

**AUSTIN ENERGY'S RESPONSE TO TEXAS INDUSTRIAL ENERGY CONSUMERS'
MOTION TO COMPEL**

Austin Energy files this Response to Texas Industrial Energy Consumers' ("TIEC") Motion to Compel Austin Energy to Respond to TIEC's Fourth Request for Information, and respectfully shows as follows:

I. PROCEDURAL HISTORY

TIEC served its Fourth Request for Information ("RFI") to Austin Energy on May 27, 2022. Austin Energy reviewed these RFIs and determined that two requests sought irrelevant information. Counsel for Austin Energy and TIEC conducted good faith negotiations that failed to resolve issues related to TIEC 4-5 and 4-10, so Austin Energy filed an Objection on June 6, 2022. TIEC filed a Motion to Compel Austin Energy to respond to TIEC 4-5 and 4-10 on June 14, 2022. Pursuant to the 2022 Austin Energy Base Rate Review Procedural Guidelines § F(2)(h), this Response to TIEC's Motion to Compel is timely filed.

II. RESPONSE TO TIEC'S MOTION TO COMPEL

Austin Energy objected to TIEC 4-5 and 4-10 because these requests seek information that is neither relevant to the issues presented nor is reasonably calculated to lead to the discovery of admissible evidence in the 2022 Austin Energy Base Rate Review. TIEC is correct that "[r]elevance is a low threshold," and "[i]nformation is relevant if it has any tendency to make a fact of consequence more or less probable than it would be without the evidence."¹ Austin Energy requests that the Impartial Hearing Examiner sustain Austin Energy's Objection to TIEC 4-5 and 4-10 for the following reasons.

a. TIEC 4-5 Seeks Irrelevant Information

TIEC 4-5: Provide a copy of Austin Energy's most recent short/long-term electricity sales and peak load forecast.

¹ TIEC's Motion to Compel Austin Energy to Respond to TIEC's Fourth Request for Information at 2 (Jun. 14, 2022).

Austin Energy objected to this Request because it seeks Austin Energy's most recent short/long-term electricity sales and peak load forecast, which is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. Pursuant to the 2022 Austin Energy Base Rate Review Procedural Guidelines § F(1)(a), "[d]iscovery is limited to relevant information that is not unduly prejudicial. In other words, Participants can ask for information related to the Rate Filing Package." As indicated in Austin Energy's Base Rate Filing Package, Austin Energy is proposing changes to its base electric rates based on a 2021 Test Year in this proceeding. Austin Energy's base rates as proposed in its 2022 Base Rate Filing Package were developed to reflect an embedded cost of service analysis based on a 2021 Test Year. Therefore, Austin Energy's most recent short/long-term electricity sales and peak load forecast have no relevance to the 2022 Base Rate Review. Thus, this request seeks information outside the scope of this proceeding.

TIEC contends that utility sales and peak loads are undoubtedly relevant to the rate setting process.² Austin Energy agrees, but *future* utility sales and peak loads have no relevance to rate setting based on a historic test year. Future utility sales and peak load projections are not used in any capacity when setting billing determinants used to recover the utility's costs. TIEC also argues that changes in billing determinants will change the amount of revenue that the utility recovers without any changes in rates.³ Austin Energy also does not dispute this, which is why it uses a historic test year—adjusted for known and measurable changes—to base its billing determinants on. If Austin Energy experiences increasing billing determinants in the future due to load growth, it will recover a greater amount of revenue than in the historical test year, and conversely, if it experiences decreasing billing determinants in the future, it will incur additional costs than it did in the historical test year. Basing rates on projected, and thus, unknown, events is not a ratemaking principal employed by Austin Energy. Austin Energy is not aware of any utility in the State of Texas whose rates are set using forecasted, projected information based on a future test year.

Forecasts are, by their nature, inherently speculative and not a proper basis for setting rates. Therefore, they are not relevant. TIEC's discussion of the known and measurable standard is erroneous. Ratemaking is not an exact science. Rates are set using a historic test year. Known

² *Id.* at 2-3.

³ *Id.*

and measureable adjustments to test year data are appropriate to make the test year more reflective of the rate year. Significantly, the Public Utility Commission of Texas has consistently held throughout its history that adjustments must actually be both known and measurable. In contrast, future projections are inherently unknown and unmeasurable. The fact that a utility may prepare estimates of future sales and demand is irrelevant to setting rates insofar as they are simply speculative guesses that do not meet the known and measurable standard.

