 5% v. 15%).[90]

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[87] AE Ex. 1 at Schedule A, col. B.

[88] Tr. at 1016: 13-22 and 1017: 22-23 (Maenius Cross) (Jun. 2, 2016).

[89] AE Ex. 1 at Schedule B; Tr. at 1016: 14-15 (Maenius Cross) (Jun. 2, 2016).

[90] Tr. at 1016: 13-22 (Maenius Cross) (Jun. 2, 2016).

Description	AE Rate Filing Reference	AE Rate Filing Package WP E-5.1.1 (A)	Difference in Wholesale Transmission Cost of Service (B)	Maenius Testimony AE PUC Docket No 42385 (C)
Transmission O&M	Schedule A, Row 4, Col L.	$ 145,698,897		
Less FERC 565, Retail Transmission Cost	Schedule D-1	(116,855,952)		
Wholesale Transmission O&M		$ 28,842,945	(18,051,971)	$ 10,790,974
Wholesale Transmission Depreciation Expense	Schedule A, Row 6, Col L.	16,333,280	(768,845)	15,564,435
Wholesale Transmission Return	Schedule A, Row 28, Col L.	18,636,382	31,864,432	50,500,814
Wholesale Transmission Cost of Service		$ 63,812,607	$ 13,043,616	$ 76,856,223
Less Other Non-Operating Transmission Revenue	Schedule E-5, Row 4, Col L	(1,682,688)	523,904	(1,158,784)
TY Wholesale Transmission Cost of Service		$ 62,129,919	$ 13,567,521	$ 75,697,440
Total Wholesale Transmission Rate Base	Schedule B, Row 14, Col L	$ 372,819,816		$ 336,480,758
Rate of Return		5.00%		15.01%
Wholesale Transmission Return	Schedule A, Row 28, Col L.	$ 18,636,382		$ 50,500,814

Second, Austin Energy is a municipally-owned utility. Austin Energy is not owned by shareholders, but is instead owned by the City of Austin on behalf of the citizens and customers of Austin Energy. Austin Energy also has one category of customers – retail customers. These *retail customers* are residential, small and large business, and governmental entities. Although Austin Energy does participate in the wholesale market with respect to its generation function, it does so for the benefit of its retail customers (something Austin Energy tried highlighting numerous times during the Hearing).

Likewise, Austin Energy's transmission system is available for use by all loads in ERCOT and Austin Energy's customers benefit from the use of the statewide transmission system to access generation remote from Austin Energy's service area.[91] Austin Energy's transmission system is owned by the City of Austin for the benefit of its retail customers. Austin Energy's retail customers paid for all of Austin Energy's cost of transmission prior to the introduction of the wholesale deregulation and open access transmission. Thus, Austin Energy's customers must benefit from all transmission revenue recovered by Austin Energy as a result of PUC approval of its costs. Despite Austin Energy's assertions, Austin Energy does not directly serve wholesale customers. There is no evidence in this case to suggest Austin Energy has "wholesale" customers.[92] Therefore, it is hard to understand Austin Energy's allegation that the

[91] AE Ex. 1 at 3-29.

[92] In his rebuttal testimony, Mr. Maenius suggested Austin Energy had different sets of customers, which is curious as the tariff Package makes no other suggestion that Austin Energy serves wholesale customers. AE Ex. 8 at 8 ("[k]eeping retail costs and revenues separate from those of AE's wholesale transmission function ensures that each *set of customers* only pays for the cost to provide the respective service" (emphasis added)).

transmission revenue adjustment proposed by NXP and Samsung will result in an illegal subsidy between wholesale and retail customers.[93] Additionally, Austin Energy has provided no legal authority to support this contention;[94] this is not surprising as no legal authority exists as it relates to vertically integrated, municipally owned electric utilities participating in ERCOT.

As to the issue of whether Austin Energy's transmission cost of service is actually $62 million as reflected in this proceeding (FY 2014 test year) or more than $75 million as approved by the PUC in June 2014, that is of lesser importance. What is important is the actual revenue Austin Energy is receiving from its transmission ownership. It is more than troublesome that Austin Energy appears to be playing a "bait and switch" by filing a more than $75 million cost of service claim with the PUC in early 2014 and then filing in this proceeding, which utilizes a 2014 test year, a much lower transmission cost of service ($62 million). Austin Energy has excluded $14 million from (ratemaking) consideration in this proceeding and should be required to identify where that money went and for what purpose it was used.

If indeed Austin Energy's costs are $62 million and its revenues are over $76 million then Austin Energy would appear to have a problem at the PUC and would be unable to convince the Commission when filings its next earnings monitoring report that it is not over recovering its costs. However, if as NXP and Samsung propose in this case, that Austin Energy's transmission costs are closer to $76 million[95] and its transmission revenues are also about $76 million, as evidenced by the latest PUC transmission matrix Order,[96] then Austin Energy is overstating its base rate revenue requirement by $14 million in this proceeding and thus asking the IHE to approve an over collection.

NXP/Samsung is not suggesting that Austin Energy is not entitled to their full amount of transmission revenue or the 15% rate for return granted in PUC Docket 42385, they are only proposing that the approximately $76 million in transmission revenue be used as an *offset for determining Austin Energy's total retail revenue requirement*. In the alternative, Austin Energy should use the revenue that it received during the test year and in 2015 to off-set the costs that are charged through the Regulatory Charge. Austin Energy estimated a $29 million under-

[93] Tr. at 1012: 2-20 (Maenius Redirect) (Jun. 2, 2013).

[94] AE Ex. 8 at 9-10 (no reference to a legal authority despite lengthy discussion of alleged cross-subsidization).

[95] NS Ex. 1 at 26. NS Ex. 41 at Findings of Fact 4 and Ordering Paragraphs 1.

[96] NS Ex. 39.

recovery of amounts received from customers. Austin Energy could have used the revenue it received, but instead Austin Energy increased the Regulatory Charge when it decreased the PSA in 2016.[97]

E. Fayette Power Plant Debt Defeasement

With a goal of decommissioning the Fayette Power Plant as part of an effort to hasten the removal of coal fired generation from the ERCOT market, Public Citizen and the Sierra Club seek to establish a debt defeasance fund to retire the outstanding debt associated with the Fayette Power Plant by the end of 2022 under the assumption that it will free the City of Austin to divest itself of the plant and that it will force the plant to close.[98] Public Citizen and Sierra Club rely upon the *Austin Energy Resource Generation and Climate Protection Plan to 2025: An Update for the 2020 Plan.*[99] The revised proposal will increase the revenue requirement by $24 million.[100]

There are several problems associated with this proposal.

1. The City Council has not approved debt defeasance plan or the decommissioning of the Fayette Power Plant.[101]

2. The debt defeasance does not trigger decommissioning or absolve the City of Austin of its responsibilities under the ownership agreement with the Lower Colorado River Authority (LCRA), which owns a portion of the plant.

3. LCRA must agree to close the Fayette Power Plant, which has not been accomplished.[102]

4. ERCOT has the authority to keep the Fayette Power Plant running for reliability.[103]

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[97] Tr. at 110: 4-13 (Dombroski Cross) (May 31, 2016).

[98] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Public Citizen's and Sierra Club's Corrected Position Statement/Presentation on the Issues, PC-SC Ex. 1 at 22-26.

[99] *Austin Energy Resource, Generation and Climate Protection Plan to 2025: An Update of the 2020 Plan*, PC-SC Ex. 4.

[100] Tr. at 604: 2-5 (Dombroski Cross) (Jun. 1, 2016) ($143.3 million divided by the proposed 6 years before the presumed October 2022 retirement).

[101] Tr. at 382: 9-19 (Szerszen Redirect) (Jun. 1, 2016); Tr. at 416: 5-11 (Faulk Cross) (Jun. 1, 2016); *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Cross Rebuttal Testimony of Marilyn J. Fox, NS Ex. 3 at 3.

[102] Tr. at 380: 20-24 (Szerszen Redirect) (Jun. 1, 2016); NS Ex. 3 at 5.

The proposal will not accomplish anything but higher rates and should not be allowed.

E. Debt Service Associated with South Texas Nuclear Project

NXP and Samsung do not take a position on this issue.

F. Uncollectable Expense

Austin Energy made a known and measurable adjustment that reduced its 2014 uncollectible expense by $4,813,622, resulting in a test year adjusted uncollectible expense of $16,054,751.[104] NXP/Samsung, Austin Energy Low Income Customers, and the ICA proposed various adjustments to Austin Energy's request. Austin Energy made the adjustment because they experienced unusually high uncollectable expense during 2013 and 2014 as a result of problems with their billing system. NXP and Samsung urge the use of the actual unaudited amount for 2015, which is $8,462,938 and is more indicative of the future trend than the test year, or the average recommended by the ICA.[105] Austin Energy contends that it has adopted a new 24 month payment plan that they believe will increase bad debt from the 2015 level.[106]

Austin Energy's test year amount of $16,054,751 should not be allowed because Austin Energy has no experience with these types of payment plans and is assuming that the new payment plans will increase the amount of bad debt solely because the new payment plans call for longer pay back periods. If this indeed occurs, Austin Energy should revise the payment plans.

G. Economic Development and Community Programs

Austin Energy has included $9,090,429 as O&M in its revenue requirement for the transfer of this money into the City of Austin Economic Development Department.[107] The City's Economic Development Department is responsible for "cultural arts contracts, Economic Incentive Payments, small business loans, and for business retention and music venue

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[103] NS Ex. 3 at 4-5.

[104] AE Ex. 1 at WP D-1.2.9, col. F, ln. 10; NS Ex. 1 at 36-37.

[105] NS Ex. 1 at 36-37.

[106] TR. at 867: 9-17 (Overton Cross) (Jun. 2, 2016).

[107] AE Ex. 1 at 5-10 (Fig. 5.7).

assistance."[108] NXP and Samsung urge the IHE to disallow this transfer because it is not necessary and reasonable to provide electric service and should therefore not be paid for by Austin Energy ratepayers. Additionally, the Austin City Council has initiated a transition plan to allocate economic development funding to the General Fund or other City departments, which is more appropriate, however, at this time the 2016-17 budget is not approved and therefore the actual amount of the transition attributable to Austin Energy is unknown; the amount Austin Energy is requesting represents the amount allocated to Austin Energy for the 2015-16 Budget.[109] While NXP and Samsung do not disagree that economic development is important, they disagree that electric ratepayers should be paying for this charge. Austin Energy argues that the results of the economic promotion increase the number of customers, thereby spreading fixed costs over greater billing determinants, but they were unable to provide how many customers were added or how load increased due to these activities.[110] Austin Energy has not conducted any cost-benefit analysis to determine the benefit to Austin Energy ratepayers;[111] instead they are looking to ratepayers to fund "benefits" that have little to no association with the provision of electricity. For these reasons NXP and Samsung recommend that the cost of Austin Energy's share of the transfer be denied and not included by the IHE in rates because these activities do not support the provision of electricity and there is no quantitative evidence of a benefit to ratepayers.

H. Loss on Disposal

Austin Energy requested an adjusted amount for Loss on Asset Disposal of $7,170,039 claiming that this loss is "generally" recurring.[112] However, Mr. Dombroski could not recall the amount that was included in the 2015-2016 Budget.[113] A review of the losses experienced since 2010 indicates that Austin Energy has seen a large variation in the amount attributable to Loss on

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[108] NS Ex. 1 at 30 (citing City of Austin 2015-2016 Approved Budget, Austin Tx., Vol. 1, pg. 263).

