

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	§	

AUSTIN CITY CLERK
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**POST HEARING BRIEF OF
AUSTIN ENERGY LOW INCOME CUSTOMERS**

COMES NOW, Texas Legal Services Center ("TLSC") on behalf of Austin
Energy Low Income Customers ("AELIC") providing a briefing on this case as follows:

I.

Overview (Introduction)

AELIC became a party to this case because of AE's proposal to decrease the rates for all residential customers who use over 750 kWh per month at the expense of residential customers who use 500 kWh or less a month. We also became a party because of Austin Energy's ("AE") pilot prepayment tariff designed and implemented without public participation and input.

While reviewing AE's rate filing package, AELIC identified issues involving the reasonableness of including certain AE cost levels and the reasonableness of certain residential revenues that we will address below. Additional issues arose in discovery and when parties filed testimony that AELIC will also address below.

II.

Revenue Requirement

The revenue requirement phase of a rate case addresses how much costs should be incurred by AE to provide electric service to its retail customers and comparing those

costs with the revenues AE realized during a typical year. A typical year is called a test year (“TY”) and starts as a base with, in this case, fiscal year (“FY”) 2014. Adjustments are made to “normalize” operations such as adjusting FY 2014 extremely hot days or extremely cold days to reflect more normal weather patterns. Additional adjustments are made to add, subtract, or modify costs or revenues to reflect costs and revenues that AE is more likely to have incurring when the rates set in this proceeding will be in effect which is FY 2017.. These are referred to as “known and measureable” adjustments. An example of a known and measureable adjustment would be salary increases that occurred after the close of FY 2014 but will be implemented either before or during the time period the rates will be in effect.

In its rate filing package AE identifies the costs it contends are necessary and reasonable to provide electric service. These costs include the plant costs, operating and maintenance (“O&M”) expenses, reserves or savings accounts to cover emergencies that may arise when the rates are in effect. AE also identifies the revenues it receives from its base rates and base rate fees or charges. The parties review these costs to determine whether the costs are related to AE’s base rate activities and whether the costs are reasonable and necessary to provide electric service. The parties also review the revenues AE attributed to its base rates and charges to determine whether the revenues were properly identified and calculated. After reviewing the costs and the revenues the parties through written presentations to the Judge make recommendations concerning cost or revenue adjustments to AE’s identified costs and revenues. The list below sets out the revenue and cost adjustments recommended by one or more parties. AELIC will

not be commenting on each adjustment. Our lack of comment should not be construed as acceptance or rejection as to AE's proposed costs or revenues or to a party's(ies') recommended cost or revenue adjustment.

A. Residential Base Revenue Customer Assistance Program Adjustment

AE has agreed that an adjustment to residential base revenues should be made to include the CAP revenues AE realized to pay for the CAP bill discounts. AELIC urges the Judge to find that this adjustment should be made and recommend to the Council that the revenue requirement should be adjusted to include these revenues.

B. Decommissioning Funding

1. AE's operations and maintenance ("O&M") should be reduced by \$19.4 million to exclude its requested cost recovery for non-nuclear decommissioning reserves. In a rate proceeding, the utility bears the burden of proving that the expenses it seeks to be recovered in rates are reasonable and necessary.¹ In this case AE not only failed in its burden of proving the largest portion of its proposed decommissioning expenses were reasonable and necessary, but AE refused to provide the very evidence needed to prove whether its estimated decommissioning expenses were reasonable and necessary. Instead, AE refused to provide the cost facts supposedly relied upon by AE to derive its level of decommissioning costs requested to be recovered with base rates in this case. Moreover, even though parties requested that AE seek an attorney general opinion on whether AE's release of this information under a confidential order in a rate hearing

¹ See Texas Utilities Code, §36.006 (Vernon 2007).

would waive its right to argue confidentiality in a Public Information Request² at the last prehearing before Your Honor, AE apparently did not take this step.³ At the hearing AE witness Dreyfus admitted that he made no attempt to seek an attorney general opinion.⁴ Moreover, AE's consultant who testified about the proposed decommissioning costs admitted that he was not aware that neither the Judge nor any party had been able to see the "detailed decommissioning cost study" that he referenced.⁵ AE is using the Public Information Act to determine whether it has to provide discovery it deems confidential. It should be pointed out that in an AE Attorney General Public Information request concerning a discovery request about its coal contracts involving its coal plant in this case, its joint coal plant partner, LCRA, questioned why a discovery request was being challenged under the Public Information Act. A copy of the relevant portions of that letter brief is attached as Exhibit A. Lastly, public utilities have historically provided its decommissioning studies not under a confidentiality seal nor pursuant to a confidentiality order but as an open documentary record in PUC rate proceedings.⁶ All these factors demonstrate a total unwillingness on the part of AE to meet its burden of proving the reasonableness and necessity of its decommission reserve expenses. As such, these expenses should be excluded from recovery in this rate case.

² See Texas Government Code, Chapter 552 (Vernon , Vernon's Supp.)

³ AE did include in its procedural rules a prohibition of the Independent Hearing Examiner to issue a confidentiality order throwing another road block in parties' attempts to verify the reasonableness and necessity of its aggregated decommissioning expense request.

⁴ Tr. At 258 & 259, AELIC cross of Dreyfus.

⁵ Tr. Pp. 765 & 766, AELIC cross of Mancinelli.

⁶ See, for instance, re: *Application of Southwestern Public Service Company For Authority to Change Rates*, Pre-filed Testimony of SPS witness Francis Seymore, Bates Stamp pp. 01678-01768, PUC Docket No. 43695 (Filed December 8, 2014)

2. In the alternative, the Judge should adopt a conservative level of decommission funding.

At the hearing, AE witness Dombrowski agreed that the goal of the decommissioning reserve is to have the money to pay for the decommissioning at the time the plant is retired.⁷ The evidence shows that AE's requested addition of \$19.4 million in the TY 2014 revenue requirements to fund a non nuclear decommissioning reserve is based on a consultant's high end of the range of decommissioning costs.⁸ For purposes of the decommissioning study the plant retirement dates were presumed to be 2018 for Decker Creek, 2025 for FPP and 2030 for San Hill Energy Center.⁹ AE's proposed funding amount of \$19.4 million in the TY expenses would completely fund the decommissioning costs of all three plants based on the high end of the range of decommissioning costs of \$80 million in 4.1 years which is substantially before the retirement dates of 2025 and 2030.¹⁰ Consequently, before the next rate case in five years, AE will have over-recovered the full amount of its proposed decommissioning reserve. AE's requested TY funding level is excessive and far exceeds a reasonable annual funding level necessary to reach the reserve limits "at the time the plants are retired."¹¹

⁷ Tr. p. 158, AELIC cross of Dombrowski

⁸ Rate filing package Bates Stamp p. 488

⁹ Id.

