

AUSTIN ENERGY 2016 RATE REVIEW

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

NXP SEMICONDUCTORS AND SAMSUNG AUSTIN SEMICONDUCTOR, LLC'S RESPONSE TO IMPARTIAL HEARING EXAMINER'S REPORT

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	REVENUE REQUIREMENT	2
	C. Internally Generated Funds For Construction (IGFC).....	2
	D. Transmission Costs and Revenues.....	3
	I. Loss on Disposal	3
	J. Customer Care	4
	M. Reserves	5
III.	COST ALLOCATION.....	7
	C. Allocation of Production Costs	7
IV.	REVENUE DISTRIBUTION / ALLOCATION / SPREAD.....	12
VII.	POLICY ISSUES.....	12
	C. Piecemeal Ratemaking.....	12
	E. Power Production Cost and Rate Treatment.....	13
IX.	CONCLUSION.....	13

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I. INTRODUCTION

NXP and Samsung appreciate the efforts of the Independent Hearings Examiner (IHE) in preparing his Report and are in agreement with many of his recommendations. We are keenly aware of the limited time and resources provided to him for his review of the voluminous record and for his preparation of a comprehensive report. NXP and Samsung also appreciate the opportunity the IHE has provided for parties to present any exceptions they may have to his Report. We believe this opportunity highlights the IHE's desire to more fully develop the record and his own recommendations during this process. To that end, NXP and Samsung will be offering its closing thoughts on the case and exceptions to some, but not all, of the IHE's recommendations.¹

All of the interveners in the Austin Energy rate case committed significant time and resources to preparing and presenting their cases. Therefore, we expected Austin Energy (AE) to use their Closing Brief (Brief) to present a detailed fiduciary and legal explanation for the positions they have taken in this case and/or a concise rebuttal to the critiques, concerns, and recommendations made by the intervenors in their own closing briefs. Instead, the AE Brief followed the strategy AE adopted for most of their case; their Brief is little more than an outline of each of their positions, a vague description or mischaracterization of the opposing views, and a dismissive assertion that almost all alternative recommendations should be ignored because they are either the subjective opinion of an opposing party or benefit the class making the argument.

Despite having documents withheld, subject matters excluded, and prejudicial procedural rules, most parties still went to the trouble to craft detailed legal and financial arguments for their

¹ NXP and Samsung have provided Attachment 1 - Summary of Independent Hearing Examiner Recommendation - as a way to visual demonstrate what NXP and Samsung believe to be the Independent Hearing Examiner's recommended adjustments to Austin Energy's Base Rate Revenue Requirement.

positions. Interveners extensively cited legal or scholarly authority when making subjective statements and recommendations in order to demonstrate the rationale as to why their positions represented best market practices for maintaining an efficient utility. In stark contrast, for the most part, AE simply cited the page number to whatever party brief they were referencing, ignoring the trial record, and testimony presented. In short, we believe that AE has failed to provide sufficient evidence to prove that their operational and accounting activities are prudent, represent good utility practice, and that the resulting rates that have been requested are just and reasonable; AE had the burden of proof here, which they failed to meet. NXP and Samsung respectfully offer these exceptions to the IHE's Report and to arguments made or ignored by AE in their Brief.

II. REVENUE REQUIREMENT

C. Internally Generated Funds For Construction (IGFC)

NXP and Samsung strongly disagree with the IHE's recommendation to grant AE all of its requested IGFC. Despite the fact that AE claims they must follow their Financial Policies, AE financed 76% of its production costs from 2012-2015 with cash or equity. This is certainly not in keeping with the AE's own stated Financial Policies and their principle of matching financing with the life of the assets. Since AE did not actually comply with its own policies its balance sheet ratio is at 45% debt and 55% equity (cash). NXP and Samsung recommended that the cash funded by ratepayers be limited to 40% equity (cash) in this rate review to begin to correct for AE's excessive use of cash in the past. Despite AE's objection that this is unreasonable, this method is consistent with Council's policy and will achieve a long term goal of 50%/50% ratio, something AE's recommendation will not accomplish.