[109] NS Ex. 1 at 30.

[110] Tr. at 122: 6-11 (Dombroski Cross) (May 31, 2016).

[111] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Austin Energy's Response to NXP Semiconductors' and Samsung Austin Semiconductor, LLC's Fourth Request for Information at 4-12 (Mar. 28, 2016).

[112] AE Ex. 1 at WP E-4.3.

[113] TR. at 123: 16-20 (Dombroski Cross) (May 31, 2016).

Asset Disposal and thus no one amount can truly represent a proxy for future amounts – the amounts Austin Energy recorded were $10,213,180 in 2011; $8,108,821 in 2012; and, $67,256 in 2013.[114] Additionally, Austin Energy did not provide any type of asset retirement plan to support the amount that may occur during the time rates from this review are in place.[115] Mr. Dombroski implies in his rebuttal that Austin Energy did not remove the cost from the test year so the parties should not either.[116] This explanation defies all logic in a rate review. Because the amount needed for Loss on Asset Disposal is not known and measurable,[117] the IHE should reject its inclusion in rates and reduce Austin Energy's requested revenue requirement accordingly. We must remember that Austin Energy has chosen to use the Cash Flow method. As presented here, Loss on Asset Disposal is a book loss that does not require any cash outflow, which means that the retirement loss consists of accounting entries to remove the asset from the books and then records any salvage and cost of removal. Since the ratepayers have already paid for the assets being retired it is inappropriate to require them to reimburse Austin Energy for a non-cash expense twice. If a book loss is included in the cost of service, using the modified cash basis, the revenue allowed in rates without a corresponding expense will impact the fund balance.

I. Customer Care

Austin Energy shares the responsibility of the Customer Care Center with the various enterprise departments who bill customers for Austin Energy, Water, Wastewater, Solid Waste Services (now called Austin Resource Recovery), Drainage, and Transportation.[118] Austin Energy is reimbursed from other departments using an allocation method developed in 2002.[119]

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[114] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Austin Energy's Response to NXP Semiconductors' and Samsung Austin Semiconductor, LLC's Fourth Request for Information at 4-10 (Mar. 28, 2016), NS Ex. 8.

[115] NS Ex. 1 at 34.

[116] AE Ex. 2 at 28 ("[l]oss on disposal is not an element of the return function. Therefore, the method used to determine AE's return is irrelevant to the loss on disposal, just as it would be irrelevant to any O&M cost").

[117] A known and measurable adjustment should only be allowed when the event creating the cost is certain and the amount linked is quantifiable. NXP and Samsung find the adjusted amount for Loss on Asset Disposal is neither known nor measurable.

[118] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Austin Energy's Response to the First Request for Information from NXP Semiconductors and Samsung Austin Semiconductor, LLC at 1-94 (Feb. 18, 2016), NS Ex. 10. *See also* AE Ex. 2 at 30.

[119] NS Ex. 10 at 1.

The allocation of these costs to Austin Energy during the test year is $28.7 million or almost 60% of the total customer care costs.

Because of the stunning growth in Austin over the last 15 years, the operations of these departments has changed significantly since 2002, with Water and Wastewater becoming far more prominent in the customer care arena than they once were. The changes in the allocation recommended by NXP and Samsung relate to the difference between costs that solely belong to Austin Energy from those costs that belong to Water and Wastewater utilities, as well as the other utilities. NXP and Samsung propose that these costs be allocated to all users either on the basis of revenue or the number of bills, depending on which allocation is more appropriate.[120] We believe this would amount to a $10.4 million reduction in Austin Energy's allocation.

Based on either of these methods it seems unreasonable to allocate some costs entirely to Austin Energy when the activities of Austin Energy are not resulting in the costs. Austin Energy justifies the reliance on the 2002 model because this model is used for budget purposes by the other departments and Austin Energy argues against the adjustment proposed by NXP and Samsung because it would increase bills to customers of other city departments.[121] This reliance should be disregarded. The purpose of *this* rate review is to establish fair and reasonable rates to Austin Energy's electricity customers, not water and wastewater customers, therefore a consideration as to how costs will be shifted onto the customers of other utilities should not be of concern, the concern should be if Austin Energy customers are paying for costs related to the provision of *electric* service.

Austin Energy's use of the 2002 allocation model assigns all of the customer complaint costs to Austin Energy.[122] However, the Call Center receives complaints concerning all of the billed services.[123] This demonstrates that Austin Energy customers are being charged costs associated not with the provision of electric service but also the provision of water and trash services.

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[120] NS Ex. 1 at 32-34.

[121] AE Ex. 2 at 32.

[122] Tr. at 226: 23-25 & 227: 4-8 (Overton Cross) (May 31, 2016).

[123] Tr. at 225:16 – 226:2 (Overton Cross) (May 31, 2016).

J. Rate Case Expense

Austin Energy requested a three year amortization period for its expenses associated with this review. The IHE should adopt standard practice which sets an amortization period for rate case expenses that matches the period of time between rate reviews.[124] In Austin, the City Council currently requires a cost of service study every five years.[125] NXP and Samsung therefore recommend an amortization period of five years, not three as Austin Energy has requested.

K. Outside Services

Austin Energy currently has 1672.75 Full-Time Equivalents included in its 2015-2016 Budget, 148 of these are dedicated to the Information Technology ("IT") function.[126] In addition, Austin Energy spends approximately $18.4 million on Outside Services specifically for IT.[127] Austin Energy maintains a program called Staff Augmentation, which consists of 457 charges for miscellaneous services provided by IT consultants.[128] NXP and Samsung find this unreasonable as Austin Energy could not estimate the cost of the program and does not plan for the program to continue in the coming year, therefore, NXP and Samsung request the IHE to eliminate the funding for $6.8 million of the total cost associated with the supplemental program.[129] The reliance on past costs to justify what Austin Energy cannot quantify in the future should be rejected by the IHE.

L. Reserves

1. Reserve Funding

Austin Energy, in this review, seeks to recover $11,590,703 for return based on the current Financial Policies using the Cash Flow method.[130] Austin Energy included in its filing

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[124] NS Ex. 1 at 37.

[125] NS Ex. 7.

[126] Tr. at 126:1 (Dombroski Cross) (May 31, 2016).

[127] NS Ex. 1 at 35.

[128] *Id.*

[129] *Id* at 35-36.

[130] AE Ex. 1 at 4-60.

exhibits which show the return if recommendations made by NewGen were adopted.[131] Austin Energy in the rebuttal testimony of Russell Maenius criticized other parties' recommendations because the City Council has not adopted any changes in the Financial Policies.[132] As discussed below, Austin Energy's use of the Cash Flow method brings with it inherent problems that the IHE should consider when determining Austin Energy's *just and reasonable rates*. NXP and Samsung might suggest that the detriments of the Cash Flow method be considered and used as a possible rational for lowering Austin Energy's requested revenue requirement because through the use of the method Austin Energy cannot *prove* that its rates are in fact *just and reasonable*.

Mr. Maenius's logic regarding Austin Energy's Financial Policies is circular at best and it fails to recognize that adjustments are tied to the historical test year revenue requirement and used to arrive at an adjusted revenue requirement. Despite the fact Austin Energy included adjustments to the test year in its Tariff Package, it appears they are also trying to preclude other parties from considering anything that Austin Energy has not included in its adjusted test year revenue requirement, which is unreasonable. This rate review process is the opportunity to provide the impact of the Financial Polices on the rates Austin Energy customers see. The calculated amount of return will be considered by City Council in this review as part of the revenue requirement. If the parties solely relied on the current policies, Austin Energy would be the only party allowed to make proposed changes to the Financial Policies.

The calculation of return in Austin Energy's own proposal uses their recommended level of operating costs, including Austin Energy's test year as adjusted fuel expense, as can be seen below:[133]

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[131] *See generally* AE Ex. 1 Appendices.

[132] AE Ex. 8 at 12-15.

[133] AE Ex. 1 at WP C-3.2.1 .

Work Paper C-3.2.1			WP C-3.2.1	
Reserve Funding				
Excludes decommissioning, construction and non-nuclear reserve funds				
No.	**Description**	**Reference**	**FY2014**	**Test Year**
			(A)	**(B)**
1				
2	Recoverable Fuel Cost	Schedule A	501,593,157	412,844,601
3	Non-Recoverable Fuel Cost	Schedule A	13,714,130	37,959,112
4	Non-Fuel O&M	Schedule A	519,823,209	553,244,219
5				
6	Portion of Non-Recoverable Fuel Cost that is GreenChoice	WP D-1.1.2		22,772,679
7				
8	Total O&M Including Fuel		1,035,130,495	1,004,047,932
9	Total O&M Excluding Fuel and GreenChoice Billed to Customers		533,537,338	568,430,652
10				
11	Depreciation Expense	Schedule E-1	145,651,759	$ 145,651,759
12				
13	General Fund Transfer (GFT)	Schedule A	105,000,000	105,000,000

The level of return recommended by NXP and Samsung uses the known and measurable change to fuel that was implemented in April. NXP and Samsung also recommend that cash working capital be limited to 45 days, which follows PUC substantive rules[134] and that the rate stabilization fund be eliminated.[135] The rate stabilization fund should be eliminated because it is not appropriate for ratemaking. It is nothing more than a way Austin Energy can collect money from ratepayers to provide them with a way to stay within the affordability goals set out by Council. This is a distortion of Council's intent in setting the affordability goals.

NXP and Samsung agree with NewGen's recommendation to eliminate the Emergency Fund. NXP and Samsung however did not exclude the $125 million associated with the Emergency Fund, which the ratepayers have funded over the previous years. Instead, NXP and Samsung recommend that the amount of cash in this fund should be used in the calculation of the 150 days metric that is used by the rating agencies. With the inclusion of the undesignated $125 million Austin Energy will still have **excessive reserves** of $37,435,998, leaving a reserve balance recommendation on Austin Energy's books of $362,976,708.[136] NXP and Samsung urge the IHE to find that this amount is ample to fund the decommissioning reserve of $12,632,400 for Decker 1 & 2 (as discussed above) if Council approves decommissioning.[137] It is interesting

[134] PUC Subst. R. § 25.231(c)(2)(B)(iii) (16 TAC § 25.231(c)(2)(B)(iii)).

[135] Direct Cross of Fox at Transcript, page 38, lines 9-22

[136] NS Ex. 1 at 4.

[137] NS Ex. 1 at 28.

to note that Austin Energy has not followed the existing Financial Policies for decommissioning cost but instead has included the cost as O & M, showing how they pick policies to follow when it suits them.

Austin Energy has used, and intends to continue to use, the reserves as a mechanism to avoid violating the affordability goal set by Resolution 2014828-157.[138] Mr. Maenius went so far as to state that the pass-through charges and tariffs of Austin Energy cannot accomplish Austin Energy's goals because "(1) cost recovery limitations are imposed by Council's Affordability Goals that system rates should not increase more than 2% per year; and (2) Council has the authority and has recently exercised that power to delay full cost recovery in order to minimize bill impacts on Austin Energy's retail customers."[139] NXP and Samsung do not agree that the purpose of the reserves is to serve as a cash fund to manipulate the collection of revenue from pass-through tariffs in order to maintain the appearance that Austin Energy is meeting the affordability goals. This Austin Energy practice destroys the goal of cost causation that Austin Energy espouses.

