

AUSTIN ENERGY 2016 RATE REVIEW

**AUSTIN ENERGY'S TARIFF
PACKAGE UPDATE OF THE 2009
COST OF SERVICE STUDY AND
PROPOSAL TO CHANGE BASE
ELECTRIC RATES**

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**BEFORE THE
CITY OF AUSTIN
IMPARTIAL HEARING EXAMINER**

**IMPARTIAL HEARING EXAMINER'S
REPORT**

July 15, 2016

AUSTIN ENERGY
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IMPARTIAL HEARING EXAMINER'S REPORT

I. Introduction

A. The Process

The Austin City Council ("Council") established a process by which Austin Energy's ("AE" or "Austin Energy") ratepayers could review AE's proposed change in rates. The IHE is not aware of any other municipally owned utility ("MOU") in Texas whose rates are scrutinized through a process similar to the one the Council established.

The rate-review process, while certainly not identical to the process employed by the Public Utility Commission of Texas ("PUCT" or "PUC"), the process nonetheless incorporated many of the features of the PUCT's ratemaking process. It allowed for affected ratepayers – in-city and outside-city ratepayers – to participate in a manner similar to that followed by the PUCT. These "parties" were provided the opportunity to formally participate in this proceeding, to undertake "discovery" of AE's proposed changes in its rates (through what in PUCT parlance are referred to as requests for information ("RFIs")), to present their respective recommendations in the form of "pre-filed testimony" or if they so elected, in a less formal written presentation, to cross-examine AE's and the other "parties" witnesses in the case in a public hearing, and finally, to present written closing briefs summarizing their recommendations.

The Council also created and filled the position of an “Independent Consumer Advocate” to represent the residential and small commercial ratepayers, again, a provision akin to what is available in rate proceedings before the PUCT.

The Impartial Hearing Examiner (“IHE”) is fully mindful of the criticism many parties to this proceeding have of the process, and the IHE agrees that the process is not a perfect one. Certainly the interplay between the Public Information Act (“PIA”) and access to data that AE considers competitively sensitive information served as source of friction between AE and some of the parties. The scope of the hearing itself was, and likely continues to be, a source of disputes with some parties arguing that all of AE’s revenue and its rates should be subject to scrutiny, instead of being limited to AE’s “base-rate” revenue requirements. The timeframe within which to conduct this proceeding also posed challenges to the parties, with everyone – including the IHE – wanting more time.

AE presented its “direct” case on January 25, 2016, which is comprised of a voluminous amount of material in which AE set forth its rationale for its proposed revenue requirement and specific rates. The other parties that elected to do so, submitted their presentations on May 3, 2016. AE submitted its “rebuttal” case on May 20, 2016.

The period for parties to submit their requests for information – that is, the “discovery period” – ran from January 25, 2016 through April 19, 2016 on AE’s direct case (which represents almost 3 months to conduct discovery), and from May 20, 2016 through May 27, 2016 on AE’s rebuttal case.

The hearing on the merits began on May 31, 2016 and concluded on June 2, 2016.

Thus in terms of timeframe, the process was similar to what is statutorily applicable to major rate cases at the PUCT. Granted, often times the utility, typically in exchange for interim

rates at a point certain in time, agrees to extend the schedule. Here, however, there is the reality of the budget process that affects the amount of time the parties, AE, and Council have to conclude these proceedings.

Thus, while the process was by no means perfect, the IHE submits it provided the stakeholders a sound process by which to examine AE's proposed revenue requirement and proposed rates, and certainly provides much greater input than most other MOUs in Texas provide.

The parties that more actively participated in the hearings are listed below:

Austin Energy (AE)	The Independent Consumer Advocate (ICA)
Austin Chamber of Commerce (ACC)	NXP Semiconductors/Samsung Austin Semiconductors, LLC (NXP/Samsung)
Austin Energy Low Income Customers (AELIC or Low Income Customers)	Public Citizens/Sierra Club
Austin Regional Manufacturers Association	Seton Family of Hospitals (Seton)
Bethany United Methodist Church (BUMC)	Mr. Paul Robbins
Data Foundry	Mr. Jim Rourke

B. Summary of the IHE's Recommendations

AE presented its proposed base-rate revenue requirement based on a "test year"; AE's test year is its Fiscal Year ("FY") 2014 historical data, adjusted for known and measurable adjustments. Based on its assessment AE proposed a base-rate revenue requirement of about \$607.2 million, which is about \$24.6 million higher than what AE presented as its test-year, base-rate revenue requirement of about \$631.8 million. So, AE is proposing to decrease its base-rate revenue requirement by about \$24.5 million.

By comparison, NXP/Samsung proposes a decrease of about \$185.1 million and the ICA proposed a decrease of about \$63.2 million. Other parties also recommended specific changes to specific elements that comprise AE's requested revenue requirement, but did not present an overall adjustment to AE's base-rate revenue requirement.

Based on what the IHE concluded was the more credible evidence presented by the parties, the IHE recommends several changes to AE's proposed revenue requirement, and accepted some but not all of the other parties' proposed changes to the elements to taken together, comprise AE's base-rate revenue requirement.

However, because the IHE cannot determine the final impact of all its changes, it is not presenting an overall revenue requirement. Instead, the IHE requests that AE use as inputs to its revenue-requirement model, the inputs the IHE recommends that Council adopt. Below the IHE lists in summary fashion, each of his proposed adjustments on the items raised by one or more parties in this proceeding. If no party disputed a change that AE proposed, the IHE did not address that element, but instead assumed that no party contested that particular element.

C. Proposed Changes to AE's and the Parties' Recommendations Regarding AE's Base-Rate Revenue Requirement

1. Residential Base Revenue Customer Assistance Program Adjustment

The IHE recommends that Austin Energy's base-rate revenue be amended to account for the \$7,085,000. Doing so produces a starting point for the decrease in Austin Energy's base-rate revenue of \$24,559,000. That is, other parties' proposed changes to Austin Energy's proposed reduction are in addition to the \$24,559,000 decrease that Austin Energy proposes.

2. Decommissioning Funding

The IHE recommends that Austin Energy's proposed fund for decommissioning its non-nuclear production plants be reduced by \$3,792,850 for a total decommissioning cost of \$17,792,850. Therefore, for FPP and SHEC the IHE recommends decommissioning costs of \$2,925,000 for FPP and \$867,850 for SHEC, and for Decker Units 1 and 2, the IHE recommends a decommissioning cost of \$14 million.

3. Internally Generated Funds for Construction

It is inappropriate to disregard CIP expenditures related to production plant as NXP/Samsung proposes. Even though the City Council may not have yet identified the next production plant for Austin Energy to construct, this does not mean Austin Energy does not expend monies on production plant. Therefore, the IHE recommends that in calculating IGCF that the amount of CIP to use is \$158,169,688.

In calculating the percentage of funds generated by equity, the amount of CIP to use should exclude CIAC as proposed by Austin Energy. This means that the CIP amount net of CIAC is \$139,656,467.

The IHE recommends that Austin Energy's funding for its CIP projects be based on 50/50 debt-to-equity ratio.

The IHE recommends Austin Energy's rates include \$88,341,455 in IGCF.

4. Transmission Costs and Revenues

Regarding NXP/Samsung's adjustment to what Austin Energy refers to as its "retail transmission costs" (accounted for in FERC Account 565), the IHE recommends that the Council reject NXP/Samsung's proposal.

But the record also establishes that in determining its base-rate revenue requirement, Austin Energy reduced its proposed base-rate revenue requirement by “Other Revenue,” and “Other Revenue” includes revenue Austin Energy receives from the ownership and operations of its transmission assets and sale of those services to transmission and distribution utilities (“TDUs”). Austin Energy shows this in its “Schedule A” to its rate filing package.

The IHE finds it difficult to reconcile Austin Energy’s position that the offset to its revenue requirement should be approximately \$62.97 million. Even if the IHE accepts Austin Energy’s argument that the \$76.6 million the PUCT approved on March 25, 2016 is beyond Austin Energy’s test year and an amount not known until after Austin Energy prepared its rate filing package, the discrepancy between the transmission data Austin Energy presented to the PUCT, and upon which the PUCT based its decisions in Docket No. 42385 (June 2014), and Docket No. 45382 is too large to ignore.

The IHE concludes that \$74.3 million is the more appropriate amount to use as an offset to Austin Energy’s revenue requirement to arrive at its base-rate revenue requirement. The IHE observes that no party contested the accuracy of the amounts shown in the table above, nor did any party argue that Austin Energy would receive an amount materially lower than the \$76.6 million it presented to the PUCT in Docket No. 45382. Further, the approximately \$76.6 million is consistent with the amount Austin Energy most recently presented to the PUCT, and is within about 1% of the amount the PUCT approved in its March 2014 order in Docket No. 42385.

Therefore, the IHE recommends to the Council that it offset Austin Energy’s revenue requirement by \$74.3 million, instead of \$62,129,919 as proposed by Austin Energy. This is an additional offset to Austin Energy’s revenue requirement of about \$5.32 million.

5. FPP Debt Defeasement

At this juncture, the IHE concludes that it is premature to include revenue in rates to be set in this proceeding for debt defeasance related to FPP and therefore, the IHE recommends rejection of PC/SC's proposal to defease debt related to FPP.

6. Debt Service Associated with South Texas Nuclear Project

Similar to the IHE's recommendation regarding defeasance of debt related to FPP debt obligations, the IHE also concludes that it is premature to increase rates by accelerating payments on Austin Energy's debt associated with the South Texas Nuclear Project ("STP").

7. Uncollectable Expense

The IHE recommends as did the ICA that Austin Energy's Uncollectible Expense in this proceeding be set at \$10,199,660 as compared to Austin Energy's proposed amount of \$16,054,751. This represents a reduction of about \$5.855 million to the amount Austin Energy proposed.

8. Economic Development and Community Programs

The IHE agrees with Austin Energy that its economic development and community programs have had a positive influence on the City's economy. However, the IHE also agrees with the ICA and with NXP/Samsung that Austin Energy's expenditures related to its economic development and community programs are not costs related to the provision of electric utility service.

The IHE further agrees with Austin Energy that as municipally owned utility, comparisons to, for example, CenterPoint Energy-Houston Electric ("CenterPoint") are of little relevance.

While the Austin Energy, and the City, may view these expenditures to be of value, the source of funding for the cost associated with these activities should not be treated as a cost of service for providing electric utility service. And to that extent, the IHE also agrees with NXP/Samsung that the economic development and community programs are not a reasonable and necessary expense to provide electric utility service.

9. Loss on Disposal

The IHE agrees with Austin Energy. The record establishes that during the test year (FY 2014) Austin Energy incurred about \$7.2 million in losses associated with the disposal of certain assets. The record also establishes that this amount is a recurring expense and that the test year amount is typical of past experience. The test-year amount is representative both of past experience and of what is expected to occur in the future. Therefore, the IHE recommends that Austin Energy's rates recover \$7,170,039 in rates related to losses on disposal of assets.

10. Customer Care

The IHE agrees with Austin Energy. While the IHE finds troublesome that 100% of customer-complaint costs are allocated to electric ratepayers, even though the record is clear a number of complaints arise from services provided by other city departments, the record establishes that the Utility Customer Center ("UCC") provides services beyond handling customer complaints. AE operates the UCC on behalf of the City, specifically serving the departments and customers of Austin Water Utility ("AWU"), Austin Resource Recovery ("ARR"), the Transportation Department, the Watershed Protection Department, and various other smaller departments. The UCC serves as the primary place for customers to report electrical outages

11. Rate Case Expense

The IHE agrees with the NXP/Samsung that Austin Energy's rate case expenses in the amount of \$1,757,931 should be recovered over a period of five years. Recovering rate case expenses over a period of 5 years is consistent with the standard practice, which sets an amortization period for rate case expenses that matches the period of time between rate reviews. Recovering rate case expenses over a period of 5 years (instead of 3 years as proposed by Austin Energy) translates into a \$215,333 reduction to Austin Energy's revenue requirement.

12. Outside Services

The IHE agrees with Austin Energy and recommends that the City Council reject NXP/Samsung's proposal to exclude \$6,762,767 from Austin Energy's cost of service related to Austin Energy's outside IT support. The fact that Austin Energy did not estimate how much it projected to spend on such services in FY 2017 does not in and of itself negate the fact that Austin Energy incurred similar costs in FY 2014 in the amount of about \$8.9 million and incurred about \$10.1 million in FY 2015.

13. Reserves

(a) Reserve Funding

To the extent the Council *does not adopt new policies* regarding the reserve funds Austin Energy should maintain, then the IHE finds the method by which Austin Energy calculates its reserve funds based on current financial policies, to be acceptable.

The IHE also recommends that the additional reserve funds Austin Energy proposes to recover, that is, the amount that corresponds to the approximate \$34.0 million, be accomplished

over three years as proposed by Austin Energy.¹ The one modification the IHE recommends is that funds associated with the decommissioning of Decker Units 1 & 2, FPP, and SHEC, are to be treated as reserves and not as an O&M expense.

(b) Policies

The IHE recommends that the Council implement most of the changes proposed in the NewGen study regarding Austin Energy's reserve funds. Doing so should have the effect of reducing Austin Energy's revenue requirement, but as noted above, by how much is dependent on the Council's decisions regarding adjustments to Austin Energy's proposed revenue requirement.

The IHE generally agrees with the NewGen study that the current structure of Austin Energy's reserve funds is confusing; is out of step with Austin Energy's peer utilities; and results in some reserve funds being over funded and others underfunded. The IHE also agrees that, overall, Austin Energy's unrestricted reserves, excluding non-nuclear decommissioning reserve fund and the CIP fund, should be set to have on hand 150 days cash on hand ("DCOH").

14. Property Transfers

(a) Energy Control Center

The IHE finds persuasive the Low Income Customers, NXP/Samsung, and the ICA's arguments that the Council should take into account receipt of the \$14.5 million Austin Energy received related to conveyance of the ECC. The record establishes that Austin Energy received \$14.5 million on November 24, 2015.² While the transaction closed after Austin Energy had

¹ As discussed below, the IHE's recommendation regarding attribution of the \$14.5 million Austin Energy received from the sale of the Energy Control Center may affect the amount of additional reserve funds Austin Energy should maintain.

² AELIC Exh. 20.

completed its cost of service study for this rate-review proceeding, Austin Energy will go through the Council's budget review in the upcoming weeks, and the \$14.5 million is a known and measurable event. Moreover, while it is a "post, test-year adjustment," meaning an event that occurred after the "test year" upon which most of Austin Energy's presentation is based, that of itself does not preclude recognition of the transaction.

(b) Seaholm South Substation Land

The IHE declines to recommend that Council adopt Mr. Robbins' proposal that the General Fund, compensate AE for the transfer of the Seaholm South Substation Land. AE presented the matter to Council and Council approved the transaction and the transaction was undertaken in accordance with Council policies. Therefore, the IHE agrees with Austin Energy and concludes that no further action is necessary with respect to the transfer of the Seaholm South Substation Land.

(c) Vacant Lot at 2406 Ventura Drive

Similar to the IHE's recommendation regarding transfer of the Seaholm South Substation Land, the IHE declines to recommend that Council adopt Mr. Robbins' proposal. Therefore, the IHE agrees with Austin Energy and concludes that no further action is necessary with respect to the transfer of the vacant lot at 2406 Ventura Drive.

(d) Vacant Lot at 3400 Burleson Drive

Similar to the IHE's recommendation regarding transfer of the Seaholm South Substation Land, the IHE declines to recommend that Council adopt Mr. Robbins' proposal. Therefore, the IHE agrees with Austin Energy and concludes that no further action is necessary with respect to the transfer of the vacant lot at 3400 Burleson Drive.

(e) Holly Street Plant

The IHE recommends that the Council decline to make any adjustments to Austin Energy's revenue requirement based on Mr. Robbins' complaints that there was no rate-review process in place when issues relate to the Holly Street Plant were addressed.

D. IHE's Proposed Changes to AE's and the Parties' Recommendations Regarding Cost Allocation

1. Functionalization of the 311 Call Center, FERC 920 Administration and General

The IHE agrees with the ICA to functionalize the 311 Call Center to Distribution instead of to Customer. Therefore, the IHE agrees with the ICA that the expense is more reasonably functionalized to "Distribution," and recommends functionalizing Account 417 ("A-417") to Distribution, allocating the expense to classes based upon distribution O&M expense.

2. Labor Costs and New Service Connection Fees

The IHE recommends that A&G Labor Costs (A-920) be allocated through use of a labor allocator as proposed by AE.

The IHE finds persuasive the ICA's proposal to assign New Service Connection Fees to the Customer function, instead of functionalizing these costs to Distribution as proposed by AE.

3. Classification of Production Costs

The IHE agrees with AE's proposal to classify fuel and recoverable purchased power as energy-related expenses.

4. Allocation of Production Costs

The IHE agrees with AE that production costs be allocated based on the 12CP allocation methodology. The IHE concludes that NXP/Samsung's and DF/ACC's proposals do not give

sufficient weight to the fact that, while AE is a vertically-integrated utility, it operates in a market where production of power, that is, generation, is deregulated. AE's proposed use of a 12CP allocator for production costs more accurately reflects the affect of nodal markets in ERCOT on production costs.

5. Allocation of Distribution Costs

(a) Classification of Distribution Costs

(1) Transformers and Capacitors

The IHE recommends that transformers be classified as demand-related costs and allocate these costs on customer demand based on an AE's 4 NCP for the months of June – September, as proposed by NXP/Samsung.

(2) Meters

The IHE recommends adoption of AE's proposal to classify meters as a function of the number of customers.

(3) Services

The IHE recommends that the Council adopt AE's proposal to classify Services as demand related and the allocation of the cost to each class based on SMD is appropriate.

(b) Allocation of Distribution Costs

The IHE recommends that the Council adopt AE's proposal to allocate distribution substations, poles, and conductors should be allocated using the 12 Non Coincident Peak ("NCP") allocator instead of NXP/Samsung's proposal to use the 4NCP method.

6. Allocation of Customer Service (Uncollectible) Costs

(a) Uncollectible Expense Allocation

The IHE recommends to Council that it adopts the ICA's proposal to allocate Uncollectible Expense should be spread proportionately to all customer classes based on revenues (i.e., a Rev Req allocation).

(b) Meter Expense and Meter Reading

The IHE recommends that Meter Expense and Meter Reading expenses be allocated to each class based on the number of metered customers as proposed by AE.

(c) Customer Service Accounts

(1) Marketing and Advertising

The IHE recommends to the Council that it adopt the AE's allocation of marketing and advertising expenses and services expenses (that is, Accounts 908 – 910).

(2) Service Connection Fees

The IHE recommends that Service Connection fees be assigned to the distribution function as proposed by AE, instead of the customer function as proposed by the ICA.

7. Allocation of Energy Efficiency Service Charge

The IHE recommends that Council adopt the ICA's proposal to allocate Energy Efficiency Service ("EES") charge and with the ICA and with PC/SC that the EES Charge should be a uniform charge assigned to all customer classes, and the IHE so recommends to the Council.

E. IHE's Proposed Changes to AE's and the Parties' Recommendations Regarding Revenue Distribution

The IHE agrees with the ICA that a CCOS is but a guide to establishing the expenses that should be assigned to each customer class. Thus, the IHE disagrees with NXP/Samsung and other parties that suggest that rates must be set at the price points mathematically determined by the CCOS study.

Therefore, the IHE recommends to Council that it adopt the proposed revenue distribution AE proposed for the initial \$17.5 million revenue reduction and that the Council allocates the additional \$7 million decrease associated with the CAP program in the same manner. Further, the IHE recommends to Council that if the Council reduces AE's revenue requirement beyond the approximate \$24.5 million conceded by AE, that it use the same proportional relationships attendant to the \$24.5 million to distribute the additional reductions.

F. IHE's Proposed Changes to AE's and the Parties' Recommendations Regarding Rate Design

1. Billing Adjustment Factor

The IHE recommends that Council adopts AE's proposed billing adjustment factor. The adjustment accounts for various factors, including errors in prior billings, partial bills, and estimated meter reads based on the data currently available.

2. Seasonal Power Supply Adjustment

The IHE recommends that Council adopts AE's proposal to implement a seasonal power supply adjustment ("PSA") instead of charging seasonal base rates.

3. Residential

(a) Customer Charge

With regard to the Residential customer charge the IHE recommends that Council adopt AE and the ICA's proposal to not change the charge and that it be left at \$10.00 per month. The IHE also agrees with the ICA that the more credible evidence in the record does not support a lower charge for multi-family residences.

(b) Tiered Energy Rates

The IHE recommends that Council approve AE's proposed changes to the tiered structure of its rate design.

(c) Seasonal Base Rates

For the reasons discussed in the section addressing the Power Supply Adjustment, and establishment of a seasonal PSA, instead of seasonal base rates, the IHE recommends that Council approve AE's proposal to eliminate the seasonality in base rates.

4. Non-Residential Customer Charge

The IHE recommends that Council approve AE's proposed non-residential rate design. However, the IHE also agrees with the ICA that Council should be mindful that approval of AE's proposal should not be taken as approval of a philosophy to increase the customer charge for S1 and S2 in the future, shifting more costs from energy rates to the demand charge in the future. Those issues should be subject to review and debate in the next rate case.

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

In any event, the IHE recommends approval of creation of a Load Shifting Voltage Level discount rider for commercial customers that can shift a year-round load using various, non-fuel

based storage technologies. The IHE does not pick one way over the other in this situation because matters of process are outside the IHE's domain and are left to Council's discretion. The IHE also agrees with PC/SC that the name of this tariff be clarified to better express its intent.

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

The IHE is not aware of any opposition to AE's proposal to adjust the demand billing determinants for customers in S2 and S3 customer classes as proposed in AE's rebuttal testimony. Further, the ICA supports AE's proposal as set forth in AE's rebuttal testimony. Therefore, the IHE recommends Council adopt AE's proposal.

7. Group Religious Worship Discount

Ultimately, continuing, or not, the HOW discount is a policy decision, but the IHE recommends that the HOW discount be discontinued. No party, including the ICA and BUMC could point to a cost-of-service basis for distinguishing HOWs from other similarly situated customers with respect to the discount policy. Thus, the IHE agrees with AE that at the conclusion of current transition period, the HOW discount be discontinued.

G. Value of Solar Issues

1. Commercial

The IHE recommends to Council that, until there is a comprehensive, stakeholder-involved process to review the issues raised by the potential introduction of a commercial VOS, that Council not adopt a commercial VOS tariff during this rate proceeding.

2. Community Solar

The IHE recommends that Council await finalization of AE's development of the design for a community solar offering. AE noted that it expects to have the new community solar system operational by the end of 2016 with development of a tariff by the beginning of September, 2016.

3. VOS Residential Tariff

The IHE recommends that Council adopt Mr. Rourke's recommendation to include more information in the VOS tariff to explain how the VOS Rate is calculated and more clearly identify and define the components of the rate.

H. Other Issues

1. Service Area Lighting

The IHE recommends to Council that it adopt AE's proposal for recovery of costs associated with providing streetlight services.

2. Customer Assistance Program

The IHE recommends to Council that it make no changes to AE's current eligibility requirements for its Customer Assistance Program ("CAP") or to the recent modifications AE has undertaken to the program.

3. Late Payment

The IHE recommends that Council retain the late-payment penalty in AE's tariffs. The late-payment penalty serves as an incentive to customers to not only pay their bills on time, but indirectly serves to minimize Uncollectible Expense.

4. Regulatory Charge

The IHE recommends that Council approve AE's proposed changes to the Regulatory Charge.

II. Revenue Requirement

Austin Energy's Position:

Austin Energy's current base-rate revenue is about \$631.8 million. This amount excludes costs and revenue recovered through three pass-through charges: the Power Supply Adjustment, the Regulatory Charge, and the Community Benefits Charge.³ In this proceeding Austin Energy seeks to decrease its base-rate revenue requirement by approximately \$24.6 million.⁴

Numerous parties submitted testimony recommending larger decreases in Austin Energy rates. Where a party identified a specific amount by which Austin Energy's rates should be further reduced, below, the IHE notes those amounts for each such party.

Independent Consumer Advocate's Position:

The ICA proposed a decrease of \$63,216,000 in Austin Energy's base-rate revenue. This amount compares to Austin Energy's proposed decrease of about \$24.6 million.⁵

NXP/Samsung:

NXP/Samsung proposed a decrease of \$185,086,492 in Austin Energy's base-rate revenue. This compares to Austin Energy's proposed decrease of about \$24.6 million.⁶

³ AE Exh. 1, Tariff Package, p. 021, Footnote 11; updated in AE Exh. 2, pp. 7-10.

⁴ The phrase "cost of service" is used synonymously with the phrase, "revenue requirement." Each speaks to the total base-rate revenue a utility must recover to equate to the cost of providing service to the public.

⁵ ICA Closing Brief at 9.

⁶ NXP/Samsung Exh. 1 at 3.

Data Foundry:

Data Foundry appears to recommend a reduction of between \$165 million and \$210 million in addition to the \$24 million in reductions Austin Energy proposed. However, Data Foundry also concurs in the NXP/Samsung revenue requirements case, except insofar as NXP/Samsung's proposals would allow production costs in base rates. Thus, Data Foundry's proposed reduction is not entirely clear given that Data Foundry also concurs in NXP/Samsung's recommendations.

Impartial Hearing Examiner's Analysis and Recommendation

For the reasons discussed below, the IHE recommends additional reductions to Austin Energy's over all base-rate revenue requirements based on the IHE's recommendations noted below. The IHE has requested that AE re-run its revenue requirement model using the IHE's recommendations as set forth below.⁷

A. Residential Base Revenue Customer Assistance Program Adjustment

Austin Energy's Position:

In Austin Energy's initial filing on January 25, 2016, AE proposed a decrease of \$17,474,000 in its base-rate revenue. Through the course of these proceedings, as is often the case in proceedings of this complexity, Austin Energy acknowledged that it had failed to capture \$7,085,000 generated from a separate funding source under the Community Benefit Charge ("CBC") that are used to offset the expenses associated with the discount offered to ratepayers under the Customer Assistance Program ("CAP"). Not accounting for these funds had the effect

⁷ The IHE had hoped to complete his report in time for AE to re-run its revenue-requirement model so that the IHE's report could have included a new "Schedule A" using the IHE's inputs, but the number of issues and their complexity prevented the IHE from doing so. The IHE apologizes to the parties for not having been able to include a "final" revenue requirement in the IHE's Report.

of overstating Austin Energy's base-revenue by \$7,085,000.⁸ Ultimately, Austin Energy proposes to decrease its base-rate revenue by \$24,559,000.⁹

No party, including Austin Energy, contested the change the Low Income Customers identified. Therefore, the IHE recommends that Austin Energy's base-rate revenue be amended to account for the \$7,085,000. Doing so produces a starting point for the decrease in Austin Energy's base-rate revenue of \$24,559,000. That is, other parties' proposed changes to Austin Energy's proposed reduction are in addition to the \$24,559,000 decrease that Austin Energy proposes.

B. Decommissioning Funding

Austin Energy's Position:

AE proposes to add \$19.4 million of additional revenue to cover future decommissioning expenses for decommissioning of the Decker Creek Power Station ("Decker"), Fayette Power Project ("FPP"), and Sand Hill Energy Center ("SHEC").¹⁰ Of the total \$19.4 million, approximately \$14 million is for the retirement of Decker; \$3.75 million is set aside for the retirement of Austin Energy's portion of FPP; and \$1.7 million is for the eventual retirement of SHEC.¹¹ Austin Energy contends that its request is consistent with City of Austin Financial Policy No. 21 and that such policy requires Austin Energy to set aside funds to pay for the eventual retirement and decommissioning of the utility's non-nuclear fuel generation fleet.¹²

⁸ The Austin Energy Low Income Customers ("AELIC") and the ICA identified this issue during the discovery process in this proceeding, an error which Austin Energy acknowledged and discussed in Mr. Dombroski's rebuttal testimony. AE Closing Brief at 12.

⁹ ICA Post-Hearing Brief at 6.

¹⁰ AE Exh. 1 at 857 (WP D-1.2.5).

¹¹ AE's total decommissioning cost estimate is \$80 million, and the amortized annual expense is \$19 million. AE Exh. 1 (WP/ D-1.2.5).

¹² AE Exh. 1 at 371.

Austin Energy also contends that it must start accumulating the decommissioning funds no later than four years prior to commencement of decommissioning activities.¹³

To arrive at its proposed decommissioning fund, Austin Energy calculated the \$19.4 million in decommissioning expense based on the estimated number of years until the units are retired and used the upper end of the range of estimated decommissioning costs for units 1 and 2 at Decker, AE's share of the FPP, and all of SHEC.¹⁴

Austin Energy noted that its estimate for the costs to decommission Decker Units 1 & 2 were based on a detailed engineering cost estimate relying upon analysis specific to these facilities.¹⁵ But because length of time before FPP and SHEC will be decommissioned, it based its costs of decommissioning FPP and SHEC on a benchmarking approach instead of a plant-specific study.

Austin Energy also argued in favor of inclusion of its entire estimated decommissioning costs now instead of some lesser amount because in its view the fact that it was seeking a reduction in rates presented a unique opportunity to begin accumulating its decommissioning funds now instead of during a time when it may be in a position to raise rates. "Using a portion of current base rate revenues to fund the Non-Nuclear Decommissioning Reserve satisfies an important revenue requirement objective without raising rates. This outcome is more desirable compared to facing a similar funding requirement when an overall rate increase is required."¹⁶

¹³ Austin Energy Brief at 13.

¹⁴ The cost estimates were developed and reported by NewGen Strategies and Solutions ("NewGen") in a July 2015 study that examined Austin Energy's reserved funds and policies.¹⁴

¹⁵ Austin Energy Brief at 14.

¹⁶ *Id.* at 22.

Independent Consumer Advocate's Position:

ICA recommends a decommissioning amount of approximately \$9.51 million.¹⁷ The ICA argued that Austin Energy's estimates to decommission Decker, FPP, and SHEC were excessive and that Austin Energy's own study showed that the average requested decommissioning costs are 20% - 50% or more than the average Texas PUC approved decommissioning cost.¹⁸ Further, the ICA contends that Austin Energy's decommissioning cost estimates ignored offsets for the value of water rights or potential sale of land and gave no offsetting value to selling working components of the plants, benefits that could serve to offset the costs of decommissioning a plant.¹⁹

The ICA also contends that Austin Energy's decommissioning estimates should be rejected because Austin Energy used contingency adders ranging from 10.7% - 30% and that the PUCT contingency allowances greater than 10% for nuclear decommissioning²⁰ and suggested that if the contingency for decommissioning a nuclear plant was capped at 10%, then the contingency for a non-nuclear plant should be lower. The ICA also argued that Austin Energy was inconsistent in the manner it estimated its decommissioning costs because, while it included a contingency for costs for FPP and SHEC, it did not apply a contingency to salvage and recycling estimates, meaning that Austin Energy applied a contingency only to positive elements

¹⁷ Austin Energy countered that the ICA's (and NXP/Samsung's) recommended adjustments are based on the mean cost per kW for decommissioning different generation technologies approved by public utility commissions in various cases, as cited in the NewGen report and that it is inappropriate to rely on the mean approved cost per kW from other plants when there is site-specific information based on a detailed engineering cost estimate available, as is the case for Decker. See Austin Energy Closing Brief at 19 – 20.

¹⁸ ICA Exh. 1, p. 18. See ICA Closing Brief at 11.

¹⁹ ICA Exh. 1, p. 19, citing AE Answer to ICA 4-6 (d), (e), & (f). Austin Energy countered that there is too much uncertainty to include revenue from the sale of property or water rights because both the Decker and FPP sites will continue to be used for generation operations after the retirement of portions of those facilities; that retirement of the SHEC site is too far into the future to predict whether those land or water rights should be sold and if so, at what value; and, that including sale of working components of the plants also was too uncertain to include an accurate estimate of the value of any such sales. See Austin Energy Closing Brief at 16 – 17.

²⁰ PUC Subst. Rule 25.304(h).

of its estimates and not to negative offsets and that the inconsistency unfairly raises the estimates for which current electric consumers are being asked to pay.²¹

The ICA compared Austin Energy's decommissioning costs to the net salvage value the PUCT approved in a recent rate case. Noting that the Commission found that a net salvage value of -2% should be applied to all production plant,²² the ICA reasoned that this implies that depreciation rates and expense must recover 2% above the value of gross plant and that the 2% covers the cost of decommissioning.²³ The ICA noted that by comparison, Austin Energy's proposed decommissioning cost for the Decker plant is close to half of the plant's original gross cost.²⁴

Lastly, the ICA noted that Austin Energy is recovering the decommissioning costs over a truncated period, rather than over the life of plant and that a truncated recovery period will lead to intergenerational inequities.²⁵

Low Income Customers' Position:

The Low Income Customers recommended excluding all of Austin Energy's proposed decommissioning costs because in its view Austin Energy "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."²⁶

²¹ ICA Exh. 1, p. 19. See ICA Brief at 12.

²² *Application of Southwestern Power Co. for Change in Rates*, Docket No. 43695, Order on Rehearing, FOF No. 118-119.

²³ Austin Energy countered that Mr. Johnson's reference to the PUCT's -2% net salvage value in PUCT Docket No. 43695 is irrelevant to the initial establishment of a non-nuclear decommissioning reserve.

²⁴ ICA Exh. 1, p. 19.

²⁵ ICA Exh. 1, p. 18; and ICA Closing Brief at 11.

²⁶ Low Income Customers' Closing Brief at 3.

The Low Income Customers also pointed out that the \$19.4 million would fund the entirety of Austin Energy’s estimated decommissioning costs of all three plants, (1) based on the high end of the range of decommissioning costs of \$80 million; (2) it would do so in a bit over 4 years; and (3) the period over which Austin Energy would recover the entirety of the \$80 million is well before the retirement dates of 2025 and 2030 for FPP and SHEC.²⁷

The Low Income Customers joined in the ICA’s argument in favor of a lower decommissioning cost because Austin Energy’s estimate failed to include any salvage value or other estimated revenues from the sale of property or water rights to offset its estimated decommissioning cost.

The Low Income Customers noted that since Austin Energy filed its rate case, Austin Energy announced that it had postponed the proposed retirement date for Decker²⁸ and that the City Council had not taken formal action to retire any of the three plants included in Austin Energy’s decommissioning cost study.²⁹ Lastly, The Low Income Customers noted that once the Council announces the retirement of a plant, there are processes Austin Energy will need to go through at the Electric Reliability Council of Texas (“ERCOT”) as part of ERCOT’s regional planning process which may defer decommissioning activities for an additional 30-36 months.³⁰

Ultimately, and as an alternative to rejection of Austin Energy’s entire amount of \$19.4 million in decommissioning costs, the Low Income Customers proposed that Austin Energy’s cost for decommissioning Decker, FPP, and SHEC be limited to \$11 million.³¹

²⁷ AELIC Exh. No. 16, p. 1. The IHE notes that, while AELIC in its brief refers to the retirement dates for FPP and SHEC as 2025 and 2030, respectively, AELIC Exh. 16 does not show the retirement dates for FPP as AELIC asserts.

²⁸ Tr. pp. 184 & 185, AELIC cross of Ball.

²⁹ AELIC Exh. No. 23, p. 1.

³⁰ Tr. p. 187, AELIC cross of Ball.

³¹ Low Income Customers’ Closing Brief at 6.

NXP/Samsung's Position:

NXP/Samsung proposed that decommissioning costs be limited to the Decker Creek Units 1 & 2; that decommissioning costs be limited to \$12,632,400; and that those costs be paid from reserves rather than treated as an expense.³² NXP/Samsung argues that if decommissioning cost are treated as an expense as part of Austin Energy's base-rate revenue requirement, this will have the flow-through effect of increasing the amount of funding needed for the working cash, contingency, and emergency reserves.³³ Austin Energy retorts that the appropriate recovery mechanism is an annual operating expense recovered from customers through rates and moved to a reserve fund for use when decommissioning activities commence.³⁴ Austin Energy further states that recovering decommissioning expense as an annual operating cost is consistent with the cost causation theory since those customers who benefit from the production facilities should pay for them and with the matching principle since decommissioning costs are recognized during the same period as production revenues; Austin Energy adds that categorizing decommissioning expense as an O&M expense is also how AE funded the decommissioning of the Holly Street Power Plant.³⁵

As did other parties, NXP/Samsung also noted that, even though Austin Energy presented in its initial filing that Decker Units 1 & 2 would be retired in 2018, 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, which resulted in a delay

³² NXP/Samsung Closing Brief at 8.

³³ NXP/Samsung Closing Brief at 9. Tr. at 118: 8-9 and 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").

³⁴ Austin Energy Closing Brief at 21.

³⁵ *Id.*

in the date for retirement of these units.³⁶ NXP/Samsung also noted that there are no retirement dates authorized by City Council for FPP and SHEC.³⁷

Public Citizen/Sierra Club's Position:

Public Citizen and Sierra Club support Austin Energy's proposal to fund a non-nuclear decommissioning reserve for the eventual retirement of Decker, FPP, and SHEC and note that as a matter of public policy, Austin Energy and the City Council must deal with its generation fleet and the reality that at some point these units will retire. Public Citizen and Sierra Club also supports the amounts Austin Energy seeks to include in rates set in this proceeding.

Public Citizen and Sierra Club note that while it would have been preferable for Austin Energy to have collected these costs from the moment these plants began operation, that is not the reality and it is better to address the issue now than continue to wait.³⁸

Paul Robbins' Position:

No position articulated on this issue.

Bethany United Methodist's Position:

No position articulated on this issue.

Data Foundry's Position:

DF indicated in its brief that it supports NXP/Samsung's revenue requirements recommendations except to the extent that they would allow recovery of production related costs.

³⁶ Tr. at 103:21 – 104:2 (Dombroski Cross) (May 31, 2016).

³⁷ *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).

³⁸ Public Citizen and Sierra Club Closing Brief at 6.

HURF's Position:

HURF stated in its closing brief that is generally in support of the revenue requirement positions and adjustments presented by NXP/Samsung.³⁹

Jim Rourke's Position:

No position articulated on this issue.

ARMA's Position:

Austin Regional Manufacturers Association ("ARMA") stated in its closing brief that is generally in support of the revenue requirement positions and adjustments presented by NXP/Samsung.⁴⁰

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that Austin Energy's proposed fund for decommissioning its non-nuclear production plants be reduced by \$3,792,850 for a total decommissioning cost of \$17,792,850. Therefore, for FPP and SHEC, the IHE recommends decommissioning costs of \$2,925,000 for FPP and \$867,850 for SHEC⁴¹ and for Decker Units 1 and 2, the IHE recommends a decommissioning cost of \$14 million.

Austin Energy seeks to include approximately \$19.4 million in its proposed rates to "pay" today for the decommissioning costs it will incur some time tomorrow for the Decker Creek Power Station ("Decker"), the Fayette Power Plant ("FPP"), and Sand Hill Energy Center ("SHEC").⁴² Of Austin Energy's total adjustment of \$19.4 million, approximately \$14 million is

³⁹ HURF Closing Brief at 1.

⁴⁰ ARMA Closing Brief at 1.

⁴¹ See ICA Exh. 1, Schedule CJ-1 (Direct Testimony of ICA witness Clarence Johnson).

⁴² The more specific amount is \$19,442,308.

for the retirement of Decker, \$3.75 million is for the retirement of Austin Energy's portion of FPP, and \$1.7 million is related to the retirement of SHEC.⁴³

Unlike rates for an investor owned utility ("IOU"), Austin Energy's rates are not directly based on its depreciation expense.⁴⁴ Instead, Austin Energy's rates are set based on the cash-flow method of determining its revenue requirement.⁴⁵

Under the cash flow methodology, depreciation expense is a source of cash whereby the cash associated with this line item in the revenue requirement can be used to pay for AE's other cash obligations, such as capital improvement projects, debt service, general fund transfers, or the funding of reserves. As a result, the cash generated from depreciation expense reduces other cash obligations of the utility, effectively netting this component to zero and removing it from the total revenue requirement determination.⁴⁶

Austin Energy must generate enough cash to meet day-to-day expenses, including cash capital needs, as well as debt-service obligations. As a result, Austin Energy establishes a revenue requirement on a cash basis. A cash basis approach identifies all the cash obligations of the utility that must be included in the revenue requirement.

Austin Energy's rates do not and have not included an amount to cover the cost of decommissioning its non-nuclear production plants. Ideally, Austin Energy would have been setting aside an amount to fund the retirement of its production plants from Day One of each plant's in-service date. But the reality is that it did not.

⁴³ The actual amount Austin Energy estimates for decommissioning costs for Decker Units 1 & 2, FPP, and SHEC is \$80 million of which \$28 million is for Decker Units 1 & 2; \$30 million is for FPP; and \$22 million is for SHEC. Austin Energy proposes to recover the \$80 million in about 4 years. AE Exh. 1 at Appendix I, Tbls. 1-3.

⁴⁴ See Austin Energy Closing Brief at 21.

⁴⁵ See Austin Energy Closing Brief at 21 and 60; and NXP/Samsung Exh. 1 at 34.

⁴⁶ Austin Energy Exh. 1 at 85 (§ 4.2.2 – Depreciation Expenses and Amortization of Contributions in Aid of Construction).

Nonetheless the IHE agrees with Austin Energy that it is prudent to set aside funding for the eventual retirement of non-nuclear fleet of production units, which consists of the Decker, FPP, and SHEC. *The more crucial question in this proceeding is how much to include in current rates to pay for the decommissioning of these plants that will occur some time in the future in a manner that minimizes intergenerational inequities?*⁴⁷

After reviewing the parties' evidence, listening to testimony at the hearing, and reviewing the parties' briefs on this issue, the IHE is persuaded that decommissioning cost to be recovered in rates to be set in this proceeding, should be limited to those decommissioning costs related to Decker Units 1 & 2 at the amount proposed by Austin Energy of approximately \$14 million,⁴⁸ and for FPP and SHEC the IHE recommends decommissioning costs of \$2,925,000 for FPP and \$867,850 for SHEC as proposed by the ICA.⁴⁹

The IHE reaches this conclusion based on Austin Energy's testimony and evidence that the decommissioning costs for Decker Units 1 & 2 are based on an analysis *specific to these units*, but that for FPP and SHEC, Austin Energy's estimates are based on a benchmarking analysis of taken from actual costs for decommissioning similar power plants.⁵⁰ The evidence established that even for the Decker Units, the exact date of retirement is not concretely known.⁵¹

⁴⁷ Intergenerational inequities refers to the tension between requiring today's ratepayers to pay for events that will occur when they are no longer taking service from the utility, and requiring tomorrow's ratepayers from paying expenses that yesterday's ratepayers should have paid. Tr. at 46:4 – 5 (May 31, 2016).

⁴⁸ The IHE does not find persuasive the Low Income Customers' recommendation to exclude in its entirety decommissioning costs, nor does the IHE find credible evidence to support the Low Income Customers' proposal to limit decommissioning costs to \$11 million.

⁴⁹ See, Exhibit ICA-1, Schedule CJ-1 (Direct Testimony of ICA witness Clarence Johnson).

⁵⁰ Austin Energy Closing Brief at 13 – 14.

⁵¹ NXP/Samsung Closing Brief at 8.

And for FPP and SHEC, there is no evidence in the record that identifies a specific date of retirement.⁵²

Further, while a benchmarking assessment may suffice to *support* an otherwise plant-specific proposal, the IHE is not persuaded that a benchmarking analysis by itself is sufficient to support a recommendation for establishing the cost to decommission FPP and SHEC. Nonetheless the IHE agrees with Austin Energy that even though the Austin City Council has not yet approved specific retirement dates for these plants, it is appropriate to include costs for decommissioning for FPP and SHEC and that Austin Energy is obligated ultimately to decommission these plants. Thus, the IHE agrees that it is prudent to set aside funds for this obligation over the useful life of the assets.⁵³

But based on the concerns raised by the ICA regarding the high estimates that Austin Energy presented for decommissioning of FPP and SHEC, coupled with the lack of a plant-specific study for FPP and SHEC, the IHE believes the better evidence in the record on the cost to decommission FPP and SHEC to be included in rates set in this proceeding, is that presented by the ICA. The ICA's proposal with regard to FPP and SHEC is the approach that better balances the need for Austin Energy to establish a decommissioning fund for FPP and SHEC, that considers intergenerational inequities, and that places less of a burden on ratepayers today. Therefore, for FPP and SHEC the IHE recommends decommissioning costs of \$2,925,000 for FPP and \$867,850 for SHEC.⁵⁴

A related issue to the decommissioning costs to be included in rates is whether those costs should be treated as an operations and maintenance ("O&M") expense, or as a reserve

⁵² NXP/Samsung Closing Brief at 28.

⁵³ See Austin Energy Closing Brief at 20.

⁵⁴ See, ICA Exh. 1, Schedule CJ-1 (Direct Testimony of ICA witness Clarence Johnson).

amount. Austin Energy's evidence showed that it treated the decommissioning costs as an annual O&M expense to be moved to a reserve fund for use when decommissioning activities actually begin.⁵⁵ NXP/Samsung recommends that decommissioning costs be paid from reserves rather than treated as an expense.⁵⁶

Irrespective of whether decommissioning costs are treated as an O&M expense, or accounted for as NXP/Samsung proposes, the IHE recommends that the funds be treated and accounted for in a manner that (1) ensures they are available when needed for their intended purpose; and (2) does not unintentionally increase Austin Energy's base-rate revenue requirement, for example, by causing an increase in Austin Energy's reserves for working cash, contingencies, and emergencies as a flow-through item.⁵⁷

C. Internally Generated Funds for Construction

According to AE, it finances its capital improvement program ("CIP") through a combination of debt and equity, with the equity portion derived from AE's current year net revenues. Internally Generated Funds for Construction ("IGFC") is a function of CIP, contributions in aid to construction ("CIAC"), and the debt to equity financing ratio. Specifically, it is the sum of CIP, net of CIAC, financed with Net Revenues plus CIAC, which is depicted in the following formula: $[(CIP - CIAC) \times \text{equity financing ratio}] + CIAC = IGFC$. Financial Policy No. 12 governs AE's treatment of IGFC. It states:

⁵⁵ Austin Energy Closing Brief at 21.

⁵⁶ NXP/Samsung Brief at 8; see also Low Income Customers' Brief at 8 – 9.

⁵⁷ See NXP/Samsung Closing Brief at 9 and NXP/Samsung Exh. 1 at 28 – 29.

Net Revenue generated by Austin Energy shall be used for General Fund transfers, capital investment, repair and replacement, debt management, competitive strategies, and other Austin Energy requirements such as working capital.⁵⁸

AE included \$88,341,455 of IGFC in the test year. Austin Energy calculated this amount as follows:

$\$158,169,688 \text{ CIP} - \$18,513,221 \text{ CIAC} = \$139,656,467 \text{ CIP net of CIAC.}$

$\$139,656,467 \text{ CIP net of CIAC} \times 50\% \text{ equity financing} = \$69,828,233 \text{ net revenue funded.}$

$\$69,828,233 \text{ net revenue funded} + \$18,513,221 \text{ CIAC} = \$88,341,455 \text{ IGFC}$

NXP/Samsung disagrees with AE's calculations and recommends that \$50,000,000 be allowed for IGFC, which is a \$38,341,455 decrease to AE's request. NXP/Samsung derives this amount by reducing CIP to \$125,000,000 and increasing the amount of debt financing to 60% (i.e., equity financing of 40%).⁵⁹ AE disagrees with NXP/Samsung witness Marilyn Fox's recommendation to exclude power production CIP.

Ms. Fox contends, according to AE, that although AE will incur power production CIP, none should be included in the rates because City Council has not determined AE's next incremental power supply, such as constructing a power plant or entering a power supply contract.⁶⁰ AE argues that it has existing power production that require CIP investment and points and states that from FY2012 through FY2015 it invested \$21 million per year on existing power-plant investment, which AE contends shows that power production CIP is incurred

⁵⁸ AE Exh. 1 at 369 (Appendix D).

