

2015 COST OF SERVICE §  
STUDY AND PROPOSAL TO CHANGE §

BEFORE THE CITY OF AUSTIN  
IMPARTIAL HEARING  
EXAMINER

BASE ELECTRIC RATES §

**AUSTIN ENERGY LOW INCOME CONSUMERS' REPLY TO PARTY  
RESPONSES TO INDEPENDENT HEARING EXAMINER'S REPORT**

**TO THE HONORABLE JUDGE HERRERA:**

COMES NOW, Austin Energy Low Income Consumers' ("AELIC") replying to Parties' Responses to the Impartial Hearing Examiner's ("IHE") Report filed in this case stating as follows:

**I.**

**Introduction**

Various parties including AELIC filed responses to the IHE Report. AELIC will be primarily replying to Austin Energy's ("AE" or "utility") Response, but will also address certain responses filed by the Independent Consumer Advocate ("ICA") and by NXP/Samsung ("Samsung").

**II.**

**Non Nuclear Decommissioning Reserve**

In its Response, AE continues to urge your Honor to recommend its original annual expense request of \$19.4 million that the utility based on its highest estimate of a range of estimated costs for the decommissioning costs of Decker Power Plant, Units 1 & 2 ("Decker"), Fayette Power Plant ("FPP"), and Sand Hill Energy Center ("SHEC"). The IHE should disregard this request. AE's request is not based on the more credible evidence in the record; fails to meet its burden of proving the reasonableness and necessity of the expense and would lead to excessive rates.

AE's requested recovery of \$19.4 million results in excessive rates even under its own analysis. AELIC Ex. No. 16 reveals that AE's requested \$19.4 million in annual expenses results in AE realizing \$97 million before the next rate case in five years. The \$97 million is in excess of \$17 million over AE's highest cost estimates of approximately \$80 million for decommissioning all three plants. In its response to AELIC's discovery request, AE explained away this over recovery stating, "Pursuant to city council policy,

Austin Energy prepares a cost of service model every five years. Non-nuclear decommissioning funding will be revisited at that time.”<sup>1</sup> This response is not credible or relevant evidence. The response does not make its requested \$19.4 million more likely to be true; that is the cost that is reasonable and necessary for AE to pay for its decommissioning costs. To the contrary, the statement makes it less likely to be true. Although AE witness Dombrowski testified at the hearing that the goal of the decommissioning fund should be to have the funding “hit exactly at exact cost if possible”<sup>2</sup>, AE is asking the IHE to recommend an amount that will recover over the period of time that the base rates set in this hearing will be in effect an amount in excess of its highest cost estimates. AELIC would further point out that the effect of AE’s requested amount is to have its ratepayers for the next five years pay in excess of AE’s highest estimated decommissioning costs for all three plants in a time period where two of the plants are not even estimated to be retired. This creates an intergenerational concern that is real and more than counters AE’s speculative similar argument in its Response.<sup>3</sup> AELIC urges the IHE reject AE’s argument set out in its response and find and recommend to the City Council of Austin (“Council” or “COA”) that AE’s requested \$19.4 million is unreasonable and results in excessive rates.

Even assuming AE’s method of calculating its non nuclear reserve is reasonable, AE’s requested recovery of \$19.4 million is unreasonable because one of its assumptions that is factored into its calculations changed before the hearing. As AELIC stated in its Response AE assumed a two year retirement timeline for Decker<sup>4</sup>; but at the hearing, AE acknowledged that the utility had extended the Decker plant retirement at least for another year. Increasing the retirement timeline from two to three results in a reduction of annual recovery to \$9 million from the \$14 million AE used in its revenue requirement relating to Decker. This results in a reduction to its requested \$19.4 million even assuming that it is reasonable to use the highest cost estimates in AE’s range of cost estimates for its non nuclear decommissioning reserve. This is a second reason to reject AE’s requested \$19.4 million. AELIC points out that even at the \$9 million annual costs for Decker, AE will recover \$18 million for the other plants in years 4 and 5 in the period of time between rate cases and after AE has recovered all of the Decker commissioning costs at the highest assumed cost estimate. AELIC urges the IHE to reject AE’s argument set out in its response and to find and recommend to the Council that AELIC’s

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<sup>1</sup> AELIC Ex. No. 16.

<sup>2</sup> Tr. p. 647

<sup>3</sup> See AE Response at p. 6.

<sup>4</sup> See AE Ex. No. 1, Bates Stamp p. 526 and Bates Stamp p. 857

recommendation to increase the time period for recovery of these Decker estimated decommissioning costs to three from two should be adopted.