2. Policies

NXP and Samsung proposed several policy changes to Austin Energy's current Financial Policies and ratemaking methods. The current policies were adopted over several decades during the budget process and are no longer consistent with standard ratemaking practices.[140] Despite the fact Austin Energy hired NewGen to conduct a study of their Financial Policies, this study has not been reviewed or adopted by the Austin City Council.[141]

The main Financial Policy Austin Energy utilizes that NXP and Samsung vehemently disagree with is Austin Energy uses the Cash Flow method to determine the rates they as ratepayers to pay and which Austin Energy uses to fund the reserves.[142] NXP and Samsung disagree with Austin Energy's choice of utilizing the Cash Flow method to determine rates because the method is inherently fraught with problems. As expressed by the PUC's Rate Regulation Division Director, Darryl Tietjen in AEs previous rate case before the PUC,

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[138] Austin, Texas Resolution No. 20140828-157 (Aug. 28, 2014).

[139] AE Ex. 8 at 19.

[140] NS Ex. 1 at 7.

[141] AE Ex. 8 at 12.

[142] NS Ex. 1 at 6-10.

> "the return determined using the Cash Flow method is ultimately a 'plug-in' number; that is, the Cash Flow method allows a utility to assert the total amount of return necessary to pay for all its cash needs, and that resulting amount is –*ipso facto*-the amount that the utility claims as the return that it 'requires' in its revenue requirement. The bottom-line result is that a utility's demonstration and justification of its desired return amount is a foregone conclusion because it is a mathematical inevitability."[143]

> "A utility asserts that it has a given level of costs that must be paid, and it uses the Cash Flow method to demonstrate this alleged necessity. When the Cash Flow method then invariably produces the asserted revenue requirement (because, by its inherent nature, it always will), that result is declared by the utility to constitute the required evidence that its claimed needs are reasonable and 'necessary.'"[144]

If Austin Energy insists on using the Cash Flow method, the IHE should consider offsetting Austin Energy's revenue requirement because this method does not generally provide an accurate portrayal of revenue requirement for the reasons specified above.

Additionally, for these reasons NXP and Samsung believe a better approach would be for Austin Energy to treat the reserves as retained earnings like an investor-owned utility; surplus revenue results in net income which can be distributed to shareholders or kept by the utility in retained earnings. The difference in approach is that the utility must earn its income. In Austin Energy's approach the amount of earnings is a given and they are then allowed to collect this "required" amount from customers. The funding of reserves should be a backward looking exercise, not a foregone level imposed upon ratepayer.

Austin Energy is a billion dollar enterprise of the City of Austin and involved in a very complicated wholesale generation business for which Austin Energy ratepayers are responsible for funding. NXP and Samsung want competitive rates that are based on *reasonable costs* and *transparent accounting*, which cannot be achieved through the use of the Cash Flow method. The current structure of establishing rates should not leave the determination of almost half of those costs to Austin Energy. Instead Austin Energy must establish transparent policies before the budget process, which is always time constrained. The current pass-through tariffs and

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[143] NS Ex. 1 at 8 (citing *Petition of Homeowners United for Rate Fairness to Review Austin Rate Ordinance No. 20120607-055*, Docket No. 40627, Direct Testimony of Darryl Tietjen at 8 (Feb. 14, 2013)).

[144] *Id.*

accounting policies need substantial scrutiny and the opportunity for City Council input after knowledgeable parties are able to apprise them of the financial implications of their utility's practices.

M. Property Transfers

1. Energy Control Center

NXP and Samsung support the adjustment proposed by Austin Energy Low Income Customers. Austin Energy received $14.5 million for the property identified as the former site of the Energy Control Center from the sale of the property to the Seaholm development in the Fall of 2015. Austin Energy did not reflect the receipt of the cash in its Tariff Package because payment was received outside of the 2014 test year. Austin Energy should reflect this amount as an offset to the Capital Improvement Plan transfer since the new control center was previously funded by debt. Therefore, the IHE should use the payment received from this sale as an offset to Austin Energy's overall revenue requirement.

2. Seaholm South Substation Land

NXP and Samsung do not take a position on this issue.

3. Vacant Lot at 2406 Ventura Drive

NXP and Samsung do not take a position on this issue.

4. Vacant Lot at 3400 Burleson Drive

NXP and Samsung do not take a position on this issue.

5. Holly Street Plant

NXP and Samsung do not take a position on this issue.

III. COST ALLOCATION

A. Functionalization of the 311 Call Center, FERC 920 Administration and General Labor Costs and New Service Connection Fees

Austin Energy has functionalized Account 920, Administrative and General Expense, in proportion to the labor costs within the production, transmission, distribution, and customer functions. ICA witness Mr. Johnson takes exception to Austin Energy's allocation because he claims that "A920 management salaries are not directly involved in supervising the workers included in labor excluding A&G."[145] Based upon this erroneous premise, Mr. Johnson concludes that

> Because none of the potential allocators are strongly related in a causal sense to A920, the selection [of] the A&G expense allocation factor should focus on the extent that the allocator spreads A920 salaries and wages broadly and equitably across utility functions.[146]

Mr. Johnson's proposed solution to this unsupported and fallacious premise is to allocate A&G expense on the basis of non-fuel O&M expense, excluding A&G.[147] In Austin Energy's rebuttal of this ICA proposal, Austin Energy witness Mr. Mancinelli correctly points out that the primary administrative function of the utility is the management of the labor force,[148] labor costs are not distributed evenly across functions,[149] and that the ICA proposal significantly shifts the allocation of A&G expenses to the production function and unfairly assigns a disproportionate share of costs to high load factor customers.[150].[151] NXP and Samsung support Austin Energy's allocation of A&G expense. In addition to the reasons for rejecting ICA's proposed allocation of A&G expense, NXP/Samsung offer the following reasons for accepting

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[145] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Corrected Direct Testimony of Clarence Johnson, ICA Ex. 1 at 52.

[146] *Id.*

[147] ICA Ex. 1 at 53.

[148] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Rebuttal Testimony of Joseph A. Mancinelli, AE Ex. 3 at 20.

[149] AE Ex. 3 at 20-21.

[150] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Cross Rebuttal Testimony of Gary L. Goble, NS Ex. 4 at 13.

[151] AE Ex. 3 at 21.

Austin Energy's proposed allocation method: Austin Energy's method is the standard industry practice,[152] and is recognized as the appropriate allocation method to use in the NARUC Electric Utility Cost Allocation Manuel.[153] NXP and Samsung recommend that the IHE and the City Council reject ICA's proposed allocation of Account 920, Administrative and General Expense, and approved the use of Austin Energy's proposed allocation method.

B. Classification of Production Costs

See below.

C. Allocation of Production Costs

1. Positions of the Parties

The parties presented three alternative methods for allocating Production demand-related costs. Austin Energy has proposed to allocate demand-related production costs on the basis of the sum of 12 monthly coincident peaks ("12CP") demands.[154] The ICA proposed to allocate demand-related production costs on the basis of a Base-Intermediate-Peak – Replacement Cost (BIP-R) method.[155] NXP/Samsung proposed to allocate demand-related production costs on the basis of the Four Coincident Peak/Average and Excess ("4CP/A&E") Demand method.[156] Public citizen and Sierra Club made recommendations similar to those of the ICA in their Position Statement/Presentation on the Issues.[157] Data Foundry/Austin Chamber of Commerce ("DF/ACC") recommended using the 4CP/A&E method consistent with the proposal of NXP/Samsung. No other party offered any testimony regarding production cost allocation.

2. Assessment and Critique of Cost Allocation Methods

a. Independent Consumer Advocate's Recommended BIP-R Method

The ICA's BIP-R method relies upon the assumption that Austin Energy's power plants each play a very specific and limited role in serving the native load of Austin Energy consumers.

[152] NS Ex. 4 at 13.

[153] NS Ex. 4 at 13-14.

[154] *See* AE Ex. 1 at 2-10 and 5-11.

[155] ICA Ex. 1 at 43.

[156] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Direct Testimony and Exhibits of Gary L. Goble, NS Ex. 2 at 13.

[157] *See generally* PC-SC Ex. 1 at 1-7.

The BIP-R is premised upon type of generation plant (i.e., Base load plant, Intermediate load plant and peaking plant) being built and operated to serve specific parts of the load duration curves of Austin Energy's customer classes. Foremost among the numerous problems that render the BIP-R unreasonable and inappropriate for use is the false notion of how system planning occurs in the ERCOT power supply market in which Austin Energy operates. In the ERCOT nodal power supply market, Austin Energy's power plants are not dispatched to serve Austin Energy's native load. Instead, Austin Energy's power plants are bid into the ERCOT market, the cost of output from the units are ranked, and Austin Energy's generation like the generation of other ERCOT power suppliers is stacked in a bid order dispatch that is matched against total ERCOT load. While a properly calculated BIP may be reasonable under some market conditions, for example such as existed in ERCOT prior to the Nodal Market where each utility built or otherwise secured sufficient resources to serve its native load, the allocation method does not reflect the manner in which the ERCOT market operates today and, thus, does not reflect the manner by which costs are incurred.

In addition, the fundamental premise of the BIP-R method is that the added capital costs of base load and intermediate generation plant in excess of a peaking unit is incurred in order to achieve lower fuel costs.[158] However, ICA's recommendations address only the allocation of higher capital costs while ignoring the necessary and consistent allocation of fuel cost savings, thus introducing a significant bias in the results of the BIP-R allocation method. The manner by which ICA recommends to apply the BIP-R allocation method shifts demand-related production costs to high load factor customers but fails to consistently allocate fuel costs. Insofar as the justification of ICA's production allocation method is premised upon a tradeoff of capital and fuel costs, the method cannot be fairly applied without a consistent allocation of fuel costs which has not and cannot occur in this rate review.[159] When cross-examined how he would have allocated fuel costs had fuel costs been an issue which Austin Energy allowed to be addressed in

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[158] ICA Ex. 1 at 33-34.

[159] *See Objections of Austin Energy to NXP/Samsung's First Request for Information* at 1-2 (Feb. 18, 2016) ("[a]s indicated in its Tariff Package, in this proceeding Austin Energy is only proposing changes to its base electric rates. Thus, this rate review is limited to Austin Energy's base electric rates. Discovery in this proceeding should, therefore, be limited to issues concerning Austin Energy's base electric rates and is irrelevant to the extent it seeks information not related to Austin Energy's base electric rates. Certain pass-through charges, including the Power Supply Adjustment, Regulatory Charge, and Community Benefits Charge, are not included in base rates and, thus, not at issue in this proceeding.").

this rate review, Mr. Johnson stated that there were "a number of ways to examine that issue."[160] He then proceeds to suggest one such possible method. However, by his own admission, Mr. Johnson agreed that a consistent allocation of fuel cost requires a change from the method employed in this rate review and, further, that he has made no such adjustment.

