



Thursday, September 28, 2006

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**Public Hearings and Possible Actions
RECOMMENDATION FOR COUNCIL ACTION**

ITEM No. 11

Subject: Conduct a public hearing to receive public comments and adopt an ordinance amending the Large Primary Service - Special Contract Rider in the Electric Rate Schedule in Exhibit A of Ordinance No. 20050912-004 and adding a new Large Primary Service - Special Contract Rider II to the Electric Rate Schedule in Exhibit A of Ordinance No. 20050912-004.

Fiscal Note: There is no unanticipated fiscal impact. A fiscal note is not required.

**Additional Backup
Material**

(click to open)

Ordinance

For More Information: Michael McCluskey, Senior Vice President for Wholesale and Retail Markets, 322-6296; Andy Perny, Assistant City Attorney, 322-6277.

Boards and Commission Action: Recommended by the Electric Utility Commission.

Prior Council Action: The public hearing on this item was set by City Council on August 31, 2006.

The proposed amendment to the Large Primary Service - Special Contract Rider ("LPSSCR") will restrict the class of customers eligible to receive LPSSCR service under the current tariff to those already having contracts in place, and will limit their current LPSSCR service to the terms of their existing contracts - the latest of which will expire on May 31, 2015. New customers wishing to receive LPSSCR service, and those whose contracts expire before May 31, 2015, may then receive service under the proposed LPSSCR II until May 31, 2015.

Both the amendment to the LPSSCR, and the new LPSSCR II, provide that customers may install and operate up to 20kW of on-site renewable energy capacity, consistent with the City's Distributed Generation from Renewable Sources Rider. The new LPSSCR II further eliminates provisions concerning the possible deregulation of the Austin retail service area that are no longer operative or relevant, and also eliminates provisions giving LPSSCR II customers guaranteed lowest electric rates (other than State rates and legally mandated rates). The new LPSSCR also allows the utility to adjust its power factor. Other than these changes, the terms of service under the new LPSSCR II are identical to those provided by the existing LPSSCR.

The effect of these amendments, other than to modify the LPSSCR as noted above, is to make available the LPSSCR rate to all eligible new and existing large primary customers for the same continuing term ending on May 31, 2015, rather than the staggered contractual terms that exist for different customers today. The LPSSCR rate has been a useful tool in attracting and retaining large high-tech and industrial customers that are vital to the Austin economy.

ORDINANCE NO.

AN ORDINANCE AMENDING ORDINANCE NO. 20050912-004 TO AMEND THE ELECTRIC RATE SCHEDULE LARGE PRIMARY SERVICE – SPECIAL SERVICE CONTRACT RIDER AND TO ADD THE LARGE PRIMARY SERVICE – SPECIAL CONTRACT RIDER II IN EXHIBIT A.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Ordinance No. 20050912-004 is amended to amend the Electric Rate Schedule Large Primary Service – Special Contract Rider in Exhibit A to read:

**CITY OF AUSTIN
ELECTRIC RATE SCHEDULE
LARGE PRIMARY SERVICE – SPECIAL CONTRACT RIDER**

Definitions:

FULL REQUIREMENTS service means generation, transmission, and distribution, (i.e., “bundled”) service as presently supplied by City of Austin (sometimes referred to as City) to customer; provided, however, that the customer may self-generate up to 20 kW of its requirements from customer-owned, on-site renewable energy technology, subject to the terms and conditions of the City of Austin’s Distributed Generation from Renewable Sources Rider

BEST OFFER means the cost of generation of a competing supplier, plus other costs, fees or expenses that a customer incurs in order to bring the generation to its point of service, including but not limited to: (1) transmission wheeling costs to the City of Austin Electric System; (2) transmission and distribution wheeling costs to the customer’s point of service; and (3) costs to install or construct any on-site generation, interconnection or metering facilities.

COMPETING SUPPLIERS includes but is not limited to a provider of generation, energy services, and ancillary services, whether or not the supplier is located inside the City of Austin’s current service territory, to the extent that the provider is permitted by law to service the customer load.

