	§	**BEFORE THE CITY OF AUSTIN**
AUSTIN ENERGY'S	§	
2022 BASE RATE REVIEW	§	**HEARINGS EXAMINER**

2WR's Position Statement

To the Independent Hearing Examiner:

Two Women Ratepayers ("2WR") file the following brief:

I.

Introduction

This review of Austin Energy's ("AE") base rates comes with a rate-filing package that leaves much to be desired in the way of clarity of facts and consistency of and in the use of data. AE established the procedural rules and timelines without input from the participants and with the caveat that timelines could not be changed without AE consent.

The test year relied upon in this review starts with the last month of pandemic rate relief and includes a significant loss of electric service event caused by winter storm URI. Yet AE failed to address these two events in its rate-filing package.[1] Despite AE's failure, 2WR will show below that these two events figure heavily in AE's seemingly urgent request to drastically change residential rate design for its ratepayers. AE's failure is an example of how its rate-filing package lacks clarity and increased the difficulty of participants' abilities to participate. 2WR will be making policy recommendations below about improving the transparency and fairness of the base rate review process.

Additionally, 2WR will be address the commingled nature of AE's business operations, adjustments to its revenues and costs, growth, cost allocation and residential rate design issues.

II.

Transparency and Fairness

Both the procedural rules and the timeline were drafted by AE without input from participants. The procedural timelines are very tight and transfers the authority and ability to alter the timelines from

[1] The word "pandemic" was found once in a Fitch rating report in the rate-filing appendix at p. 726 of the package without any discussion as to the costs and/or revenues affected in FY 2020 and FY 2021. Winter Storm URI was mentioned twice in the same paragraph discussing pass-through rates, not base rates. See p. 51 of the rate-filing package.

the Independent Hearing Examiner ("IHE") to AE, a participant in the base rate review process. This shift of authority prejudices the other participants to the advantage of AE by controlling how much time participants have to request to participate, and to seek and obtain information ("RFIs") about AE's operations during the test year, both formally through requests for information and at technical conferences. The procedural rules also hampered non-AE participants' abilities to obtain information by limiting the number of RFIs each participant could ask AE about information that was vaguely provided and that omitted key events such as the pandemic rate discounts. The shortened timelines and notice left little time to ask follow-up questions. Little time was provided participants to file briefs after the hearing except for AE who did not file at the same time as participants but at much later dates and restricted participants formal rebuttals to other participants to only half of the subject matter to be covered (cost allocation and rate design) barring further discussion of revenue requirement after initial filings.

The rate-filing package also presented obstacles in its vagueness. First participants had to use some of their limited RFIs to find out information such as the pandemic and winter storm URI events occurring during the test year. Second AE was not forthcoming in providing information. An example would be 2WR's and other participants requests for information about the effect of URI and the effect the days of electricity outages for hundreds of thousands of ratepayers had on the utility's costs and revenues. The response was reference to an after-action report that provided none of the facts requesting information on the abnormal changes to AE's costs and revenues. It was not until one participant's happenstance finding of an AE filing before the PUC that participants were able to get an understanding of effect URI had on AE operations[2] Even then a question about this filing brought no answer because AE alleged that the information was irrelevant based on the methodology it used to derive the TY as opposed to FY revenues and costs. Whether this is true or not, AE did not use those revenues and costs to justify its drastic residential rate design changes. Instead, AE used the FY2020 and FY2021 revenues and costs affected by the pandemic rate discounts and winter storm URI. Using these two years of hemorrhaging revenues, and for FY 2021, the substantial storm costs to prove AE net revenues are slipping due to its residential rate design and cannot sustain a fiscally sound business going forward without drastic change is disingenuous and misleading, especially in its glaring absence of

[2] The report filed in Project No. 51674 was in response to the Texas Public Utility's request for information of utility damages caused by the winter storm. Ironically, the transmittal letter to this report was signed by co-counsel to this filing. The short report revealed that over the course of about seven days upwards to 220,259 customers experienced electrical outage causing approximately 509,828,944 customer minutes of customer interruption and therefore lost kilowatt hours of sales and therefore revenue to AE.

discussing these two events in its rate-filing. More concerns will be addressed in the commingling, cost allocation and rate design sections below.