AE also claims that it has proven that power production CIP is known and incurred annually. However, during this rate review process AE announced that the plans for the 500 MW gas fired plant have been delayed to an undetermined time, despite the fact that while compiling the Rate Filing Package, AE planned for this project to be built. This fact directly contradicts the claim that these costs are currently known and measurable. Additionally, the delay of this new plant should have been accounted for and should have drastically reduced the amount of funding AE requires for 2016-2017, the time that these rates will be in effect.

AE's operating philosophies have allowed the utility to add excessive amounts to their revenue requirement and reserve funds and have resulted in rates that are not in line with Texas

benchmark cities for all customer classes. AE should not be rewarded for deviating from their own financial policies creating an imbalance in their debt to equity ratio. NXP and Samsung's recommendations are a prudent way to begin to correct this imbalance, which under the current recommendation could exacerbate the problem, and therefore request the IHE to reconsider his position on the issue and adopt the proposal presented by NXP and Samsung.

D. Transmission Costs and Revenues

NXP and Samsung appreciate the response the IHE provided on July 21, 2016 regarding confusion related to the calculation and analysis regarding Transmission Costs and Revenues. Based on the IHE's clarification, NXP and Samsung believe the Report should be modified to reflect that AE requested a revenue requirement offset of \$62,129,919 but the IHE proposes an actual offset of \$74.3 million, making \$12,170,081 the "additional" offset the IHE is recommending.

I. Loss on Disposal

The IHE recommends accepting AE's request for funds related to asset losses despite the fact that AE provided no asset retirement plan or projection for when, where, or why losses on assets might occur. The IHE also chose not to address the serious issue raised by NXP/Samsung that these losses are nothing more than recorded book entries where no cash expenditure *actually* occurred, apparently in direct conflict with their chosen method of Cash Flow accounting.

The IHE adopted the contention by AE that \$7,170,039 is a known amount and a recurring loss on the disposal of assets. However, the record establishes that the amount of losses varies greatly in any given year and therefore for any particular year is not known and measurable until after they occur (from \$10,213,180 to a low as \$67,256 in 2013). AE did not provide any explanation for these wide swings nor any evidence of the amount that will be retired during the time that the rates from this review will be in effect. It could range from \$0 to \$20 million and could result in a gain in some years. The inclusion of the test year amount just because it was in the test year does not meet the criteria for a *representative* expense that is ongoing and quantifiable. In fact, Mr. Dombroski could not recall the amount of the loss included

in the 2015-2016 Budget. It was in fact zero in the Budget and the actual amount was a gain of \$14,482,530, not a loss.²

In their Brief, AE seems to confuse the requirement that a post-test year adjustment be known **and** measurable with an idea that it can either be known or measurable, but does not have to be both. The amount of the loss on disposal of assets AE has experienced varies greatly within a four year period. In any given year they do not know if they will dispose of any assets much less know how much of a loss they may experience. AE only knows this after the fact. AE's entire argument as to the amount it "needs" for loss on disposal of assets is predicated on the fact that they allege they need a particular amount without any justification or analysis. They claim the last four years says they need x amount so therefore they need x amount, despite the wide variation needed over those same four years and the fact that the actual amount needed could only be determined at the conclusion of any particular year.

AE also maintains that the cash flow method is only used for return. However, as quoted in the IHE Report on page 29, AE acknowledges that "the cash flow method is inherent in its treatment of depreciation and amortization." AE acknowledged its accounting treatment of the loss as described in Ms. Fox's testimony³ – it is a book loss that only involves cash expenditures for cost of removal that exceeds salvage value received. Just as depreciation expense is a non-cash item that is reflected as an expense in the cost of service and then deducted from the cost of service, the non-cash loss should not be included in rates. Why should AE collect more money from ratepayers for expenses that do not actually occur?

J. Customer Care

In the IHE's acceptance of the way AE tracks and allocates costs for customer care activities, NXP and Samsung believe he misses an opportunity to require AE to operate more transparently and efficiently in how the utility accounts for activities related to providing electric service. It is unclear how the IHE found AE's arguments persuasive since AE's Brief attempts to deflect from its existing accounting practices with a statement that the recommendation of NXP and Samsung that customer billing be organized and allocated based on the total number of

²See Attachment 2, also available <https://www.austintexas.gov/financeonline/finance/budget/object.cfm?dept=1100&fund=5010&div=9TRQ&grp=9REQ> (last visited 7/22/2016).