¹⁰ AELIC Ex. No. 16, p. 1

¹¹ Tr. 158, AELIC cross of Dombrowski

Furthermore, since AE's filing of its rate case, AE has postponed the proposed retirement date for Decker.¹² Moreover, the Council has taken no formal action to retire any of the three plants included in AE's decommissioning cost study.¹³ In addition, once the Council announces the retirement of a plant, AE enters into ERCOT's regional planning process which defers decommissioning activities for an additional 30-36 months.¹⁴ Assuming the maximum decommissioning costs AE has assumed for purposes of calculating its TY levels of decommissioning expenses, AE has not provided a reasonable amortization of these costs between the effective date of the rates to be set in this case and the date the utility could commence decommissioning activities (assuming the plant retirement dates AE utilized in the rate case with consideration for the newly announced Decker Creek plant delayed retirement date). Taking AE's high decommissioning cost estimates for each plant, amortizing that amount over the number of years until AE's presumed retirement, and adding the calculated amortized costs for each plant results in approximately \$11 million for TY 2014.¹⁵

However, this \$11 million TY amount is based on AE's use of the maximum values provided in the study. ICA witness Johnson noted these maximum values exceeded the average decommissioning cost per kW approved by regulatory authorities.¹⁶ Mr. Johnson's recommended 48% expense reduction is reasonable and consistent with regulatory authorities' decisions on this issue who are charged on balancing the interests

¹² Tr. p. 185, AELIC cross of Ball

¹³ AELIC Ex. No. 23, p. 1

¹⁴ Tr. p. 186, AELIC cross of Ball

¹⁵ The data to perform this analysis is at Bates Stamp p. 488 of the rate filing package.

¹⁶ ICA Ex. No. 1, Johnson direct at p. 20

of consumers and utility.¹⁷ The reasonableness of Mr. Johnson's recommendations gains further support given the facts in this case: the only decommissioning study done was deemed confidential and was unavailable for review; the decommissioning study relied upon the regulatory decisions ICA witness Johnson relied upon in determining his adjustment; and AE chose to rely on the upper most top of the range of decommissioning cost estimates derived in the decommissioning study. Mr. Johnson's adjustment to the \$11 million results in a TY amortization of \$5.72 million.

3. Any TY amortization level of decommissioning costs included in the revenue requirement should also not include an adjustment to AE's reserves.

AE has considered its amortized decommissioning reserve cost as a non-fuel O & M expense and included that expense in its calculation of reserves based on non-fuel O & M expenses. The additional reserve costs that AE has increased to include this expense are the working capital, contingency, and emergency reserves. The calculation of the cost impact to the reserves was discussed at the hearing.¹⁸

AE's request to include its amortized decommission reserve costs in the calculation of certain of its reserves should be denied. Both Samsung witness Fox and AELIC witness Szerszen testified that classifying the decommissioning reserve cost as an O & M expense is improper.¹⁹ At the hearing ICA witness Johnson and Samsung witness Fox testified that decommissioning costs are usually recovered in a utility's depreciation

¹⁷ Id.

¹⁸ Tr. pp. 106-108, AELIC cross of Dombrowski.

¹⁹ AELIC Ex. No. 3 Szerszen cross rebuttal at p. 8; Samsung Ex. No. NS-1, Fox Direct at pp. 28 and 29. See also Tr. p. 413, AE cross of Fox.

costs.²⁰ Depreciation costs are not included in a utility's O & M and are not factored into a utility's calculation of reserves.²¹ Schedule A of AE's rate filing package shows that its depreciation costs are not included in its O & M expenses.²²

AELIC urges the Judge to find that the more credible evidence in the record supports a finding that the decommissioning reserve is not an O & M expense that should be included in the calculation of AE's reserves, and to recommend the Council adjust AE's reserves to exclude this cost from its calculations of its reserves.

C. Internally Generated Funds for Construction

D. Transmission Costs and Revenues

E. FPP Debt Defeasement

The more credible evidence in the record supports a finding that an adjustment for the FPP debt defeasement reserve is too speculative and should be rejected.

Public Citizen/Sierra Club ("Public Citizen") is requesting that an additional \$31 million be added to the TY 2014 revenue requirement to fund a FPP debt defeasement reserve. The record contains several reasons why this request should be denied.

²⁰ Tr. p. 415, AE cross of Fox; Tr. at 443-444, clarifying cross of Fox; Tr. pp. 450-451, AE recross Fox; Tr. p. 554, AE cross Johnson.

²¹ Tr. p. 451, AE recross Fox

²² See rate filing package, Bates Stamp p. 767; See also AELIC Ex. No. 16, pp. 3 & 4, WP C-3.2.1, Bates Stamp p. 827.

First, as AE witness Dombroski testified, this amount would wipe out the current rate reduction and therefore rates of AE's customer classes would not be reduced which are according to both ICA and AE are above cost. Consequently, it would affect the affordability of AE's customer rates.²³ Public Citizen has not provided this court with any analysis that its requested fund would not negatively affect the affordability of rates. The only evidence in the record is that funding this reserve would not.

Two, the amount of debt related to FPP is speculative. FPP is debt funded by several bond series. And the FPP debt is commingled with debt associated with other capital acquisitions.²⁴ Ms. Szerszen also noted several of the bond series will be paid off between 2020 and 2027, dates close to the Council's target date for retiring FPP. Also Ms. Szerszen noted that several of the bond series have sinking fund requirements that could all be applied to reduce the FPP debt.²⁵ Moreover, Ms. Szerszen noted that about a third of the principal amount of the bonds cannot be refunded (i.e. retired) before the 2040 retirement date.²⁶ Public Citizen has presented no evidence concerning the bond series nor presented evidence of how much of the debt tied up in these bond series would be unpaid and that could be paid off around the time of the proposed retirement date given Ms. Szerszen's observations stated above. Public Citizen's analysis falls short of establishing a reasonable reserve cost.

²³ AE Ex. 2 Dombrowski rebuttal at p. 22; ICA Ex. 2 Johnson cross rebuttal at p. 18.

²⁴ AELIC Ex. No. 3 Szerszen cross rebuttal at p. 3 (of testimony)

²⁵ Id. at p. 4

²⁶ Id. at p. 5

Third, neither AE nor the Council currently have control of the FPP retirement date. AE owns FPP jointly with LCRA and cannot retire any of the FPP without LCRA's agreement.²⁷ LCRA's willingness to allow retirement of FPP in whole or in part (such as one of the operating units) is not known. AE doesn't know what debt obligations LCRA has, if any, in relation to the portion of FPP jointly owned with AE.²⁸ Until this issue is resolved, AE cannot retire any portion of the FPP. Public Citizen has provided no evidence of any agreement between LCRA and AE that addresses the early retirement of FPP, in whole or in part.