2WR is asking the IHE to recommend the council direct the EUC to develop procedural rules that provide fairness to all participants. 2WR further asks the IHE to recommend the council direct the EUC to develop minimum elements to be included in a rate-filing package including sections such as discussion of significant events occurring during the test year and how AE resolved the cost and revenue consequences. These two requests go hand in hand. The more transparent a rate-filing package, the less discovery is needed.

II.

The Commingling Conundrum

AE provides several services under one business enterprise. This fact itself is not a problem. Economies of scope allow AE to provide these different services at a more efficient level. This is good for ratepayers and Austin citizens who are the shareholders. A quandary arises when either: rates are being set for one set of services, in the case base rates, and the underlying costs are shared with other services; or where a decision in the base rate case will have an operational and/or rate effect of the other service or services AE provides. About half of an AE residential electric bill is made up of charges from other non-base rate charges. This is a serious issue given the magnitude of the other services.

Another commingling problem arises with customer contributions in aid of construction ("CIAC"). CIAC is AE's implementation of council policy that new customers should pay the full costs recovery of service extensions. See COA Resolution No. 20140612-057 (June 12, 2014). Neither the rate-filing package nor RFIs provided information tracking the capital investments paid for by CIAC throughout all aspects of the rate-filing package such as debt-service coverage and cost allocation. This is because AE commingles the CIAC revenues with other revenues to fund investments regardless of function. See AE answer to Technical Conference No. 2 Follow-up, 2WR 2-2. 2WR has yet to receive answers to how AE books and tracks the CIAC funded capital or how it is treated in cost of service. Because of this failure 2WR cannot determine whether an adjustment should and can be made. 2WR is asking the IHE to recommend the council direct AE to track its capital paid for with CIAC for purposes of rate setting to ensure ratepayers are not asked to pay for costs, in whole or in part, that have already been paid for. 2WR further asks the IHE to recommend the council direct the EUC to supervise a study addressing whether growth is being adequately but fairly paid for by new customers.

Another commingling concern is AE's non-electric utility business. Although AE shows that it removed all costs related to this business, the adjustment shows that TY 2021 base revenues were used to increase the non-electric business income to provide a zero net profit. See Table 4-B, Item 24, p. 30 of rate-filing package. See also Sched. A, p. C-12 (34 of Appendix) to rate-filing package. This almost $20 million subsidization was one of the causes of AE's gap between base rates and costs. See Fig. 7-23, p. 101, rate-filing package. This subsidization raises additional concerns about how many previous FYs and how great a subsidy have AE ratepayers borne the subsidy in lost revenues. More importantly, how much of the narrowing and so-called gap between base revenues and base costs is caused by this subsidy and not declining sales. This is a problem commingling can cause without careful accounting and reporting. In this case, AE addressed the subsidy issue for purposes of calculating the TY2021 net revenues for setting rates. But at the same time, it included the subsidy costs to portray a utility losing money in a significant enough amount to justify drastic changes to residential rate design. Not a good public policy moment.

The examples set out above show that commingling can be a problem without proper reporting and accounting. It is just as important to see what is included or excluded from commingled costs for one service as it is for base rate services. 2WR asks the IHE to recommend the council direct AE to utilize better reporting and accounting for rate-setting purposes, especially allowing discovery on non-base rate services to ensure no double counting of costs and no subsidization by base rates for another service.