³ *Austin Energy Tariff Package: 2015 Cost of Service Study and Proposal to Change Base Electric Rates*, Corrected Direct Testimony and Exhibits of Marilyn J. Fox at 33-36 (May 27, 2016).

bills received for each utility is unreasonable, providing no evidence or authority for why it is unreasonable. If it is reasonable for other utilities within the state that are not as sophisticated as AE to organize and allocate cost based on total number of bills received for each utility, why is it unreasonable for AE? How is it unreasonable to allocate costs based on the utility creating the costs? How does AE not know who is creating the costs? Taking AE's recommendation to the extreme, if no person ever complained about AE, AE would still pay for all customer complaints, which is unreasonable and imprudent. AE has touted their high customer satisfaction yet argue they should take full responsibility for all complaints, which is inconsistent logic.

Though NXP and Samsung recognize that AE might be uncomfortable shifting costs it has routinely paid onto other utilities, it is unreasonable to use this as the a rationale for continuing to pay for these costs that have nothing to do with providing *electric service*. If a cost appropriately belongs to another City department, that City department should be responsible for paying for the cost incurred; AE's argument in customer care and economic development create accounting practices that reduce transparency to rate payers.

M. Reserves

NXP/Samsung appreciate the IHE's acknowledgement that the reserve numbers are subject to change due to proposed adjustments to the revenue requirement. However, we had hoped the IHE would make stronger recommendations to Council as to how the reserve policies can be changed and improved for the direct benefit of ratepayers, and force more accountability from AE.

In its Brief AE states that it needs enough cash on hand to meet annual cost obligations, debt service requirements, and infrastructure investment needs, however, it does not justify how or why they set the amount of cash that will cover these needs. In a process where utilities must show that their costs and rates are just and reasonable this approach is unacceptable.

AE states that no party disagreed with the revenue requirement associated with funding reserves under the current financial policies in their Brief, despite the fact parties repeatedly stated AE is collecting too much in reserves NXP and Samsung devoted several pages to the reserve issue.⁴ NXP/Samsung have been arguing against the method AE uses for determining

⁴ Not only did the Direct Testimony of Marilyn Fox discuss this issue, but pages 32 to 37 of *NXP Semiconductors and Samsung Austin Semiconductor, LLCs' Post Hearing Brief* included a critic of AE's reserve

reserves since before the List of Issues was finalized, consistently arguing that AE's use of the Cash Flow method, which is the method used in part to determine the amount necessary for reserves, is unreasonable because it is self-prophetic. The method inherently results in whatever amount that is stated as being "needed" is needed because it is said to be needed. Interveners presented, and the IHE acknowledged, several challenges to AE's revenue requirement demonstrating the excess revenue AE requested, also increasing reserve calculations and leading to higher rates for customers.

In their Brief AE accuses NXP and Samsung of only subjective reasons for recommending changes to the Financial Policies. Yet the recommendation to eliminate the rate stabilization fund is solely based on the ratemaking principle AE cites – today's ratepayers should not be charged more than the cost to provide electric service. Creating multiple funds that can be manipulated should not be allowed or encouraged. Due to the reasons stated in *NXP Semiconductors and Samsung Austin Semiconductor, LLCs' Post Hearing Brief* and the rational presented here, NXP and Samsung strongly urge the IHE to reconsider his position and eliminate the rate stabilization fund, not just rename it the Power Supply Stabilization Reserve. Furthermore, NXP and Samsung strongly disagree with AE's position to keep any over-collection of the PSA to fund the rate-stabilization fund. This encourages over-collection of the PSA, which should be a true pass-through charge and thus not experience any over-collection. This reserve is nothing more than a reserve component to the PSA, making the PSA not a pass-through. As such, this fund should be open to the same scrutiny as base rates. Having a reserve element in a pass-through charge that is not audited by the public due to confidentiality issues related to competitive factors is bad account and public policy. NXP and Samsung urge the IHE to see that the rate-stabilization fund is a cushion for AE to use to claim that rates are affordable, as no other explanation has been provided; it is nothing more than a future subsidization of rates, which is contrary to AE's claims related to their transmission arguments that they "shall not create significant opportunities for cross subsidization." The creation of a fund for the sole purpose to keep rates artificially low is the ultimate opportunity for cross-subsidization.