Fourth, the Council has not taken any formal action to retire FPP.²⁹ According to AE, the Council has set a target for decommissioning FPP in 2022 or 2023 based on other generation additions outlined in the 2014 Austin Energy Resource, Generation and Climate Protection Plan to 2025.³⁰ These retirement-targeted deadlines are subject to affordability goals, regulatory/reliability requirements, market performance/asset value and overall risk management needs.³¹ Public Citizen has provided no analysis to address these conditions for retirement.

Fifth, the Council has qualified the retirement of FPP on maintaining affordability goals. ICA witness Johnson laid out the affordability concerns and qualifiers to taking formal action to retire FPP.³² Among some of the qualifiers the Council would take into consideration is the competitiveness of rates

²⁷ Samsung Ex. No. NS-3, Fox rebuttal at p. 4

²⁸ AELIC Ex. No. 15, p. 2

²⁹ AELIC Ex. No. 22, p. 1

³⁰ Id.

³¹ Id.

³² ICA Ex. No. 2 Johnson cross rebuttal at p. 19

compared to the surrounding area and the 2% rate increase cap if FPP is retired.³³

Public Citizen has provided no analysis of the affordability qualifiers in relation to the targeted FPP retirement dates. Consequently, Public Citizen's FPP debt defeasement fund based on early retirement of FPP is speculative.

Six, retirement of FPP timelines do not commence until the Council takes formal action. As AE witness Ball testified, AE doesn't commence decommissioning activities until the Council takes formal action to retire the plant.³⁴ After that formal action is taken, AE still cannot start decommissioning activities until AE has notified ERCOT and a plan for transition is developed which would take 30 to 36 months.³⁵ Consequently any Council plan to retire FPP will also include an additional 30 to 36 months of planning at ERCOT. Public Citizen has provided no evidence to identify the steps AE must take and the timelines involved after the Council's decision to retire FPP is made and the commencement of decommissioning of the plant.

In summary, there is no evidence in the record to: address affordability concerns; determine the timeline for LCRA agreement for AE to retire at least a portion of FPP; determine the actual amount of debt, if any, that would be outstanding at the time decommissioning of FPP commences; and determine when AE would commence decommissioning activities for FPP. To the contrary, ICA witness Johnson, AELIC witness Szerszen, and Samsung witness Fox all conclude

³³ Id.

³⁴ Tr. p. 186, AELIC cross of Ball

³⁵ Id.

the evidence in this case shows that timelines for decommissioning activities is speculative and the amount of debt that would be outstanding, if any, at the time decommissioning activities commences is too speculative.³⁶ AELIC urges Your Honor to find that Public Citizen's request to increase the revenue requirement in this case is not based on the more credible evidence in the record and to recommend that the Council reject this adjustment.

F. Debt Service Associated with South Texas Nuclear Project

G. Uncollectable Expense ("bad debt")

The more credible evidence in the record supports an adjustment of the TY2014 bad debt level to the FY 2015 level of bad debt.

AE's test year level of bad debt is \$16,806,578.³⁷ AELIC joined by two other parties, Independent Consumer Advocate ("ICA") and NXP /Samsung ("Samsung") recommended adjustments arguing the TY level was not representative of the level of bad debt that would occur in FY 2017, the effective date of the rates to be set in this case. ICA's recommendation is based on an average of AE's bad debt from 2008 to 2014 finding a range of \$8.2 million to

³⁶ AELIC Ex. No. 3, Szerszen cross rebuttal at pp. 6 & 7; ICA Ex. No. 2 Johnson cross rebuttal at pp. 20 & 21; and Samsung Ex. No. NS-3, Fox cross rebuttal at p. 4.

³⁷ This amount represents an adjustment to the initial \$20.8 million to delete past due accounts that were closed prior to the start of FY 2014 and therefore do not constitute bade debt that AE incurred in FY 2014. See AELIC Ex. No 17 (AE's Response to ICA 2-27(A))

\$10.4 million.³⁸ Samsung and AELIC recommended that AE's level of bad debt be adjusted to \$8,462,938, the level of bad debt AE reported it incurred in FY 2015.³⁹ This amount is within the range of bad debt calculated by ICA.

As ICA witness Johnson's testimony shows, AE's level of bad debt for FY 2014 and 2013 is materially and significantly higher than any of the previous FY's debt levels.⁴⁰ As an explanation for the extraordinarily high levels of bad debt for FYs 2013 and 2014, ICA witness Johnson discussed the billing problems and the disconnection moratorium AE experienced when it implemented its new billing system.⁴¹ AELIC agrees with ICA's observation that the ballooning of the debt in FYs 2013 and 2014 should not be treated as a recurring event,⁴² and the level of bad debt should be coming down to more normalized levels as evidenced by FY 2015's level of bad debt. AE failed to respond to this reasoning in its rebuttal testimony.⁴³ But in cross examination by ICA AE witness Dombrowski referred to a 2013 change⁴⁴ in its payment arrangements that increased the customer's time for payment on past due bills as a reason for its high levels of bad debt.⁴⁵

However, AE's statements to the Austin City Council ("Council") say otherwise.

AELIC Ex. 38 reveals that AE made a presentation to the Council concerning bade

³⁸ See ICA Ex. No. 1, Johnson Direct pp. 13 & 14.

³⁹ See Samsung Ex. NS-1, Fox Direct at pp. 36 & 37.

⁴⁰ ICA Ex. No. 1, Johnson Direct at p. 13.

⁴¹ *Id.* at pp. 14 & 15.

⁴² *Id.* at p. 15.

⁴³ AELIC would note that AE struck from AE rebuttal witness Dombrowski's testimony addressing this issue. See Tr. at pp. 562 & 563.

⁴⁴ See AELIC Ex. No. 36, a copy of the Council Ordinance changing the utility's payment arrangements signed into law on December 5, 2013.

⁴⁵ Tr. at p. 650.

debt on June 23, 2014 after the 2013 change in its payment arrangements mentioned above. In that presentation AE discussed with the Council its management plans to reduce debt.⁴⁶ At the presentation AE also provided a forecast of its bad debt levels through FY 2019 which showed a steadily declining level of bad debt.⁴⁷ AELIC notes that the TY level of bad debt is below AE's forecasted bad debt for FY 2014; and, similarly AE's FY 2015 level of bad debt is below the FY 2015 forecasted level and about the same amount forecasted for FY 2017, the years the rates will be in effect. The evidence summarized above supports Samsung's and AELIC's recommended use of AE's FY 2015 bad debt level for the revenue requirements in this case. This recommendation is conservative given AE's own forecasted bad debt levels for the FYs the rates will be in effect. In addition, Samsung witness Fox testified that bad debt levels will fluctuate with the amount of revenue and that due to decreased fuel prices and resulting rate decreases should have a downward pressure on AE's level of debt.⁴⁸ Moreover, the Council addressed AE's argument concerning the length of time a customer is allowed to pay off his/her unpaid bills by amending the utility code in 2015.⁴⁹ The Code amendment removed the payment agreement timelines that were included in the 2013 Ordinance.⁵⁰ This 2015 code amendment substantially

⁴⁶ AELIC Ex. No. 38, p. 11 of presentation "What Are We Doing About It?"