Furthermore, the BIP-R has not been correctly calculated and the results it produces are biased. Foremost among the BIP-R calculation problems is the severe understatement of peak related production costs. Although Austin Energy's 2015 system peak demand was 2,735 megawatts ("MW"), ICA's BIP-R cost allocation method only assigned 450 MW to provide peak capacity. ICA's recommended approach unreasonably assumes that the difference of 2,285 MW peak demand is served at zero costs.[161] ICA witness Mr. Johnson attempted to explain away this significant error by stating that base and intermediate generation units also serve peak demand. However, he did not allocate the cost of any portion of the base and intermediate generating units on the basis of peak demand. Mr. Johnson attempts to explain away this cost shifting scheme by claiming that base and intermediate plant costs were allocated to the peak insofar as annual energy includes energy used during the peak hours.[162] Notwithstanding the fact that the peak hour includes one of 8,760 hours in a year to which base and intermediate plant is allocated, the allocation of the preponderance of generation demand-related costs remains an energy allocation, not a peak demand allocation. Consequently, ICA's proposed BIP-R allocation method unfairly and unreasonably shifts costs from low load factor to high load factor customers.

An additional error in calculating the BIP-R methodology was ICA's unquestioned reliance upon national generation technology cost information as a replacement for Austin Energy's actual generation plant costs.[163] ICA's replacement cost method seriously distorts the actual cost structure of Austin Energy's generation plant. ICA witness Mr. Johnson replaced the actual costs of Austin Energy's generation resources with current "proxy" costs in order to adjust the costs of the older, more fully depreciated Austin Energy generation with 2014 replacement costs.[164] However, current technology types vary significantly from past technologies due to

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[160] Tr. at 532: 9-10 (Johnson Cross) (Jun. 1, 2016).

[161] NS Ex. 4 at 8-9.

[162] Tr. at 531: 8-12 (Johnson Cross) (Jun. 1, 2016).

[163] Tr. at 533: 17– 534:17 and 539: 1-5 (Johnson Cross) (Jun. 1, 2016).

[164] ICA Ex. 1 at 42-43.

advancements in control systems, improved instrumentation, advances in metallurgy, and other such factors. ICA's proposed replacement approach assumes that Austin Energy would have reached exactly the same decisions as to the type, size, technology and nature of generation to build using today's technology as would have been reached decades ago had those technologies been available at that time. This is almost certainly not true because Austin Energy would likely have made different choices in the past if different power production technology had been available at that time. Furthermore, ICA's replacement costs do not appear to include specific factors that may be unique to Austin Energy's generation units such as the cost of land and land rights, cooling water availability, capacity factor, and capital costs.[165] Finally, the authors of the report that produced the generation plant cost information upon which Mr. Johnson relied provided the following concerns about using the information, "[s]ince projected utilization rates, the existing resource mix, and capacity values can all vary dramatically across regions where new generation capacity may be needed, the direct comparison of LCOE across technologies is often problematic and can be misleading as a method to assess the economic competitiveness of the various generation alternatives."[166]

NXP/Samsung submit that the ICA's proposed allocation of demand-related production costs unfairly and unreasonably shifts costs from low load factor consumers to high load factor customers and should be rejected by the IHE and the City Council.

b. Austin Energy's Recommended Twelve Coincident Peak Allocation Method

Austin Energy proposed to employ the 12CP allocation method to allocate demand-related production costs. The 12CP allocation approach assigns costs on the basis of the sum of class contributions to each month's system peak demand during the twelve month test year divided by the sum of system peaks over the same 12 month period. Austin Energy contends that the 12CP allocation method "is an appropriate methodology for a regulated entity like Austin Energy that operates in a centralized dispatched environment like the ERCOT Nodal Market."[167] The narrative of the Tariff Package states that Austin Energy also supports its proposed 12CP allocation method by noting that "this allocation methodology better aligns the

[165] NS Ex. 4 at 9.

[166] Tr. at 539: 24 – 540: 6 (Johnson Cross) (Jun. 1, 2016).

[167] AE Ex. 1 at 2-10.

relationship between the costs and the benefits that accrue from owning and operating its fleet."[168]

> [f]or the production function, AE is concerned with making generation available during the ERCOT system peak throughout the year; therefore, to allocate demand costs to each customer class, Austin Energy calculates each customer class' contribution to the twelve monthly peak days that occur from January through December.[169]

In his Rebuttal Testimony, Austin Energy witness Mr. Joseph Mancinelli first introduces Austin Energy's notion that the financial benefits of power cost hedging are year-round benefits, and, thus, the costs of demand-related production plant should be allocated on the basis of twelve coincident peak demands.[170] There are, however, several fatal problems with Mr. Mancinelli's justification of Austin Energy's use of the 12CP approach.

First, the fact that financial hedging provides benefits in all months relies upon self-defining rational. One must question what Austin Energy asset does not provide a benefit in all months. Meters provide benefits in all months, yet no one would reasonably argue that meters should be allocated on the basis of the 12CP allocation method. Austin Energy's transmission system provides benefits in all months, yet one cannot reasonably argue that transmission plant should be allocated on the basis of the 12CP allocation method. General Plant[171] is used and useful in all 12 months, but no one can reasonably argue that General Plant should be allocated on the basis of the 12CP allocation method. In fact, there are few, if any, assets that do not provide benefits in all months. If the assets provided no benefits throughout the year, one would have to question whether the asset was used and useful. The fact that power cost hedging opportunities are available in all months has nothing to do with the factors that give rise to generation plant costs.

Second, Austin Energy has confused cause and effect. Austin Energy's ability to hedge arose as a result of the availability of Austin Energy production plant, not visa-versa. Only if

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[168] *Id.*

[169] *Id.* at 5-11.

[170] AE Ex. 3 at 39.

[171] General Plant refers to plant amounts booked in account numbers 389 through 399 and include the costs of land, structures, office equipment, stores equipment, tools, laboratory equipment, communications equipment, and other assets that are not properly includible in other accounts.

Austin Energy built its generation assets in order to secure such hedges would hedging be a cost driver for demand-related generation costs. Indeed, Austin Energy witness Ms. Elaina Ball testified that hedges are "insurance [policies]" against higher fuel costs.[172] One would never buy a house in order to take advantage of a homeowner's insurance policy, although that is precisely Austin Energy's rational for allocating demand-related production plant on the basis of 12CP. Similarly, Austin Energy did not build its power plants to secure hedges. Instead, they were able to secure hedges because of the existence of the power plants.

Finally, class revenue requirements are based upon the costs of providing service, not the benefits of providing service. The benefit of hedging is not the driving force that leads to the construction of generation plant. Cost of service studies are intended to reflect the manner in which costs arise and the factors that cause these costs to be incurred. Costs should be allocated based upon factors that drive the costs, not the benefits received. While value of service may have a place in rate design, it should not be introduced to bias the results of cost allocations. Insofar as Austin Energy's sole justification for proposing the 12CP allocation method relies upon the argument that the benefits of hedging power costs are available year-round, the 12CP production allocation method should be rejected.

Using the 12CP allocation method to reflect the cost drivers of a distinctly summer peaking system in a distinctly summer peaking power market like ERCOT is not reasonable. It is undisputed that Austin Energy is a summer peaking electric system with virtually no likelihood of the system peak occurring in any months other than June through September.[173] The same is true of ERCOT. The 12CP allocation method fails to recognize any seasonality of load even though the most predominant load characteristic of both Austin Energy's electric system and ERCOT is the significant summer peak season. Austin Energy's proposed 12CP allocation method assigns as much cost to an April peak kilowatt of demand as it does to an August kW of demand. Similarly, October peak demands are considered in the 12CP allocation method as being equally important as a hot July peak demand. This is simply not reasonable. Seasonality of a utility's load should be considered in selecting the appropriate demand-related production cost allocation method. The National Association of Regulatory Utility

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[172] Tr. at 166: 13-24 (Ball Cross) (May 31, 2016). *See also* Tr. at 156:22 (Redirect Dombroski) (May 31, 2016) (Mr. Dombroski also characterized hedging activities as a type of insurance policy).

[173] NS Ex. 2 at 19.

Commissioners ("NARUC") Electric Utility Cost Allocation Manual agrees since it recommends using the 12CP allocation method only when the monthly peaks lie within a narrow range,[174] which is not the case with either ERCOT or Austin Energy.

c. NXP and Samsungs' Recommended Four Coincident Peak/ 4CP/A&E Allocation Method ("4CP/A&E")

NXP and Samsung propose that the IHE and the Austin City Council adopt the 4CP/A&E method to allocate demand-related production plant to customer classes. NXP/Samsung witness Mr. Goble cites six undisputed facts that support the use of the 4CP/A&E allocation method:[175]

- Austin Energy's own system planning and demand side management programs are based on the importance of Austin Energy's demands during the summer;[176]
- ERCOT's system planning and operation are based on the importance of summer peak demands;[177]
- The ERCOT and Austin Energy systems are distinctly summer peaking systems with little likelihood that demands during other months of the year will influence capacity requirements;[178]
- The 4CP/A&E methodology, not the 12CP methodology is supported by the PUC in electric utility rate cases;[179] and,
- The 4CP/A&E methodology was specifically approved by the Austin City Council in Ordinance No. 20120607-055, dated June 7, 2012,[180] and there have been no changed circumstances in Austin Energy's operations, identified by myself or Austin Energy, since that time that would lead to a change in allocation methods.

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[174] Tr. at 852: 1-2 (Mancinelli Recross) (Jun. 2, 2016).

[175] NS Ex. 2 at 17.

[176] Tr. 808:16-20 (Mancinelli Cross) (Jun. 2, 2016).

[177] Tr. at 795: 21 and 808: 16-20 (Mancinelli Cross) (Jun. 2, 2016). *See also Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Austin Energy's Response to NXP Semiconductors' and Samsung Austin Semiconductor, LLC's Fourth Request for Information 4-43, 4-44, and 4-45 (Mar. 28, 2016), NS Exs. 29, 30, and 31 (respectively).

[178] NS Ex. 1 at 21-22.

[179] NS Ex. 1 at 23-24.

[180] NS Ex. 7. Tr. 782: 21-24 (Mancinelli Cross) (Jun. 2, 2016).

Both ICA's proposed BIP-R and Austin Energy's proposed 12CP allocation methods fail to reflect the cost drivers for production demand-related costs, fail to sufficiently account for the significant impacts of summer demands upon generation requirements, and do not comport with either City Council ordinance or PUC precedent, these allocation proposals should be rejected. NXP and Samsung believe that Austin Energy essentially chose the 12CP allocation method as a matter of political expediency. Note that Austin Energy's response to ICA's 8th request for information admitted as much, saying "[t]he November 30, 2015 memo was developed in response to an AE request asking NewGen to look at other cost of service methods used by electric utilities and recognized by PUCs that might relieve the residential class of some of its cost of service responsibility."[181] In other words, Austin Energy hired Mr. Mancinelli's consulting firm to "shop around" for a method that shifted costs away from residential customers. This lack of objectivity in conducting class cost of service studies is inappropriate and unduly discriminatory. NXP and Samsung submit that the purpose of a class cost of service study is to *identify costs by class, not shift costs off of favored customers and onto the backs of other customer classes*. NXP/Samsung urge the IHE and the Austin City Council to reject Austin Energy's recommended biased 12CP allocation method and to adopt the 4CP/A&E allocation method for the allocation of demand-related production costs, just as they have previously.

D. Allocation of Distribution Costs

On Schedule G-6 of its cost of service study, Austin Energy allocated Primary and Secondary substations, poles, and conductors, and the associated indirectly allocated costs on the basis of 12 non-coincident peak ("12NCP") demands. Austin Energy properly recognized that the equipment necessary to transform power from primary to secondary voltage should be allocated by the secondary demands that utilize transformers, but has failed to properly account for the impact of summer loads and temperature conditions upon distribution costs.

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[181] *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Austin Energy's Response to the Independent Consumer Advocate's Eighth Request for Information at 8-1 (May 31, 2016).