TIEC notes that Austin Energy has provided at least one load forecast in response to Sierra Club / Public Citizen 2-3(d).⁴ While Austin Energy did provide this forecast, it is aggregate data provided in very high level, is based on outdated projections that are no longer relevant, was already publically available, and was included as one slide in a presentation with other relevant information used to respond to Sierra Club / Public Citizen's request. The information provided in response to Sierra Club / Public Citizen 2-3(d) is not similar to TIEC's request here. Austin Energy's relevance objection to TIEC 4-5 should be sustained.

b. TIEC 4-10 Seeks Irrelevant Information

TIEC 4-10: Provide a schedule showing each of the following metrics for Austin Energy over the past five years and projected for the next five years:

- a) Debt service coverage ratio.*
- b) City transfer.*
- c) The amount of cash available to fund construction.*

Austin Energy objected to this Request to the extent it requested a schedule showing Austin Energy's debt service coverage ratio, city transfer, and the amount of cash available to fund construction projected for the next five years. The Request seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence. Pursuant to the 2022 Austin Energy Base Rate Review Procedural Guidelines § F(1)(a), "[d]iscovery is limited to relevant information that is not unduly prejudicial. In other words, Participants can ask for information related to the Rate Filing Package." As indicated in Austin Energy's Base Rate Filing Package, Austin Energy is proposing changes to its base electric rates based on a 2021 Test Year in this proceeding. Austin Energy's base rates as proposed in its 2022 Base Rate Filing Package were developed to reflect

⁴ *Id.* at 4.

an embedded cost of service analysis based on a 2021 Test Year. Therefore, projections for the next five years of Austin Energy's debt service coverage ratio, city transfer, and the amount of cash available to fund construction have no relevance to the 2022 Base Rate Review. Thus, this request seeks information outside the scope of this proceeding.

Austin Energy objected to the portion of TIEC 4-10 that seeks projected financial information for the same reasons it objected to TIEC 4-5: projected, future forecasts are unknown, not measurable, and cannot be used as a basis for setting rates in this proceeding. TIEC's own Motion to Compel admits that TIEC seeks "information about Austin Energy's projected future financial condition."⁵ Neither Austin Energy nor TIEC knows what the utility's projected future financial condition will be, and therefore they cannot use unknown projections as a basis for rates in this matter. TIEC is correct in stating that Austin Energy is seeking an adequate rate of return that is necessary to allow the utility to attract capital on reasonable terms and maintain its financial integrity.⁶ All of the relevant information needed for that analysis can be found in Austin Energy's Base Rate Filing Package. Austin Energy is not arguing that it needs additional revenue based on future projections, or events that may never occur; it is arguing that it needs additional revenue based on a historic test year, adjusted for known and measurable changes to that test year. Forecasted financial information would not impact anything in Austin Energy's Base Rate Filing Package, because forecasted financial information would not meet the known and measurable standard. Therefore, the information sought by TIEC would not be incorporated as adjustments to test year data. Forecasted financial information is based on assumptions, equivalent to a guess, which has no bearing on the test year.

TIEC notes again that Austin Energy has provided certain projected financial information in response to other discovery responses.⁷ The examples provided by TIEC are not similar to its request in TIEC 4-10. For example, Austin Energy provided projected principal payments in response to Independent Consumer Advocate (ICA) 2-1.⁸ Projected principal payments are based on an established payment plan, which is known and measurable. Austin Energy also provided

⁵ *Id.* at 5.

⁶ *Id.*

⁷ *Id.* at 6.

⁸ Austin Energy's Response to ICA's Second Request for Information at 2 (May 13, 2022).

the general fund transfer (GFT) for 2022 in response to ICA 2-3.⁹ The GFT for 2022 has already been paid, and thus is not only known and measurable, but has already occurred and is thus historical information. Lastly, as explained above, Austin Energy provided a high-level forecast in response to Sierra Club / Public Citizen 2-3(d), which included aggregate data based on outdated projections, was already publically available, and was included as one slide in a presentation with other relevant information used to respond to Sierra Club / Public Citizen's request. Therefore all examples given by TIEC are distinguishable from its requests here, and Austin Energy's relevance objection to TIEC 4-10 should be sustained.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Austin Energy requests the Impartial Hearing Examiner sustain Austin Energy's Objection to TIEC 4-5 and 4-10. Austin Energy also requests any other relief to which it may show itself justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR THE CITY OF AUSTIN
D/B/A AUSTIN ENERGY**

⁹ *Id.* at 4.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading has been served on all parties and the Impartial Hearing Examiner on June 21, 2022, in accordance with the 2022 Austin Energy Base Rate Review Procedural Guidelines.



THOMAS L. BROCATO