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**BEFORE THE KANSAS CORPORATION COMMISSION
OF THE STATE OF KANSAS**

MAY 09 2012

by
State Corporation Commission
of Kansas

Application for Revised Rates, Tariffs, and Rate Design Changes

of

Mid-Kansas Electric Company, LLC

Docket No. 12-MKEE-380-RTS

May 9, 2012

**PREFILED REBUTTAL TESTIMONY
RANDALL D. MAGNISON
EXECUTIVE VICE PRESIDENT-ASSISTANT CHIEF EXECUTIVE OFFICER
SOUTHERN PIONEER ELECTRIC COMPANY**

**ON BEHALF OF
MID-KANSAS ELECTRIC COMPANY, LLC**

1 **Q. Please state your name.**

2 A. My name is Randall D. Magnison

3 **Q. What is your profession?**

4 A. I am the Executive Vice President and Assistant Chief Executive Officer of Southern
5 Pioneer Electric Company ("Southern Pioneer"), a wholly owned subsidiary of Pioneer
6 Electric Cooperative, Inc. ("Pioneer"), pursuant to the Services Agreement entered into
7 between Pioneer and Southern Pioneer on July 7, 2006. Our corporate office is located in
8 Ulysses, Kansas, and our distribution-customer service offices are located in Liberal and
9 Medicine Lodge, Kansas.

10 **Q. Please describe the business activities of Southern Pioneer.**

11 A. As a Mid-Kansas Electric Company, LLC ("Mid-Kansas") distribution member-system
12 and owner, and pursuant to the July 2, 2007, Electric Customer Service Agreement
13 approved by the Kansas Corporation Commission ("Commission" or "KCC") on
14 December 21, 2007 in Docket No. 08-MKEE-099-MIS, Southern Pioneer provides retail
15 and distribution service to approximately 17,200 Mid-Kansas retail consumers. Southern
16 Pioneer also provides sub-transmission service to 34.5kV sub-transmission users.

17 **Q. Please describe your responsibilities with Pioneer and Southern Pioneer.**

18 A. As the Executive Vice President and Assistant CEO ("Assistant CEO") of both
19 companies, I provide assistance to the Chief Executive Officer ("CEO") in the day-to-day
20 management of both Pioneer and Southern Pioneer, I oversee all of the Human Resource
21 functions to include personnel, compensation planning, benefits administration and
22 regulatory/compliance activities. Further, as the Assistant CEO, I work directly for the
23 CEO and with the Board of Directors in establishing policy, implementing strategic

1 programs, establishing rates and the overall operation of both Pioneer and Southern
2 Pioneer to ensure reliable service at a competitive cost, all while using generally
3 acceptable industry business practices. As an Alternate Mid-Kansas Board of Director, I
4 work in close cooperation with Mid-Kansas to provide reliable service at reasonable rates
5 for the Mid-Kansas customers that Southern Pioneer services under contract with Mid-
6 Kansas.

7 **Q. What is your educational background?**

8 A. I graduated from Friends University in 1991 with a Bachelors of Science Degree in
9 Human Resource Management. In 2005, I successfully completed the National Rural
10 Electric Cooperatives' Management Internship Program through the University of
11 Wisconsin.

12 **Q. What is your professional background?**

13 A. I was employed in July 2000 as the Assistant to the CEO at Pioneer Electric. In
14 September 2005, I served a dual role as the Assistant to the CEO and Southern Pioneer's
15 Executive Vice President-Chief Operating Officer ("COO"). As the COO of Southern
16 Pioneer, I was instrumental in the formation of Southern Pioneer and coordinated the
17 acquisition and transition of Southern Pioneer's portion of the acquired Aquila Kansas
18 Electric Network from an investor-owned utility to that of C-Corporation, owned by a
19 cooperative and agreeing to operate as a taxable, not for profit. In May 2011, I was
20 officially appointed the Executive Vice President and Assistant CEO of both Pioneer and
21 Southern Pioneer, the position I continue to hold today. Prior to July of 2000, I served as
22 Manager of Benefits for Sunflower Electric Power Corporation in Hays, Kansas, where I
23 managed all Statutory and Welfare Benefit Programs, provided support to all Sunflower

1 Member Systems and 500 plus system employees. Prior to Sunflower, I served seven
2 years as the Administrator at a regional Accounting firm where I managed the daily
3 activities of the firm as well as provided compensation and benefit consulting to clients.

4 **Q. Have you previously presented testimony before the KCC?**

5 A. Yes, I have filed both Intervener Direct and Rebuttal testimony in Docket NO. 06-MKEE-
6 524-ACQ, the Joint Application of Aquila, Inc., d/b/a Aquila Networks-WPK ("WPK")
7 and Mid-Kansas in which the Joint Applicants sought an Order approving the transfer to
8 Mid-Kansas of WPK's Certificates of Convenience and Franchises with respect to all of
9 WPK's Kansas Electric Business, including its generation, transmission and local
10 distribution facilities ("the 524 Docket"). In this same docket, I have also filed annual
11 compliance reports.

12 **Q. On whose behalf are you appearing in this proceeding?**

13 A. I am presenting Rebuttal Testimony on behalf of Mid-Kansas and its Southern Pioneer
14 Division.

15 **Q. What is the purpose of your testimony in this proceeding?**

16 A. The purpose of my testimony is to respond to the prefiled Direct Testimony of the Kansas
17 Electric Power Cooperative, Inc. ("KEPCo"), the Citizens' Utility Ratepayer Board
18 ("CURB") and Commission Staff, regarding Southern Pioneer's choice of business
19 structure, the treatment of Southern Pioneer's Income Taxes, and level of salary and wage
20 adjustments.

