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VIA E-MAIL (rate.filings2022@austinenergy.com)

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

Re: Misrepresentations in Austin Energy's Closing Brief

Dear Independent Hearing Examiner:

Similar to Texas Industrial Energy Consumers ("TIEC"),[1] NXP Semiconductors, Inc. ("NXP") has identified various inaccuracies and misrepresentations in Austin Energy's ("AE") closing brief regarding NXP's positions in this proceeding and in record testimony. NXP respectfully submits this letter to identify and correct these issues for the Independent Hearing Examiner's ("IHE") benefit in preparing the IHE report.

Cash Flow Methodology

Despite the representations in AE's brief,[2] NXP witness Mr. Chuck Loy does not contend that AE's inclusion of depreciation and amortization in the development of the return under the cash flow approach was "in error". Rather, Mr. Loy indicated in NXP's Position Statement that while he believed the overall revenue requirement calculated by AE is computationally correct, he disagrees with the *presentation* of the cash flow return because it leads to a significant understatement of the true cash flow return AE is requesting.[3] Additionally, Mr. Loy affirmatively testified during the Hearing that he did not claim inclusion of depreciation and amortization is an "error."[4] And despite the implication in AE's Brief that Mr. Loy's argument must be to make AE look unreasonable or because he "does not understand" the cash flow approach, Mr. Loy readily acknowledges that the inclusion of depreciation and amortization does not computationally impact the revenue requirement.[5] As reflected in Mr. Loy's extensive CV (Exhibit NXP-CEL 9 to NXP's Position Statement), Mr. Loy has been a rate of return expert in

[1] TIEC Letter to IHE Regarding AE's Post-Hearing Brief (Aug. 18, 2022) ("TIEC Letter").
[2] AE's Closing Brief at 6 ("AE Brief").
[3] NXP Ex. 1 at 52:14-15 and 53:1-2.
[4] Tr. 58:41-45 (Loy Cross) (July 14, 2022).
[5] Tr. 61:5-6 (Loy Cross) (July 14, 2022).

numerous cases before the Public Utility Commission of Texas ("Commission") and the Commission has repeatedly accepted his testimony.[6]

Rather, Mr. Loy's argument, as stated in NXP's Position Statement and during the Hearing, is that removal of depreciation and amortization from the cash flow approach provides a clearer picture of the amount of return requested – which in this case is a 13.8% imputed return, or nearly twice the amount of cash flow represented by AE's proposed methodology.[7] Contrary to the suggestion in AE's brief, this *is relevant* information for the City Council to be aware of.

NXP also calls to the IHE's attention AE's misstatement that "AE's approach is consistent with every non-investor owned utility transmission rate filing at the Commission that has utilized the cash flow approach."[8] Not only did NXP provide the example of Brownsville Public Utilities Board's ("BPUB") transmission cost of service cash flow method, but NXP also provided an example of LCRA Transmission Services Corporation's historical transmission cost of service cash flow method, both of which remove depreciation and amortization from the model.[9] AE only addressed the BPUB example in its Brief, claiming that excluding depreciation "is not a common way to file such a request," but provided no support for this conclusion. NXP requests that the IHE disregard AE's comments as described above and instead rely only on the record evidence and testimony in considering NXP's position on the cash flow methodology.

<u>Production Demand Cost Allocation</u>

AE's Brief takes issue with NXP's and TIEC's proposed A&E 4CP production demand cost allocation methodology, stating in part "[t]o look to vertically integrated utilities for appropriate cost causation methodologies, as TIEC and NXP advocate in their briefs, is to ignore the significant differences between the ERCOT wholesale market and the fully regulated environment in which these vertically integrated utilities operate." [10] AE cites NXP's post-hearing brief at page 26. However, AE has selectively represented only a portion a NXP's argument on the referenced page, excluding an example NXP provides of a municipally-owned utility similar to AE. For complete context, NXP requests that the IHE consider the entirety of NXP's argument on the history and prevalence of A&E 4CP discussed in its post-hearing brief, included but not limited to the following (more complete) excerpt:

> All of the investor-owned utilities ("IOUs") in Texas that are integrated use the A&E 4CP methodology to allocate production demand-related costs, and the PUCT has approved this methodology for those utilities and for unbundled IOUs when they were still vertically-integrated. *Moreover, there are MOUs like AE that also utilize the A&E 4CP methodology for allocating demand-related production costs, such as CPS Energy which is a substantially similar system to AE. CPS Energy is also a bundled MOU in ERCOT that owns significant generation resources and serves a comparable load to AE (having both extensive residential*

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[6] NXP Ex. 1 at 111-113.
[7] Tr. 61:5-6 (Loy Cross) (July 14, 2022); NXP Ex. 1 at 53.
[8] AE Brief at 6.
[9] NXP Ex. 6 and 7.
[10] AE Brief at 45.

> *customers and high load factor customers over a large geographic area).*[11] (Emphasis added).