1. Austin Energy's Proposed 12NCP Allocation Method

Austin Energy's support for using the 12NCP allocation method to allocate distribution facilities is addressed on page 5-11 of its Tariff Package, which states

> [t]he distribution function is concerned with meeting localized demands; therefore, class maximum demands are often used to allocate distribution costs. Finally, for individual customers, AE is concerned with the maximum demand that the specific customer places on the system. These demands are significant cost drivers for AE's capital expenses, including debt.[182]

Austin Energy's only mention of the use of the sum of 12NCP demands (i.e., the 12NCP allocation method) is provided on pages 5-16 and 5-17, which states

> [t]he 12NCP method takes the average of each class' NCP for all 12 months. This method represents the annual average class peak and was used to allocate costs associated with distribution load dispatch, distribution substations, poles, and conductors at both the primary and secondary voltage levels.[183]

Austin Energy witness Mr. Mancinelli submitted rebuttal testimony providing further support for Austin Energy's proposed 12NCP demand-related distribution allocation method. Austin Energy's witness proffers three reasons to support Austin Energy's proposed demand-related distribution cost allocation proposal. First, he suggests that the 12NCP method recognizes that distribution capacity provides value to customers throughout the year, not just during the summer months. This "value of service" line of reasoning is the same as employed in his support of the 12CP allocation of demand-related production costs and suffers from the same flawed logic. A cost of service study is intended to measure the costs of providing electric service to customer classes, not the subjective value of service by class.[184] Austin Energy has not calculated the value of electrical service in the various months of the test year. Subjective, unsupported statements of how valuable distribution equipment may be to various classes during each month of the test year is not evidence and should not be considered in selecting the metric that best describes the forces driving distribution investment.

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[182] AE Ex. 1 at 5-11.

[183] *Id.* at 5-16 to 5-17.

[184] Tr. at 797:8-21 (Mancinelli Cross) (Jun. 2, 2016). *See also* Tr. 850: 2-8 (Mancinelli Recross) (Jun. 2, 2016).

Second, Austin Energy argues that because the NCP is measured at the class level, off peak or seasonal customers may not be fully accounted for in a 4 Summer NCP allocation method such as NXP/Samsung has proposed.[185] The logic behind this argument is that the winter demand of an individual customer upon local facilities may not be properly reflected as the diversity of load among individual customers increases the further the equipment is from the point of delivery on distribution system that demand is measured. However, as Mr. Mancinelli conceded under cross-examination, this same diversity of demands lessens the importance of off-peak maximum customer demands upon the capacity requirements of distribution equipment as the combined loads of the numerous customers are served at the substation level.[186] In other words, a different and more diversified measure of demands rather than individual customer maximum demands drives substation investment. The importance of the individual customer's maximum demand, regardless of when it occurs, is diminished among the many customers served at the substation level. Thus, demands are properly accounted for by using the 4 Summer NCP demand allocation factor as NXP and Samsung have proposed, rather than the 12NCP demand allocation methods Austin Energy proposed.

Austin Energy witness Mr. Mancinelli's rebuttal testimony also criticized NXP/Samsung's allocation method by stating "[i]f the demand measure is a single hour (i.e., the 1NCP), the ability to shift and avoid cost responsibility is easier compared to a 12NCP."[187] However, Mr. Mancinelli incorrectly characterized NXP/Samsung's 4 Summer NCP demand allocation proposal as the 1NCP allocation method. Thus, much of Mr. Mancinelli's testimony is not applicable once the erroneous description of NXP/Samsung's proposed allocation factor was made.[188] More at issue, however, is the implicit assumption of Austin Energy's witness that a small number of hours suggests instability of demand measures or significant deviations from normal loads that may influence the results of the allocation factor. However, Austin Energy's class demands have been customer adjusted and weather normalized.[189] Any aberrations or

[185] AE Ex. 3 at 43.

[186] Tr. at 811: 7-15 (Mancinelli Cross) (Jun. 2, 2016).

[187] AE Ex. 3 at 43.

[188] Tr. at 739: 24-25 (Mancinelli Direct) (Jun. 2, 2016).

[189] Tr. at 268: 9-12 (Dryfus Cross) (May 31, 2016).

anomalies in class loads have been removed, and the four summer NCP demands for each class are fair and reasonable representations of customer class load responsibility.

Finally, Austin Energy's proposed demand-related distribution allocation should be consistent with its own distribution planning practices. Austin Energy's distribution planning process consists of a review of the distribution performance during the previous summer's peak load periods.[190]

2. ICA's Proposed 4 Summer KWH Allocation Method

ICA witness Mr. Johnson proposed using customer kWh usage during the four summer months of June through September to calculate the allocation factors for distribution substations and transformers.[191] Mr. Johnson asserts that the costs of meeting federal energy standards have recently increased the costs of transformers by a range of 10% - 24%. Based upon this assertion, he recommends that 100% of the costs of all transformers and substations be allocated on the basis of summertime energy sales.[192] NXP/Samsung agrees that summer loads are the primary cost drivers of investment in transformers and substations.[193] NXP/Samsung disagrees that summertime energy sales reflect the load that drives the costs of this equipment.[194]

ICA witness Mr. Johnson correctly points out that using summer loads of customers to develop the transformer and substation allocation factors "recognizes the effect of high demand periods and higher ambient temperatures on transformer capacity."[195] This is consistent with NXP/Samsung's recommendation, except that ICA recommends using summertime energy rather than summertime NCP demands to allocate these demand-related costs. Recognition of the importance of summertime demands is also consistent with Austin Energy's distribution planning as discussed below.

Although ICA's witness correctly interprets the impact of the higher ambient temperatures upon the capacity requirements of substations and transformers, he incorrectly and

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[190] NS Ex. 29. NS Ex. 30. NS Ex. 31. Tr. 806: 23– 807: 11 & 808: 10-20 (Mancinelli Cross) (Jun. 2, 2016).

[191] ICA Ex. 1 at 55.

[192] *Id.* at 56.

[193] NS Ex. 2 at 27.

[194] *Id.* at 27-28.

[195] ICA Ex. 1 at 55.

erroneously recommends that summer energy rather than summer NCP demands drive the costs of such distribution equipment. ICA's novel approach to distribution cost allocation flies in the face of virtually all facts in the record. Austin Energy's own distribution planning specifically addresses the impact of demands upon the costs of the distribution system.[196]

3. NXP/Samsung Proposed 4 Summer NCP Allocation Method

NXP/Samsung witness Mr. Goble proposed to allocate substations and transformers on the basis of class maximum demands occurring during the summer peak season. NXP/Samsung's recommendation is supported, in part, by a number of the recommendations made by both Austin Energy and ICA. Austin Energy's support of using non-coincident peak ("NCP") demands to model the impact of customer loads upon distribution facilities is addressed on page 5-11 of its Tariff Package, which states

> [t]he distribution function is concerned with meeting localized demands; therefore, class maximum demands are often used to allocate distribution costs. Finally, for individual customers, AE is concerned with the maximum demand that the specific customer places on the system. These demands are significant cost drivers for AE's capital expenses, including debt.[197]

In addition, as reflected in Austin Energy's distribution planning process, Austin Energy recognizes the greater importance of customer summer demands. In its Tariff Package, Austin Energy stated:

> [t]he [distribution] planning process begins with a review of distribution system performance during the previous summer's peak load periods. Overhead distribution feeder circuits and substation transformers are noted for further study when their loading reaches 85 percent of their normal rating under normal (i.e. all facilities in service and all loads being served) conditions.[198]

The fact is that summer NCP demand, not summer energy or 12 monthly NCP demands, is the factor that drives distribution costs. It is also a fact that summer loads are the loads that Austin Energy uses to plan and design its distribution system. Austin Energy's Tariff Package also states that the feeder modeling software used to analyze the distribution system uses summer

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[196] AE Ex. 1 at 5-11.

[197] *Id.*

[198] *Id.* at 3-32

load conditions "[t]o ensure model accuracy, they [Austin Energy distribution planners] first match and then test the previous summer's system configuration and peak load conditions."[199]

The uncontroverted facts clearly demonstrate that summertime NCP demands are the forces that determine Austin Energy's distribution plant investment. These are the facts upon which NXP/Samsung's recommendation is based. The factor that first and foremost drives a utility's investment in transformers is the non-coincident demand of customers at the customers' locations. The size of the transformer, and, therefore, its cost, is determined by the anticipated kVa load of individual customer premises. Austin Energy's response to NXP/Samsungs' 1st RFI, No. 1-76, provided excerpts from Austin Energy's design manuals or other engineering specifications regarding the calculation of loads and the diversity among loads assumed for installation and sizing of transformers, which states

> [f]or the purpose of sizing AE facilities, AE Design shall determine the maximum expected Customer demand load amps that will be seen by AE facilities from the Customer's total connected undiversified load information and business type as documented on the ESPA form.[200]

Additionally, in this RFI response, Austin Energy included procedures for estimating customer maximum demands for purposes of determining transformer needs for customers. One such procedure was as follows:

> IMPORTANT: Each part of the secondary side service (the service, the secondary, and the transformer) should be sized separately for the specific maximum demand that it will see, i.e., maximum demand for the service for one residence will be different from the maximum demand for the secondary serving two residences, and these will differ still from the maximum demand for the transformer serving eight residences because of load diversification.[201]

Nowhere in Austin Energy's guidelines is any mention made of selecting transformers based upon minimizing energy losses. Instead, summer maximum demands are Austin Energy's primary determinant for sizing transformers and, thus determining the transformer costs. This is

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[199] *Id.*

[200] *Austin Energy's Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Austin Energy's Response to the First Request for Information from NXP Semiconductors and Samsung Austin Semiconductor, LLC at 1-76 (Feb. 28, 2016).

[201] *Id.* at Attachment 1, page 8 of 37.

not surprising since substation and transformer costs are recognized as being demand-related by NARUC. The NARUC Electric Utility Cost Allocation Manuel recommends allocating substation costs on the basis of demands and transformer costs on the basis of demands and customers, but not on the basis of energy, as ICA witness Mr. Johnson has recommended.[202] Furthermore, factors other than energy loss minimization impact transformer and substation costs are at least as important as energy losses in determining the costs of the distribution plant. These other factors affecting the cost of transformers relate cost savings associated with purchase order quantity and the need for standardization of transformer sizes and types; whether the transformer is pole-mounted or pad-mounted; capitalized costs of installation; environmental requirements, etc.[203] However, considerations of energy cost savings appear to have little or no impact upon Austin Energy's cost of substation and transformer equipment.

Austin Energy's recommendation that the 12NCP allocation factor be used to allocate substations and transformers is contrary to its own planning and engineering guides as demonstrated above. Austin Energy plans its distribution system to meet summer peak demands. Because Austin Energy's costs for substations and transformers are the result of and driven by summer peak season NCP demands, these same demands should be employed to allocate costs insofar as this allocation method best reflects the manner in which such costs are incurred. In summary, NXP/Samsung's recommendation to allocate distribution substations and transformers on the basis of the class NCP demands occurring in the months of June through September best reflects cost of service principles and should be approved by the IHE and the City Council.

E. Allocation of Customer Service (Uncollectible) Costs

NXP and Samsung agree with Austin Energy's proposal.

F. Allocation of Energy Efficiency Service Charge

NXP and Samsung agree with Austin Energy's proposal.