⁵⁹ Corrected Direct Testimony of Marilyn Fox, NXP/Samsung Exh. 1 at 19:15-17.

⁶⁰ *Id.* at 20:13-15.

annually and is not contingent upon City Council approving AE's next incremental power-supply project.

AE notes that its FY2015 CIP is based on historical costs equaling \$168 million and is a reasonable proxy for its expected costs. This is because the \$168 million for FY2015 is within 3% of CIP average amounts for FY2012 through FY2014. By comparison, NXP/Samsung's recommended \$125 million CIP is 24% below the average \$165 million level for the same time period. AE points out that the CIP amounts for that time period were stable. AE argues that its retrospective analysis conforms to NXP/Samsung's recommendation to look back several years to assess its normal level of expenditures.

AE puts forth additional reasons why the FY2015 CIP amount is reasonable. First, FY2015 was the first year of an amended line extension policy was in place, which allows recovery of the full cost of line extensions based on estimated construction costs. AE contends it makes sense to include the results from that policy and match them with them to the same period, i.e., FY 2015. Second, AE funds its CIP through a combination of debt and equity. It argues that the 50% equity-financing ratio is reasonable because it is consistent with Financial Policy No. 14, which states that a range of 35% to 60% equity is desirable for financing capital projects. The 50% equity ratio is also consistent with AE's 51% historical average equity-financing ratio from FY2012 through 2014. Moreover, according to AE, it complies with City Ordinance No. 20120607-055, which directs City Council to adopt a policy of targeting debt-to-equity ratio of 60/40 until October 1, 2014, and then reaffirms a 50/50 split thereafter.

AE disagrees with NXP/Samsung's recommendation to use a 40% equity-financing ratio. The consequence of this, according to AE, is that AE would reduce rates in the short term by incurring more debt to fund capital projects. However, according to AE, NXP/Samsung

provided no evidence that it is reasonable or that the historical level of equity funding is unreasonable. Moreover, AE asserts that it is unreasonable to apply a system level debt-to-equity financing ratio to sub-level CIP because not all projects avail themselves to the same level of debt-to-equity financing. In addition, NXP/Samsung ignores that additional costs are associated with incurring more debt.

AE further disagrees with NXP/Samsung's argument that netting out CIAC *prior* to multiplying the CIP sum by the 50% equity-financing amount obfuscates the issue by producing a higher effective level of equity sharing (i.e., 56%), which improperly inflates rates. AE explains that CIAC are contributions from customers for CIP projects and, as such, are properly matched to CIP prior to applying debt-to-equity financing ratio. These contributions serve as an offset to revenues and reduce rates. This separate source of revenue must be subtracted before determining the debt-to-equity financing share.

Furthermore, AE explains that it has implemented a new CIAC policy (i.e., full cost recovery) at City Council's direction in an effort to have growth pay for itself. The direct application of that policy is to net CIAC to CIP as AE has done. Through the application of CIAC, new customers pay for the associated with new customer growth. Consequently, the amount of CIP that has to be financed through rates is reduced. AE argues that the intent of the debt-to-equity share is to allocate funding sources of AE's net cost, regardless of the level of CIAC funding. According to AE, NXP/Samsung failed to take into account the costs associated with increased debt.

AE also disagrees with the ICA's \$6 million "compromise adjustment" and disallowance of \$12 million based on a normalization of the past four years' expenditures.

Independent Consumer Advocate's Position:

The ICA generally supports NXP/Samsung's position on the issue, but provides an alternative recommendation. The ICA seeks to add the \$21 million identified by AE witness Dombroski in annual construction CIP for existing plant to NXP/Samsung witness Fox's normalized non-production resulting in \$146 for CIP. According to the ICA this would result in a revenue requirement decrease of \$6 million.

Low Income Customers' Position:

Not addressed.

NXP/Samsung's Position:

NXP and Samsung urge the IHE to reduce the amount of IGFC to \$50 million since this amount is the proper amount that represents cash funding from customers. NXP and Samsung disagree with AE's claim that they are funding eligible construction expenditures with 50% cash funding and 50% debt financing. NXP and Samsung assert 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%.⁶¹ NXP and Samsung assert that AE's witness Dombroski's calculation of the 50% figure was erroneous since he deducted AE's proposed CIAC 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 AE is seeking from customers through base rates in this proceeding.

In addition, according to NXP and Samsung, Mr. Dombroski 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. According to NXP and Samsung, the problem with this method of

⁶¹ NXP/Samsung Exh. 1 at 18.

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. NXP and Samsung point out that AE has chosen to use the cash flow method, it is more appropriate to use Austin Energy's total construction amount and compare that to the total amount of equity funding from both customers' rates and CIAC, which results in an equity-financing ratio of 56%.

NXP and Samsung do not disagree with Austin Energy's stated policy of a 50% debt and 50% equity financing over the long term; but they argue that at this time a 40% cash and 60% debt ratio is needed to balance Austin Energy's recent heavy reliance on cash funding.⁶² With respect to the relevant time period, 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.⁶³

Another source of contention concerns the expenditures for power production. NXP and Samsung calculate this amount to be \$14 million.⁶⁴ 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. NXP and Samsung note that the City Council has not determined or approved Austin Energy's next power supply increment 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.

Further, NXP and Samsung contend that 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

⁶² *Id.*

⁶³ NXP/Samsung Exh. 1 at 19.

⁶⁴ NXP/Samsung Closing Brief at 14.

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.⁶⁵ 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.

Public Citizen/Sierra Club's Position:

Does not take a position.

Paul Robbins' Position:

Does not take a position in briefing.

Bethany United Methodist's Position:

Does not take a position.

Data Foundry's Position:

Does not take a position.

HURF's Position:

HURF is generally in support of the revenue-requirement positions and adjustments presented by NXP/Samsung.

Jim Rourke's Position:

Does not take a position.

ARMA's Position:

ARMA supports NXP/Samsung's revenue requirements recommendations.

⁶⁵ NXP/Samsung Exh. 1 at 20-21.

Impartial Hearing Examiner's Analysis and Recommendation

The more salient issues related to the amount of Internally Generated Funds for Construction ("IGFC") to include in Austin Energy's rates are (1) the amount of Capital Improvement Program ("CIP") monies to use as the basis for determining Austin Energy's IGFC; (2) whether the percentage that Austin Energy applied to the CIP monies expended in FY2015 is 50% or 56%; (3) the percentage of Austin Energy's CIP that should be funded by cash versus debt; and ultimately, (4) the amount of IGFC to include in Austin Energy's revenue requirement.

Austin Energy included \$88,341,455 of IGFC for recovery in rates and is funded from "Net Revenues."⁶⁶ As Austin Energy noted, IGFC is a function of Austin Energy's capital improvement program ("CIP"),⁶⁷ contributions in aid to construction ("CIAC")⁶⁸ it receives from customers, and Austin Energy's debt-to-equity financing ratio.⁶⁹ Austin Energy's proposed IGFC is the sum of (1) the portion of Austin Energy's CIP, less CIAC, multiplied by the equity ratio of 50%, (2) plus CIAC. Austin Energy calculated its IGFC as follows:

FY 2015 CIP =	\$158,169,688
CIAC =	<u>\$18,513,221</u>
CIP Net of CIAC =	\$139,656,467
Equity Ratio =	50%
Equity Ratio * CIP Net of CIAC =	\$69,828,234
CIAC + Equity Portion of CIP =	\$18,513,221
CIAC + Equity Portion of CIP =	\$88,341,455

⁶⁶ *Id.*

⁶⁷ Austin Energy finances its CIP through a combination of debt and equity, with the equity portion derived from AE's current year net revenues. Austin Energy Closing Brief at 23.

⁶⁸ CIAC are funds contributed by a customer for extension of service to that customer's premises or development.

⁶⁹ Austin Energy Closing Brief at 23.

Austin Energy's IGFC of \$88,341,455 is an increase of \$2,238,482 over its FY 2014 amount of \$86,102,972 and its adjustment of about \$2.2 million is based in part on its CIP for FY 2015.⁷⁰ Austin Energy argued that using FY 2015 as the basis for its adjustment to its proposed CIP is appropriate because doing so takes into account Austin Energy's amended line-extension policy, which as amended requires the customer to provide the full cost of extensions based on estimated construction costs,⁷¹ and in turn increases the CIAC funds, which reduces Austin Energy's revenue requirement.⁷² Fiscal Year 2015 was the first complete year the amended policy was in place.⁷³

Austin Energy's historical CIP for the years FY 2012 through FY 2015 is as follows:

FY 2012 = \$166 million

FY 2013 = \$155 million

FY 2014 = \$167 million

FY 2015 = \$168 million.⁷⁴

According to Austin Energy, these data demonstrate a consistent, stable pattern of total CIP spending over the 4-year period.

Compared to Austin Energy's proposed IGFC of about \$88.3 million, NXP/Samsung recommends that this amount be reduced to \$50.0 million; this amount is before taking into account any CIAC funds.⁷⁵

⁷⁰ Austin Energy Closing Brief at 24.

⁷¹ AE Tr. 2 at 20:16-17.

⁷² *Id.* at 20:17-18.

⁷³ *Id.* at 20:18-19.

⁷⁴ See AE Exh. 1 at 831 (WP C-3.4.1, line 13).

⁷⁵ NXP/Samsung Closing Brief at 10.

NXP/Samsung arrives at its proposed amount of \$50.0 million by eliminating CIP associated with Austin Energy's production plant, which reduces CIP from approximately \$158.2 million to about \$125.0 million; by using a debt-to-equity ratio of 60% debt and 40% equity such that IGFC is funded by 40% cash and 60% debt; and by using Austin Energy's *average level* of construction expenditures for the period FY 2012-2015, to determine the amount reasonably necessary to be included in Austin Energy's cost of service.⁷⁶

The ICA agrees with NXP/Samsung that a "normal" amount of construction expenditures should be used to determine how much IGFC to include in rates and offered a compromise position.⁷⁷ The ICA's proposal takes into account the average annual construction improvement plan ("CIP") for existing production plant. The ICA notes that based on Austin Energy's own evidence, on average since 2012, Austin Energy has expended about \$21 million per year.⁷⁸ The ICA also notes that Austin Energy's witness on this issue, Mr. Dombroski, did not identify any specific or extraordinary construction projects that would justify a departure from the average expenditures.⁷⁹ The ICA's proposed amount for IGFC is thus based on a CIP of \$146 million. Based on Austin Energy's formula for calculating IGFC, the ICA contends that Austin Energy's IGFC should be decreased by \$6 million.⁸⁰

⁷⁶ NXP/Samsung Exh. 1 at 19.

⁷⁷ See ICA Closing Brief at 14. In fact, Austin Energy notes that its proposed amount of about \$88.3 million is indeed consistent with its "normal" construction expenditures. Austin Energy Closing Brief at 25.

⁷⁸ Dombroski Rebuttal at 19.

⁷⁹ Exhibit AE-2, p. 18.

⁸⁰ Mr. Dombroski shows \$88 million for internal cash generation requirement as the result of the formula, and with the \$146 million CIP, the result changes to \$82 million in necessary cash generation.

1. Capital Improvement Program (“CIP”) and contributions in aid of construction (“CIAC”)

First, the IHE agrees with Austin Energy that it is inappropriate to disregard Austin Energy’s expenditures for production plant as proposed by NXP/Samsung.⁸¹ Austin Energy continues to incur costs related to production plant.

The IHE does however agree with NXP/Samsung that in identifying a “normal” amount to include in rates for CIP expenditures, it is more appropriate to look at the level of expenditures over several years or a historical period of time instead of a snapshot of a single year.⁸² And the record shows that Austin Energy reviewed its CIP expenditures for FY 2012 – FY 2015 to determine its proposed amount of IGCF of about \$88.3 million. This is the same period NXP/Samsung’s witness Ms. Marilyn Fox reviewed.⁸³

On average from FY 2012 through FY 2015 Austin Energy shows CIP expenditures of about \$164.0 million. Austin Energy’s use of \$158.2 million in CIP to calculate its IGCF is about 3.5% lower than the average CIP expenditures for FY 2012 – FY 2015. The IHE agrees with Austin Energy that these data demonstrate a consistent, stable pattern of total CIP spending over the 4-year period and thus, the IHE disagrees with NXP/Samsung’s proposed CIP amount to use in calculating the amount of IGCF to use in setting rates.

Further, the evidence also shows that Austin Energy’s CIP expenditures specific to production plant have been, as NXP/Samsung agrees, approximately \$21.0 million annually on average from FY 2012 – FY 2015. Thus, it is inappropriate to disregard CIP expenditures related to production plant as NXP/Samsung proposes. Even though the City Council may not

⁸¹ NXP/Samsung notes that the more significant difference between its proposed CIP amount and Austin Energy’s is whether expenditures for production plant are included (as Austin Energy proposes) or excluded (as NXP/Samsung proposes). See NXP/Samsung Closing Brief at 14.

⁸² NXP/Samsung Exh. 1 at 19.

⁸³ *Id.*

have yet identified the next production plant for Austin Energy to construct, this does not mean Austin Energy does not expend monies on production plant. Therefore, the IHE recommends that in calculating IGCF that the amount of CIP to use is \$158,169,688.⁸⁴

2. Whether the percentage that Austin Energy applied to the CIP monies expended in FY 2015 is 50% or 56%

With regard to how CIAC is taken into account in determining the amount of CIP that is funded by equity (50% versus 56%), the IHE agrees with Austin Energy. CIAC funds are contributions from customers and serve as an offset to revenues and reduce rates. CIAC funds are a separate source of revenue that should be subtracted before determining the debt-to-equity financing share. Unlike net revenue produced by Austin Energy's usage rates or customer charges, CIAC funds are specific to a customer and project and are not recovered from the ratepayers at large. Thus, CIAC funds are not of the same nature as typical internally generated funds.

Therefore, in calculating the percentage of funds generated by equity, the amount of CIP to use should exclude CIAC as proposed by Austin Energy. This means that the CIP amount net of CIAC is \$139,656,467.

3. The percentage of Austin Energy's CIP that should be funded by cash versus debt

The IHE recommends that a debt-to-equity financing ratio of 50/50 for determining the amount of CIP that should be funded by cash versus debt. A 50/50 ratio is within the range prescribed by Financial Policy No. 14;⁸⁵ is representative of AE's debt to equity ratio and

⁸⁴ The ICA's proposed amount of \$146 million in CIP appears to be in part based on NXP/Samsung's proposed CIP amount. Because the IHE rejected NXP/Samsung's proposal, the IHE also rejects the ICA's proposed amount for CIP.

⁸⁵ AE Exh. 1 at 369 (Appendix D).

historical average equity financing of 51% from FY 2012 through FY 2014; and complies with City Ordinance No. 20120607-055. NXP/Samsung's proposed 60% debt and 40% equity lacks credible support in the record and ignores that not all projects may be financed at the same level of debt. As Austin Energy notes, certain types of capital projects, such as vehicles, are funded completely by IGFC, where it is not practical to incur 30-year bond debt for shorter life assets. Also, the more recent decisions by the PUCT support using a debt-to-equity ratio of 50/50.⁸⁶

Therefore, the IHE recommends that Austin Energy's funding for its CIP projects be based on 50/50 debt-to-equity ratio.

4. The amount of IGFC to include in Austin Energy's revenue requirement

For the foregoing reasons the IHE recommends Austin Energy's rates include \$88,341,455 in IGCF. This amount is supported by Austin Energy's historical amounts of CIP expenditures and correctly accounts for CIAC funds.

D. Transmission Costs and Revenues

Austin Energy's Position

AE disagrees with NXP/Samsung's claims that AE has not properly applied \$14,479,686 in "excess recovery" of wholesale transmission revenue, which would be offset by \$10 million in transmission expense associated with payments to other transmission service providers for use of the transmission system. AE's opposition is based on legal and policy considerations. AE contends that it does not have the authority to require wholesale transmission customers to subsidize its retail operations. In support of its position, AE cites to PURA §§ 35.004(b) and (c),

⁸⁶ See, e.g., Docket No. 43695, *Application of Southwestern Public Service Company for Authority to Change Rates*, Order on Rehearing at 4 and at Finding of Fact No. 72A (Feb. 23, 2016).

which applies to the provision of transmission service and where for purposes of this provision, the term “electric utility” includes a MOU.⁸⁷ Section 35.004(b) provides in relevant part:

The commission shall ensure that an electric utility or transmission and distribution utility provides nondiscriminatory access to wholesale transmission service [...to...] other electric utilities or transmission and distribution utilities.

Section 35.004(c) states:

When an electric utility, electric cooperative, or transmission and distribution utility provides wholesale transmission service within ERCOT at the request of a third party, the commission shall ensure that the utility recovers the utility’s reasonable costs in providing wholesale transmission services necessary for the transaction from the entity for which the transmission is provided so that the utility’s other customers do not bear the costs of the service.

In addition, AE cites to 16 Tex. Admin. Code § 25.275(o)(1)(C), which provides:

Provisions for Bundled MOU/COOPs.

(C) Cross-subsidization prohibited. A bundled MOU/COOP shall not create significant opportunities for cross subsidization of competitive energy-related activities with revenues from distribution and transmission rates.

According to AE, NXP/Samsung’s recommendations, revenues from transmission rates would be cross subsidizing AE’s generation activities (i.e., retail rates include generation costs) which are competitive energy-related activities.⁸⁸

AE also claims that it would be bad policy set retail rates arbitrarily lower based upon wholesale transmission revenues at a given point in time. AE argues that in the event that the City of Austin were to set retail rates lower than AE’s cost of service, the PUC would

⁸⁷ PURA § 35.001 (West 2007).

⁸⁸ AE assumes that if adopted, NXP/Samsung’s proposal would be applicable both ways. That is, NXP/Samsung would support retail customers subsidizing the transmission function if it becomes necessary to increase transmission rates.

undoubtedly require AE to adjust the rates to ensure that its wholesale transmission customers (i.e., distribution service providers (“DSPs”) in ERCOT who pay the “postage stamp” rate to TSPs for use of the transmission system) are not subsidizing those rates.

Independent Consumer Advocate’s Position:

Not addressed in briefing.

Low Income Customers’ Position:

Not addressed in briefing.

NXP/Samsung’s Position

NXP/Samsung recommends a \$14,479,686 base-rate reduction due to excess recovery of wholesale transmission revenue. NXP/Samsung does not question the PUC’s role in regulating transmission costs and revenues, but rather contends that it is appropriate to account for “known and measurable adjustments” to AE’s transmission costs and revenues for proper ratemaking, and that AE is accounting for those adjustments properly in the proposed base rate revenue requirement.

NXP/Samsung explains that there are two types of costs associated with AE’s transmission activities. The first are payments made to other transmission service providers (TSPs). This amount is recalculated annually based on AE’s latest 4CP and the updated PUC approved total postage stamp rate.⁸⁹ According to NXP/Samsung, these are “*retail transmission costs*” (emphasis added).⁹⁰ The other type of cost is 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.⁹¹ AE recovers the

⁸⁹ NXP/Samsung Exh. 1 at 22-23; PUC Subst. R. § 25.192(b)(1) (16 TAC § 25.192(b)(1)).

⁹⁰ TR. at 994: 10 (Maenius Cross) (Jun. 2, 2016).

⁹¹ AE Exh. 1 at 4-64.

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.⁹²

NXP/Samsung assert that AE recovers the costs associated with the expense AE incurs and is charged to FERC Account 565 through the regulatory charge.⁹³ As discussed throughout this case, the regulatory charge is a pass-through assessment to Austin Energy's customers.⁹⁴ Austin Energy records the transmission revenue it receives through the application of its PUC approved access fee in "Other Revenues."⁹⁵ Austin Energy's adjusted "Other Revenues" are reflected on as an offset to Austin Energy's Total Cost of Service.⁹⁶ 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.⁹⁷ Their recommendation relies on the latest PUC approved transmission matrix.⁹⁸ NXP and Samsung recommend the following transmission amounts be recognized in Austin Energy's total cost of service and revenue requirement.⁹⁹

⁹² NXP/Samsung Exh. 39; *See also* PUC Subst. R. § 25.192(b) (16 TAC § 25.192(b)).

⁹³ *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.

⁹⁴ AE Exh. 1 at 3-28 & 6-32.

⁹⁵ AE Exh. 1 at WP E-5.1.1.

⁹⁶ *See* AE Exh. 1 at Schedule A, col. J, rows 30, 33, and 36.

⁹⁷ NXP/Samsung Exh. 1 at 24.

⁹⁸ *See* NXP/Samsung Exh. 39.

⁹⁹ NXP/Samsung Exh. 1 at 24.

NXP/Samsung - Transmission by Others (recovered thru Regulatory Charge)

\$126,825,202

NXP/Samsung - Transmission Other Revenue

\$76,609,559

Public Citizen/Sierra Club's Position:

Does not take a position in briefing.

Paul Robbins' Position:

Does not take a position in briefing.

Bethany United Methodist's Position:

Does not take a position in briefing.

Data Foundry's Position:

Does not take a position in briefing.

HURF's Position:

HURF is generally in support of the revenue-requirement positions and adjustments presented by NXP/Samsung.

Jim Rourke's Position:

Does not take a position in briefing.

ARMA's Position:

ARMA supports the revenue requirements recommendations submitted by NXP/Samsung.

1. Transmission by Others - FERC Account 565

Austin Energy's Position:

NXP/Samsung recommends an adjustment to retail transmission costs included in FERC Account 565 using the 2016 postage stamp rate approved in PUC Docket No. 45382¹⁰⁰ and based on AE's most recent average ERCOT 4 Coincident Peak ("CP"). AE opposes this adjustment at this time although it would increase the regulatory charge recovery when it is adjusted during the upcoming budget process. AE witness Maenius testified that the postage stamp rate recommended by NXP/Samsung witness Ms. Fox was approved in PUC Docket No. 45382 on March 25, 2016, well after the rate RFP had been developed and released and is thus beyond the scope of this base rate case and inappropriately extends the historical test year.

Moreover, Ms. Fox would apply the rate against AE's most recent 4CP, an action that AE asserts would create a mismatch for transmission cost bill determinants as compared with the determinants used in the normalized 4CP included in the test year. Further, this change is beyond the scope of this case insofar as it does not impact base rates.

Independent Consumer Advocate's Position:

Does not take a position.

Low Income Customers' Position:

Not addressed.

NXP/Samsung's Position

NXP/Samsung witness Ms. Fox testified that AE did not use the most recent ERCOT statewide postage stamp rate approved by the PUC. According to Ms. Fox, AE used the 2015 ERCOT statewide postage stamp rate approved March 2015 in PUC Docket No. 43881 and not

¹⁰⁰ *Commission Staff's Application to Set 2016 Wholesale Transmission Service Charges for the Electric Reliability Council of Texas*, Docket No. 45382 (Mar. 25, 2016).

the rate approved for 2016 in PUC Docket No. 45382. Therefore, AE's known and measurable ERCOT transmission expense should be \$126,825,202 rather than \$116,855,952¹⁰¹. This constitutes a known and measurable change to AE's test year amount. 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, but propose the \$10 million increase to the Regulatory Charge as a known and measurable change to maintain consistency in its application of known-and-measurable adjustments.

Public Citizen/Sierra Club's Position:

Does not take a position in briefing.

Paul Robbins' Position:

Does not take a position in briefing.

Bethany United Methodist's Position:

Does not take a position in briefing.

Data Foundry's Position:

Does not take a position in briefing.

HURF's Position:

HURF is generally in support of the revenue-requirement positions and adjustments presented by NXP/Samsung.

Jim Rourke's Position:

Does not take a position in briefing.

¹⁰¹ NS Ex. 1 at 23-24.

ARMA's Position:

ARMA supports the revenue requirements recommendations submitted by NXP/Samsung.

Impartial Hearing Examiner's Analysis and Recommendation

Regarding NXP/Samsung's adjustment to what Austin Energy refers to as its "retail transmission costs" (accounted for in FERC Account 565), the IHE recommends that the Council reject NXP/Samsung's proposal.

Beyond increasing the Regulatory Charge by \$9,992,960, the IHE agrees with Austin Energy that NXP/Samsung's proposal is based on a mis-match in the billing determinants for Austin Energy's transmission costs because NXP/Samsung's proposed adjustment is premised on Austin Energy's 2016 postage stamp rate approved in PUC Docket No. 45382¹⁰² (which is based on Austin Energy's most recent average ERCOT 4 Coincident Peak ("CP")), and the transmission expenses Austin Energy presented in its rate filing package is based on the normalized 4CP included in the test year.

Further, the IHE agrees with Austin Energy that these costs are outside the scope of this proceeding.

Independent Consumer Advocate's Position:

Does not take a position.

Low Income Customers' Position:

Not addressed.

¹⁰² *Commission Staff's Application to Set 2016 Wholesale Transmission Service Charges for the Electric Reliability Council of Texas*, Docket No. 45382 (Mar. 25, 2016).

2. Austin Energy's Transmission Revenues

Austin Energy's Position:

AE disagrees with NXP/Samsung's characterization of AE as an unbundled utility holding company, consisting of regulated and unregulated affiliates governed by PUC affiliate transactions rules and a code of conduct. AE explains that like many utilities in the state, AE has a transmission business and a retail business. Thus, AE is both a TSP and a Load Serving Entity ("LSE"). AE states that it could divest itself of their entire transmission business and still be a LSE; or, it could sell off its entire retail customer base and remain as a TSP. These are two separate functions with two sets of customers and two revenue streams. AE asserts that the revenue associated with transmission assets comes from one set of customers while the revenue from the ownership of retail assets comes from another set of customers.¹⁰³ If AE were to sell either of these systems, they would continue to have the same revenue stream from the other system. This structure is common and well known in Texas, according to AE.

AE draws a similar distinction between retail transmission expense and wholesale transmission costs. AE's retail transmission expense is the cost born by AE's retail customers and paid to other TSPs in the ERCOT region. The retail transmission expense is the product of the PUC-approved statewide transmission postage stamp rate and AE's average ERCOT 4CP. These costs are coded to FERC Account 565 and are recovered from AE's retail customers through the Regulatory Charge. AE's wholesale transmission costs, on the other hand, are AE's costs of owning and operating its transmission assets as part of the ERCOT transmission grid. AE recovers its wholesale transmission costs, such as transmission O&M or transmission asset

¹⁰³ NXP/Samsung's claim at page 25 that AE has no "wholesale customers" is also wrong. Wholesale transmission customers are all of the DSPs who pay transmission revenues to AE and the other TSPs in the state. The IHE can be certain that the PUC knows who these customers are and will ensure that they are not subsidizing AE's retail operations.

debt service, from other DSPs at AE's PUC-approved transmission cost of service ("TCOS") rate. Revenue received to cover AE's wholesale transmission is the product of AE's TCOS rate and the average ERCOT 4CP. AE thus concludes that wholesale transmission costs and retail costs are separate and distinct, recovered from two different customer bases, and under different jurisdictional ratemaking regulatory bodies. Consequently, according to AE, the wholesale transmission function and the retail function should not subsidize each other.

AE contends that including costs or revenues from one function in the other's revenue requirement violates two basic rate making principals: cost causation and cross subsidization. Consequently, AE adjusted the transmission costs in the retail case to include only those costs applicable to the retail function and excluded costs associated with the wholesale function which are recovered from ERCOT's DSPs. Retail transmission costs are recorded in FERC 565 and affirmed in NXP/Samsung's testimony.¹⁰⁴ AE made specific adjustments to the revenue requirement in order to exclude wholesale transmission costs and leave only retail transmission (matrix expense) recorded in FERC 565.

AE characterizes NXP/Samsung's position on the issue such that wholesale transmission revenues should subsidize the retail function so that retail customers do not incur the true costs to serve. According to AE, NXP/Samsung proposes to do this by increasing "Other Revenue" to reflect AE's wholesale transmission revenues set in Docket 45382 in the amount of \$76,609,599. AE thus contends that NXP/Samsung seeks to include wholesale transmission costs and wholesale transmission revenues in the retail rate case.

AE further explains that if NXP/Samsung insists on including the full measure of AE's wholesale transmission revenues, then it is appropriate that the full measure of AE's wholesale

¹⁰⁴ Rebuttal Testimony of Russell H. Maenius, AE Exh. 8 at 8:3-9.

transmission costs also be encompassed, including the wholesale transmission return authorized by the PUC. AE argues that wholesale transmission revenue has a higher embedded PUC approved return than what is included in the retail case and should be recognized to match revenues to cost of service. If the higher return were recognized, AE contends it would be under-recovering on its wholesale transmission function by about \$23 million.

By incorporating wholesale transmission costs and revenues into the retail case, as opposed to AE's position of eliminating wholesale transmission costs from the retail case, AE asserts that retail customers would be subsidizing AE's wholesale transmission function by \$23 million. AE believes that NXP/Samsung confuses retail transmission expense with wholesale transmission costs and revenues.

Independent Consumer Advocate's Position:

Not addressed in briefing.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

NXP/Samsung asserts that AE 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." Further, AE characterizes the revenue it receives for this function as "wholesale transmission revenue." NXP/Samsung points out that AE witness Mr. Maenius testified that Austin Energy completely eliminated wholesale transmission costs and wholesale transmission revenue when it deducted \$62,219,919 and other deductions from the approximate \$1.3 billion in

total cost of service in order to get to the \$614 million proposed base rate revenue requirement.¹⁰⁵

NXP and Samsung 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 its base-rate revenues by \$14,479,686¹⁰⁶. 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 assets¹⁰⁷ as this amount is the amount most recently approved by the PUC in Docket No. 45382 in 2016.¹⁰⁸

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

¹⁰⁵ TR. at 1015: 15-18 (Maenius Cross) (Jun. 2, 2016).

¹⁰⁶ NXP/Samsung Exh. 1 at 24.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* See also NXP/Samsung Exh. 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), NXP/Samsung Exh. 41.

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 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 \$1.160111¹⁰⁹.

Ms. Fox's testimony revealed that AE is not crediting any of the Transmission Revenue it receives to its pass-through regulatory charge. NXP/Samsung developed a chart which showed that 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. NXP/Samsung contends that AE should have recognized the PUC's approval in 2014 of its interim TCOS case¹¹⁰ by inserting \$75.7 million as an Other Revenue in its proposed cost of service. According to NXP/Samsung this would qualify as a "known and measurable adjustment" as the increased transmission revenue was approved by the PUC on June 4, 2014¹¹¹ and Austin Energy's test year in this proceeding is the fiscal year ended, September 30, 2014¹¹².

NXP/Samsung characterizes AE's position as essentially stating that since its wholesale transmission costs in support of the statewide grid are \$62 million, as evidenced by its proposed

¹⁰⁹ NXP/Samsung Exh. 1 at 25-26 (internal citations omitted).

¹¹⁰ See NXP/Samsung Exh. 41.

¹¹¹ *Id.*

¹¹² AE Exh. 1 at 1-1.

cost allocation in this case, then its wholesale revenues in support of its cost must then be an equal amount (\$62 million). NXP/Samsung contend that AE's wholesale transmission cost and revenues should be based on the PUC's Order in Docket No 42385, which established Austin Energy's cost of service and revenue to be collected.¹¹³

NXP/Samsung point out that Austin Energy has not disputed that current transmission revenues are significantly higher than those from 2014 based on information in its FY2014-2015 Fourth Quarter Report where it AE noted 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 in PUC Docket 42385.

According to NXP/Samsung, 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 difference between Austin Energy's cost of service in this proceeding and the cost of service in PUC Docket 42385 is almost \$14 million, according to NXP/Samsung. 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%).¹¹⁴

NXP/Samsung makes the point that Austin Energy is a municipally-owned utility and its only customers are retail customers. And even though it participates in the wholesale market with respect to its generation function, it does so for the benefit of its retail customers.

¹¹³ NXP/Samsung Exh. 41.

¹¹⁴ Tr. at 1016: 13-22 (Maenius Cross) (Jun. 2, 2016).

Furthermore, NXP/Samsung stresses that 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.¹¹⁵

In addition, AE's transmission system is owned by the City of Austin for the benefit of its retail customers. NXP/Samsung asserts that 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. Therefore, according to NXP/Samsung, AE's retail customers must benefit from all transmission revenue recovered by AE as a result of PUC approval of its costs.

NXP/Samsung asserts that AE does not have retail customers and therefore there will be no illegal subsidy as AE contends. NXP/Samsung condemns AE for 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). NXP/Samsung argues that AE 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.

NXP/Samsung suggests that if it were the case that AE's costs are \$62 million and its revenues are over \$76 million it would be over-earning and would be subject to PUC scrutiny. However, if as NXP and Samsung propose in this case, that AE's transmission costs are closer to \$76 million¹¹⁶ and its transmission revenues are also about \$76 million, as evidenced by the latest PUC Transmission Matrix Order,¹¹⁷ then AE is overstating its base rate revenue requirement by \$14 million in this proceeding.

¹¹⁵ AE Exh. 1 at 3-29.

¹¹⁶ NXP/Samsung Exh. 1 at 26. NXP/Samsung Exh. 41 at Findings of Fact 4 and Ordering Paragraphs 1.

¹¹⁷ NXP/Samsung Exh. 39.

NXP/Samsung clarifies that it is not suggesting that AE 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, NXP/Samsung recommends that 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. AE estimated a \$29 million under-recovery of amounts received from customers. AE could have used the revenue it received, but instead AE increased the Regulatory Charge when it decreased the PSA in 2016.¹¹⁸

Public Citizen/Sierra Club's Position:

Does not take a position in briefing.

Paul Robbins' Position:

Does not take a position in briefing.

Bethany United Methodist's Position:

Does not take a position in briefing.

Data Foundry's Position:

Does not take a position in briefing.

HURF's Position:

HURF is generally in support of the revenue-requirement positions and adjustments presented by NXP/Samsung.

Jim Rourke's Position:

Does not take a position in briefing.

¹¹⁸ Tr. at 110: 4-13 (Dombroski Cross) (May 31, 2016).

ARMA's Position:

ARMA supports the revenue requirements recommendations submitted by NXP/Samsung.

Impartial Hearing Examiner's Analysis and Recommendation

In the IHE's view the issue of the extent to which Austin Energy's transmission cost and revenues affects its base-rate revenue requirements, is one of the more difficult ones to resolve. Austin Energy correctly notes that the PUCT has exclusive jurisdiction with regard to Austin Energy's transmission cost of service and expenses.¹¹⁹

But the record also establishes that in determining its base-rate revenue requirement, Austin Energy reduced its proposed base-rate revenue requirement by "Other Revenue," and "Other Revenue" includes revenue Austin Energy receives from the ownership and operations of its transmission assets and sale of those services to transmission and distribution utilities ("TDUs"). Austin Energy shows this in its "Schedule A" to its rate filing package.

In its rate-filing package Austin Energy included \$62,129,919 in "Other Revenue" related to what it describes as its "wholesale transmission revenue" to arrive at its base-rate revenue requirement of \$614,404,165. NXP/Samsung argued that the more accurate number to use for "Other-Revenue" related to transmission revenue is \$76,609,599. NXP/Samsung next argued that Austin Energy under-stated its "Other Revenue," which had the effect of *over*-stating its base-rate revenue requirement by \$14,479,680.¹²⁰ NXP/Samsung contended that the \$76,609,599 was the more accurate amount to use because that's the value the PUCT approved in Austin

¹¹⁹ Austin Energy Closing Brief at 28.

¹²⁰ See NXP/Samsung Closing Brief at 21.

Energy's most recent application to update its interim wholesale transmission rates.¹²¹ Below are the "Other Revenue" amounts shown in the record:

Austin Energy FY 2014 <i>Recorded</i> Revenue	\$68,974,261
Austin Energy <i>Adjusted</i> FY 2014 (for use in this proceeding)	\$62,129,919
PUCT Approved Amount June 3, 2014 (Dkt. 42385)	\$75,697,440
Austin Energy 4 th Quarter FY 2014-2015 Report of Expected Revenue	\$74.3 million*
PUCT Approved Amount March 25, 2016	\$76,609,559

* *The IHE notes that a more precise amount is not readily available from the cites provided by the parties, but no party disputed this amount.*

In light of this evidence, the IHE finds it difficult to reconcile Austin Energy's position that the offset to its revenue requirement should be approximately \$62.97 million. Even if the IHE accepts Austin Energy's argument that the \$76.6 million the PUCT approved on March 25, 2016 is beyond Austin Energy's test year and an amount not known until after Austin Energy prepared its rate filing package, the discrepancy between the transmission data Austin Energy presented to the PUCT, and upon which the PUCT based its decisions in Docket No. 42385 (June 2014), and Docket No. 45382 is too large to ignore.

At a minimum one would expect the offset to revenue to be between about \$68.97 million (the FY 2014 and test year amount) and \$74.3 million (the amount Austin Energy reported in its 4th Quarter Report).

In any event, given the amounts the PUCT approved – based on Austin Energy's costs – the IHE concludes that \$74.3 million is the more appropriate amount to use as an offset to Austin Energy's revenue requirement to arrive at its base-rate revenue requirement. The IHE observes that no party contested the accuracy of the amounts shown in the table above, nor did any party argue that Austin Energy would receive an amount materially lower than the \$76.6 million it presented to the PUCT in Docket No. 45382. Further, the approximately \$76.6 million is

¹²¹ NXP/Samsung Exh. 1 at 25.

consistent with the amount Austin Energy most recently presented to the PUCT, and is within about 1% of the amount the PUCT approved in its March 2014 order in Docket No. 42385.

Regarding Austin Energy's argument that the amount approved by the PUCT is not what Austin Energy's actual revenue may be, and therefore is not a known-and-measurable amount, while normally the IHE would agree, again in light of the wide difference between Austin Energy's test year amount of about \$68.97 million (and in particular, its proposed adjusted amount of about \$62.1 million), and the amounts the PUCT approved in June 2014 and the higher amount in March 2016, the IHE notes that if the data upon which the \$74.3 million is based is sufficiently known to Austin Energy for purposes of its 4th Quarter Report for FY 2014 – 2015, that amount is sufficiently known and measurable for setting rates in this proceeding.

The IHE also does not find persuasive the distinction Austin Energy draws between its "retail transmission costs" from its "wholesale revenue." As NXP/Samsung pointed out, Austin Energy's transmission assets were built to benefit Austin Energy's ratepayers. And the IHE did not find evidence in the record that explained how Austin Energy's ratepayers would benefit from the increased transmission revenue Austin Energy will receive.

Therefore, the IHE recommends to the Council that it offset Austin Energy's revenue requirement by \$74.3 million, instead of \$62,129,919 as proposed by Austin Energy. This is an additional offset to Austin Energy's revenue requirement of about \$5.32 million.¹²²

¹²² \$74,300,000 less \$68,974,261 equals \$5,325,739, or about \$5.32 million. If the record reflects a more accurate number than the \$74.3 million noted in Ms. Fox' testimony (NXP/Samsung Exh. 1), the IHE recommends the more accurate number be used.

E. FPP Debt Defeasement

Austin Energy's Position

According to AE, Public Citizen/Sierra Club ("PC/SC") proposes establishing a fund to defease the debt associated with Austin Energy's share of the FPP.¹²³ PC/SC's rationale for creating a new source of funds is to ensure AE's share of FPP is retired pursuant to the timetables outlined in the *Austin Energy Resource, Generation, and Climate Protection Plan to 2025* ("Gen Plan").¹²⁴ Establishing the debt defeasance fund, according to PC/SC, would enable AE to pay off the long-term FPP debt early and help AE avoid a significant rate increase in the future. However, adoption of PC/SC's recommendation would increase rates now by an amount between approximately \$24 million and \$31 million annually.¹²⁵ AE opposes PC/SC's proposal for several reasons.

First, AE asserts that the Gen Plan is a City Council-approved strategic document that guides AE's near- and mid-term operational planning. However, the Gen Plan does not specifically authorize any individual action; instead, it guides AE staff in making operational decisions for the next three to five years. AE explains that even though the Gen Plan calls for the operational ramp down of FPP to start in 2020, this goal does not specifically authorize AE to enter into an agreement with the Lower Colorado River Authority ("LCRA") to change the joint participation agreement. AE would first need to present that agreement to City Council for its approval.

¹²³ PC/SC Brief at 7.

¹²⁴ Austin Energy Resource, Generation and Climate Protection Plan to 2025: An Update of the 2020 Plan, PC/SC Exh 4.

¹²⁵ PC/SC Brief at 10. The range depends on the total amount of debt to defease and the amortization period of defeasance.

AE reasons that because the target date of 2020 is a target, many factors could change between today and 2020 that might influence Council's ultimate decision to start ramping down operations. AE asserts that internal planning is currently underway in an effort to analyze the myriad inputs that can affect resource-planning initiatives. The Gen Plan is thus better understood as a guide that leads AE to analyze many alternatives and ultimately make decisions or recommendations on how best to achieve the goals laid out in the Gen Plan. AE identified certain elements that must be considered in such analysis which include operational, financial, legal and policy risks. AE believes that totality of the risks and benefits must be explored in depth and a full plan must be developed and presented to City Council for its approval before it would be prudent for AE to start collecting funds associated with debt retirement.

Second, AE points out that because there is no specific plan in place, the new revenue that would be collected by PC/SC's proposed fund does not meet the known and measureable test for making adjustments to historical test-year costs. This is because no party, including AE, has presented definitive testimony on what the appropriate funding level would be if this defeasance fund were to be created.¹²⁶

Third, PC/SC's logic in drawing similarities between decommissioning funds and collecting defeasance funds is fundamentally flawed, according to AE. In his cross-examination by PC/SC, AE Witness Mark Dombroski stated that it does not make sense to set aside money for debt defeasance in the same way that AE sets aside money for plant decommissioning. Similarly, AE Witness Joe Mancinelli testified to the difference between decommissioning funding and debt retirement funding.

¹²⁶ *Id.* at 10; Tr. at 654:12-24; AELIC Brief at 9; ICA Brief at 16-17; NXP/Samsung Brief at 27.

AE argues that the equivalent to collecting decommissioning costs for repayment of long-term debt is the 30-year schedule of annual principle and interest debt payments, not a mechanism to fund early repayment of that debt. Therefore, following the same logic used to justify collection of decommissioning funds to suggest the creation of an early debt retirement fund is erroneous, and the IHE should not accept it.

AE agrees with AELIC,¹²⁷ ICA,¹²⁸ and NXP/Samsung¹²⁹ that collecting revenue for a debt defeasance fund at this time would be premature because PC/SC's rationale is based on speculative activity in an unknown future. AE contends that there are several steps that must be taken before rates can be established to recover the cost of retiring debt associated with FPP, including creation and approval of a full decommissioning and debt retirement plan and until that occurs rate recovery would be premature.

Independent Consumer Advocate's Position:

ICA concurs with the rebuttal testimony of AELIC and Austin Energy in opposing PC/SC's proposed \$31.5 million annual revenue requirement increase to fund a defeasement reserve for the Fayette Power Project ("FPP").¹³⁰

Public Citizen/Sierra Club ("PC/SC") states that if the FPP is retired by the end of 2023, the debt associated with that plant would need to be retired early, and so they recommend a bond retirement reserve fund be established and funded for the period of 2017-2022. PC/SC bases their position on a 2014 presentation by AE which assumes an outstanding debt of \$189 million associated with the FPP, and then they divide \$189 million by six years, arriving at an annual

¹²⁷ AELIC Brief at 8.

¹²⁸ ICA Brief at 17.

¹²⁹ NXP/Samsung Brief at 27-28.

¹³⁰ ICA Brief at 16.

debt retirement reserve of \$31.5 million. However, for several reasons, this proposal is not necessary nor reasonable.¹³¹

ICA contends that the City Council has not yet approved a date for retirement of the FPP, and cannot do so without the joint owner, the Lower Colorado River Authority, and closing that plant prematurely could expose AE to reliability risks and volatile wholesale market prices. Moreover, defeasement of bond debt prior to the date the debt actually becomes callable could expose AE to legal risks.¹³²

ICA argues that according to evidence adduced by AELIC, the outstanding debt associated with the FPP is actually \$168.8 million and a significant amount of that debt is likely to be retired through sinking funds payments over the next few years. Series 2007 revenue bonds will be paid off by 2020, and AE could assign 2016-2025 sinking fund amounts from its series 2008 and 2010A revenue bonds to the FPP, minimizing the impact that any early retirement of the plant would have on ratepayers. Furthermore, ICA asserts that AE includes the FPP in the development of a non-nuclear decommissioning fund as part of its rate filing (as discussed in Section II.B. above), and that expense may serve a functionally equivalent goal to the goal of creating a reserve fund. Moreover, rate making practice provides for amortization of undepreciated plant costs, to the extent it exists at the time of a plant's retirement, which would contribute to the payment of any remaining debt. As pointed out by ICA witness Mr. Johnson, it is premature to determine either the exact retirement date, the debt defeasement cost, or how much of the cost can be paid by new debt issuances rather than by immediate cash.¹³³

¹³¹ *Id.*

¹³² *Id.*

¹³³ ICA Brief at 17.

Lastly, the ICA does not believe that it is appropriate to consider increasing electric rates to create an unnecessary reserve fund while Austin Energy continues to struggle with meeting the affordability and competitiveness goals set forth by the City Council.¹³⁴

Low Income Customers' Position:

AELIC opposes Public Citizen/Sierra Club's ("PS/SC") request that an additional \$31 million be added to the TY 2014 revenue requirement to fund a FPP debt defeasement reserve.

AELIC first argues that 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.

Second, AELIC asserts that 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.¹³⁵ AELIC witness 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.¹³⁶ 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.¹³⁷ AELIC claims that PC/SC 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 or how much of the amount that could be paid off around the time of the proposed retirement date given Ms. Szerszen's observations stated above.

¹³⁴ *Id.*

¹³⁵ AELIC Exh. No. 3 Szerszen Cross Rebuttal at p. 3 (of testimony).

¹³⁶ *Id.* at p. 4.

¹³⁷ *Id.* at p. 5.

Third, AELIC argues that neither AE nor the Council currently have control of the FPP retirement date. AE owns FPP jointly with another public utility, the Lower Colorado River Authority (“LCRA”), and cannot retire any of the FPP without LCRA’s agreement.¹³⁸ AELIC contends that 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.¹³⁹ Until this issue is resolved, AELIC believes that AE cannot retire any portion of the FPP. PC/SC has provided no evidence of any agreement between LCRA and AE that addresses the early retirement of FPP, in whole or in part, according to AELIC.

Fourth, AELIC points out that the Council has not taken any formal action to retire FPP.¹⁴⁰ 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 2025.¹⁴¹ AELIC notes that these retirement-targeted deadlines are subject to affordability goals, regulatory/reliability requirements, market performance/asset value and overall risk management needs.¹⁴² AELIC claims that PC/SC has provided no analysis to address these conditions for retirement.

Fifth, AELIC notes that 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.¹⁴³ Among some of the qualifiers the Council would take into

¹³⁸ NXP/Samsung Exh. No. 3, Fox Rebuttal at p. 5.

¹³⁹ AELIC Exh. No. 15, p. 2.

¹⁴⁰ AELIC Exh. No. 22, p. 1.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ ICA Exh. No. 2, Johnson Cross Rebuttal at p. 19.

consideration in determining whether to retire the FPP are the competitiveness of rates compared to the surrounding area and the 2% annual rate increase cap.¹⁴⁴ AELIC criticizes PC/SC for providing no analysis of the affordability qualifiers in relation to the targeted FPP retirement dates. Consequently, PC/SC's FPP debt-defeasement fund based on early retirement of FPP is speculative.

Sixth, AELIC remarks that 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.¹⁴⁵ 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.¹⁴⁶ Consequently any Council plan to retire FPP will also include an additional 30 to 36 months of planning at ERCOT. AELIC argues that PC/SC 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.

NXP/Samsung's Position:

Not addressed in briefing.