AE failed to address the fact that NXP and Samsung also recommended that AE follow the one/eight of O&M rule for working cash, which was PUC precedent until utilities were

policies as well as recommendations as to how the reserve policies should be changed in order to better reflect best utility practices.

required to demonstrate the need for working cash by submitting a lead/lag study, which AE has never done. Had the City Council addressed the policy issues prior to this rate case many of NXP and Samsungs' concerns would have been eliminated; the Council still needs to determine how the 150 days on hand is calculated, and which reserves will be counted in the calculation.

For its review NXP/Samsung used the calculation proposed by NewGen that begins with AE's total O&M, including fuel, to establish what is required to meet the 150 day policy. Under this reasonable proposal, one can clearly see that AE's reserve balances as of September 30, 2015 were *adequate* and thus *no additional amounts* would be needed from ratepayers. NXP and Samsung therefore encourage this position to be clearly adopted by the IHE.

AE's claims that their judgment regarding reserves should be adopted because they conducted a "detailed analysis," stating that because of that the recommendations of other parties should be rejected. This implies that other parties, like NXP and Samsung, did not conduct an analysis of AE's proposals to the reserve policies, which is unfounded and unsupported. AE stated they conducted a detailed analysis but did not share that detailed analysis or provide any validation outside parties validated the analysis. NXP/Samsung witness Ms. Fox has been analyzing AE's reserves for several years and is well qualified to provide a second opinion that should be adopted.

III. COST ALLOCATION

C. Allocation of Production Costs

It is extremely disappointing that the IHE recommends adopting AE's choice of the 12CP allocation method despite a dearth of evidence in support of the 12CP allocation method, substantial evidence that it is inconsistent with the current ERCOT market and policies, and the admission by AE that a primary reason for selecting the method was political expediency of a plan that falls between the other two options. AE confirms this in their closing Brief and discovery responses.

AE is supposed to act as a fiduciary for ALL ratepayers, as according to AE, they view ALL ratepayers as shareholders, and should therefore make recommendations based on the least discriminatory and most prudent methods for the ERCOT market that reflect their actual cost to provide electricity. AE is ignoring its fiduciary duty and responsibility to use good utility practice by supporting a 12CP allocation method.

Beginning on page 71 of its Brief AE discusses its recommendation for allocation of production costs. AE's Brief states that NXP and Samsung make "a similar claim" to use the A&E/4CP allocation methods as does Data Foundry and the Austin Chamber of Commerce (DF/ACC). Actually, NXP and Samsung recommend the exact same allocation method as DF/ACC. NXP and Samsung submitted more detailed evidence as to why the A&E/4CP method should be approved, yet the recommendation was the same. AE did not provide, to a similar extent NXP and Samsung provided, evidence supporting their recommendation.

On page 72 of their closing Brief, AE suggests (and the IHE apparently agrees) that PUC precedent for vertically integrated utilities like AE does not apply to AE because it operates in ERCOT. AE states, "[u]nlike Austin Energy, vertically-integrated utilities are not subject to the wholesale market forces in which generation companies must compete based on economic efficiency in order to have their units run." While there are differences in how AE operates in ERCOT and how a similarly situated electric utility would operate in a different market, these differences have nothing to do with the issue of cost allocation, especially as it relates to production cost allocation.

AE grossly mischaracterizes how vertically integrated electric utilities outside of ERCOT operate. Just like a utility, retail provider, or generator in ERCOT, vertically integrated utilities outside of ERCOT also attempt to run their systems efficiently. Why would they do otherwise? And why would a regulatory authority with oversight of vertically integrated utilities allow such inefficient operation? Vertically integrated utilities outside of ERCOT also increase and decrease the output of the most efficient power supply resources available to them to meet demand, regardless of whether their supply resource is their own generation, generation from other utilities (for example, SWEPCO in the Southwest Power Pool), or generation from ERCOT. To suggest that generation outside of ERCOT is not subject to competition and are not economically efficient is unsupported by evidence and contrary to plain common sense.

