

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

In the Matter of the General Investigation     )  
Regarding Whether Electric Utilities Should     ) Docket No. 17-GIME-565-GIE  
be Considered an “Operator” of Private     )  
Underground Lines Under the Provisions of     )  
The Kansas Underground Utility Damage     )  
Prevention Act.     )

**INITIAL COMMENTS OF PIONEER ELECTRIC COOPERATIVE, INC.  
AND SOUTHERN PIONEER ELECTRIC COMPANY**

COMES NOW Pioneer Electric Cooperative, Inc. (“Pioneer”) and Southern Pioneer Electric Company (“Southern Pioneer”) and pursuant to the State Corporation Commission of the State of Kansas (“Commission”) Order Opening General Investigation (“Order”) and Order Setting Procedural Schedule (“Procedural Schedule”), hereby submits their Initial Comments in the above-captioned matter.

**I. Introduction and Background**

1. On July 27, 2017, the Commission issued its Order Opening General Investigation in this docket. The Order explains that this General Investigation arises out of the issues raised in a prior Complaint by a commercial customer against Kansas City Power and Light Company (“KCP&L”) in Docket No. 15-KCPE-544-COM (“Complaint Docket” or “15-544 Docket”). The Commission’s Order focuses primarily on the interpretation of “operator” of underground electric service lines under the Kansas Underground Utility Damage Prevention Act (“KUUDPA”). KUUDPA imposes certain obligations and liabilities on the “operator” of underground facilities to accurately locate such facilities prior to excavation work.

2. On February 16, 2017, the Commission issued an order setting the Procedural Schedule to include the submission of initial and reply comments by parties on or before October 12, 2017 and November 14 , 2017, respectively.<sup>1</sup>

3. Pioneer Electric is a member-owned Kansas electric cooperative with its principal place of business located in Ulysses, Kansas. Pioneer Electric serves approximately 4,712 members and 16,625 meters in ten southwest Kansas counties. Pioneer Electric owns approximately 128 miles of transmission line and 3,974 miles of distribution line and substation facilities. Pioneer is a certificated electric public utility and is self-regulated under K.S.A. § 66-104d.

4. Southern Pioneer is a not-for-profit, taxable Kansas corporation with its principal place of business located in Ulysses, Kansas, with distribution and customer service offices in Liberal and Medicine Lodge, Kansas. Southern Pioneer serves approximately 16,965 total retail customers, as well as provides wholesale local access delivery service to 34.5 kV sub-transmission users, in ten south central and southwest Kansas counties. Southern Pioneer owns and operates approximately 302 miles of 34.5 kV sub-transmission line and substation facilities and approximately 818 miles of distribution line and substation facilities. Southern Pioneer is a certificated electric public utility and is a wholly owned subsidiary of Pioneer Electric. Southern Pioneer was granted public utility status on November 21, 2013, when the Commission approved the transfer of the retail certificated territory, customers, Rules and Regulations, and tariffs from Mid-Kansas Electric Company, LLC to Southern Pioneer in Docket No. 14-MKEE-447-MIS.

5. In the prior Complaint Docket, KCP&L filed a comprehensive Legal Brief that set forth the legal basis for an interpretation that the “operator” of underground facilities is the entity

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<sup>1</sup> Order Setting Procedural Schedule and Designating Prehearing Officer, p. 2 (September 12, 2017)

and owns and installs the facilities because that entity has control and knowledge of its actual location.<sup>2</sup> For the sake of efficiency, Pioneer and Southern Pioneer adopt and incorporate the legal arguments and authorities contained in KCP&L’s Legal Brief in the 15-544 Docket as they support Pioneer and Southern Pioneer’s responses to the Commission’s questions in this General Investigation.

## **II. Responses to Commission Questions**

### **A. Regarding underground electric service lines, how should the Commission interpret the term “operator” at K.S.A. 66-1802(j)?**

6. K.S.A. 66-1802(j) defines “operator” as:

(j) “Operator” means any person who **owns or operates** an underground tier 1 or tier 2 facility, except for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property. [Emphasis added]

K.S.A. 66-1802(p) defines a “tier 1 facility” as:

(p) “Tier 1 facility” means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing gas, electricity, communications, crude oil, refined or reprocessed petroleum products or hazardous liquids.