Application:

This rate is applicable to a large primary service (LPS) customer that executed a separate contract for service under this rider prior to October 9, 2006 in form and substance

1 acceptable with the City of Austin, for this service. The contract will require the customer
2 to remain a full requirements customer of the City of Austin for up to ten years, subject to
3 certain rights of first refusal as set forth below. The City of Austin, acting by and through
4 its Electric Utility Department, enters and executes the contract and assumes its
5 obligations in its proprietary capacity as the owner and operator of a utility enterprise
6 increasingly in competition with other power suppliers for the attraction and retention of
7 industrial loads, and in order to induce customer to remain a customer of the City of
8 Austin on a long term basis. This rate and the other terms of this rider shall remain
9 available to customer only for the remainder of the term currently specified in customer's
10 contract. Any amendments to customer's current contract shall be subject to the terms of
11 the City of Austin's Large Primary Service – Special Contract Rider II.

12
13 The Rider TOU – Thermal Energy Storage and the Optional Time-of-Use Rate may be
14 attached to this rate.

15
16 Character of Service:

17
18 The character of Service provided under this rate is alternating current, 60 cycles, single
19 phase or three phase, in accordance with the Utilities Criteria Manual prescribed by the
20 City of Austin and which may be amended from time to time. Electric service of one
21 standard character will be delivered to one point on the customer's premises and
22 measured through one meter.

23
24 Monthly Rate:

25
26 Rate (E):

	Winter Billing Months of November through April	Summer Billing Months of May through October
27 Energy Rate (E)	28 1.11¢ per kWh, 29 for all kWh	30 1.11¢ per kWh, 31 for all kWh

32 Demand Rate (ELD)	33 \$11.40 per kW	\$12.54 per kW
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34 Fuel Adjustment Clause (FAC) – plus an adjustment for variable costs, calculated
35 according to the Fuel Adjustment Clause Tariff, multiplied by all kWh.

36
37 Minimum Bill:

38
39 Customer will be assessed a monthly Minimum Bill of \$12.00 if the above calculations
40 result in a charge of less than \$12.00.

41
42 Billing Demand:

The kilowatt demand during the fifteen-minute interval of greatest use during the current billing month as indicated or recorded by metering equipment installed by the City of Austin. When power factor during the interval of greatest use is less than 85%, Billing Demand shall be determined by multiplying the indicated demand by 85% and dividing by the lower peak power factor.

Optional Time-Of-Use Rate:

At the option of the customer, a separate agreement may be entered into between the City and the customer for a time-of-use incentive rate. The customer shall permit the City to install all equipment necessary for time-of-use metering and to permit reasonable access to all electric service facilities installed by the City for inspection, maintenance, repair, removal, or data recording purposes.

	Winter Billing Months of November through April	Summer Billing Months of May through October
Energy Rate (E)		
On-Peak	1.71¢ per kWh	2.41¢ per kWh
Off-Peak	(.29)¢ per kWh	.56¢ per kWh
Demand Rate (ELD)		
On-Peak	\$11.40 per kW	\$12.54 per kW
Off-Peak	\$0.00 per kW	\$0.00 per kW

Billed demand will be based on the fifteen-minute interval of greatest use during an On-Peak period for the current billing month. All other adjustments will be included as described above (See Billing Demand).

Fuel Adjustment Clause (FAC) - plus an adjustment for variable costs, calculated according to the Fuel Adjustment Clause Tariff, multiplied by all kWh.

On-Peak: 1:00 p.m. to 9:00 p.m., Monday through Friday; May 1 through October 31.
8:00 a.m. to 10:00 p.m., Monday through Sunday; November 1 through April 30.

Off-Peak: 9:00 p.m. to 1:00 p.m., Monday through Friday; all day Saturday, Sunday, Memorial Day, Independence Day, and Labor Day; May 1 through October 31. 10:00 p.m. to 8:00 a.m. Monday through Sunday; November 1 through April 30.