The major difference in how vertically integrated utilities outside of ERCOT operate and the operation of AE is that the power supply costs of the former are carefully scrutinized by independent professionals at the PUC while AE's costs are not. Rates for vertically integrated utilities are scrubbed by the PUC to only include reasonable and prudent costs and investments in rates. This fact tends to make vertically integrated utilities cautious in their spending and accounting for fear of significant disallowance by the Commissioners.

Although AE often discounts the importance of relying upon the recognized authority of the PUC, AE relies on PUC precedent at other times (page 73 of their Brief) citing the need to “keep historical precedent in mind when adopting a coincident peak-based methodology (CP) to allocate production costs.” Amazingly, they ignore the PUC precedent when choosing the other half of that formula when recommending the 12CP method over the A&E 4CP method, which is preferred by the PUC because it best reflects today’s Texas market.

On page 75, AE’s Brief states that “[w]hile 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. They can and do occur throughout the year...” Of course high market prices can occur anytime, but random excursions in power prices have nothing to do with production cost drivers in Texas and are not relevant to the discussion on how to allocate the cost of power production. The basic undisputed truth for AE and every power producer in ERCOT is that the *summer peak demand* drives power production costs, and is a factor AE cited when rationalizing their recommended seasonal power supply adjustment, recognizing that the system has two “seasons,” **summer** and non-summer. Even more concerning is the fact that AE has admitted that its recommendation is based on political expediency rather than facts.⁵

On page 78 of their Brief AE states that because they use their generation to hedge throughout the year, costs should be spread evenly throughout the year. Assigning costs to off-peak months because of AE’s belief they are somehow using the assets to hedge does not withstand scrutiny, especially in light of the fact they refused to describe or quantify their hedging practices. AE does not build power plants in order to engage in hedging practices. Instead, AE hedges because it already has power plants. The fact that hedging benefits are available after-the-fact does not alter the reason that generation was built in the first place. In addition, AE assumes that the benefits of hedging are exactly the same in each month. Why would one assume that the benefits of hedging that supposedly occur during the mild month of March (which has never recorded a system peak demand) would be the same as the hedging benefits in the peak month of August? Although this is the outcome that AE’s 12CP method

⁵Austin Energy’s Closing Brief at 81 and 94.

relies upon; such a result has never been demonstrated, nor is there a shred of evidence to support this assumption, which defies logic.

As stated on page 79 of AE's brief, "[t]he 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." This statement is the foundation of AE's reliance upon the 12CP allocation factor. However, this statement is directly contradicted by ERCOT's own planning procedures. ERCOT undertakes periodic Seasonal Assessment of Resource Adequacy (SARA) to insure that the ERCOT region has sufficient "installed capacity to serve forecasted peak demands in the upcoming **summer season** (June – September 2016)" (emphasis added).⁶ In addition, ERCOT generation reserve margins are expressed in terms of **summer demands**. For example, an ERCOT news release dated December 1, 2015, stated

[t]he updated 10-year Capacity, Demand and Reserves (CDR) report released today by the Electric Reliability Council of Texas (ERCOT) shows a continuing rise in planning reserve margins in coming years, due primarily to the anticipated addition of more than 5,000 megawatts (MW) of new generation capacity by the summer of 2017 and another 4,300 MW the following year.⁷

This news release also stated that

[t]he anticipated peak demand for electricity — forecast at more than 70,500 MW in summer 2016 and growing to nearly 78,000 MW by summer 2025 — also has increased from previous reports. The revised long-term load forecast continues to be based on a new forecasting methodology that was implemented in 2014.⁸

In addition, ERCOT's *2015 Annual Report of Demand Response in the ERCOT Region* addresses Transmission and Distribution Service Provider ("TDSP") load management programs. The report notes that "[e]ven though there are some minor variations in these programs generally all Load Management Programs require participants to be available only during weekdays from June 1 through September 30 and between the hours of 1 and 7 p.m."⁹

⁶See Electric Reliability Council of Texas, *Preliminary Seasonal Assessment of Resource Adequacy for the ERCOT Region (SARA) Summer 2016*, Mar. 1, 2016, at 1 available at <http://www.ercot.com/content/gridinfo/resource/2016/adequacy/sara/SARA-PreliminarySummer2016.pdf>.

