

Homeowners United for Rate Fairness

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My name is Roger Borgelt, and I am an attorney in private practice in Austin, Texas. I currently serve as general counsel to HURF, or Homeowners United for Rate Fairness, an organization which represents the interests of Austin Energy customers who are not residents of Austin. HURF has publicly criticized the recently adopted Austin Energy rate increase that the group estimates will cost suburban ratepayers \$43,732,114 in excessive rate increases, and amounts to a 15 to 25% increase in utility bills for many of them. 15% of the funds Austin Energy receives goes to fund services that HURF ratepayers never receive, and that they are also paying some other entity to receive, so they are, in effect, paying twice. The rate increase, passed on June 7 over many objections about its impact on ratepayers, from almost all sectors of customers who participated in the council's process, will dramatically increase the cost of energy to all classes of customers, both in and out of Austin.

It is clear that Austin Energy is facing a crisis of management. By this, we do not mean the actual staff or employees of the utility, who would probably be perfectly capable of executing a rational management strategy if they were given one. Unfortunately, that is not the case. Austin, as a city, very effectively and intentionally uses the electric utility to stabilize its overall revenue streams. Because of this, Austin Energy was forced to request a rate increase not only sufficient to cover its own operational needs, but also to recover a structural deficit in its operational reserves caused by the continued over reliance of the city on the utility's revenues during a time in which those revenues were actually declining. Also, letting the utility go 16 years without an increase in base rates was a terrible oversight failure on the council's part.

On top of this, the city council has insisted on a rate increase large enough to continue to support transfers and other expenditures of \$160 million per year, without regard to the effect of those transfers on the overall health of the utility. All of these problems, we believe, would at the very least be ameliorated by a change in governance structure for the utility.

A SOLUTION RIGHT DOWN THE STREET- CPS ENERGY AS A MODEL

CPS Energy in San Antonio has a governance structure which limits the direct influence of the city council on the operations of the utility. CPS Energy is governed by a five-member Board of Trustees. The Board of Trustees, in accordance with city bond ordinances, governs the electric utility. CPS Energy Board candidates must meet minimum qualifications for business, and finance experience.

The Mayor of San Antonio serves as an ex-officio member, for as long as he is the Mayor. The other four members represent the four geographical quadrants of the City, and must reside within the quadrant they represent. They are nominated by the remaining trustees, for a five-year term with eligibility to serve one additional term. CPS staff conducts searches and assures that the candidates will meet minimum qualifications. The nominations must be approved by majority vote of the San Antonio City Council.

The City Council has final approval on rates, bond issuance and use of eminent domain. The CPS Energy Board decides the amount of any transfers to the city's general fund, which have varied over time, based on the performance of the utility.

APPA SURVEY

While CPS Energy is useful as a model, a survey conducted by the American Public Power Association (APPA) shows that 68% of municipally owned utilities the size of Austin Energy (greater than 50,000 customers) are operated by an independent board, not by the city council. In addition, for the vast majority (over 70%) of utilities the size of Austin Energy which have an independent board, the *board* sets rates, salaries and budgets, the only power regularly remaining with the city council is bond issuance authority. We believe putting most of the governance authority in the independent board is preferable, as it will result in a more business like operation, less subject to political influence and fund raiding by the council.

RATE REVIEW PROCESS

The process used by Austin Energy in this last rate increase was both cumbersome for the council and painful to watch. Essentially, the council was simultaneously being tutored in the elements of ratemaking, while being not so subtly persuaded by its tutors that all of the methodologies employed and requests made by the Austin Energy staff were entirely reasonable and supportable, akin to having the prosecutor advising the judge on what the law is while simultaneously presenting its case. It's not that they are not intelligent. It's that they are frantically dealing with the scores of issues and citizen activists that are before them every day, and they don't have time to understand or properly oversee Austin Energy.

While we are certain this process was quite educational for the council, it was very slow, difficult, and led to a very obvious staff bias in the outcome. An independent evaluation of the evidence in support of any rate increase is preferable, and we understand this is actually how the last increase was handled. A utility attorney was contracted by the city to evaluate all of the evidence both supporting and against the last rate increase, and his recommendation was then forwarded to the council. This process should be required whether it is the council or a board that makes the ultimate decision.

BENCHMARKING

Commonly used in the business world, benchmarking is another method by which it can be assured that Austin Energy is performing at a level that is commensurate with its peers around the country. A primary benchmark is suggested in comparing Austin Energy with CPS Energy, noting their geographic proximity and other common characteristics. Using other utilities could provide a cross-reference comparison in comparing Austin Energy with its own peers in order to more fully examine the relationships and benchmarks for fundamental financial and operating performance metrics.

Utilities are not generally known for being efficient in many of their business processes, even though moderate performance variations often exist. However, when utility business processes are benchmarked with large private-sector for-profit enterprise, significant improvements are possible,

given sufficient incentive within or upon the utility for this level of performance achievement.

RECOMMENDATIONS

HURF recommends the following specific reform measures to both increase accountability and protect ratepayers. The city is studying doing some of these things, but has studied them before, more than 10 years ago, and done nothing, and due to other charter amendments on the ballot this fall, can do nothing until November of 2014. The following recommendations should therefore be adopted by the Legislature:

- ✓ Establish an independently appointed, qualified, and geographically representative Board of Trustees to manage utility operations separate and apart from the Austin City Council. This could be patterned, in part, after the City Public Service management structure. The Board would be geographically representative, and would have the power to decide rates and budgets, and how much to transfer to the city's general revenues based upon its own operational performance. The initial Board would be selected by an independent panel, and approved by the Council. The Board members could then be involved in selecting their own replacements, much as CPS Energy operates.
- ✓ Require an independent administrative law judge hired by the Board, not an Austin Energy employee or contractor, to conduct an evidentiary hearing for all rate increases. This would allow a true testing of all financial and operational information used to both support and oppose rate increases.
- ✓ Direct an independent review of Austin Energy's operations and finances by the Sunset Commission on a regular cycle, similar to the sunset legislation directed at Capital Metro.
- ✓ Require benchmarking standards to be developed, by which Austin Energy is periodically evaluated in relation to the performance of other government operated electric utilities around the country

We are offering common-sense recommendations aimed at protecting the long-term viability of Austin Energy and shielding ratepayers from future dramatic increases in their bills. The Council went 16 years without a rate

increase, and then proceeded disastrously with this one—we are in a position to learn from their mistakes and prevent future problems at this publicly owned utility.