21

22

23

1 A. *SOUTHERN PIONEER'S FORM OF OPERATION AS A C-CORPORATION*

2

3 **Q. KEPCO witness Mr. Stephen Daniel (*id.*, p. 8, l. 1 – p. 15, l. 18) describes in his testimony**
4 **the need for balancing of utility and customer interest. In doing so, he alleges that**
5 **because Southern Pioneer is structured as a for profit taxable C-corporation and is**
6 **wholly owned by Pioneer, all earnings of Southern Pioneer go to the benefit of the**
7 **owner, Pioneer in this case, and not the Southern Pioneer customers, therefore failing**
8 **his described “balancing test.” Do you agree with this allegation?**

9 A. I do not completely agree with Mr. Daniel’s analogy. While it is true that Southern Pioneer
10 was organized as a taxable C-corporation (only after consulting tax and legal counsel, which
11 will be discussed in more detail later in my testimony), Southern Pioneer has not and does
12 not remit dividends to its sole shareholder, Pioneer, without KCC and lender approval. This
13 provision not to remit dividends was a self-induced integral part of the discussion and
14 Stipulation and Agreement adopted in the 524 Docket (“524 Stipulation”), and was put in
15 place to ensure that the acquired Mid-Kansas Southern Pioneer Division customers would not
16 subsidize the native customers of Pioneer by paying dividends to Pioneer. This limitation on
17 Southern Pioneer remitting dividends is conceptually the same as the S&A requirement in
18 the 524 Docket that each Mid-Kansas member, excluding Southern Pioneer, maintain
19 separate accounting records for their acquired and native divisions in which to measure
20 allocation of costs so as to demonstrate the lack of subsidy.

21 **Q. You state that this separate bookkeeping requirement excluded or did not apply to**
22 **Southern Pioneer. Please explain why not.**

1 A. Prior to the acquisition, and only after consulting tax and legal advisors to reach a prudent
2 business decision, Southern Pioneer organized as its own legal entity to operate
3 independently of Pioneer. Because of this legal separation, there was no need for this clause
4 to apply to Southern Pioneer.

5 **Q. In his description of the adverse implications of Southern Pioneer's C-Corporation**
6 **structure, Mr. Daniel contends that if Southern Pioneer had structured as a not-for-**
7 **profit cooperative, it would not be required to incorporate a component for income**
8 **taxes unless its sources of revenue violated the statutory provisions for maintaining its**
9 **non-taxable cooperative status. Is it true that if you are a cooperative, you do not**
10 **incorporate an income tax component in your rates?**

11 A. I am not a tax expert and I will defer to Mid-Kansas witness Mr. James Smith, but I believe
12 this assertion is not entirely true. As I understand, you can be a taxable cooperative by
13 choice (i.e. voluntarily revoking your tax exempt status), or by failure to meet requirements
14 (i.e. more than 15% of your annual revenues come from non-member sources). Of course,
15 even a not-for-profit cooperative has income taxes embedded in its rates which are included
16 in the payments made by the cooperative to its vendors and power suppliers who pay income
17 taxes and pass them through to the cooperative in their prices.

18 **Q. Please clarify.**

19 A. For example, Westar is a taxable entity, and because it is, it must recover this tax liability
20 through rates charged to its wholesale customers. Because Westar is one of KEPCo's
21 primary power suppliers and income tax is in Westar's cost of service, the KEPCo member
22 systems and their individual consumers are indirectly paying this income tax.

1 **Q. Mr. Daniel points out that the S&A, Page 24, in the 524 Docket prohibits the inclusion**
2 **of income tax expense component in any Mid-Kansas rate filing before the Commission**
3 **and contends Mid-Kansas is violating its commitment and obligation by including**
4 **income tax. Do you agree with Mr. Daniel's contention?**

5 A. No I do not. Mid-Kansas is formed as a for-profit limited liability company and an election
6 was made that any tax liability *for Mid-Kansas* would be paid at the partnership level. This
7 means the income taxes related to the operation of Mid-Kansas are paid by its individual
8 members, including Southern Pioneer. It must be remembered that at the time of the 524
9 Stipulation, the parties were operating under the belief that spin down of the Mid-Kansas
10 certificated territory and consumers to the Mid-Kansas Member companies would occur
11 shortly after acquisition closing. As such, this provision regarding Mid-Kansas income tax
12 was not directed at the rates to be charged for service by the Mid-Kansas Members in future
13 rate cases.

14 **Q. CURB witness Andrea Crane recommends (*id.*, p.39, l. 8 – 14) that the Commission**
15 **deny Southern Pioneer's claim for recovery of state and federal income taxes based on**
16 **the fact that that Southern Pioneer made a decision to organize as a C-Corporation,**
17 **unlike its parent company Pioneer Electric or other Mid-Kansas members. Ms. Crane**
18 **goes on to state that had it organized as a cooperative, no state or federal income taxes**
19 **would be due. Do you agree with Ms. Crane's position?**

20 A. No I do not, for the same reasons I have stated above in response to Mr. Daniel.

21 **Q. Staff Witness Laura Bowman is recommending (*id.* p.17, ll. 12-18 – p.18, ll. 1-14) that**
22 **because Southern Pioneer had an opportunity to organize itself as a cooperative and**
23 **chose not to, it does not seem appropriate to allow special treatment through a formula**

1 rate plan (i.e. proposed DSC Ratemaking Plan). Further, Ms. Bowman says that,
2 should the DSC Ratemaking Plan be implemented, the desire to roll Southern Pioneer
3 into Pioneer would be mitigated. Would you please address these assertions of Ms.
4 **Bowman.**

5 A. I will address the business structure in more detail below in response to the testimony of
6 KEPCo and CURB. As to Ms. Bowman's concern that the proposed DSC Ratemaking Plan
7 will stall Pioneer and Southern Pioneer's continued exploration of combining the two
8 companies as agreed to in the 524 Stipulation, this assertion is purely speculative and
9 unsupported. As of this day, Pioneer and Southern Pioneer are both in compliance with the
10 524 Stipulation and we will continue to comply with its terms until such time as the
11 Commission determines otherwise.

12 **Q. Could you summarize the allegations of KEPCo and CURB regarding Southern**
13 **Pioneer's C-Corporation form of business operation?**

14 A. These parties contend that because Southern Pioneer was formed as a taxable entity and not a
15 cooperative, the consumers of Southern Pioneer are unjustifiably and unfairly paying an
16 income tax component that they should not have to pay. They make other recommendations
17 that are punitive in nature based upon their assumption that the form chosen for operating
18 Southern Pioneer was not a prudent decision by the Company's management. Their
19 assumption is entirely incorrect, and therefore, their recommendations based upon that
20 erroneous assumption are also incorrect.

21 **Q. Prior to forming Southern Pioneer, did you seek the guidance of legal and tax advisors**
22 **to reach a prudent business decision regarding the appropriate form of operation for**
23 **the Company?**

1 A. Yes, as part of our due diligence related to the acquisition of the Aquila properties, Southern
2 Pioneer engaged the law firm of Foulston Siefkin to review the legal impact and the various
3 forms of operation available. We also engaged the accounting firm of Moss Adams to
4 review the tax implications to Pioneer Electric in acquiring the Aquila assets.