A more compelling request is that the current base rate review be broadened to include rate review for all the services ratepayers pay on the electric portion of their utility bills. First it will allow the council and the public a better check on whether any subsidies are occurring or whether non-base rates should change. Restricting rate review to base rates leaves a little less than fifty per cent of the costs and revenues underlying these pass-through costs totally unchecked and unaccounted for. Except for the transmission rates, the pass-through rates face little scrutiny being lost in a sea of competing budget items. And the transmission rate should be reviewed not to change transmission rates. This is beyond city jurisdiction. The transmission rates should be reviewed to determine whether costs have been adequately identified and included appropriately and whether the profits included in transmission rates should be used to offset base rate or rates from other AE services.

IV.

Adjustments to Test Year

A. Town Lake Property.

In responding to NXP 4th RFI No. 4-1, AE stated its anticipation to transfer its Town Lake property to the City for $30.5 million in FY 2023, the first year the base rates set in this review will take effect. 2WR recommends the $30.5 million be amortized over five years with the amortized amount be included in TY 2021 as an offset to base rate cost of service, allocated to customer classes based on the methodology AE utilized in allocated costs related to the Town Lake building in the last base rate case.

B. Pandemic and winter storm URI adjustment.

In FY 2020 AE initiated a series of pandemic rate relief actions: increased CAP discounts, reduced non-CAP residential rates, waiving a series of fees, including late payment penalty fees. See AE answer to 2WR 1st RFI to AE No. 1-7. This relief ending the second month of FY2021, November 2020 billings. In response to URI, late payment penalties were again waived beginning February 12, 2021. See March 4, 2021 release posted at austinenergy.com/ae/about/news/news-releases/2021/covid-and-winter-storm-utility-bill-relief. The amounts for late payment fees and the other waived fees included in the TY 2021 are understated due to these waivers. An adjustment to the TY 2021 late payment penalty fees included in the rate-filing package should be made to include a more reasonable value for the expense the period the rates will be in effect. The most reasonable approach is to take the previous year fees that were not affected by this waiver and average them and then add the difference between this average number and the amount listed in the rate-filing package. This represents an increase of $2,204,612 over the TY 2021 amount. See rate-filing package, Appendix, E-5.1, p. 170 and AE answer to 2WR 1st RFI No. 1-11. 2WR asks the IHE to find this adjustment reasonable and to recommend that it be made.

C. Rate Case Expenses

Even though base rate review is set on five-year cycles, AE has amortized the rate case expense over three years. The rate case recovery should mirror the time lapse between rate reviews. Amortizing this expense over five years instead of three years leads to a revenue requirement reduction of $238,000 from the TY revenue requirement. 2WR urges the IHE to find and recommend that this reduction be made.

D. 311 Call Center.

The 311 Call Center is a shared service with other city departments. AE has been assigned a portion of those costs based on its per centage of AE-related calls to the center. In addition, AE is paying a supplement for supposed back up of its night services. This is not a reasonable nor necessary expense.

AE has invested in expensive digital meters over much cheaper analog meters to obtain operational information 24 hours a day including when electric services are out. Further, AE has the ability to contact its customers to provide an alert notifying them of any emergency. Consequently, this expense is not necessary and 2WR urges the IHE to find and recommend that the 311 Call Center expenses be adjusted to exclude the after-hours surcharge.

V.
Affordability Goal

AE spends little time addressing affordability goals and showing how they are met.

The first goal is that rates are not supposed to rise more than 2% annual compound rate. This is not a good gauge of affordability. That guideline proved irrelevant in the 2016 rate case where AE was seeking a rate decrease not increase. Further, other economic factors should be considered whether a rate increase or rate design in this case that drastically increases low users' rates should be made. The two primary economic factors that should be incorporated in addressing whether proposed rates or rate designs are affordable are housing and food costs. In other words, how would a rate increase affect a person's ability to remain in the current housing, and how would a rate increase affect a person's ability to purchase adequate food.