Public Citizen/Sierra Club's Position:

PC/SC recommends that AE's revenue requirement should include annual budget allocations to a Fayette Debt Defeasement Fund that equal one sixth the total amount the utility would need to defease all remaining debt associated with the Fayette Power Project in November 2022. This is necessary to facilitate retirement of Austin Energy's portion of Fayette in 2023.

¹⁴⁴ *Id.*

¹⁴⁵ Tr. pp. 186, AELIC cross of Ball.

¹⁴⁶ *Id.* at pp. 186 and 187.

The basis of PC/SC's recommendation is with the City Council's approval of the Austin Energy Resource, Generation and Climate Protection Plan to 2025. The Plan includes a commitment to retire the Fayette Power Plant by 2023. The particulars of the Plan are as follows:

On page 2 it states, "The Plan establishes a process for ending the use of coal by the end of 2022, contingent upon setting aside a fund to pay off the outstanding debt."

On page 3 it states, "This Plan adopts and acts immediately on: (2) Supporting creation of a cash reserve fund for Fayette Power Project retirement. Reserves would be approved through the budgeting process and targeted to retire Austin's share of the plant beginning in 2022."

On page 5, it states, "Reducing and ending Austin Energy's use of coal is contingent on paying off the debt associated with environmental investments that Austin Energy has made in the plant. The 2025 Generation Plan continues to establish a ramp down in production in 2020 to achieve established carbon goals, and anticipates the retirement process in 2022, if funds are available. The recommended Plan will require establishment of a cash reserve retirement account in advance of the retirement to be funded with available cash as part of the annual budgeting process."

On page 7 it states, "Austin Energy will strive to retire its share of the Fayette Power Project as soon as legally, economically and technologically possible."

The Plan also contains a table on page 4 showing "retirement of AE's share of Fayette at the end of 2023."¹⁴⁷ The table was provided in PC/SC's brief and illustrates the projected resource mix and timing of the recommended 2025 Generation Plan.

¹⁴⁷ PC/SC Exh. 4.

PC/SC contends that despite what it characterizes as clear policy direction from the City Council, AE has not has taken any action to establish a cash reserve for future defeasement of Fayette debt.¹⁴⁸ PC/SC notes that contrary to AE witness Dombroski's rebuttal testimony that "it is premature to develop a defeasement fund at this time[,]" in part because, "[t]o date, City Council has not approved a definitive date for closing the FPP."¹⁴⁹ Mr. Dombroski admitted under cross-examination that admitted that the goals established in the 2025 AE Plan are more than just suggestions; rather, they are "things we should be working towards and putting our best-faith effort towards."¹⁵⁰

According to PC/SC, AE estimates that it will still owe approximately \$143.3 million in debt associated with the Fayette Power Project in October of 2022.¹⁵¹ As Mr. Dombroski testified, November 2022 is when the remaining debt associated with Fayette will become callable and Austin Energy will have the legal option to defease it.¹⁵² Mr. Dombroski testified that some additional funds beyond the approximately \$143.3 million would be needed for defeasement to account for future interest payments.¹⁵³ Since AE did not provide that amount, PC/SC calculated its own additional amount of \$31.5 million per year. This figure was based on data that showed the total amount of debt associated with Fayette that would need to be defeased by 2022 at \$189 million.¹⁵⁴ PC/SC's proposal was based on dividing that amount over six years in order to reduce the rate impact as much as possible. Dividing \$143.3 million over six years results in approximately \$23.9 million per year. PC/SC asserts that Austin Energy will need to

¹⁴⁸ Tr. Vol. 2 at 606: 13-607:1- 2.

¹⁴⁹ AE Exh. 2.

¹⁵⁰ Tr. Vol. 2 at 610: 13-18.

¹⁵¹ PCSC Exh. 9.

¹⁵² Tr. Vol. 2, p. 601, l. 7 – p. 602, l. 16.

¹⁵³ Tr. Vol. 2, p. 654, l. 12-24.

¹⁵⁴ PCSC Exh. 8.

provide the additional amount necessary to cover interest to determine the exact amount needed to defease the Fayette debt in November, 2022.

PC/SC further asserts that the same reasons why decommissioning costs should be treated as an annual operating cost also applies to debt defeasement costs that will be associated with retirement of Austin Energy's portion of Fayette. PC/SC contends that just as it is appropriate for those customers who benefit from Fayette to pay for decommissioning the plant, they should also be the ones to pay for the debt associated with the plant. Debt defeasement costs for Fayette should be treated the same as decommissioning costs, because they are both directly associated with future retirement of the facility.

PC/SC posits that if the Fayette retirement date were further away, less revenue would be required on an annual basis for the Non-Nuclear Decommissioning Fund because collection could be spread over more years. PC/SC believes that at the same time Austin Energy is saying that no money should be set aside for Fayette debt defeasement because a retirement date has not been set, it is also arguing that it needs more money for decommissioning Fayette. According to PC/SC, these two positions are not compatible.

Moreover, PC/SC asserts that since payments on some of the bonds associated with Fayette are scheduled to continue until after 2040,¹⁵⁵ ratepayers would be paying for an asset decades after it was no longer "used and useful" if AE doesn't defease the remaining debt before the retirement process begins in 2022. PC/SC claims that would represent a significant intergenerational inequity that can be avoided by collecting money for Fayette debt defeasement now.

¹⁵⁵ AELIC Exh. 3, p. 5.

While PC/SC agrees that neither AE, nor the City Council, has the authority to decommission the facility without cooperation from LCRA, it believes that Austin Energy should not wait for an agreement with the LCRA before establishing and allocating money to a Fayette Debt Defeasement Fund. Austin Energy has been directed by the Austin City Council to negotiate options for retirement of its portion of Fayette with the LCRA. According to PC/SC, if Austin Energy waits until negotiations are complete before beginning to save for debt defeasement, either the retirement date will be missed or customers will experience a large rate increase.

PC/SC contends that the objections raised by the AELIC and Ms. Fox on behalf of NXP/Samsung regarding the affordability of defeasing Fayette debt are both based on inaccurate assumptions. PC/SC notes that the presentation on which she relied was from February 2014, and the analysis in that presentation was based on different assumptions, including a 2017 retirement date for Fayette.¹⁵⁶ The 2017 retirement date was never adopted by City Council.

PC/SC faults Ms. Fox's reliance on an analysis of Resolution 20140828-157 by Austin Energy, and with regard to Ms. Fox's discussion regarding the Austin Energy Resource, Generation and Climate Protection Plan to 2025, PC/SC states that Ms. Fox fails to acknowledge that the Austin Energy analysis she cites was not an analysis of the affordability of that plan.¹⁵⁷ In fact, the plan was adopted after Resolution 20140828-157 because Austin Energy felt that it would be an affordable alternative to that resolution.¹⁵⁸

¹⁵⁶ AELIC Exh. 3, p. 5.

¹⁵⁷ NXP/Samsung Exh. 3, p. 2, l. 7-15.

¹⁵⁸ PC/SC Exh. 4, p. 1.

PC/SC asserts that the arguments that Austin Energy¹⁵⁹ and AELIC¹⁶⁰ make in regard to the various benefits that the Fayette Power Project provides to Austin Energy and its customers are not relevant to establishing a Fayette Debt Defeasement Fund. PC/SC notes that the Austin City Council heard those arguments and decided to vote for a plan that has Austin Energy's portion of Fayette retiring in 2023 anyway. PC/SC notes that AELIC also made the point that ERCOT approval would be needed to retire Fayette. PC/SC acknowledges that this is true, but criticizes AELIC for providing no evidence that ERCOT is likely to initiate a Reliability Must Run ("RMR") contract for Fayette or why an RMR would be anything but temporary, if one were initiated.¹⁶¹

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

HURF is generally in support of the revenue-requirement positions and adjustments presented by NXP/Samsung.

Jim Rourke's Position:

Not addressed in briefing.

¹⁵⁹ AE Exh. 3, p. 23, l. 14-15.

¹⁶⁰ AELIC Exh. 3, p. 6.

¹⁶¹ *Id.*

ARMA's Position:

ARMA supports the revenue requirements recommendations submitted by NXP/Samsung.

Impartial Hearing Examiner's Analysis and Recommendation

Turning first to Public Citizen/Sierra Club's proposal, all parties that submitted testimony in this proceeding oppose PC/SC's proposal to establish a defease the debt associated with Austin Energy's share of the FPP. PC/SC's recommendation if adopted would increase rates from between approximately \$24 million and \$31 million.¹⁶²

The target date for starting the ramp down of FPP is 2020, but it is nonetheless at this juncture no more than a target date and the Gen Plan upon which this target date is based is not final authorization from City Council to begin that process; the Gen Plan is instead more a guide than a specific plan of action.¹⁶³ Many factors could change between today and 2020 that could serve to influence City Council's ultimate decision to start ramping down operations at FPP.

And because there is no specific directive from City Council to begin the ramp down of FPP, it is at best speculative to know the costs of that ramp down; it is not a sufficiently quantifiable event such that its costs may be accurately measured. No party, including AE, has presented definitive testimony on what the appropriate funding level would be if this defeasance fund were to be created.¹⁶⁴

Also, collecting revenue in rates for retiring debt associated with FPP, is not the same as collecting revenue in rates for decommissioning of a plant. Decommissioning FPP is a

¹⁶² PC/SC Brief at 10. The range depends on the total amount of debt to defease and the amortization period of defeasance.

¹⁶³ Austin Energy Closing Brief at 36.

¹⁶⁴ *Id.* at 10; Tr. at 654:12-24; AELIC Brief at 9; ICA Brief at 16-17; NXP/Samsung Brief at 27.

recognition of a future liability for dismantling the plant. By comparison, defeasing debt by its very nature implicates the obligations Austin Energy and the City took on when it borrowed funds in the bond markets to finance FPP and thus, requires a close evaluation of those bond commitments and any legal restrictions surrounding that debt.¹⁶⁵

Thus, at this juncture, it is premature to include revenue in rates to be set in this proceeding for debt defeasance related to FPP and therefore, the IHE recommends rejection of PC/SC's proposal to defease debt related to FPP.

F. Debt Service Associated with South Texas Nuclear Project

Austin Energy's Position:

AE opposes Paul Robbins' recommendation to increase rates by accelerating the payments on AE's debt obligations associated with the South Texas Nuclear Project ("STP") to match the expiration of the current license for the plant. AE asserts that while the expiration of the license for Unit 1 expires in 2027 and Unit 2 in 2028, both units are in the process of being relicensed. Once the licenses are granted, according to AE, the current expiration dates for each unit will be extended by 40 years. AE states that, accordingly, Mr. Robbins' recommendation to accelerate debt service does not meet the known and measurable test.

Additionally, AE notes that there are still over 11 years remaining on the current license for Unit 1 and over 12 years remaining on the current license for Unit 2. Therefore, AE argues, even if the Nuclear Regulatory Commission ("NRC") were to deny the license extension request, AE will have ample time to make contingency plans that will provide for full cost recovery while not unduly impacting rates.

¹⁶⁵ Tr. at 772:6-17.

Independent Consumer Advocate's Position:

ICA took no position in briefing.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Does not take position in briefing.

Public Citizen/Sierra Club's Position:

Does not take position in briefing.

Paul Robbins' Position:

Paul Robbins did not address this issue in post-hearing brief but did raise it in his pre-filed direct testimony. Mr. Robbins asserts that the South Texas Nuclear Project is currently underpaying what it owes in principle and interest. Mr. Robbins asserts that Unit 1 is licensed to operate until 2027 and Unit 2 until 2028; however, the payment schedule stretches into 2041. Barring a license extension, about \$21.8 million will be paid between 2027 and 2041 after the plant's operational life ends. Mr. Robbins thus requests that payments be increased to match current expected lifetime of the units.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

HURF is generally in support of the revenue-requirement positions and adjustments presented by NXP/Samsung.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

ARMA supports NXP/Samsung's revenue-requirement recommendations.

Impartial Hearing Examiner's Analysis and Recommendation

Similar to the IHE's recommendation regarding defeasance of debt related to FPP debt obligations, the IHE also concludes that it is premature to increase rates by accelerating payments on Austin Energy's debt associated with the South Texas Nuclear Project ("STP").

Austin Energy owns 16% of the two units that comprise the STP. Unit 1 is currently licensed to operate until August 20, 2027. Unit 2 is currently licensed until December 15, 2028. The current debt payment schedule concludes in 2041.¹⁶⁶ Both units of STP are in the process of being relicensed and if those licenses are granted, the current expiration date of those licenses will be extended by 40 years.¹⁶⁷ While it is unknown whether the licenses will be extended, it is also unknown whether the Nuclear Regulatory Commission will decline to renew the licenses. Thus, both events are unknown and any adjustment to costs betting on the outcome one way or the other does not comprise a known and measurable event that supports inclusion of such costs in rates.

Therefore, the IHE recommends rejection of Mr. Robbins' proposal to increase rates to pay for acceleration of debt associated with STP.

¹⁶⁶ Austin Energy Closing Brief at 39 – 40.

¹⁶⁷ AE Exh. 8 at 5:10.

G. Uncollectible Expense

Austin Energy's Position:

AE asserts that it incurred \$16,054,751 in test year uncollectable expenses,¹⁶⁸ an amount that incorporates a decrease of \$4.8 million¹⁶⁹ from the actual uncollectable expense AE incurred in FY 2014. AE opposes recommendations made by AELIC, NXP/Samsung, and ICA to adjust AE's test year uncollectible expense to a lower amount. The ICA recommends an expense amount of \$10.1 million based on a five-year average of uncollectable expenses between FY 2010 and FY 2014.¹⁷⁰ NXP/Samsung¹⁷¹ and AELIC¹⁷² propose that AE match the bad debt recorded in unaudited FY 2015, or \$8,462,938. According to AE, all three parties base their recommendations on a perceived downward trend in uncollectable expenses. AE disagrees with these recommendations because each represents a subjective adjustment based on predictions of what may or may not occur in future years.

AE contends that the parties' recommendations do not meet the known and measurable test for making adjustments to historical financial data. While the amount of uncollectable expense decreased between FY 2014 to FY 2015, and was properly recorded in AE's initial \$4.8 million adjustment,¹⁷³ a single-year decrease does not represent a knowable trend on which AE should make additional adjustments.

AE speculates that a different trend may emerge in the coming year because the amount of bad debt experienced in FY 2014 is in part attributable to a more lenient payment arrangement

¹⁶⁸ AE Exh. 1 at 383 (Schedule D-1, Column J, Row 138).

¹⁶⁹ *Id.* at 093.

¹⁷⁰ ICA Brief at 22.

¹⁷¹ NXP/Samsung Brief at 28.

¹⁷² AELIC Brief at 13.

¹⁷³ In part, the appropriateness of AE's \$4.8 million known and measurable adjustment is attributable to the completion of three extraordinary trends that started as early as 2011. *See* Tr. at 650:7-651:3.

policy approved by the Austin City Council in Fall 2013.¹⁷⁴ This policy change led to an increase in the total number of payment arrangements and a decrease in the number of successfully completed payment arrangements. In a May 2015 presentation to the Austin Energy Utility Oversight Committee, AE showed there were 2.7 times as many customers on payment arrangements in April 2015 than in April 2013 and that the amount due in payment arrangements had increased by 72%.¹⁷⁵

Therefore, according to AE, these data suggest that there is a distinct possibility that the level of uncollectable expenses may be on the rise again after a single year decrease.¹⁷⁶

AE does not dispute the ICA's assertion that AE has far higher average bad debt expenses than other utilities across the country.¹⁷⁷ AE avers that this fact is not, in and of itself, a reason to disallow the level of AE's test year uncollectable expenses. It simply points to a significant difference in policy requirements enacted by AE's governing body and the uncollectable debt level reflects the unintended results of those policies.

Independent Consumer Advocate's Position:

ICA recommends an adjustment to the uncollectible expense allowance, reducing AE proposed revenue requirement by \$5.855 million. AE's proposed uncollectible expense in Account 904 was based upon a FY2014 level of \$20.86 million and adjusts this amount to a test year level of \$16.1 million, although AE's 2015 uncollectible expense appears to have dropped

¹⁷⁴ See City of Austin Code of Ordinances § 15-9-144, AELIC Exh. 36 and Tr. at 867:9-17.

¹⁷⁵ AE Response to AELIC RFI No. 10-13, AELIC Exh. 38 at 255.

¹⁷⁶ AELIC Witness Lanetta Cooper offered evidence from a June 2014 presentation by AE staff to the Austin City Council in AELIC Exh. 38. However, Ms. Cooper cherry picked information from AE's complete response to AELIC's RFI Nos. 10-12 and 10-13 to support her position. Had Ms. Cooper presented additional information provided in these responses using data from a more recent presentation to City Council, such as AE's May 28, 2015 presentation, a more complete picture of AE's uncollectable expense level would have been drawn in AELIC's Closing Brief.

¹⁷⁷ ICA Brief at 21.

dramatically to almost half of that amount, according to the ICA. The ICA contends that AE's proposed level for uncollectible expense is high by almost any standard.¹⁷⁸

In order to develop a recurring allowance for bad debt for a utility like Austin Energy, the ICA recommends a normalization of the uncollectible amount based upon historic uncollectible experience. This minimizes any distortions associated with non-recurring events and unusual conditions. The ICA provided a table that shows that AE's historical uncollectible rate was relatively stable until 2013 and 2014, when the uncollectible amount more than quintupled for those two years. The shorter five- year normalization period produces the larger amount than the seven-year, because the 2013 and 2014 uncollectible amounts comprise a greater proportion of the average.

The ICA notes that the range is from \$8.2 million to \$10.4 million, compared to the \$16.1 million requested by AE, and notably, the \$8.4 million uncollectible amount for 2015 falls within this range. According to ICA witness Mr. Johnson, a 2014 increase of more than five-fold in a historically stable expense is almost certainly associated an extraordinary event. The ICA contends that Austin Energy incurred widespread problems in the implementation of a new IBM billing system during the 2011 – 2013 timeframe. Between October 2011 and January 2013, Austin Energy ceased collection activity because of uncertainty about the accuracy of bills.¹⁷⁹ As a result, substantial debt accumulated, with many customers accruing thousands of dollars of past due bills.

According to the ICA, because the lack of bills and billing errors contributed to the amounts owed by customers, the City Council liberalized the deferred payment procedures. Although the billing system problems may have occurred in 2011-2013, given the potential

¹⁷⁸ ICA Brief at 18.

¹⁷⁹ ICA Closing Brief at 20.

length of deferred payment plans (up to 36 months) and the customer's ability to enter into multiple deferred payment plans, the effect of the billing system issues may have continued to affect uncollectible amounts well into 2014. This effect should diminish as the time interval lengthens since the billing problems occurred. The ballooning bad debt expense in 2013 and 2014 should not be treated as a recurring event. The ICA, therefore, believes that normalizing the expense amount based on average historical experience is appropriate. In fact, in a June 23, 2014 presentation, AE identified four contributors to its recently high uncollectible experience and AE acknowledged at the hearing that at least three of those contributing causes have ended. The AE presentation also projected that going forward uncollectible expense would be trending downward.¹⁸⁰

The ICA created a table further illustrating the unreasonably high level of AE's proposed uncollectible expense.¹⁸¹ The table compares Austin Energy's requested uncollectible expense to the uncollectible cost requested in the most recent rate case of three investor-owned bundled utilities in Texas. The three bundled investor-owned utilities are Southwestern Public Service Co. (SPS), Entergy Texas Inc. (ETI), and El Paso Electric Co. (EPE). The ICA's table shows that Austin Energy's requested uncollectible expense per customer is more than three times the other utilities' uncollectible request.¹⁸²

The ICA recommends using the upper end of the range (5-year average) of normalized uncollectible expense experienced by Austin Energy. This amount is \$10,199,660. After known

¹⁸⁰ *Id.* at 21.

¹⁸¹ *Id.* at 21 – 22.

¹⁸² ICA Closing Brief at 22.

and measurable adjustment, Austin Energy utilized a test year amount of \$16,054,751. Therefore, the ICA proposed expense reduction is \$5.855 million.¹⁸³

The ICA argues that the test year amount for uncollectible expense should be representative of future costs. Given the large fluctuation in bad debt caused by unusual circumstances, normalizing the expense level to reflect longer term experience is reasonable, according to the ICA. The portion of test year costs, which is unrepresentative of prospective costs was recovered from revenues collected at the time the expense was incurred; such costs are not appropriately recovered with future revenues. This principle is inherent in historical test year rate making.¹⁸⁴

The ICA contends that its adjustment on this issue is very conservative, because even with the proposed reduction in the allowance for bad debt, the adjusted amount remains quite high. Even with the disallowance, the uncollectible expense per customer would still be \$23.35 — more than twice the uncollectible per customer cost of SPS, the highest cost investor-owned utility in the table created by the ICA.¹⁸⁵ If the adjustment had been based on a longer period for normalization, the reduction would be larger too, asserts the ICA.

The ICA argues that regardless of the potential impact of previous billing system errors, Austin Energy's management is responsible for taking action to reduce the level of uncollectible expense. Austin Energy should be able to manage this expense to a more reasonable level, well below what the ICA recommended allowance will provide.¹⁸⁶

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ ICA Closing Brief at 23.

¹⁸⁶ *Id.*

Low Income Customers' Position:

AELIC argues that the TY level of bad-debt expense 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 annual bad-debt levels from 2008 to 2014 finding a range of \$8.2 million to \$10.4 million for the level of bad debt that should be included in the test year.¹⁸⁷ AELIC and NXP/Samsung 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 2015.¹⁸⁸ AELIC observes that this amount is within the range of bad debt calculated by ICA.

AELIC relies on ICA witness Johnson's testimony that 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.¹⁸⁹ 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.¹⁹⁰ AELIC agrees with the ICA's observation that the ballooning of the debt in FYs 2013 and 2014 should not be treated as a recurring event,¹⁹¹ and the level of bad debt should be coming down to more normalized levels as evidenced by FY 2015's level of bad debt.

AELIC acknowledges that AE witness Dombroski referred to a 2013 change¹⁹² in AE's payment arrangements that increased the customer's time for payment on past due bills as a

¹⁸⁷ See ICA Exh. No. 1, Johnson Direct pp. 13 - 14.

¹⁸⁸ See NXP/Samsung Exh. 1, Fox Direct at pp. 36 - 37.

¹⁸⁹ ICA Exh. No. 1, Johnson Direct at p. 13.

¹⁹⁰ *Id.* at pp. 14 - 15.

¹⁹¹ *Id.* at p. 15.

¹⁹² See AELIC Exh. No. 36, a copy of the Council Ordinance changing the utility's payment arrangements signed into law on December 5, 2013.

reason for its high levels of bad debt.¹⁹³ AELIC contradicts this claim based on AE's statements to the Austin City Council ("Council"). AE made a presentation to the Council concerning bad debt on June 23, 2014 after the 2013 change in its payment arrangements mentioned above. At the presentation, AE also provided a forecast of its bad debt levels through FY 2019 that showed a steadily declining level of bad debt.¹⁹⁴ 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 AE's FY 2015 forecasted level and that the utility's FY 2015 bad debt level is about the same amount forecasted for FY 2017, the first year the rates will be in effect.

AELIC asserts that these facts show that its position is conservative given AE's own forecasted bad debt levels for the FYs the rates will be in effect. Moreover, AELIC relies on NXP/Samsung witness Fox's testimony that bad debt levels will fluctuate with the amount of revenue; and, that decreased fuel prices and resulting rate decreases should have a downward pressure on AE's level of debt.¹⁹⁵

AELIC points out that the Council addressed AE's argument concerning the length of time a customer is allowed to pay off their unpaid bills by amending the utility code in 2015.¹⁹⁶ The Code amendment removed the payment agreement timelines that were included in the 2013 Ordinance.¹⁹⁷ According to AELIC, this 2015 code amendment substantially weakens AE's supporting argument for setting the TY 2014 level at the actual FY 2014 level.

¹⁹³ Tr. at p. 651, ICA cross of Dombrowski.

¹⁹⁴ *Id.* at p. 4 of presentation, "Forecast—Bad Debt Expense."

¹⁹⁵ Tr. pp. 434 & 435, AE cross of Fox.

¹⁹⁶ AELIC Exh. No. 37

¹⁹⁷ Compare AELIC Exh. No. 36 and No. 37

NXP/Samsung's Position:

NXP/Samsung also opposes AE's known and measurable adjustment that reduced its 2014 uncollectible expense by \$4,813,622, resulting in a test year adjusted uncollectible expense of \$16,054,751.¹⁹⁸ NXP and Samsung urge the use of the actual unaudited amount for 2015, which is \$8,462,938, which NXP/Samsung contends is more indicative of the future trend than the test year, or the average recommended by the ICA.¹⁹⁹

NXP/Samsung discounts AE's new 24-month payment plan, which AE believes will increase bad debt from the 2015 level.²⁰⁰ NXP/Samsung asserts that AE'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, NXP/Samsung believes that AE should revise the payment plans.

Public Citizen/Sierra Club's Position:

Did not take a position in briefing.

Paul Robbins' Position:

Did not take a position in briefing.

Bethany United Methodist's Position:

Did not take a position in briefing.

Data Foundry's Position:

Did not take a position in briefing.

¹⁹⁸ AE Exh. 1 at WP D-1.2.9, col. F, ln. 10; NXP/Samsung Exh. 1 at 36-37.

¹⁹⁹ NXP/Samsung Exh. 1 at 36-37.

²⁰⁰ TR. at 867: 9-17 (Overton Cross) (Jun. 2, 2016).

HURF's Position:

HURF supports NXP/Samsung.

Jim Rourke's Position:

Did not take a position in briefing.

ARMA's Position:

ARMA generally supports NXP/Samsung.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE agrees with the ICA that the better approach to identifying the amount of Uncollectible Expense to include in rates is a “normalized” amount. Austin Energy’s proposed amount of about \$16.1 million focuses more on a single year’s expense, FY 2015, and based on that year’s Uncollectible Expense, Austin Energy adjusts downward its FY 2014 amount by about \$4.0 million.

However, Austin Energy’s approach ignores that in FY 2015 its Uncollectible Expense dropped by almost one-half as compared to FY 2014 and that for FY 2013 and FY 2014, its Uncollectible Expense more than quadrupled compared to FY 2008 – FY 2012.²⁰¹ Austin Energy’s fails to provide an explanation for the wide variance in FY 2013 and FY 2014, and FY 2008 – FY 2012, and instead focuses on the difference between FY 2015 and FY 2014. The ICA points out that the wide difference in FY 2013 and FY 2014 is likely attributable to an extraordinary event. The evidence shows that Austin Energy incurred widespread problems in the implementation of a new IBM billing system during the 2011 – 2013 timeframe.²⁰² It was

²⁰¹ See ICA Closing Brief at 18.

²⁰² ICA Exh. 1, p. 14.

these billing concerns that led the City Council to liberalize Austin Energy's deferred-payment procedures.²⁰³

The ICA's analysis takes into account a longer historical period of data. Based on those data, the ICA determined for FY 2008 through FY 2014, the ratio of Uncollectible Expense to Austin Energy's total revenue.²⁰⁴ On average, Austin Energy's uncollectible rate for the seven-year period (FY 2008 – FY 2014) was 0.6770% and for the five-year period (from FY 2008 – FY 2012) was 0.8379%. The difference in the two averages appears to be driven by the two highest seemingly anomalous years of FY 2013 and FY 2014.

The IHE agrees with Austin Energy that “a single year decrease does not represent a knowable trend on which AE should make additional adjustments.”²⁰⁵ But Austin Energy's adjustment appears to be based on precisely that: a one-year assessment of its Uncollectible Expense. If anything Austin Energy's arguments underscore that its proposed amount for Uncollectible Expense is the lesser known-and-measurable amount; Austin Energy states, “a different trend *may* emerge in the coming year because the amount of bad debt experienced in FY 2014 is in part attributable to a more lenient payment arrangement policy approved by the Austin City Council in Fall 2013;”²⁰⁶ and that these “data [suggest] that there is a *distinct possibility* that the level of uncollectable expenses *may be on the rise* again after a single year decrease.”²⁰⁷

²⁰³ ICA Closing Brief at 20.

²⁰⁴ See ICA Closing Brief at 19.

²⁰⁵ See Austin Energy Closing Brief at 41 [emphasis added].

²⁰⁶ See Austin Energy Closing Brief at 41 citing to City of Austin Code of Ordinances § 15-9-144, AELIC Exh. 36 and Tr. at 867:9-17.

²⁰⁷ See Austin Energy Closing Brief at 41.

Although Austin Energy contends that its proposed \$16 million of uncollectable expense is the more reasonable estimation of future expenses because in its view, its proposed amount reflects both historical and current trends, the IHE concludes that in fact, the ICA's proposal better takes into account Austin Energy's historical data regarding Uncollectible Expense.

Austin Energy's Uncollectible Expense for FY 2015 (albeit unaudited) was about \$8.5 million. Using the 7-year average ratio of 0.06770% for Austin Energy's Uncollectible Expense, produces about \$8.2 million in Uncollectible Expense;²⁰⁸ using the 5-year average ratio of 0.8379% produces about \$10.2 million Uncollectible Expense.²⁰⁹ As the ICA notes, the Uncollectible Expense for FY 2015 of about \$8.4 million is within the range identified by the ICA. The amounts of Uncollectible Expense for FY 2013 and FY 2014 do not appear to be recurring events. The amount of Uncollectible Expense for FY 2015 is in line with the historical amounts for Uncollectible Expense for FY 2008 through FY 2014.

Therefore, the IHE recommends as did the ICA that Austin Energy's Uncollectible Expense in this proceeding be set at \$10,199,660 as compared to Austin Energy's proposed amount of \$16,054,751. This represents a reduction of about \$5.855 million to the amount Austin Energy proposed.

H. Economic Development and Community Programs

Austin Energy's Position:

Austin Energy has proposed including \$9,090,429 as O&M in its revenue requirement to be transferred to the City's Economic Development Department. AE contends that Austin Energy's funding of economic development and community programs is a reasonable and

²⁰⁸ Multiplying Austin Energy's total retail revenue of \$1,234,701,609 by 0.6770% equals about \$8,240,629.

²⁰⁹ Multiplying Austin Energy's total retail revenue of \$1,234,701,609 by 0.8379% equals about \$10,199,660.

necessary expenditure that helps develop a diverse system load. AE argues that a diverse system load benefits all customers by improving AE's system load factor and thus reducing regulatory costs. AE also asserts that economic development programs also lead to a more stable and predictable system load, and increase the customer base to share AE's fixed costs.

According to AE, the ICA is not recommending any disallowance of these funds.²¹⁰ The ICA is simply "recommending that these funds be treated as flowing through the General Fund Transfer ("GFT")" for the sake of transparency.²¹¹ AE believes that the ICA's recommendation is based on the position that these funds are not reasonable and necessary for providing utility service, and therefore, should be separated from AE's COS. According to AE, NXP/Samsung likewise contends that economic development and community programs expenditures are not reasonable or necessary expenses and should not be included in rates.

AE asserts that to the contrary economic development and community programs expenses are reasonable and necessary for providing utility service. According to AE, the Economic Development Department attracts new businesses to Austin, which creates new customers for AE, and helps retain and expand existing Austin businesses, thus maintaining and increasing revenue for AE. In addition to attracting new and retaining existing commercial customers, economic development programs lead to new residential load growth.

AE criticizes the ICA's comparison of AE's economic development expenditures to other Texas electric utilities, and the ICA's claim that AE's expenditures are greater than most and, in particular, that AE's economic development of 0.77% of revenues is greater than CenterPoint's equivalent 0.16%. AE asserts that this comparison, however, lacks context and is not an accurate indicator of what constitutes an appropriate amount for a utility to spend on economic

²¹⁰ *Id.* at 24.

²¹¹ *Id.*

development. As a MOU, Austin Energy's community role and business model are completely different than a private, for-profit utility like CenterPoint, AE contends.

According to AE, NXP/Samsung also notes City Council's plan to allocate funding to the General Fund or other City departments but concedes that the 2016-17 budget is not approved and the \$9,090,429 AE is requesting in this rate proceeding "represents the amount allocated to Austin Energy for the 2015-16 Budget." AE rebuts this argument in contending that it is not authorized to adjust the City's budget and that such concerns are more appropriately raised with City Council during the City budget process.

Independent Consumer Advocate's Position:

The ICA recommends bringing greater transparency to Austin Energy's transfers to the Economic Development Department and its donations and contributions to Community Programs by including them in the General Fund transfer. In this manner, the economic development expenditures and donations would be clearly segregated from utility expenditures. These expenditures would still be recovered, but apart from those expenditures that are essential to the cost of providing of safe and reliable electric service.

The ICA explains that like other city departments, Austin Energy contributes to the City's economic development efforts. \$9,090,429 is currently collected through the customer charge. However, the ICA argues that AE's economic development expenditures are larger than most Texas electric utilities. The ICA cites as an example, CenterPoint Houston Electric's economic development program was \$2.4 million in its last rate case, compared to more than \$9 million for AE. AE's economic development amount is 0.77% of revenues, compared to CenterPoint expending 0.16% of its revenues on economic development.²¹²

²¹² ICA Closing Brief at 23 – 24.

The ICA addresses in its brief NXP/Samsung's criticism of AE witness Dombroski's justification for AE's economic development expense. Mr. Dombroski argued that such expenses benefit the utility by developing a "more diverse system load." NXP/Samsung argued that these expenditures "have little to no association with the provision of electric service." NXP/Samsung further suggested that using ratepayers funds to encourage growth and energy consumption is not consistent with also charging consumers for programs to encourage a reduction in energy consumption. NXP/Samsung also pointed out that the City Council has initiated a transition plan to allocate economic development funding to the General Fund of other City departments, but that the amount of the transition will not be known until the City Council approves the 2016-2017 budget.²¹³

In contrast to NXP/Samsung, the ICA does not recommend a disallowance, but rather it is recommending that these funds be treated as flowing through the General Fund Transfer ("GFT"), as thus part of discretionary funds to the City. The ICA refers to the PUC Rule limiting the amount of advertising, contributions and donations that can be included in regulated utility rates to "three-tenths of 1.0% (0.3%) of the gross receipts of the electric utility for services rendered to the public." The ICA notes that this limitation includes advertising, as well as contributions and donations. The ICA reasons that both economic development programs and community donations may benefit the broader community and the City may legitimately decide to make these expenditures and contributions with funds generated by Austin Energy or by any other city department.²¹⁴

However, to be consistent with the requirement that only reasonable and necessary expenses are allowed in the utility's cost of service, the ICA believes that it is not appropriate to

²¹³ *Id.* at 24.

²¹⁴ ICA Closing Brief at 25.

treat these as necessary expenditures for providing utility service. The ICA recommends that the Economic Development Program, donations, and contributions to community programs should all be treated as part of the General Fund Transfer (“GFT”). In this manner, economic development expenditures and charitable donations would be clearly segregated from utility expenditures.

Low Income Customers’ Position:

Not addressed in briefing.

NXP/Samsung’s Position:

NXP and Samsung urge the IHE to disallow the AE’s transfer of \$9,090,429 as O&M in its revenue requirement for the transfer of this money into the City of Austin Economic Development Department because it is not necessary and reasonable to provide electric service and should therefore not be paid for by Austin Energy ratepayers. NXP/Samsung explains that 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, NXP/Samsung asserts the 2016-17 budget is not approved and therefore the actual amount of the transition attributable to Austin Energy is unknown. In addition, NXP/Samsung refers to Austin Energy’s argument 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.²¹⁵ NXP/Samsung contends, however, that Austin Energy has not conducted any cost-benefit

²¹⁵ Tr. at 122: 6-11 (Dombroski Cross) (May 31, 2016).

analysis to determine the benefit to Austin Energy ratepayers;²¹⁶ instead they are looking to ratepayers to fund “benefits” that have little to no association with the provision of electricity.

Public Citizen/Sierra Club’s Position:

Did not take a position in briefing.

Paul Robbins’ Position:

Did not take a position in briefing.

Bethany United Methodist’s Position:

Did not take a position in briefing.

Data Foundry’s Position:

Did not take a position in briefing.

HURF’s Position:

Supports NXP/Samsung.

Jim Rourke’s Position:

Did not take a position in briefing.

ARMA’s Position:

Generally supports NXP/Samsung.

Impartial Hearing Examiner’s Analysis and Recommendation

The IHE agrees with Austin Energy that its economic development and community programs have had a positive influence on the City’s economy.²¹⁷ However, the IHE also agrees with the ICA and with NXP/Samsung that Austin Energy’s expenditures related to its economic

²¹⁶ *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).

²¹⁷ See Austin Energy’s Closing Brief at 43.

development and community programs are not costs related to the provision of electric utility service.

The IHE further agrees with Austin Energy that as municipally owned utility, comparisons to, for example, CenterPoint Energy Houston Electric (“CenterPoint”) are of little relevance. As Austin Energy states, “As a MOU, Austin Energy’s community role and business model are completely different than a private, for-profit utility like CenterPoint. Therefore, this comparison provides no value to this proceeding and has no bearing on whether AE’s economic development funds are reasonable and necessary.”²¹⁸ But this underscores the merits of the ICA’s proposal: to fund the costs of Austin Energy’s economic development and community programs from the General Fund Transfer. The City has wide flexibility on what it may do with those monies from the General Fund Transfer.

Thus, while the Austin Energy, and the City, may view these expenditures to be of value, the source of funding for the cost associated with these activities should not be treated as a cost of service for providing electric utility service. And to that extent, the IHE also agrees with NXP/Samsung that the economic development and community programs are not a reasonable and necessary expense to provide electric utility service.

I. Loss on Disposal

Austin Energy’s Position:

AE explains that losses associated with the disposal of various assets (i.e., loss on disposal) are a common expense that is typical for electric utilities. During the test year, Austin Energy experienced \$7,170,039 in such losses.²¹⁹ Because the test year amount is recurring and

²¹⁸ *Id.* at 44.

²¹⁹ The test year amount is the historical FY 2014 book amount, as shown on line 6 in AE Exh. 1 at 901 (WP E-4.3).

representative of both past and expected future experience, AE made no adjustment to the test year amount.

AE opposes NXP/Samsung's position to exclude the entire requested amount for loss on disposal.²²⁰ According to AE, NXP/Samsung admits that the test year amount is the actual FY 2014 loss on disposal. However, NXP/Samsung seeks to remove it because the historical amount is not known and measureable. AE finds NXP/Samsung's approach too unreasonable. AE argues that the historical test year amount is a known quantity.

AE contends that NXP/Samsung cannot assert that the loss is non-recurring because their testimony states that losses occur yearly.²²¹ In fact, the test year amount is actually lower than the amount experienced by AE in two of the three years prior to the test year. According to AE, even if one assumes that Ms. Fox intended to say that it is unknown whether the expense will occur in the future, her recommendation fails. AE argues that past experience, as well as Mr. Dombroski's testimony, establishes that this is a recurring expense and demonstrates that this is an appropriate expense to include in rates.

AE also argues against Ms. Fox's additional claim that the loss on disposal should be disallowed because AE used the cash flow method to determine its return. AE cites to Mr. Dombroski's rebuttal testimony that the "[l]oss on disposal is not an element of the return function."²²² Therefore, according to AE, 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. The cash flow method only pertains to those elements noted in the return function and listed in Schedule C-3.

²²⁰ NXP/Samsung Exh. 1 at 34:2-3 and 5-6.

²²¹ *Id.* at 34:11-13.

²²² AE Exh. 2 at 28:17.

AE also takes issue with the ICA's recommendation on loss of disposal of assets. According to AE, the ICA proposes an \$800,000 adjustment based on normalizing the losses on disposal for the three years prior to the test year. AE argues that the ICA ignores the test year amount and then averages the three prior years. AE also criticizes the ICA for including the exceptionally and anomalously low loss amount for 2013, because it inappropriately disallows the reasonable and anticipated amount to cover losses on asset disposal.

Independent Consumer Advocate's Position:

ICA supports, in part, the adjustment for loss on disposal of assets proposed by NXP/Samsung, but only as an \$800,000 reduction to revenue requirement.²²³ ICA acknowledges that this is a recurring cost, although the amount fluctuates considerably each year. The ICA's calculations show that normalizing 2011-2013 losses would result in an \$800,000 reduction to AE's proposed loss on disposal reduction.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

NXP/Samsung casts doubt on AE's position that disposal loss amounts are recurring. A review of the losses experienced since 2010 shows that Austin Energy has seen a large variation in the amount attributable to Loss on 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 2013.²²⁴ Additionally, Austin Energy did not provide any

²²³ ICA Closing Brief at 25 – 26.

²²⁴ *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), NXP/Samsung Exh. 8.

type of asset retirement plan to support the amount that may occur during the time rates from this review are in place.²²⁵

NXP/Samsung points out that Austin Energy has chosen to use the Cash Flow method. NXP/Samsung explains that 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, NXP/Samsung contends that 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.

Public Citizen/Sierra Club's Position:

Did not take a position in briefing.

Paul Robbins' Position:

Did not take a position in briefing.

Bethany United Methodist's Position:

Did not take a position in briefing.

Data Foundry's Position:

Did not take a position in briefing.

HURF's Position:

Supports NXP/Samsung.

Jim Rourke's Position:

Did not take a position in briefing.

²²⁵ NXP/Samsung Exh. 1 at 34.

ARMA's Position:

ARMA generally supports NXP/Samsung.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE agrees with Austin Energy. The record establishes that during the test year (FY 2014) Austin Energy incurred about \$7.2 million in losses associated with the disposal of certain assets.²²⁶ The record also establishes that this amount is a recurring expense and that the test year amount is typical of past experience. The test-year amount is representative both of past experience and of what is expected to occur in the future. Therefore, the IHE recommends that Austin Energy's rates recover \$7,170,039 in rates related to losses on disposal of assets.²²⁷

J. Customer Care

Austin Energy's Position:

AE opposes the ICA's and NXP/Samsung's recommendation regarding the allocation of cost related to the AE-operated Utility Customer Center ("UCC") to the other utilities and departments that use UCC's services. The effect of using the recommended alternative cost allocation method would effectively reduce AE's revenue requirement by approximately \$10.3 million.²²⁸

AE operates the UCC on behalf of the City, specifically serving the departments and customers of Austin Water Utility ("AWU"), Austin Resource Recovery ("ARR"), the Transportation Department, the Watershed Protection Department, and various other smaller

²²⁶ Austin Energy Closing Brief at 45.

²²⁷ The IHE does not address the ICA's proposal to reduce the \$7,170,039 by \$800,000 because it is not clear to the IHE how the ICA developed his adjustment of \$800,000. See ICA Closing Brief at 27.

²²⁸ ICA Brief at 27, fn. 87.

departments.²²⁹ The UCC serves as the primary place for customers to report electrical outages.²³⁰ Additionally, the UCC provides and maintains the automated utility customer management call center, meter reading, and billing system.²³¹

AE allocates the costs related to the UCC in accordance with the model developed by KPMG.²³² AE notes that it and the City have successfully used this model for the past 14 years and it was approved by City Council in the last AE rate review.²³³ AE criticizes NXP/Samsung witness Ms. Fox's allocation method as based solely on her personal judgment calls and her knowledge of what utilities Austin has.²³⁴ AE contends that suggestions by NXP/Samsung and the ICA that a different allocation method is more appropriate, ignores the cost drivers underlying the specific allocation factors used in the KPMG model.

Additionally, AE argues that NXP/Samsung's proposal, as advocated for by the ICA, is also flawed because it incorrectly implies that a department such as ARR and Austin Energy are responsible for a similar share of the costs, including the costs of the billing system. However, AE explains that the complexity of the electric billing system is significantly greater than the billing system for solid waste disposal.

AE further criticizes NXP/Samsung's proposal because it would inappropriately shift electric costs to other City departments, but lacks any specific support for the adjustment. Moreover, AE avers that using the NXP/Samsung allocation method would lead to inappropriate increases to the customer bills of those departments. AE disagrees with NXP/Samsung's

²²⁹ See AE Exh. 2 at 30:9-12.

²³⁰ See Tr. at 231:5-21.

²³¹ See AE Exh. 2 at 30:12-14.

²³² *Id.* at 30:1-6.

²³³ *Id.* at 30:4-6.

²³⁴ See Tr. at 422:24-423:23.

assertion that the IHE should ignore those increases because this is a proceeding to address electric rates since this approach fails to acknowledge cost causation issues.

Independent Consumer Advocate's Position:

ICA supports the additional allocations of this expense to other user departments, sponsored by NXP/Samsung witness Ms. Fox, totaling a \$10,371,602 disallowance, thereby further reducing AE's responsibility for these costs.²³⁵ The ICA supports Ms. Fox's testimony that there is little justification for allocating 100% of a customer complaint expense to AE when there is evidence that a number of customer complaints regarding water are received and it is odd to think that in 2016 there is no way to track that type of data. The ICA agrees with Ms. Fox's observation that recent reports to Council concerning the number of water related complaints would indicate that someone is able to track complaints by type."²³⁶

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

NXP/Samsung's recommendation relates 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.²³⁷ NXP/Samsung believes this would amount to a \$10.4 million reduction in Austin Energy's allocation.

Public Citizen/Sierra Club's Position:

²³⁵ NXP/Samsung Exh. 1, p. 33.

²³⁶ *Id.* at p. 32, ln. 5-12.

²³⁷ NXP/Samsung Exh. 1 at 32-34.

Do not take a position.

Paul Robbins' Position:

Did not take a position in briefing.

Bethany United Methodist's Position:

Did not take a position in briefing.

Data Foundry's Position:

Did not take a position in briefing.

HURF's Position:

Supports NXP/Samsung.

Jim Rourke's Position:

Did not take a position in briefing.

ARMA's Position:

ARMA generally supports NXP/Samsung.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE agrees with Austin Energy. While the IHE finds troublesome that 100% of customer-complaint costs are allocated to electric ratepayers, even though the record is clear a number of complaints arise from services provided by other city departments, the record establishes that the Utility Customer Center ("UCC") provides services beyond handling customer complaints. AE operates the UCC on behalf of the City, specifically serving the departments and customers of Austin Water Utility ("AWU"), Austin Resource Recovery ("ARR"), the Transportation Department, the Watershed Protection Department, and various

other smaller departments.²³⁸ The UCC serves as the primary place for customers to report electrical outages.²³⁹

Additionally, the UCC provides and maintains the automated utility customer management call center, meter reading, and billing system.²⁴⁰ The billing system captures account information and premise information, ultimately generating customer bills that include charges for metered services such as electric (Austin Energy) and water and wastewater (Austin Water Utility), garage carts based on size for Austin Resource Recovery, and a drainage fee.²⁴¹ Bills also include miscellaneous fees and charges, such as initiation of service fees, late payment fees, and extra garage bag fees.²⁴²

The IHE agrees with NXP/Samsung that it seems inconsistent to be able to know that a number of complaints are related to services provided by the Austin Water Utility but not be able to track those complaints. However, responding to customer complaints is not the only function the UCC performs and more critically, NXP/Samsung's proposed allocation system is too simplistic in light of the many tasks the UCC performs. The IHE is persuaded that the complexity of the electric billing system is significantly greater than the billing system, e.g., for solid waste disposal and thus, it is an unfair conclusion to say that Austin Resource Recovery and Austin Energy are equally responsible for the operation and maintenance of the Customer Care and Billing ("CC&B") system.

²³⁸ See AE Exh. 2 at 30:9-12.

²³⁹ See Tr. at 231:5-21.

²⁴⁰ See AE Exh. 2 at 30:12-14.

²⁴¹ *Id.* at 30:18-20.

²⁴² *Id.* at 30:20-22.

While the IHE does not at this time recommend a disallowance of costs as proposed by NXP/Samsung, the IHE nonetheless believes that costs associated with customer complaints could be better tracked.