Terms and Conditions:

1 The special contract rate begins on the first day of the customer's billing cycle following
2 the date that a separate contract has been executed between the City of Austin and the
3 customer, and shall be in effect for a period of thirty-six (36) months thereafter.
4

5 Not earlier than the first day of the thirty-seventh month after the effective date and not
6 later than the last day of the seventy-second month after the effective date, a most favored
7 nations clause applies (which clause does not apply to a rate paid by a governmental
8 entity of the State of Texas, that is mandated by Federal or State law, the Public Utility
9 Commission, a judicial body, or a retail pilot program affecting a customer of the City of
10 Austin). It is the intent of this provision that the most favored nations clause will not
11 apply unless the City of Austin voluntarily charges a lower rate to another LPS customer
12 or large industrial primary service or transmission level customer (who receives power at
13 12,500 volts or higher and has a demand for power that meets or exceeds 3,000 kW for
14 any two months within the previous twelve months). If the City of Austin is required by
15 Federal or State law, the Public Utility Commission, or a judicial body to charge a lower
16 rate to a customer or group of customers, then the most favored nations clause does not
17 apply.
18

19 For the remainder of the term of this contract after the seventy-second month after the
20 effective date, the City of Austin may keep customer loads on-system by exercising a
21 continuing right of first refusal to match the best offer of any competing suppliers. The
22 City of Austin shall have until the later of sixty (60) months from the effective date, or
23 seventy-five (75) days from the date it receives proper notice from Customer to exercise
24 its right of first refusal. All alternative proposals may be disclosed to the City of Austin
25 on a confidential trade secret basis to the extent permitted by law, and shall be supported
26 by a sworn affidavit signed by a corporate officer of the customer involved.
27

28 For the remainder of the term of this contract after the seventy-second month after the
29 effective date, provided that retail competition in the electric utility industry in Texas is
30 allowed and is available in Austin, Texas, the City of Austin shall not be obligated to
31 charge the customer the special contract rate. In the event that retail competition is not
32 allowed in Texas, or is not available in Austin, Texas, the customer shall continue to take
33 power from the City of Austin at the special contract rate (with Time-Of-Use option) and
34 be subject to extended application of the most favorable nations clause, until the end of
35 the term of the contract.

36 This tariff does not obligate the City of Austin to match the best offer of any competing
37 supplier. In addition, nothing herein shall obligate the City of Austin to match any portion
38 of an offer or other consideration not directly related to the supply of electric energy (i.e.
39 generation, transmission and distribution) to the customer's facilities in the Austin area.
40 In other words, the City of Austin would be required to match the total delivered cost of
41 electric energy to the customer.
42

1 Contracts entered into under the provisions of this tariff shall protect the integrity and
2 enforceability of the City's right of first refusal. After a customer commences to purchase
3 electric generation from a competing supplier (and the City of Austin fails to exercise its
4 right of first refusal or to match the offer of a competing supplier), provision of
5 generation service by the City of Austin to that portion of customer's total load removed
6 from the City of Austin Electric System shall thereafter be at the sole option of the City
7 of Austin. However, the City of Austin shall have a continuing obligation to provide
8 transmission and distribution services, including ancillary services if needed, pursuant to
9 its tariffs and the Public Utility Commission's Substantive Rules or other applicable laws
10 and regulations.

11
12 A customer may not submit bids or offers received from competing suppliers, and
13 thereby cause or require the City of Austin to exercise its right of first refusal in
14 accordance with the terms of this tariff, more than once every twelve months.
15 Nothing in this tariff or a contract under this tariff shall operate to prevent, prohibit, or
16 delay the City of Austin from recovering "stranded" costs from the customer, to the
17 extent authorized by law, including those described in the Public Utility Regulatory Act.

18
19 If, notwithstanding the foregoing paragraph, any subsequent legislation would in any way
20 operate to prevent, prohibit or delay recovery of the full amount otherwise authorized by
21 law, of "stranded" costs through any surcharge or additional charge or any new or revised
22 rate level or element solely because of the existence or contents of this tariff or the
23 contract, then the contract rates specified in this tariff for energy, demand and/or fuel
24 shall be deemed to be changed by an amount designed to exactly equal the revenue the
25 City of Austin would otherwise recover but for the existence or contents of this tariff or
26 contract. Any change shall take effect on the same date that the surcharge, additional
27 charge or new or revised rate level or element would otherwise go into effect. If
28 necessary the change may take the form of a one-time charge, assessable prior to or after
29 customer switches generation suppliers. To the extent possible, while still allowing full
30 recovery of the otherwise authorized amount, the change shall be incorporated into
31 prospective monthly recurring charges.

32
33 The contract to be signed by customer shall explicitly incorporate the terms of the
34 preceding two paragraphs, and also provide that the results contemplated by the
35 paragraphs are essential and non-severable terms of the contract.