Primary Distribution Demand-Related Costs (Primary Substation Issue)

As is also true for TIEC,[12] AE's brief inaccurately implies that NXP misstated the facts on the primary-substation issue. Specifically, AE states that:

> 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 (≥ 20,000 kW) customers are directly connected to an AE distribution substation through dedicated feeders. As AE has stated multiple times throughout the course of this proceeding, there are no primary ≥ 20,000 kW customers that are served directly from the substation.[13]

NXP's brief does not state that high load factor voltage customers are directly connected to an AE substation through dedicated feeders. Instead, NXP acknowledged AE's position on this fact and made a recommendation on a rate alternative for these customers regardless of whether AE considers them "directly connected." NXP's brief states:

> Although AE has provided conflicting information on this point throughout the course of the proceeding, AE ultimately stated during the Hearing that it does not serve any Primary Voltage over 20 MW customers directly from AE-owned substations, meaning AE does not serve any such customers that are connected in an AE-owned substation or by a feeder owned by the customer rather than by AE. *Regardless, NXP proposes that if the delivery point of any customer in the class is on a short feeder coming out of an AE substation, then the cost of that feeder is more appropriately recovered through a facilities charge to the customer than through requiring that customer to pay for a load ratio share of AE's entire primary distribution system's poles and lines costs*. This rate option should be available to the Primary Voltage Above 20 MVA customers.[14] (Emphasis added).

Accordingly, NXP did not misstate the facts on this issue as implied by AE's Brief. Additionally, AE's characterization of NXP's argument entirely fails to address a key component of the proposal. NXP provided Oncor's tariff as an example of a primary substation rate, which AE dismisses as a viable option because primary substation customers who avail themselves of this Oncor rate construct and maintain the associated distribution facilities themselves, whereas AE owns and maintains such facilities.[15] According to AE, "TIEC and NXP downplay the distinguishing facts as if ownership of the facilities is not the dispositive issue."[16] However, this is not the case as NXP clearly discusses this issue in its brief:

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[11] NXP's Post Hearing Brief at 26.
[12] TIEC Letter at 2.
[13] AE Brief at 48, citing NXP's Post Hearing Brief at 35.
[14] NXP's Post Hearing Brief at 35-36.
[15] AE Brief at 49.
[16] *Id.*

> AE is incorrect that the Oncor example is inconsistent with NXP's recommendation that a substation service rate class be available where the costs associated with the distribution line between the AE substation and the customer's point of interconnection are recovered through a facilities charge – the point is that the customer (rather than AE) ultimately bears that cost directly.[17]

As demonstrated above, ownership of the facilities is *not* the dispositive factor on the primary substation rate alternative issue under NXP's proposal, despite such representation in AE's Brief.

<u>Energy and Demand Line Loss Factors</u>

AE's Brief is correct in that both TIEC and NXP witnesses recommend the use of demand losses for CP allocation. And in fact, AE does not disagree with this recommendation and acknowledges that "[i]deally, demand losses should be utilized to adjust load."[18] However, AE does not have a demand loss measured for each peak hour of the month applicable to the 12CP cost allocation, so the ideal demand loss adjustment cannot be made. AE indicates that NXP and TIEC therefore recommend the use of demand losses for NCP cost allocation, which AE suggests the IHE should reject.[19] However, NXP did not recommend the use of demand losses for NCP cost allocation. Instead, NXP recommended that AE be ordered to develop and use demand loss factors in future base rate reviews.[20] NXP requests that the IHE consider and implement NXP's proposal.

<u>Class Revenue Distribution</u>

AE's Brief states that "NXP is incorrect in its assertion that AE's methodology results in some customer classes moving further from their COS."[21] This misstates NXP's position, as clarified in the version of NXP's Position Statement that was corrected and admitted into the record as NXP Ex. 1. In the corrected version, NXP witness Jim Daniel states that "Step 1" of AE's proposed methodology (which imposes a revenue increase of the proposed system average percent base rate revenue increase on *all* classes) results in moving some customer classes further from cost of service as a starting point for the methodology.[22] This is also made clear in NXP's Post-Hearing Brief.[23]

NXP draws attention to this issue as part of its overall critique of AE's proposed class revenue distribution methodology, including the fact that this "Step 1" is not an industry accepted approach and is one that Mr. Daniel has never seen used by any other utility.[24] It is not NXP's representation that the outcome of AE's methodology, however flawed, results in some

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[17] NXP's Post Hearing Brief at 36. *See also* Tr. 56:7-25 (Daniel Cross) (July 14, 2022).
[18] AE Brief at 52.
[19] AE Brief at 53.
[20] NXP Ex. 1 at 39.
[21] AE Brief at 56.
[22] NXP Ex. 1 at 42.
[23] NXP's Post Hearing Brief at 41-42.
[24] NXP Ex. 1 at 42 and NXP Post-Hearing Brief at 41.

customer classes moving further from their cost of service. Despite this fact, AE's methodology (including its curious "Step 1") should be appropriately scrutinized given that AE chose not to update its cost of service model prior to briefing or prior to the IHE's Recommendation, meaning no participants in this proceeding or the presiding officer have any way to determine how AE's proposed revenue distribution methodology will flow through to and impact AE's customer classes.[25]

NXP respectfully requests that the IHE take the above-issues under advisement in drafting the Final Report, disregarding any misstatements or misrepresentations regarding NXP's positions and testimony in this proceeding.

Very truly yours,

HUSCH BLACKWELL LLP

By: ______________________________

J. Christopher Hughes
Attorney for NXP Semiconductors, Inc.

[25] NXP Post-Hearing Brief at 40-41.