The second test is comparing AE rates with other utilities. In this base rate case AE compared average bills, not rates. Because of the City's and AE's successful EE actions, AE has some of the smallest average bills. This means AE can have higher rates than all or most comparable utilities but still have the lowest bill because its average bills have fewer kWh usage. For example, a 10kWh bill @ 10 cents/kWh ($1.00) would be the lower monthly bill than another utility's average bill of 15 kWh @ 7 cents/ kWh (1.05). A more accurate comparison would be to use average rates, not average bill comparisons. Moreover, comparable utility average rate comparisons should be those, still rate regulated and comparable in business operations. Until 2020 the Texas Public Utility Commission (Texas PUC) published monthly data on the average rates for utilities still regulated. These reports are published on the Texas PUC website. According to the latest Texas PUC report (1919), AE's average rate was slightly above the comparison companies. Consequently, AE does not offer one of the cheapest average rates among comparable Texas utilities.

To support the reasonableness of its sharply increased customer charge, AE then turns to a small set of utilities that are not comparable. A more comparable group shows AE's current customer charge in line with that group: Entergy--$10.00 (Effective 2018); El Paso Electric Company--$8.25 (effective 2018); Xcel Energy--$11.40 (approved 2022); CPS Energy--$9.10 (effective 2022). These customer charges reinforce the reasonableness of AE's current customer charge. 2WR urges the IHE to find the current customer charge reasonable and to recommend that no changes be made.

VI
Cost Allocation

A. 311 Call Center

This service provides a social benefit to the community. It is a cost that results in intraclass subsidies. As such, this cost should be allocated as AE has recommended for the state, military and ISD commercial rate discounts. 2WR asks the IHE to so find and recommend.

B. Bad Debt

This is a normal cost of doing business. As such it should be allocated on revenue, not customer. 2 WR asks the IHE to so find and recommend.

VI.
Rate Design

AE is proposing a massive change in its residential rate design by:

1. Raising the customer charge by 250% contending fixed costs are driving this increase, regardless that customer charges have traditionally and are currently among comparable utility companies only recovering costs that vary by the addition of a customer; and
2. Reducing the five-tier rate design to three, reducing the price differentials between the tiers, and cutting the first-tier usage block almost in half, contending that the top two tiers create too much revenue instability given the declining sales in the top two tiers and that the current price differentials are not cost justified.

AE blames Austin's energy efficiency measures for the reduced sales leading to reduced revenues. It also points to the housing market with apartments increasing its share in the housing market, and the turning away from larger and bigger homes. AE did not justify this argument. Energy efficiency measures have an effect on decreasing utility costs. AE admitted in response to Sierra Club and Public Citizen's ("Sierra") 4th RFI No. 43 that energy efficiency reduces AE's allocation of transmission costs due to reducing demand. AE also admitted that energy efficiency would "enable Austin Energy to avoid or defer certain distribution capacity investments that otherwise would have been made." *Id.* Moreover, AE implicitly admits this fact in its rate-filing package by showing the capacity and energy reductions produced by building codes as proof that sales are declining. See rate-filing package at p. 84. AE even considers energy efficiency savings as avoided costs by providing credits in its solar tariff. See rate-filing package at pp. 139-143. Yet AE did not discuss EE avoidance cost savings and how growth paying for growth do not overcome the growth of costs exceeding revenues. Energy efficiency measures are not the enemy of AE's prosperity. The EE measures allow AE to avoid distribution, production and transmission costs and thereby provide lower operating costs needing fewer revenues to be financially viable. This failure to take a serious look negates the strength of AE's arguments.

There is also the issue of growth that AE failed to adequately address. The City has a policy that growth should pay for itself. This concern AE ignored even to the point of identifying incremental costs caused by new customers that are causing the gap between costs and revenues justifying major rate design changes. Some of these incremental costs identified are clearly costs that are supposed to be recovered by CIAC. See rate-filing package at. P. 99.

Consequently, AE failed to show that costs are far outpacing new customer growth despite CIAC and energy efficiency measures.