5 **Q. What were their conclusions?**

6 A. Our professional advisors recommended that, due to several challenges faced at the time, and
7 because it was unknown when the customers would spin down to the MKEC Members,
8 Pioneer should create a separate entity formed as a C-Corporation to receive the Aquila
9 assets in order to avoid losing its tax-exempt status. I have attached a matrix titled "Talking
10 Points – KCC Staff Meeting" as RDM -1 (Confidential) that specifically highlights the issues
11 considered at the time of the acquisition, the challenges we faced, and the opinions of our
12 professional advisors. This information supports the prudence of the decision reached by the
13 Company as to how we should acquire the Aquila assets in a manner that was in the best
14 interests of our customers and members.

15 **Q. Why was a C-Corporation selected as opposed to an LLC?**

16 A. With an LLC, any year-end profits or losses flow directly from Southern Pioneer to the
17 partner – in this case, Pioneer - and because the acquired customers held in the LLC would
18 not have membership in Pioneer, the revenues would be considered non-member income.
19 This had tax implications. In order to avoid subsidies from Southern Pioneer to Pioneer, and
20 to insulate Pioneer's tax-exempt status, the C-Corporation was the only viable business
21 structure.

22 **Q. Were these recommendations discussed with Staff?**

1 A. Yes, in October 2006 I met with Staff in the context of the 524 Docket to review our
2 advisors' recommendations and the tax implications. Further, in September 2006, Mid-
3 Kansas discussed with Staff the tax implications and the tax status risks related to four of the
4 six Mid-Kansas Members. I have attached this Conversation Memo as RDM -2
5 (Confidential). I have also attached as RDM-3 (Confidential) certain emails discussing the
6 conversations with Staff regarding this issue, and a copy of a Memo prepared by Deloitte on
7 the issue as RDM-4.

8 **Q. Did the Commission accept Southern Pioneer's C-Corporation form of operation when**
9 **it approved the 524 Stipulation?**

10 A. Yes, it did. It imposed conditions upon Southern Pioneer to protect customers, and Southern
11 Pioneer has complied with those conditions. The Commission *has not ever* made a finding
12 that the operational structure of Southern Pioneer was not prudent; however, the testimony of
13 Mr. Daniel and Ms. Crane make this assumption.

14 **Q. Why didn't Pioneer simply roll these acquired customers into Pioneer to avoid the tax**
15 **issue?**

16 A. Because Mid-Kansas still holds the certificate and these are technically MKEC customers.
17 As such, these customers cannot technically be a customer of one utility, i.e. Mid-Kansas,
18 and also be a member of Pioneer. Had Pioneer done this, it is firmly believed that not only
19 would Pioneer have risked losing its tax exempt status, it could also have lost its cooperative
20 status.

21 **Q. Since the approval of the S&A in 524 Docket in which Southern Pioneer's tax status**
22 **was discussed, has Southern Pioneer addressed the potential combination of Pioneer**
23 **and Southern Pioneer?**

1 A. Yes, on March 26, 2010, Southern Pioneer and Pioneer filed in the 524 Docket their first
2 three-year report as required by the 524 Stipulation and Order. The report details the
3 progress of the Companies in considering a potential combination, and we reported that at
4 that time it did not make business sense to do so. This report and all supporting documents
5 can be found on the Commission's website under the 524 Docket filings.

6

7 **B. PAYROLL ADJUSTMENTS**

8 **Q. As part of her adjustments relating to Salary and Wage Expense, Ms. Crane has**
9 **criticized (*id.* p. 25, l. 5 through p. 26, l. 6) the level of compensation increases for**
10 **Southern Pioneer's employees, alleging that these increases have been greater than the**
11 **average payroll increases in the utility industry and in other industries. Do you agree**
12 **with Ms. Crane's observation?**

13 A. No, I do not. In order to better understand and validate Ms. Crane's assertion, Southern
14 Pioneer submitted Data Request ("DR") No. 5 to CURB requesting the survey data she used
15 to draw these conclusions. I have attached DR No. 5 and Ms. Crane's response to my
16 rebuttal testimony as RDM-5.

17 **Q. What information did Ms. Crane provide?**

18 A. The information returned with the DR response represented three companies; one a Kansas
19 electric distribution utility, one an investor owned natural gas company and one a municipal
20 company in Atlantic City, New Jersey. The information generally showed a range of average
21 increases from 2.5% to just under 4%. However, none of the data indicated or discussed if
22 the employee or group, before or after the changes, were in the "market range."

23 **Q. Did Ms. Crane return other salary information?**

1 A. Yes she did. She also provided the Employment Cost Index from the US Bureau of Labor for
2 Civilian Workers and Private Industry Workers for the 12-month period ending March 2012.
3 For these classes of workers, the compensation cost increased 1.9% and 2.1% respectively.

4 **Q. Do you believe that a listing of three companies - of which only one is in the electric**
5 **utility business in Kansas - out of several thousand in fifty states is indicative of the**
6 **prevailing wage and benefit trends as claimed by Ms. Crane?**

7 A. No, I do not believe her methodology or the basis for her opinion is accurate or fair as it does
8 not take into consideration market conditions, the wages of employees in the context of those
9 market conditions or the levels of benefits that affect wages paid. Furthermore, she fails to
10 even attempt an industry specific analysis.

11 **Q. Did Southern Pioneer provide CURB with its Salary and Wage Program?**

12 A. Yes, we did. In response to CURB DR No. 60, Southern Pioneer provided an explanation of
13 the adjustments and a copy of the Board approved 2009 through 2011 year Salary and Wage
14 Program based on the Employment Cost Index specific to Utility Employees and a survey for
15 all positions at approximately 900 plus electric cooperatives in the nation. This data listed
16 each position, shows the minimum to maximum salary range and the average change from
17 year to year. Ms. Crane ignores most of this data in her recommendation. I have attached
18 CURB DR No. 60 to my rebuttal as RDM-6 (Confidential).