⁴⁷ Id. p. 4 of presentation, "Forecast—Bad Debt Expense."

⁴⁸ Tr. pp.432, 434 AE cross Fox

⁴⁹ AELIC Ex. No. 37

⁵⁰ Compare AELIC Ex. No. 36 and No. 37

weakens AE's supporting argument for setting the TY 2014 level at the actual FY 2014 level.

The more credible evidence in the record supports Samsung's and AELIC's recommendation to reduce AE's TY level of bad debt to that level AE experienced in FY 2015.

H. Economic Development

I. Loss on Disposal

J. Customer Care

K. Rate Case Expense

L. Outside Services

M. Reserves

1. Reserve Funding

2. Policies

N. Property Transfers

1. Energy Control Center

AE received \$14.5 million at the beginning of FY 2016 for the sale of land related to a retired plant facility.⁵¹ Even though AE first stated that the funds were to be used to fund a new control center, AE admitted at the hearing that the new control center had already been built and was in operation during the TY 2014.⁵² Further, the plant was funded with debt through the CIP. And AE admitted there

⁵¹ AELIC Ex. No. 20.

⁵² Tr. Pp. 971972

were costs relating to the new control center in the TY. The \$14.5 million should be an adjustment to the utility's operating balance for the TY. Although AE intimates that it is a non-recurring and should not be considered, AELIC is not asking the Judge to amend AE's O&M expenses. AELIC is simply asking the Judge to recognize that this money was provided AE within the time period that AE has been making known and measureable adjustments and that the operating balance, i.e. the cash working capital reserve should be increased. Reserves are different than AE's other expenses. The source of these funds makes it an excellent choice to be transferred into AE's decommissioning reserve because it is proceeds from its retirement of a facility.

AE urges Your Honor to find that AE realized \$14.5 million from a sale of land related to the retirement of plant facilities and that that the operating balance for the TY should be adjusted to recognize these funds and to recommend to the council that the funding be used to adjust any reserve deficiencies AE may have.

2. Seaholm South Substation Land
3. Vacant Lot at 2406 Ventura Drive
4. Vacant Lot at 3400 Burleson Drive

III.

Cost Allocation

Once AE's costs are determined, the next phase of a rate hearing occurs. The next phase commences with establishing groupings of customers by common usage characteristics. The groupings are called customer classes. Residential customers are

grouped into one class—the residential customer class. Broadly speaking AE has a residential customer class, a small business customer class, a commercial class(es), a large commercial class(es), and an industrial class(es). These customer groupings along with criteria for member-customers can be controversial and become an issue to be decided ultimately by the City Council.

After the customer classes are defined, the next challenge is to determine the costs AE incurs in serving each customer class. This part is challenging because many of the costs AE incurs are joint costs; that is, costs that several if not all of the customer class's cause. An example is a power plant⁵³. A power plant serves all of its customer classes. How to divvy up these joint costs among the customer classes is the primary challenge for this phase of the rate case. The costs will be characterized and based on their characterizations methodologies will be relied upon to mete out the common costs to the various customer classes. One of the most controversial group of costs are those classified as production, representing power plant costs. From a base rate view, production costs have the greatest impact to base rates and therefore the allocation of these costs is usually controversial. This rate case is no exception. Three parties in addition to AE have recommended different approaches to production cost allocations. This is one of the issues parties will be addressing below. There are other cost allocation decisions that impact the costs assigned a customer class that were raised by the parties in this case as identified below.

⁵³ Because of deregulation, power plants do not directly serve AE customers. The energy that AE's power plants generate is sold out in the wholesale market. Likewise, AE purchases all its customers' energy needs from the wholesale market. This description is provided to show joint costs.

- A. Functionalization of the 311 Call Center, FERC 920 Administration and General Labor Costs and New Service Connection Fees
- B. Classification of Production Costs
- C. Allocation of Production Costs
- D. Allocation of Distribution Costs
- E. Allocation of Customer Service (Uncollectable) Costs
- F. Allocation of Energy Efficiency Service Charge

IV.

Revenue Distribution/Allocation/Spread

V..

Rate Design

- A. Billing Adjustment Factor
- B. Seasonal Power Supply Adjustment
- C. Residential

One of AE's chief arguments that its current residential rate design needs to be changed is that it has revenue stability. To support this argument, AE alleges that its revenues are out of align with its costs and shows a chart demonstrating that while 64% of its costs are "fixed", only 25% of its revenues are "fixed."⁵⁴ AE contends this mismatch between fixed costs and variable revenues places the utility in a risky situation. AE's

⁵⁴ Rate filing package, pp. 6-3 and 6-4 (Bates Stamp pp. 134 and 135.

concern about its revenue recovery of fixed versus is deceptive in that a great portion of its variable revenues are reconcilable and therefore less risky than its “fixed” revenues. As AELIC’s discussion with AE witness Dreyfus⁵⁵ illustrated, many of AE’s variable revenues are “reconcilable” meaning that the underlying rate is adjusted to compensate for any over or under recoveries of AE’s costs.⁵⁶ In other words, both the utility and the customer are made whole. Principally, AE is guaranteed recovery of its costs through the adjustment of a reconcilable variable rate. AE refers to these reconcilable rates as pass through rates. A review of AE’s Schedule H-5.3 of AE’s rate filing package (Bates Stamp p. 1071) shows that the utility fails to consider the substantially less risky nature of reconcilable rates. Reviewing the residential utility rates will illustrate the percentages of variable vs. fixed vs. reconcilable revenues on Schedule H-5.3, horizontal line 2 will show that the vast majority of AE’s residential rates are not risky. The schedule shows the residential class \$318,701, 696 it asserts are risky variable revenues. However, \$150,715,475 of those variable revenues⁵⁷ are actually realized from pass through rates and are therefore reconcilable thereby providing the utility a cost recovery mechanism less risky than the fixed charge, cost recovery mechanism for its fixed revenues because fixed charges are not reconcilable. AE has no guarantee that it will recover its costs with its fixed charges as in its reconcilable rates. It should be noted that the regulatory charge, the EES and the SAL rates were in base rates. By moving the costs related to these reconcilable variable rates, AE made its cost recovery more secure than when they were

⁵⁵ Tr. pp. 270& 271, AELIC cross of Dreyfus

⁵⁶ Id.