K. Rate Case Expense

Austin Energy's Position

AE proposes to collect \$1,757,931 in rate cases expense over a three-year amortization period (i.e., $\$585,977 \times 3 \text{ years} = \$1,757,931$). AE opposes NXP/Samsung Witness Fox's recommendation changing the amortization period from three to five years. This translates into a \$215,333 reduction to AE's revenue requirement. This recommendation is based on the current requirement that AE conduct a cost of service study at least every five years.

AE asserts that a three-year amortization period is justified because a three-year amortization is typical of the period over which other utilities collect rate case expenses. AE contends that a three-year amortization period balances the interests of the utility in obtaining cost recovery and the interests of ratepayers by mitigating rate impacts and spreading the cost over the period that rates are likely to be in effect. According to AE, this is particularly important, because while it has a financial policy to conduct a cost of service study at least every five years, the policy does not prohibit AE from conducting one on a shorter time frame.

Independent Consumer Advocate's Position:

The ICA recommends that the amortization of the actual rate case expense for this proceeding match the time period commitment that AE makes for conducting its next rate review. The ICA suggests that if AE commits to initiating its next cost of service rate review within the next 2-3 years, as the ICA recommends, then it is reasonable to recover those expenses over the next three years. If, however, AE claims that it wants to conduct the next rate

review in 5 years hence, then the ICA advocates that rate case expense should be amortized over 5 years, as NXP/Samsung is recommending.²⁴³

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

NXP/Samsung contends that the IHE should adopt standard practice which sets an amortization period for rate case expenses that matches the period of time between rate reviews.²⁴⁴ NXP/Samsung asserts that the City Council currently requires a cost of service study every five years.²⁴⁵ NXP and Samsung therefore recommend an amortization period of five years, not three as Austin Energy has requested.

Public Citizen/Sierra Club's Position:

Did not take a position in briefing.

Paul Robbins' Position:

Did not take a position in briefing.

Bethany United Methodist's Position:

Did not take a position in briefing.

Data Foundry's Position:

Did not take a position in briefing.

HURF's Position:

Supports NXP/Samsung.

²⁴³ NXP/Samsung Exh. 1. P. 37.

²⁴⁴ *Id.* at 37.

²⁴⁵ NXP/Samsung Exh. 7.

Jim Rourke's Position:

Did not take a position in briefing.

ARMA's Position:

Generally supports NXP/Samsung.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE agrees with the NXP/Samsung that Austin Energy's rate case expenses in the amount of \$1,757,931 should be recovered over a period of five years. Recovering rate case expenses over a period of 5 years is consistent with the standard practice, which sets an amortization period for rate case expenses that matches the period of time between rate reviews.²⁴⁶ Using an amortization period of 5 years is also consistent with the City Council's requirement that Austin Energy undertake a cost-of-service study every five years.²⁴⁷ Recovering rate case expenses over a period of 5 years (instead of 3 years as proposed by Austin Energy) translates into a \$234,391 reduction to Austin Energy's revenue requirement.

L. Outside Services**Austin Energy's Position:**

AE opposes NXP/Samsung's recommendation to eliminate the entirety of AE's outside IT support. This translates into a \$6,762,767 adjustment. The basis of NXP/Samsung's opposition is AE's statement in discovery that AE stated it has not estimated the cost for IT Staff Augmentation during the time that base rates from this proceeding will be in effect, beginning in January 2017, and is thus not a known and measurable change.

²⁴⁶ NXP/Samsung Exh. 1 at 37.

²⁴⁷ NXP/Samsung Exh. 7.

AE explains that the reason AE could not estimate the costs for IT Staff Augmentation was because the City Council has not yet approved AE's FY 2017 budget, which typically occurs in September each year. The estimated cost will be included in Austin Energy's FY 2017 budget. The test year amount of \$8.9 million for outside staff, which included the amount disallowed for outside IT staff, was the FY 2014 historical amount. AE incurred \$10.1 million in costs for outside IT staff in FY 2015. AE concludes the historical test year amount is not only representative and recurring, but also less than what AE expects to spend on these services in the future.

Independent Consumer Advocate's Position:

No position taken in briefing.

Low Income Customers' Position:

No position taken in briefing.

NXP/Samsung's Position:

NXP and Samsung find as unreasonable Austin Energy's failure to estimate the cost of the Staff Augmentation program and notes that AE 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.²⁴⁸

Public Citizen/Sierra Club's Position:

Did not take a position in briefing.

Paul Robbins' Position:

Did not take a position in briefing.

²⁴⁸ *Id* at 35-36.

Bethany United Methodist's Position:

Did not take a position in briefing.

Data Foundry's Position:

Did not take a position in briefing.

HURF's Position:

Supports NXP/Samsung.

Jim Rourke's Position:

Did not take a position in briefing.

ARMA's Position:

Generally supports NXP/Samsung.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE agrees with Austin Energy and recommends that the City Council reject NXP/Samsung's proposal to exclude \$6,762,767 from Austin Energy's cost of service related to Austin Energy's outside IT support. The fact that Austin Energy did not estimate how much it projected to spend on such services in FY 2017 does not in and of itself negate the fact that Austin Energy incurred similar costs in FY 2014 in the amount of about \$8.9 million and incurred about \$10.1 million in FY 2015.

The record sufficiently establishes that over the past years as well as in Austin Energy's current approved budget Austin Energy continues to incur costs related to IT Staff Augmentation and that the historical test year amount is not only representative and recurring, but also less than what Austin Energy expects to spend on these services in the future.

M. Reserves

1. Reserve Funding

Austin Energy's Position:

AE explained that it relies on cash to fund its annual operations, and in the long run, the utility needs enough cash on hand to meet annual cost obligations, debt service requirements, and infrastructure investment needs. Unlike Investor Owned Utilities (“IOUs”), which can draw from equity and debt capital markets, MOUs, like Austin Energy, can only access cash from its reserves or issue short-term debt to secure cash for operations. AE asserts that as a result, adequate cash reserves are critical to the successful management of the utility.

AE further explained that City of Austin Financial Policies Nos. 11, 15, and 16 govern the type of and funding requirements for AE's cash reserves and are used to determine the appropriate funding levels in the COS model.²⁴⁹ In order to calculate the amount of revenue required to meet City financial policies, AE compared the FY 2015 ending balances with the target funding level for each reserve. According to AE, at the end of FY 2015, unaudited unrestricted reserves totaled \$402,428,053; existing financial policies require a total of \$437,200,161, based on Test Year (“TY”) 2014 data. Because AE proposes to reach full reserve fund levels over three years, recovery of the funding deficiency results in an \$11.6 million known and measurable increase to the annual revenue requirement.

AE proposed an alternative reserve fund policy proposal based on recommendations made from NewGen's thorough study of AE reserve fund policies, which is addressed in subsection 2 (“Policies”) below.

²⁴⁹ AE Exh. 1 at 369-70.

Independent Consumer Advocate's Position:

The ICA opposes AE's reliance on the NewGen study's "worst case scenario" and what it views as AE's assumption that all volatility will meet the ERCOT market price cap for funding a Power Supply Stabilization Reserve. The ICA asserts that the analysis does not consider whether hedging or other contracts in the forward market could insure against simultaneous outages at STP and FPP during a period of price spikes, which is the worst case event.²⁵⁰ The ICA notes that the difference between 120 days and 90 days' net power supply costs in the reserve fund ties up tens of millions of dollars more ratepayer money, and potentially prevents customers from receiving fuel cost refunds in the future.²⁵¹

Therefore, the ICA recommends that this reserve be funded at 90 days of net power supply costs, rather than at 120 days or at 105 days. A 90-day level of funding is on the low end of a range that is still characterized as "worst case scenario."²⁵² Moreover, the ICA points out that the funding limit for the current Rate Stabilization Fund is based on 90-days, and AE offered no evidence or commentary to suggest that that 90-day limit has proven to be insufficient to serve the goal of mitigating fluctuations in energy prices.

The ICA also disagrees with using net credit balances in the PSA to fund this reserve, rather than simply including them in an over/under collection calculation.²⁵³ The larger the required balance in the fund, the greater the impact of using net credit balances in the PSA on

²⁵⁰ Exhibit ICA-1, pp. 24-25.

²⁵¹ *Id.* at p. 25.

²⁵² *Id.* at pp. 24-25.

²⁵³ *Id.* at p. 25.

rates. According to the ICA, if this approach were currently in effect, it is unlikely ratepayers would have received the 11.3% decrease in the PSA that took effect on April 1, 2016.²⁵⁴

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

NXP/Samsung's criticism of AE's reserve amounts appears be based primarily on Austin Energy's use of the Cash Flow method to develop its revenue requirement. NXP/Samsung contend that the Cash Flow method brings with it inherent problems.

NXP/Samsung criticizes AE's witness, Mr. Maenius's logic regarding Austin Energy's Financial Policies, as circular at best and contend that Mr. Maenius fails to recognize that adjustments are tied to the historical test year revenue requirement and used to arrive at an adjusted revenue requirement. NXP/Samsung further suggests that it appears that AE is trying to preclude other parties from considering anything that Austin Energy has not included in its adjusted test year revenue requirement. NXP/Samsung observes that 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.

In specific recommendations regarding reserve balances, NXP/Samsung recommends that cash working capital be limited to 45 days,²⁵⁵ and that the rate stabilization fund be eliminated.²⁵⁶ According to NXP/Samsung the rate stabilization fund is nothing more than a way for Austin Energy to collect money from ratepayers to provide them with a way to stay within the affordability goals set out by Council.

²⁵⁴ *Id.*

²⁵⁵ PUC Subst. R. § 25.231(c)(2)(B)(iii) (16 TAC § 25.231(c)(2)(B)(iii)).

²⁵⁶ Direct Cross of Fox at Transcript, page 38, lines 9-22.

NXP/Samsung also agrees with NewGen’s recommendation to eliminate the Emergency Fund, but NXP/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. According to NXP/Samsung, 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 \$362,976,708.²⁵⁷ NXP/Samsung notes that this amount is ample to fund the decommissioning reserve of \$12,632,400 for Decker Units 1 & 2.²⁵⁸

NXP/Samsung also takes issue with AE’s treatment of the reserve dedicated to Decker Units 1 & 2 as an O&M expense. NXP/Samsung suggests that by treating the Decker Units’ reserve as an O&M expense, Austin Energy is not following the existing Financial Policies for decommissioning cost.

NXP/Samsung alleges that Austin Energy has used, and intends to continue to use, the reserves as a mechanism to avoid violating the affordability goal set by Resolution 2014828-157.²⁵⁹

Public Citizen/Sierra Club’s Position:

Did not take a position in briefing.

Paul Robbins’ Position:

Did not take a position in briefing.

²⁵⁷ NXP/Samsung Exh. 1 at 4.

²⁵⁸ *Id.* at 28.

²⁵⁹ Austin, Texas Resolution No. 20140828-157 (Aug. 28, 2014). See also, AE Exh. 8 at 19.

Bethany United Methodist's Position:

Did not take a position in briefing.

Data Foundry's Position:

Did not take a position in briefing.

HURF's Position:

Supports NXP/Samsung.

Jim Rourke's Position:

Did not take a position in briefing.

ARMA's Position:

ARMA generally supports NXP/Samsung.

Impartial Hearing Examiner's Analysis and Recommendation

Austin Energy stated in its closing brief that, “No party disagreed with the revenue requirement associated with funding reserves under current financial policies in their closing briefs.”²⁶⁰ The IHE assumes Austin Energy means that no party disagreed with the *mathematical* calculation of its proposed reserve amount of about \$11.5 million, and to that extent the IHE agrees with Austin Energy. However, the funding of reserves was certainly a disputed issue.

First, the level of funding for Austin Energy's *current* reserve funds is in part a function of Austin Energy's expenses and capital expenditures. Thus, while mathematically the \$11.5 million Austin Energy proposes is correct, that amount will change should the Council not adopt Austin Energy's proposed change in annual revenue requirements. Any additional decreases the Council may adopt will affect the level of reserve funds Austin Energy should maintain.

²⁶⁰ See Austin Energy's Closing Brief at 52.

Thus, to the extent the Council *does not adopt new policies* regarding the reserve funds Austin Energy should maintain, then the IHE finds the method by which Austin Energy calculates its reserve funds based on current financial policies, to be acceptable.

The IHE also recommends that the additional reserve funds Austin Energy proposes to recover, that is, the amount that corresponds to the approximate \$34.0 million, be accomplished over three years as proposed by Austin Energy.²⁶¹ The one modification the IHE recommends is that funds associated with the decommissioning of Decker Units 1 & 2, FPP, and SHEC, are to be treated as reserves and not as an O&M expense.

2. Policies

Austin Energy's Position:

AE retained NewGen to study its reserves as required by the City in the 2013 rate ordinance. AE recommends that the City revise its financial policies based on the NewGen study results, as well as its own internal discussions. These wide-ranging and comprehensive policy changes would entail changes to the following elements of AE's reserves: total unrestricted reserves, excluding the non-nuclear decommissioning reserve and the CIP Fund; the internal setting of target reserve amounts; working capital reserve; strategic reserves, including emergency, contingency and rate-stabilization reserves; power supply stabilization reserve; repair and replacement reserve; and CIP fund. According to AE, if the City Council were to adopt these recommended structural changes to AE's reserve fund policies and funding levels, AE would expect an additional decrease in the annual revenue requirement of approximately \$8.2 million, assuming a three-year amortization period to reach full funding.

²⁶¹ As discussed below, the IHE's recommendation regarding attribution of the \$14.5 million Austin Energy received from the sale of the Energy Control Center may affect the amount of additional reserve funds Austin Energy should maintain.

AE opposes the ICA's and NXP/Samsung's proposed changes to AE's reserve-policy modifications. The ICA recommends funding for the Power Supply Stabilization Reserve be targeted at 90 days of net power supply costs.²⁶² AE contends that the ICA misunderstands AE's proposal and that contrary to the ICA's belief that a 120-day reserve is necessary under a "worst case scenario," AE's proposal recommends a funding level *range* of between 90 days and 120 days of net power supply costs. AE notes that to calculate a revenue-requirement adjustment based on the proposed alternative financial policies, AE picked 105 days of net power supply costs to represent a midpoint between the minimum and maximum funding levels. AE argued that while the ICA is correct to point to affordability concerns with funding levels greater than 90 days of net power supply costs, the reverse scenario, in which AE must raise PSA rates in the middle of the year to cover volatile market costs, must be considered as well.

AE also takes issue with the ICA opposition to AE's proposal to fund the Power Supply Stabilization Reserve by using net credit balance in the PSA. According to AE, the ICA appears to misunderstand the function of the net credit funding mechanism; AE argues that it is not intended to continuously sweep funds from the PSA into the Power Supply Stabilization Reserve. Instead, if the Power Supply Stabilization Reserve is below its target funding levels and if the PSA has an over-recovery of less than 10%, then those excess revenues would be swept into the Power Supply Stabilization Reserve. AE reasons that this net credit funding mechanism would supplement, and ultimately reduce, any base rate revenue requirement adjustments needed for reserve funding. If either the PSA over-collection exceeds 10% or if the Power Supply Stabilization Reserve is within target funding levels, the over-collected PSA funds will be returned to customers following the normal procedures.

²⁶² ICA Brief at 31.

Further, AE argues that using the net credit funding mechanism minimizes rate impacts on customers by potentially reducing the number of occasions when AE might need to adjust PSA or base rates. In addition, AE states that the use of net credit funds in the Power Supply Stabilization Reserve maintains a causal link between source and use of funds.

AE recommends increasing the Working Capital funding level from 45 to 60 days of non-power supply O&M costs in its alternative policy proposal and opposes NXP/Samsung's recommendation to maintain the existing 45-day Working Capital funding level. AE argues that the basis of NXP/Samsung's recommendation – the PUC rule pertain to cash working capital – does not apply to MOUs and does not consider the difference in operating environments for IOUs and MOUs. AE explains that AE's obligation to transfer funds associated with shared service and with the City's General Fund Transfer should be appropriately considered as firm, ongoing, and substantive cash requirements that the utility must meet each month. AE states that IOUs do not have this type of regular fund transfer and consequently, the PUC's rules do not contemplate the impact these transfers might have on the utility's operating cash balances. According to AE, it is reasonable for AE to increase the target-funding amount for its Working Capital Reserve to 60 days in order to reflect more accurately its true monthly cash requirements.

AE disagrees with NXP/Samsung's mischaracterization of the Power Supply Stabilization Reserve as “a distortion of Council's intent in setting the affordability goals.”²⁶³ According to AE, NXP/Samsung offers no evidence or testimony to support this claim, only its conjecture that AE is seeking an easy way to collect money from its customers.

AE also criticizes NXP/Samsung's questioning of the use of the Cash Flow Method to determine AE's revenue requirement. AE claims that this is an attempt by NXP/Samsung to cast

²⁶³ *Id.*

AE as an IOU and notes that Austin Energy is an MOU with financial policies that should be examined and reviewed through its specific MOU lens. Moreover, AE notes that this issue was identified as being beyond the scope of the case.²⁶⁴

Independent Consumer Advocate's Position:

The ICA takes no position on this issue at this time since the AE policies on reserves have yet to be adopted.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

NXP/Samsung disagrees with AE's use of the cash flow methodology to set its rates and that it uses to fund the reserves. NXP/Samsung believes that the cash flow methodology is fraught with problems, citing to the testimony of the PUC's Rate Regulation Division's Director in AE's prior rate case before the PUC that "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."

NXP/Samsung contends that 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.

Additionally, 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.

²⁶⁴ See Impartial Hearing Examiner's Memorandum No. 11 at 5 (Mar. 11, 2016).

Public Citizen/Sierra Club's Position:

Did not take a position in briefing.

Paul Robbins' Position:

Did not take a position in briefing.

Bethany United Methodist's Position:

Did not take a position in briefing.

Data Foundry's Position:

Did not take a position in briefing.

HURF's Position:

Supports NXP/Samsung.

Jim Rourke's Position:

Did not take a position in briefing.

ARMA's Position:

ARMA generally supports NXP/Samsung.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that the Council implement most of the changes proposed in the NewGen study regarding Austin Energy's reserve funds. Doing so should have the effect of reducing Austin Energy's revenue requirement, but as noted above, by how much is dependent on the Council's decisions regarding adjustments to Austin Energy's proposed revenue requirement.

The IHE generally agrees with the NewGen study that the current structure of Austin Energy's reserve funds is confusing; is out of step with Austin Energy's peer utilities; and results in some reserve funds being over funded and others underfunded. The IHE also agrees that,

overall, Austin Energy's unrestricted reserves, excluding non-nuclear decommissioning reserve fund and the CIP fund, should be set to have on hand 150 days cash on hand ("DCOH").

Working Capital Reserve:

The IHE recommends that the Council adopt NewGen's proposal for Austin Energy's Working Capital Reserve. However, the IHE recommends that the Working Capital Reserve be based on 45 days of non-power supply costs. Austin Energy argues that working capital reserve should be based on 60 days of non-power supply costs because the PUCT's 45-day standard does not take into account transfers like the General Fund Transfer and shared-service expenses Austin Energy incurs. As Austin Energy recognizes and as NXP/Samsung notes, a 45-day timeframe is consistent with PUCT guidelines. The IHE agrees with Austin Energy that the PUCT's rule regarding working capital does not apply to a municipally owned utility like Austin Energy.

Nonetheless, while it is clearly appropriate to recover the General Fund Transfer in Austin Energy's rates, and though it may be a firm obligation that Austin Energy has, it is not an operating expense of the kind typically associated with cash working capital. Thus, the IHE recommends that the Council implement a Working Capital Reserve to maintain a balance of 45 days of non-power supply costs.

With regard to shared services, to the extent such shared services are fairly allocated to Austin Energy and those services reasonably necessary to provide electric utility service, the IHE recommends that the Council include such expenses in determining Austin Energy's Working Capital Reserve.

Strategic Reserve, Emergency Reserve and Contingency Reserve:

The IHE recommends elimination of the Strategic Reserve and the Emergency Reserve as proposed by NewGen and Austin Energy. As Austin Energy acknowledges the Strategic Reserve's structure is confusing and muddles the objectives and intentions of the underlying reserves; and the Emergency Reserve duplicates the functions served by other reserves.²⁶⁵ Eliminating the Strategic Reserve and clarifying the underlying reserve funds currently under the umbrella of the Strategic Reserve may serve to minimize disputes going forward, or at a minimum, narrow the scope of the disputes.

The IHE further recommends that the Council approve retention of the Contingency Reserve as proposed by NewGen; that the funding level for the Contingency Reserve be maintained at a maximum of 60 days cash on hand consistent with the Council's current financial policy; and that in the near term the Contingency Reserve be funded by a transfer from the balance in the Emergency Reserve.

Rate Stabilization Fund:

The IHE further recommends that the Council rename the Rate Stabilization Reserve and reinstitute it as the Power Supply Stabilization Reserve whose purpose would be dedicated to moderating the effects of potential volatility in power-supply costs that may arise in the ERCOT wholesale market.²⁶⁶

With regard to funding the Power Supply Stabilization Reserve, first, because the purpose of this reserve is to moderate the impact on customers' bills caused by changes in power supply costs, the funding level should be set at 90 days of net power supply cost. As the ICA notes, a

²⁶⁵ Austin Energy Closing Brief at 54.

²⁶⁶ Both the ICA and Austin Energy support creating and maintaining the Power Supply Stabilization Reserve. See Austin Energy Closing Brief at 54 – 55; and ICA Closing Brief at 29 – 31.

90-day level of funding is on the low end of a range that is still characterized as “worst case scenario” and is consistent with NewGen’s findings that the four-year average ending in 2015 was approximately \$110 million, which is consistent with a 90-day funding level.²⁶⁷ The IHE agrees with the ICA that Austin Energy offered no evidence to suggest that the 90-day limit has proven to be insufficient to serve the goal of mitigating fluctuations in energy prices. Therefore, the IHE agrees that the Power Supply Stabilization Fund maintain a cash balance equivalent to 90 days of Austin Energy’s net power supply expenses.

Lastly, and for the reasons noted by the ICA and the ICA’s witness Mr. Clarence Johnson, the IHE recommends that Council reject Austin Energy’s proposal to fund the Power Supply Stabilization Reserve from net credit balances remaining in the Power Supply Adjustment (“PSA”) over or under account balance.²⁶⁸

Remove, Repair, and Replacement Reserve:

The IHE agrees with Austin Energy to rename the current Repair and Replacement Reserve, as the Capital Reserve. Doing so more closely aligns the fund’s name with its intended purpose: to ensure sufficient equity funding sources for capital projects.²⁶⁹

Further, the IHE recommends that Council (1) fund the Capital Reserve at a minimum of 50 percent of the prior year’s depreciation with no maximum amount identified; and (2) because there is no maximum funding limit, that additional cash reserves required to meet the goal of 150 Days Cash on Hand (“DCOH”) be accrued in this reserve.

²⁶⁷ Exhibit ICA-1, pp. 24-25.

²⁶⁸ See ICA’s Closing Brief at 31 and ICA Exh. 1 at 24 – 25.

²⁶⁹ See Austin Energy Closing Brief at 55 – 56.

Non-Nuclear Decommissioning Reserve:

The IHE recommends that the Council adopt NewGen's proposal to establish a Non-Nuclear Decommissioning Reserve. As NewGen's study notes, Austin Energy's financial policy requires that funds be set aside over a minimum of four years prior to closure of a production plant to fund costs associated with expected plant closures. As noted above,²⁷⁰ the IHE recommends funding the anticipated retirement of Decker Creek Units 1 & 2 at the amount proposed by Austin Energy of approximately \$14 million; for FPP at \$2,925,000 and for SHEC at \$867,850.²⁷¹ To the extent the \$14 million reserved for decommissioning the Decker Creek Units exceeds the actual costs to retire those units, those excess funds should be applied to the next facilities to be decommissioned.

Capital Improvement Plan:

The IHE does not recommend any changes to the Capital Improvement Program Fund ("CIP"). Although no party directly proposed changes to the CIP Fund, in NXP/Samsung's discussion regarding funding of Internally Generated Funds for Construction ("IGFC"), it did indirectly propose a change to the amount of CIP to be funded by way of debt versus equity. NXP/Samsung urged a capital structure for calculating the IGFC of 60% debt and 40% equity for the CIP element of that calculation. By comparison, Austin Energy used 50/50 debt-to-equity ratio. Thus, to the extent NXP/Samsung's discussion on calculation of Austin Energy's IGFC is viewed as a commentary on the debt-to-equity ratio to use for funding Austin Energy's CIP, the IHE recommends that Austin Energy's funding for its CIP projects be based on 50/50 debt-to-equity ratio.²⁷²

²⁷⁰ See Section II.B. – Decommissioning Costs, above.

²⁷¹ See, ICA Exh. 1, Schedule CJ-1 (Direct Testimony of ICA witness Clarence Johnson).

²⁷² See IHE Report, above, at Section II.C.3 – Internally Generated Funds for Construction.

N. Property Transfers

Austin Energy's Position:

AE opposes Paul Robbins' proposal to reappraise the former Energy Control Center ("ECC") then have the City's general fund reimburse Austin Energy for "the difference between the [\$14.5 million] and the increased value today."²⁷³ AE contends that this proposal is without legal support or precedent.

AE disagrees with proposals made by the ICA, NXP/Samsung and AELIC. AE explains that it received the funds at issue during this current fiscal year,²⁷⁴ not during the test year that Austin Energy used to set the proposed rates in this proceeding. AE rebuts NXP/Samsung's and the ICA's recommendation to recognize the proceeds from the sale in this case by arguing that it was a non-recurring source of funding, which was specifically used to pay down existing debt on a facility, and should not be used to set rates.

AE disagrees with AELIC's recommendation that the monies should be used to "adjust any reserve deficiencies AE may have."²⁷⁵ AE notes that this recommendation is at odds with its contention that the funds have been spent to reduce AE debt.²⁷⁶

Independent Consumer Advocate's Position:

The ICA recommends that Austin Energy be ordered to make an adjustment to its cost of service reflecting the \$14.5 million transferred to the utility due to the sale of land at 301 West Ave. The City Council directed that \$14.4 million of the amount was to help fund the new Energy Control Center ("ECC") on Riverside Drive.²⁷⁷

²⁷³ Tr. at 512:4-14.

²⁷⁴ Tr. at 856:2-4.

²⁷⁵ AELIC Brief at 16.

²⁷⁶ Austin Energy's Response to AELIC RFI Nos. 10-5 and 10-6, AELIC Exh. 20.

²⁷⁷ AE Exh. 5, p. 8, l. 7-11.

The ICA disagrees with AE's position that it did not include the transaction because it was outside the test year and is a one-time non-recurring event.²⁷⁸ The ICA contends that test year adjustments should be made for nonrecurring, special or out-of-period revenue items that occur before the evidentiary record closes. The ICA argues that Austin Energy has failed to show that it has properly treated this revenue and applied \$14.4 million toward the cost of the new ECC as directed by Council. The ICA contends that the transaction is known and measureable and that AE should be required to quantify the impact on its cost of service of effectuating the City Council's directive to use the proceeds to fund the cost of the new Energy Control Center.

Low Income Customers' Position:

AELIC requests that the \$14.5 million AE recognized from the sale of the ECC be accounted for in this case. In support, AELIC notes the following: 1) 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;²⁷⁹ 2) the plant was funded with debt through the utility's CIP; and 3) AE admitted there were costs relating to the new control center in the TY.²⁸⁰

AELIC does not request an amendment of AE's O&M expenses, but requests recognition that this money was provided to 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. AELIC explains that the operating balance or cash reserve "is simply the

²⁷⁸ AELIC Exh. 20, p. 3.

²⁷⁹ Tr. pp. 974-976, AELIC cross of Maenius

²⁸⁰ *Id.*

cash available to facilitate day-to-day operations.”²⁸¹ Further, AELIC suggest that the source of these funds makes it an excellent choice to be transferred from AE’s operating balance into the utility’s decommissioning reserve because it is proceeds from the retirement of an AE facility.

NXP/Samsung’s Position:

Indicated in briefing that they support AELIC.

Public Citizen/Sierra Club’s Position:

Did not take a position in briefing.

Paul Robbins’ Position:

Mr. Robbins addressed this issue in testimony. Mr. Robbins contends that the City of Austin mismanaged Austin Energy property by giving it to the City of Austin General Fund, either without compensation, or without adequate compensation. Mr. Robbins argues that the amount of imprudence should be quantified, and the General Fund should reimburse AE for misuse of property. The ECC is one of the pieces of property that Mr. Robbins asserts was mismanaged.

Mr. Robbins asserts that the sales agreement, executed in 2010, allowed the developer to wait several years to decide on whether development should go forward and actual sale, essentially using the contract as a land bank. According to Mr. Robbins, AE has thus lost the appreciated value of this land between 2008 and 2015. Mr. Robbins’ specific recommendation with respect to this property is that Austin Energy hire an appraiser to estimate the 2015 market value of this property. Mr. Robbins believes that the delta between the 2008 and 2015 values, as well as the appraisal costs, should be reimbursed by the General Fund to AE.

²⁸¹ AE Exh. No. 1, rate filing package, Bates Stamp p. 432.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Indicated in briefing that it supports NXP/Samsung. Since NXP/Samsung indicated support for AELIC, HURF would appear to support AELIC.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Indicated in briefing that it generally supports NXP/Samsung.

Impartial Hearing Examiner's Analysis and Recommendation**1. Energy Control Center**

The IHE finds persuasive the Low Income Customers, NXP/Samsung, and the ICA's arguments that the Council should take into account receipt of the \$14.5 million Austin Energy received related to conveyance of the ECC. The record establishes that Austin Energy received \$14.5 million on November 24, 2015.²⁸² While the transaction closed after Austin Energy had completed its cost of service study for this rate-review proceeding, Austin Energy will go through the Council's budget review in the upcoming weeks, and the \$14.5 million is a known and measurable event. Moreover, while it is a "post, test-year adjustment," meaning an event that occurred after the "test year" upon which most of Austin Energy's presentation is based, that of itself does not preclude recognition of the transaction. Just as Austin Energy took into

²⁸² AELIC Exh. 20.

account changes in its CIAC policy that were implemented in its FY 2015, so can the monies received from the sale of the ECC be recognized.

Citing to AELIC Exhibit No. 20, Austin Energy states in its brief that the funds have been used to reduce Austin Energy's debt.²⁸³ AELIC Exhibit No. 20 is Austin Energy's response to discovery propounded by Mr. Paul Robbins and by AELIC; but Austin Energy's responses to those requests for information establish no more than that the ECC sale closed on November 24, 2015 and that Austin Energy received \$14.5 million.²⁸⁴ Further, Mr. Canally's testimony at the points cited to by Austin Energy state no more than that the monies from the conveyance of the ECC property were "directed to Austin Energy to help fund the new ECC on Riverside Drive."²⁸⁵ Thus, the IHE finds no evidence in the record to support Austin Energy's statement in its closing brief that it used the \$14.5 million to reduce Austin Energy's debt.

Also, while Mr. Canally testified that the use of the \$14.5 million was undertaken in accordance with City policy, the IHE can find no evidence in the record describing the policy to which Austin Energy refers.

Ultimately, the evidence in the record establishes that Austin Energy received \$14.5 million; that the new ECC was funded through debt issued by Austin Energy; and that costs associated with operating the new ECC are included in the expenses Austin Energy proposes be included in rates to be set in this proceeding.

Therefore, the IHE recommends that in establishing rates, the Council consider the \$14.5 million as funds available to fund either Austin Energy's operations or its reserves.

²⁸³ See Austin Energy Closing Brief at 62.

²⁸⁴ Austin Energy's cites to AELIC Exh. 20 and states in its closing brief that AELIC Exh. 20 is comprised of Austin Energy's responses to AELIC RFI Nos. 10-5 and 10-6. But AELIC Exh. 20 does not include responses to AELIC RFI Nos. 10-5 and 10-6.

²⁸⁵ See Austin Energy Closing Brief at 62 – 63; see also AE Exh. 5 at 8:10-11. The IHE notes that Mr. Canally's testimony states that of the \$14.5 million, \$14.4 million was directed to Austin Energy.

2. Seaholm South Substation Land

Austin Energy's Position:

AE asserts that the Seaholm South Substation Land is being utilized to build the new Central Public Library,²⁸⁶ in accordance with City policy.²⁸⁷ AE asserts that since none of the closing briefs or testimony during the hearing address this property, it requests that the IHE recommend to Council that no further action is necessary with respect to the transfer of the Seaholm South Substation Land.

Independent Consumer Advocate's Position:

Indicated in briefing that it takes no position.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Indicated in briefing that they take no position.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they take no position.

Paul Robbins' Position:

Mr. Robbins asserts in testimony that parts of the Seaholm Power Plant land were sold or leased to private companies by the General Fund. The cooling water intake structure and its surroundings represents most, if not all, of the balance of the land. This was transferred to the Parks Department without compensation. Mr. Robbins requests that Austin Energy hire an appraiser to estimate the 2016 market value of this property and that the money, including appraisal costs should be reimbursed by the General Fund to AE.

²⁸⁶ AE Exh. 5 at 9:8-15.

²⁸⁷ *Id.* at 9:16-18.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Indicated in briefing that it supports NXP/Samsung. Since NXP/Samsung indicated that they do not take a position, it appears that HURF does not take a position.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Indicated in briefing that it generally supports NXP/Samsung. Since NXP/Samsung indicated that they do not take a position, it appears that ARMA does not take a position.

Impartial Hearing Examiner's Analysis and Recommendation

Other than Mr. Robbins, no party presented arguments in briefs or presented testimony during the hearing addressing this property.

The IHE declines to recommend that Council adopt Mr. Robbins' proposal that the General Fund, compensate AE for the transfer of the Seaholm South Substation Land. AE presented the matter to Council and Council approved the transaction and the transaction was undertaken in accordance with Council policies.

Therefore, the IHE agrees with Austin Energy and concludes that no further action is necessary with respect to the transfer of the Seaholm South Substation Land.

3. Vacant Lot at 2406 Ventura Drive

Austin Energy's Position:

Austin Energy transferred this property to the Parks and Recreation Department ("Parks") on June 10, 2010²⁸⁸ in accordance with City policy.²⁸⁹ AE asserts that none of the closing briefs or testimony during the hearing address this property and therefore requests that the IHE recommend to Council that no further action is necessary with respect to the transfer of the vacant lot at 2406 Ventura Drive.

Independent Consumer Advocate's Position:

Indicated in briefing that it takes no position.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Indicated in briefing that they take no position.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they take no position.

Paul Robbins' Position:

Mr. Robbins indicated in testimony that this property was donated without reimbursement. Mr. Robbins requests that AE hire an appraiser to estimate the 2010 market value of this property and that the money, plus inflation between then and 2016, and including appraisal costs, should be reimbursed by the General Fund to AE.

Bethany United Methodist's Position:

Not addressed in briefing.

²⁸⁸ *Id.* at 10:2-5.

²⁸⁹ *Id.* at 10:14-17.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Indicated in briefing that it supports NXP/Samsung. Since NXP/Samsung indicated that they do not take a position, it appears that HURF does not take a position.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Indicated in briefing that it supports NXP/Samsung. Since NXP/Samsung indicated that they do not take a position, it appears that ARMA does not take a position.

Impartial Hearing Examiner's Analysis and Recommendation

Other than Mr. Robbins, no party presented arguments in briefs or presented testimony during the hearing addressing this property.

Similar to the IHE's recommendation regarding transfer of the Seaholm South Substation Land, the IHE declines to recommend that Council adopt Mr. Robbins' proposal.

Therefore, the IHE agrees with Austin Energy and concludes that no further action is necessary with respect to the transfer of the vacant lot at 2406 Ventura Drive.

4. Vacant Lot at 3400 Burleson Drive**Austin Energy's Position:**

Austin Energy transferred this property to Parks on June 10, 2010,²⁹⁰ in accordance with City policy.²⁹¹ AE asserts that none of the closing briefs or testimony during the hearing address

²⁹⁰ *Id.* at 10:19-21.

²⁹¹ *Id.* at 11:10-13.

this property and therefore requests that the IHE recommend to Council that no further action is necessary with respect to the transfer of the property.

Independent Consumer Advocate's Position:

Stated in briefing that it takes no position.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Stated in briefing that it takes no position.

Public Citizen/Sierra Club's Position:

Stated in briefing that it takes no position.

Paul Robbins' Position:

Mr. Robbins indicated in testimony that this property was donated without reimbursement. Mr. Robbins requests that AE hire an appraiser to estimate the 2010 market value of this property and that the money, plus inflation between then and 2016, and including appraisal costs, should be reimbursed by the General Fund to AE.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Indicated in briefing that it supports NXP/Samsung. Since NXP/Samsung indicated that they do not take a position, it appears that HURF does not take a position.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Indicated in briefing that it generally supports NXP/Samsung. Since NXP/Samsung indicated that they do not take a position, it appears that ARMA does not take a position.

Impartial Hearing Examiner's Analysis and Recommendation

Other than Mr. Robbins, no party presented arguments in brief or presented testimony during the hearing addressing this property.

Similar to the IHE's recommendation regarding transfer of the Seaholm South Substation Land, the IHE declines to recommend that Council adopt Mr. Robbins' proposal.

Therefore, the IHE agrees with Austin Energy and concludes that no further action is necessary with respect to the transfer of the vacant lot at 3400 Burleson Drive.

5. Holly Street Plant**Austin Energy's Position:**

AE asserts that the Holly Street Plant ceased operations in September 2007²⁹² and has been, since 1985, dedicated, per City ordinance, to revert to parkland.²⁹³ Given these dates, AE contends that the prior AE rate review was the appropriate time to consider and investigate all issues related to the costs associated with the plant.²⁹⁴ AE rebuts Mr. Robbins' allegations that he was not able to address this issue in the prior case because the review process being used for this case did not exist. AE explains that while that may be the case there were other means of

²⁹² *Id.* at 6:12-14.

²⁹³ *Id.* at 19:6-13.

²⁹⁴ *Id.* at 6:12-14.

exchanging information that were available in the prior case. AE concludes that the fact that the process developed for the current rate review is different than the one used previously does not justify the examination of properties that would have been an appropriate subject of debate in the previous review. Moreover, AE asserts that none of the closing briefs or testimony during the hearing address this property. AE requests that the IHE recommend to Council that no further action is necessary with respect to the transfer of the Holly Street Plant.

Independent Consumer Advocate's Position:

Stated in briefing that it takes no position.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Stated in briefing that it takes no position.

Public Citizen/Sierra Club's Position:

Stated in briefing that it takes no position.

Paul Robbins' Position:

Mr. Robbins noted in testimony that the Holly Street Plant land is intended for transfer to the Austin Parks Department after the old power plant that sits on the land is decommissioned. Mr. Robbins indicated that there is no benchmark for received value because the transfer is pending after full decommissioning, which has not actually been executed yet. Mr. Robbins asks that an appraisal for the value of the decommissioned property be conducted, and that any transfer to the Austin Parks Department or another owner be compensated.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Stated in briefing that it supports NXP/Samsung. Since NXP/Samsung indicated that they do not take a position, it appears that HURF does not take a position.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Stated in briefing that it generally supports NXP/Samsung. Since NXP/Samsung indicated that they do not take a position, it appears that ARMA does not take a position.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that the Council decline to make any adjustments to Austin Energy's revenue requirement based on Mr. Robbins' complaints that there was no rate-review process in place when issues related to the Holly Street Plant were addressed.

As Austin Energy notes, the Holly Street Plant ceased operations in September 2007²⁹⁵ and per City ordinance since 1985 has been dedicated to revert to parkland.²⁹⁶ Given these dates, the prior Austin Energy rate review was the appropriate time to consider and investigate all issues related to the costs associated with the plant.²⁹⁷

In the end, no party presented arguments in brief or presented credible testimony during the hearing addressing the Holly Street Plant. Therefore, the IHE agrees with Austin Energy and concludes that no further action is necessary with respect to the transfer of the Holly Street Plant.

²⁹⁵ *Id.* at 6:12-14.

²⁹⁶ *Id.* at 19:6-13.

²⁹⁷ *Id.* at 6:12-14.

III. Cost Allocation

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

1. Functionalization of the 311 Call Center

Austin Energy's Position:

AE explains that the 311 Call Center is a communication system that connects users with various city departments, including Austin Energy. The cost of the call center is driven by call volume, which best correlates with the number of customers. As a result, in AE's view, the 311 Call Center should be functionalized to customers and allocated to each rate class based on the number of customers in the class.

ICA Witness Johnson recommends that the 311 Call Center Expense be functionalized to the distribution function instead of the customer function. AE opposes Mr. Johnson's recommendation. According to AE, functionalization of the 311 Call Center to distribution and allocation of these costs to rate classes using distribution O&M expense would result in customers with larger demands paying a greater share of 311 Call Center costs compared to customers with smaller demands. AE believes that this end result is inappropriate because the benefit associated with access and use of the 311 Call Center is the same for customers of all sizes. According to AE, Mr. Johnson contends that the disaster recovery portion of the 311 Call Center cost is presumably focused on restoring power service, but this cost actually has nothing to do with grid operations. However, contends AE, emergency use of the Call Center is no different from normal use of AE's customer service center.

Independent Consumer Advocate's Position:

The ICA disagrees with AE's position to functionalize the 311 Call Center costs as customer-related. According to the ICA only a relatively small portion of the expense is based

on usage (number of calls attributable to AE); most of this expense is directly assigned to AE and supports the disaster recovery center.²⁹⁸ The primary function of the 311 Call Center pertains to system reliability and maintaining continuous delivery of power. According to the ICA, the vast majority of Austin Energy’s total payment for the 311 Call Center (90.5%) is based upon the value to the utility for access to the disaster recovery center.²⁹⁹ The ICA argues that the expense is more reasonably functionalized to “Distribution,” because distribution facilities are most related to maintaining power delivery³⁰⁰ and recommends allocating the expense to classes based upon distribution O&M expense.³⁰¹

Low Income Customers’ Position:

Not addressed in briefing.

NXP/Samsung’s Position:

Not addressed in briefing.

Public Citizen/Sierra Club’s Position:

Does not take a position in briefing.

Paul Robbins’ Position:

Not addressed in briefing.

Bethany United Methodist’s Position:

Not addressed in briefing.

Data Foundry’s Position:

Not addressed in briefing.

²⁹⁸ Exhibit ICA-1, p. 67.

²⁹⁹ Exhibit ICA-37.

³⁰⁰ Exhibit ICA-1, p. 67.

³⁰¹ *Id.*

HURF's Position:

Indicated in briefing that it supports NXP/Samsung. NXP/Samsung did not address this issue in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Indicated in briefing that it generally supports NXP/Samsung. NXP/Samsung did not address this issue in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE agrees with the ICA to functionalize the 311 Call Center to Distribution instead of to Customer. The IHE finds more persuasive the ICA's evidence that only a relatively small portion of the expense is based on usage (number of calls attributable to AE); most of this expense is directly assigned to AE and supports the disaster recovery center;³⁰² the primary function of the 311 Call Center pertains to system reliability and maintaining continuous delivery of power; that the vast majority of Austin Energy's total payment for the 311 Call Center (90.5%) is based upon the value to the utility for access to the disaster recovery center.³⁰³ Further, the IHE agrees that AE's position ignores the fact that conditions that would lead to the use of the disaster recovery center as a back-up call center are likely to be associated with severe events and most of the calls to be outage-related.

Therefore, the IHE agrees with the ICA that the expense is more reasonably functionalized to "Distribution," and recommends functionalizing Account 417 ("A-xxx") to

³⁰² Exhibit ICA-1, p. 67.

³⁰³ Exhibit ICA-37.

Distribution, allocating the expense to classes based upon distribution O&M expense.³⁰⁴

2. FERC 920 Administration and General Labor Costs

Austin Energy's Position:

AE asserts that A&G labor costs are properly allocated through the use of a labor allocator. A labor allocator recognizes that the primary administrative function of the utility is the management of the labor force. AE opposes ICA witness Mr. Johnson's recommendation to allocate A&G labor costs on the basis of a non-fuel O&M allocator. According to AE, this method distorts the COS relationship and unduly shifts costs to the generation function. AE asserts that O&M includes a large amount of non-labor expense items that can vary by year and function. A large portion of these expenses is related to infrastructure-maintenance requirements. AE contends that these expenses do not align well with the level of effort of the management team or the underlying staff. AE asserts that labor cost as a percent of total O&M is significantly lower for the production function compared to the other functions because non-labor expenses are much higher for the generating units compared to transmission and distribution infrastructure. AE concludes that O&M less fuel is a poor allocator of A&G costs because this method unjustly shifts a significant amount of management labor costs to the production function.

With respect to STP and FPP, AE argues that it correctly allocates these costs using labor, then directly assigns an additional \$3.3 million in A&G labor costs to the production function for STP and FPP administration costs. Since AE accounts for these costs separately, therefore, it contends that they can be directly assigned. According to AE, when accounting for the direct assignment, AE allocates approximately 28% of total FERC 920 costs to the

³⁰⁴ Exhibit ICA-1, p. 67.

production function, which is 7% higher than what would be otherwise allocated using a labor allocator without a direct assignment.

AE contends that Mr. Johnson acknowledges that his proposed allocation method significantly shifts the allocation of A&G costs to the production function. AE believes that the ICA's proposal would disproportionately shift indirect costs to the production function and away from the transmission and distribution functions. As a result, large electric users will pay too much of these overhead costs while small users will pay too little.

Independent Consumer Advocate's Position:

The ICA reasons that because none of the potential allocators are strongly related in a causal sense to A-920, the selection should focus on the extent that the allocator spreads A-920 salaries and wages broadly and equitably across utility functions. Austin Energy's top management is responsible for all aspects of the utility's operations, and it makes sense that their salary costs are recovered broadly across functions.³⁰⁵ The ICA notes that typically, Account 920 personnel are responsible for a broad scope of management activity, not just supervising the utility's employees.

The ICA criticizes AE's use of a labor allocator, by drawing attention to the fact that while the STP and FPP constitute approximately 55% of AE's non-fuel production expense, the plants' labor expense is not included in the labor allocator. The ICA believes that as a result, the labor allocation will understate the magnitude of the production function and an exception to the typical practice of using a labor allocation for A-920 is justified.³⁰⁶ Therefore, ICA witness Mr. Johnson allocates account A-920 on the basis of non-fuel O&M expense, excluding A&G.³⁰⁷

³⁰⁵ Exhibit ICA-1, p. 52.

³⁰⁶ *Id.* at p. 53.

³⁰⁷ This allocator is designated "O&MxAG" in the cost of service study.

According to the ICA, AE witness Mr. Mancinelli claims that high voltage service customers should only have to pay for indirect costs related to high voltage infrastructure, and that Mr. Johnson's A&G proposal would cause large electric customers to pay too much for overhead costs.³⁰⁸ However, the ICA responds by arguing that this ignores the fact that the large electric customers are high load factor, and consume the largest quantities of energy when the baseload STP and FPP plants are generating electricity. Therefore, the ICA believes that *understating* the overhead assignable to these power plants will minimize the large customers' cost causal responsibility.

Moreover, according to the ICA, the use of an O&M allocator is reasonably related to the functions of management.³⁰⁹ The ICA states that presumably the top management of the Company pays attention to overall expense levels, whether associated with labor or procurement of materials. In addition, the ICA avers that the O&M allocation will reflect contract labor expense, as well as employee wages. Moreover, the ICA suggests that the change in functionalization of A-920 should be carried through the sub-functionalization process.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

NXP/Samsung supports AE's position and oppose the ICA's position on the issue. NXP/Samsung agrees with AE that the primary administrative function of the utility is the management of the labor force,³¹⁰ labor costs are not distributed evenly across functions,³¹¹ and

³⁰⁸ AE Exh. 3, p. 22.

³⁰⁹ Exhibit ICA-1, p. 54-55.

³¹⁰ *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Rebuttal Testimony of Joseph A. Mancinelli, AE Exh. 3 at 20.