19 **Q. Of the Salary and Wage Plan provided, can you advise what the overall average market**
20 **change was for each of the three years?**

21 A. The change in 2009 was 5.08 %, in 2010 it was 2.07%, and in 2011 it was 3.64%

22 **Q. In reviewing this data, these increase percentages do not seem far off from Ms. Crane's**
23 **data. Please explain.**

1 A. What Ms. Crane failed to properly evaluate was the level of existing pay for our employees
2 as it related to the overall market levels. Obviously, some employees, depending on where
3 they are on their pay scale, will receive more or less of a percent of adjustment. That is what
4 happened at Southern Pioneer. As the data shows, many of our employees were low on their
5 scale and Southern Pioneer consciously adjusted their wages to remain competitive and fair.

6 **Q. Does the level of benefits offered by the employer affect the wage adjustments each**
7 **year?**

8 A. Yes, it does. Many benefits are a by-product of the annual wages, so if the company is
9 attempting to control its cost in a given year, it might reduce the wage adjustment and pay
10 more in benefits. If you notice, the 2010 year percent of overall change was down due to a
11 down financial market, which caused the Company to have to contribute additional monies
12 into the employees' pension plan.

13 **Q. Ms. Crane contends that because Southern is not unionized, it is not contractually**
14 **required to pay wages at this level. Do you agree with her contention?**

15 A. While it is true that Southern does not have a collective bargaining group, it still must offer
16 competitive wages and benefits in order to attract and retain qualified employees in rural
17 western Kansas. These wages must be competitive within the local area and within the
18 electric utility industry. Furthermore, all relevant factors must be considered for a wage
19 analysis to be valid and helpful.

20 **Q. Does this conclude your testimony?**

21 A. Yes.

RDM-1 is a Confidential Document

It contains and/or reflects information and opinions received by the Applicant from its professional advisors which is not otherwise available from a public source.

RDM-2 is a Confidential Document

It contains and/or reflects information and opinions received by the Applicant from its professional advisors which is not otherwise available from a public source.

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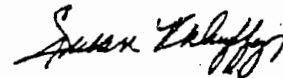
It contains and/or reflects information and opinions received by the Applicant from its professional advisors which is not otherwise available from a public source.

Memo

STATE CORPORATION COMMISSION

Date: March 20, 2006
To: Jayne E. Clarke, Sunflower Electric Power Corporation
From: Kevin P. Dolan, Atlanta
Subject: MKEC Tax and Cooperative Operation Issues

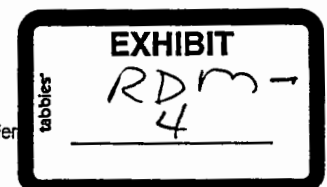
MAR 29 2010



The purpose of this memorandum is to briefly summarize certain tax and cooperative operation issues discussed during the meeting at Sunflower Electric Power Corporation ("Sunflower") on February 10, 2006 related to the proposed MKEC transaction. In particular, I was asked to: 1) discuss the tax effect of the MKEC Form K-1 income on the distribution cooperatives' 85% test for exemption under Internal Revenue Code ("IRC") Section 501(c)(12), and 2) discuss certain tax effects to the MKEC customers served by the distribution cooperatives, including any related Form 1099 issues.

Tax Effect of Form K-1 Income on the Distribution Cooperatives' 85% Test for Exemption

1. Gross Receipts or Form K-1 Amount? - It is our understanding that most, if not all, of the six distribution cooperatives use the gross receipts method for calculating their 85% test for exemption under IRC Section 501(c)(12). It is our experience that general industry practice among electric cooperatives is to only pick up the Form K-1 amount (net income on Line 1 of the Form K-1) from a partnership investment like MKEC. The IRS, however, could require the six distribution cooperatives to pick up their percentage interest of the underlying MKEC gross receipts in their 85% test. Let's assume that Wheatland had a roughly 20% interest in MKEC and MKEC had \$20 million of gross receipts with net income of \$1 million in 2006. MKEC would receive a Form K-1 from MKEC indicating \$200,000 of net income on Line 1. Wheatland's share, however, of MKEC's underlying gross receipts would be \$4 million. We believe that Wheatland has a tax reporting position to pick up the \$200,000 as non-member income in its 85% test, but there is a risk that the IRS could assert that Wheatland should pick up the \$4 million as non-member income in its 85% test.
2. If the distribution cooperative passes the 85% test, inclusive of the MKEC non-member income, does the MKEC income create unrelated business taxable income ("UBTI")? - Assuming the distribution cooperative remains tax-exempt, it still should be concerned about UBTI. A tax-exempt electric cooperative still could pay tax on any UBTI it creates. In this instance, however, we believe that the distribution cooperatives have a tax reporting position that the MKEC activity and resulting income contributes directly to the distribution cooperative's primary tax-exempt purpose so the MKEC income should not create UBTI.



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Subject: MKEC Tax and Cooperative Operation Issues
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3. If the distribution cooperative fails the 85% test, inclusive of the MKEC non-member income, could the MKEC income be considered patronage sourced income ("PSI")? - Several historical court cases set precedent for the definition and treatment of PSI, including Cotter and Illinois Grain. Recently, numerous IRS private letter rulings have been issued dealing with the PSI issue in situations where a partnership was formed in situations similar to MKEC, including PLR 200244013. In these rulings and the cases supporting them, the income received from the cooperative partner in the partnership was treated as PSI so long as the partnership's activity is directly related to the cooperative's primary business purpose and the partnership deals directly with the cooperative's patrons. We believe based on these cases and rulings that the distribution cooperatives would have a tax reporting position to treat the MKEC income as PSI.
4. Use of a Wholly-Owned Subsidiary to hold the MKEC partnership interest? - It is our understanding that at least one of the six distribution cooperative members in MKEC holds its MKEC interest in a wholly-owned subsidiary rather than having the cooperative hold this interest directly. Based on IRS Revenue Ruling 2002-55, none of the MKEC Form K-1 income or gross receipts (see question 1 above) would effect the distribution cooperative's 85% test for exemption. The wholly-owned subsidiary between the cooperative and MKEC is a separate taxable entity. Any Form K-1 income from MKEC could create taxable income at the wholly-owned subsidiary level, but the issues discussed in question 1 above would be eliminated at the cooperative level.

Certain Tax Effects to the MKEC Customers Served by the Distribution Cooperatives

1. Would the MKEC customers served by the distribution cooperatives receive patronage allocations from the distribution cooperatives?

