

August 18, 2022

**VIA E-MAIL to rate.filings2022@austinenenergy.com**

Impartial Hearing Examiner  
301 W. 2nd St.  
Austin, TX 78701

Re: Austin Energy's Post-Hearing Brief

Dear Independent Hearing Examiner:

Texas Industrial Energy Consumers (TIEC) has identified factual inaccuracies and certain mischaracterizations of TIEC's position in Austin Energy's (AE) closing brief. TIEC submits this letter to clarify the record and to ensure that the Independent Hearing Examiner (IHE) does not rely on incorrect statements in developing the IHE report in this proceeding.

AE's Production Demand Allocation briefing

AE criticizes TIEC and NXP for pointing to Public Utility Commission of Texas (PUC) precedent for non-ERCOT vertically integrated utilities that allocate production-demand costs based on the AED-4CP<sup>1</sup> method.<sup>2</sup> AE attempts to distinguish its position from the circumstances of those non-ERCOT utilities on a factually inaccurate basis. Specifically, AE states that:<sup>3</sup>

To look to vertically integrated utilities for appropriate cost causation methodologies, as TIEC and NXP advocate in their briefs,<sup>254</sup> is to ignore the significant differences between the ERCOT wholesale market and the fully regulated environment in which these vertically integrated utilities operate. *Unlike AE, vertically integrated utilities operating outside of ERCOT are not subject to wholesale market forces in which generation companies must compete based on economic efficiency in order to have their units run. And, unlike vertically integrated utilities, AE's generation resources are not exclusively maintained to meet AE system peak; rather, they are maintained to be dispatched based on system wholesale price. AE's proposal avoids an overreliance on a traditional approach that is outdated. (emphasis added).*

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<sup>1</sup> Average and Excess Demand, Four Coincident Peak

<sup>2</sup> AE's Post-Hearing Br. at 45.

<sup>3</sup> *Id.*

The italicized sentence above is factually incorrect as to the non-ERCOT utilities TIEC referenced in its brief: ETI, SPS, and SWEPCO.<sup>4</sup> Each of these utilities operates in a competitive, centrally dispatched wholesale market: ETI operates in MISO,<sup>5</sup> and SPS and SWEPCO operate in the SPP.<sup>6</sup> These utilities sell the power from their generating resources into their respective markets at the applicable locational marginal price and buy the power necessary to serve their own customers from these markets, just like AE does in the ERCOT market.<sup>7</sup> Contrary to AE's statement, these utilities thus are "subject to wholesale market forces in which generation companies must compete based on economic efficiency in order to have their units run" in the exact same manner as AE. The record provides no contrary evidence, which is presumably why AE included no citations for the above-quoted statements regarding "vertically integrated utilities" in its brief.

TIEC's expert witness Mr. Pollock submitted testimony explaining that ETI, SPS, and SWEPCO operate in competitive wholesale markets well over a month before AE filed its brief.<sup>8</sup> AE did not refute Mr. Pollock on this point in its rebuttal testimony, and at the hearing, AE witness Mr. Burnham admitted that he does not know how plants are dispatched in MISO and SPP, or whether their circumstances are distinguishable from AE's position within ERCOT.<sup>9</sup> Nevertheless, AE continues to make unsupported (and demonstrably inaccurate) arguments regarding vertically integrated utilities in SPP and MISO.

#### Primary Substation Service

AE's brief inaccurately implies that TIEC misstated the facts on the primary-substation issue. Specifically, AE states that:<sup>10</sup>

*Despite AE revising prior responses and participating in meetings with the participants directly to clarify, NXP and TIEC continue to state that high load factor voltage ( $\geq 20,000$  kW) customers are directly connected to an AE distribution substation through dedicated feeders.<sup>273</sup> As AE has stated multiple times throughout the course of this proceeding, there are no primary  $\geq 20,000$  kW customers that are served directly from the substation. (emphasis added).*

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<sup>4</sup> TIEC's Post-Hearing Br. at 22; TIEC Ex. 1, (Pollock Dir.) at 24.

<sup>5</sup> Midcontinent Independent System Operator.

<sup>6</sup> Southwest Power Pool.

<sup>7</sup> TIEC Ex. 1 (Pollock Dir.) at 24.