³¹¹ AE Exh. 3 at 20-21.

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.³¹²

In addition, NXP/Samsung argues that Austin Energy's method is the standard industry practice,³¹³ and is recognized as the appropriate allocation method to use in the NARUC Electric Utility Cost Allocation Manual.³¹⁴

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Did not address the issue in briefing.

Bethany United Methodist's Position:

Did not address the issue in briefing.

Data Foundry's Position:

Did not address the issue in briefing.

HURF's Position:

Did not address the issue in briefing.

Jim Rourke's Position:

Did not address the issue in briefing.

ARMA's Position:

Did not address the issue in briefing.

³¹² *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Cross Rebuttal Testimony of Gary L. Goble, NXP/Samsung Exh. 4 at 13.

³¹³ NXP/Samsung Exh. 4 at 13.

³¹⁴ NXP/Samsung Exh. 4 at 13-14.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE agrees with AE to allocate FERC Account 920 Administration and General Labor Costs (“A&G Labor Costs”) based on use of a labor allocator. While the IHE agrees with the ICA that A-920 contains salaries and wages which cannot be attributed to any particular function of the utility, use of a non-fuel O&M allocator as the ICA proposes ignores that a large portion of non-fuel O&M expenses include a disproportionate amount of maintenance expenses related to the production function. As AE points out, a large part of non-fuel O&M expenses are related to maintenance of infrastructure, and thus, do not align well with the level of effort of the management team or the underlying staff, particularly for the production function. The IHE finds more persuasive that, compared to other functions, *non-labor maintenance* cost is very high for the production function.

Therefore, the IHE recommends that A&G Labor Costs (A-920) be allocated through use of a labor allocator as proposed by AE.

3. New Service Connection Fees

Austin Energy's Position:

AE opposes ICA witness Mr. Johnson's recommendation that New Service Connection Fees be assigned to the customer function rather than the distribution function. AE explains that these services directly relate to the distribution system infrastructure required to connect the customer. They are collected for initiating new services and reconnecting after failure to pay.³¹⁵ Therefore, according to AE, these costs are properly functionalized to the distribution system.

³¹⁵ AE Exh. 3 at 62 (Exhibit JAM-2).

Independent Consumer Advocate's Position:

The ICA disagrees with AE's classification of the fee as distribution-related because "the service is associated with the distribution of power to the customer."³¹⁶ However, the ICA asserts that the fee does not recover the incremental facility costs of new services and new meters.³¹⁷ According to the ICA, this fee is only for ordering the initiation of new service and the revenues from the service initiation fee are more reasonably identified as customer-related.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Not addressed in briefing.

Public Citizen/Sierra Club's Position:

Indicated in briefing they do not take a position.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

³¹⁶ AE Exh. 1.

³¹⁷ Exhibit ICA-1, pp. 69-70, citing AE Response to ICA RFI 7-3.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE finds persuasive the ICA's proposal to assign New Service Connection Fees to the Customer function, instead of functionalizing these costs to Distribution as proposed by AE.

AE classifies the fee as distribution-related because in its view the service is associated with the distribution of power to the customer.³¹⁸ However, the record establishes that the fee does not recover the incremental facility costs of new services and new meters.³¹⁹ The fee instead is for ordering the initiation of new service. As the ICA notes, service initiation pertains to customer access, and customer access is part of the customer function, which is more likely to vary with number of customers than distribution demands.³²⁰

Therefore, the IHE recommends that New Service Connection Fees be functionalized as Customer related.

B. Classification of Production Costs**Austin Energy's Position:**

Austin Energy classifies fuel and recoverable purchased power as energy related expenses. AE believes that this classification is consistent with the short-run view and represents a large percentage of AE's short-run variable costs. According to AE, use of the short-run view closely reflects actual variable costs incurred by AE when units are dispatched into the ERCOT market. When AE bids generation into the market, the bid accounts for short-run variable costs

³¹⁸ AE Exh. 1.

³¹⁹ Exhibit ICA-1, pp. 69-70, citing AE Response to ICA RFI 7-3.

³²⁰ *Id.* at p. 70.

such as fuel cost (including delivery), variable O&M (“VOM”), and unit start-up and shut-down costs.

AE opposes the ICA’s classification of production O&M costs using the NARUC Cost Allocation Manual (“CAM”) approach. AE argues that the CAM was developed for vertically integrated monopolies and does not reflect the realities of the current day ERCOT marketplace. AE notes that like other Texas utilities, AE is faced with a competitive wholesale power market, aggressive conservation and demand response goals, increased interest in distributed generation options by customers, and long-term, low-load growth projections. AE states that all of these factors create load uncertainty, energy volatility, and greater revenue instability. AE contends that fixed cost recovery is no longer certain in the wholesale power market or through rates. AE argues that the CAM’s consideration of long-run variable costs are not applicable to generation facilities in a nodal market and are more appropriately considered a demand-related cost.

AE states that its classification of production variable costs aligns with the economics of generation dispatch in ERCOT and reflects costs AE will recover from the market. AE asserts that because of deregulation of generation in the ERCOT market, that depending upon market prices, other costs above and beyond these short-run variable costs may be recovered, but this is not guaranteed. Consequently, AE states customers are ultimately responsible for some or all of the generation costs above short-run variable costs. AE posits that given that it is proper to recognize short-run variable costs as energy related, it is also proper to recognize O&M expenses as demand related.

AE also states that its generation assets must be in a state of “readiness to serve,” or operationally available, when market conditions provide economic opportunities for dispatch and that O&M practices are crucial to maintaining units available to operate on short notice. AE

contends that because in the ERCOT market generation is a competitively available input to delivery of electric service, it focuses on a measure it refers to as the Commercial Unit Availability (“CUA”), which measures the availability of a unit to operate when the market so dictates. AE argues that O&M expenses (excluding fuel and VOM) ensure a high CUA and capacity-on-demand for all AE generation resources. Therefore, according to AE, these O&M expenses are properly classified as demand related costs in the nodal market.

Independent Consumer Advocate’s Position:

The ICA believes that the customary approach is to split these expenses between demand and energy. By comparison, AE classified all production non-fuel O&M expense as demand-related in its CCOS. According to the ICA, among current bundled electric utilities in Texas, SWEPCO, SPS, and El Paso Electric Co. classify a portion of production non-fuel O&M expense as energy-related.³²¹ ICA witness Mr. Johnson recommended classification based on the NARUC Cost Allocation Manual (“CAM”) guideline. In the NARUC CAM, some accounts are classified entirely as either energy or demand. However, the CAM splits most accounts between energy and demand in proportion to the labor and commodity costs in the account.

The ICA notes that AE witness Mancinelli disagrees with the CAM approach because it was established before the deregulation of the electric market and establishment of ERCOT. The ICA pointed to a prior email from Mr. Mancinelli, which in ICA’s view, suggests that he has endorsed the CAM approach.

In addition the ICA asserts that the CAM classification approach continues to be consistent with cost causation.³²² The ICA contends that a large proportion of maintenance expense is classified as energy-related. Moreover, the ICA points out that, like most mechanical

³²¹ Direct Testimony of Clarence Johnson at 49.

³²² Exhibit ICA-1, p. 50.

devices, the frequency of maintenance for production facilities is generally a function of the wear and tear associated with the duration of operating the facilities. The ICA thus argues that it is not reasonable to assign causal responsibility for maintenance costs solely to peak hours during the year.³²³ Furthermore, the ICA asserts that a significant portion of operational expenses classified as energy-related consist of lubricants, coolants, and fluids which are consumed in proportion to the hours of generation operation.³²⁴

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

NXP/Samsung refers to the section of its brief regarding the allocation of production costs.

Public Citizen/Sierra Club's Position:

Does not take a position in briefing.

Paul Robbins' Position:

Does not take a position in briefing.

Bethany United Methodist's Position:

Does not take a position in briefing.

Data Foundry's Position:

Data Foundry ("DF") opposes allowing certain costs associated with AE's participation in the ERCOT to be included in the revenue requirement. However, in the event that those costs are allowed, then DF agrees that the entirety of AE's non-fuel production O&M costs are properly classified as demand costs.

³²³ *Id.*

³²⁴ *Id.* at p. 51

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE agrees with AE to classify fuel and recoverable purchased power as energy-related expenses. While the ICA correctly notes that NARUC's Cost Allocation Manual ("CAM") suggests that these costs should be split between demand and energy, the approach the NARUC manual suggests does not take into account the deregulated nature of generation of electricity in the ERCOT market. The IHE finds more material, AE's testimony that AE dispatches its production units to meet market demands and is no longer based on the paradigm articulated in the NARUC CAM (based on the dispatch of "base-load" units, "intermediate" units, and lastly "peaking" units). AE's classification of production variable costs aligns with the economics of generation dispatch in ERCOT and reflects costs AE will recover from the market.

Therefore, the IHE agrees with AE's proposal to classify fuel and recoverable purchased power as energy-related expenses.

C. Allocation of Production Costs**Austin Energy's Position:**

AE proposes allocating its production costs on the basis of the 12CP allocation methodology. AE believes that this more accurately reflects how the ERCOT nodal market impacts production costs and is a reasonable way to assign the recovery of those costs to AE's

customer-owners. AE rejects the recommendations of DF/ACC to allocate these costs on the basis of the Average & Excess (“A&E”) 4CP allocation methodology.³²⁵ AE also rejects NXP/Samsung’s similar claim. AE also opposes ICA’s recommendation to use a BIP allocation methodology and PC/SC’s similar methodology. According to AE, those methodologies are flawed because they fail to recognize fundamental market principles.

AE draws a distinction between the ERCOT market and fully regulated market in which traditional vertically integrated utilities operate. AE contends that unlike AE, vertically-integrated utilities are not subject to wholesale market forces in which generation companies must compete based on economic efficiency in order to have their units run. AE also contends that unlike vertically-integrated utilities, AE’s generation resources are not exclusively maintained to meet system peak; rather, they are maintained to be dispatched based on system wholesale price. Because of such differences, AE believes that consideration of different methodologies is warranted in order to avoid an overreliance on a traditional approach that is outdated, and it is appropriate for AE to consider other factors in addition to historical precedence when determining the most reasonable production cost allocation methodology.

AE maintains that it does recognize historical precedent. AE asserts that the shift from A&E 4CP to 12CP maintains the relationship between those demand-related costs and the classes that contribute to demand during those periods of the year. According to AE, the 12CP method simply acknowledges that price spikes caused by demand for energy can occur throughout the year in the ERCOT market. AE continues, when market price spikes can occur as often in February as they do in August, critique of the historical precedence of a summer peaking methodology is reasonable.

³²⁵ Data Foundry/Austin Chamber Cost Allocation and Revenue Distribution Brief at 6-8 (“DF/ACC Brief”).

AE criticizes DF/ACC's argument in favor of the A&E 4CP methodology because according to AE it demonstrates a lack of understanding of how ERCOT nodal market prices impact the production costs of resources needed to meet demand. AE explains that the ERCOT nodal market is based on the supply of and demand for energy in five minute intervals, and when demand for energy outstrips the available supply, prices rise to encourage resource owners to make more energy available to the market.³²⁶ These price increases can occur at any time in the year, not only when peak demand is reached, according to AE. Similarly, generation resources are dispatched based on the marginal price offered by the resource owner, not when demand on the system reaches its peak.

AE denounces DF/ACC's reliance on the American Public Power Association's ("APPA") 1979 manual *Cost of Service Procedures for Public Power Systems* since it pre-dates the era of deregulated energy markets. In addition, AE believes that DF/ACC's argument fails to recognize that wholesale market price increases do not exclusively occur during peak demand periods of the year. Moreover, AE asserts that DF/ACC broadly and erroneously over-emphasizes the importance peak demand plays in AE's production cost analysis,³²⁷ whereas they should be most concerned with peak price intervals.

AE asserts that while it is true that average wholesale prices tend to be higher during the summer months when demand typically reaches its peak, AE has shown that high market prices are not exclusive to the four summer months.³²⁸ They can and do occur throughout the year, and spikes can be significantly higher than average prices, even higher than the average summer month prices.

³²⁶ See AE Exh. 1 at 042-044.

³²⁷ *Id.* at 7.

³²⁸ AE Exh. 1 at 165.

AE explains that in order to ensure that its resources are available to provide energy when market prices escalate, AE must maintain its fleet throughout the year. AE witness Mr. Mancinelli stated that O&M expenses help maintain the operational readiness and commercial availability of the fleet and are appropriately classified as demand-related costs.³²⁹ According to AE, it is therefore reasonable for AE to allocate its production costs based on a methodology that considers the impact of market price spikes throughout the year.

AE criticizes ICA Witness Johnson's adherence to an outdated production stack dispatch model to describe how AE incurs production costs. In reality, according to AE, ERCOT's Security Constrained Economic Dispatch engine uses an economics-based stack to determine which unit runs next. AE explains that in the ERCOT nodal market, there are no longer "base hours," "intermediate hours," or "peak hours." Instead, the variation is centered on price: "low priced intervals," "medium priced intervals" and so on. AE it further explains that it incurs costs to maintain resource fleet "readiness" in the event that prices increase and these high priced intervals can occur during the traditional "base hours" or "peak hours." Thus, according to AE, reducing O&M costs to three outdated tranches of BIP hours neglects implicit cost causation principles associated with the fact that ERCOT's "peaking" units may run equally during peak pricing events in February and August.

In addition, AE asserts that the hourly dispatch construct is a moot notion in the ERCOT nodal market. Prices can escalate from \$20/MWh in one 15-minute interval to \$500/MWh (or more) in the next 15-minute interval, and then back to \$20/MWh in the next. In this example, so-called "peaking units" are not necessarily dispatched in the high price interval; it is the next unit with the lowest marginal cost that is called on to run. Therefore, according to AE, it may be

³²⁹ AE Exh. 3 at 27:13-17.

that a “baseload” unit has available capacity to offer that is cheaper to dispatch than a “peaking” unit, contrary to Mr. Johnson’s depiction of the market.

AE questions NXP/Samsung witness Goble’s critique of AE’s use of a 12CP allocator. First, according to AE, Mr. Goble confuses the association of costs and benefits in AE’s hedging year-round wholesale market volatility.³³⁰ He claims that AE has attributed production costs based on the benefits accrued to customers. AE argues that this is patently untrue. AE contends that by suggesting allocation of costs based on the year-round benefits of AE’s physical hedging activity and then drawing a link to other assets owned by AE, Mr. Goble misses the simple cost causation principle that cost drivers determine how to allocate expenses, not the benefits.

According to AE, Mr. Goble’s second argument is that AE has confused the cause and effect of owning and operating a generation resource fleet.³³¹ AE never indicated that it acquired resources before the introduction of the deregulated market to serve as financial or physical hedges. In fact, AE originally acquired those resources to serve its native load in an era and market construct that no longer exists.

Mr. Goble’s third argument claims that AE should establish a class revenue requirement based on the cost of providing service and not the benefits of the service. AE asserts that it has consistently argued that the production cost drivers are associated with maintaining fleet readiness year-round so that its units can run when economics merit dispatch³³² and that ERCOT 12CP is the allocator that most closely link costs of fleet readiness to the customer classes that drive the costs.

³³⁰ NXP/Samsung Brief at 43.

³³¹ *Id.* at 43-44.

³³² See for example, AE Exh. 1 at 047, 108, 114, and 117; AE Exh. 3 at 32-42; Rebuttal Testimony of Mark Dreyfus, AE Exh. 9 at 42-48; Tr. at 176:24-178:18.

Lastly, AE addresses Mr. Goble's argument that the 12CP methodology fails to properly recognize seasonal peak demand.³³³ AE believes that the concept of the ERCOT 12CP is rooted in the fact that peak pricing drives production costs, and seasonal peak demand is less relevant in today's nodal market. According to AE, the cost of readying its fleet to respond to a two-hour interval in April when market prices are \$2,000/MWh are the same as readying the fleet to respond to a two-hour interval in August when market prices are \$2,000/MWh.

With respect to PC/SC's argument that hourly energy data is the most appropriate input for production cost allocation study, AE avers that this is not based on an analysis of AE's operations or business environment. According to AE, this position is based on a cursory review of material prepared by Jim Lazar who noted that his analysis was incomplete. Similarly, according to AE, PC/SC witness Paul Chernick admitted to conducting an incomplete analysis of AE's production costs.

Independent Consumer Advocate's Position:

ICA witness Mr. Johnson recommends using the Base-Intermediate-Peak Method ("BIP") for allocating production plant among customer classes, developing a variant of BIP which recognizes the specific characteristics of AE's generation investment.³³⁴ The NARUC CAM identifies BIP as an accepted production demand methodology which falls within the "time-differentiated" category of methodologies.³³⁵ BIP utilizes three time periods — Base, Intermediate, and Peak hours — and is based on the premise that baseload, intermediate, and

³³³ NXP/Samsung Brief at 44.

³³⁴ Exhibit ICA-1, pp. 38-49.

³³⁵ NARUC CAM at pp. 60-62.

peaking generation technologies and fuel types were incurred primarily to serve each of those time periods, respectively.³³⁶

ICA witness Mr. Johnson testifies that BIP will produce class allocation results similar to more data intensive time of use methods; with any difference in results not justified by the additional complexity of the capacity utilization models. ICA cites to several reasons to support its recommendation for use of the BIP. First, the methodology explicitly recognizes the different types of generation technologies and fuel sources which were chosen by AE to serve the base, intermediate, and peak hours, and therefore, the BIP method reflects production cost causation criterion discussed in Subsection III.B., above.³³⁷ Second, the methodology appropriately recognizes that, over the last 30 years, AE historically relied upon nuclear and coal generation to reduce total fuel cost.³³⁸ Third, the methodology reflects the more recent trend of using combined cycle and combustion turbine gas fired generation to meet loads of medium and short duration with the least costly capital investment.³³⁹ Fourth, AE has considered the BIP methodology and, therefore, is aware that it represents a reasonable methodology for the AE system.³⁴⁰ Fifth, AE's previous cost of service consultant, R.W. Beck (later called "SAIC"), recommended using BIP during the public involvement ("PIC") process for the 2011 rate request.³⁴¹ The consultant pointed out that BIP is consistent with the characteristics of ERCOT market dispatch.³⁴²

³³⁶ Exhibit ICA-1, p. 38.

³³⁷ Exhibit ICA-1, p. 39.

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*, referencing AE Response to ICA RFI 7-11.

³⁴² *Id.*, Footnote 36: R.W. Beck concluded that BIP mirrored the Probability of Dispatch method (POD) by "maintaining a link between resource dispatch and load requirements, but in a manner more consistent with the

The ICA explains that the BIP method identifies the plant investment assignable to base, intermediate, and peak utilization.³⁴³ The South Texas Project (nuclear) and Fayette Power Project (coal) are assigned as baseload, because these units are operated as much as possible throughout the year. From an economic perspective, Austin Energy's objective is to maximize the capacity factor for these two plants in order to take advantage of their low variable costs.³⁴⁴ Steam-fired gas units and combined cycle gas units at Decker Power Plant and Sand Hill Energy Center are assigned as intermediate generation.³⁴⁵ Typically, intermediate generation will have capacity factors ranging from 20% - 50%, depending on their variable costs and market conditions. Intermediate periods frequently include shoulder demands. The gas generation categorized as "Quick Dispatch" consists of combustion turbines at the Decker and Sand Hill sites, and are assigned to Peak.³⁴⁶ As the name implies, these units can be started quickly in order to meet loads of short duration. AE has minor amounts of investment in wind and solar plant, which are properly included in the baseload category. Renewable investment is not dispatchable, but the plants share the energy characteristics of baseload generation.³⁴⁷ Solar and wind power involve relatively high capital costs per kW which are incurred in order to achieve zero fuel cost. Therefore, the capital cost provides energy value to AE's generation portfolio.³⁴⁸

ERCOT nodal market design."

³⁴³ When AE has prepared BIP allocations, it appears that revenue requirements rather than plant investment was used for weighting the three periods. Production demand methods are considered to be generation plant allocation factors, and it is customary to assign *plant costs* to time periods, which is reflected in Mr. Johnson's formulation of BIP.

³⁴⁴ Exhibit ICA-1, p. 40.

³⁴⁵ *Id.* at pp. 40-41.

³⁴⁶ *Id.* at p. 41.

³⁴⁷ *Id.*

³⁴⁸ *Id.*

ICA witness Mr. Johnson then developed class allocation factors.³⁴⁹ Base capacity was allocated on an energy basis, because baseload generation is operated at maximum capacity factor in order to achieve maximum energy value throughout the year. The Intermediate period is allocated partially on an energy basis and partly on the basis of 12CP (ERCOT), because intermediate generation has a role which is a mixture of Peak and Baseload characteristics.³⁵⁰ The capacity factor of these units is a proxy for the portion of plant cost which is energy-related. Based on the average weighted capacity factor for AE's intermediate units, 34% of Intermediate is allocated on energy and 66% is allocated on a 12CP basis. The Peak capacity is allocated on the basis of the ERCOT 4 summer coincident peaks (4CP).³⁵¹ The summer peaks provide higher prices which justify the operation of high variable cost generators. This reflects the role of quick start peak generation in meeting the primary peak demands.

Mr. Johnson developed two variations of BIP class allocation factors.³⁵² The "net plant" version ("BIP-N") is based on net plant values for the generation. This reflects both depreciation and investment cost in "as spent dollars." In order to avoid a distortion in the relative value of Base, Intermediate, and Peak hours simply due to the timing of plant installation dates, Mr. Johnson developed a "replacement cost" version of the method.³⁵³ Based on this adjustment to the method, all plant costs are converted to the same year's dollars, so that the values for Base, Intermediate, and Peak generation can be compared on an economically equivalent basis.³⁵⁴ This replacement cost version of BIP ("BIP-R"), adjusts the Base, Intermediate, and Peak ratios to

³⁴⁹ *Id.* at pp. 41-42.

³⁵⁰ *Id.*

³⁵¹ Exhibit ICA-1, p. 42.

³⁵² Class allocation factors for both versions are shown on Exhibit ICA-1, Schedule CJ-2.

³⁵³ Exhibit ICA-1, p. 42.

³⁵⁴ *Id.*

reflect the costs of generating technologies in 2014 dollars,³⁵⁵ utilizing the U.S. Department of Energy (“DOE”) generation cost estimates (installed capital cost per kW \$2014) for current nuclear, coal, combined cycle, and combustion turbine technologies.³⁵⁶ The DOE generation cost estimates are used by electric utilities (including Austin Energy), regulatory commission, and regional transmission organizations as generic plant costs.³⁵⁷

ICA witness Mr. Johnson recommends using the BIP-R, and his class cost of service results incorporate BIP-R as the production demand allocation factor. The ICA contends that plant cost comparisons based upon equivalent overnight dollars provide the most reasonable results.³⁵⁸ Mr. Johnson also produced a version of BIP which utilizes actual net plant costs from the CCOS study for the baseload, intermediate, and peak components, which is labeled BIP-N. The ICA responds to Mr. Goble’s rebuttal testimony criticizing the BIP-R, due to its reliance on DOE capital cost projections. The ICA argues that these criticisms are not applicable to BIP-N; and the allocation factors for BIP-N are shown on Exhibit ICA-1, Schedule CJ-2. As shown on Schedule CJ-2, the allocation factors for BIP-N and BIP-R are reasonably close to each other, according to the ICA. The ICA believes that adoption of the methodology is more important than the particular version which is used, and it can also support the BIP-N factors, if the Impartial Hearing Examiner finds that version to be preferable.

As confirmation of the BIP results, Mr. Johnson also compared the results of his BIP-R method to another energy-weighted production demand methodology, a formulaic approach termed Average & Peak-12CP (A&P-12CP). The ICA asserts that under certain simplifying

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id. at pp. 42-43.*

³⁵⁸ Exhibit ICA-1, p 43.

assumptions, this method is mathematically equivalent to a time of use capacity utilization method.³⁵⁹ The ICA contends that the resulting Adjusted A&P-12CP produces class allocation factors almost the same as BIP-R, which confirms that a time of use based methodology will produce results approximately the same as BIP-R.

The ICA explained that now that AE operates in the ERCOT nodal market, it is important that the production demand methodology recognizes different types of generating plants.³⁶⁰ Mr. Johnson provides examples of how the ERCOT market affects the types of generating plants owned by AE.³⁶¹ The ICA asserts that production demand allocation methods such as the ICA recommended BIP-R methodology are consistent with the capital-energy trade-offs associated with generation entry into the ERCOT market.³⁶²

The ICA reject's NXP/Samsung witness Goble's recommendation to allocate production costs using an Average & Excess Demand/4CP ("AED-4CP") method.³⁶³ The ICA contends that this AED-4CP method should be rejected because it produces results which do not take into account the role of energy use in system planning, because it relies too heavily on only four hours of the year to allocate almost one billion dollars of generation investment, and because it ignores the effect of ERCOT dispatch on generation cost causation.³⁶⁴

The ICA argues in response to Mr. Gobles' argument that the PUC has approved the AED-4CP in previous utility rate cases, no Texas PUC precedent exists for the appropriate production demand methodology to use as a guide under the current ERCOT market structure.

³⁵⁹ "Capacity Utilization Responsibility: An Alternative to Peak Responsibility," Dr. Michael Proctor, Public Utility Fortnightly at 31, April 26, 1983.

³⁶⁰ Exhibit ICA-1, p. 45.

³⁶¹ *Id.* at pp. 46-48.

³⁶² *Id.* at p. 49.

³⁶³ NXP/Samsung Exh. 2, pp. 8-27.

³⁶⁴ Exhibit ICA-2, pp. 4-5.

The ICA argues that Mr. Goble's AED-4CP formula appears to allocate costs in part on the basis of energy usage (average demand), but that appearance is largely a mathematical illusion, particularly if coincident peak data is used, as Mr. Goble has proposed. The ICA asserts that AED-4CP formula is a circuitous route to estimating the class shares of 4CP demands, which in turn *allocates costs to only four hours*.³⁶⁵ If the load factor for the AED-4CP calculation is derived from 4CP, the results of A&E/4CP are the same as a straight 4CP allocator. The ICA notes that minor adjustments, such as converting "negative" excess demands to zero (such as the Texas PUC's typical formulation), or using a different load factor may cause the A&E/4CP to diverge slightly from 4CP. According to the ICA, this change is slight because it usually affects only the lighting classes.³⁶⁶

Mr. Goble cites the NARUC Cost Allocation Manual ("CAM") to oppose AE's 12CP methodology.³⁶⁷ However, according to the ICA the NARUC CAM does not support the AED-4CP method which he employs. The ICA believes that the NARUC CAM cautions against the insertion of coincident peaks into this formula stating that reliance upon coincident peak ("CP") demands for the Average & Excess ("A&E") method will preclude the methodology from achieving the purported aim of recognizing energy use (average demand).³⁶⁸

The ICA contends that Mr. Goble has previously supported the Probability of Dispatch ("POD") allocation method.³⁶⁹ According to the ICA, unlike AED-4CP, POD spreads generation plant costs to all 8,760 hours of the year.

³⁶⁵ Exhibit ICA-2, p. 6

³⁶⁶ *Id.* at p. 7.

³⁶⁷ NXP/Samsung Exh. 2, pp. 20-21.

³⁶⁸ NARUC Electric Utility Cost Allocation Manual (1992) at p. 50.

³⁶⁹ Mr. Goble testified in support of the POD method in CPL Docket Nos. 8646 and 9561 before the Texas PUC.

The ICA argues that NXP/Samsung's AED-4CP method should be rejected as overly simplistic and inconsistent with ERCOT dispatch principles. The ICA contends that if power plants were built to serve load in only four hours of the year, the utility would always construct gas peaker units because that reflects the cheapest conventional technology for generating power during a minimal number of hours. However, Austin Energy builds base load and intermediate plants because these technologies are expected to minimize total costs over a larger number of hours.³⁷⁰

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

NXP/Samsung proposes to allocate demand-related production costs on the basis of the Four Coincident Peak/Average and Excess ("4CP/A&E") Demand method.³⁷¹ NXP/Samsung witness Mr. Goble cites six undisputed facts that support the use of the 4CP/A&E allocation method.³⁷²

- Austin Energy's own system planning and demand side management programs are based on the importance of Austin Energy's demands during the summer;³⁷³
- ERCOT's system planning and operation are based on the importance of summer peak demands;³⁷⁴

³⁷⁰ Exhibit ICA-2, p. 10.

³⁷¹ *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Direct Testimony and Exhibits of Gary L. Goble, NXP/Samsung Exh. 2 at 13.

³⁷² NXP/Samsung Exh. 2 at 17.

³⁷³ Tr. 808:16-20 (Mancinelli Cross) (Jun. 2, 2016).

³⁷⁴ 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), NXP/Samsung Exh. 29, 30, and 31 (respectively).

- 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;³⁷⁵
- The 4CP/A&E methodology, not the 12CP methodology is supported by the PUC in electric utility rate cases;³⁷⁶ and,
- The 4CP/A&E methodology was specifically approved by the Austin City Council in Ordinance No. 20120607-055, dated June 7, 2012,³⁷⁷ 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.

NXP/Samsung criticizes 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. NXP/Samsung questions the ICA's understanding of how system planning occurs in the ERCOT power supply market in which Austin Energy operates. According to NXP/Samsung, 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.

NXP/Samsung asserts that 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.³⁷⁸ However, according to NXP/Samsung, the ICA's recommendations address only the allocation of higher capital costs while ignoring the necessary

³⁷⁵ NXP/Samsung Exh. 1 at 21-22.

³⁷⁶ *Id.* at 23-24.

³⁷⁷ NXP/Samsung Exh. 7. Tr. 782: 21-24 (Mancinelli Cross) (Jun. 2, 2016).

³⁷⁸ ICA Exh. 1 at 33-34.

and consistent allocation of fuel cost savings, thus introducing a significant bias in the results of the BIP-R allocation method.

In addition, NXP/Samsung contends that 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. According to NXP/Samsung, although Austin Energy's 2015 system peak demand was 2,735 megawatts ("MW"), the ICA's BIP-R cost allocation method only assigned 450 MW to provide peak capacity. NXP/Samsung concludes that the ICA's recommended approach unreasonably assumes that the difference of 2,285 MW peak demand is served at zero costs.³⁷⁹

An additional error in calculating the BIP-R methodology, according to NXP/Samsung, was the ICA's unquestioned reliance upon national generation technology cost information as a replacement for Austin Energy's actual generation plant costs.³⁸⁰ NXP/Samsung believes that the ICA's replacement cost method seriously distorts the actual cost structure of Austin Energy's generation plant.

NXP/Samsung notes several problems it perceives with respect to AE's proposal to allocation production costs on the basis of a 12CP allocator. First, NXP/Samsung contends the fact that financial hedging provides benefits in all months relies upon self-defining rationale. NXP/Samsung asserts that there is no AE asset that does not provide benefits throughout the year. Second, according to NXP/Samsung, Austin Energy has confused cause and effect. NXP/Samsung argues that Austin Energy's ability to hedge arose as a result of the availability of Austin Energy production plant, not visa-versa. NXP/Samsung contends that only if Austin Energy built its generation assets in order to secure such hedges would hedging be a cost driver

³⁷⁹ NXP/Samsung Exh. 4 at 8-9.

³⁸⁰ Tr. at 533: 17– 534:17 and 539: 1-5 (Johnson Cross) (Jun. 1, 2016).

for demand-related generation costs. Lastly, NXP/Samsung contends that 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.

Fundamentally, according to NXP/Samsung, 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. NXP/Samsung asserts that 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.³⁸¹ 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.

NXP/Samsung makes a bold claim that Austin Energy essentially chose the 12CP allocation method as a matter of political expediency. According to NXP/Samsung, Austin Energy hired AE witness Mr. Mancinelli's consulting firm to "shop around" for a method that shifted costs away from residential customers. NXP/Samsung contends that this lack of objectivity in conducting class cost of service studies is inappropriate and unduly discriminatory.

Public Citizen/Sierra Club's Position:

PC/SC recommends that Austin Energy should utilize a production cost allocation that is based upon energy use since it is important that the chosen method reflect that resources are used and result in costs not only to serve peak demand periods, but also to meet energy needs throughout the year. PC/SC believes the Base-Intermediate-Peak (BIP), Probability of Dispatch ("POB"), or a method based on actual hourly energy use would be appropriate. According to

³⁸¹ NXP/Samsung Exh. 2 at 19.

PC/SC, in an ERCOT wholesale market where generation plants are dispatched based upon the marginal cost of energy at specific times, allocating production costs on an hourly cost model is the most accurate way to allocate costs of generation.³⁸²

PC/SC notes that both the 12-Coincident Peak (12CP) method utilized by Austin Energy and the 4-Coincident Peak Average and Excess Demand (4CP/AED) method Samsung and NXP allocate production costs based on energy use among customer classes during just a few hours for the entire year. PC/SC contends that these methods do not reflect the reality of how generation is dispatched in the ERCOT market. The costs of energy use throughout the year should be accounted for in the cost-allocation method.³⁸³

PC/SC prefers that AE be ordered to run an hourly energy model, but concede that the BIP method used by the Independent Consumer Advocate would also be a fair cost-allocation method.³⁸⁴

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Data Foundry ("DF") and the Austin Chamber of Commerce ("ACC") oppose AE's 12CP allocation proposal. According to DF/ACC, AE has not proven that any change from its prior use of an A&E 4CP allocator is warranted, and the alternative method does not correctly measure production costs given AE's system and specific retail class load characteristics. In

³⁸² PCSC Exh. 31, Attachment p. 8-9.

³⁸³ PCSC Exh. 31, Attachment p. 8-9.

³⁸⁴ *See, generally, ICA Exhibit 1.*

addition, DF/ACC note that the 12CP would shift costs from the residential class to the commercial classes. DF/ACC argue that AE's proposed 12CP is not based on cost allocation methodologies commonly used throughout the utility industry and is not in accordance with generally accepted practices in Texas. DF/ACC cites to The American Public Power Association cost allocation manual for support of its claim that 12CP is questionable if the power system has a high winter or summer peak demand relative to demands of other times.³⁸⁵ According to DF/ACC, AE's rationale for using 12CP does not reflect its own belief that the underlying nature and cause of generation capacity is an important consideration in selecting a production demand cost allocation method since peak electrical demands in Texas occur in the summer. DF/ACC argue that, in contrast to the 12CP, the Average and Excess 4 Coincident Peak ("A&E-4CP") method traditionally approved by the PUCT recognizes that production costs are not driven solely by peak demands or energy usage but are the result of both.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE agrees with AE that production costs be allocated based on the 12CP allocation methodology. The IHE concludes that NXP/Samsung and DF/ACC's proposals do not give

³⁸⁵ Cost of Service Procedures for Public Power Systems, American Public Power Association, Washington, D.C., 1979, p. X-3 (1979) (emphasis added).

sufficient weight to the fact that, while AE is a vertically-integrated utility, it operates in a market where production of power, that is, generation, is deregulated. AE's proposed use of a 12CP allocator for production costs more accurately reflects the affect of nodal markets in ERCOT on production costs.

Likewise, the IHE finds NXP/Samsung's and DF/ACC's proposal to use the A&E 4CP methodology wanting in that it gives too little weight to how the nodal markets in ERCOT operate. While the American Public Power Association's ("APPA") 1979 manual *Cost of Service Procedures for Public Power Systems* to which DF/ACC cite does indeed describe the importance of peak demand in determining the proper allocation of production costs, the model upon which the APPA's suggestion is not a sound fit for a vertically-integrated utility like AE, in the ERCOT market. As AE points out, the ERCOT nodal market is based on the supply of and demand for energy in five-minute intervals, the price for power is a product of supply and demand, where prices change throughout the year and not only in 4 months out of the year during peak demand.³⁸⁶ As a consequence, generation resources are dispatched based on the marginal price offered by the resource owner and not on system peak demands.

The IHE also recommends against use of the methodology the ICA proposes, the Base-Intermediate-Peak Method ("BIP") for allocating production plant among customer classes, for the same reasons he recommends against use of the A&E-4CP approach. The BIP methodology ignores the reality of the market in which AE operates and places too much emphasis on the paradigm more appropriate to a fully-integrated utility in the non-ERCOT service areas in Texas.

³⁸⁶ See AE Exh. 1 at 042-044.

Similarly, the IHE also recommends rejection of PC/SC's proposal to allocate production costs upon energy the BIP method, or the Probability of Dispatch ("POB"), or some other undefined method based on actual hourly energy.

Therefore, recommends that production costs be allocated based on the 12CP allocation methodology as proposed by AE.

D. Classification and Allocation of Distribution Costs

1. Classification of Distribution Costs

(a) Transformers and Capacitors

Austin Energy's Position:

AE argues that distribution transformers and capacitors perform demand related functions and therefore, their costs should be classified as demand related. AE contends that to ensure reliability of service to customers, distribution transformers are sized to meet customer maximum demands on the system. AE states that these transformer costs are fixed, meaning that they do not vary with energy use. AE asserts that it is standard industry practice to classify transformers as demand related costs and allocate these costs on some measure of customer demand. In the RFP, AE allocates these costs using the Sum of Maximum Demands ("SMD") method. SMD reflects the maximum monthly demand a customer places on the system during each month of the year. AE asserts that this classification approach has been widely accepted by the PUC in prior rate proceedings.³⁸⁷ Also, according to AE, Transmission and Distribution

³⁸⁷ *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 43695 (Feb. 23, 2016); *Application of Entergy Texas, Inc. for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 41791 (May 16, 2014); *Application of Entergy Texas, Inc. for Authority to Change Rates, Reconcile Fuel Costs, and Obtain Deferred Accounting Treatment*, Docket No. 39896 (Nov. 2, 2012); *Application of Entergy Texas, Inc. for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 37744 (Dec. 13, 2010); *Application of CenterPoint Energy Houston Electric, L.L.C. for Authority to Change Rates*, Docket No. 38339 (June 23, 2011); *Application of Sharyland Utilities, L.P. to Establish Retail Delivery Rates, Approve Tariff for Retail Delivery Service, and Adjust Wholesale Transmission Rate*, Docket No. 41474 (Jan. 23 2014).

Utility (“TDU”) rate structures approved by the PUC, and applied to customer classes with demand meters, recover distribution costs entirely from customer and demand charges. AE concludes that this fact illustrates that transmission and distribution costs are not related to energy.

AE opposes ICA witness Johnson’s recommendation to classify a portion of transformers and capacitors as energy related. According to AE, using Mr. Johnson’s logic, a customer using little to no energy would pay nothing associated with the installed transformers dedicated to serve that customer’s load; yet when this customer needs electricity, the transformer investment is standing by to meet that demand requirement. AE believes that the transformer provides a significant benefit to the customer and that benefit is best measured with demand. AE also argues that Mr. Johnson’s logic is also inconsistent with the development of standby rates that backup customers who self-generate their own electricity.

Independent Consumer Advocate’s Position:

The ICA disagrees with the way that AE classifies transformer costs as 100% demand-related.³⁸⁸ ICA recommends allocating A-362 (Transformers and related devices installed in distribution substations) and A-368 (Line transformers and related devices such as capacitors and voltage regulators) costs on the basis of class summer energy use.³⁸⁹ The ICA asserts that energy use recognizes the role of transformers and substations in producing energy losses. According to the ICA, limiting the energy use to summer months recognizes the effect of high demand periods and higher ambient temperatures on transformer capacity.

³⁸⁸ Exhibit ICA-1, p. 55.

³⁸⁹ *Id.* at p. 55.

ICA asserts that its position is consistent with a Regulatory Assistance Project (“RAP”) report published for NARUC on the implications of unbundling for distribution rate design.³⁹⁰ The report recommended that a portion of distribution costs be allocated on an energy basis, for both embedded and marginal cost of service studies.³⁹¹ In further support of its position, the ICA notes that Center Point Electric uses class summer kWh consumption to develop its allocation.

Low Income Customers’ Position:

Not addressed in briefing.

NXP/Samsung’s Position:

NXP/Samsung opposes AE’s use of 12NCP to allocate distribution costs. NXP/Samsung criticizes AE’s justification for 12NCP because according to AE it recognizes that distribution capacity provides value to customers throughout the year, not just during the summer months. As with its critique of AE’s use of 12CP to allocate production costs, 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.³⁹²

NXP/Samsung addresses AE’s argument 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.³⁹³ According to NXP/Samsung, 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

³⁹⁰ Weston, Harrington, Moskovitz, Shirley, And Cowart, Charging for Distribution Utility Service: Issues in Rate Design, (Dec. 2000).

³⁹¹ *Id.* at 32, 39 [references omitted].

³⁹² Tr. at 797:8-21 (Mancinelli Cross) (Jun. 2, 2016). *See also* Tr. 850: 2-8 (Mancinelli Recross) (Jun. 2, 2016).

³⁹³ AE Exh. 3 at 43.

demand is measured. NXP/Samsung argued that AE witness 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.³⁹⁴ According to NXP/Samsung, 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, argues NXP/Samsung. NXP/Samsung considers that 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.

NXP/Samsung also disputes AE's witness Mancinelli's understanding of its proposal. NXP/Samsung argues that 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, NXP/Samsung asserts that Austin Energy's class demands have been customer adjusted and weather normalized.³⁹⁵

Lastly, NXP/Samsung contends that 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.³⁹⁶

³⁹⁴ Tr. at 811: 7-15 (Mancinelli Cross) (Jun. 2, 2016).

³⁹⁵ Tr. at 268: 9-12 (Dryfus Cross) (May 31, 2016).

³⁹⁶ NXP/Samsung Exh. 29. NXP/Samsung Exh. 30. NXP/Samsung Exh. 31. Tr. 806: 23– 807: 11 & 808: 10-20 (Mancinelli Cross) (Jun. 2, 2016).

NXP/Samsung addresses ICA witness Mr. Johnson's proposal using customer kWh usage during the four summer months of June through September to calculate the allocation factors for distribution substations and transformers.³⁹⁷ NXP/Samsung agrees that summer loads are the primary cost drivers of investment in transformers and substations.³⁹⁸ NXP/Samsung disagrees that summertime energy sales reflect the load that drives the costs of this equipment.³⁹⁹

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 asserts that summer NCP demand, not summer energy or 12 monthly NCP demands, is the factor that drives distribution costs, and that summer loads are the loads that Austin Energy uses to plan and design its distribution system. NXP/Samsung contends that the size of the transformer, and, therefore, its cost, is determined by the anticipated kVa load of individual customer premises. NXP/Samsung cites to various provisions of AE's own design manuals or other engineering specifications as well as the NARUC Electric Utility Cost Allocation Manual in further support of its position. NXP/Samsung also noted that 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.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Not addressed in briefing.

³⁹⁷ ICA Exh. 1 at 55.

³⁹⁸ NXP/Samsung Exh. 2 at 27.

³⁹⁹ *Id.* at 27-28.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE agrees with AE that distribution transformers and capacitors perform demand related functions and therefore, those costs should be classified as demand related. The IHE finds persuasive AE's testimony that distribution transformers are sized to meet customer maximum demands on the system to ensure reliability of service to customers and that transformer costs are fixed and do not vary with energy use. For this reason, the IHE also recommends against the ICA's proposal to classify a portion of transformers as energy related.

However, the IHE finds more credible NXP/Samsung's evidence that instead of using 12NCP, it is more appropriate to use AE's 4NCP. NXP/Samsung noted in its brief that the uncontroverted facts demonstrate that summertime NCP demands are what determine Austin Energy's distribution plant investment. The IHE also finds persuasive NXP/Samsung's arguments that Austin Energy plans its distribution system to meet summer peak demands and that these same demands should be employed to allocate transformer costs.

Therefore, the IHE recommends that transformers be classified as demand-related costs and allocate these costs on customer demand based on an AE's 4NCP for the months of June – September, as proposed by NXP/Samsung.

(b) Meters

Austin Energy's Position

AE asserts that the costs of meters are a function of the number of customers and are, therefore, correctly classified by AE as customer related costs. According to AE, a customer related classification is supported by the NARUC CAM and the PUC routinely uses this classification in TDU rate cases.⁴⁰⁰ AE continues, additional costs of metering equipment for larger customers have already been accounted for in the COS by the application of a customer count allocation of meter costs using a weighted meter cost.

AE opposes ICA witness Johnson's proposal to classify a part of the meter cost as demand related because it would result in improper cross subsidization of meter costs from small demand customers, like the residential class, to large demand customers, like large commercial customer. AE believes that any demand response and load shifting benefits potentially derived with advanced metering infrastructure ("AMI") meters and new rate designs are not significant since any benefits associated with these types of customer responses are small on the system. AE believes that even if benefits do exist, they are related to the avoided cost of future investments on the production, transmission, and distribution systems. According to AE, these potential future benefits are not related to the metering investment, which remains an investment made on a per customer basis.

⁴⁰⁰ *Id.*

Independent Consumer Advocate's Position:

The ICA explains that AE has been aggressive in the sophistication of the meters it deploys, and the implication of these advancements is that substantial meter investment cost has been expended to access meter functions which transcend the standard billing and collection measurement role. The ICA believes that the allocation method for meter investment should take into account the incremental cost of enabling other functions.⁴⁰¹ The ICA asserts that the avoidance of meter reading expense constitutes as much as one-half of the net present value benefit of smart meter investment,⁴⁰² and this proportion of the incremental cost can be allocated on the weighted customer basis. However, according to the ICA the remainder of the incremental cost pertains to demand-side management, avoided generation cost, and reliability. The ICA contends that production demand is a reasonable measure for these functions. Therefore, ICA witness Mr. Johnson allocates meter investment on a 60% weighted customer and 40% production demand basis.⁴⁰³

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

NXP/Samsung does not address the specific issue of meter cost allocation.

Public Citizen/Sierra Club's Position:

Did not take a position in briefing.

Paul Robbins' Position:

Not addressed in briefing.

⁴⁰¹ Exhibit ICA-1, p. 64.

⁴⁰² *Id.* at p. 65, referencing "Costs and Benefits of Smart Meters for Residential Customers," pp. 31 – 34.

⁴⁰³ Exhibit ICA-1, p. 65, Footnote 70: The incremental investment above manual meter cost is 80% of the total meter plant. 40% of the total meter plant cost (80% X 50%) is allocated on a production demand basis.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that Council adopt AE's position regarding the classification of meters. AE's evidence establishes that meter costs are a function of the number of customers. Also, AE has accounted for the costs of metering equipment for larger customers by allocating costs on the basis of customer count but with weighted meter cost to account for the differing costs in metering equipment occasioned by the size of the customer's power needs.

The IHE finds credible AE's conclusion that classifying a portion of meter costs as demand related, as the ICA suggests, would result in shifting metering costs from customers with small demand requirements to customers with large demand requirements, which would result in cross subsidization of metering costs where small demand customers, like residential customers, would pay too little for metering expense and large commercial customers would pay too much.

Lastly, the IHE does not find persuasive the ICA's argument that advanced meters, which are intended to incent a shift in a customer's demand and load currently affect the basis for the

need for a meter. And even if AE's advanced metering infrastructure has its intended effects, fundamentally, the reason for the meter is because of the customer at the end of the service line.

Therefore, the IHE recommends adoption of AE's proposal to classify meters as a function of the number of customers.

(c) Services

Austin Energy's Position:

AE asserts that services can be classified as customer related expenses, but notes that when this classification approach is pursued, the underlying customer allocator is weighted between classes. This weighting recognizes that service costs vary between customers based on the customers' demand requirements, according to AE. Hence, AE contends that its classification of services as demand related and the allocation of the cost to each class based on SMD is a reasonable and fair treatment of these costs.

AE continues, even if one assumes services are a customer related expense, rate class weighting factors would be similar to SMD allocators previously discussed. As a result, the impact of this classification change on COS results would be minor, according to AE. Also, AE asserts that such a classification would make service costs eligible to be included in the customer charge of each rate class rather than a component of demand. Again, however, this change in treatment would have little impact on rate design.