⁵⁷ According to Mr. Dreyfus, the SAL, EES, Regulatory Charge and the Other Power Supply charges are reconcilable variable revenues. See Tr. pp. 270-271.

in base rates. AE is proposing rate design changes to promote greater revenue stability but one of its chief arguments—fixed vs. variable revenues—misrepresents the secure nature of over half of its “variable” revenues. AE is proposing to modify its variable base rate tier structures to better ensure the utility does not under collect when the utility experiences an unusually moderate summer.⁵⁸ But, AE admitted at the hearing that AE can over-collect its revenues with its variable base rates when it experiences an unseasonably hot summer or cold winter.⁵⁹ There is a risk to the utility of under recovery during mild weather, but there is also an equal risk to the customer that the utility will over recover during extreme weather events. The risk is shared between customer and utility. AE sets its variable base rates for “normalized” weather. Changes in rate design to address the utility’s risk of under recovery in this case are not matched with addressing the customer’s risk of over recovery. AE’s rate design proposal has the effect of its customers bearing a greater risk. The Judge should take into consideration this shifting more of the risk onto customers, especially in light of the fact that AE has already insulated itself against risk of under recovery by removing some costs out of base rates such as its transmission costs, its street lighting costs and its energy efficiency costs and created a reconcilable rate recovery mechanism.

⁵⁸ Tr. p. 267 AELIC cross of Dreyfus.

⁵⁹ Id.

1. Customer Charge

AE contends that customer-related costs are fixed costs that “vary with the addition or subtraction of customers, not usage.”⁶⁰ While these costs may be “fixed” costs, most of these costs do not vary with the subtraction or addition of customers. AE has identified the following costs as customer costs: meters, customer accounting, customer service, meter reading, uncollectible, key accounts and economic development.⁶¹ AE contends it incurs \$21.68 per residential customer per month for these costs.⁶² The record evidence will show that several of these costs do not vary with the addition or subtraction of a residential customers. ICA witness Johnson notes that the costs of meters, service lines, meter reading, and customer billing have a relationship to the number of customers.⁶³ This analysis would exclude customer service, uncollectibles, key accounts, and economic development from the customer charge. These cost components do not vary with the addition of a customer. For instance, uncollectible costs are not a function of the number of customers. Samsung witness Fox testified that uncollectible costs are variable costs that fluctuate with the amount of usage.⁶⁴ AE acknowledges this relationship between higher bills and debt in its presentation to the Council about customer debt in June 2014.⁶⁵ In fact AE did not list the number of customers as a factor in its amount of uncollectible debt.⁶⁶

⁶⁰ Rate filing package p. 5-11 (Bates Stamp p. 114).

⁶¹ Rate filing package, Schedule H-5.4 (Bates Stamp p. 1072).

⁶² Id.

⁶³ ICA Ex. No. 1, Johnson direct at p. 77.

⁶⁴ Tr. p. 432, AE cross of Fox

⁶⁵ AELIC Ex. No. 38, last page (“Higher summer bills and weather moratoriums typically cause a rise in active debt.”)

⁶⁶ AELIC Ex. No. 38, p. 2 of the power point presentation

Customer-classified costs that have some relationship to the number of customers are impacted by the diversity of residential usage. AE no longer has a simple analog meter for each of its residential customers. They have 8 different meters installed at residential homes ranging in costs from \$18 to \$396.⁶⁷ AE incurs additional meter reading expenses for its value of solar customers who have not one but two meters.⁶⁸ Public Citizen provided several examples of the differing costs between a small use residential customer and a large use residential customer.⁶⁹ Moreover, AE's line extension policy now requires the costs of meters to be paid up front by the customer.⁷⁰ Consequently, this new policy going forward substantially mitigates the costs AE incurs for certain cost components of the customer charge.

ICA witness Johnson found AE's current \$10 to be slightly above its cost of service.⁷¹ This level was confirmed by Public Citizen witness Chernick based on his general knowledge of a utility's cost components that should be recoverable in a customer charge.⁷²

AELIC asks the Judge to find that the customer charge recovers costs incurred by AE that vary with the number of customers; that AE has included several cost components, most notably uncollectible costs, in its cost of service analysis underlying its customer charge that do not vary with the number of customers; and that the \$10 customer charge provides AE adequate revenues to recover its costs that vary with the

⁶⁷ AELIC Ex. No. 24

⁶⁸ AELIC Ex. No. 25, p. 6. TR. AELIC cross of Ball

⁶⁹ Tr. pp. 730 & 731, AE recross Chernick

⁷⁰ Id. p. 3

⁷¹ ICA Ex. No. 1, Johnson Direct p. 78

⁷² Tr. pp. 729-731, AE recross of Chernick

number of its customers. AELIC further asks the Judge to recommend to the Council that the \$10 customer charge provides AE adequate revenues to recover its costs that vary with the number of customers.

2. Tiered Energy Rates

AE is proposing to change the residential tiered rate structure to increase the first tier and reduce rates for all other tiers. AE argues it is increasing the first tier to create revenue stability. However, as pointed out above, by unbundling certain base costs into a series of reconcilable rates, AE has already increased its revenue stability. Moreover, AE admits that its COS in this case shifted more costs onto its residential customers making current rates set to recover less allocated costs unable to cover the increased allocated costs.⁷³ AELIC notes that ICA witness Johnson's COS analysis finds AE's residential customers to be slightly above cost⁷⁴ thereby showing the current rate design to provide stable revenues. The issue therefore in this case is not one of revenue stability but one of fairness and whether the conservation effect of AE's rate design will be affected with AE's proposed changes.

AE's proposed elimination of the seasonal rate differential negatively impacts the conservation effect of the residential rate design. AE is proposing that a seasonal differential on the Power Supply Adjustment ("PSA") rate to provide pricing incentives to conserve.⁷⁵ Obviously AE concedes that a seasonal adjustment provides conservation

⁷³ Rate filing package p. 6-6 (Bates Stamp p. 137).

⁷⁴ Tr. p. 518, AE voir dire of Johnson; ICA Ex. 1-A

⁷⁵ Rate filing package at 6-35 (Bates Stamp p. 164).

incentives. Nonetheless, AE argues that its base rate costs are fixed. This argument is in contravention to its argument that AE's generation fleet, whose costs are recovered with base rates, is essential to protect its customers against market price spikes.⁷⁶ Further AEs COS relies upon allocating base rate funded production costs to residential customers based on monthly peak demands. AE's incurrence of production costs funded with base rates revenues goes hand in hand with its incurrence of PSA-funded energy market price spikes. It is disingenuous to think that production costs funded with base rates have somehow become more "fixed" than in the last rate case and even further back in earlier rate cases. These costs have always been fixed in the short and intermediate run. AE's base rate seasonal differential has been a rate design tool which recognizes that the "fixed" costs in the short and intermediate run become variable in the long run; that is, the need to increase generation because of growing customer demand. Encouraging conservation through rate design can delay the cost of new power plants.