Pioneer and Southern Pioneer believe that the Commission should interpret the term “operator” of underground tier 1 or tier 2 facilities under K.S.A. 66-1802(j) as an entity that has actual operational “control” or service responsibility (through ownership, agreement, contract, tariff and/or rule and regulation) over the Tier 1 or Tier 2 facilities. For most electric utilities, there is a clear line of demarcation of ownership, operational control and service responsibility as between the electric utility and customer of these underground facilities pursuant to the utility’s tariffs, rules and regulations and/or contract with the customer. In the case of Pioneer and Southern Pioneer,

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<sup>2</sup> KCP&L Legal Brief, Docket No. 15-KCPE-544-COM, filed August 22, 2016.

their respective tariffs and rules and regulations expressly provide that the point of delivery at which electric energy is furnished by Pioneer/Southern Pioneer to the customer is at the meter location (unless otherwise agreed to between Pioneer/Southern Pioneer and the customer).<sup>3</sup> The meter location/service point is the line of demarcation for ownership and control of the underground electric facilities between Pioneer/Southern Pioneer and the customer.<sup>4</sup> The Rules and Regulations further provide that (i) the utility assumes no responsibility for damages incurred beyond or downstream of the meter/service point where ownership of the facilities change, unless such damages are due to the negligence of the utility;<sup>5</sup> and (ii) the location, installation, and maintenance of all electric facilities downstream of the meter/service point is the sole responsibility of the customer who has full ownership and control of these facilities.<sup>6</sup> As such, Pioneer/Southern Pioneer would be the “operator” of the underground electric facilities it owns to the meter/service point, and the customer would be the “operator” of its customer owned facilities beyond that point. This promotes safety by having a clear point of demarcation between the utility and the customer where each is responsible for the facilities they installed and of which they have knowledge regarding design and installation.

7. In practice, the actual location of the meter/service point for tier 1 underground electric facilities is different between Pioneer and Southern Pioneer based upon local code ordinances and the diverse profiles of the two utilities. Pioneer’s certified service territory is primarily rural while Southern Pioneer’s certified service territory is primarily urban.

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<sup>3</sup> Pioneer Rules and Regulations, Section 10(D); Southern Pioneer Rules and Regulations, Index No. R9, Sheet 1, Section IX(A).

<sup>4</sup> Provided in the case of service to Southern Pioneer residential customers, the residential customer actually owns and installs the meter loop and therefore the specific point of ownership changes at the connection to the meter loop.

<sup>5</sup> Id.

<sup>6</sup> Pioneer Rules and Regulations Section 10(A)-(B); Southern Pioneer Rules and Regulations, Index No. R9, Sheet 1, Section IX(B).

8. The location of the meter/service point for majority of Pioneer residential customers is at the current transformer on the pole in a defined and developed alley or in the road right-of-way, and therefore the customer is responsible for owning and operating all private underground conductor and associated facilities and equipment from this meter/service point to the residence in accordance with all applicable laws, rules and safety codes and standards.

9. The location of the meter/service point for Southern Pioneer residential customers is generally at the building wall of the house or dwelling, unless the customer requests that Southern Pioneer place the meter on the pole in the sometimes not well defined or undeveloped alley or on the road and the customer assume the responsibility for installation of the underground conductor and associated facilities and equipment up to the house or dwelling.

10. There is also a difference in the location of the meter/service point as between residential and commercial customers. The location of the meter/service point for small commercial customers such as service to a gas well or pivot sprinkler is located on the pole in the road right-of-way. The location of the meter/service point for large commercial and industrial customers is generally on the protection scheme cabinet next to the padmount transformer located adjacent to or at the edge of the customer's property. The commercial customer in both cases is responsible for locating, installing, owning, operating and maintaining the underground facilities downstream of these meter/service points.