It is our understanding that the Kansas Corporation Commission ("KCC") believes that these must be customers of MKEC for regulatory purposes. As such, the distribution cooperatives will not treat these customers as members. These customers will not be entitled to a vote at member meetings, and they will not be entitled to patronage allocations. As a result, any receipts from these customers by the distribution cooperatives will be treated as non-member receipts for purposes of the cooperative's 85% test. We briefly discussed a tax argument that the cooperative is merely acting as an agent for MKEC, but we determined that this was a legal issue, and possibly KCC regulatory issue, beyond the scope of our discussion. We also discussed the opportunity to allocate PSI to these non-member patrons if the cooperative had lost its tax-exempt status. A non-exempt common law cooperative can allocate PSI to a non-member and still receive a patronage exclusion from taxable income.

2. Would the distribution cooperatives be required to issue a Form 1099 to these non-member patrons?

The distribution cooperatives could allocate PSI to a non-member, but this is not a requirement for cooperative operation. Assuming the MKEC non-member income does not cause the distribution cooperative to fail its 85% test for exemption, then it is unlikely that the cooperative would choose to allocate to non-members. As a result, there would not be any Form 1099 reporting requirement considerations. If the MKEC non-member income causes the distribution cooperative to lose its tax-exempt status, however, then the cooperative may want to allocate PSI to these non-member patrons in order to gain a patronage exclusion from taxable income. In these cases, it is uncertain whether the cooperative would have a Form 1099 reporting requirement. There are not any IRS

To: Jayne E. Clarke
Subject: MKEC Tax and Cooperative Operation Issues
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regulations related to Form 1099 reporting requirements for common law cooperatives. It has been our experience that under IRS audit, different IRS districts have treated the Form 1099 reporting requirements differently for other electric cooperatives. The NRECA recently sent a letter request to the IRS National Office seeking clarification on this issue.

This memorandum is a summary discussion and is limited to the described facts. It is not intended to be a formal opinion of tax consequences, and, thus, may not contain a full description of all the facts or a complete exposition and analysis of all relevant tax authorities. The conclusions and recommendations contained in this memorandum are based on our understanding of the facts, assumptions, information, and documents referenced herein and current tax laws and published tax authorities in effect as of the date of this memorandum, which are subject to change. If the facts and assumptions are incorrect or change or the tax laws change, the conclusions and recommendations would likewise be subject to change. Deloitte & Touche LLP assumes no obligation to update the memorandum for any future changes in tax law, regulations, or other interpretations and does not intend to do so. Unless otherwise specified, all section references are to the Internal Revenue Code of 1986 ("IRC") or the regulations thereunder, both as amended through the date of this memorandum.

This memorandum is not binding on the IRS or the courts and should not be considered a representation, warranty, or guarantee that the IRS or the courts will concur with our conclusions. Only the specific tax issues and tax consequences described herein are covered by this memorandum; no other federal, state, or local laws of any kind were considered and are beyond the scope of this memorandum.

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Mid-Kansas and Southern Pioneer
Information Request

Request No: 5

Company Name: CURB
Docket Number: 12-MKEE-380-RTS
Request Date: April 24, 2012
Response Due Date: May 8, 2012

Please Provide the Following:

On page 25, lines 5-8 of Direct testimony, Ms. Andrea Crane recommends the Commission reject the Company's post-test-year payroll adjustment because "the Southern Pioneer Division's salary and wage increases have been far greater than the average payroll increases in the utility industry, or far greater than the average increases granted to employees in other industries." Please provide data, both utility specific and other industries, for each position Ms. Crane makes this recommendation.

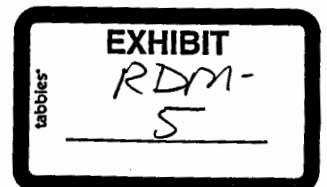
Response: Utility industry increases in the cases in which Ms. Crane has been involved recently have averaged approximately 3.0%. For example, in KCC Docket No. 12-MKEE-491-RTS, MKEC's Western Division reported in response to CURB-11 that increases ranged from 2.5% to 3.93% over the past three years. In the current Atmos Energy case, the Company reported in response to CURB-13 that salary ranges increased by under 3.0% annually each year from 2007 to 2011. In a pending Atlantic City Electric Company case in New Jersey, the Company reported in response to RCR-A-15 that salaries and wages increased from 0% to 3.7% annually over the past five years. Copies of these data requests are attached.

With regard to other industries, the US Bureau of Labor Statistics found that compensation costs for private industry employees rose 2.1% for the 12-month period ending March 2012, while costs for the prior 12-month period rose 2.0%. A copy of the April 27, 2012 Economic News Release is also attached.

Submitted By: Mid-Kansas/Southern Pioneer

Submitted To: CURB - Andrea Crane

If for some reason the above information cannot be provided by the date requested please provide a written explanation of the reason(s).



Verification of Response

I have read the foregoing Information Request and answer(s) thereto and find the answer(s) to be true, accurate, full and complete, and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the requestor any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Data Request.

Signed: Andrea C. Craxe

Dated: May 4, 2012

ATTACHMENT TO NO. 5

**Western Coop Electric
CURB DR # 11**

Date	% Wage Increases	Union / Non- Union
11/1/09	3.93%	Union
11/1/09	3.77%	Non-Union
11/1/10	3.95%	Union
11/1/10	3.35%	Non-Union
11/1/11	2.50%	Union
11/1/11	2.86%	Non-Union

Docket No. 12-ATMG-564-RTS
Atmos Energy Corporation, Kansas Division
CURB DR Set No. 1
Question No. CURB-13
Page 13 of 84

REQUEST:

Provide the percentage of salary and wage increases granted in each of the last five years, as well as any increases in 2012 to date. If applicable, provide this information separately for union and non-union personnel.

RESPONSE:

Please see Attachment 1.

ATTACHMENT:

ATTACHMENT 1 - Atmos Energy Corporation, CURB_1-13_Att1 - Merit Increase Guidelines FY07-FY11.pdf, 6 Pages.

Atmos Energy Corporation FY 2007 Merit Increase Guidelines

General Salary Increase Information

- Salary increases across the country are forecast to average around 3.7% during 2006. The table below reflects actual experience for 2004, 2005 and what is projected for 2006. The amounts shown include general cost-of-living adjustments, merit increases and other adjustments such as market or equity-related increases. Promotions are excluded from these salary increase amounts.
- Atmos uses national data on which to base its annual guidelines. Regional results generally mirror the national data.