AE failed to rebut the reasonableness of the lowest estimate in the range of estimated decommissioning costs the utility calculated for Decker, FPP, and SHEC. AE provided no credible evidence to support its request to use the utility's highest cost decommissioning estimate over its lowest cost estimate or for any amounts in between. Instead, the utility relied upon speculation and conclusory statements that do not constitute evidence under the Texas Rules of Evidence made applicable to this proceeding under §9.1(a) of the City of Austin Procedural Rules for the Initial Review of Austin Energy Rates.<sup>5</sup> (“...there exists the very real *possibility* (emphasis added) that future customers will bear an inequitable burden when the time comes for decommissioning arrives.”)<sup>6</sup> AE further supports its request to use the highest decommissioning cost estimates by using conclusory statements of future activity. (“... should the actual costs end up being lower than expected, AE can apply the balance to funding decommissioning activities of other facilities and reduce required revenues in the next retail rate review.” (in five years)).<sup>7</sup> (At the hearing AE witness Dombrowski testified, “If we did not use all of the dollars in that decommissioning fund, we would go to council and request permission to transfer those funds either to other reserves or to working capital.”)<sup>8</sup> AE's simply has presented no competent and credible evidence to support its use of the highest cost estimates. AE developed a range of cost estimates. While the utility used speculative arguments and conclusory statements as evidentiary support, the support is not credible or competent evidence nor does it constitute regulatory ratemaking. Utilities have the burden of proving that its expense values are both reasonable and necessary. In this case AE is seeking the highest estimate over the lowest estimate or any estimate in between based on a fear of generational inequity if the realized revenues are not enough and an assertion that any over recoveries will be put to good use. There was no economic analysis picking the highest estimate over the lowest estimate. Nor was there any credible evidence showing that the lowest decommissioning cost estimates—especially if one considers the contingency factors—were not reasonable. In this case, AE refused to provide any data except conclusory aggregated data. The only

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<sup>5</sup> See Texas Rules of Evidence, Rs 401 & 402 ; See also *Wal-Mart Stores, Inc. v. Charles T. Merrell*, 313 S.W.3d 837, 839 (Tex. 2010) (citing Coastal Transportation, “opinion testimony that is conclusory or speculative is not relevant evidence, because it does not tend to make the existence of a material fact ‘more probable or less probable’ (quoting TEX. R. EVID. 401). “Such conclusory statements cannot support a judgment even when no objection was made to the statements at trial.”); *Coastal Transport Company, Inc. v. Crown Central Petroleum Corp.*, 136 S.W.3d 227,232 (Tex. 2004).

<sup>6</sup> See AE Response at p. 6.

<sup>7</sup> See AE Response at p. 6.

<sup>8</sup> See Tr. p. 150.

analysis addressing the reasonableness of AE's proposed cost estimates came from ICA witness Johnson who noticed that regulatory authorities did not take the highest cost estimates but made adjustments. While the IHE could easily find and recommend that AE take nothing on this issue for failing to provide credible and competent evidence, especially for its choice of its highest cost estimate over its lowest cost estimate, AELIC recommends that the IHE reject AE's request set out in its Response and to find and recommend to the Council that ICA witness Johnson's adjustments be adopted (subject to an additional adjustment that relies upon three years for recovery involving Decker decommissioning costs instead of the two ICA witness Johnson relied upon in his original testimony which was filed before the parties knew AE extended the Decker retirement date.).

AE should not be allowed to characterize the costs it recovers for its non nuclear decommissioning costs as operating and maintenance ("O&M") expenses. There is no reason for AE to characterize the non nuclear decommissioning reserve as an O&M expense. It is a reserve and is listed as one of the Council's reserves in the COA's financial policies. The only result that can occur is that AE will attempt to indirectly create additional reserve costs that Your Honor correctly determined should not occur. In all likelihood, AE will try to use this amount to calculate its minimum 150 days cash on hand reserve formula. None of AE's financial reserves are considered O&M expenses. Schedule A to AE's rate filing package<sup>9</sup> show that the costs to replenish its reserves are not O&M expenses but are set out under a separate section of that schedule. It should be noted that funding for nuclear decommissioning reserves are not within the authority of the Council. It is a federal requirement and held in an outside trust.

### **III.**

#### **Transmission Costs and Revenues**

The IHE correctly found that AE's most recent PUC decision involving its recovery for its transmission costs should be included in AE's COS. AE spends a great deal of time in its Response talking about cross subsidization concerns. But the fact of the matter is that AE is one utility. That any revenues AE realizes from its wholesale transmission operations is retained by AE, not a separate subsidiary or independent third party. The money goes somewhere within AE's operations. And if its wholesale transmission revenues exceed its costs (including the general fund transfer), then those revenues become the utility's surplus. Surplus can be retained by the utility or transferred to the Council. If retained, the utility may utilize those revenues for any of its

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<sup>9</sup> See AE Ex. No. 1, Bates Stamp p. 767, line 17 and compare to lines 1-4.

business operations. The surplus is not bound to its wholesale operations; in other words, the utility is not required to spend this money on wholesale transmission-related operations, nor is it required to refund or credit any of these monies to its wholesale transmission customers. Surplus is part of the utility's operating balance which is its working capital.<sup>10</sup> Consequently, the surplus flows into AE's reserves. Therefore, the \$6.8 million identified at AE Ex. No. 1, Bates Stamp p. 904 (WP E-5.1.1) as a "known and measureable" adjustment should have been reflected in AE's TY 2014 operating balance. The extra wholesale transmission revenue Samsung witness Fox identified should be included in this rate case as a known and measureable adjustment. Reserves are an issue in this case.