Regardless of the theory behind the summer differential, AELIC has no objection to eliminating the base rate seasonal differential provided that AE maintains the current rate tier differentials to minimize the loss of the conservation effect caused by the seasonal differential elimination. This can be done by making each tier revenue neutral such as by averaging the winter and corresponding summer rate in each tier, perhaps using a weighted average based on kWh. AE's elimination of the seasonal differential coupled with increasing the first tier rates and decreasing all other tier rates decreases the conservation effect of AE's inclining block rate structure. Moreover, ICA witness

⁷⁶ Tr pp. 168-171, Data Foundry cross of Ball

Johnson noted that the first tier is the least susceptible to reducing energy use because this tier is where low use customers have little room to reduce consumption.⁷⁷ In proposing to not only eliminate the seasonal differential but increase the tier least susceptible to price AE performed no elasticity of demand study to determine how its changes will affect the goal of conservation.⁷⁸ This is troubling because AE commissioned a study that showed the current residential rate design “contributed to a material and significant reduction in electricity consumption in the residential class.”⁷⁹ The study suggested use of elasticity of demand studies to help shape further rate design decisions.⁸⁰ Yet AE did not follow that suggestion and decided in this case to make changes to its rate design that drastically alter the conservation effect of its current rate design. AELIC urges the Judge to find that combining the elimination of the seasonal differential with an increase to the first tier without providing evidence that the conservation effect under the proposed rate design will not be impaired is unreasonable and further find that its proposal to increase the first tier while decreasing all other tier rates should be denied; and to recommend the Council deny AE’s request to increase the small user rate tiers.

A second reason AE encourages the Judge to recommend the tier differentials be maintained is because AE’s proposal makes its first and second tier virtually equal in base rate per kWh recovery, taking into consideration all components of the base rates. Under AE’s proposed first and second tiers the base rate cost per kWh is 5.3 cents per

⁷⁷ ICA Ex. No. 1, Johnson direct at p. 81.

⁷⁸ Tr. p. 591, AELIC cross Dombrowski

⁷⁹ AELIC Ex. No. 1

⁸⁰ Id.

kWh at 500 kWh for the first tier and 5.45 cents per kWh for the second tier at 1000 kWh.⁸¹ For residential customers whose services are located outside the city limits the base rate per kWh for the first tier is actually higher than the second tier. Under AE's proposed first and second tiers the base rate cost per kWh for the first tier is 5.8 cents per kWh and for the second tier the base rate cost per kWh is 5.7 cents per kWh.⁸² The customer charge creates a declining rate effect that is countered by the steepness of the current rate design.

AE has increased the first tier rates by more than \$6.7 million.⁸³

A third reason the Judge should maintain the current rate differentials (as modified by eliminating the seasonal surcharge) is that the differing rate tiers recognize that AE incurs more costs to serve large users. AELIC Ex. Nos. 25 and 26 illustrate this point by showing the larger the house, the more demand a residential customer places on the system. Higher load demands increases infrastructure costs as well as increases the production costs shifted onto the residential class. AE's COS analysis for rate design purposes does not consider the load differentials between large and small users. Instead AE distributes its incurred base rate costs out assuming each customer causes the same amount of cost to AE⁸⁴ by either averaging the costs by number of customers (such as in

⁸¹ The computation at the first tier is $500 \times .033$ (proposed base rate) plus the \$10 customer charge divided by 500. The second tier would add to the first tier's costs the $500 \text{ kWh} \times .056$ (proposed second tier rate) divided by 1000. The proposed tariffs are set out in AE rate filing package at pp. 6-15 and 6-16 (Bates Stamp pp. 146 and 147).

⁸² The calculation would be the same as in footnote No. 73 except the proposed energy charges would be replaced with the proposed energy charges for customers outside the city limits.

⁸³ It is more because the only tier whose rates were increased was the first tier and AE gives the second tier credit for part of the increase; therefore, mathematically speaking, the first tier had to increase by more than \$6.7 million to have the offsetting decreases in the second tier to be able to allow AE to have \$6.7 million from both the first and second tier.

⁸⁴ See, for example AELIC Ex. No. 35. See also rate filing package p. 6-13 (Bates Stamp p. 144).

the customer charge) or by total residential class kWh (such as reflected in AELIC Ex. No. 35 showing how AE's base rate cos was calculated). An inverted block rate acknowledges that large users cost AE more to serve while also sending price signals about future costs.

AELIC is not adverse to fewer tiers and encourage AE to consider this issue. That is because it is the differentials between tiers that create the conservation effect. In AE's proposal AE is seeking to increase the first tier rates by over \$6.7 million, a rate tier were low use customers have little or not room to reduce usage. The conservation effect of the rate design is in those tiers where a change in price can reduce usage as it has been shown with the current rates.⁸⁵ Moreover, AE has not only virtually elimination the differential between the first and second tier in the inside city residential rate design but has perversely increased the first tier in the outside city residential rate design where there is a negative price differential between the first and second tier.

AE urges the Judge to find that AE's current rate design has shown to promote conservation; that AE's proposed changes to its energy charges without researching the conservation effect is unreasonable; that AE's proposed increases to the first tiers and decreases to all other tiers results in virtually no differential between the first and second tiers; and that AE's proposal is unfair because it raises the rates of small users while substantially decreasing the rates of large users while failing to consider the declining block rate nature of the customer charge that had been increased 66% in the last rate case.

⁸⁵ See AELIC Ex. No. 1

AELIC further requests the Judge to recommend to the Council that the current rate tier differentials (as modified by eliminating the seasonal differential) be maintained.

3. Seasonal Base Rates

- D. Non-Residential Customer Charge
- E. Load Shifting Voltage Rider
- F. S2 and S3 20% Load Factor Billing Determinant Adjustment
- G. Group Religious Worship Discount

VI.

Value of Solar Issues

- A. Commercial
- B. Community Solar
- C. VOS Residential Tariff

VII.

Policy Issues

- A. Funding Discounts
- B. Rates for Customers Inside and Outside the City Limits of Austin
- C. Piecemeal Ratemaking
- D. Service Area Lighting

1. The more credible evidence in the record supports a finding that AE's Service Area Lighting Pass Through Tariff ("SAL"): inappropriately shifts costs onto AE's retail residential and business customers who are not the cost causers; is inconsistent with other

utilities in Texas; discriminates against AE’s retail residential and commercial customers whose services are located inside the City limits because it does not charge its retail and commercial customers whose services are located outside the City for SAL services provided outside the city limits; exacerbates affordability concerns because the charging of SAL tariff produces less competitive rates; and that the costs underlying the SAL tariff should be allocated to the City of Austin.

(a). Inappropriate shifting of costs. The more credible evidence in the record supports a finding that AE’s SAL tariff creates a mismatch between the cost of providing the service and what customers pay. Samsung witness Goble testified that this mismatch is “neither fair nor reasonable to compel electric users to pay for a service over which they have little or not control and perhaps no need; a service provided by the City of Austin that is utilized by more than just AE customer who live within the City limits.”⁸⁶ This evidence was not rebutted by AE

(b). Inconsistent with other Texas utilities. Samsung witness Goble testified that other utilities in Texas establish a separate class—municipalities within their service territories—and establish a respective base rate.⁸⁷ This testimony was also not rebutted by AE or any other party in this case.