General Salary Increase Information for All Industries

Employee Category	Actual 2004	Actual 2005	Projected 2006
Operating Nonexempt Employees	3.4%	3.6%	3.7%
Exempt Salaried Employees	3.6%	3.7%	3.8%

Salary Structure

- The Atmos salary ranges will be increased 2.5% on average.

Compa-ratio

- The term compa-ratio is being reintroduced to the merit increase process. Compa-ratio is defined as the ratio of the employee's pay to the midpoint of the assigned salary range. For example, if an employee's pay is \$50,000 and the midpoint of the salary range is \$55,000, the employee's compa-ratio is 90.9% ($\$50,000/\$55,000 = 90.9\%$). If the compa-ratio is greater than 100%, the employee's pay is above the midpoint; if it is less than 100%, the employee's pay is below the midpoint.
- Target pay is defined as the portion of the salary range between 80% and 120% of midpoint.
- Each employee's compa-ratio will be shown in the Common Merit Increase ("CMI") system for the FY 2007 merit increase cycle.

Merit Increase Guidelines

- The FY 2007 merit budget is 3.5%; therefore the dollar amount applied in merit increases by each Business Unit or Shared Services Unit should not exceed 3.5% of the September 30, 2006 payroll. The merit budget for Mid-Tex meter readers who received a full merit increase on February 28, 2006 is 2.0%.
- A merit increase recommendation between 0% and 4% is the expected norm for the majority of employees and should be submitted using CMI.
- Additionally, when considering the appropriate merit increase to recommend for an assigned employee, supervisors should:

**Atmos Energy Corporation
FY 2008 Merit Increase Guidelines**

General Salary Increase Information:

- Salary increases across the country are forecast to continue between 3.8 and 3.9 percent during 2007. The table below reflects actual experience for 2005, 2006 and what is projected for 2007. The amounts shown include general cost-of-living adjustments, merit increases and other adjustments such as market or equity-related increases. Promotions are excluded from these salary increase amounts.
- Atmos uses national data on which to base its annual guidelines. Regional results generally mirror the national data.
- The pay grade structure will increase by 2.5%

General Salary Increase Information for All Industries:

Employee Category	Projected 2005	Actual 2005	Projected 2006	Actual 2006	Projected 2007
Operating Nonexempt Employees	3.6%	3.6%	3.7%	3.7%	3.8%
Exempt Salaried Employees	3.7%	3.7%	3.8%	3.8%	3.9%

Merit Increase Guidelines

- The FY2008 merit budget is 3.5%; therefore the dollar amount applied in merit increases by Shared Services and utility divisions should not exceed 3.5% of the September 30, 2005 nonunion payroll.
- Atmos bases the annual merit budget on two factors:
 - What other companies are doing – "the market"
 - Atmos' financial performance.
 - FY 2008 is predicted to be a challenging year from a financial perspective, therefore in order to maintain a conservative budget over all; Management has decided to base its merit budget slightly lower than the market predictions for 2008.
- Supervisors should use the employee's performance, experience and where the employee's pay falls within the job's pay range as the criteria to determine the merit increase amount to apply.
- Guidelines for Merit Increases are as follows:

<i>All Employees</i>	
<i>Compa Ratio</i>	<i>Max Increase %</i>
<i><80%</i>	<i>0%-6.50%</i>
<i>80% to 89%</i>	<i>0%-3.75%</i>
<i>90% to 110%</i>	<i>0%-3.50%</i>
<i>111% to 119%</i>	<i>0%-2.25%</i>
<i>120% or higher</i>	<i>0%-2%</i>

FY 2009 CMI Guidelines



▪ Merit Increase Guidelines

– Merit increase component is 3.5%

- Divisions, Shared Services and the Customer Service Organization are responsible for managing within the 3.5% budget using the following guidelines

<i>ALL EMPLOYEES</i>	
<i>COMPA-RATIO</i>	<i>ALLOWABLE INCREASE %</i>
<80%	0%-6.50%
80% - 119%	0%-6.0%
120% or greater	0%-3.5%

**Atmos Energy Corporation
FY 2010 Merit Increase Guidelines**

General Salary Increase Information:

- Based on the economic conditions, salary increases across are forecast to average around 2.7%. Promotions and market adjustments are excluded from these salary increase amounts.
- Atmos uses national survey data from World at Work on which to base its annual guidelines. Regional results generally mirror the national data.
- Salary ranges are projected to increase by 1.8-2.7%.
- Atmos bases the annual merit budget on two factors:
 - Market competitiveness (i.e. based on what other companies are doing); and,
 - Affordability – what the company can afford within the bounds of its financial plans and earnings target for the fiscal year.

Merit Increase Guidelines:

- The FY2010 merit budget is 3.0%. The FY2010 merit should not exceed 3.0% of the September 30, 2009 non-union payroll.
- Supervisors should consider each employee's job performance, experience and compa-ratio (where the employee's pay falls within the job's pay range) as the criteria to determine the appropriate merit increase to recommend.
- Pay grades were increased by 2.2% over the FY2009 pay grades.

<i>All Employees</i>	
<i>Compa-Ratio</i>	<i>Range of Allowed Increase (%)</i>
<i><80%</i>	<i>0%-6.00%</i>
<i>80% to 119%</i>	<i>0%-5.5%</i>
<i>120% or higher</i>	<i>0%-3.0%</i>

Guidelines for prorations:

- Employees hired between October 15, 2008 and June 30, 2009 will receive pro-rated increases
 - Employees hired between July 1, 2009 and September 30, 2009 will receive consideration for a merit increase effective next year on October 1, 2010
 - Employee's in this group will have their 2010 merit increase prorated e.g., if hired in July 2009, their 2010 recommended merit increase will be prorated by 15/12ths of what is recommended.

**ATMOS ENERGY CORPORATION
FY 2011 MERIT INCREASE GUIDELINES**

GENERAL SALARY INCREASE INFORMATION:

- Based on the economic conditions, salary increases across are forecast to average 3.0%. Promotions and market adjustments are excluded from these salary increase amounts.
- Atmos uses national survey data from WorldatWork on which to base its annual guidelines. Regional results generally mirror the national data.
- Salary ranges are projected to increase by 1.5-2.4%.
- Atmos bases the annual merit budget on two factors:
 - Market competitiveness (i.e. based on what other companies are doing); and,
 - Affordability – what the company can afford within the bounds of its financial plans and earnings target for the fiscal year.