#### **IV.**

#### **Bad Debt**

AELIC has addressed this issue both in its Post Hearing Brief and in its Motion to Reconsider the IHE's Report and incorporate those discussions in this Reply. AELIC will be making a few additional observations in reply to AE's Response. AE accuses AELIC of cherry picking answers; however, it is not AELIC's duty to present whatever position AE has on an issue. AELIC is not privy to AE's preparation of its case and cannot know what or what not AE considers important. If AE thought information was important, it should have presented evidence. Apparently, AE did not. Moreover, the AE answer to AELIC's discovery request was apparently voluminous. AE referenced a page 255 of an answer to AELIC RFI No. 10-13 to AE. AELIC's decision to create a trial exhibit out of 255 pages of an AE answer to its discovery question obviously required judgement and it was judgement that AELIC used. Moreover, it appears that AE is citing evidence that is outside the record. There is no page 255 in AELIC Ex. No. 38; and as mentioned, AELIC did not include all of the voluminous answer to AELIC's 10<sup>th</sup> RFI No. 10-13 to AE. The IHE should disregard AE's evidentiary argument on this issue. Moreover, it is AE that has cherry picked the record evidence in this case. While AE cites AELIC Ex. 36 and a fictitious page of AELIC Ex. No. 38 to argue that the Council's 2013 ordinance has caused AE to continue to incur large levels of bad debt, AE utterly failed to acknowledge AELIC Ex. No. 37. That exhibit shows the Council amended its 2013 ordinance to remove the longer payment arrangement time periods. This ordinance was signed into law on June 2015 obviously after the 2013 ordinance and after the alleged May 28, 2015 presentation AE referenced (and that is not supported by the record evidence). Also, AE's argument flies in the face of common sense. The May

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<sup>10</sup> See AE Ex. No. 1, Bates Stamp

28, 2015 presentation supposedly showed more payment arrangements, but FY 2015 ended on September 30 2015, four months later, (and over a year after the 2013 ordinance was passed) and showed about \$8.9 million in bad debt. The logical conclusion to AE's 2013 ordinance argument is that bad debt should have increased in FY 2015. But as stated above it did not. It went down. It should be pointed out that Samsung attached a copy of an apparent part AE's FY 2016 budget that reflects 2<sup>nd</sup> Quarter financial data in relation to the budget.<sup>11</sup> The budget attachment shows that AE budgeted approximately \$14.5 million for bad debt, but as of the end of the 2<sup>nd</sup> quarter had incurred only about \$4.2 million in bad debt. This set of facts tends to support Samsung's and AELIC's recommended \$8.9 million level for bad debt to be included in AE's revenue requirement. AELIC urges Your Honor to deny AE's requested relief on this issue in its Response; and to find and recommend to the Council that Samsung's and AELIC's requested level of bad debt be included in the revenue requirement for purposes of the COS.

## **V.**

### **Energy Control Center**

AE excepts to the IHE decision to include the \$14.5 million AE received from the sale of property contending the realized revenues are outside the TY and that it is a one-time event and shouldn't be considered for purposes of setting rates. AE added no new argument in its exception.

The IHE correctly determined that these revenues should be included in AE's revenue requirement. AELIC has no need to add to our arguments set out in our Post Hearing Brief. AELIC incorporates our discussion in the post hearing brief herein along with the discussion ICA and Samsung had in their post hearing briefs on this issue.

AELIC urges the IHE to reject AE's request to exclude the \$14.5 million and to affirm its decision reached in its report on this issue.

## **VI.**

### **Allocation of Bad Debt**

In its Response AE argues that bad debt should be directly assigned. This is contrary to the more credible evidence in the record provided by ICA witness Johnson. Mr. Johnson testified that his recommended allocation is consistent with PUC rulings.

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<sup>11</sup> See Attachment 2 to Samsung Response

While AE argues that the Entergy case relied upon Mr. Johnson is an old case, AE fails to acknowledge that Mr. Johnson referred to a currently pending PUC order involving Southwestern Public Service Company where the PUC in that case adopted a revenue allocation consistent with Mr. Johnson's reasoning.<sup>12</sup> The IHE correctly found and recommended that Mr. Johnson's proposed allocation of bad debt expense is reasonable and based on the more credible evidence. AELIC urges the IHE to affirm his original decision on this issue.