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[202] NARUC Electric Utility Cost Allocation Manual at 86-99.

[203] NS Ex. 4 at 18.

G. Allocation of Meters and Meter Reading Expense

1. Allocation of Meters

Austin Energy and NXP/Samsung agree on the appropriate manner by which to allocate meter costs. Austin Energy and NXP/Samsung allocate meter costs on the basis of the number of customers in a class weighted by the relative costs of each type of meter used to serve that class.[204] This is standard industry practice and is the practice described in the NARUC Electric Utility Cost Allocation Manual.[205] In contrast, ICA witness Mr. Johnson proposes a novel meter allocation method that combines the weighted customer allocation with a production cost allocation factor to produce a meter allocation factor.[206] Insofar as ICA's recommended production cost allocation factor is weighted 74% to energy,[207] ICA's recommendation shifts the majority of customer-related meter costs to the energy classification. Such cost shifting is unreasonable and results in undue discrimination and therefore should be denied by the IHE and the Austin City Council.

ICA's recommended allocation of meters using a hybrid allocation factor is premised upon the false assumption that the increased functionality of AMS meters changes the cost drivers from being customer-related to a combination of customer-related and production demand-related costs.[208] That is incorrect. As NXP/Samsung witness Mr. Goble testified

> Stated simply, meter investment is a function of the number of customers. Meter investment does not increase as production demand costs increase, but it does increase as the number of customers increases. Smart meters provide AE with customer specific information, which may be useful for a multitude of reasons including implementation of demand side management activities, application of time varying rates, customer connect/disconnect processes, two-way communication, and potentially other uses. However, regardless of smart meter functionality, the inescapable fact is that meter investment is directly correlated to changes in the number of customers by class, and in no way correlated to production demand costs. Since meter

[204] ICA Ex. 1 at 63; NS Exhibit 4 at 21.

[205] Judicial notice was taken of NARUC Electric Utility Cost Allocation Manual as authoritative text. See pages 98 of the NARUC cost manual.

[206] ICA Ex. 1 at 65.

[207] Tr. at 531: 18-23 (Johnson Cross) (Jun. 1, 2016).

[208] ICA Ex. 1 at 64-65.

> costs vary in proportion to the number of customers, meters should be allocated based upon the weighted number of meters, as AE has proposed. [209]

ICA's hybrid meter allocation factor unreasonably and unfairly shifts costs from small customers to large customers in a manner that fails to reflect the cost of service. In contrast, Austin Energy's proposed allocation of meters comports with standard industry practice, is consistent with the NARUC Electric Utility Cost Allocation Manuel, and relies upon meter weightings that reflect the specific costs of Austin Energy. NXP/Samsung recommends that the IHE and the Austin City Council reject ICA's proposed meter allocation method and instead approve the method proposed by Austin Energy.

2. Allocation of Meter Reading Expense

Only ICA took issue with Austin Energy's allocation of Meter Reading expense. ICA contends that meter reading expense should be allocated on the basis of meter investment. Meter investment, in turn, would be largely allocated on the basis of energy if ICA's hybrid meter plant allocation method is approved.[210] ICA witness Mr. Johnson bases ICA's recommendation on his unsupported belief that "Meter reading expense obviously is associated with meter investment"[211] and "Larger meters tend to be associated with larger customer bills[.]"[212] Neither of Mr. Johnson's bases are true, and his conclusions are wrong. Current meter reading technology electronically gathers meter data and passes that information into Austin Energy's customer records system automatically. Reading a large meter is no more costly than reading a small meter. [213] Austin Energy witness Mr. Mancinelli pointed out that

> AMI meters, including the supporting meter data management and billing systems, represent technologies that already gather data and render bills, Metering configurations and rate complexity have no impact on the level of effort to read a meter. As such, it is

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[209] NS Ex. 4 at 19-20.

[210] ICA Ex. 1 at 66.

[211] *Id.*

[212] *Id.*

[213] NS Ex. 4 at 22.

> appropriate to allocate the meter reading costs to each class based on the number of metered customers.[214]

NXP and Samsung agree with Austin Energy and recommend that Austin Energy's proposed allocation of Meter Reading Expense be approved by the IHE and the City Council.

IV. REVENUE DISTRIBUTION / ALLOCATION / SPREAD

There are major differences concerning the distribution of revenue requirement among the customer classes. DF/ACC proposes that all classes below the class's allocated costs of service receive a 2% increase, and classes above allocated costs of service receive rate reductions proportionate to the excess of rate revenue above COS.[215] Austin Energy is proposing that no rate class, except TRANS-2, which is required by tariff and contract to be served at unity COS receive a base rate increase.[216] The ICA recommends that the revenue decrease be allocated among all classes based on kWh consumption, except for Lighting services which would remain unchanged and Transmission ≥ 20 MW @ 85% aLF which ICA would set equal to the class's allocated cost of service. NXP/Samsung proposes that the IHE and City Council recognize the rare window of opportunity that a rate reduction provides and take advantage of this opportunity to move all rate classes to full cost of service based rates in this proceeding. Of these recommendations, only DF-ACC's and NXP/Samsung's address the problem of the significant inter-class rate subsidies.

DF-ACC's proposal would move most classes toward recovery of their respective costs of service. However, for classes such as Residential and Small Commercial which are significantly underpriced, the movement would be limited to a two percent increase. While DF-ACC's proposal addresses and attempts to correct the severe revenue-cost distortions that currently exist, its proposed two percent increase for classes that require several times that increase allows the existing unreasonable and unfair rate subsidies and burdens to continue into the foreseeable future. NXP/Samsung recommends that DF-ACC's be considered and approved if, and only if, the IHE and City Council do not approve of NXP/Samsung's recommendation to

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[214] AE Ex. 3 at 45-46.

[215] *Austin Energy's Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Intervenors Data Foundry/Austin Chamber Corrected Cost Allocation, Revenue Distribution and Rate Design Presentation at 18-20 (May 31, 2016)..

[216] AE Ex. 2 at 35.

eliminate all rate subsidies in this rate review.

Austin Energy's proposal makes no significant correction to the current cross-subsidies that exist among rate classes. Austin Energy's justification for "treading water" is that rate increases applied in addition to the rate structure changes it proposes for Residential customers would result in adverse customer impact for some customers a portion of whose usage is charged at higher rate tiers.[217] Austin Energy has stated its "proposed customer revenue requirement was developed with an underlying objective that no customer class incur a revenue increase, taking into account proposed base rate adjustments and forecasted pass-through charges."[218] In addition, Austin Energy proposes to employ its proposed rate reduction to reduce those rates for the classes that are currently paying the most in terms of excess above their total costs of service. However, Austin Energy has done nothing to correct what it has itself referred to as "significant deviations from cost of service"[219] for the residential class. Austin Energy recommends that the existing subsidies continue for another five years without addressing the issue. Furthermore, Austin Energy has not indicated what its position with respect to rate design will be at that future time, nor if they will actually address the issue in the future, or if Austin Energy will continue to allow a high degree of subsidization. Austin Energy's recommendation simply fails to address the class cross-subsidy problems that that it has itself declared to be "significant deviations from cost of service". NXP/Samsung submits that the problem of class subsidies will not go away, but will only get worse if the problem is not meaningfully addressed in this rate review. NXP/Samsung urges the IHE and City Council to consider the consequences of waiting five more years until the time of a significant rate increase to attempt to correct these severe rate distortions. Such action only guarantees that "rate shock" will be a monumental problem at that time that dwarfs any concerns of customer impact in this immediate rate review. In summary, Austin Energy's recommendations do nothing to correct the significant deviations from cost of service that presently exist and require other customer classes to continue to unfairly and unreasonably bear the costs of providing service to other rate classes. Austin Energy's revenue

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[217] *Austin Energy's Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Austin Energy's Response to the First Request for Information from NXP Semiconductors and Samsung Austin Semiconductor, LLC at 1-21 (Feb. 28, 2016).

[218] *Id.*

[219] AE Ex. 1 at 2-12.

distribution recommendation should be rejected by the IHE and City Council and NXP/Samsung's recommendation approved.

ICA's self-serving recommendation is to make the present rate subsidy issues worse by further decreasing rates that are currently being subsidized. ICA witness Mr. Johnson first suggests that a class cost of service study "provides useful information for developing the class revenue increases, but it should not be the sole consideration."[220] ICA's witness then downplays the importance of cost of service studies and recommends that the results of the cost of service studies be ignored.[221] ICA's recommendation perpetuates and exacerbates the existing class cross-subsidy issues. Furthermore, ICA's recommendations fly in the face of common practices of considering cost based rates as a fair and reasonable goal of rate design. NXP/Samsung strongly urge the IHE and City Council to reject ICA's recommended "do nothing" recommendation.

NXP/Samsung propose that all classes be moved to their fully allocated class cost of service in this rate review.[222] As pointed out by NXP/Samsung witness Mr. Goble,

> I think that in this case we have what should be a rare window of opportunity to correct some of what even Austin Energy refers to as some severe problems in under-recovery that will not be available in the future. We're having a rate decrease in this case. When you correct the misalignment of costs at a time where we're facing a rate increase, then you're stacking the correction of costs of service on top of a rate increase. I think we have a window of opportunity here, and we should take advantage of that opportunity.[223]

NXP/Samsung witness Ms. Fox has made a number of fair and reasonable recommendations that will result in further decreases to Austin Energy's revenue requirement beyond what Austin Energy has proposed. Assuming that most, if not all, of Ms. Fox's recommendations are adopted by the IHE and the City Council, Mr. Goble's recommendations will result in rate decreases for Austin Energy's customer classes. Even assuming, *en arguendo*, that some, but not all, of Ms. Fox's recommendations are accepted, the revenue requirement reduction that is likely to result from this rate review will allow each and every rate class to be

[220] ICA Ex. 1 at 72.

[221] *Id.* at 72-73.Johnson.

[222] NS Ex. 2 at 36-37.

[223] Tr. at 456: 22 – 457: 6 (Goble Cross) (Jun. 1, 2016).

moved closer to cost recovery without undue customer impact concerns. To wait five years to make the rate adjustments that are needed today is not reasonable and places an unfair burden upon those customer classes which would then have to pay the significant subsidy for those years. Furthermore, movement toward correcting the cost of service issues coupled with future rate increases will inevitably cause far greater impact at that time than in the present rate review. The proposed movement to cost based rates by NXP and Samsung is fair and reasonable and should be approved by the IHE and the Austin City Council at this time.

V. RATE DESIGN

A. Billing Adjustment Factor

Austin Energy's WP G-10.1.1.1 included a downward adjustment to present revenue of $2,972,575 to reflect what Austin Energy contends represents the overstatement of revenues that would arise as a result of using Austin Energy's billing determinants to rebill the proposed rates. Although no explanation of this deeply buried adjustment to increase revenue was provided in the Tariff Package, Austin Energy did respond to NXP/Samsung's request for information requesting Austin Energy's support for this adjustment. The adjustment purportedly reflects the difference between the sum of class revenue resulting from rebilling each class's billing determinants using the test base rates and total booked base rate revenue from all classes. According to Austin Energy's response to NXP and Samsung's 6 RFI, number 6-10, Austin Energy claims it was unable to calculate FY14 base rate revenues by class because such revenues "... are not easily attributed to customer classes, due to accounting system limitations and the imprecision of assigning long-term contract customers to the appropriate current rate classes."[224] However, this disingenuous response fails to explain how total rebilled revenues were calculated without first calculating the rebilled revenue by customer class. The rebilled revenue on WP G-10.1.1.1 had to come from some calculation that used the present rates by class and the associated billing determinants. In other words, if AE was unable to rebill its customer classes as it stated in the response to NXP/Samsung's 6 RFI, number 6-10, then the total rebilled revenue

[224] *Austin Energy's Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Austin Energy's Response to NXP Semiconductors' and Samsung Austin Semiconductor, LLC's Sixth Request for Information at 6-10 at 10 (Apr. 18, 2016).

from these classes cannot be known. Austin Energy's response is effectively that it cannot support the calculation to arrive at its $2,972,575 adjustment to revenue.