⁷See Press Release, Electric Reliability Council of Texas, New generation resources drive up projected ERCOT reserve margins through 2025 (Dec. 1, 2015), (http://www.ercot.com/news/press_releases/show/81272).

⁸*Id.*

⁹See Electric Reliability Council of Texas, *2015 Annual Report of Demand Response in the ERCOT Region*, Mar. 15, 2016, at 5 (<http://www.ercot.com/services/programs/load>).

This demonstrates ERCOT's focus on the four summer months of June through September because these months are *most important* in terms of adequacy of generation capacity. This is a fact that is reflected in NXP/Samsungs' support for the A&E/4CP. This is also a fact that directly contradicts AE's use of the 12CP allocation method, which AE ignores.

In stark contrast to what it argues in this rate review, AE's own power supply needs are also focused primarily upon customer loads during the **summer months** of June through September, and not upon loads throughout the year. If the summer months weren't most important then why does AE focus on the summer? Additionally, why has AE focused on curbing summer demand through its energy efficiency programs?

The Tariff Package notes that "[i]n FY 2014 alone, the energy efficiency programs reduced Austin Energy's peak demand by 67 MW."¹⁰ The peak demand referenced is the **summer peak demand**. The Tariff Package lauds AE's energy conservation programs that allow the utility to remotely control customers' thermostats, allowing AE to cycle off customers' air-conditioning load.¹¹ Additionally, AE's "Powersaver" program focuses on **control of summertime air-conditioning and not winter heating**, because it is the heat of the summer that brings peak demand in Texas. Additionally, "Austin Energy's energy conservation goals reduce the amount of customer demand during summer peak periods[.]" because "the highest average wholesale market prices tend to occur during the hot summer months and Austin Energy's demand side management programs directly lower demand for electricity during those *summer peak hours*."¹² (emphasis added) AE's own planning and operations recognize that summer peak demands have a far greater impact upon production requirements and costs than do non-summer demands, therefore an A&E/4CP allocation method best reflects the characteristics of the market AE serves within and should be adopted by AE and recommended by the IHE.

NXP and Samsungs' recommendation for the A&E/4CP method for generation planning is similar to traffic planning. Generation, like roads are built for rush hour traffic. While traffic congestion could occur at any time of the day the highest probability for congestion is rush hour. Similarly, while congestion and high prices may occur throughout the year, summer peak demand is predictable and used for generation planning. For the reasons presented by NXP and

¹⁰ Tariff Package at 3-40 (Bates 069).

¹¹ *Id.*

¹² *Id.* at 3-39 (Bates 068).

Samsung throughout this process, NXP and Samsung respectfully request the IHE change his position and recommend to Council that AE use an A&E/4CP allocation method. The evidence thoroughly supports this recommendation.

IV. REVENUE DISTRIBUTION / ALLOCATION / SPREAD

NXP and Samsung have expressed their concerns that industrial rates and cost of service are out of line with Texas benchmark cities. Affordability is an issue for all Austinites and a rate case provides the community access to how the utility manages the funds they collect from customers. Many interveners expressed a concern with the amount of money AE collects in rates and retains in reserves and recommended various reductions. AE should operate a lean and fiscally responsible utility collecting funds required to operate and withhold the minimum amount of customer's money in their reserves. AE is correct that there is not precedent specific to a Municipally Owned Utility in ERCOT that parties can look to, however, as seen through the PUC appeal of AE's last rates, the PUC witnesses looked to PUC rules when determining just and reasonable rates for AE. The PUC in that case made a determination that PURA and PUC rules/precedent should govern and be a guiding light when determining the reasonableness of AE's actions as they demonstrate good, prudent, utility practice in the state of Texas. NXP and Samsung used this guiding light when making its recommendations.