MERIT INCREASE GUIDELINES:

- The FY 2011 merit budget is 3.0%, subject to final budget approval. The FY2011 merit should not exceed 3.0% of the September 30, 2010 non-union payroll.
- Supervisors should consider each employee's job performance, experience and current compa-ratio (where the employee's pay falls within the job's pay range) as the criteria to determine the appropriate merit increase to recommend.
- Pay grades were increased by 1.8% over the FY 2010 pay grades.

<i>All Employees</i>	
<i>Compa-Ratio</i>	<i>Range of Allowed Increase (%)</i>
<80%	0%-6.00%
80% to 119%	0%-5.5%
120% or higher	0%-3.0%

GUIDELINES FOR PRORATIONS:

- Employees hired between October 15, 2009 and June 30, 2010 will receive pro-rated increases
 - Employees hired between July 1, 2010 and September 30, 2010 will receive consideration for a merit increase effective next year on October 1, 2011.
 - Employee's in this group will have their 2011 merit increase prorated e.g., if hired in July 2010, their 2010 recommended merit increase will be prorated by 15/12ths of what is recommended.

- Employees hired between July 1, 2009 and Sept. 30, 2009 will be eligible for a proration of 13/12ths, 14/12ths or 15/12ths on October 1, 2010.
 - Employee's in this group did not receive a merit increase on October 1, 2009

OTHER CONSIDERATIONS:

Employees whose pay is below the minimum of the assigned pay grade- grant a pay adjustment effective October 1, 2010 to bring the employee's base pay to the new pay grade minimum.

Lump sum awards

- One-time payment in lieu of merit increase to base pay
 - Should be awarded when:
 - Regular merit increase would move an employee into the Value Pay range and job performance does not warrant Value Pay.
 - An employee is currently paid in the Value Pay range and job performance does not warrant Value Pay.
 - Minimum allowable lump sum award is \$500.
 - Lump sums should not exceed 3.0%

Combo awards

There will be no combo awards (Lump sum + merit in the form of an increase to base) considered for FY 2011.

KEY DATES:

	START	FINISH
CMI System Opens for Entry	8/2/2010	
CMI System Closes for Entry		8/13/2010
Division Review and approval	8/16/2010	8/27/2010
Comp and Benefits Prepare for MC Approval	8/30/2010	9/8/2010
MC Approval Meeting	9/9/2010	9/9/2010
Effective Date of Increases	10/1/2010	10/1/2010
CMI Loaded to Oracle	10/1/2010	10/1/2010
ESS Blackout Period - Salary Form Only	9/30/2010	10/8/2010
Supervisors/Managers Communicate Increases	9/10/2010	10/7/2010
Pay Day with Partial Increase	10/8/2010	10/8/2010
Pay Day with Full Increase	10/22/2010	10/22/2010

IN THE MATTER OF THE PETITION OF ATLANTIC CITY ELECTRIC COMPANY FOR APPROVAL OF AMENDMENTS TO ITS TARIFF TO PROVIDE FOR AN INCREASE IN RATES AND CHARGES FOR ELECTRIC SERVICE PURSUANT TO N.J.S.A. 48:2-21 AND N.J.S.A 48:2-21.1 AND FOR OTHER APPROPRIATE RELIEF

BPU Dkt. No.: ER11080469

Response to DRC Data Requests – Set DRC-1

10/17/2011


Jay C. Ziminsky

Question No.: RCR-A-15

Provide the percentage of salary and wage increases granted in each of the last five years, as well as any increases in 2011 to date. Please provide this information separately for union and non-union employees.

RESPONSE:

RCR-A-15	Management
	2011 – 3.0
	2010 – 3.1
	2009 – 0%
	2008 – 3.7%
	2007 – 3.6%
	LU 210
	2011 – 2%
	2010 – 2%
	2009 – 3%
	2008 – 3%
	2007 – 3%
	LU 210-5
	2011 – 2%
	2010 – 3%
2009 – 3%	
2008 – 3%	
2007 – 3%	

 **U.S. Bureau of Labor Statistics**

Economic News Release**Employment Cost Index news release text**

TRANSMISSION OF MATERIAL IN THIS RELEASE IS EMBARGOED UNTIL
8:30 A.M. (EDT) FRIDAY, APRIL 27, 2012

USDL-12-0772

Technical information:

(202) 691-6199 NCSinfo@bls.gov <http://www.bls.gov/ect>

Media contact:

(202) 691-5902 PressOffice@bls.gov

EMPLOYMENT COST INDEX - MARCH 2012

Compensation costs for civilian workers increased 0.4 percent, seasonally adjusted, for the 3-month period ending March 2012, the U.S. Bureau of Labor Statistics reported today. Wages and salaries (which make up about 70 percent of compensation costs) increased 0.5 percent, and benefits (which make up the remaining 30 percent of compensation) also increased 0.5 percent.

Civilian Workers

Compensation costs for civilian workers increased 1.9 percent for the 12-month period ending March 2012, essentially unchanged from the 2.0 percent increase a year earlier in March 2011. Wages and salaries increased 1.7 percent for the current 12-month period. In March 2011 the increase was 1.6 percent. Benefit costs increased 2.7 percent for the 12-month period ending March 2012. In March 2011, the increase was 3.0 percent.

Private Industry Workers

Compensation costs for private industry workers increased 2.1 percent over the year, essentially unchanged from the 2.0 percent increase for the previous 12-month period. Wages and salaries increased 1.9 percent for the current 12-month period. The increase for the 12-month period ending March 2011 was 1.6 percent. The increase in the cost of benefits was 2.8 percent for the 12-month period ending March 2012. The March 2011 increase was 3.0 percent. Employer costs for health

benefits increased 3.0 percent for the 12-month period ending March 2012. In March 2011 the increase was 3.4 percent.

Among occupational groups, compensation cost increases for private industry workers for the 12-month period ending March 2012 ranged from 1.3 percent for service occupations to 2.6 percent for sales and office occupations.

Among industry supersectors, compensation cost increases for private industry workers for the current 12-month period ranged from 1.0 percent for leisure and hospitality to 3.2 percent for information.