Furthermore, Austin Energy redacted the information necessary to verify the adjustment and objected to providing this information when requested. Austin Energy claimed customer confidentiality for all 13 rate classes, not just for those for which customer a claim of confidentiality may have been valid.[225] Thus, Austin Energy has provided no testimony supporting a deeply buried rate increase of $2,972,575, has prevented any party from examining the underlying calculations of this number by claiming customer confidentiality of information which is part of the PUC's required rate filing package, and has represented that it was unable to calculate FY14 base rate revenues by class even though virtually all other electric utilities can do so as a standard practice. Austin Energy's response is simply not credible. Austin Energy has presented no support for this adjustment, and Austin Energy's defense of the adjustment suffers from an absence of credibility. This adjustment should be denied by the IHE and the Austin City Council.

B. Seasonal Power Supply Adjustment

NXP and Samsung take no position on this issue.

C. Residential

NXP and Samsung take no position on this issue.

D. Non-Residential Customer Charge

NXP and Samsung take no position on this issue.

E. Load Shifting Voltage Rider and Additional Demand Response and Storage Tariffs

NXP and Samsung take no position on this issue.

F. S2 and S3 20% Load Factor Billing Determinant Adjustment

NXP and Samsung take no position on this issue.

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[225] *Id.*

G. Group Religious Worship Discount

NXP and Samsung take no position on this issue.

VI. VALUE OF SOLAR ISSUES

NXP and Samsung do not take a position on this issue.

VII. POLICY ISSUES

A. Funding Discounts

NXP and Samsung do not take a position on this issue.

B. Rates for Customers Inside and Outside the City Limits of Austin

NXP and Samsung do not take a position on this issue.

C. Piecemeal Ratemaking

Austin Energy argues that the cost collected by the pass-through tariffs cannot be considered in this proceeding and that changes to these tariffs can only be done during the Austin City Council budget process.[226] NXP and Samsung have consistently argued that the manner of calculating the pass-through charges should be examined in this review as pass-through charges make up approximately 50% of a customer's bill.[227] Austin Energy currently has the following pass-through tariffs: (1) Power Supply Adjustment – passes on the cost of fuel costs, ERCOT activities, and hedging activities; (2) Regulatory Charge – passes through transmission costs paid to ERCOT transmission providers, Congestion Revenue Rights, and ERCOT administrative fees; and, (3) Community Benefit Charge – collects fees for street lighting service, energy efficiency programs, and the Customer Assistance Program (CAP).

Though NXP and Samsung recognize that there are some adjustments allowed as riders at the PUC, NXP and Samsung note that these cost adjustments undergo higher scrutiny than the analysis that occurs during a City Council budget process, and thus cannot be compared. For example, at the PUC both the Transmission Cost Recovery Factor (TCRF)

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[226] AE Ex. 1 at 4-61.

[227] NS Ex. 1 at 12.

and the Energy Efficiency Cost Recovery Factor (EECRF)[228] are allowed to be adjusted outside of a base rate proceeding. However, at the PUC these rates are set after thorough analysis where discovery can be conducted. Under the procedures of Austin Energy, pass-through charges merely go through the City of Austin's budget process, which does not provide the opportunity for the level of scrutiny that is mandatory at the PUC. During the City of Austin's budget process discovery is not conducted, witnesses are not questioned by intervening parties, and most importantly at best a peripheral review of the pass-through charges can be conducted by interested parties. The best way to conduct a full analysis of pass-through charges, and conduct a full rate analysis, instead of participating in piecemeal ratemaking, is to allow pass-through charges to be vetted in a full ratemaking proceeding, like the one currently being conducted. [229]

An example from this case of the importance of the including all costs in the review can be seen with regards to the transmission charge issue (part of the Regulatory Charge). Austin Energy repeatedly sought to have all reference to this charge precluded from the review, despite the protest of NXP and Samsung. Thankfully the IHE realized that though the PUC approved TCOS is part of an Austin Energy pass-through, unreasonable accounting principles associated with that pass-through affected Austin Energy's current requested revenue requirement and allowed the discussion of the charge in part. As a consequence, NXP and Samsung discovered that all of the revenue received by Austin Energy from those using Austin Energy's transmission assets was not reflected in either the base rates or the Regulatory Charge. This would not have occurred without allowing the parties to pursue discovery concerning how the base rates impact the pass-through charges. More importantly this issue illustrates how a pass-through charge can be used by Austin Energy to double dip, hide revenue, or provide inaccurate accounting because at no portion of the review of Austin Energy's rates is a full review of their rates conducted; instead each review only allows for a snippet of a customer's bill and the inputs that go into making it.

By allowing for a full review of all of Austin Energy's rates, at least every five years, as contemplated by Austin City Ordinance No. 20120607-055, piecemeal ratemaking can be avoided (or at the very least curbed). This Ordinance states that "[t]he Council adopts as policy

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[228] PUC Sub Rule 26.281(f) (10).

[229] NS Ex. 1 at 14.

that Austin Energy's *rates* should be reviewed at least once every five years" (emphasis added). There is no language in this ordinance which would prevent a full review of rates (and nothing directing a limited review), thus the Austin City Council is not prevented from instructing Austin Energy to perform a *full analysis of all rates and charges* every five years. A process that would allow for a full review of all Austin Energy costs when a cost of service study is performed could eliminate piecemeal ratemaking and result in a more efficient and accurate rate analysis because the interaction of all rates will be fully analyzed in one proceeding. As a result, a comprehensive recommendation could be presented to the Austin City Council for review; a recommendation which would actually show the Austin City Council if Austin Energy is meeting their affordability goal.[230]

D. Service Area Lighting

At this time NXP and Samsung found the arguments made by the other Intervenors and therefore support their treatment of Service Area Lighting.

E. Power Production Costs and Rate Treatment

NXP and Samsung do not take a position on this issue.

F. Studies Supporting Future Cost of Service

NXP and Samsung do not take a position on this issue.

G. Customer Assistance Program

NXP and Samsung support the recommendation made the Austin Energy Low Income Customers.

H. Customer Satisfaction

NXP and Samsung do not take a position on this issue.

I. Pilot Programs

NXP and Samsung do not take a position on this issue.

J. Pick Your Own Due Date

NXP and Samsung do not take a position on this issue.

[230] NS Ex. 1 at 15.

VIII. STATEMENT OF POSITION / OTHER ISSUES

A. Late Payment Fees

NXP and Samsung do not take a position on this issue.

B. Regulatory Charge

NXP and Samsung addressed this issue under heading II. Revenue Requirement subsection D. Transmission Costs and Revenue. As demonstrated in that section, NXP and Samsung strongly advocates a revision to the current tariff for the Regulatory Charge. The charge collects funds from Austin Energy ratepayers to recover the cost paid to other transmission providers in ERCOT. However, it is not providing Austin Energy's ratepayer/owners the benefit of the revenue Austin Energy receives from other transmission providers in ERCOT; instead Austin Energy appears to be pocketing this revenue not explaining where it is going. To ensure that the ratepayers receive the benefit, the tariff should be revised to clarify that the costs must be off-set by the revenue received by Austin Energy. The cost and revenue are not confidential and monthly reporting of amounts received and paid, as well as the calculation of the Regulatory Charge, should be provided to the Austin City Council and the public. Austin Energy has admitted to using both the PSA and the Regulatory Charge as funds to avoid *breaking* the affordability cap. Austin Energy appears to be manipulating charges instead of containing costs in order to meet the affordability goal. Transparency cannot be achieved as long as Austin Energy is allowed to manipulate cost and revenue through its pass-through charges. As seen in this proceeding, transparency is key; a full review of all charges is necessary in order to understand how they interplay with one another and affect a customer's total bill. The only way to prove Austin Energy is not double dipping is to allow a full review of their books and records at the same time, otherwise it is too easy to use accounting transactions to bury numbers.

C. Austin Energy's Use of the Public Information Act (PIA) as a Shield and Withhold Critical Information

Procedural Rule §3.1(d)(1) states

> [b]ecause this review process is designed to be open and accessible to all members of the public, no confidential materials should be involved in any filings. However, Austin Energy may be required

> to rely on certain confidential information in compiling its Tariff Package. Because Austin Energy considers this information to be competitive matters under Government Code, §552.133, Austin Energy will provide such information only if ordered to do so by the state attorney general's office. Individuals seeking this information will be required to use the public information process as set forth in Government Code, Chapter 552.[231]

This rule clearly demonstrates that despite the fact Austin Energy used confidential information in its Tariff Package,[232] no party would have access to this information, even though the information provided a basis for Austin Energy's calculations and determinations. Inherently this resulted in a hearing that was **not open and accessible**, it also had the impact of causing participants to question many of Austin Energy's motives and assumptions resulting in the inability to conduct a full analysis.

It is important to note that proceedings related to utility rates always involve confidential information, for example information related to contract price, ERCOT bids, etc. Additionally, RFIs would inevitably result in the need to release confidential information in order to fully respond.[233] Despite protests from Intervenors that the use of the PIA was unnecessary, Austin Energy unilaterally decided that though this is a *contested proceeding* that all information disclosed would have to be disclosed in accordance with the PIA, contrary to every other utility in the state who must provide similar information during a PUC rate case proceeding under a protective order.[234] Austin Energy seemed to believe that if it released otherwise protected material in this case, that the material would lose its protected status and become subject to public disclosure, under the PIA. Austin Energy refused to recognize arguments repeatedly made by parties that disagreed with this interpretation of the Government Code.[235] Open

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[231] Procedural Rules § 3.1(d)(1).

[232] This Procedural Rule also contradicted Procedural Rule § 3.1(e), which contemplated the use of confidential information.

[233] NXP and Samsung alone sent approximately 22 RFI requests which were deemed to be subject to non-disclosure under the PIA.

[234] Despite the fact it is common knowledge that parties involved in a rate proceeding at the PUC routinely sign protective orders so that confidential information can be disseminated, in a letter dated February 25, 2016, Stuart Reilly, Assistant City Attorney, asserted that "none of this information is shared or made public by other electric utilities, many of which are private, investor-owned utilities without obligations under the Texas Public Information Act." This statement is false as the information requested would be provided under a protective order.

[235] NXP and Samsung expressed this interpretation at several times during this proceeding and specifically in: (1) letter responding to Open Records Request from Mr. J. Christopher Hughes received February 3, 2016 (Mar. 7, 2016); (2) letter responding to Open Records Request from Maria Faconti received March 15, 2016 (Apr. 11,

Records Decision No. 579 recognizes that the exchanging of information among litigants in informal discovery is not a voluntary release under § 552.007. Additionally, § 552.103 excepts from required public disclosure "information relating to litigation of a civil or criminal nature to which the state or political subdivision is or may be a party[.]"