VII. POLICY ISSUES

C. Piecemeal Ratemaking

In support of AE's use of other processes for setting rates to recover specific categories of cost outside a general rate review, AE's Brief cites the ability of a utility under PUC jurisdiction to make pass-through adjustments outside of a rate proceeding – Fuel Factor (16 Tex. Admin Code § 25.237) (TAC); Power Cost Recovery Factor (16 TAC § 25.238); Transmission Cost Recovery Factor (16 TAC § 25.239); Distribution Cost Recovery Factor (16 TAC § 25.243). However, AE fails to disclose what process the PUC requires before a utility can make any of these changes to rates. At the PUC, if a utility desires to make any of these adjustments they must file an application with the PUC which is subject to scrutiny by subject matter experts and always has the potential to be set for an evidentiary hearing. This is because these adjustment factors are designed to only compensate the utility for changes to cost that occurred after the costs were included in base rates, and which are subject to subsequent true-ups

to ensure that the utility is not over-recovering. It is therefore disingenuous for Austin Energy to compare these proceedings to the City's budget process.

E. Power Production Cost and Rate Treatment

In this section of their Brief AE goes to great lengths to assert that AE's ratepayers are shareholders and therefore must pay for the risky endeavors of the business and have a responsibility to pay for the unrecovered costs of the company. However they refuse to allow these "shareholders" the benefit of excess recovery of transmission revenues. AE also fails to recognize that AE ratepayers do not hold any stock and can only remove themselves from the burden of "shareholder" status by moving out of the service territory. Thus, these "shareholders" are captive in every sense of the term. They must pay for AE's losses, but AE wants to keep any benefit from excess revenues. AE describes its rate payers as shareholders, yet does not treat them as such; companies prepare standard accounting statements for shareholders to review how the business operates, which AE does not do. Ultimately AE uses the shareholder argument as a way to rationalize imprudence and waste that the company never actually has to experience, but the ratepayers do. AE should instead be focused on making utility management decisions that would be viewed as reasonable and prudent by true shareholders.

IX. CONCLUSION

Time after time during this review process AE has ignored the clear evidence of what is deemed prudent utility practice in ERCOT, as well as their own planning and operational procedures and guidelines, in favor of political solutions.

AE's Brief in this review ignores the undisputed evidence that ERCOT and AE themselves plan capacity to meet summer peak demands because summer prices drive cost. AE's use of the 12CP allocation is contrary to ERCOT's and AE's actual planning and operations, and is an admitted political move to avoid making the prudent decisions necessary to allocate costs and set rates in a just and reasonable manner, that reflects cost of service. This type of political posturing and the resulting policies is precisely why AE's revenue requirement is bloated and AE's rates are no longer competitive with the rest of ERCOT. We believe it is the responsibility of the IHE to recognize this and recommend to Council, who entrusted him with making a non-political recommendation, an allocation method and utility policy that *best* reflects the ERCOT market.

AE touts itself as the middle ground among the varied interests that participated in its rate review. AE proposes allocation methods that allegedly fall roughly between the interests of large consumers and small consumers but lack a basis in the Texas market; just because the Texas market in some ways might favor one type of consumer does not mean making a recommendation based on that market is somehow unfair and unreasonable, it is merely how the market operates. AE suggests that what is fair is to approve its allocations despite recognizing that some classes have been extensively subsidizing others and that generally speaking no class is truly at cost of service. This is entirely unacceptable to NXP and Samsung and should be to every ratepayer. Because this rate review involves some level of rate decrease, now is the time to remove the structural inequities in the rate system and move customer classes to cost of service and Texas benchmark cities, which should be the ultimate goal of the IHE.

This rate reduction “window of opportunity” is unlikely to occur again in the near future. Forestalling the obvious problems of cost of service, subsidization, and rate level disparities creates a far bigger problem to clean up in future rate cases where rate increases are likely contemplated. It is time for the City Council to reform AE’s troubling accounting practices and make the rate review process comprehensive and inclusive of all data for parties to examine. Doing so will benefit all ratepayers well into the future and make participation in rate reviews like this one more coherent and accessible for all parties. NXP and Samsung expect AE to be efficiently, transparently, and prudently managed and operated.