11. Staff has taken the position that the utility is the "operator" of tier 1 or tier 2 underground electric facilities under KUUDPA because the utility operates those facilities by transporting power over them and setting certain operational standards for public safety purposes that have an impact on those facilities.<sup>7</sup> It is patently unreasonable and inconsistent with the

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<sup>7</sup> Commission Staff's Post-Hearing Legal Brief, p.5, filed October 5, 2016; Commission Staff's Brief on KUUDPA Responsibilities, p. 6., filed August 22, 2016.

language of the statute and legislative intent of KUUDPA to expand the definition of “operator” to require that the utility be responsible for customer-owned underground facilities for which it clearly has no legal interest in or responsibility for simply because there is power which originated from the utility flowing over such customer-owned facilities. Pioneer and Southern Pioneer’s service and title to the energy it provides over its electric facilities the customer clearly passes to the customer at the meter, which is the line of demarcation of ownership of the electric facilities between Pioneer/Southern Pioneer and the customer, as defined by their respective tariffs and rules and regulations.<sup>8</sup> The actual energy flowing over the customer-owned underground facilities is under the ownership and control of the customer, and in all cases the customer may install and own a breaker or disconnect switch on the customer side of the meter to unilaterally disconnect the flow of energy over the customer-owned facilities at any point in time.<sup>9</sup> Therefore, it is clear that the utility should only be determined to be the “operator” under KUUDPA of those underground electric facilities for which it owns and controls that are upstream of the service point as defined under each utility’s applicable tariffs, rules and regulations and/or contract with the customer.

**B. Should the utility service provider be required to provide locates for residential underground electric service up to the location of the customer meter or the building wall of the residence, whichever is further downstream?**

12. As described above, Pioneer and Southern Pioneer define the point of service at the meter location which is the point of demarcation between the Pioneer/Southern Pioneer electric facilities and the customer-owned facilities. Therefore, Pioneer and Southern Pioneer are responsible under KUUDPA for providing locates for residential underground electric service up

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<sup>8</sup> Pioneer and Southern Pioneer Rules and Regulations, Index No. R9, Sheet 1, Section IX(A).

<sup>9</sup> For services where the meter location is on the pole located in the road right-of-way or in the alley or on the protection scheme cabinet next to the pad mount transformer, Pioneer and Southern Pioneer require that the customer install and own a service disconnect switch which is completely under the customer’s control.

to the location of the customer meter, but should not be responsible for such locates past the location of the meter. In the case of Southern Pioneer, the location of the customer meter is usually on the building wall of the residence. However, in the case of Pioneer, the meter/service point is at the current transformer on the utility pole located on the road right-of-way at the edge of the customer's property and therefore the residential customer is responsible for locating, installing, owning, operating and maintaining its electric facilities downstream of the meter on the customer's property. A disconnect switch is required to be installed on the customer side of the meter, and the customer may unilaterally disconnect the electric service at any point in time.

13. Pioneer's rural residential customers could install and own controlled runs of underground wire extending to more than one building on the customer's premises (house, barns, sheds, water wells, etc.). In most cases, Pioneer would have no knowledge of the location of the customer-owned underground facilities and as such, they would be very difficult to accurately locate. It is not as easy as locating customer-owned private underground facilities from the pole to a point on the back of a house. This does not promote the public safety objective under KUUDPA.

**a. What is the risk to the customer of not providing locates under this scenario?**

14. There is no added risk to the customer of not providing locates of customer owned facilities as that is currently Pioneer and Southern Pioneer's practice. The customer who designed and installed the customer owned facilities has access to their maps and diagrams and is in the best position to work with the excavator to accurately locate its private facilities to ensure public safety.

**b. What is the risk/cost to the utility of being required to provide locates under this scenario?**

15. The potential risk/cost to the utility of being required to provide locates of customer

owned facilities could be significant as further discussed below in response to Commission Question E. Requiring Pioneer and Southern Pioneer to provide locates for all customer owned facilities downstream of the meter/service point would be an almost impossible task given the significant amount of private use facilities that traverse its service territory due to the primarily rural and commercial nature of its customer base. Therefore, the cost to locate these customer owned facilities and the potential liability for inaccurate locates could be substantial.

**C. For commercial customers, should the utility service provider be required to provide locates up to the building wall, the current transformer cabinet, or the customer meter, whichever is further downstream?**

16. As earlier stated, the utility should be obligated under KUUPDA to provide locates up to the service point, which is the point of demarcation of ownership and operational control of the electric facilities between the utility and the customer. In the case of Pioneer and Southern Pioneer's commercial customers, the service point is also the location of the meter. The utility should not be obligated under KUUPDA to provide locates beyond the service point.