(c). Discriminatory recovery of AE’s cost in providing SAL. At the hearing AE witness Dreyfus testified to the arbitrary and discriminatory nature of AE’s recovery of its costs underlying its SAL services. AE’s residential and commercial customers

⁸⁶ Samsung Ex. NS-2, Goble Direct, pp. 37&38.

⁸⁷ Samsung Ex. NS-2, Goble Direct p. 11.

whose service is located inside Austin City limits are charged a SAL rate; whereas AE's residential and commercial customers whose service is located outside Austin city limits are not charged a SAL rate; some AE large commercial customers whose electric service is located within Austin city limits are not charged a SAL rate; the City of Austin is not charged for its SAL but Cities within AE's service territory are charged for SAL services provided by AE. In addition, AE arbitrarily charges its residential and commercial customers whose services are located within Austin's city limits a reconcilable rate which allows AE to charge them for losses AE incurs in providing this service; whereas the rate AE charges the municipalities for SAL is considered a non-reconcilable base rate in which the customers are not charged for losses AE incurs in providing this service.⁸⁸

(d). Affordability. In her rebuttal testimony, AE witness Kimberly characterized a competitive rate as one that does not charge a customer for a charge that is not paid in the de-regulated market.⁸⁹ At the hearing, AE witness Dreyfus found competition to be an element of affordability.⁹⁰ As brought out in the first subsection above, AE's decision to charge its residential and commercial customers a SAL charge is inconsistent with Texas utilities' practice of charging the cities within their service territories the rate. Consistent with AE's concept of competitiveness and affordability, the failure of other utilities to charge its residential and commercial customers a SAL rate results in AE's SAL rate being

⁸⁸ Tr. pp. 1050-1053, AELIC cross of Dreyfus

⁸⁹ See AE Ex. No.7, Kimberly Rebuttal at p. 17. In her testimony, Ms. Kimberly was arguing competitive rates as a justification for not charging high load customers an EES rate.

⁹⁰ Tr. p. 261, AELIC cross of Dreyfus

anti-competitive and therefore impacts the affordability of the rates charged AE;s residential and commercial customers who take service inside Austin’s city limits.

The more credible evidence in the record supports Samsung’s and AELIC’s recommendation that the costs underlying AE’s SAL rates have been improperly allocated to its residential and commercial customers; that AE has acted unfairly and in a discriminatory and arbitrary fashion in its cost recovery mechanisms for its SAL services; and is contrary to economic standards common to the electric industry (“Rates should be designed, to the degree practical, to reflect the actual cost of providing services to different customer types while promoting the efficient use of resources.”⁹¹). As such, Your Honor should find that AE’s SAL rate is discriminatory, arbitrary, inconsistent with Texas utilities’ recovery of SAL and is anti-competitive. AELIC further asks Your Honor to find that AE should re-allocate its costs underlying its SAL pass through rates to the City of Austin and to make a recommendation consistent with the findings.

2.Alternateively, AE asks the Court to find that recovering its costs for SAL under a reconcilable tariff from its residential and commercial customers whose service is located within Austin city limits while recovering its SAL services using a non-reconcilable base rate from Cities it serves is discriminatory and arbitrary. AELIC further requests in the alternative that Your Honor recommend to the Council that the current SAL pass through tariff be a non-reconcilable rate

⁹¹ See Rate filing package, “AE’s Rate Design Philosophy” pp. 182-195

consistent with the non-reconcilable tariff it uses for its customers outside the Austin city limits.

E. Power Production Costs and Rate Treatment

F. Studies Supporting Future Cost of Service

G. Customer Assistance Program

The more credible evidence in the record supports AE continuing to review and analyze its procedures to determine eligibility for its bill discount program; and that an adjustment to CAP costs is not supported by the record.

Mr. Robbins contends that there is imprudence in the CAP program citing the size of the AE staff in the CAP program and citing errors in the automatic enrollment system that led to non-low income customers automatically enrolled in the CAP bill discount program. Mr. Robbins could not testify to the level of imprudent costs; he did request the Judge to recommend the Council adopt a stricter automatic enrollment screening processes.

At the hearing AE witness Overton testified that the CAP program provides more services than the bill discount program. The CAP program has expanded to provide weatherization energy efficiency services to CAP customers. The CAP program also provides services to AE's medically vulnerable customers and that this program has grown. Lastly, the CAP bill discount program has also grown.⁹² Any budget comparison with other utility bill discount programs has to take these other program responsibilities into consideration. There is no record evidence

⁹²⁹² Tr. at pp. 208-209, AELIC cross of Overton

comparing utility budgets for providing services to low income customers with similar multiple program activities.

This issue raised by Mr. Robbin's addressing AE's enrollment process's failure to exclude customers who are not income eligible for the bill discount program is already being addressed by AE. As AE witness Overton testified, AE uses a 3rd party vendor to perform a screening process that identifies AE customers who are participants in governmental programs provided to people based on household income eligibility.⁹³ Automatic enrollment is an income screening process the Texas Legislature directed the PUC to establish to qualify low income telephone and electric customers for bill assistance.⁹⁴ This state law reflects a public policy decision that automatic enrollment is an effective tool in identifying low income customers in need of utility bill assistance.

AE witness Overton also testified that AE has responded to Mr. Robbin's concerns by modifying the screening process to remove customers who live in homes valued at \$250,000 or more. This change has resulted in removing these customers from the bill discount program.⁹⁵ Mr. Overton also testified to the problems of self-enrollment which cause income eligible customers to be excluded from the program.⁹⁶ As Mr. Overton testified, limiting income eligibility screening to the customer named on the electric bill raises problems because that

⁹³ AE Ex. No. 6, Overton rebuttal at p. 6

⁹⁴ PURA Section 17.004(f)

⁹⁵ Id.

⁹⁶ Id. at p. 9

process would exclude low income customers whose spouse or child is on Medicaid.⁹⁷

AELIC agrees with Mr. Robbins that AE should continue to review and analyze its CAP enrollment process and include the community in improving the process.

AELIC urges the Judge to find that Mr. Robbin's request to adjust the CAP program expenses is without evidentiary support and should be denied. AELIC further urges the Judge to find that AE has been and is making adjustments to its enrollment process to identify and exclude AE customers who do not income qualify for the bill assistance program; to further find that the Council is aware of this issue and is already reviewing and analyzing the CAP bill assistance enrollment procedure; and that no further action by this Court is necessary.

H. Customer Satisfaction

I. Pilot Programs

AE's design and implementation of pilot programs should include public input, especially for those pilot programs that will affect the application of customer protections set out in the City utility code.