Independent Consumer Advocate's Position:

The ICA's position on services cost allocation is included in the discussion of meter cost allocation above (Sec. III.D.1.(c)).

Low Income Customers' Position:

Not addressed.

NXP/Samsung's Position:

NXP/Samsung does not address the specific issue of services cost allocation in briefing.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that the Council adopt AE's proposal to classify Services as demand related and the allocation of the cost to each class based on SMD is appropriate.

Although AE agreed that Services could be classified as customer-related expenses, AE noted that when Services are classified as customer-related expenses, the underlying customer allocator is weighted between classes, thus recognizing that service costs vary between customers based on the customer class' demand requirements.

The IHE agrees with AE that because weighting of services is based on class demand requirements, AE's classification of services as demand related and the allocation of the cost to each class based on SMD is appropriate.

Although the ICA disagreed with AE's approach, the IHE does find sufficiently persuasive to adopt the ICA's proposal simply because other utilities use the ICA's recommended approach.

Therefore, the ICA recommends that the Council adopt AE's proposal to classify Services as demand related to allocate such costs to each class based on Austin Energy's SMD as proposed by AE.

Allocation of Distribution Costs

Austin Energy's Position:

According to AE, distribution substations, poles, and conductors should be allocated using the 12 Non Coincident Peak ("NCP") allocator. In contrast, NXP/Samsung witness Goble recommends using the 4NCP method for allocating distribution substations, poles, and conductors. AE believes that the use of 12NCP is more equitable than 4NCP.⁴⁰⁴ This is because the 12NCP method recognizes that distribution capacity provides value to customers throughout the year, not just during the peak hour or the summer peak months. In addition, AE claims that because the NCP calculation is done at the class level, off peak or seasonal customers may not be fully accounted for in a 4NCP calculation and a 12NCP calculation solves this problem. In addition, because the system is sized in consideration of localized demand that varies from area to area based on variations in the customer mix, AE contends that these variations are better represented by a 12NCP allocator which takes into consideration the value of load diversity across the distribution system.

⁴⁰⁴ AE Exh. 3 at 43.

Independent Consumer Advocate's Position:

ICA supports AE's use of 12NCP to allocate poles and conductors, and opposes Mr. Goble's proposal to use a summer NCP allocation. The ICA opposes NXP/Samsung's witness Goble's method. According to the ICA, since restricting the NCP demand to summer months, his method limits the recognition of diversity of loads between classes, because classes with high demands outside the summer season are insulated from the allocation of distribution costs associated with their high demand periods.⁴⁰⁵

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

NXP/Samsung's position is addressed in Section III.D.1.A.

Public Citizen/Sierra Club's Position:

Did not take a position in briefing.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

⁴⁰⁵ Exhibit ICA-2, p. 11.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that the Council adopt AE's proposal to allocate distribution substations, poles, and conductors should be allocated using the 12 Non Coincident Peak ("NCP") allocator instead of NXP/Samsung's proposal to use the 4NCP method.⁴⁰⁶

The IHE is persuaded that to allocate substations, poles, and conductors as proposed by NXP/Samsung would relieve customers that are off peak during the summer months from the responsibility of paying for these costs but at the same time gaining the benefit of these assets. The use of 12NCP is more equitable than 4NCP because the 12NCP method recognizes that distribution capacity provides value to customers throughout the year, not just during the peak hour or the summer peak months.⁴⁰⁷

The IHE agrees with AE that from a cost allocation perspective, certain rate classes may be able to avoid a portion of distribution demand related costs by shifting demand during NCP periods. Thus, if the demand measure is just a few hours (e.g., four months in the summer), the ability to shift and avoid cost responsibility is easier compared to a 12NCP method. Further,

⁴⁰⁶ ICA supports AE's use of 12NCP to allocate poles and conductors, and opposes Mr. Goble's proposal to use a summer NCP allocation.

⁴⁰⁷ Further, the IHE does not find AE's use of the phrase, "provides value to customers," to mean that it AE is assigning costs on a non-cost basis.

because the distribution system is spread across the AE's service area, AE sizes its system taking into account localized demand that varies from area to area based on variations in the customer mix. The IHE is persuaded that a 12NCP allocator better takes into account load diversity across the distribution system.

Therefore, the IHE recommends to Council that it adopt AE's proposal to allocate distribution substations, poles, and conductors using AE's 12 NCP allocator.

E. Allocation of Customer Service Costs

1. Uncollectible Expense Allocation

Austin Energy's Position:

AE has directly assigned uncollectible accounts. AE cites to the NARUC Manual for support. AE opposes the ICA position to allocate the costs on the basis of each rate class's requirement since directly assigned the costs would allegedly create volatile results. AE contends that this is an unwarranted concern based on a comparison of directly assigned costs for uncollected accounts from AE's 2009 rate case and this case.

Independent Consumer Advocate's Position:

ICA recommends that uncollectible costs should be allocated on the basis of revenues ("Rev Req allocation" or "revenue allocation").⁴⁰⁸ The direct assignment method was rejected by the Texas Public Utility Commission in an Entergy rate case (Docket No. 16705), according to the ICA. The PUC noted that "the passing on of such costs to others is generally factored into the cost of doing business. It is a cost that is better absorbed by the many."

The ICA notes that the direct assignments of uncollectible expense tend to be based on experience over a relatively short period of time. The ICA points out that the magnitude of the

⁴⁰⁸ Exhibit ICA-1, p. 60.

uncollectible expense in a given period is affected not only by the frequency of customer accounts which are written off during a period, but also by the amount of revenue billing attributable to each particular type of customer. The ICA provides as an example, that the bad debt risk for a class with a small number of customers of varying sizes may not be adequately measured over a short duration period.

In addition, the ICA notes that the *potential* for significant impact from individual large accounts should be considered.⁴⁰⁹ For instance, if an industrial or large business customer goes out of business due to bankruptcy, that individual default would result in a disproportionate increase in the amount of uncollectible expense. This event is likely a low probability/high consequence exposure. Although the event may not occur in the specific one, or two-year period, the allocation of an uncollectible allowance should reflect the broader exposure if a very large customer defaults. Again as an example, the ICA notes that, AE's responses to discovery showed that, although no transmission voltage customers were assigned uncollectible expense based on 2014 experience, at least one transmission voltage customer has filed bankruptcy since 2012.⁴¹⁰ The cost of service study assigned no uncollectible cost to Secondary >300 kW (due to lack of information).⁴¹¹ The ICA presented evidence showing that AE was aware of 27 bankruptcies since 2012 in the Secondary >50 kW category, but is unable to determine whether any of the bankruptcies involved customers greater than 300 kW.⁴¹² Thus, the ICA reasons that

⁴⁰⁹ *Id.* at p. 63.

⁴¹⁰ Exhibit ICA-1, p. 63, referencing AE Response to ICA RFI 2-29.

⁴¹¹ Inadequate secondary >50 kW uncollectible records constitute another flaw in AE's direct assignment. The records did not permit identification of uncollectible based on the proposed Secondary class configuration. As a result, AE subjectively chose to assign all of the Sec >50 kW uncollectible expense to <300 kW customers, assuming that the cost belonged to the class with the most customers.

⁴¹² *Id.*

the more reasonable solution is to allocate uncollectible expense as a cost of doing business which should be spread proportionately to all customer classes.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Indicated in briefing that they support AE.

Public Citizen/Sierra Club's Position:

Did not take a position in briefing.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends to Council that it adopts the ICA's proposal to allocate Uncollectible Expense should be spread proportionately to all customer classes based on revenues (i.e., a Rev Req allocation).

The ICA explained that the direct assignment method was rejected by the Texas Public Utility Commission in an Entergy rate case (Docket No. 16705). Also, the ICA notes that direct assignments tend to be based on experience over a relatively short period of time and that the uncollectible expense in a given period is affected not only by the frequency of customer accounts which are written off during a period, but also by the amount of revenue billing attributable to each particular class of customer. The bad debt risk for a class with a small number of customers of varying sizes may not be adequately measured over a short duration period.

Given that AE's own data show that its proposed direct assignment of uncollectible expense yields approximately the same results as does the ICA's proposed method, and in light of the PUCT's rejection of the direct-assignment approach, the IHE finds more persuasive the ICA's argument to employ assignment of Uncollectible Expense based on revenue requirement as proposed by the ICA.

2. Meter Expense and Meter Reading

Austin Energy's Position:

AE argues that meter expense should be allocated using a weighted customer allocator and that meter reading costs should be allocated based upon the number of customers. AE opposes ICA witness Johnson's recommendations that meter expense be allocated using a

combination of customer and demand allocators and meter reading costs be allocated using weighted meter investments.

AE asserts that any use of demand in the allocation of meter expense is unsupportable from a cost causation perspective, and unduly shifts metering expense from small to large demand customers. With respect to meter reading costs, AE argues that metering configurations and rate complexity have no impact on the level of effort to read a meter. As such, according to AE, it is appropriate to allocate the meter reading costs to each class based on the number of metered customers.

Independent Consumer Advocate's Position:

The ICA proposes to allocate meter-reading expense based upon the weighted customer allocator applied to meters.⁴¹³ The ICA explains that meter-reading expense is associated with meter investment and that the weighted customer allocator reflects differences in the costs of meters among the customer classes.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Not addressed in briefing.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they take no position.

Paul Robbins' Position:

Not addressed in briefing.

⁴¹³ Exhibit ICA-1, p. 66.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

For the reasons noted by AE, the IHE recommends to Council that it adopt AE's proposal for allocating meter-reading costs. The IHE agrees with AE that meter expense is a customer related expense. The evidence showed that AE has properly accounted for cost differentials between meters through the use of weighting factors used in the customer allocator. Meter reading costs should be allocated to each class based on the number of metered customers.

The IHE did not find persuasive the ICA's argument that because larger meters tend to be associated with larger customer bills, that AE spends more time in addressing a billing issue associated with a customer with a larger meter.⁴¹⁴ As AE noted, any use of demand in the allocation of meter expense is unsupportable from a cost causation perspective, and unduly shifts metering expense from small to large demand customers.

⁴¹⁴ Exhibit ICA-1, p. 66.

Therefore, the IHE recommends that Meter Expense and Meter Reading expenses be allocated to each class based on the number of metered customers as proposed by AE.

3. Customer Service Accounts

(a) Marketing and Advertising

Austin Energy's Position:

AE contends that the proper manner to allocate marketing and advertising costs in FERC Accounts 908-910 is based upon the number of customers. The ICA recommends a weighted allocation representing 50% class revenue requirement and 50% number of customers. Contrary to ICA witness Johnsons' claims, the NARUC manual appears to agree with AE's cost allocation approach for these expenses, according to AE.

Independent Consumer Advocate's Position:

The ICA asserts that the object of the "marketing and advertising" accounts is to advise customers on the safe and efficient use of electricity, promote or retain electrical usage, or encourage conservation or environmentally beneficial activities. There is no reason to believe that the costs of achieving such general objectives will vary in proportion to the number of customers.⁴¹⁵ The expenditures represent a general cost of doing business and are more properly treated as an overhead.

The ICA also claims that the NARUC Manual supports its position. Austin Energy directly assigns 14% of these accounts to Key Account customers, and the ICA CCOS accepts the direct assignment of this portion of the accounts.⁴¹⁶ However, Mr. Johnson developed a weighted customer allocator, instead of unweighted customers, for the remainder of the accounts.

⁴¹⁵ Exhibit ICA-1, p. 68.

⁴¹⁶ *Id.* at p. 69.

The weighted allocator for the remaining 86% of the expense is 50% class revenue requirement and 50% number of customers.⁴¹⁷ This approach recognizes that the general expenses in these accounts which cannot be directly assigned should be treated, in part, as general overhead.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Not addressed in briefing.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

⁴¹⁷ *Id.*

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends to the Council that it adopt the AE's allocation of marketing and advertising expenses and services expenses (that is, Accounts 908 – 910).

While the IHE found merit to the ICA's proposal to allocate these expenses on a weighted-customer basis (50% on class revenue and 50% on number of customers), the IHE found no reference in the record to the NARUC CAM that supports the ICA's witness' proposal. Mr. Johnson on behalf of the ICA refers to NARUC Manual for support of his recommendation to allocate account numbers 908 – 910 based on a weighted customer basis, but the reference Mr. Johnson cites is with regard to Accounts 911 – 917.

But as Mr. Mancinelli on behalf of AE noted, for Accounts 906 – 910, the NARUC Manual appears to support AE's proposal more than Mr. Johnson's and expressly states that Accounts 906 – 910 are customer related.

Therefore, the IHE recommends that marketing and advertising be allocated as proposed by AE.

(b) Service Connection Fees

Austin Energy's Position:

AE believes that the proper way to allocate service connection fees is based on the SMD or customer billed demand allocator. The logic behind AE's position is that service connection fees are related to services, so both service connection fees and services should be functionalized, classified, and allocated in a similar fashion in the COS study.

Independent Consumer Advocate's Position:

The ICA's position is addressed in Section III.E.3.(a) ("Marketing and Advertising").

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Not addressed in briefing.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that Service Connection fees be assigned to the distribution function as proposed by AE, instead of the customer function as proposed by the ICA.

The more credible in the record shows that these services directly relate to the distribution-system infrastructure required to connect the customer and are collected for initiating new services and reconnecting after failure to pay.⁴¹⁸

Therefore, these costs are properly functionalized to the distribution system as proposed by AE.

F. Allocation of Energy Efficiency Service Charge

Austin Energy's Position:

AE explains that during the development of the Tariff Package for this case, AE redesigned its Energy Efficiency Charges ("EEC"). According to AE, this was done in order ensure that there was a steady progression of rates from one rate class to the next so that if a customer moved from S3 to S2, for example, the EES charge would not be significantly different. Following the filing of the Tariff Package, AE states that through its own internal review process it became increasingly clear that the proposed EES rate would not ultimately meet AE's objective to reduce year-to-year interclass subsidies and therefore, it would not meet AE's desired cost causation outcomes. In its direct testimony, PC/SC critiqued AE's original EES rate design, claiming that the rates did not align closely enough with true cost of service for several rate classes.⁴¹⁹ AE filed the Rebuttal Testimony of Deborah Kimberly and proposed an adjustment to the EES fee which, according to AE, brought the rates closer to class cost of service and maintained one of AE's original objectives to provide year-to-year rate predictability.⁴²⁰

⁴¹⁸ AE Exh. 3 at 62 (Exhibit JAM-2).

⁴¹⁹ Public Citizen and Sierra Club's Corrected Position Statements/Presentation on the Issues, PCSC Exh. 1 at 30.

⁴²⁰ Rebuttal Testimony of Deborah Kimberly, AE Exh. 7 at 15:15-17:22.

AE points out that the ICA and PC/SC object to the new rates because of the potential rate impact on the residential class. AE therefore urges that the IHE rule exclusively on the appropriateness of the allocation methodology and not on any potential rate that results from that allocation.

AE explains that the EES charge funds programs that provide direct benefits to individual customers in the form of rebates and reductions in monthly bills due to lower energy consumption. According to AE, these programs also provide indirect benefits to all customers in the form of a somewhat lower Regulatory Charge, reduced plant emissions, and decreased capital costs due to offsetting the need for new generation resources. At its core, though, according to AE, the costs of the EES program are caused by the customers directly participating in EES programs and who directly receive financial and non-financial benefits.

In addition, AE recognizes that there is year-to-year variability in the proportion of benefits received by different rate classes. Therefore, AE proposes to allocate the EES program costs on a three-year rolling average of total EES costs, divided by the share of residential costs and non-residential costs. AE proposes that the non-residential rate be adjusted for voltage. According to AE, this allocation methodology will ensure that if, in the future, the ratio of benefits shifts from one group to another, the EES rate will reflect those changes and will assign the cost to the proper recipients.

AE states that it has shown that residential customers receive a larger percentage of the direct benefits funded from AE's EES charge than commercial customers.⁴²¹ Hence, according to AE, no large commercial customer will get "a free ride" on either direct or indirect benefits,

⁴²¹ See CES Performance Measures Summary, FY 2014 From Customer Energy Solutions Program Progress Report 2014-2015, PCSC Exh. 29; FY 15 CES Performance Measures Summary From Customer Energy Solutions Progress Report 2015-2016, PCSC Exh. 30; Tr. at 941:20-943:13; Tr. at 959:10-18.

contrary to the ICA's claims.⁴²² AE states that large industrial customers in the P4 and T2 rate classes do not have to contribute into the EES recovery pursuant to tariff design decisions already approved by the City Council. AE argues that though these customers will enjoy the benefit of indirect system-wide benefits, their tariffs have been designed to mirror more closely the tariff structures of industrial customers served in the competitive choice areas. This decision was made to help bring the bills of these customers more in line with typical bills in the competitive choice area and was essentially a risk management decision, according to AE. Moreover, AE argues that these customers cannot participate in the EES programs because they do not contribute to the program costs.

Independent Consumer Advocate's Position:

The ICA complains that AE made dramatic changes to the EES charge in its rebuttal testimony and therefore it was not able to adequately respond to it. The ICA argues that AE has not met its burden of proof that the charge is reasonable since, according to the ICA, AE admitted that it was not fully vetted.

The EES charge would nearly double the current EES rate for residential customers, asserts the ICA. The ICA warns that if this new EES re-allocation proposal is adopted, the resulting rate impacts would be great enough to ensure that almost all residential customers would receive a rate *increase* from this rate review proceeding⁴²³ at the same time that AE proposes to decrease its overall system revenues and to provide rate reductions to its largest commercial customers.

The ICA also disagrees with AE's position that the new allocation of energy efficiency services is consistent with cost causation. AE's method is based on total incentive payments by

⁴²² ICA Brief at 72.

⁴²³ Exhibit ICA-34; Exhibit ICA-26; Tr. 1082-1090 (Dreyfus).

rate class. The ICA argues that this is not the appropriate representation of cost causation. According to the ICA, the incentive payments are a means to achieving the objective of reducing future utility revenue requirements (in the form of lower production plant, purchased power, and fuel expenses, which in turn benefits all ratepayers and not just the participating class), but they are not the underlying cost causal basis for energy efficiency programs.

The ICA contends that AE's energy efficiency programs are intended to benefit far more customers than the customers who are actually receiving the programs directly. The ICA argues that the purported theory behind the late-filed EES re-allocation proposal does not properly account for the possibility of system-wide benefits, which is a fundamental objective for which the utility is promoting energy efficiency programs in the first place.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Indicated in briefing that they agree with AE's proposal.

Public Citizen/Sierra Club's Position:

Public Citizen and Sierra Club oppose Austin Energy's proposal to shift a disproportionate amount of the Energy Efficiency Service ("EES") fee cost to residential customers. PC/SC contend that Austin Energy has acknowledged that all customers served by Austin Energy benefit from the demand reduction programs funded by the EES fee, even if they do not directly participate in the programs.⁴²⁴ PC/SC assert that AE's own COS study showed that the High Load Factor Primary Voltage customers and the T2 High Load Factor customers would "cost" the program, neither customer class would pay the EES charge.

⁴²⁴ Tr. Vol. 1, p. 239, ll. 8-17.

Public Citizen and Sierra Club are supportive of a uniform EES fee for all customer classes, with a slight adjustment based on voltage, and believe that in particular the High-load primary voltage and transmission customers should also be subject to the EES fee.⁴²⁵

PC/SC explains that AE's initial proposal was to charge all customer classes a uniform fee; however, AE presented a two-tiered EES rate tariff in its rebuttal tariff. Under this proposal, one fee—paid by residential consumers only—would charge residential consumers inside and outside the city a proposed tariff of \$0.0047 per kilowatt hour. All other customer classes would pay a rate of \$0.00128 per kilowatt hour (adjusted for voltage)—about one-fourth of the residential rate.⁴²⁶ PC/SC asserts that AE made this change without changing its COS model. PC/SC asserts that the proposed new residential customer tariff is approximately twice the amount of the EES tariff found in Austin Energy's initial filing, and that the rate for all other classes is approximately half the amount of the initial tariff.⁴²⁷ PC/SC conducted a study which shows that the new EES tariff would raise residential rate impacts by approximately \$9,400,000 while lowering costs for other customers by a similar amount.

PC/SC questions the data upon which the revised EES tariff rates are based, specifically noting confusion in the number of years of rebates and tariffs, which served as the basis for the rate. PC/SC criticizes AE for not including administrative costs in the rate since the EES tariff pays for administrative costs associated with the EES and demand response programs. PC/SC also criticizes AE for categorizing multi-family programs as residential programs and not as commercial programs. According to PC/SC, the rebates and incentives of these programs do not go directly to the residential consumers, but rather to the building owners. Therefore, according

⁴²⁵ PCSC Exh. 1, p. 30.

⁴²⁶ *Id.*

⁴²⁷ Tr. Vol. 3, p. 939, ll. 16 and 24.

to PC/SC, even though the owners of the buildings themselves get the rebate, Austin Energy is making the case that because the efficiency gains benefit the individual units, the entire “cost” of these rebates should be assigned to the residential class. In that vein, PC/SC asserts that categorizing multifamily incentives as residential is not current Austin Energy policy.

PC/SC did their own analysis and included all administrative costs and assigned all multifamily programs to commercial classes. PC/SC contends that their analysis demonstrates that the split in the budget is 50 percent residential and 50 percent commercial, not 60 or 65 residential as stated by AE.⁴²⁸

Paul Robbins’ Position:

Not addressed in briefing.

Bethany United Methodist’s Position:

Not addressed in briefing.

Data Foundry’s Position:

Not addressed in briefing.

HURF’s Position:

Not addressed in briefing.

Jim Rourke’s Position:

Not addressed in briefing.

ARMA’s Position:

Not addressed in briefing.

⁴²⁸ Tr. Vol. 3, p. 959, ll. 17-18.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that Council adopt the ICA's proposal to allocate Energy Efficiency Service ("EES") charge.

The IHE agrees with the ICA that the energy efficiency program is undertaken for the purpose of reducing future utility revenue requirements, in the form of lower production plant, purchased power, and fuel expenses, which in turn benefits all ratepayers, not just the participating class. The incentive payments are a means to achieving that objective, but are not the underlying cost cause of the energy efficiency programs.

Testimony from AE's witness acknowledged the overall benefits of the EES programs. At the hearing Ms. Kimberly agreed that the utility largely designs its energy efficiency programs to pass the "total resource cost test" and analyzes its energy efficiency programs to see if the programs pass the "nonparticipant test."⁴²⁹ The total resource cost test "measures the net cost of an energy conservation program, viewing the program as a utility resource option."⁴³⁰ Ms. Kimberly agreed that if a program passes the nonparticipant test, then it may suggest that the program reduces future revenue requirements for all customers (i.e., by delaying or avoiding the need for the utility to invest in new electric generation facilities).⁴³¹

The IHE agrees with the ICA that AE's EES programs are intended to benefit far more customers than the customers who are actually receiving the programs directly.⁴³²

The IHE also is troubled by the lateness with which AE presented its proposal for re-allocation of EES. AE did not include its proposal to re-allocate EES charges with its initial rate-

⁴²⁹ Tr. at p. 241.

⁴³⁰ https://beopt.nrel.gov/sites/beopt.nrel.gov/files/help/Total_Resource_Cost_Test.htm.

⁴³¹ Tr. at pp. 241-242.

⁴³² Tr. Vol. 1, p. 239, ll. 8-17.

filing package. Further AE acknowledged at the hearing that its proposal was not fully vetted.

Further, the IHE agrees with PC/SC that, while AE's initial proposal to charge a uniform fee to all customer classes to support the EES and demand reduction program did not receive opposition from any party, AE's proposal presented for the first time in its rebuttal case is vastly different from the one it initially proposed.⁴³³ Under AE's new proposal AE would charge residential consumers inside and outside the city a proposed tariff of \$0.0047 per kWh, and all other customer classes would pay a rate of \$0.00128 per kilowatt hour (adjusted for voltage), which is about one-fourth of the residential rate.⁴³⁴

While the difference alone is not a basis for rejecting AE's new proposal, the fact remains that AE provided no new cost of service study to support its proposal.⁴³⁵ Coupled with the impact on residential customers,⁴³⁶ the element of surprise attendant to AE's new proposal, and its apparent lack of a concrete cost analysis,⁴³⁷ the IHE agrees with PC/SC that AE failed in its burden to establish the merits of its change in position.

Therefore, the IHE agrees with the ICA and with PC/SC that the EES Charge should be a uniform charge assigned to all customer classes, and the IHE so recommends to the Council.

⁴³³ AE Exh. 7, Rebuttal Testimony of Deborah Kimberly.

⁴³⁴ *Id.*

⁴³⁵ PCSC Exh. 16; Tr. Vol. 2, p. 623, ll. 13-17.

⁴³⁶ PC/SC estimates that AE's new proposal would shift about \$9.4 million to the Residential customer class. See PC/SC Closing Brief at 20 and PCSC Exh. 1 and AE Exh. 7 (Kimberly Rebuttal). The ICA notes that if adopted, the Residential customer class would likely see an increase in rates, while AE is proposing an overall decrease of about \$24 million. See ICA Closing Brief at 70.

⁴³⁷ See PC/SC Closing Brief at 21.

IV. Revenue Distribution / Allocation / Spread

Austin Energy's Position:

AE recognizes that there is disagreement among the customer classes concerning the distribution of revenues and the rate impacts on the classes. AE asserts that in its revenue distribution proposal it has attempted to recognize the continuing need to address the interclass subsidy of the Residential class and weigh the affordability concerns for both residential and commercial customers.

The first objective according to AE was to ensure that no increases were imposed on class revenue requirements in the first year of new retail rates (FY 2017). Customer classes below COS were held revenue neutral—except for T2⁴³⁸—in order for the community to engage in a substantive dialogue, using the 2014 COS study, about how quickly and how close each class should get to COS.⁴³⁹ However, because several commercial classes are significantly above COS, the second objective, according to AE, was to deliver the greatest relief to the classes furthest above COS.

AE describes its revenue distribution as follows. To achieve the goal of delivering the greatest relief to those furthest above COS, the S2 and S3 customer classes initially received a \$10.1 million reduction in annual base revenues. Of this \$10.1 million, S2 received approximately \$8.3 million, given its greatest disparity to class COS and the large number of customers assigned to the class. The remaining \$7 million reduction primarily benefited the P1, P2, and P3 classes. However, rather than distribute a pro rata share of the reduction to each customer class based on the COS results, AE also acknowledged the impacts of estimated pass-

⁴³⁸ In the fall 2015, Austin Energy designed the T2 rates to recover the full COS. By keeping the T2 class at 100% COS, the remaining customer classes are able to receive more immediate benefit from the revenue reduction.

⁴³⁹ AE Exh. 1 at 024.

through charges. Austin Energy has proposed a relatively significant change to the Regulatory Charge rate design in an effort to bring the P2 rate class closer to COS. Without any other mitigating efforts, AE contends that this change in the Regulatory Charge would likely result in a significant bill increase for P2 customers, an illogical result given the overall context of a revenue decrease. Therefore, AE proposed that P2 receive a larger share of the remaining \$7 million as an offset to what would have been an overall bill increase.

AE fundamentally disagrees with the ICA's suggestion of using a kWh allocator so that all classes can benefit from the system-wide rate reduction.⁴⁴⁰ This is because according to AE, the Residential class is already under-recovered by more than \$46.3 million with consideration of the CAP revenue adjustment, it should not be entitled to a rate decrease, an action which would exacerbate the disparity in class cost of service.

AE indicates that it intends to distribute the additional \$7 million of revenue related to CAP funds in the same manner as the first \$17.5 million: using a balance of financial, community, and technical policies. However, AE states that it has not rerun its COS study to include the \$7 million of additional revenue, so class impacts of the additional \$7 million were not reported in AE's initial brief. AE states that it will rerun the model on request from the IHE and the City Council.

AE explains that the total \$24.5 million revenue distribution proposed in this rate proceeding is the next step in the continuing and gradual approach to achieving full COS among all customer classes ("unity"). Austin Energy indicates that the first step occurred back in 2012 with the approval of the first new retail rates in nearly 20 years. Austin Energy recommends that

⁴⁴⁰ ICA Brief at 73.

additional steps be taken in rate years two (FY 2018) through five (FY 2021) to help bring each customer class closer to unity and to minimize persistent interclass subsidies.

AE addresses NXP/Samsung's and DF/ACC's recommendation that the Residential class be brought closer to COS in the first rate year. In some instances, according to AE, DF/ACC⁴⁴¹ and NXP/Samsung⁴⁴² suggest that all rate classes be brought to unity COS in the first rate year. In response, AE asserts that the Residential class has improved its class COS significantly: in 2009, the Residential class was under-recovered by over \$70 million; in 2014, that figure was \$46.3 million. AE contends that the IHE should reject such a dramatic move in the first rate year; instead, AE recommends a continuing effort to move the classes closer to unity over time.

AE also opposes DF/ACC's apparent suggestion that AE adopt a 2% increase for the Residential class in rate year one, in an attempt to keep somewhat consistent with the Council's affordability goals.⁴⁴³ According to AE, this is also inconsistent with AE's guiding principles of utilizing a deliberate, gradual approach to bringing each customer class closer to its COS, although it concedes that a 2% or 3% rate increase for residential customers phased in over rate years two through five would be acceptable.

Independent Consumer Advocate's Position:

In general, the ICA believes that based upon its own CCOS as a guide, the ICA contends that the revenue decrease should be distributed broadly among the customer classes. The ICA explains its proposed revenue distribution as follows. ICA witness Mr. Johnson used his CCOS study to determine the customer classes that are far below cost — in this case, the lighting

⁴⁴¹ DF/ACC Brief at 9.

⁴⁴² NXP/Samsung Brief at 55.

⁴⁴³ *Id.* at 13.

classes.⁴⁴⁴ For those classes, his proposal leaves the base revenues unchanged. In addition, Mr. Johnson used the CCOS study result to assign a base revenue increase to Transmission >20 MW, 85% LF.⁴⁴⁵ According to the ICA, AE's rate filing explains that this particular class' revenues are designed to be set at cost. The customer in this class pays a fixed contract and will be unaffected. The ICA contends that setting the revenues at cost ensures that other customers are not subsidizing the contract rate. Incorporating an approximate \$2 million base revenue increase for this class produces a larger revenue decrease to be distributed among the remaining classes, according to the ICA.

The ICA then proposes to allocate the revenue decrease on the basis of class shares of kWh consumption, which according to the ICA is a compromise allocation. The ICA contends that the kWh methodology produces a more favorable revenue reduction for higher load-factor customer classes, than would an equal-percentage revenue decrease. Based upon the ICA's post-hearing position—a \$63,216,000 annual revenue reduction—the ICA argues that larger percentage reductions should be applied to each customer class as follows:

Residential	-8.7%
Small Secondary	-7.1%
Medium Secondary	-9.2%
Large Secondary	-11.9%
Primary Classes	-14.7% to -20.0%
Transmission (non-contract)	-8.9%

Low Income Customers' Position:

Not addressed in briefing.

⁴⁴⁴ Exhibit ICA-1, p. 74.

⁴⁴⁵ Exhibit ICA-1, p. 74-75.

NXP/Samsung's Position:

NXP/Samsung proposes that all classes be moved to their fully allocated class cost of service in this rate review.⁴⁴⁶ NXP/Samsung asserts that even if not all of its revenue requirement recommendations are adopted, the revenue requirement reduction that is likely to result from this rate review will allow each and every rate class to be moved closer to cost recovery without undue customer impact concerns. NXP/Samsung argues that it makes sense to do this now in the context of a rate decrease case.

With respect to DF/ACC's position, NXP/Samsung agrees that it moves classes toward cost but asserts that the proposed two percent rate increase restriction for residential and commercial classes is inadequate since those classes are well above cost. NXP/Samsung take the position that the IHE should adopt DF/ACC's recommendation only if its position is not adopted.

With respect to AE's recommendation, NXP/Samsung contends that AE has done nothing to correct what it has itself referred to as "significant deviations from cost of service"⁴⁴⁷ for the residential class. 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 believes that ICA's self-serving recommendation is to make the present rate subsidy issues worse by further decreasing rates that are currently being subsidized. NXP/Samsung criticizes the ICA for downplaying the importance of cost of service studies and recommending that the results of the cost of service studies be ignored.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

⁴⁴⁶ NXP/Samsung Exh. 2 at 36-37.

⁴⁴⁷ AE Exh. 1 at 2-12.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

DF/ACC disagrees with AE because the ratemaking policy objectives of the utility and its governing body should not support and/or maintain subsidies between rate classes. According to DF/ACC, regulated utility rates are supposed to be set based on cost of service, not value of service or other considerations. Captive customers should not be forced to pay above-cost rates in order to subsidize other classes of customers. DF/ACC pointed to the PUCT's decision in a recent Southwestern Public Service (SPS)⁴⁴⁸ rate proceeding where the PUCT rejected gradualism in setting rates. Moving classes toward cost makes particular sense here according to DF/ACC since AE's own results show a revenue surplus, as was the case for SPS. The relatively rare instance of surplus provides a unique opportunity to make substantial, and possibly complete, movement toward unity without severe rate increases for any class.

DF/ACC believes that AE's allocation of its proposed system-wide revenue reduction does not adequately reduce existing subsidies even though this could be done with a moderate rate increase to the Residential class.

Moreover, DF/ACC asserts that AE wrongly chose to not follow the Texas precedent, which would require a revenue distribution that assigns the largest rate decreases to the classes that are currently the farthest above cost of service. Nor did AE use the opportunity to bring the

⁴⁴⁸ *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 43695, Final Order, December 18, 2015.

classes that are currently the farthest below cost more in line with a unity relative rate of return on an absolute dollar basis and on a percentage basis.

DF/ACC rely on the recent Southwestern Public Service (SPS)⁴⁴⁹ rate case at the PUCT to support its position. DF/ACC cited to AE's own cost allocation method which showed that Residential customers are currently paying \$53.4 million less than its cost-of-service while the Commercial classes⁴⁵⁰ are paying a combined \$53.7 million more than their cost-of-service.

DF/ACC argues that gradualism is typically applied when there are material revenue increases, and it is used to ameliorate the impacts of potentially large increases to individual rate classes. Gradualism is not a significant factor when the case involves a small rate increases or an overall reduction, according to DF/ACC.

DF/ACC explains that it had originally proposed a revenue distribution recommendation based on a 2% understanding at that time that the Council's Affordability goal limiting annual increases to 2% also applied on a class basis. DF/ACC asserts that AE interprets it to apply to only system-wide amounts, and not to individual classes or customers.⁴⁵¹ Therefore, to the extent that the Affordability goal is a limit on AE's overall rates and not rates to individual classes, DF/ACC does not seek to impose a limit on individual class rate increases.

DF/ACC notes that AE's proposed revenue distribution is based on the utility's proposed base rates but it then used test-year Pass-Through rates to measure total bill impacts. DF/ACC believes that the revenue distribution should instead be based on projected "Rate-Year" Pass-Throughs rather than "Test-Year" Pass-Throughs. According to DF/ACC this is no small matter

⁴⁴⁹ *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 43695, Final Order, December 18, 2015.

⁴⁵⁰ Commercial classes: S1, S2, S3, P1, P2 and P3.

⁴⁵¹ HOM Tr. p. 249, line 2 – p. 250, line 15. *See also* Data Foundry Exh. 6.

since Projected Pass-Throughs are approximately \$51 million less than Test-Year Pass-Throughs.

DF/ACC opposes the ICA's revenue distribution proposal, which is based on class shares of kWh consumption.⁴⁵² DF/ACC asserts that the ICA's proposal is arbitrary, inconsistent with regulatory precedent and completely ignores the results of the cost-of-service study.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE observes that in his experience, each party that presents a class cost of service ("CCOS") study is convinced that theirs is the one-and-only, sacrosanct CCOS that truly assigns cost to the cost causer. But in the IHE's experience, searching for the True CCOS is not unlike Monty Python's search for the Holy Grail. Truth in these circumstances, like beauty, is in the eye of the beholder. The best that can be said is that CCOS studies gain and lose favor over time. In the current regulatory environment in Texas, the CCOS proposed by AE is in favor and is within the bounds that the PUCT would not find offensive to its sense of "truth."

AE's proposed CCOS is generally a rational approach to assign cost to the various customer classes that AE serves. The IHE is of the opinion that AE's CCOS fairly takes into

⁴⁵² ICA Exh. 1 (Johnson Dir.), p. 75, lines 9-10.

account its unique position in the ERCOT market having to compete as a vertically integrated utility in a market where generation is deregulated.

While there was a time in decades past where the CCOS proposed by the ICA was in favor, but that day is not today. The IHE is of the opinion that adopting a BIP approach to allocating costs would invite disputes that would likely lead to the PUCT. Though that may occur irrespective of the Council's final decision in this proceeding, the IHE believes that adopting a BIP allocation methodology would make that path that much more difficult to navigate. Although it is not the primary reason the IHE recommended against adoption of the ICA's proposed BIP CCOS, it is a factor, and having rejected the BIP approach, the IHE also declines to accept the ICA's proposed distribution of revenue.

Like the ICA's BIP study, the ICA's proposed distribution of revenue is heavily dependent on energy or kWh, which is too far a departure from a CCOS more dependent on coincident-peak allocators. Moreover, by using AE's 12CP approach to allocating costs, AE's approach avoids the downside to NXP/Samsung's 4CP approach, which is too focused on 4 points in time in four summer months.

The IHE agrees with the ICA that a CCOS is but a guide to establishing the expenses that should be assigned to each customer class. Thus, the IHE disagrees with NXP/Samsung and other parties that suggest that rates must be set at the price points mathematically determined by the CCOS study. The IHE also disagrees with DF/ACC that DF/ACC argues that gradualism is to circumstances where there is an overall increase in rates or that the use of gradualism is not a significant factor when the case involves a small rate increases or an overall reduction. Under DF/ACC's theory a class of customers that under one party's CCOS was well under its "cost"

could see significant increases in rates, thus, experiencing “rate shock,” while all other classes enjoyed a decrease.

In the IHE’s view, it is precisely to recognize that a CCOS study is more a guide than a strict rule, that the Public Utility Regulatory Act (“PURA”) requires that the regulatory authority ensure that rates a utility charges are “just and reasonable” based on “reasonable and necessary expenses.” If a CCOS study were intended to be the be all to end all, then the directive in PURA would simply be to set rates based on cost and cost needed to meet the “reasonable-and-necessary” standard. But PURA expressly requires that rates be “*just* and reasonable.” And like a “true” CCOS study, what is “just” is not a fixed matter. It is subjective.

Thus, notwithstanding the volumes of trees that have died in support of one CCOS study over another, the IHE recommends that it adopt the revenue distribution proposed by AE.

AE’s proposed revenue distribution best balances the need to move toward rates that more closely align with an accepted CCOS study; the need to avoid rate shock to any particular class of customers; the need to adhere to Council policies; the need to lay the foundation for future changes in cost allocation; recognition of the Council’s affordability goals and community priorities; and finally, the want that all customer classes see some benefit from an overall reduction in revenue requirement – even if that means a slightly lower increase than would otherwise be the case.

Therefore, the IHE recommends to Council that it adopt the proposed revenue distribution AE proposed for the initial \$17.5 million revenue reduction and that the Council allocate the additional \$7 million decrease associated with the CAP program in the same manner. Further, the IHE recommends to Council that if the Council reduces AE’s revenue requirement

beyond the approximate \$24.5 million conceded by AE, that it use the same proportional relationships attendant to the \$24.5 million to distribute the additional reductions.

V. Rate Design

A. Billing Adjustment Factor

Austin Energy's Position:

AE explains that a billing adjustment factor accounts for the difference between the amount AE books as revenue and the amount it should have booked based on the billing determinants (*e.g.*, number of customers, kW and kWh) and the prevailing rates.⁴⁵³ AE asserts that it is a common adjustment in utility cases and accounts for various factors, including errors in prior billings, partial bills, and estimated meter reads. AE calculated a billing adjustment factor in this case on a system-wide basis because information for calculating it on a class basis was not available. AE opposes NXP/Samsung's recommendation to disallow the adjustment based on the lack of data. AE asserts that the failure to provide the data on a class by class basis was not to purposefully hide the data, but simply that the data was not available.

Independent Consumer Advocate's Position:

The ICA opposes NXP/Samsung's proposed adjustment to change the allocation of the \$2.9 million billing adjustment to revenues.⁴⁵⁴ According to the ICA, Mr. Goble's testimony attempts to insulate certain customer classes from the reduced revenue effect. The ICA explains that while it would have been preferable if AE could have provided data by class for this

⁴⁵³ AE Exh. 3 at 51:2-4.

⁴⁵⁴ Exhibit ICA-2, p. 12.

adjustment, in the absence of such information, insulating larger customers from this adjustment is arbitrary.⁴⁵⁵

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

NXP/Samsung opposes AE's billing adjustment since it contends that AE failed to explain how total rebilled revenues were calculated without first calculating the rebilled revenue by customer class. NXP/Samsung contends that the rebilled revenue had to come from some calculation that used the present rates by class and the associated billing determinants. NXP/Samsung further complains that AE prevented any party from examining the underlying calculations of this number by claiming customer confidentiality of information.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

⁴⁵⁵ *Id.* at p. 13.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that Council adopt AE's proposed billing adjustment factor. The adjustment accounts for various factors, including errors in prior billings, partial bills, and estimated meter reads.

The IHE further agrees with AE that there is no evidence in the record to suggest that AE purposefully hid the customer class data as asserted by NXP/Samsung. As AE explained, AE's systems do not allow for accurate base revenue reporting *by customer class*, in part because of the need to allocate revenues from certain customers who are on long-term contracts."⁴⁵⁶

The IHE also proposes that AE evaluate the ability to provide such information in future cost of service studies.

Therefore, the IHE recommends that Council adopt AE's proposed billing adjustment based on the data currently available.

B. Seasonal Power Supply Adjustment

Austin Energy's Position:

Austin Energy proposes to implement a seasonal PSA instead of charging seasonal base rates. AE proposes a seasonal PSA to improve the timely recovery of power supply costs and help maintain pricing incentives consistent with City Council's goals for energy efficiency and conservation. The PSA includes revenues from the sale of power to ERCOT, fuel costs, net

⁴⁵⁶ *Id.* at 51:12-14.

Purchased Power Agreement costs, power purchased from ERCOT to supply AE's customer load, and any adjustment for the over- or under-recovery PSA costs balance. The charge is set to recover current year power supply costs, based on the preceding year's expenditures. Because the charge is driven in large part by fuel prices, the underlying cost drivers of the PSA vary with the season. Austin Energy has a summer peaking load, meaning that on a system-wide basis, most electricity is consumed during the summer. As demand increases during the summer, the power supply is constrained, thus triggering price increases within ERCOT's competitive wholesale power market. Therefore, AE believes that a seasonal PSA is appropriate because the price of power changes with the season. AE currently accounts for seasonal power prices by charging seasonal base rates. However, according to AE, because the seasonal price differential stems from ERCOT's market prices, it is more appropriate to reflect seasonality in the PSA. Austin Energy recommends adjusting the PSA to reflect the two seasonal periods, summer and non-summer during the annual budget process in the fall which AE asserts will give customers adequate notice.

PC/SC is "concerned that the elimination of the summer rates will decrease the signal to conserve and will reduce investment in energy efficiency measures," and that "[t]he inconsistency inherent in moving the seasonal rate differential from energy rates to the PSA would reduce the incentive to conserve and would confuse customers."⁴⁵⁷ AE questions PC/SC's reliance on the statements of witness Chernick. AE contends that incentivizing conservation while also protecting customers is precisely why AE is proposing a seasonal PSA in place of seasonal base rates. According to AE, a seasonal PSA accomplishes incentivizing conservation during the summer season by increasing prices to reflect the high summer demand

⁴⁵⁷ PC/SC Brief at 24.

in the ERCOT market, but does not create as drastic a change in seasonal prices as accounting for seasonality in base rates.

Independent Consumer Advocate's Position:

The ICA supports AE's position.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Indicated in briefing that they take no position.

Public Citizen/Sierra Club's Position:

Public Citizen and Sierra Club oppose Austin Energy's proposal to implement a Seasonal Power Supply Adjustment ("PSA") charge as an alternative to summer and winter energy rates for residential customers. PC/SC are concerned that the elimination of the summer rates will decrease the signal to conserve and will reduce investment in energy efficiency measures. PC/SC points to statements made by witness Chernick that reducing summer prices reduces the incentive to conserve in the summer.

Moreover, PC/SC asserts that the inconsistency inherent in moving the seasonal rate differential from energy rates to the PSA would also reduce the incentive to conserve and would confuse customers. PC/SC contends that variation in the price difference between winter and summer prices from year to year is often significant. According to PC/SC, 2011-2015 data show that average electric prices for the four summer months was about 20 percent higher than winter prices but that the summer price premium ranges from almost 47 percent in 2011 to about negative 12 percent in 2014.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that Council adopt AE's proposal to implement a seasonal power supply adjustment ("PSA") instead of charging seasonal base rates.

The record shows that the PSA includes revenues from the sale of power to ERCOT, fuel costs, net Purchased Power Agreement costs, power purchased from ERCOT to supply AE's customer load, and any adjustment for the over- or under-recoveries in PSA-cost balances. Because the charge is driven in large part by fuel prices, the underlying cost drivers of the PSA vary with the season. AE's evidence established that by adjusting the PSA to reflect the seasonality in costs, price signals sent to customers better align with the cost of power supply in ERCOT. By contrast, AE's base rates cannot track changes in ERCOT market prices with the same flexibility.

The IHE agrees with AE that its proposed change is consistent with accepted rate-design principles, provide incentives for energy conservation, promote the efficient use of resources, and encourage consumer investment in energy efficiency by more accurately reflecting the real-time cost of power.

The IHE disagrees with PC/SC that elimination of the summer rates will decrease the signal to conserve and will reduce investment in energy efficiency measures,” and that “[t]he inconsistency inherent in moving the seasonal rate differential from energy rates to the PSA would reduce the incentive to conserve and would confuse customers.”⁴⁵⁸ The IHE agrees that by more closely tracking changes in prices in the ERCOT market, a seasonal PSA will provide consumers stronger price signals than a seasonality in base rates, where the price is fixed at either a “summer” rate or a “winter” rate, but otherwise is not directly tied to changes in prices in the ERCOT market.

Further, while the IHE finds PC/SC’s witness Mr. Chernick to be properly credentialed, the IHE did not find Mr. Chernick’s testimony persuasive. Mr. Chernick did not examine AE’s proposed change to the PSA.

Therefore, the IHE recommends that Council adopt AE’s proposal to implement a seasonal PSA instead of charging seasonal base rates.

C. Residential

Austin Energy’s Position:

Austin Energy explains that it has proposed changes to its residential rates to ensure greater revenue stability and help prevent potential erosion of the residential class’ cost recovery in the future. AE notes that while there are a number of measures that would help achieve this

⁴⁵⁸ PC/SC Brief at 24.

goal, AE has chosen to only propose adjusting the tiered pricing structure and removing seasonality from base rates in this rate proceeding. AE is not proposing a change to its customer charge, although according to AE, the COS supports increasing it. AE argues that this decision is intended to gradually address residential under-recovery so that AE's customers' bills are not significantly negatively impacted but experience only moderate bill impacts.

AE disputes AELIC's claim that AE's rate design would unfairly shift risk from AE to customers. AE explains that its proposed changes to its residential rate design address substantial changes to AE's class load characteristics since its last rate review in 2012. According to AE, while AE's residential class peak demand has moved closer to the AE system peak, there has been a downward trend of average residential energy consumption.