Another factor negating AE's arguments that reduced revenues and increasing costs justify drastic rate design changes is the use of FY revenues that have been affected by pandemic rate discounts and fee waivers and winter storm URI. See Rate-filing package, pp. 100 and 101. The graphs on these two pages show gaps between revenue and costs in 2020 and 2021. The revenues and costs have not been adjusted to exclude the effects of the pandemic rate relief and URI. See AE answer to 2WR 1st RFI Nos. 1-15, 1-16. Consequently, these two years' of revenues are substantially suppressed and should not serve as support to make drastic changes in AE's residential rate design.

Still another factor negating AE's arguments about reducing bills is the Texas PUC reporting of AE's average rates on a monthly basis. While this report has not been published since February 2020, it does offer insights into whether AE's monthly bills have been steadily declining. The PUC rate data show as follows:

AVERAGE kWh Reported by AE to PUC

	2016	2017	2018	2019
Jan.	788	778	887	761
Feb.	663	607	757	707
Mar.	602	610	600	
Apr.	612	658	626	
May	702	708	686	
June	963	959	1144	
July	1258	1246	1183	

Aug	1251	1277	1311
Sept	1166	1128	1224
Oct	940	888	819
Nov	728	660	685
Dec	651	637	663

Source: Texas PUC rate regulation division electric utility monthly bill comparison. January 2017 to February 2020 published on their website

This data is another indication that AE's financial condition does not necessitate the drastic rate design changes proposed by AE.

Lastly, 2WR points to AE's apparent use of base revenues to subsidize its non-electric business. See Paragraph III above. In addition, AE utilized monies from one of its cash reserves ($27 million) to fund the Nacogdoches biomass power plant's first debt service payment. While this funding decreased AE's cash reserves in FY 2019 and 2020, the conversion from purchase power contract with the plant to its owner the long run is a decrease of costs. See FY2020 Approved budget, Austin, Texas p. 171. These costs were not caused by increased base rate operating costs but by external factors and further indicate that the so-called gap between base rates and base rate costs is clearly not as wide at all, let alone whether a gap exists at all.

Because AE: failed to adjust FY 2020 and 2021 revenues and costs to account for the pandemic rate discount and to account for URI lost revenues and increased costs; and failed to adjust for the subsidy and the biomass conversion costs; and failed to address AE cost savings caused by energy efficiency measures; AE has failed to justify its substantial rate design changes based on failing revenues. 2WR asks the IHE to find and recommend that no rate design changes be made in this rate case.

The customer charge proposed by AE is egregiously high and contains costs that should be excluded. See AE answer to 2WR RFI No. 1-10.

First, all the cost elements that AE has included in the customer charge are overstated because they include a profit, the general fund transfer. In general, utility regulation does not allow utilities to load up expenses with profit. A profit is a separate component. Furthermore, in this case it has the effect of using expenses loaded with the rate case general fund transfer amount to derive the profit, a profit on a profit. General fund transfer is a separate element and should be allocated based on revenues.

Second, some of the elements are tainted because they include costs that should have been recovered with CIAC.

Third, some include cost recovery for the 311 call center which should be allocated on revenue, not customer. See above.

Fourth some of the costs do not increase or decrease based on whether a customer is connected or not connected to service.

Fifth, the current customer charge is reasonable considering comparable utility customer charges.

2WR asks the IHE to find and recommend that the current customer charge is reasonable and that no changes should be made.

VII.
Reservation and Official Notice

At the time for this filing 2WR has not received all its answers. Furthermore, AE's position may change based on new information and other position statements. To that end, 2WR reserves the right to amend its position set out herein, including the addition of new positions.

In further support of this position, 2WR asks the IHE to take official notice of AE answers to the RFIs filed in this case.

Prayer

2WR asks the IHE to grant the relief requested herein.

Respectfully submitted on June 22nd, 2022

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Certificate of Service

The undersigned certifies that 2WR has served a copy of this document upon all known parties of record and the filing clerk by email on the 22nd day of June 2022

/s/ Lanetta M. Cooper