36
37 Notwithstanding any provision of this tariff, neither customer nor the City of Austin shall
38 be precluded from challenging the legal validity of any statute, regulations, or other
39 provisions of law.

40
41 This Special Contract Rider shall be extended to all of an LPS customer's accounts
42 having a maximum demand of at least 500 kW.
43

1 Upon request, customers receiving service under this Special Contract Rider will be
2 provided dual feed service with reserve capacity and maintenance under the 10 year long
3 term contract provisions of this Special Contract Rider, except that the customer will be
4 responsible for the initial assessment fee, customer requested changes to the initial
5 assessment, and facilities design and construction costs, as established in the fee
6 schedule. Dual feed service with reserve capacity is electric service provided to the
7 customer's premise(s) through two (or more) independent distribution feeders, with one
8 feeder in normal service and the other in back-up service. Capacity is reserved for the
9 second feeder, and is placed into service upon an outage of the primary feeder.

10
11 If it is determined at any time by the City of Austin that the customer violated the
12 provisions of this tariff or the contract implementing the tariff, then the customer will be
13 immediately billed on the LPS rate schedule, or as amended, from the date service was
14 first commenced under this tariff. The difference, plus interest at one percent (1%) per
15 month, or the maximum allowable legal interest rate, whichever is less, from the date
16 service was first commenced under this tariff, shall immediately become due by customer
17 to the City of Austin.

18
19 The contract executed under this tariff shall address the rights of the City and the
20 customer relating to the transfer or assignment of rights under this tariff.

21
22 **PART 2.** Ordinance No. 20050912-004 is amended to add the Electric Rate Schedule
23 Large Primary Service Special Contract Rider II in Exhibit A as follows:

24
25 CITY OF AUSTIN
26 ELECTRIC RATE SCHEDULE
27 LARGE PRIMARY SERVICE - SPECIAL CONTRACT RIDER II

28
29 Definitions:

30
31 FULL REQUIREMENTS service means full and exclusive generation, transmission, and
32 distribution, (i.e., "bundled") service by the City of Austin (sometimes referred to as
33 City) to customer; provided, however, that the customer may self-generate up to 20 kW
34 of its requirements from customer-owned, on-site renewable energy technology, subject
35 to the terms and conditions of the City of Austin's Distributed Generation from
36 Renewable Sources Rider.

37
38 Application:

39
40 This rate applies to a large primary service (LPS) customer that executes a separate
41 contract for this service on or after October 9, 2006, in form and substance acceptable to
42 the City of Austin. The contract will require the customer to remain a full requirements
43 customer of the City of Austin through May 31, 2015, on which date customer's contract

1 and the terms of this rider shall terminate; provided, however, that if the City of Austin
2 subsequently adopts a tariff that provides more favorable rates, terms, or conditions than
3 provided by this rider and which describes a customer class for which customer's large
4 primary service accounts qualify, customer may terminate its contract and receive service
5 pursuant to such subsequent tariff. The City of Austin, acting by and through its Electric
6 Utility Department, enters and executes the contract and assumes its obligations in its
7 proprietary capacity as the owner and operator of a utility enterprise increasingly in
8 competition with other power suppliers for the attraction and retention of industrial loads,
9 and in order to induce customer to remain a customer of the City of Austin.

10
11 The Rider TOU – Thermal Energy Storage and the Optional Time-of-Use Rate may be
12 attached to this rate.

13
14 Character of Service:

15
16 The character of Service provided under this rate is alternating current, 60 cycles, single
17 phase or three phase, in accordance with the Utilities Criteria Manual prescribed by the
18 City of Austin and which may be amended from time to time. Electric service of one
19 standard character will be delivered to one point on the customer's premises and
20 measured through one meter.

21
22 Monthly Rate:

23
24 Rate (E):

25
26
27 Energy Rate (E)

28
29
30 Demand Rate (ELD)

31
32 Fuel Adjustment Clause (FAC) – plus an adjustment for variable costs, calculated
33 according to the Fuel Adjustment Clause Tariff, multiplied by all kWh.

34
35 Minimum Bill:

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37 Customer will be assessed a monthly Minimum Bill of \$12.00 if the above calculations
38 result in a charge of less than \$12.00.