AE concludes that the ultimate result of these shifts is that AE is under-recovering its residential class fixed costs, which is not remedied by the recovery of reconcilable variable costs as AELIC suggests.⁴⁵⁹ This is because according to AE a basic ratemaking principle is that recovering fixed costs through fixed charges more closely aligns the customer's bill with the customer's COS.⁴⁶⁰ The TY 2014 COS analysis shows that Austin Energy needs to better align its fixed cost recovery with its fixed revenue stream because 64% of AE's costs are fixed while only 25% of AE's revenue is collected via fixed charges.⁴⁶¹ The remaining fixed costs are recovered through variable charges.⁴⁶²

Independent Consumer Advocate's Position:

The ICA did not address residential rate design in general in this section of its brief. The

⁴⁵⁹ *Id.* at 19.

⁴⁶⁰ AE Exh. 1 at 134.

⁴⁶¹ *Id.*

⁴⁶² *Id.*

ICA did however address AE's proposed customer charge, tiered energy rates, and seasonal base rates elsewhere in its brief.

Low Income Customers' Position:

AELIC addresses AE's argument that its current residential rate design needs to be altered because its current rate design poses revenue stability problems for AE. AELIC believes that AE's concern about its recovery of fixed revenues versus variable revenues is deceptive in that a great portion of its variable revenues are reconcilable and therefore less risky than its fixed revenues. AELIC asserts that 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.⁴⁶³ In other words, both the utility and the customer are made whole.

AELIC disagrees with AE's rationale for revising its residential variable base rate tier structure, which AE has done to account for potential under collections during unseasonably mild summers. AELIC notes that there is also an equal or even greater risk to the customer that the utility will over recover during extreme weather events.

NXP/Samsung's Position:

Indicated in briefing that they do not take a position.

Public Citizen/Sierra Club's Position:

PC/SC did not address residential rate design in general in this section of its brief. PC/SC did however address AE's proposed customer charge, tiered energy rates, and seasonal base rates elsewhere in its brief.

Paul Robbins' Position:

Not addressed in briefing.

⁴⁶³ Id.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

1. Customer Charge

Austin Energy's Position:

Austin Energy is not proposing a change to its residential customer charge in this proceeding. However, AE takes the position that its COS analysis supports an increase to the customer charge. During the 2012 rate review, AE's residential fixed customer charge was set at \$10.00 per month and the electric delivery (or wires) charge, was set at \$0.00 per month (i.e., there is no Residential Electric Delivery Charge).⁴⁶⁴ AE believes that, generally, these charges should reflect the minimum amount of equipment and service needed for customers to access the electric grid, since these costs vary with the addition or subtraction of customers and do not vary with energy usage.⁴⁶⁵

⁴⁶⁴ *Id.* at 144.

⁴⁶⁵ *Id.*

AE provides the following data to support its position. Austin Energy's Residential customer class has grown by 8.08% since 2009.⁴⁶⁶ The fixed customer-related costs have grown at a similar rate, but only 12.5% of these customer-related costs are being recovered in the fixed monthly customer charge.⁴⁶⁷ The remaining portion of customer-related costs is recovered in the variable energy charge within the tiered rate structure, where customer consumption is decreasing each year.⁴⁶⁸ For TY 2014, AE's COS analysis shows AE's total residential fixed costs are \$39.27 per customer per month, of which, \$21.68 is customer costs and \$17.59 is electric delivery costs.⁴⁶⁹ The current \$10.00 per month customer charge and \$0.00 per month electric delivery charge only recover about a quarter of what is identified in the COS analysis.⁴⁷⁰

AE notes that neither the ICA nor AELIC object to AE's proposed \$10 customer charge. Contrary to those parties' assertions, AE maintains that its customer charge calculation includes appropriate cost components that do, in fact, vary with the number of customers and that its COS supports a \$21.68 customer charge. Moreover, AE notes that its \$10.00 residential customer charge is less than half of the \$22.50 customer charge of the utilities surrounding AE's service territory, Pedernales Electric Cooperative and Bluebonnet Electric Cooperative, which provide a more accurate comparison than the utilities cited by the ICA that likely have different cost structures for labor and materials. Additionally, AE urges the IHE to recognize that there is no evidence supporting a \$6 customer charge for multi-family dwellings.

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.*

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.*

Independent Consumer Advocate's Position:

The ICA agrees that the current customer charge should remain unchanged.⁴⁷¹ The ICA attacks the underlying rationale for a customer charge in its claim customers have no means of controlling the size of their bill in response to a customer charge increase---other than going without electricity. The ICA argues that this access-rationing role is not consistent with public interest rate regulation.

The ICA also points out that AE's \$10 residential customer charge is currently higher than any of the other bundled electric utilities in the state: \$6.00 for ETI; \$5.00 for El Paso Electric Co.; \$8.00 for SWEPCO; and \$9.50 for Southwestern Public Service Co.⁴⁷²

The ICA disputes AE's claim that there is a cost-based justification to charge a \$22 customer charge⁴⁷³ since it believes that this position is based on including inappropriate costs in the customer charge. Given its nominal pricing function, the customer charge should only recover costs which vary directly with the number of customers.⁴⁷⁴ The ICA asserts that the AE-calculated customer unit cost includes a portion of general overhead costs, such as A&G expense, which do not vary with changes in the number of customers. However, the ICA contends that even if this type of customer charge calculation is accepted, ICA's CCOS indicates a cost of \$14.35, which is significantly closer to the current \$10 charge than AE's claimed cost.

ICA witness Clarence Johnson's estimate of the customer charge that would be directly related to the number of customers results in a \$9.35 monthly charge.⁴⁷⁵

⁴⁷¹ Exhibit ICA-1, p. 76.

⁴⁷² *Id.* at p. 77.

⁴⁷³ AE Exh. 1, Tariff Package at page 6-13.

⁴⁷⁴ ICA Exh. 1, pp. 77-78.

⁴⁷⁵ *Id.* at p. 78.

The ICA rejects PC/SC's recommendation for a \$6 customer charge for multi-family dwellings because of a lack of supporting data. In addition, since it is the position of the ICA that the residential customer charge should recover only costs which vary directly with the number of customers, limiting the customer charge to costs that vary directly with the number of customers is likely to find little differentiation between multi-family and single family residences.⁴⁷⁶ Moreover, the ICA believes it would be unwise and premature to create a different customer charge for multi-family residences in this rate case when Austin Energy has plans to study customer-related cost recovery charges for multi-family, single-family and solar customers before the next rate review.⁴⁷⁷

Low Income Customers' Position:

AELIC disputes AE's position that customer-related costs are fixed costs that "vary with the addition or subtraction of customers, not usage."⁴⁷⁸ AELIC asserts that while these costs may be "fixed" costs, most of these costs do not vary with the subtraction or addition of customers. According to AELIC, customer service, uncollectibles, key accounts, and economic development are cost components that do not vary with the addition of a customer. AELIC notes that customer-classified costs that have some relationship to the number of customers are impacted by the diversity of residential usage. Lastly, AELIC refers to ICA witness Johnson's finding that AE's current \$10 to be slightly above its cost of service.⁴⁷⁹

NXP/Samsung's Position:

Not addressed in briefing.

⁴⁷⁶ The customer charge does not include any delivery costs associated with lines, poles, and transformers. The principal cost components are customer accounting and billing, which vary on a per customer basis and which are unlikely to be affected by the type of dwelling unit.

⁴⁷⁷ AE Exh. 1, Tariff Package, Appendix E, Bates 372.

⁴⁷⁸ *Id.*, Rate Filing Package, pp. 5-11 (Bates Stamp p. 114).

⁴⁷⁹ ICA Exh. 1, Johnson Direct p. 78.

Public Citizen/Sierra Club's Position:

PC/SC supports the \$10 per month customer charge for residential customers in single-family homes, but assert that those living in multifamily housing should be charged a reduced \$6 per month customer charge. PC/SC claims that the cost of service for multi-family dwellings is significantly lower (on both a per-customer and a per-kilowatt-hour basis) than the cost of serving single-family residents.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

With regard to the Residential customer charge the IHE recommends that Council adopt AE's and the ICA's proposal to not change the charge and that it be left at \$10.00 per month.

The IHE also agrees with the ICA that the more credible evidence in the record does not support a lower charge for multi-family residences. Although PC/SC asserted that the cost of

service for multi-family dwellings is significantly lower (on both a per-customer and a per-kilowatt-hour basis) than the cost of serving single-family residents, the IHE did not find PC/SC's presentation on this point persuasive. PC/SC did not provide any calculations or analysis to support the \$6 multi-family customer charge, as noted by the ICA.⁴⁸⁰

The Low Income Customers took issue with AE's arguments that customer-related costs are fixed costs that "vary with the addition or subtraction of customers, not usage"⁴⁸¹ and argued that while these costs may be "fixed" costs, most of these costs do not vary with the subtraction or addition of customers. Similarly, the ICA disputed AE's claim that there is a cost-based justification to charge a \$22 customer charge⁴⁸² because the ICA believes that AE's position is based on including inappropriate costs in the customer charge. Nonetheless the IHE believes that given agreement that the \$10.00 customer charge should remain unchanged, the IHE leaves the dispute of the proper basis for the customer charge to another day.

In the end, the IHE recommends that the Residential customer charge remain at \$10.00.

2. Tiered Energy Rates

Austin Energy's Position:

Austin Energy proposes to modify its current five rate tiers for residential customers by raising the bottom tier rate and reducing the top tier rate, along with some refinements to the middle tiers.⁴⁸³ In particular, AE notes that Revenue collection in the lowest rate tier, currently at 1.8 cents per kWh in the non-summer period and 3.3 cents per kWh in the summer period, is unaligned with consumption in this tier: 47.3% of Austin Energy's residential base usage occurs

⁴⁸⁰ ICA Brief at 79.

⁴⁸¹ AE Exh. 1, Rate Filing Package, pp. 5-11 (Bates Stamp p. 114).

⁴⁸² *Id.* at pp. 6-13.

⁴⁸³ *Id.* at 25.

in Tier 1 while only 21.6% of revenue associated with the tiered charges occurs in Tier 1.⁴⁸⁴ Thus, AE contends that significant usage in the upper tiers must occur to offset the under-collections in the first tier.⁴⁸⁵ AE explains that because there has been more multi-family construction than single-family construction and energy efficiency programs have succeeded in lowering the average residential customer's energy use, AE anticipates under-recovery in the lower rate tiers to be a growing problem.⁴⁸⁶ Also, as pointed out by the ICA, AE's revenue collections are particularly sensitive to weather conditions with its steeper tiers.⁴⁸⁷

AE addresses concerns raised by the ICA that extreme weather events could push some customers into a higher than usual tier causing "rate shock,"⁴⁸⁸ and that low use customers in the first tier who "have little room to further reduce consumption ... may be unable to lower their bills in response to the higher rate."⁴⁸⁹ The ICA recommends assigning part of the system base revenue reduction to the residential class and using a "portion of the residential share of the base revenue reduction ... to fund the changes to the rate structure without increasing rates for the lowest tier."⁴⁹⁰ AE acknowledges the ICA's concerns, but argues that some amount of customer impact is necessary to bring the residential rate class into closer alignment with the cost to serve that class.

AE disagrees with the ICA's and PC/SC's claims that AE's proposal to modify the tiered rates will discourage conservation. AE asserts that the tiered rate structure modified according to

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ ICA Brief at 81.

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.* at 82.

⁴⁹⁰ *Id.*

AE's recommendations will continue to send conservation signals to consumers by increasing the rate with increased usage.

Independent Consumer Advocate's Position:

The ICA does not agree with the claim that high usage tiers are paying above their cost. According to the ICA, this appears to be an attempt to use the CCOS study to define whether customers of various usage levels are above or below cost. ICA witness Mr. Johnson testified that this is not an appropriate use of the CCOS study since the CCOS allocates costs to customer classes, not to individual customers or customers at various tier levels. Moreover, the ICA believes this can produce serious inaccuracies.⁴⁹¹

The ICA explains that the AE proposal would flatten the tier structure somewhat. This involves higher rates in the first tier and lower rates in higher tiers. According to the ICA, AE's objective is to increase revenue stability from the inverted block structure. The bill impact by customer usage is illustrated on AE's Schedule H-3.⁴⁹² Up to 750 kWh, the average customer bill will increase 4% - 7%.⁴⁹³ In the 750 kWh – 1000 kWh usage category, the average bill impact declines only slightly. The decrease grows to -2.5% in the 1750 – 2000 kWh group.⁴⁹⁴ The average percentage decrease for the highest usage levels is just above -1%.

The ICA does not disagree with the objective of producing more revenue stability in the rate structure, but does not agree with increasing the bottom tier. The ICA argues that during an abnormally hot summer, customers may unknowingly be pushed into a higher tier than they are

⁴⁹¹ ICA Exh. 1, p. 80.

⁴⁹² AE Exh. 1.

⁴⁹³ ICA Exh. 1, p. 80.

⁴⁹⁴ *Id.* at p. 81.

accustomed, which could produce rate shock.⁴⁹⁵ The ICA contends that many of these low use customers have little room to further reduce consumption, and may be unable to lower their bills in response to the higher rate.

The ICA's revenue reduction recommendation assigns part of the system base revenue reduction to the residential class. The ICA argues that a portion of the residential share of the base revenue reduction should be used to fund the changes to the rate structure without increasing rates for the lowest tier.⁴⁹⁶ Thus, the ICA believes that AE could achieve its desired reduction in the steepness of the tier structure, but also maintain the basic rate levels for the first tier. According to the ICA, after using part of the base revenue reduction for this change, any remaining residential base revenue reduction amount should be used to reduce all tiers equally.⁴⁹⁷

Lastly, the ICA suggests that AE should study the changing the number of tiers before its next rate case. However, changing the number of tiers in this case, without the benefit of that study, would be overly disruptive and could produce unintended consequences.⁴⁹⁸

Low Income Customers' Position:

The Low Income Customers links elimination of the base rate seasonal differential and moving it to the PSA (as discussed above) and AE's current tiered rate design. Presumably if the PSA is changed to a "seasonal" rate, then the Low Income Customers would prefer that AE maintain its current rate tier differentials to minimize the loss of the conservation effect caused by the seasonal differential elimination.

⁴⁹⁵ *Id.*

⁴⁹⁶ *Id.*

⁴⁹⁷ ICA Exh. 1, p. 81.

⁴⁹⁸ *Id.* at p. 82.

AELIC asserts that AE's elimination of the seasonal differential coupled with increasing the first tier rates and decreasing all other tier rates materially decreases the conservation effect of AE's inclining block rate structure. AELIC refers to ICA witness Johnson's testimony 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.⁴⁹⁹ In proposing to not only eliminate the seasonal differential but increase the tier least susceptible to price, AELIC criticizes AE for performing no elasticity of demand study to determine how its changes will affect the goal of conservation.⁵⁰⁰

A second reason AE encourages that the current tier differentials be maintained is because AE's proposal makes its first and second tier virtually equal in base rate cents per kWh recovery, taking into consideration all components of the base rates.

Lastly, the Low Income Customers contend that the current tier structure should be maintained to recognize that AE incurs more costs to serve large users.

NXP/Samsung's Position:

Indicated in briefing that they do not take a position.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

⁴⁹⁹ ICA Exh. No. 1, Johnson Direct at p. 81.

⁵⁰⁰ Tr. p. 592, AELIC cross of Dombrowski.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that Council approve AE's proposed changes to the tiered structure of its rate design.

AE's proposed changes are necessary to better align revenue collections in the lowest tier with consumption. Absent a change, AE anticipates under-recovery in the lower rate tiers to be a growing problem.⁵⁰¹ Also, as AE noted, significant usage in the upper tiers must occur to offset the under-collections in the first tier.⁵⁰²

To moderate the impact of potential "rate shock," a valid concern the ICA raised, and recognizing the importance of gradualism in making rate adjustments, the IHE agrees that these changes be implemented in year one, prior to assessing any additional charges on the residential class to move the class closer to its theoretical cost of service. AE's proposal of creating a more moderate rate structure by moving certain residential class tiers closer to cost of service balances

⁵⁰¹ *Id.*

⁵⁰² *Id.*

policy priorities of gradual customer impact with appropriate intra- and inter-class subsidies, while achieving greater revenue stability.

Therefore, the IHE recommends that Council approve AE's proposed modifications to its tiered rate structure.

3. Seasonal Base Rates

Austin Energy's Position:

Austin Energy is proposing to eliminate seasonality in its base rates. AE asserts seasonality is more appropriately reflected in rates through a seasonal PSA. Austin Energy based its recommendation to eliminate seasonality in base rates on findings from its COS study that the underlying base rate cost drivers do not vary significantly with the season.⁵⁰³ AE explains that this is in part because the base rates recover costs that are primarily fixed in nature and are less influenced by seasonal price volatility.⁵⁰⁴ In addition, AE argues that seasonal base rates have increased AE's financial risk because a large portion of its revenue requirement is designed to be recovered in the summer months, which creates a financial incentive to increase sales while at the same time encouraging its customers to improve their energy conservation efforts.⁵⁰⁵ According to AE, this effect is inconsistent with AE's policies.⁵⁰⁶ Additionally, AE believes that removing the seasonality from base rates will benefit customers by resulting in more predictable monthly bills that are easier to manage financially due to less seasonal volatility.⁵⁰⁷

⁵⁰³ AE Exh. 1 at 136.

⁵⁰⁴ *Id.*

⁵⁰⁵ *Id.* at 136-37.

⁵⁰⁶ *Id.* at 137.

⁵⁰⁷ *Id.*

AE addresses PC/SC's concerns that "[a]bandoning the summer and winter energy rate differential would risk ending the pattern of increased efficiency that the existing summer tiered energy rates have created"⁵⁰⁸ and the seasonal PSA "would not provide the consistent signal" to conserve that seasonal base rates provide. AE responds that the seasonal PSA will continue to incentivize conservation by reflecting an increased price during high demand periods, but the seasonal price variation will be less drastic than seasonal base rates, and thus, less financially challenging for customers.

Independent Consumer Advocate's Position:

The ICA indicated in briefing that it does not object to AE's proposal to eliminate the seasonality in base rates and establish a seasonal Power Supply Adjustment.

Low Income Customers' Position:

AELIC addresses this issue in Section V.C.2. ("Tiered Energy Rates").

NXP/Samsung's Position:

Indicated in briefing that it takes no position.

Public Citizen/Sierra Club's Position:

PC/SC opposes Austin Energy's proposal to eliminate the summer and winter rate differential in residential energy rates. PC/SC argues that abandoning the summer and winter energy rate differential would risk ending the pattern of increased efficiency that the existing summer tiered energy rates have created.⁵⁰⁹ PC/SC contend that customers would have to get used to another new rate design and the proposed alternative of a summer and winter PSC would not provide the consistent signal found in the summer and winter energy pricing.

⁵⁰⁸ PC/SC Brief at 28.

⁵⁰⁹ AELIC Exh. 1. NewGen Strategies & Solutions Memo, p. 9.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

For the reasons discussed in the section addressing the Power Supply Adjustment, and establishment of a seasonal PSA, instead of seasonal base rates, the IHE recommends that Council approve AE's proposal to eliminate the seasonality in base rates.

D. Non-Residential Customer Charge

Austin Energy's Position:

AE indicates that no party objects to its proposed non-residential customer charge. AE addresses the ICA's request that, "AE should avoid raising the small commercial customer charge in the next rate review, if possible," and "refrain from shifting costs from energy rates to the demand charge in the next rate review." In response, AE indicated that cannot commit to future handling of individual rate components in the next rate review.

Independent Consumer Advocate's Position:

The ICA does not in general object to AE's rate design for the S-1 and S-2 (small commercial) rate classes. The ICA expressed concern about AE's adherence to strict fixed/variable pricing and the stated desire to pursue pricing that promotes high load factor. The ICA is concerned that AE will continue to use this philosophy to increase the customer charge for S1 and S2 in the future, shifting more costs from energy rates to the demand charge in the future.⁵¹⁰

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Not addressed in briefing.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

⁵¹⁰ ICA Exh. 1, p. 85.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE is not aware of any opposition to AE's proposed rate design for non-residential rates. Therefore the IHE recommends that Council approve AE's proposed non-residential rate design.

However, the IHE also agrees with the ICA that Council should be mindful that approval of AE's proposal should not be taken as approval of a philosophy to increase the customer charge for S1 and S2 in the future, shifting more costs from energy rates to the demand charge in the future. Those issues should be subject to review and debate in the next rate case.

E. Load Shifting Voltage Rider and Additional Demand Response and Storage Tariffs**Austin Energy's Position:**

In order resolve concerns regarding its current Thermal Energy Storage tariff, AE recommends creating a Load Shifting Voltage Level discount rider for commercial customers that can shift a year-round load using various, non-fuel based storage technologies. PC/SC supports the proposal but advocates several changes. AE supports changes to the title of the tariff and tariff language. AE is receptive to creating a load shift rider for residential customers and to explore other types of demand response tariffs. AE prefers to develop these ideas in a pilot program. AE opposes PC/SC's proposal that any storage-related pilot programs be developed with stakeholder, Electric Utility Commission, Resource Management Commission,

and City Council participation, except as required by Council policy.⁵¹¹ AE explains that once pilot programs are completed and the data validate the idea's feasibility, AE will consult with relevant stakeholder groups, City of Austin Boards and Commissions, and the City Council prior to rolling out full programs.

Independent Consumer Advocate's Position:

Indicated in briefing that it does not take a position.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Not addressed in briefing.

Public Citizen/Sierra Club's Position:

PC/SC support Austin Energy's proposed Load Shifting Voltage Rider, but request that the name should be clarified and a version should be created for residential customers.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

⁵¹¹ AE Exh. 2 at 49:1-50:15.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

No party voiced opposition to AE's proposal to create a Load Shifting Voltage Level discount. In fact, PC/SC noted its support of such a tariff.

But PC/SC also recommended that the name of the tariff and the tariff language be clarified to better describe its intent. AE also supported PC/SC's recommendation to create a load-shift rider geared for residential customers and to explore other demand response tariffs focused on different storage technologies.

The one disagreement with creation of this new tariff was the process by which it would be created. PC/SC suggested any storage-related pilot programs be developed with stakeholder, Electric Utility Commission, Resource Management Commission, and City Council participation, except as required by Council policy.

AE by contrast preferred to first complete a pilot program and then to present, after it has validated the data and the program's feasibility, that then AE would consult with relevant stakeholder groups, City of Austin Boards and Commissions, and the City Council prior to rolling out full programs.

The IHE does not pick one way over the other in this situation because matters of process are outside the IHE's domain and are left to Council's discretion.

In any event, the IHE recommends approval of creation of a Load Shifting Voltage Level discount rider for commercial customers that can shift a year-round load using various, non-fuel based storage technologies.

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

Austin Energy's Position:

AE explained that in its initial filing, the demand billing determinates for customers in the S2 and S3 customer classes with less than a 20% load factor were reduced by a greater amount than what would likely be experienced in the rate year. This adjustment was based on aggregated data rather than individual bills.

AE further explains that when the proposed rates were applied to the proper billing determinants, it resulted in AE over-collecting its revenue requirement. AE asserts that this error was first noticed in discovery and AE made this adjustment in rebuttal testimony. The revised approximation is based on individual bills of customers with less than a 20% load factor. The energy charges for the S2 and S3 customer classes were recalculated at a 20% load factor to receive their target revenue requirement and reduce the over-recovery produced.

The new proposed rates are less than what was proposed in the COS study. As noted, the initially developed rates would have resulted in an over-recovery. This adjustment is being made to keep AE from over-collecting its proposed revenue requirement.

Independent Consumer Advocate's Position:

ICA supports Austin Energy's rebuttal testimony adjustment to limit bill impacts.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Not addressed in briefing.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE is not aware of any opposition to AE's proposal to adjust the demand billing determinants for customers in S2 and S3 customer classes as proposed in AE's rebuttal testimony. Further, the ICA supports AE's proposal as set forth in AE's rebuttal testimony.

Therefore, the IHE recommends Council adopt AE's proposal.

G. Group Religious Worship Discount

Austin Energy's Position:

Austin Energy recommends that the City Council discontinue the discount for certain group religious worship accounts, commonly called House of Worship (“HOW”) accounts as intended by the 2012 rate review. AE explains that prior to the Council’s adoption of the new tariffs in 2012, HOW accounts were typically billed under the residential rate schedule; during the 2012 rate case, AE states that there was recognition and agreement that HOW accounts should be moved to the appropriate commercial customer classes. Additionally, there was concern that special rates for churches were “no longer common in Texas and any such rate treatment would likely be disallowed by the PUC in a rate appeal.”⁵¹² During the transition period, qualifying HOW accounts were eligible for a rate cap for an electric meter that serves a “religious sanctuary” used primarily for group religious worship services open to the public.

AE explains that the current HOW rate cap is set such that the average rate for monthly service will not exceed \$0.13051 per kWh.⁵¹³ In addition, billing demand for HOW accounts that are billed demand charges is based on measured weekday demand. The Council phased in the elimination of the HOW discount upon the conclusion of the next rate review (i.e., the current case). No new HOW accounts would receive the discount after the date of the Council ordinance approved June 7, 2012. Council later voted to extend the HOW discount to new HOW accounts established after the adoption of the June 7, 2012 ordinance.

AE responded to the complaint of the ICA that removal of the HOW rate cap will expose those ratepayers to rate shock. AE referred to Mr. Dreyfus’s testimony that contained rebuttal of that claim. Specifically, Mr. Dreyfus testified that S1 customers are not subject to demand

⁵¹² AE Exh. 9 at 28:9-12.

⁵¹³ See applicable tariff at <http://austinenergy.com/wps/wcm/connect/e269c3f9-e09b-40eb-9afc-3b9abc24b67c/SecondaryVoltage.pdf?MOD=AJPERES>.

charges, do not incur additional fixed cost recovery, and are unaffected by the change in the S2 class boundary. Only the smallest S1 customers will be affected by the elimination of the rate cap, as the cap is not binding on many S1 customers. Similarly for the S2 class, neither the \$2.50 monthly increase in the customer charge nor the expansion of the S2 class contributes to rate shock. In addition, the load factor floor proposed by Austin Energy would have mitigated the rate impact for 78% of HOW S2 bills had it been in effect in the test year. Mr. Dreyfus stated that he anticipates a similar benefit if Austin Energy's rates proposals are adopted. While elimination of the rate cap and including the weekend in billing demand will affect the bills of some S2 HOW customers, Mr. Dreyfus testified that this will not implicitly lead to rate shock for the majority of HOW accounts.

With respect to the ICA's argument that the HOW discount not be lifted until the completion of customer studies, AE argued that the proposed studies are unnecessary insofar as these studies are unlikely to resolve any perceived concerns of those HOW customers. AE supports the ICA's recommendation to reach out to HOW accounts about the discount. AE witness Dreyfus responded to Mr. Johnson's proposal that AE absorb the discount by pointing out that it is Austin Energy's policy, as adopted by the City Council in the rate proceeding in 2012, that whenever discounts are offered to a set of customers, those discounts are passed back to the customers in the same rate class as the customers receiving the discount.

AE also addresses the arguments made by BUMC. Mr. Dreyfus pointed out in his rebuttal testimony that the HOW discount, like all discounts, is funded from customers in the same class as the HOWs receiving the discount. The transition nature of the HOW discount accommodation assured these customers of the temporary nature of the subsidy they have been

required to bear. In addition, AE asserts that it has made a significant effort to reach out to HOW accounts.

Independent Consumer Advocate's Position:

ICA recommends extending the current transition mechanisms for Group Religious accounts until the next rate review, and after completion of Austin Energy's proposed studies of S1 rate class and of demand charges for commercial customers who peak outside the AE system peak. The ICA clarifies that the HOW discount is a transition mechanism that was established by Council in 2012 to "mitigate rate shock"⁵¹⁴ for those HOWs that would experience large bill increases when they were moved from the residential to the commercial class.⁵¹⁵ The ICA referred to the approach taken by El Paso Electric in its 2009 to support its position to extend the HOW discount.

The ICA argues that rate shock continues to be a concern for a number of the HOWs. A variety of factors coincide in this rate request to create rate shock conditions; these include the loss of the rate cap, the loss of the weekday-only demand measurement, AE's effort to place greater cost recovery on fixed charges, and expansion of the size of the S2 class from 50 kW to 300 kW as the upper limit.

Among the studies Austin Energy proposes prior to the next cost of service assessment is a study of the rate structure for the S1 class and a study of demand charges for customers peaking outside AE system peak.⁵¹⁶ Both of these studies could result in rates that would mitigate the rate shock that some HOWs will experience under the proposal in this rate case.

⁵¹⁴ AE Exh. 1, Tariff Package at p. 6-43, Bates 174.

⁵¹⁵ *Id.*, Section 6.8.3.

⁵¹⁶ *Id.*, Attachment E.

The ICA thus argues that the discounts should not be eliminated without the benefit of the studies.

The ICA also argues that HOW customers provide beneficial load diversity (as measured by customer peaks vs. system non-coincident and coincident peaks) which is not recognized by demand charge pricing. Also, the ICA contends that it is not fair to subject some HOWs to significant rate increases while doing nothing to mitigate these rate increases.

The ICA thus recommends extending the transition for HOWs—retain the cap of 13.051 cents per kWh and the practice of measuring peak usage only during weekdays. The ICA further recommends that preferably, AE should absorb the discount, instead of re-allocating the cost to other customers. The ICA believes that the transition should not end until after the two studies referenced above have been completed and the next rate case is completed.⁵¹⁷ The ICA recommends also that AE continue outreach to HOWs, prioritizing those who would experience the largest rate increase absent the transition.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Indicated in briefing that they take no position.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they take no position.

Paul Robbins' Position:

Not addressed in briefing.

⁵¹⁷ ICA Exh. 1, p. 90. In addition, the IHE should order AE to include HOW customers in the two studies above.

Bethany United Methodist's Position:

Bethany United Methodist Church (BUMC) asserts that elimination of the HOW discount will result in rate shock. Specifically, BUMC explains that estimated bill impacts indicate that that S1 HOWs' rates will increase by 1% to 23% while other S1 customers will see a decrease of 2% to 6%; S2 HOWs' rates will increase by 28% to 34% while other S2 customers will decrease 5% to 12%; and S3 HOWs' rates will increase 22% while other S3 customers will decrease 1% to 3%.

BUMC asserts that the size and distribution of the HOW Customers are defined such that 298 (68%) in Rate Class S1 & S2 and 143 (32%) in S3. According to BUMC, there are a lot of small users who are difficult to reach and most of them will suffer rate shock. The BUMC notes that HOWs are billed largely on demand, which will also harm small users. The BUMC also asserts that a 20% load factor floor would ameliorate some of the effect of the elimination of the HOW discount, but that there would still be rate increases. BUMC points to the El Paso Electric discount process for additional support of its position. BUMC also refers to ICA witness Johnson's testimony that churches may use power briefly on the weekends, but that the demand charges result in bills which exceed their cost impact on the system. BUMC asserts that AE's efforts in communicating the effect of the elimination of the discount was not sufficient. BUMC also refers to certain proposed studies that AE has not completed.

Therefore, BUMC requests: 1. To extend the transition and continue the rate cap, and the weekday measurement of demand; 2. Apply the 20% Load Factor Floor to S2 and S3 customers including HOW customers; 3. Provide for HOW customer involvement and completion of the study of weekend demand customers; and 4. Provide more guidance and coaching from AE with

collaboration from HOW interest and denominational groups to get the word out, especially to the hundreds of small HOWs.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

Ultimately, continuing, or not, the HOW discount is a policy decision, but the IHE recommends that the HOW discount be discontinued. No party, including the ICA and BUMC could point to a cost-of-service basis for distinguishing HOWs from other similarly situated customers with respect to the discount policy. Thus, the IHE agrees with AE that at the conclusion of current transition period, the HOW discount be discontinued.

While the ICA and BUMC raised numerous concerns with potential rate shock, the evidence suggests that moving HOW customers to the S1 and S2 rates will not have the negative impacts of which BUMC and the ICA are concerned.

As Mr. Dreyfus testified elimination of the rate cap will not lead to rate shock. The S1 customers are not subject to demand charges. It is demand charges that in large measure result in high bills to low-load factor customers. Also, S1 customers will not incur the additional fixed cost recovery, and S1 customers are not affected by the S2 class boundary.

Further, only the smallest S1 customers will be affected by elimination of the rate cap. Also, the IHE agrees that an increase of \$2.50 in the customer charge, which no party opposed, for the S2 customers can be said to comprise shock.

The evidence AE presented also showed that had the proposals AE presents in this case were in effect during the test year, AE's proposed load-factor floor would have mitigated the rate impact for 78% of bills to HOW customers in the S2 rate class.

With regard to funding of the HOW discount, should the Council decide to continue the discount, the IHE agrees with AE that the discount be funded from other customers in the same class of customers to whom the HOW discount is available.

Regarding the ICA's contention that HOW customers provide beneficial load diversity, the IHE is not persuaded that the evidence in the record supports the ICA's contention.

The IHE agrees with BUMC and the ICA that AE should undertake a concerted effort to notify customers eligible for the HOW rate of the effect of elimination of the HOW discount.

VI. Value of Solar ("VOS") Issues

A. Commercial

Austin Energy's Position:

AE does not support PC/SC's proposal that AE implement a commercial VOS rate in the 2016–2017 Tariffs.⁵¹⁸ AE contends that a comprehensive review of AE's solar rate structures would be necessary before adopting a new VOS, and proposes a stakeholder engagement process and the development of a glide path "to prevent sudden changes to customers' bills or utility costs."⁵¹⁹ AE argues that commercial customers are encouraged to size their solar installations so

⁵¹⁸ See PC/SC Brief at 29-33.

⁵¹⁹ *Id.* at 10:4-6.

that they meet the customer's daytime load,⁵²⁰ not so that the customer can feed excess electricity back onto the grid.⁵²¹ Thus according to AE, because of this underlying assumption about commercial solar installations, simply implementing a commercial VOS without undertaking the necessary inquiries could negatively impact the AE distribution system.⁵²²

AE disagrees with PC/SC's claim that the commercial VOS must be adopted now because current commercial solar incentives are set to expire before AE will conduct its next rate review.⁵²³ This is erroneous according to AE because it presupposes that AE will not undertake another base rate review until 2021 and ignores the fact the VOS question is a narrow and discreet issue that could be handled separately from a full COS review.

Independent Consumer Advocate's Position:

Indicated in briefing that it supports the position taken by AE in its rebuttal testimony.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Indicated in briefing that they do not take a position.

Public Citizen/Sierra Club's Position:

PC/SC believes that the existing Value of Solar tariff should be expanded to apply to commercial customers. PC/SC's recommendation is that commercial customers with solar installations be billed for their consumption and demand, just as they would if they did not have solar.

⁵²⁰ Tr. at 911:9-12.

⁵²¹ Tr. at 922:15-21.

⁵²² See Tr. at 924:3-4.

⁵²³ See PC/SC Brief at 31.

PC/SC asserts that Austin Energy’s current policies for treatment of commercial customers’ on-site solar installations fail to provide fair compensation for value provided to the utility. PC/SC contend that while Austin Energy offers net metering to commercial customers with solar installations that are 20 kilowatts or less, commercial customers with installations larger than 20 kilowatts receive no compensation for energy that flows back to the grid.⁵²⁴ Commercial installations sized at 1 megawatt or less are currently eligible for a performance-based incentive (PBI) from Austin Energy; however, PC/SC believes that is insufficient compensation.

Moreover, PC/SC point out that the PBI is scheduled for elimination by 2020, at the latest. If the customer sited solar goal is met prior to 2020, the PBI will be ended at that time.⁵²⁵ In the meantime, “incentives – including the PBI – will be lowered as more capacity is installed between now and when the program is completed.”⁵²⁶ While PC/SC do not disagree with the reduction in the incentives over time, the reality, according to PC/SC, is that reducing the PBI accentuates the problem caused by Austin Energy’s lack of a policy to fairly compensate commercial customers with solar installations larger than 20 kilowatts for the energy they provide to the utility.

PC/SC points out that the issue of how or if commercial customers will be compensated for energy produced by on-site solar installations should not be confused with the need to ensure that such systems do not harm the utility’s infrastructure.

⁵²⁴ PCSC Exh. 17.

⁵²⁵ PCSC Exh. 25 “Austin Energy’s solar incentive program is expected to remain in place until the earlier of 2020 or the date by when local solar goals are met.” Ms. Kimberly contradicted this policy in her testimony at the hearing (Tr. Vol. 3, p. 918, l. 20 – p. 922, l. 2), but our understanding of the policy stated in the Austin Energy Resource, Generation and Climate Protection Plan to 2025 (PCSC Exh. 4, p. 5) is aligned with the written response Austin Energy provided to our request for information provided in Exhibit 25.

⁵²⁶ PCSC Exh. 25.

PC/SC makes the additional point that the Value of Solar tariff was specifically designed to be independent of the rates and fees that customers are charged for electric consumption. The formula used to calculate the Value of Solar rate in no way incorporates consumption rates or fees.⁵²⁷ PC/SC believes that there is no need to develop a new Value of Solar formula for commercial installations. Production from commercial customers' on-site solar installations is already incorporated into the calculation of the Value of Solar rate.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends to Council that, until there is a comprehensive, stakeholder-involved process to review the issues raised by the potential introduction of a commercial VOS, that Council not adopt a commercial VOS tariff during this rate proceeding.

⁵²⁷ Jim Rourke Exh. 3.

With regard to compensation to commercial customers that install solar, the IHE agrees with AE that those installations are intended to be sized more to meet the customer's needs than as a source of revenue to the customer or as a means of producing excess energy to flow back into AE's grid.

The IHE finds credible Ms. Kimberly's explanation that before adopting a new VOS tariff, it is prudent to undertake a comprehensive review of AE's solar rate structures.

The IHE does, however, suggest to Council that it provide a date by when AE should undertake that comprehensive review so that commercial customers that may be interested in such a solution may pursue it.

B. Community Solar

Austin Energy's Position:

AE opposes PC/SC's request at this time for a value of community solar since AE is undertaking steps necessary to finalize the design of this new tariff.

Independent Consumer Advocate's Position:

ICA recommends a process for stakeholder engagement and analysis for a Community Solar tariff before the tariff is approved.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Indicated in briefing that they do not take a position.

Public Citizen/Sierra Club's Position:

PC/SC supports the establishment of a Value of Community Solar tariff as a tool to compensate community solar subscribers. PC/SC notes that while Austin Energy has not made a

final decision about how to structure the community solar program, it supports a contemplated proposal that customers to pay up-front or monthly subscription fees for capacity at the community solar installation and be compensated for production from that capacity based on a Value of Community Solar tariff.⁵²⁸

In addition, PC/SC asserts that whenever possible, rates and tariffs should be set as part of a rate case, as opposed to on an ad hoc basis. PC/SC believes that establishing the Value of Community Solar tariff as part of this rate case will ensure transparency and provide opportunities for meaningful public input. Setting the Value of Community Solar tariff ahead well ahead of program roll-out will aid in program success by allowing Austin Energy staff time to respond to any concerns.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

⁵²⁸ PCSC Exh. 26, p. 8.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that Council await finalization of AE's development of the design for a community solar offering. AE noted that it expects to have the new community solar system operational by the end of 2016 with development of a tariff by the beginning of September, 2016.

The record in this proceeding does not provide sufficient data upon which to base PC/SC's proposed rate design and compensation options. Therefore, the IHE recommends to Council that it await the conclusion of AE's pending assessment of a community solar tariff.

C. Residential

Austin Energy's Position:

In response to concerns expressed by intervenor Jim Rourke, AE prepared a table which outlines the various components of the VOS value, their definitions, and the formula used to determine the values.⁵²⁹ AE supports the inclusion of the table in its tariff.

Independent Consumer Advocate's Position:

ICA has no objection to including the formulas for the residential VOS tariff in the tariff schedules.⁵³⁰

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Indicated in briefing that they do not take a position.

⁵²⁹ See VOS Methodology table, Jim Rourke Exh. 3.

⁵³⁰ Tr. p. 680, ln. 23 through p. 686, ln. 13.

Public Citizen/Sierra Club's Position:

PC/SC support maintaining the existing Value of Solar tariff for residential customers.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Mr. Rourke requests that the VOS tariff rider be revised more clearly to include more information on how the VOS Rate is calculated and to clearly identify and define the components of the rate. Mr. Rourke indicates that AE has agreed to and no other party is opposed to his proposed revisions.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that Council adopt Mr. Rourke's recommendation to include more information in the VOS tariff to explain how the VOS Rate is calculated and more clearly identify and define the components of the rate. No party, including AE, opposed Mr. Rourke's recommendation.

VII. Policy Issues

A. Funding Discounts

Austin Energy's Position:

AE proposed several changes to the structure of some of its discounts, but did not does propose changing the funding of its discounts. AE opposes the ICA's position recommendation for "imputing the value of the \$5.8 million annual discount given to outside of city residents, rather than including this amount as a cost to be borne by other ratepayers,"⁵³¹ and its claim that "it is unreasonable to force inside customers to pay higher rates as a result of the discount."⁵³²

In response to ICA's position, AE concedes that the purpose of the PUCT Docket No. 40627 was to avoid future litigation and was part of its strategy to protect customers against potential financial risk.

AE asserts that the ICA's suggestion for imputation is such that the discount is paid out of AE's margin. However, according to AE, this would also ultimately result in AE's customers bearing the cost of the discount, which is exactly what the ICA opposes. AE reasons that paying the imputed revenue out of AE's margin would deplete AE's reserves and working capital.⁵³³ AE would then need to recover these depleted reserve revenues from all customers at a later date.⁵³⁴ Therefore, AE concludes that customers end up paying for the discount regardless.

Lastly, AE believes that it is not unreasonable to pass this cost to inside city customers since they are the ones receiving the benefit of risk mitigation.

⁵³¹ ICA Brief at 92.

⁵³² *Id.* at 93.

⁵³³ *Id.* at 13:2-3.

⁵³⁴ *Id.* at 13:4-5.

Independent Consumer Advocate's Position:

ICA recommends imputing the value of the \$5.8 million annual discount given to outside of city residents, rather than including this amount as a cost to be borne by other ratepayers inside the city. ICA proposes imputing the level of class revenues as if outside city customers paid a revenue level corresponding to inside city service. According to the ICA, this “holds harmless” inside city customers for the settlement negotiated with representatives of outside city customers, and properly reduces the level of “under recovery” that AE has assigned to the residential class.⁵³⁵

According to the ICA, Austin Energy testified the purpose of the discount is to mitigate litigation risk.⁵³⁶ However, the ICA contends that it is unreasonable to force inside customers to pay higher rates as a result of the discount. The ICA explains that the revenue imputation ensures that the cost of the discount is paid out of AE’s margin rather than forcing inside city customers to pay higher rates to support the outside city discount. Moreover, the ICA asserts that this is comparable to AE’s decision when it originally agreed to the discount. After the Docket No. 40627 settlement was entered, AE did not increase inside city customers’ rates to pay the shortfall. The ICA believes that this means that the cost of the discount was paid out of the utility’s margin.

Low Income Customers' Position:

Not addressed in briefing.

⁵³⁵ Although AE would not place this issue in its proposed briefing outline under the Revenue Requirement section, the ICA’s proposal for revenue imputation of the \$5.8-million-dollar discount is added to its Revenue Requirement calculations, due to the fact that the record of this proceeding contains no cost of service based justification for the discount.

⁵³⁶ AE Exh. 2, p. 12.

NXP/Samsung's Position:

Indicated in briefing that they do not take a position.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

For the reasons noted by AE, the IHE recommends to Council that it continue to fund the rate differential between outside-city rates and inside-city rates, from inside-city ratepayers.

The discount in effect was to “buy peace” with those ratepayers that filed a petition with the PUCT seeking review of the rates the City set for AE in in Texas PUC Docket No. 40627. Thus, to the extent that peace holds, the basis for the discount – to mitigate the risks and related costs of litigation – continues.

Should the discount fail in its purpose after the Council sets final rates in this proceeding, the Council may always revisit the merits of maintaining the discount.

Further, the IHE recommends to Council that funding of the discount be accomplished from all customer classes. The record is voluminous and AE may indeed have proposed funding of the discount from all customer classes, but the IHE was not able to locate that recommendation in AE's testimony and Mr. Dombroski's rebuttal testimony does not expressly state how the discount is recovered from the customer classes. But given that all customer classes benefit from the mitigation of the risk of litigation that the discount is intended to accomplish, all customer classes should share in bearing the cost of the discount. Further, the IHE recommends that the same manner in which AE's rate-case expenses are assigned to the various customer classes be the basis for assigning responsibility for recovery of the discount.

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

Austin Energy's Position:

Austin Energy recommends that the revenue requirement reductions for outside customers that were agreed to during the 2012-2013 PUC proceeding in Docket No. 40627⁵³⁷ be sustained in this 2016 COS and retail rate review. The basis for the recommendation is the same as the basis for the terms of the settlement in 2013: reasonable public policymaking associated with risk mitigation.

The Docket No. 40627 settlement adopted several rate differentials for customers outside the City of Austin. Outside city residential customers received a revenue requirement reduction of \$5,425,441. Outside city commercial classes received a base rate reduction of \$326,451. The

⁵³⁷ PUC Docket No. 40627 intervenor Data Foundry, while not a signatory to the agreement, agreed that it would not oppose the issuance of the final order in that proceeding consistent with the terms of the agreement. *See Petition by Homeowners United for Rate Fairness to Review Austin Energy Rate Ordinance No. 20120607-055*, Docket No. 40627, Finding of Fact No. 30 (Apr. 29, 2013).

residential reduction was achieved in part by adjustments to the five-tier residential rate structure initially adopted by the City Council.

AE opposes Paul Robbins' and PC/SC's positions on the issue. Contrary to his own assertion, Mr. Robbins admitted that the cost to serve out of city ratepayers is no greater than the cost to serve in city ratepayers, according to AE. AE also referred to the position taken by HURF that the Docket No. 40627 settlement to support AE's position that the perceived litigation risk is a real concern for AE, and the strategy to avoid another appeal of its retail rates by HURF is a reasonable way to mitigate that risk. AE argues that Mr. Robbins' alternative assertion that AE should stop paying franchise fees to other cities in its service territory does not recognize the function franchise fees play in the MOU business model. AE contends that the franchise fee payment is a reasonable way to compensate cities for lost revenues and to pay for the right to serve customers in these outside Austin areas.

According to AE, PC/SC states that the five-tier rate structure sends stronger conservation pricing signals than a three-tier rate structure, and that therefore AE should send the same pricing signal to all residential customers by restoring the five-tier rate structure to out of city residential ratepayers. PC/SC offers no evidence to support its theory that price elasticity in a three-tier structure is significantly different than a five-tier structure, especially when the rate of incline between the tiers is as high as it is for AE's residential customers. AE asserts that lower usage customers are paying a higher amount compared to inside city customers for similar consumption.

Independent Consumer Advocate's Position:

ICA does not oppose the proposal made by Austin Energy to maintain the discount negotiated in Texas PUC Docket No. 40627 conditioned on the revenue imputation proposal discussed in Section VII.A.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Indicated in briefing that they do not take a position.

Public Citizen/Sierra Club's Position:

PC/SC proposes that the residential rate structure for inside and outside customers should be similar. PC/SC maintains that the present three-tiered rate structure for outside the city limits provides less incentive to conserve than the five-tier rate structure. PC/SC points out that if a slight discount should be provided to outside the city limits of Austin customers-such as that contained in the settlement -- that does not mean the rate structure must be fundamentally different.

Paul Robbins' Position:

Mr. Robbins opposes AE's payment of a franchise fee to other municipalities in its service territory. Mr. Robbins contends in testimony (not addressed in post-hearing briefing) that the discount is warranted since out of city customers are getting more benefits based on the relative size of AE's in city and out of city service areas. Mr. Robbins requests that a cost of service study be conducted to ascertain the costs of serving in city and out of city customers.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

HURF supports that portion of the Austin Energy rate-filing package, which maintains the out of city discount as filed. HURF's primary policy argument for the discount has been that its customers receive no direct city services, so the General Fund Transfer provides no direct benefit to HURF customers. HURF asserts that there is an absence of any meaningful data upon which to justify a higher cost of service for out of city customers.