<sup>8</sup> *Id.*

<sup>9</sup> Tr. (July 13) at 117:28-49 (Burnham Cr.).

<sup>10</sup> AE's Post-Hearing Br. at 48.

Contrary to AE's implications, the referenced Primary  $\geq$  20 MW customers *are* "directly connected to an AE distribution substation through dedicated feeders," and AE itself confirmed this to TIEC witness Mr. Pollock.<sup>11</sup> AE has also provided a discovery response identifying the specific dedicated feeders that serve these primary customers, which confirms that no other customers take service from those feeders.<sup>12</sup> At the final conference, Mr. Burnham confirmed that the point of interconnection for Primary  $\geq$  20 MW customers is to a feeder that comes out of the substation.<sup>13</sup> Thus, there is no real dispute about whether Primary  $\geq$  20 MW customers are directly connected to AE substations *through dedicated feeders*.<sup>14</sup> They are. The actual dispute is over whether this justifies allocating costs differently for these customers. Contrary to AE's briefing, TIEC has not misstated the facts underlying its position on this issue.

### Credit ratings

Finally, AE inaccurately represents the testimony of TIEC witness LaConte, stating: "Ms. LaConte takes the unusual position that it is not prudent for AE to have an 'AA' rating."<sup>15</sup> AE did not include any citation to support this assertion in its brief, but the original source of this characterization of Ms. LaConte's position was AE witness Mr. Dombroski's rebuttal testimony, which included the question "Do you agree with witness LaConte's argument that it is not prudent for Austin Energy to have 'AA' rating?"<sup>16</sup> Ms. LaConte has never stated that it is "not prudent" for AE to have an 'AA' rating; rather, she testified that it is not prudent for a utility to pursue the *highest credit rating possible without regard to the cost to ratepayers*.<sup>17</sup> This is a materially different position that AE has mischaracterized.

TIEC's counsel clarified this very point with Mr. Dombroski at the hearing, and he agreed that Ms. LaConte had *not* testified that it was imprudent for AE to have an AA rating.<sup>18</sup> He then went on to agree with Ms. LaConte's actual testimony that it is not prudent for a utility to pursue the highest credit rating possible without regard to cost.<sup>19</sup> As with the other misstatements addressed in this letter, it is thus unclear why AE insists on continuing to misrepresent Ms. LaConte's testimony in this manner.

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<sup>11</sup> TIEC Ex. 1 (Pollock Dir.) at 32 ("I am advised by AE that all three High Load Factor Primary Voltage  $\geq$  20 MW) customers are directly connected to an AE distribution substation through dedicated radial feeders.").

<sup>12</sup> TIEC Ex. 23 (AE's Response to NXP's RFI 1-5R).

<sup>13</sup> Tr. (July 15) at 76:6-20 (Burnham Cr.).

<sup>14</sup> The feeders are owned by AE, which TIEC acknowledged in its brief. TIEC's Post-Hearing Br. at 31-32.

<sup>15</sup> AE's Post-Hearing Br. at 48.

<sup>16</sup> AE Ex. 3 (Dombroski Reb.) at 24-25.

<sup>17</sup> TIEC Ex. 3 (LaConte Dir.) at 7-8.

<sup>18</sup> When asked if Ms. LaConte's question was different than how he framed it in his rebuttal testimony, Mr. Dombroski stated, "I agree. It's not word for word and I can understand your point you're making." July 15, 2022 Energy Rate Proceeding Video at 3:00:06 (available at: <https://austintx.new.swagit.com/videos/177897>). However, the transcript inaccurately transcribed Mr. Dombroski's statement to read, "I agree. It's not word for word. Not gonna understand your point You're making." See Tr. (July 15) at 42:16-28 (Dombroski Cr.).

<sup>19</sup> Tr. (July 15) at 42:28-29 (Dombroski Cr.).

TIEC respectfully requests that the IHE disregard AE's factual misstatements or mischaracterizations of TIEC positions, as described above, in developing the IHE report in this proceeding.

Respectfully submitted,

/s/ Benjamin B. Hallmark

Benjamin B. Hallmark

Attorney for Texas Industrial Energy Consumers

cc: All parties of record