The *2014 Public Information Handbook* from the Office of the Attorney General states that "[f]or purposes of section 552.103(a), a contested case under the Administrative Procedure Act (APA), Government Code chapter 2001, constitutes litigation."[236] While Austin Energy and the City of Austin inexplicably chose not to conduct this case under the APA and instead chose to limit the authority of the IHE on a number of matters including scope, discovery, and the issuance of protective orders, it is clear that administrative proceedings not subject to the APA have also been considered "litigation" within the meaning of § 552.103(a).[237] When determining if a proceeding should be considered litigation for purpose of § 552.103, the Attorney General considers (1) whether the dispute is, for all practical purposes, litigated in an administrative proceeding where (a) discovery takes place, (b) evidence is heard, (c) factual questions are resolved, and (d) a record is made, and (2) whether the proceeding is an adjudicative forum of first jurisdiction.[238] Under these provisions and exceptions to disclosure, NXP and Samsung contended that materials and information provided during this rate review process would remain protected from disclosure for purposes of future PIA requests. It is clear that though this proceeding is not subject to the APA, it has all the markings of a litigated proceeding – parties conducted discovery, presented evidence, and the Impartial Hearing Examiner resolving factual questions with the creation of a record. In addition, the hearing before the Impartial Hearing Examiner was where this proceeding was first adjudicated. No other type of hearing more closely falls in line with all the factors the Attorney General considers when determining what constitutes "litigation."

2016); (3) *Comments of NXP and Samsung Regarding the City of Austin Procedural Rules for the Initial Review of Austin Energy's Rates*; (4) *NXP Semiconductors and Samsung Austin Semiconductor, LLCs' Motion to Compel Austin Energy* (Feb. 25, 2016); and, (5) comments made during the January 14, 2016 Pre-hearing Conference.

[236] Office of the Attorney General, *2014 Public Information Handbook* at 82. Citing Open Records Decision No. 588 at 7 (1991) (construing statutory predecessor to APA).

[237] Office of the Attorney General, *2014 Public Information Handbook* at 82. Open Records Decision No. 588 at 6-7 (1991).

[238] Office of the Attorney General, *2014 Public Information Handbook* at 82. *See* Open Records Decision No. 588 (1991).

Despite the fact this rate proceeding constitutes "litigation" for purposes of § 552.103, Austin Energy insisted on asking for an Attorney General's opinion regarding several discovery requests, hampering full participation and the ability of a party to fully analyze the Tariff Package. This was a severe hindrance and resulted in the inability to conduct a full analysis of Austin Energy's rates. Despite protests that a protective order be instituted, Austin Energy refused despite the fact a protective order would have established repercussions to discourage dissemination of confidential information.[239]

Additionally, use of the PIA was unreasonable given the procedural schedule. Under the Government Code § 552.301(b), if Austin Energy receives a written request for information that it wishes to withhold from public disclosure, it must ask for an Attorney General's decision and state the exception/s that apply within a reasonable time, but not later than the 10th business day after the date they received the written request. Then, before the information is released, under Government Code § 552.306 the Attorney General has 45 business days to render its decision. This timeline makes any information which Austin Energy determines to be covered from disclosure under an exception to the PIA, untouchable by any party, even if the information was actually not covered, and even if Austin Energy knew the Attorney General would not deem the information protected. This gives Austin Energy the ability to guard any information it wishes not to disclose, irrelevant of if the information is actually subject to being withheld. More importantly, Austin Energy did not characterize the PIA requests as discovery requests they were sending to the Attorney General because they refused to sign a protective order. By use of the PIA, Austin Energy was able to hide important documents and figures despite their necessity in analyzing the Tariff Package.

As the Attorney General has recognized, the PIA differs in purpose from statutes and procedural rules providing for discovery of documents in administrative and judicial proceedings.[240] The PIA's exceptions to required public disclosure do not create privileges from

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[239] Austin Energy asked a Protective Order be used in PUC Docket 40627, *Petition by Homeowners United for Rate Fairness to Review Austin Rate Ordinance No. 20120607-055*, and was granted one, and has released similar information under that protective order. The information provided in Docket 40627 is the same, or very similar to, information requested in the RFIs objected to as confidential or competitively sensitive in this rate review process. *See* Answer of the City of Austin D/B/A Austin Energy to the Petition By Homeowners United for Rate Fairness to Review Austin Rate Ordinance No. 20120607-055, PUC Docket 40627 at 6-7 (Nov. 1, 2012).

[240] Attorney General Opinion JM-1048 at 2 (1989); Open Records Decision Nos. 551 at 4 (1990), 108 (1975).

discovery of documents in administrative or judicial proceedings.[241] Despite this, Austin Energy was allowed to circumvent discovery; procedurally limit discovery in a contested proceeding through use of the PIA. The PIA was, specifically § 552.103(a), intended to prevent the use of the PIA as a method of avoiding, in litigation, the rules of discovery;[242] parties seeking information related to litigation should obtain that material through discovery procedures and not the PIA.[243] Even though Intervenors attempted to use standard discovery methods to obtain information, Austin Energy was allowed to withhold essential documents that went to the merits of the case simply by claiming exemption under the PIA, a statute never intended to be used to circumvent discovery. Through use of the PIA, Austin Energy was allowed to hide information despite the fact Open Records Decision No. 579 states, "exchanging information among *litigants* in informal discovery was not a voluntary release,"[244] and therefore the confidentiality of the information exchanged was not waived as to the general public.

Not only was Austin Energy's use of the PIA to hide traditionally discoverable material inherently prejudicial, it also created a situation where essential documents needed for a full and fair hearing, including the complete evaluation of the reasonableness of Austin Energy's rates, were withheld allowing for only a partial analysis by Intervenors. Despite the fact Austin Energy, on its own discretion, filed a comprehensive rate-filing package that included its costs and realized revenues from all of its tariffed rates, including both base rates and non-base rates, and for its non-utility operations, many documents necessary for a full analysis were not disclosed. Though Austin Energy wanted to "present a comprehensive, transparent Tariff Package[,]"[245] they made efforts to prevent a comprehensive review of the Tariff Package, leading to non-transparent rates. It was when Intervenors attempted to make the Tariff Package "transparent" by inquiring into rationale and figures presented that Austin Energy blocked disclosure through the use of the PIA shielding relevant information. As a result, parties were unable to use discovery as it was intended, to fully understand the information presented. Essential

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[241] Gov't Code § 552.005.

[242] *Thomas v. Cornyn*, 71 S.W.3d 473, 480 (Tex. App. – Austin 2002, no pet.); Attorney General Option JM-1048 at 4 (1989). Open Records Decision No. 551 at 3 (1990).

[243] Open Records Decision No. 551 at 3 (1990).

[244] Open Records Decision No. 579 at 7 (1990).

[245] Austin Energy's Response to NXP Semiconductors' and Samsung Austin Semiconductor, LLC's Motion to Compel Austin Energy at 2 (Mar. 1, 2016).

information was unavailable resulting in the inability to fully understand Austin Energy's rates and underlying philosophies. This is especially troublesome because Austin Energy made no attempt in its Tariff Package to separate costs and revenues associated with non-base rate services from the costs and corresponding revenues attributable to its base rates, and they did not provide information to allow analysis of whether or not Austin Energy was double dipping through use of the ERCOT market. Due to the procedures Austin Energy selected to govern this proceeding, a full and comprehensive analysis of the reasonableness of base rates was unachievable. Austin Energy's unwarranted decision to not utilize a protective order put all parties at a disadvantage and prevented a full understanding of the inputs to base rates.

IX. CONCLUSION

Based on its original memorandum of recommendations to reduce Austin Energy's revenue requirement, the adjustments to the revenue requirement made by Austin Energy since that time, and the results of the Rate Review Hearing, NXP/Samsung have outlined in this brief almost $130 million in savings to Austin Energy's retail revenue requirement. These savings were not that difficult to find. For the most part they are recommendations to end sloppy accounting gimmicks and over collection from ratepayers. It should be instructive that NXP/Samsung were able to find such savings so easily considering how much information Austin Energy was able to withhold and how compressed the procedural schedule has been. It would be interesting to see how much in savings the stakeholders might find if we were able to take this case to the PUC for a more robust investigation.

The biggest problem with how Austin Energy operates is that it is entangled in a co-dependent and politically motivated management structure with City Council developed over decades with no independent oversight and no competition.

Going forward, the key for Austin ratepayers is to demand access to electric service that is transparent and affordable. The key for Austin Energy and the City Council is how transparently they run the PUBLIC utility and how transparently they pay for certain city services.

To summarize, NXP/Samsung's recommendations are as follows:

Revenue Requirement:

- Decommissioning – Total savings to revenue requirement - ($19.4 million). Reduce allocation to $12.6 million for Decker Units 1 & 2 only and fund it out of reserves rather than expenses in the revenue requirement. Pages 8-10
- Internally Generated Funds for Construction – Total savings to revenue requirement ($38.3 million). Pages 10-15
- Transmission Costs and Revenues - Total savings to revenue requirement ($14 million). Pages 15-27
- Uncollectable Expense – Total savings to revenue requirement ($8.4 million). Pages 28-29
- Economic Development/Community Programs – Total savings to revenue requirement ($9.1 million). Pages 28-29
- Loss on Asset Disposal – Total savings to revenue requirement ($7.2 million). Pages 29-30
- Customer Care – Total savings to revenue requirement ($10.3 million). Pages 30-31
- Rate Case Expense – Total savings to revenue requirement ($212,000). Page 32
- Outside Services – Total savings to revenue requirement ($6.8 million). Page 32
- Property Transfer Sales – Total savings to revenue requirement ($14.5 million) Page 37
- Change the use of the Cash Flow method as it discourages transparent accounting and sound operational and financial decisions, or reduce revenue requirement to indicate an understanding that the Cash Flow method produces an inflated revenue requirement. Page 35-36
- Allow for Pass-through charges to be reviewed as part of a detailed contested case rate review process just like they would be at the PUC. Page 36-37
- Require Austin Energy to treat their reserves as retained earnings similar to how other utilities are required to treat them. Page 36

Cost Allocation

- A&G Expense – NXP/Samsung support Austin Energy's allocation of A&G expense. Pages 35-36

- Allocation of Production Costs – NXP/Samsung supports the use of the 4CP/A&E Allocation Method. Pages 36-43
- Allocation of Distribution Costs – NXP/Samsung support the use of the 4 Summer NCP Allocation Method. Page 43-49
- Allocation of Meters and Meter Reading Expenses – NXP/Samsung agree with Austin Energy's allocation of meter and meter reading expenses. Pages 49-51
- Revenue Distribution/Allocation/Spread – NXP/Samsung propose that all classes be moved to their fully allocated class cost of service in *this* rate review. Pages 51-54
- Policy – Prevent piecemeal ratemaking by allowing Pass-through charges to be reviewed and adjusted outside of a base rate proceeding in an improved transparent and comprehensive contested hearing just like they are at the PUC. Pages 56-58
- Regulatory Charge – Revise the current tariff to fully account for all costs and apply all revenues transparently to reduce the revenue requirement for the benefit of ratepayers. Pages 63-68

We want to thank the IHE and fellow intervenors for their hard work in making this process as productive as possible and we look forward to the next steps in the process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this pleading has been forwarded by fax, e-mail, U.S. first class mail, hand-delivery, or by courier service to all parties and filed with the City Clerk on the 10th day of June, 2016.

_____
J. Christopher Hughes