HURF asserts that Paul Robbins' testimony that out of city costs are higher based on a percentage of service territory is suspect.

HURF does not believe that PC/SC's request to extend the 5 rate tiers to the out of city customers is necessary or that it will produce any additional significant reduction in energy use because AE's rate proposal actually increases rates for Austin Energy customers outside the city for eight months out of the year. Therefore, HURF does not consider that this will significantly further conservation. Moreover, HURF notes that while outside customers represent 13.6 % of the customer base, they represent 22% of the energy and solar rebates and there thus seems to be more than enough actual existing incentive for them to conserve.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that the Council maintain the rate differential between outside-city rates and inside-city rates. As noted above (regarding recovery of the discount provided to the outside-city ratepayers), the discount is the price of avoiding potential, if not likely, litigation.

With regard to Mr. Robbins' contentions that the discount should be eliminated because it costs more to serve outside-city ratepayers, there is no credible evidence to support his claim. The IHE also rejects Mr. Robbins' proposal that AE should somehow refuse to pay other cities' franchise fees given that AE is providing outside-city ratepayers a discount. Payment of franchise fees by AE, are unrelated to payment of rates by customers. A city has the right to require compensation for use of its public property, and the franchise fees those cities may impose serves that function.

As to PC/SC's proposal to modify the tiered structure of rates charged outside-city ratepayers, the IHE finds no credible evidence in the record to support PC/SC's claim that a 3-tiered structure (as is in place for outside-city ratepayers) provides any less incentive to conserve and improve efficiency of use of electricity than does the 5-tiered structure (in place for in-city ratepayers).

Lastly, the IHE agrees with AE regarding the import of the settlement in PUC Docket No. 40627. Most, if not all settlements in rate cases at the PUCT, are of no precedential value and the signatories each agree that no party is agreeing to any particular rate-setting philosophy. Thus, the IHE observes that HURF's characterization that the 2013 settlement agreement somehow acknowledged that outside-city ratepayers receive no benefit from the General Fund Transfer, is but an opinion held by HURF without foundation in the record or in the settlement reached in PUC Docket No. 40627.

C. Piecemeal Ratemaking

Austin Energy's Position:

Austin Energy generally agrees with the ICA's position that AE's rates should not be changed between rate proceedings outside of the already established PSA and pass-through charges. However, AE noted that there may be circumstances that warrant making an exception to this policy. AE noted that as a result of wholesale and retail deregulation, as well as many other changes in electric utility law over the past decade, piecemeal rate-making has become more commonplace, citing to several examples permitted by the PUCT as well as the Austin City Council. AE claims that the City's process to set pass through charges allows for adequate public participation, in response to NXP/Samsung's complaints that it is not.

Independent Consumer Advocate's Position:

The ICA recommends that Council should not adopt changes in rates or rate design, outside of the already established PSA and pass-through charges, during the time period in between rate review proceedings. The ICA explains that there is an interrelationship among many cost of service components (i.e., expenses, investments, revenues) within a test year.⁵³⁸

When adjustments are made to electric rates for one item of expense outside of a full rate review of all components, then a mismatch can occur which distorts the overall cost of service.⁵³⁹

The ICA explains that this proceeding has allowed unprecedented public involvement and scrutiny of Austin Energy's electric rates and that rate changes that may occur subsequent to this proceeding would not be subject to the same amount of scrutiny.

The ICA asserted that while the Council and public may assume this proceeding will set rates until the next such rate review, AE has indicated that may not be their intent.

⁵³⁸ ICA Exh. 1, p. 103.

⁵³⁹ *Id.* at p. 103.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

In opposition to AE's position, NXP/Samsung argues 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.⁵⁴⁰ Though NXP/Samsung recognize that there are some adjustments allowed as riders at the PUC, NXP/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. NXP/Samsung believes that they should therefore be vetted in a comprehensive rate proceeding such as this proceeding. NXP/Samsung cites to Austin City Ordinance No. 20120607-055, which states that "[t]he Council adopts as policy that Austin Energy's *rates* should be reviewed at least once every five years" (emphasis added).

According to NXP/Samsung, 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.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

⁵⁴⁰ NXP/Samsung Exh. 1 at 12.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE is in general agreement with the ICA and NXP/Samsung's concerns with setting rates in a piecemeal manner. Setting rates on a piecemeal basis usually means that only a very limited portion of the utility's costs are reviewed, which means that while increase in expenses in one area are under scrutiny, decreases in other areas, or increases in overall revenue, are ignored.

The IHE also agrees with AE that in proceedings before the PUCT, there are numerous proceedings that address a limited area of the utility's costs. As AE notes, the Legislature identified specific categories of expenses that may be reviewed outside a general rate proceeding. These include adjustments to fuel costs; ERCOT fees; transition-to-competition charges; and changes under the PUCT's rules for Fuel Factors (16 Tex. Admin Code § 25.237) ("TAC"); Power Cost Recovery Factors (16 TAC § 25.238); Transmission Cost Recovery Factors (16 TAC § 25.239); Distribution Cost Recovery Factors (16 TAC § 25.243); Advanced Metering charges (16 TAC § 25.130); and Energy Efficiency Cost Recovery Factors (16 TAC § 25.181(f)).

The IHE agrees that the Council as the regulatory authority in the first instance with regard to Austin Energy, has broad discretion to define processes for setting rates, including

review of limited areas of AE's costs outside a general rate review. And a key factor in such proceedings is the extent that affected ratepayers have a fair opportunity to evaluate the utility's proposed change in a particular rate. As NXP/Samsung point out proceedings at the PUCT focused on a particular rate item or cost adjustment undergo a higher scrutiny than the analysis that generally available during a City Council budget process.

Ultimately how the City implements changes in rates is a policy decision for Council to make. However, the IHE strongly cautions against piecemeal ratemaking. Beyond the inability to undertake a review of all the "pluses" and "minuses" that comprise a utility's cost of providing service, piecemeal ratemaking tends to engender a lingering distrust in the process.

Thus, the IHE recommends that the Council give serious consideration to NXP/Samsung's suggestion to provide a process, either through the City's budget process or otherwise, that affords affected stakeholders the opportunity for greater scrutiny of AE's pass-through charges.

D. Service Area Lighting

Austin Energy's Position:

AE explains that its rate schedules include a tariff for SAL, a cost-based rate that recovers the costs of providing electric service for illumination (*i.e.*, streetlights) and traffic signal service on public streets and highways. The tariff applies uniformly to these services whether those services are provided to accounts inside the City of Austin or outside. For customers inside the City of Austin, the costs to fund SAL are collected through the SAL component of the CBC. Austin Energy does not collect a SAL component of the CBC from customers outside the City of Austin.

With respect to arguments raised by AELIC, AE contends that because of the public benefit all customers within Austin receive from street lighting, it is well within the Council's purview to assess customers inside the City of Austin for the provision of this public benefit through the unbundled CBC.⁵⁴¹ AE asserts that AELIC presented no evidence as to how the other 150 MOUs or electric coops collect street lighting service in their rates.

Independent Consumer Advocate's Position:

Indicated in briefing that it does not take a position.

Low Income Customers' Position:

AELIC argues that AE's position wrongfully shifts costs since it is neither fair nor reasonable to compel electric users to pay for a service over which they have little or no control and perhaps no need, that is, a service provided by the City of Austin that is utilized by more than just AE customers that live within the City limits. In addition, AELIC contends that it is inconsistent with the practice of other utilities. AELIC also asserts that it is discriminatory for AE to recover the cost of providing SAL based on whether customers are located within the City or outside the City. Lastly, AELIC contends that the SAL rate affects the affordability of rates charged AE's in-city, residential and commercial customers.

NXP/Samsung's Position:

NXP/Samsung asserts in its brief that it supports the arguments made by other intervenors.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

⁵⁴¹ AE Exh. 9 at 26.

Paul Robbins' Position:

Did not address this issue in briefing.

Bethany United Methodist's Position:

Did not address this issue in briefing.

Data Foundry's Position:

Did not address this issue in briefing.

HURF's Position:

Did not address this issue in briefing.

Jim Rourke's Position:

Did not address this issue in briefing.

ARMA's Position:

Did not address this issue in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends to Council that it adopt AE's proposal for recovery of costs associated with providing streetlight services.

While the Low Income Customers raised numerous concerns with regard to AE's Service Area Lighting ("SAL") tariff,⁵⁴² the Low Income Customers provided no credible evidence to support their allegations that the tariff (1) inappropriately shifts costs onto AE's retailed residential and business customers; (2) is inconsistent with other utilities in Texas; (3) discriminates against inside city customers; (4) exacerbates affordability concerns; and (5) that the costs should be allocated to the City of Austin.

⁵⁴² For a succinct summary of the many allegations the Low Income Customers raised, see Austin Energy's Closing Brief at 130.

The IHE finds that AE's evidence and testimony support maintaining the SAL charge as proposed by AE.

E. Power Production Costs and Rate Treatment

Austin Energy's Position:

AE contends that there is no precedent on which parties can rely when deliberating the appropriateness of the retail base rates of a MOU operating in the ERCOT wholesale.

AE explains that prior to the introduction of the nodal market in 2010, the company's strategic objectives created a direct causal relationship between AE's generating assets and its customer base. According to AE, its ratepayers realized ten years of savings valued at approximately \$1.2 billion compared with average retail rates in the competitive market during that period.⁵⁴³

With the implementation of the nodal market in late 2010, though, AE states that the direct, easy to understand relationship between AE's retail customers and AE's generation business unit ("Power Production") operations dissolved. AE asserts that no longer were its generation resources directed for use by its retail customers; instead, all energy produced was sold into a centralized, wholesale market and all energy bought was purchased from the same centralized, wholesale market. As with deregulation in 1999, AE contends this significant and fundamental change to the market structure altered AE's strategic objectives.

AE argues that because AE's retail customers also own the utility's wholesale assets, the most direct way to causally link the cost and benefits is to recognize the revenues earned from sales of electricity into the wholesale market with an offset to the Power Supply Adjustment paid

⁵⁴³ It is no coincidence that the savings AE's customers realized during this time period corresponded with the time period of normal to high average natural gas prices. When the natural gas market rapidly declined, starting in 2009, the traditional cost-benefit ratio started falling as well.

by customers for wholesale market purchase (among other expenses), which AE characterizes as a hedge value. AE's Power Production group breaks the hedge value into two distinct strategies. First, AE operates the utility's resources to maximize unit availability so that the fleet is ready to run when wholesale market prices merit dispatch. Second, AE attempts to predict when market prices might expose AE's retail customers to unfavorable price volatility. According to AE, the hedge value then results in a separate revenue stream that offsets part of the costs of owning and operating the utility and protects retail customers (who are also the owners) from significant financial risk due to market volatility.

AE argues that hedging programs rarely turn a profit because their basic objective is to minimize the potential downside of a transaction. AE asserts that the same is true of AE's Power Production strategies: these resources are not solely focused on maximizing revenue, they are focused on protecting AE's customers from market volatility by being available when prices merit dispatch.⁵⁴⁴ That AE may not have earned enough revenue to cover both the variable and fixed costs of owning and operating its generation resources is a result of wholesale market pressure due to historically low natural gas prices, not because of some fundamental problem at AE. In fact, AE argues, it is a phenomenon being experienced by nearly every competitive generation company in the market today.

AE explains that the difference between the revenues earned in the market and the revenue required to meet long-term financial investment strategies is called the "missing-money" problem and has been debated extensively over the past five years at ERCOT, the PUC and the Texas Legislature. There is nothing unique to AE's performance or to the results of hedging in a historically low market situation.

⁵⁴⁴ As noted above, Power Production also has other, non-financial objectives that are included in its strategic planning.

AE explains that generation resources are offered into a wholesale nodal market that is priced based on short-run variable costs—costs which including fuel, unit start-up costs, and variable operations and maintenance costs (“O&M”).⁵⁴⁵ Merchant generators (and MOUs with competitive generation business units) typically offer their resources at the short-run variable cost of the generating unit.⁵⁴⁶ If a generation company is able to sell energy from that unit for more than the unit’s short-run variable cost, then the company can recover some of its long-run costs. AE believes that notwithstanding claims made by NXP/Samsung,⁵⁴⁷ there is no market guarantee that generators can or will earn more than the short-run variable cost. AE contends that in the event that they do not earn revenue to cover those costs, shareholders (for merchant generators) and customer-owners (for MOUs) are ultimately responsible to bear those costs.

AE asserts that despite DF’s effort to question the validity of the relationship between AE’s retail customers and its wholesale activities, it is clear that its customer-owners interact with the utility in a fundamentally different way than do shareholders of a merchant generator or customers of a competitive retailer: AE’s customers serve both roles simultaneously.

AE believes that intervenors have confused the relationship between the utility and its customer-owners because they appear to not understand how an MOU functions in the ERCOT nodal market.

⁵⁴⁵ AE Exh. 3 at 26-27.

⁵⁴⁶ In the energy-only market, energy offers are ordered from least to greatest costs and the price of the last unit required to meet system demand sets the price for electricity in that moment. Generation companies typically minimize their offer price to include only the short-run variable cost to make it more likely the unit is selected for dispatch. Offers above the short-run variable cost would increase the offer price and make it less likely that the resource would be selected for dispatch.

⁵⁴⁷ NXP/Samsung Exh. 2 at 41:18-20.

Independent Consumer Advocate's Position:

ICA disagrees with Data Foundry's assertion that Austin Energy's production plant is "dedicated" to the wholesale market and should be included in retail rates and recommends the IHE reject this argument and Data Foundry's related adjustment to revenue requirement. ICA's position is consistent with the rebuttal testimony of Dr. Dreyfus for Austin Energy.⁵⁴⁸

The ICA compares AE to all of the investor-owned bundled utilities in Texas that buy and sell power in real time wholesale markets that do not exclude the associated power-plant fixed costs from retail rate base. According to the ICA, only plant allocable to native-load wholesale customers pursuant to FERC cost-of-service tariffs are excluded from those utilities' retail rate base. AE has no comparable native load wholesale customers. The ICA argues that AE is no different than El Paso Electric Co. (EPE) or Southwestern Public Service Co. (SPS), which include power plant investment in retail rate base, but use revenues from opportunity sales of power and purchases of power on the wholesale market as an offset to retail revenue requirement.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Indicated in briefing that they do not take a position.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Not addressed in briefing.

⁵⁴⁸ AE Exh. 9, p. 51-53.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

DF/ACC assert that AE's captive retail ratepayers are presently paying at least \$200 million dollars per year more than they would if Austin had competitive choice and ratepayers could use competitive REPs instead of AE. DF/ACC dub this a "No Choice Penalty." DF/ACC contend that prices charged to retail ratepayers in the Texas competitive market typically do not include the wholesale generators' fixed production costs, which mostly consist of Operations and Maintenance expenses.

AE's retail ratepayers, on the other hand, pay customer and distribution charges, but the price they must pay includes all of AE's production costs, both fixed and variable, whereas in customer choice areas the user bears only short run variable costs. DF/ACC calculate that \$200,778,242 represents AE's production costs that are not short run marginal costs. DF/ACC contend that inclusion of this amount as part of the retail base revenue requirement (and then approved retail rates) is not just or reasonable; and thus, DF/ACC contend that allowing recovery of those costs would be unjust and unreasonable, arbitrary, capricious, an abuse of discretion or unwarranted exercise of discretion.

DF/ACC explain that the move to a wholesale market and then to the nodal approach led to an undeniable fact: much of AE's generation was originally dedicated to serving its native retail load, but things have materially changed. DF/ACC assert that all of AE's generation is now exclusively and inescapably dedicated to servicing the ERCOT wholesale market.⁵⁴⁹

⁵⁴⁹ HOM Tr. p. 167, line 11 – p. 168, line 4.

DF/ACC argue that AE's generation now has absolutely no direct relationship, and does not in any way relate, to the power actually consumed by AE's retail customers. According to DF/ACC, the assets are not used by or useful to retail ratepayers and the ongoing operational costs are not reasonable or necessary retail costs. DF/ACC believe that the *only* connection is that AE's wholesale "settlements" revenue is deposited in the Power Supply Adjustment ("PSA") account and – along with some other "benefits" from things like "hedging" – serves to reduce to some extent the amount retail ratepayers contribute toward AE's purchased power costs ("Load Zone Cost").⁵⁵⁰

DF/ACC applaud AE for forthrightly explaining that its wholesale settlements payments are not booked as a credit to the base revenue requirement. Instead they credit against the PSA balance and count against AE's Wholesale Fuel Related Costs, which are debited in the PSA. According to DF/ACC, AE insists, however, that the PSA composition and calculation is not part of this case. Nonetheless, DF/ACC believe that AE does want to require retail ratepayers to fund AE's Wholesale Fixed Costs in base rates.

DF/ACC argue that AE's claim to net benefits is entirely based on willful exclusion of the Wholesale Fixed Costs when calculating the claimed "benefits." According to DF/ACC, the evidence clearly demonstrates that the "benefits" are far outweighed by the relevant costs, once you actually consider all relevant costs. The "benefits" (if such they can be called) all accrue to the PSA, not the base rates even though almost half of the costs are in base rates. DF/ACC believe that base rate inclusion of the Wholesale Fixed Costs cannot be allowed merely on account of speculative and non-quantified subjective notions about benefits accruing to PSA prices that are squarely not in issue in this case.

⁵⁵⁰ Data Foundry Exh. 3; see also *inter alia* HOM p. 178, line 20 – p. 180, line 8.

DF/ACC believe that AE's alleged \$98 million PSA "benefit" does not exist. DF/ACC argue that that figure is merely the extent to which AE received revenues over and above its Wholesale Fuel Related Cost, and then the relatively small \$4 million in "hedging" savings. DF/ACC argue that this ignores AE's Wholesale Fixed Costs. DF/ACC assert that the test year results show that there were \$210 million in Wholesale Competitive Losses Charged to Retail Ratepayers, and the best information in the record indicates that may worsen.

DF/ACC point out that AE's witnesses repeatedly touted the benefits of "hedging,"⁵⁵¹ but the information in the rate-filing package shows that the "hedging" benefit, while theoretically plausible, has not in fact provided significant monetary support against retail base or even PSA pass-through rates and will not be in position to do so, as long as gas prices remain relatively low.

DF/ACC argue that in order to be consistent about entirely separating wholesale activities from retail activities, the Council consider changing calculation of the PSA revenue requirement so that it is no longer reduced by the revenues associated with AE's revenue related to the Net Thermal and Renewable Generation and Bilateral Power, and any other claimed benefits, including hedging.

DF/ACC acknowledge that is true that AE does not have "invested capital" *per se* so there is no need to debate the amount of allowable invested capital for return purposes. DF/ACC explain that AE's debt is a proxy for invested capital, and AE is seeking to recover \$58,314,647

⁵⁵¹ Mr. Dombrowski said AE suffered a net loss on hedging. Ms. Ball (and Data Foundry Exh. 3) reflect a \$4 million net gain. *Compare*, HOM Tr. p. 156, lines 1-19 (net loss) with pp. 166, line 9 – 167, line 6 (net \$4 million gain). Data Foundry will accept Ms. Ball's representation purposes of argument since it is consistent with Data Foundry Exh. 3.

in “production-related” debt service⁵⁵² even though the “debt” is related to plant that is no longer used by or useful to retail ratepayers.⁵⁵³

According to DF/ACC AE is also claiming there should be an allowed “return” or profit through the \$105,000,000 General Fund Transfer (“GFT”).⁵⁵⁴ Data Foundry repeats that if an asset is not used and useful, then no “return” or recovery of debt service may be allowed in base rates. According to DF/ACC, this means that neither the \$44,297,706 in GFT associated with the \$308,047,663 in Wholesale Fixed Costs, nor the \$58,314,647 in “production-related” debt service may be recovered in rates because these amounts are related to assets and costs that are not used by or useful to retail ratepayers and therefore are not reasonable and necessary expenditures.

In addition, DF/ACC explain that any ongoing costs AE incurs to operate the non-used and useful assets are by definition not reasonable or necessary and must be disallowed from the regulated base revenue requirement. Therefore, according to DF/ACC, the \$308,047,663 in claimed production demand costs (Wholesale Fixed Costs With GFT) must be disallowed.⁵⁵⁵

⁵⁵² Schedule A, line 16, Column E, Bate 767; Schedule C-3, line 6, Column E, Bate 822, Workpaper C-3.1, line 6, Column F, Bate 823.

⁵⁵³ AE witness Dombrowski recognized the legal problem with trying to recover debt-related costs pertaining to plants that are not presently used and useful to current from retail ratepayers at HOM Tr. p. 607, lines 15-22:

15 Q Okay. So wouldn't you also agree that there
16 might be legal or regulatory challenges to Austin
17 Energy if the utility were to try to recover the debt
18 on a plant that has already been retired?
19 A Yes. I believe there's a regulatory rule
20 called “used and useful” that collecting -- paying debt
21 off an asset that's no longer in service could cause a
22 problem.

⁵⁵⁴ Schedule A, line 18, Column K, Bate 767.

⁵⁵⁵ If the GFT – Wholesale Fixed portion, which equals \$44,297,706, is sent to some other item so it can still be recovered, then the Wholesale Fixed Costs Without GFT, which equals \$263,749,957, must still be disallowed.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that Council reject DF/ACC's arguments. While interesting, fundamentally DF/ACC's arguments ignore the unique circumstances of a vertically integrated utility operating in the ERCOT nodal market.

The IHE will not here repeat AE's arguments for rejecting DC/ACC's other parties' similar arguments. The IHE agrees with AE's rationale for retaining in AE's overall rate structure, recovery of its production-related expenditures. AE's customer-owners interact with the utility in a fundamentally different way than do shareholders of a merchant generator in the ERCOT nodal market, or customers of a competitive retailer: AE's customers serve both roles simultaneously. Thus, the IHE agrees: the MOU-ERCOT, nodal-market paradigm has changed the relationship between the utility and its customers, but that change does not mean, as suggested by DF/ACC, that costs of production should not be recovered through AE's rates.

In the end, DF/ACC present a facile argument for a complex relationship in which AE's customers are at once the owners of AE's production plant and its ratepayers that operate in a market where some entities' production plant is not subject to rate regulation and yet AE's in effect is.

The IHE recommends to Council that it approve AE's approach to recovery of its expenditures related to production plant.

F. Studies Supporting Future Cost of Service

Austin Energy's Position:

Austin Energy proposes certain studies be conducted prior to AE's next comprehensive rate review. AE's proposed studies are listed in Appendix E of the RFP and include studies on the following issues: tier structure of residential rates; lifeline study of minimum residential energy uses; customer-related cost recovery charges for multi-family, single-family, and solar-installed residences; charges for three-phase residential customers; rate structure for secondary voltage service 1; downtown network rates; peak usage measurement; and power factor charges.⁵⁵⁶

AE indicates that the positions of the ICA and PC/SC are not inconsistent with AE's recommendation. However, AE does not agree with PC/SC's position that studying residential solar customers "would be a waste of money."⁵⁵⁷ This is because studies of residential solar customers could help determine how to expand residential solar or how best to develop a commercial solar tariff.

In addition, AE strongly disagrees with PC/SC's assertion that an additional study is needed before reducing the steepness of AE's tiered rate structure⁵⁵⁸ since AE has already determined that adjusting its tiered rate structure is appropriate.

⁵⁵⁶ AE Exh. 1 at 372-73 (Appendix E).

⁵⁵⁷ *Id.*

⁵⁵⁸ *Id.*

Independent Consumer Advocate's Position:

ICA has two recommendations with regard to studies supporting future cost of service: 1) there should be no change to the House of Worship transition until after the study of weekend demand is completed; and 2) AE should provide opportunities for customer involvement in these studies.

In addition, the ICA recommends:

- The identified studies should be completed prior to the next rate review. Austin Energy has agreed to this, but with the caveat that they are contingent on Council approval and funding.⁵⁵⁹
- Austin Energy should engage the Electric Utility Commission (EUC) and stakeholder groups during the study process. Stakeholder groups for residential customers should include groups such as residential consumer advocates, low-income advocates, solar advocates and representatives of ratepayers outside the City. Houses of Worship and representatives of small business should be included as stakeholders for the non-residential studies.
- Austin Energy should provide technical expertise to the EUC and stakeholder groups during these studies. It is essential for the public, and the Council, to know the bill impacts of various proposals that could be considered under each of these studies. The EUC and most stakeholders typically would not have access to the technical assistance to run alternative rate designs, review the final approved cost of service study, etc.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Indicated in briefing that they do not take a position.

⁵⁵⁹ AE Exh. 9, p. 65, l. 1-5.

Public Citizen/Sierra Club's Position:

PC/SC supports a study to evaluate a reduced customer charge for multifamily residents. PC/SC believe that it is very likely that multifamily residents cost the utility less to serve and should therefore be charged a reduced fixed customer fee. PC/SC opposes studies focused on customers with on-site solar installations because Austin Energy already has a well-designed method for ensuring that residential solar customers are both compensated for the value they provide and are paying their fair share of costs.

Before any changes are made to reduce the steepness of the tiered residential rates, PC/SC contends that a study should be done to examine the impact on energy conservation and low-income customers.

PC/SC also believe that studying the cost of service between serving inside city versus outside city customers is also needed and will help determine to what extent different rate design and structures should be implemented.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

Undertaking any particular study is not without cost and whatever studies are undertaken in the future do not affect rates to be set from this proceeding. Further, deciding which studies to perform, is purely a policy decision by Council.

Nonetheless the IHE supports that AE undertake the studies AE identified in its list of studies and also supports the ICA's recommendations that to the extent reasonably feasible, should be completed prior to the next rate review; generally should engage the Electric Utility Commission (EUC) and stakeholder groups during the study process; and should provide technical expertise to the EUC and stakeholder groups during these studies. Based on the IHE's experience with the processes AE follows, these all appear consistent with the approach AE typically takes in such matters.

G. Customer Assistance Program**Austin Energy's Position:**

AE requests that the IHE recommend to Council that no changes are currently needed to the CAP discount enrollment process. AE disagrees with Paul Robbins' position that stricter screening in the enrollment process is needed because AE currently enrolls people in the program who should not be eligible.

AE explains that it has made certain modifications to the program and is continuing to evaluate the process and is regularly updating City Council on progress made.⁵⁶⁰ AE believes that this incremental process is the correct approach to take and requests that the IHE

⁵⁶⁰ *Id.* at 11:5-18.

recommend that City Council take no specific action at this time with respect to the CAP enrollment process.

Independent Consumer Advocate's Position:

Indicates in briefing that they agree with AE.

Low Income Customers' Position:

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, but disagrees as does AE that changes in addition to those already planned, should not be made at this time.⁵⁶¹ AELIC believes that a review and assessment of the recent and planned changes to the enrollment process should be made before any future changes are made.⁵⁶²

NXP/Samsung's Position:

NXP/Samsung indicated in briefing that they support the recommendation made the Austin Energy Low Income Customers.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Mr. Robbins argues that Austin Energy is mispending some of its rate-based administrative funds to enroll and/or assist the wrong customers in its Customer Assistance Program (CAP) bill discount for low-income ratepayers.

Mr. Robbins explains that CAP is intended to discount bills for low-income customers. Since 2013, participants to the CAP program have been automatically enrolled by matching participants in social service programs such as food stamps, Medicaid, and the Children's Health

⁵⁶¹ *Id.* at p. 11

⁵⁶² *Id.*

Insurance Program (CHIP) with electric accounts. However, a household is eligible if anyone enrolled is using one of these social service programs, not just the person who pays the bill. Mr. Robbins believes that this has led to a flawed system where even people that live in mansions can sometimes be enrolled. For example, if a wealthy customer takes in a foster child who automatically qualifies for CHIP, their household will receive the CAP discount.

Mr. Robbins performed a study that showed that Austin Energy customers had more than double the CAP participants as water and drainage utilities. Mr. Robbins contends that AE opposed his discovery requests for relevant information and therefore he cannot make a realistic estimate of the number of ineligible enrollees.

Mr. Robbins thus requests that CAP administration be changed to stricter automatic enrollment screening requirements and/or income verifications, similar to the way the majority of surveyed utilities operate their low-income discount programs.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends to Council that it make no changes to AE's current eligibility requirements for its Customer Assistance Program ("CAP") or to the recent modifications AE has undertaken to the program.

The more credible evidence in the record regarding eligibility criteria for CAP and the steps AE takes to administer the CAP is that presented by AE.

H. Customer Satisfaction

Austin Energy's Position:

In response to the ICA's recommendations, AE responded that it does not believe that any specific Council action is required with respect to improving customer satisfaction.

AE states that as a customer-owned utility, Austin Energy is always focused on improving customer satisfaction levels. AE also notes that it receives high customer satisfaction scores when customers directly interact with representatives of the utility.⁵⁶³

Independent Consumer Advocate's Position:

ICA recommends Austin Energy develop a plan to improve its customer satisfaction ratings, specifically related to the findings of the survey referred to as the "overall satisfaction survey", with a reported satisfaction rating of 59%.⁵⁶⁴

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

Indicated in briefing that they do not take a position.

⁵⁶³ AE Exh. 7 at 19:4-8.

⁵⁶⁴ ICA Exh. 1 p. 92 ln. 2 through p. 94, ln. 9.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE does not recommend any particular action by Council regarding measurements or steps to take with regard to customer satisfaction. As with studies to undertake, the IHE believes the Council is in a much better position as is the EUC, on directing AE on what steps it should or should not take to improve either measurements of customer satisfaction, or customer satisfaction itself.

I. Pilot Programs

Austin Energy's Position:

Austin Energy requests that the IHE recommend to Council that no action is needed on any of the pilot program issues at this time. Three intervenors, AELIC,⁵⁶⁵ the ICA,⁵⁶⁶ and PC/SC⁵⁶⁷ raised various issues about current and proposed Austin Energy pilot programs.

Concerning the ICA's and AELIC's concerns about the current residential prepayment pilot, AE asserts that if it opts to pursue expanding or extending the prepay pilot program, Austin Energy will take into consideration the various questions and concerns raised by the ICA and AELIC. AE argues that it would be premature for Council to take any action on this pilot program as it will close later this fiscal year.⁵⁶⁸

PC/SC requested that either Council adopted the new programs proposed by PC/SC or that AE be directed to develop new pilot programs to test new tariffs related to demand response and storage technologies.⁵⁶⁹ AE is opposed to these requests since "any new programs will take time and resources to develop and will not be properly developed within the timeframe of the current rate process."⁵⁷⁰

⁵⁶⁵ AELIC Brief at 34-38.

⁵⁶⁶ ICA Brief at 100-103.

⁵⁶⁷ PC/SC Brief at 36.

⁵⁶⁸ AE Exh. 6 at 18:11-16.

⁵⁶⁹ PC/SC Brief at 36.

⁵⁷⁰ AE Exh. 2 at 48:19-20.

Finally, AELIC, ICA, and PS/SC all make recommendations that seek to modify Austin Energy's general pilot program development process.⁵⁷¹ AE recommends rejection of these proposals because they would negatively impact Austin Energy's ability to timely develop effective pilot programs.

Independent Consumer Advocate's Position:

The ICA raised concerns about AE's prepayment plan pilot project. The ICA argues that the proposal would apply different service conditions, and arguably less consumer protections, for participants in the program, as compared to normally billed residential customers. In addition, the ICA argues that even if a prepayment program is not specifically targeting low income or payment troubled customers, the benefit of not having to supply a security deposit in order to have prepayment service is likely to attract such customers. The ICA asserts that other utilities have experienced a higher number of disconnections and spikes in disconnections through their prepayment programs.

Low Income Customers' Position:

AELIC contends that 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's utility code. AELIC asserts that the absence of public participation causes AE to miss significant issues that should be considered before any pilot is designed and implemented.

With respect to AE's prepayment pilot program, AELIC believes that the utility has given little thought to the applicability of the customer protections set out in the City's utility code to the pilot's prepayment tariff customers. AELIC also considers that AE has not given sufficient

⁵⁷¹ See, e.g., PC/SC Brief at 36 and ICA Brief at 103.

thought to the usability of its web portal for the prepayment program. AELIC argues that AE's failure to allow payment plans in the prepayment program is a violation of state law. AELIC is concerned that the absence of public input into the design and implementation of pilot programs can lead to programs that pose health and safety concerns.

For pilots in general, ICA's testimony made several recommendations, including that stakeholder input should be sought in the development of the pilot, and proposed pilots should be reviewed by the Electric Utility Commission and the Council, separate and apart from the budget process.

NXP/Samsung's Position:

Indicated in briefing that they do not take a position.

Public Citizen/Sierra Club's Position:

PC/SC agree with the ICA's and AELIC's concerns that clear timelines with an end date, a public participation process including stakeholder engagement, Electric Utility Commission and Resource Management Commission consultation, and City Council input should be required for the development of any pilot project, and to the extent a pilot program will become permanent, even more input and public process should be required. PC/SC supports the ICA's position on these issues.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

As with future studies to undertake, or establishing eligibility criteria for AE's CAP, the IHE believes that how AE undertakes pilot programs is a matter within the purview initially of the EUC, and ultimately, within the Council's policy discretion and its decisions in this proceeding regarding how AE should undertake its pilot programs, or which pilot programs to pursue, will not affect the rates it sets in this proceeding.

Thus, the IHE makes no specific recommendation regarding AE's existing pilot programs, pilot programs it should or should not undertake, or how AE should undertake those programs.

J. Pick Your Own Due Date

Austin Energy's Position:

The ICA recommends that Austin Energy be required to implement a "Pick Your Own Due Date" for customers "as soon as it is technically feasible to do so"⁵⁷² which the ICA asserts would allow AE to offer customers the ability to choose the date within their monthly billing cycle when their bill is due. Austin Energy explains that it is planning to offer this program to customers who receive monthly assistance from a government program or who are able to

⁵⁷² ICA Brief at 104.

demonstrate a hardship. AE states once the specifics of the program are finalized, AE will publicly announce the program in advance of the implementation of the pick your own due date option.⁵⁷³

Independent Consumer Advocate’s Position:

ICA recommends Austin Energy should be required to implement a “Pick Your Own Due Date” option for consumers as soon as it is technically feasible to do so, and then publicly promote this billing accommodation to its consumers. According to the ICA, this option allows the utility to offer each customer the ability to choose the timing of their monthly billing cycle, allowing for a customized due date each month that best suits that customer’s bill paying patterns.

Low Income Customers’ Position:

Not addressed in briefing.

NXP/Samsung’s Position:

Indicated in briefing that they do not take a position.

Public Citizen/Sierra Club’s Position:

PC/SC indicate in briefing that they do not take a position.

Paul Robbins’ Position:

Not addressed in briefing.

Bethany United Methodist’s Position:

Not addressed in briefing.

Data Foundry’s Position:

Not addressed in briefing.

⁵⁷³ *Id.*

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

No party expressed opposition to provide some customers the option of picking their due date to pay their bill. Further, AE noted that it is working on developing the technical capabilities necessary to offer this option to customers. Thus, the IHE recommends to Council that AE continue pursuit of this program, as recommended by the ICA, as soon as it is technically feasible to do so, and then that AE publicly promote this billing accommodation to eligible consumers.

VIII. Statement of Position / Other Issues**A. Late Payment Fees****Austin Energy's Position:**

The City of Austin assesses a 5% late payment penalty. AE reasons that the late payment fee is a pricing signal used by companies to encourage their customers to pay their bills on time.⁵⁷⁴

AELIC proposes that AE eliminate the late payment fee. According to AELIC, "[t]he more credible evidence" supports eliminating the fee.⁵⁷⁵ In the alternative, AELIC urges the IHE

⁵⁷⁴ *Id.*

⁵⁷⁵ AELIC Brief at 38.

to recommend that the late payment penalty not be applied to AE's CAP customers. This alternative recommendation is also supported by the ICA in their brief.⁵⁷⁶

AE argues that the *only* evidence in this case supports continuation of the late payment fee as established by City Council since AELIC did not seek to admit its testimony on the issue and AE thereby withdrew its testimony. Moreover, AE considers the ICA's criticism that the fee is not cost based misses the point.⁵⁷⁷ The purpose of the fee is to encourage payment of unpaid bills and thereby reduce the amount of uncollectible expense to be collected from other customers.

AELIC argued that "PUC Subst. Rule 28.8(b) does not allow vertically integrated utility to charge its residential customers a late payment penalty fee."⁵⁷⁸ AE countered this claim in arguing that presuming AELIC is referring to 16 TAC § 25.28(b), this regulation does not apply to Austin Energy as an MOU. Moreover, according to AE, there are provisions in 16 TAC § 25.28 permitting assessment of a penalty of up to 5% for late payment.

In addition, and contrary to AELIC's inference, AE believes that its late payment fee is also consistent with PURA § 17.005⁵⁷⁹ which requires MOUs to adopt rules that have the effect of accomplishing the objectives set out in PURA §§ 17.004(a) and 17.102 since nothing in those sections prohibits a MOU from adopting a late payment fee.

⁵⁷⁶ ICA Brief at 104-105.

⁵⁷⁷ *Id.* at 105.

⁵⁷⁸ AELIC Brief at 38.

⁵⁷⁹ AELIC Brief at 38.

Independent Consumer Advocate's Position:

ICA recommends eliminating late fees for customers in the CAP program, supporting in part the recommendation on late fees made by AELIC.⁵⁸⁰ The ICA explains that the purpose of the CAP program is to provide assistance to the city's most vulnerable customers. The ICA argues that Imposing late fees on this group simply adds more to their cost burden. This action can be expected to both assist CAP customers with affordability and reduce the buildup of bad debt according to the ICA. Furthermore, the ICA contends that Austin Energy admits there is no cost basis for the fee.⁵⁸¹ The ICA also relies on Texas Public Utility Commission Substantive Rules at Sec. 25.480 (c) which prohibits the charging of late fees to customers in the competitive retail market.

Low Income Customers' Position:

AELIC recommends 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 payment 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.

According to AELIC, 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. AELIC argues that the PUC SUBST Rule 28.8(b)⁵⁸² does not allow vertically integrated utilities to charge its residential customers a late payment penalty fee and AE's reliance on this rule is based on a misreading of the rule.

⁵⁸⁰ AELIC Exh. 2 (Position Statement), p. 7.

⁵⁸¹ Tr. p. 877, l. 13-16.

⁵⁸² AELIC Exh. 34.

NXP/Samsung's Position:

Indicated in briefing that they do not take a position.

Public Citizen/Sierra Club's Position:

Indicated in briefing that they do not take a position.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

The IHE recommends that Council retain the late-payment penalty in AE's tariffs. The late-payment penalty serves as an incentive to customers to not only pay their bills on time, but indirectly serves to minimize Uncollectible Expense.

The one change the IHE recommends the Council consider is the ICA and Low Income Customers' suggestion that the late-payment penalty not be applied to customers that are eligible to participate in AE's CAP program. The purpose of the CAP program is to assist those

otherwise unable to afford their electricity service. Adding a late-payment penalty in the IHE's view is inconsistent with that goal.

B. Regulatory Charge

Austin Energy's Position:

AE explains that shortly after AE's 2012 rate case, many customers switched classes. This migration caused the Primary 3-20 MW ("P2") customer class regulatory charge rate to go from \$2.92 per kW to \$0.38 per kW. The regulatory charge for P2 customers is currently significantly below cost, according to AE. AE proposes to redesign the Regulatory Charge "in order to restore a logical rate design for the class at it compares with the regulatory charge assed on the P1 and P3 classes."⁵⁸³ AE continues, left on its own, this change in the Regulatory Charge would likely result in a significant bill increase for P2 customers. In order to mitigate this impact, AE proposes to allocate a larger share of the overall revenue requirement decrease to P2 in order to prevent what would have been a bill increase.⁵⁸⁴

DF/ACC opposes the change. AE concedes that from a percentage perspective, the prospective increase may be material. Nevertheless, AE supports the change for five reasons. First, the regulatory charge contained in the RFP is illustrative and based on the new voltage level approach.⁵⁸⁵ Second, even with this increase, the illustrative P2 regulatory charge is still below cost.⁵⁸⁶ Third, the rate based on the new voltage level approach is consistent with what the other primary customer classes, Primary <3MW ("P1") and Primary >20MW ("P3"), will be

⁵⁸³ AE Exh. 1 at pp. 5-26.

⁵⁸⁴ *Id.* at pp. 5-27.

⁵⁸⁵ AE Exh. 2 at 47.

⁵⁸⁶ WP H-2.6 shows the COS for P2 Regulatory is \$3.61. The proposed rate is \$3.16.

paying.⁵⁸⁷ Fourth, the expected change to the P2 charge is not a disproportionate increase on a percentage basis, because, as explained above, the P2 class has been artificially low.⁵⁸⁸ Fifth, P2 customers received a larger share of the rate decrease in order to offset what would have been a bill increase.⁵⁸⁹

Independent Consumer Advocate’s Position:

Indicated in briefing that it does not take a position at this time.

Low Income Customers’ Position:

AELIC contends that AE will be recovering \$29 million in surplus from its regulatory charge revenues by the end of FY 2016 that should be added to AE’s operating balance (“working capital”). AELIC believes that it is within the known and measureable time periods AE has relied upon for its test year.⁵⁹⁰

NXP/Samsung’s Position:

NXP/Samsung refer to Section II. Revenue Requirement, Subsection D. Transmission Costs and Revenue of their brief for their position on the issue.

Public Citizen/Sierra Club’s Position:

Indicate in briefing that they do not take a position on the issue.

Paul Robbins’ Position:

Not addressed in briefing.

Bethany United Methodist’s Position:

Not addressed in briefing.

⁵⁸⁷ AE Exh. 2 at 47.

⁵⁸⁸ *Id.*

⁵⁸⁹ AE Exh. 1 at 5-27.

⁵⁹⁰ AE Exh. No. 19; See also Tr. pp. 109-111, cross of Dombrowski discussing the \$29 million to be returned to AE’s working capital at the end of FY 2016.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

Impartial Hearing Examiner's Analysis and Recommendation

For the reasons AE notes, the IHE recommends that Council approve AE's proposed changes to the Regulatory Charge.

As AE noted, the shifts from one rate class to another by customers – that is, class migration – led to a marked reduction in the charge per kW for P2 customers recovered through the Regulatory Charge. At the same time, AE's Long-Term Contracts were expiring. These events led to a charge per kW that is below cost for customers in the P2 class.

To move these customers closer to their cost of service – as most large customers argue as a matter of sound regulatory policy should be the case – AE redesigned the Regulatory Charge to better align the rate charged P2 customers as compared to the P1 and P3 classes. Absent such a change, the Regulatory Charge would likely lead to significant increases in bills to P2 customers. To mitigate this impact, a larger share of the decrease in the overall revenue requirement should be allocated to the P2 class to prevent what would have been an unwarranted bill increase. Doing so is consistent with sound regulatory principals that the regulatory

authority has significant discretion to determine and set “just” and reasonable rates, as discussed in the cost-allocation part of this report.

The record establishes that even with this increase, the example of the P2 regulatory charge is still below cost; the rate based on the new voltage level is consistent with what the P1 and P3 classes will be paying; given that the P2 rates are below cost, the expected change to the P2 charge is not a disproportionate increase on a percentage basis; and customers received a larger share of the rate decrease in order to offset what would have been a bill increase.

Therefore, the IHE recommends that Council adopt AE’s changes to P2 regulatory charge.

C. Miscellaneous Process Issues

Austin Energy’s Position:

AE responds to NXP/Samsung’s complaints that that have been unable to access certain confidential information in this case. AE considers NXP/Samsung’s position to be ironic given their position for a deregulated market since none of the confidential information NXP/Samsung complains about would be obtainable from any other generator within ERCOT. AE also argued that it is subject to the PIA and under the PIA certain Austin Energy competitive information is deemed confidential by law.

Moreover, AE asserts that the City, as an administrative and legislative body, has no authority to issue protective orders and even if it could, it would defeat the purpose of the PIA. AE further argues that as the Attorney General has opined, cities cannot require the public to sign a non-disclosure agreement as a condition for receiving public information. AE also notes that the PIA itself provides that if a public entity voluntarily discloses information to one person,

the public entity must make it available to any person. According to AE, the practical impact of this would be to allow anyone, anywhere to access Austin Energy's competitive information.

Independent Consumer Advocate's Position:

Not addressed in briefing.

Low Income Customers' Position:

Not addressed in briefing.

NXP/Samsung's Position:

NXP/Samsung express concern with AE's classifying certain information as confidential which limited their ability to review relevant information. NXP/Samsung refer to Procedural Rule §3.1(d)(1) that, according to NXP/Samsung, clearly demonstrates that despite the fact Austin Energy used confidential information in its Tariff Package,⁵⁹¹ no party would have access to this information, even though the information provided a basis for Austin Energy's calculations and determinations. NXP/Samsung contends that proceedings related to utility rates always involve confidential information, for example information related to contract price, ERCOT bids, etc.

NXP/Samsung rely on Attorney General opinions and the PIA itself for the proposition that materials and information provided during this rate review process would remain protected from disclosure for purposes of future PIA requests. NXP/Samsung argue that this case is a "litigated proceeding" and thus triggers an exemption from disclosure under the PIA under § 552.103.

NXP/Samsung contend that despite the fact this rate proceeding constitutes "litigation" for purposes of § 552.103, Austin Energy insisted on asking for an Attorney General's opinion

⁵⁹¹ This Procedural Rule also contradicted Procedural Rule § 3.1(e), which contemplated the use of confidential information.

regarding several discovery requests, hampering full participation and the ability of a party to fully analyze the Tariff Package.

In addition, NXP/Samsung complain that the abbreviated nature of this proceeding made information that AE had requested an opinion from the Attorney General's Office untouchable given the timelines for such requests.

NXP/Samsung also notes that the PIA's exceptions to required public disclosure do not create privileges from discovery of documents in administrative or judicial proceedings.⁵⁹²

Public Citizen/Sierra Club's Position:

Not addressed in briefing.

Paul Robbins' Position:

Not addressed in briefing.

Bethany United Methodist's Position:

Not addressed in briefing.

Data Foundry's Position:

Not addressed in briefing.

HURF's Position:

Not addressed in briefing.

Jim Rourke's Position:

Not addressed in briefing.

ARMA's Position:

Not addressed in briefing.

⁵⁹² Gov't Code § 552.005.

Impartial Hearing Examiner's Analysis and Recommendation

No process is perfect including the review process set up by the City to review AE's rates. Here, the IHE is of the opinion that given AE is in effect a governmental entity subject to the PIA, AE and the City have valid concerns with regard to treatment of competitively sensitive information. Thus, the IHE defers to the City Attorney's office on these matters and will not second-guess the City Attorney's conclusion on this matter.

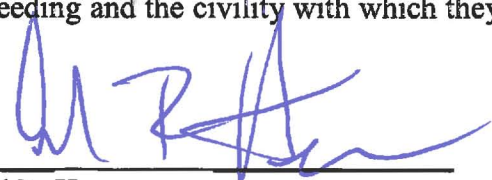
IX. CONCLUSION

The IHE recommends to the Council that it adopt the IHE's recommendations as set forth above.

Because the IHE was not able to provide his final Report earlier than its final due date, AE has not had sufficient time to input the IHE's recommendations into AE's revenue-requirement model, and thus, the IHE anticipates issuing a supplemental report to provide Council a recommendation showing the effect of the IHE's recommendations on AE's overall, base-rate revenue requirement.

Further, there are likely a myriad of "correct" answers to the many issues the parties raised in this proceeding, but based on the IHE's review of the record, the parties' live testimony and evidence admitted at the hearing, the IHE in this Report presents what he believes are the better recommendations based on his assessment of the record in this proceeding.

Lastly, and most importantly, the IHE sincerely expresses his thanks to the parties for the diligence with which they addressed the issues in this proceeding and the civility with which they conducted themselves.



Alfred R. Herrera
Impartial Hearing Examiner

DATE: JULY 15, 2016