AE's position as to pilot programs is that public interference in its design and implementation of the pilots "would limit the utility's ability to gather concrete data and develop an internal understanding of innovative potential solutions to customer

⁹⁷ Id. at 10 & 11

needs and concerns.”⁹⁸ AELIC disagrees with this statement. As the evidence reveals, the absence of public participation causes AE to miss significant issues that should be considered before any pilot is designed and implemented. AE’s prepayment tariff pilot provides an excellent example of this public policy concern. AELIC Ex. No 29 represents a set of AE responses to discovery involving AE’s prepayment tariff pilot program. These responses were not supplemented as required by the City of Austin Procedural rules applicable to this proceeding.⁹⁹ AE’s responses reveal the utility had given little thought to the applicability of the customer protections set out in the City’s utility code. Customer protects such as maximum levels of deposits and credit balances and payments on outstanding utility balances are necessary to ensure AE customers, especially low income customers, can continue to have access to electrical service. Customers without electric service pose health and safety concerns. Another area of customer concern in the design of a pilot program is the useability of the web portal AE was still designing at the time AELIC’s discovery requests were made. Input from low income advocates concerning the ease or lack of ease of access to the information published on the portal for low income customers and/or customers with little education or customers with disabilities would ensure the web portal would be accessible to all AE customers.

One of the important customer protection concerns was that AE’s prepayment pilot program was designed to exclude a customer’s ability to enter into payment

⁹⁸ AE Ex. 6, Overton rebuttal at p. 18

⁹⁹ See City of Austin Procedural Rules for the Initial Review of Austin Energy’s Rates, Rule 7.3(i) “Duty to supplement.”

arrangements if they get behind in prepaying for electric service. AE explained, “(P)ayment arrangements are inconsistent with the underlying concept of a prepaid program because pilot participants are expected to pay for service in advance and cannot use more than what for which they have already paid. As such, there is no functionality for payment arrangements included in the vendor’s prepaid program software.”¹⁰⁰ Not only is this statement contrary to the Public Utility Commission of Texas’ (“PUC”) customer protection substantive rules involving prepaid service providers operating in Texas¹⁰¹, but it violates state law involving weather emergencies. PURA Section 39.101(h) made applicable to municipally owned utilities through PURA Section 40.055(a)(7), Section 39.101(a)(1) requires utilities providing retail service to “defer collection of the full payment of bills” during a weather emergency and to “work with customers to establish a pay schedule for deferred bills.” This state law deferred payment requirement is in the PUC substantive rules involving prepaid service.¹⁰² Consequently, the failure to include consumer advocates in the design and implementation plans for this pilot program has led to a program design violated of state law and an investment in a software program that cannot function consistent with state law. This issue is of particular concern to AELIC because the prepayment tariff pilot program is expected to continue through the upcoming summer months. A customer in this pilot project could face disconnection during or after a weather moratorium even

¹⁰⁰ AELIC Ex. No. 29, AE response to AELIC RFI No. 2-11.

¹⁰¹ See P.U.C. SUBST. R. 25.498(i) “Deferred payment plans”

¹⁰² See P.U.C. SUBST. R. 25.498(i)(1).

though state law requires a deferred plan be offered to the customer. ICA witness Johnson noted that as of March 10, 2016 AE had not resolved the customer protection concerns raised in AELIC's discovery requests.¹⁰³ Further as of March 10, 2016 AE had not discussed its design and implementation plans with the Electric Utility Commission, a citizen's advisory commission established to review and analyze AE's policies and procedures, nor had the utility discussed its design and implementation plans with the City Council.¹⁰⁴ The absence of public input into the design and implementation of pilot programs can lead to programs that pose health and safety concerns as noted by ICA witness Johnson¹⁰⁵ and as illustrated above. ICA witness Johnson expresses concern that a prepayment tariff pilot program is likely to attract low income customers¹⁰⁶ and observes that utilities have experienced a higher number of disconnections and spikes in disconnections through their prepayment programs.¹⁰⁷ AE witness Overton's defense to this concern is that the prepayment program "is going to be completely a voluntary program." Characterizing a rate pilot program as voluntary should not be justification for a customer to relinquish his/her customer protections. And opting for the prepayment tariff pilot program in lieu of disconnection of a customer's post -paid electrical service is a likely scenario.

¹⁰³ ICA Ex. 1, Johnson direct at p. 97.

¹⁰⁴ Id. at p. 95.

¹⁰⁵ ICA Ex. No. 1 at p. 99

¹⁰⁶ AELIC notes that AE has excluded CAP customers from the pilot program. This is applaudable; however, as AELIC Ex. No. 30 shows the number of low income families exceed the number of CAP customers. (CAP customer count can be derived from Rate filing package, WP H-5.1 (Bates Stamp p. 1074).

¹⁰⁷ ICA Ex. 1 at pp. 98 & 99.

AELIC requests Your Honor to find there is credible evidence in the record demonstrating the need for public input in the design and implementation of pilot programs, especially those that affect the customer protection rules of the City's utility code; and to recommend to the Council that AE be directed to incorporate stakeholder and public input in the design and implementation of pilot programs.

J. Pick Your Own Due Date

VIII

Statement of Position/Other Issues

(A) Late Penalty Fees.

The more credible evidence supports a finding and recommendation that AE eliminate the late payment penalty fee because it is inconsistent with PUC customer protection rules for vertically integrated utilities. In the alternative, AE urges the Judge to find and recommend that the late payment¹⁰⁸ penalty fee should not be applied to AE's CAP customers to be consistent with the PUC's customer protection rules involving the deregulated, retail electric marketplace.

PURA Section 17.005 requires municipally owned utilities to adopt and implement customer protection rules that are consistent with the minimum standards established by the Commission. The PUC SUBST Rule 28.8(b) does not allow vertically integrated utilities to charge its residential customers a late payment penalty fee. Although AE relied upon this rule in explaining its reasoning for its late payment penalty fee, it misread the statute. Even assuming the Judge determines that AE should be

¹⁰⁸ AELIC Ex. No. 32

following the customer protection rules in the deregulated market, AE still fails to do so. P.U.C. SUBST. R. 25.480(c) exempts customers in billing assistance programs from the assessment of a late payment penalty fee. AELIC urges the Judge to find that AE's customer protections are to be consistent with the PUC customer protection rules; that the PUC either fully exempts or partially exempts residential customers from the late payment penalty fee and that AE should do so accordingly. Alternatively, AELIC urges the Judge to recommend that AE's CAP customers be exempt from the late payment penalty fee.

(B) Regulatory Charge

AELIC urges the Judge to find that AE will be recovering \$29 million in surplus that should be adjusted to AE's operating balance. It is within the test year.¹⁰⁹

IX..

Conclusion (Prayer)

Wherefore, Premises Considered, AELIC requests the Judge to grant the relief stated above and for such other relief in law or in equity to which it is entitled.

Respectfully Submitted

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¹⁰⁹ Tr. Pp ; AE Ex. 19

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CERTIFICATE OF SERVICE

The undersigned certifies that TLSC has served a copy of the attached document upon all known parties of record by email and to the Impartial Hearing Examiner on the 10th day of June 2016

/S/ Lanetta M. Cooper

Lanetta M. Cooper