## **VII.**

### **Allocation of EES Expenses**

In its Response AE contends that the IHE erred in failing to adopt the allocation of EES expenses recommended by AE rebuttal witness Kimberly. The IHE correctly found that the cost study was improper. Public Citizen and Sierra Club in their post hearing brief correctly showed that AE had failed to include a significant portion of costs recovered under the EES rates, and that AE had unreasonably classified commercial costs as residential costs. Both of these errors resulted in a tainted cost of service study. Moreover, the IHE correctly found that the benefits of EES do not only accrue to the individual customer provided EES services but to all customers because a primary EES goal is to reduce the utility's peak demand which reduces current operating market costs and reduces production costs in the long run. AELIC urges the IHE to affirm his original decision on this issue.

## **VIII**

### **Rate Discounts to Customers Outside City Limits**

AE's Response urges the IHE to reverse its decision that the cost of the rate discount provided to customers taking service outside the city limits should be allocated to all customer classes taking service inside the city limits. AE argued its allocation was agreed to in the PUC settlement in the last rate case. AE's allegation is inconsistent with the plain language of the settlement and council action. Rates for residential ratepayers taking service inside the city limits were not raised in the agreement or subsequently to recover the revenues AE would not realize as a result of the settlement's agreement to provide a discount to ratepayers taking service outside the city limits. Nor did AE request a rider or a surcharge to be included on residential bills for AE recovery of these revenues it would not realize. In truth, this cost was taken and has been taken below the line since

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<sup>12</sup> See ICA Ex. No. 1, Johnson Direct at pp. 60-63.

the last rate case. The IHE correctly found and determined that the value AE alleges for this discount equally benefits all customer classes and should be allocated accordingly.

AELIC urges the IHE to affirm his original decision on this issue.

## **IX.**

### **Customer Care**

Both ICA and Samsung disagreed with the IHE Report concerning adjustments to the amount of costs AE included in its revenue requirement for Customer Care. The IHE found that AE should bear 100% of the costs relating to customer complaints even though he acknowledged that AE acts as agent for the City's other utilities and has addressed customer complaints from other City utilities.<sup>13</sup> AELIC agrees with the ICA and Samsung. While the study AE relied upon to develop its customer care costs may have been reasonable at some time, the record evidence shows that the study allows costs clearly attributable to other utilities to be included in costs AE is seeking to be recovered from its customers. The costs clearly attributable to other City utilities are neither reasonable nor necessary costs to provide electric service. It is the utility's duty to identify and quantify what costs among a set of costs that include non-electric utility costs are reasonable and necessary costs that its customers should bear. AE has simply failed in meeting its burden of proving up the reasonableness and necessity of the customer care costs when those costs contain non-AE utility costs. The PUC in *Application of El Paso Electric Co.*, Final Order, 10 Tex. P.U.C. Bull. 1071, (PUC 1984) was faced with a similar experience. In this case, El Paso Electric Co. requested recovery of certain airplane expenses conceding that some of the expenses were not related to utility service. The Examiner in that case stated:

The examiners note that while each trip was not revealed as an improper inclusion in cost of service, this does not automatically mean that all remaining items have been proven reasonable. Assuming for the sake of argument that a presumption of reasonableness exists for any item not contested in a rate case, it is the examiners' opinion that the presumption dissipates once any of the components of the item is shown to be improper and/or unreasonable. At this point the party with the burden of proof--the company-- must come forward to justify the remaining components. This was not done in this case. EPEC made no attempt to prove the reasonableness of the requested airplane expenses, even in light of the company's own admissions that some of the inclusions are inappropriate

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<sup>13</sup> See e.g. IHE Report at p. 102.



*El Paso at p. 83*

The Examiner disallowed El Paso's total requested recovery of airplane expenses because the company failed to identify and prove up the reasonableness of its airplane expenses.

AELIC notes that neither ICA nor Samsung requested a total disallowance of the customer care costs, but did recommend some adjustment to reflect that AE included costs in its customer care costs that were not related to AE's utility service.

AELIC requests Your Honor to find that AE's requested customer care costs include costs that are not related to AE utility service and to recommend that the Council adopt the recommended adjustment to customer care costs requested by ICA and Samsung.

### **Prayer**

**WHEREFORE, PREMISES CONSIDERED,** AELIC respectfully requests the IHE to grant the relief stated above, to grant the relief requested in its Motion for Reconsideration and for such other relief in law or in equity to which it is entitled.

Respectfully Submitted

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### **CERTIFICATE OF SERVICE**

The undersigned certifies that TLSC has served a copy of the attached document upon all known parties of record by email and to the Impartial Hearing Examiner on the 31st day of July 2016

/S/ Lanetta M. Cooper  
Lanetta M. Cooper