Date: July 22, 2016

Respectfully submitted,



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**ATTORNEYS FOR NXP SEMICONDUCTORS AND
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this pleading has been forwarded by fax, e-mail, U.S. first class mail, hand-delivery, or by courier service to all parties and filed with the City Clerk on the 22 day of July, 2016.



Maria C. Faconti

ATTACHMENT 1

SUMMARY OF INDEPENDENT HEARINGS EXAMINER RECOMMENDATION

AE Base Revenue \$631,878,463

Less:

<input type="checkbox"/> Non-Nuclear Decommissioning Expense	\$19,442,308
<input type="checkbox"/> Transmission Revenue	12,170,081
<input type="checkbox"/> Economic Development Transfer	9,090,429
<input type="checkbox"/> Rate Case Expenses	234,391
<input type="checkbox"/> Uncollectible Expense	5,855,091
<input type="checkbox"/> AE Original Reduction	17,474,298
<input type="checkbox"/> Additional Other Revenue AE Agreed to in Hearing	<u>7,084,702</u>

Total Adjustments, excluding Reserve Funding \$ 71,351,300

IHE Recommended Base Rate Revenue Requirement \$560,527,163

We urge the IHE to carefully review the Non-Nuclear Decommissioning adjustment as included in AE's rerun model. The adjustment does not remove the total amount from O & M but proposes an adjustment to the reserve calculations. This is incorrect because the O & M expense reduces revenue requirement dollar-for-dollar. The reserve calculation does not.

Also AE's reserve adjustment does not reflect 90 days as recommended by the IHE for the Rate Stabilization reserve.

ATTACHMENT 2

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Austin Finance Online

City of Austin - Financial Services

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MAIN | **BUDGET & FINANCE** | PURCHASING | OFFICIAL STATEMENTS | MBE/WBE | PERFORMANCE REPORTS | PAYMENT REGISTER

RAW BUDGET DATA - 2016 Q2

Other Requirements Expense Categories

←	Location		
	DEPARTMENT:	Austin Energy	
	CATEGORY:	Austin Energy Fund	
	PROGRAM:	Transfers and Other Requirements	
	ACTIVITY:	Other Requirements	

Quick Filter:

Expense Category	Budget	Expenditures
Accrued Payroll	\$1,420,667.00	\$0.00
Bad Debt Expense	\$14,590,209.00	\$4,221,312.78
Commercial paper admin exp	\$2,628,021.00	\$624,148.45
FICA tax	\$81.00	\$0.00
Fire/Extend Coverage Insurance	\$81,451.00	\$83,037.88
Fleet-equip.preventative maint	\$475,280.00	\$0.00
Insurance-health/life/dental	\$58,106.00	\$0.00
Interest-general	\$0.00	\$15,756.08
Loss on disposal of assets	\$0.00	(\$14,482,530.41)
Market Study Adjustment	\$1,223,551.00	\$0.00
Medicare tax	\$14.00	\$0.00
Temporary employees	\$989.00	\$0.00
Util rev bnd commission exp	\$0.00	\$3,653.76

The comparison of actual expenditures to budget may appear inconsistent. That is because base wages for personnel are fully budgeted in the expense categories regular wages full-time, regular wages part-time, or regular wages civil service. The budget does not assume expenditure levels for the various leave categories, such as sick pay, vacation pay, or jury leave. However, actual expenses for various leave categories are recorded based on timesheet coding. The result is that actual expenditures for regular wages are spread across multiple expense categories while the budget is shown in one expense category.

Personnel savings is budgeted to account for the likely savings in personnel costs generated through attrition. However, the savings is realized in the expense categories regular wages full-time, regular wages part-time and regular wages civil service. Therefore, the actual expenditures in the personnel savings expense category will always be zero.

The data contained on this website is for informational purposes only. Certain Austin Energy budget items have been excluded as competitive matters under [Texas Government Code Section 552.133](#) and [City Council Resolution 20051201-002](#).

Frequently Asked Questions | Public Information Request | Austin City Council Contacts

Important Phone Numbers

Help Line (311): (512) 974-2000
 Bid Packets: (512) 974-2500
 Vendor Registration: (512) 974-2018

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 Capital Contracting Officer

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