39
40 Billing Demand:

41
42 The kilowatt demand during the fifteen-minute interval of greatest use during the current
43 billing month as indicated or recorded by metering equipment installed by the City of

Austin. When customer's power factor during the interval of greatest use is less than 85%, Billing Demand shall be determined by multiplying the indicated demand by 85% and dividing by the lower peak power factor; provided, however, the power factor adjustment specified in this paragraph shall be superceded by any subsequent tariff or ordinance governing power factor that may enacted or amended by the City of Austin from time to time.

Optional Time-Of-Use Rate:

At the option of the customer, a separate agreement may be entered into between the City and the customer for a time-of-use incentive rate. The customer shall permit the City to install all equipment necessary for time-of-use metering and to permit reasonable access to all electric service facilities installed by the City for inspection, maintenance, repair, removal, or data recording purposes.

	<u>Winter</u> <u>Billing Months of</u> <u>November through April</u>	<u>Summer</u> <u>Billing Months of</u> <u>May through October</u>
<u>Energy Rate (E)</u>		
<u>On-Peak</u>	<u>1.71¢ per kWh</u>	<u>2.41¢ per kWh</u>
<u>Off-Peak</u>	<u>(.29)¢ per kWh</u>	<u>.56¢ per kWh</u>
<u>Demand Rate (ELD)</u>		
<u>On-Peak</u>	<u>\$1.40 per kW</u>	<u>\$12.54 per kW</u>
<u>Off-Peak</u>	<u>\$0.00 per kW</u>	<u>\$0.00 per kW</u>

Billed demand will be based on the fifteen-minute interval of greatest use during an On-Peak period for the current billing month. All other adjustments will be included as described above (See Billing Demand).

Fuel Adjustment Clause (FAC) - plus an adjustment for variable costs, calculated according to the Fuel Adjustment Clause Tariff, multiplied by all kWh.

On-Peak: 1:00 p.m. to 9:00 p.m., Monday through Friday; May 1 through October 31.
8:00 a.m. to 10:00 p.m., Monday through Sunday; November 1 through April 30.

Off-Peak: 9:00 p.m. to 1:00 p.m., Monday through Friday; all day Saturday, Sunday,
Memorial Day, Independence Day, and Labor Day; May 1 through October 31. 10:00
p.m. to 8:00 a.m. Monday through Sunday; November 1 through April 30.

Terms and Conditions:

1 The special contract rate is effective on the first day of the customer's billing cycle
2 following the date that a separate contract under this tariff has been executed between the
3 City of Austin and the customer, and shall be in effect through May 31, 2015.

4
5 Notwithstanding any provision of this tariff, neither customer nor the City of Austin shall
6 be precluded from challenging the legal validity of any statute, regulations, or other
7 provisions of law.

8
9 This Special Contract Rider shall be extended to all of an LPS customer's accounts
10 having demand of at least 500 kW.

11
12 Upon request, customers receiving service under this Special Contract Rider will be
13 provided dual feed service with reserve capacity and maintenance under the long term
14 contract provisions of this Special Contract Rider, except that the customer will be
15 responsible for the initial assessment fee, customer-requested changes to the initial
16 assessment, and facilities design and construction costs as established in the fee
17 schedule. Dual feed service with reserve capacity is electric service provided to the
18 customer's premise(s) through two (or more) independent distribution feeders, with one
19 feeder in normal service and the other in back-up service. Capacity is reserved for the
20 second feeder, and is placed into service upon an outage of the primary feeder.

21
22 If it is determined at any time by the City of Austin that the customer violated the
23 provisions of this tariff or the contract implementing the tariff, then the customer will be
24 immediately billed on the LPS rate schedule, or as amended, from the date service was
25 first commenced under this tariff. The difference, plus interest at one percent (1%) per
26 month, or the maximum allowable legal interest rate, whichever is less, from the date
27 service was first commenced under this tariff, shall immediately become due by customer
28 to the City of Austin.

29
30 The contract executed under this tariff shall address the rights of the City and the
31 customer relating to the transfer or assignment of rights under this tariff.

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37 **PART 3.** This ordinance takes effect on October 9, 2006.

PASSED AND APPROVED

_____, 2006

§
§
§

Will Wynn
Mayor

APPROVED:

David Allan Smith
City Attorney

ATTEST:

Shirley A. Gentry
City Clerk