State and Local Government Workers

Compensation costs for state and local government workers increased 1.5 percent for the 12-month period ending March 2012. In March 2011, the increase for the 12-month period was 1.8 percent. Values for this series—which began in June 1982—have ranged from 1.3 percent to 9.6 percent. Wages and salaries increased 1.0 percent for the 12-month period ending March 2012. A year earlier the increase was 1.2 percent. Prior values for this series, which also began in June 1982, ranged from 1.0 percent to 8.5 percent. Benefit costs increased 2.3 percent in March 2012, down from the March 2011 increase of 3.3 percent. Prior values for this series, which began in June 1990, ranged from 1.2 percent to 8.3 percent.

The Employment Cost Index for June 2012 is scheduled to be released on Tuesday, July 31, 2012, at 8:30 a.m. (EDT).

Information in this release will be made available to sensory impaired individuals upon request—
Voice phone: (202) 691-5200; Federal Relay Service: (800) 877-8339.

This release incorporates annual revisions in seasonally adjusted Employment Cost Index (ECI) data for total compensation, wages and salaries, and benefit costs. Seasonally adjusted data for 2007-2011 were revised to reflect updated seasonal factors.

BLS news releases, including the ECI, are available through an e-mail subscription service at:
www.bls.gov/bls/list.htm.

Table A. Major series of the Employment Cost Index
(Percent change)

Category	3-month,		12-month,				
	seasonally adjusted		not seasonally adjusted				
	Dec. 2011	Mar. 2012	Mar. 2011	June 2011	Sep. 2011	Dec. 2011	Mar. 2012
CIVILIAN							
WORKERS[1]							
Compensation[2]	0.5	0.4	2.0	2.2	2.0	2.0	1.9
Wages and salaries	0.3	0.5	1.6	1.6	1.6	1.4	1.7
Benefits	0.7	0.5	3.0	3.6	3.2	3.2	2.7
PRIVATE INDUSTRY							
Compensation[2]	0.5	0.4	2.0	2.3	2.1	2.2	2.1
Wages and salaries	0.4	0.5	1.6	1.7	1.7	1.6	1.9
Benefits	0.8	0.3	3.0	4.0	3.3	3.6	2.8
STATE AND LOCAL							
GOVERNMENT							
Compensation[2]	0.3	0.7	1.8	1.7	1.5	1.3	1.5
Wages and salaries	0.3	0.4	1.2	1.2	1.0	1.0	1.0
Benefits	0.4	1.1	3.3	3.0	2.5	2.1	2.3

[1] Includes private, industry and State and local government.

[2] Includes wages and salaries and benefits.

- [Employment Cost Index technical note](#)
- [Table 1. SEASONALLY ADJUSTED: Employment Cost Index for total compensation, by ownership, occupational group, and industry](#)
- [Table 2. SEASONALLY ADJUSTED: Employment Cost Index for wages and salaries, by ownership, occupational group, and industry](#)
- [Table 3. SEASONALLY ADJUSTED: Employment Cost Index for benefits, by ownership, occupational group, and industry](#)
- [Table 4. COMPENSATION \(NOT SEASONALLY ADJUSTED\): Employment Cost Index for total compensation, for civilian workers, by occupational group and industry](#)
- [Table 5. COMPENSATION \(NOT SEASONALLY ADJUSTED\): Employment Cost Index for total compensation, for private industry workers, by occupational group and industry](#)

- [Table 6. COMPENSATION \(NOT SEASONALLY ADJUSTED\): Employment Cost Index for total compensation, for private industry workers, by bargaining status, census region, census divisions, and area](#)
- [Table 7. COMPENSATION \(NOT SEASONALLY ADJUSTED\): Employment Cost Index for total compensation, for State and local government workers, by occupational group and industry](#)
- [Table 8. WAGES AND SALARIES \(NOT SEASONALLY ADJUSTED\): Employment Cost Index for wages and salaries, for civilian workers, by occupational group and industry](#)
- [Table 9. WAGES AND SALARIES \(NOT SEASONALLY ADJUSTED\): Employment Cost Index for wages and salaries, for private industry workers, by occupational group and industry](#)
- [Table 10. WAGES AND SALARIES \(NOT SEASONALLY ADJUSTED\): Employment Cost Index for wages and salaries, for private industry workers, by bargaining status, region, and area](#)
- [Table 11. WAGES AND SALARIES \(NOT SEASONALLY ADJUSTED\): Employment Cost Index for wages and salaries, for State and local government workers, by occupational group and industry](#)
- [Table 12. BENEFITS \(NOT SEASONALLY ADJUSTED\): Employment Cost Index for benefits, by ownership, occupational group, industry, and bargaining status](#)
- [Table 13. COMPENSATION AND WAGES AND SALARIES \(NOT SEASONALLY ADJUSTED\): Employment Cost Index for total compensation, and wages and salaries, for private industry workers, by area](#)
- [HTML version of the entire news release](#)

[The PDF version of the news release](#)

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Last Modified Date: April 27, 2012

U.S. Bureau of Labor Statistics | Office of Compensation and Working Conditions, PSB Suite 4175, 2 Massachusetts Avenue, NE Washington, DC 20212-0001

www.bls.gov/ECT | Telephone: 1-202-691-6199 | [Contact ECT](#)

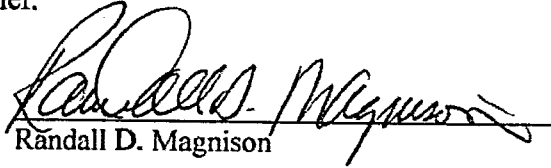
RDM-6 is a Confidential Document

It contains and/or reflects information related to private wage and salary information of company employees.

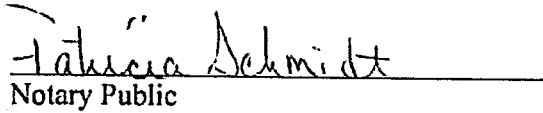
VERIFICATION

STATE OF KANSAS)
) ss
COUNTY OF GRANT)

The undersigned, Randall D. Magnison, upon oath first duly sworn, states that he is an officer of Southern Pioneer Electric Company, and that he has prepared the foregoing testimony, that he is familiar with the contents thereof, and that the statements contained therein are true and correct to the best of his knowledge and belief.


Randall D. Magnison

Subscribed and sworn to before me this 9 day of May, 2012.


Notary Public

My appointment expires: 10-27-2015