17. The meter location/service points for Pioneer and Southern Pioneer's commercial customers are either on the current transformer at the top of the utility pole or the protection scheme at the padmount transformer located at the edge of the customer's property. The commercial customer owns and controls the service disconnect switch and may disconnect service downstream of the meter at any point in time.

18. Pioneer has several commercial oil and gas as well as irrigation customers that have multiple runs of private underground wire that extend for long distances, in some cases a mile or more. Pioneer and Southern Pioneer also have several large industrial customers (beef processing plants, midstream gas and helium processing facilities, feed yards, dairies, etc.) that own and operate a complex network of underground electric facilities from the protection scheme



on the transformer to the various customer service locations. Beyond the primary metering point, Pioneer and Southern Pioneer have no knowledge of the location of these private underground facilities and the commercial customer may not have accurate or adequate maps indicating the location of such facilities. Therefore, they would be extremely difficult if not impossible to locate and mark such facilities. Further, the manpower and resources required to perform such activity for such for-profit private facilities spreading vastly across Pioneer and Southern Pioneer's 20-county service territories would be insurmountable.

**D. If it is required to locate customer-owned facilities, should the utility service provider only be required to locate those facilities to the boundaries of the common utility easement?**

19. This question assumes that the utility is the "operator" of customer owned facilities under KUUPDA and therefore must locate such facilities. Pioneer and Southern Pioneer do not agree with this supposition. With that stated, Pioneer and Southern Pioneer will respond to the question. Pioneer and Southern Pioneer only have easement or property rights to access the facilities owned by Pioneer and Southern Pioneer. Pioneer and Southern Pioneer have no legal right to enter upon customer-owned property to locate customer-owned facilities downstream of the service point, and no such right has been created under KUUDPA. An interpretation of "operator" under KUUDPA that would require utilities to locate customer-owned facilities would place utilities in the position of a trespasser exposing it to potential liability and expense to its ratepayers.

**E. What is the liability of an operator in providing locates for customer installed/owned facilities?**

20. If it is determined that the utility is the "operator" of customer owned and controlled underground facilities, significant and unwarranted liability could be placed on the utility for customer owned facilities for which it did not design or install. The utility and its

members/customers could be liable for civil damages in the event there are damages arising from the inaccurate marking of these underground facilities under state negligence laws. As previously discussed, in many cases, private customer owned underground lines extend for miles in every direction across Pioneer and Southern Pioneer's 20-county service territories as the territories are primarily rural with the majority of services (over 75%) being commercial and large industrial services with primary metered networks of underground customer owned facilities. The ability to accurately locate a majority of these facilities is unlikely. Further, as described above, in the case of Pioneer and Southern Pioneer, the utility does not have any real property rights to access the customer-owned facilities nor any legal interest in the customer owned facilities themselves. Therefore, the utility would be subject to additional liability and expense for violating Kansas property laws. Pioneer is an electric cooperative and Southern Pioneer is a non-profit utility, and therefore any liability incurred by the utilities due to unreasonable obligations imposed on them under KUUDPA to locate customer owned facilities will be paid for by Pioneer and Southern Pioneers members and customers, respectively, through increases to rates.

**F. If an operator is not required to provide locates of customer installed/owned facilities, should the operator be required to alert the customer to the fact that locating customer-owned facilities is the customer's obligation?**

21. Pioneer and Southern Pioneer's practices require that the customer provide locates of customer owned facilities downstream of the meter/service point as the customer is the owner and operator of these facilities. Their practices also include notification to the customer that locating the customer-owned facilities downstream of the meter/service point is the customer's responsibility.

**G. What are the best practices that may be employed by an excavator to avoid damaging customer-owned facilities when no locate marks are present or the provided locate marks are of questionable accuracy?**

22. An excavator has the obligation to engage in a visual review of the location before digging, and must take responsibility for making sure all underground lines have been located before beginning the excavation work. The excavator should be able to recognize a situation where the utility has not located lines all the way to the customer's building. However, the excavator should contact the utility and the customer to identify the point of service and determine if the customer has installed any underground facilities downstream of the service point.

### **III. Conclusion**

23. Pioneer and Southern Pioneer appreciate the opportunity to participate in this docket and provide comment on the utility's obligations as an owner and operator of underground facilities under KUUPDA. The determination by the Commission of a utility's obligations with respect to customer-owned private underground facilities could have a significant impact on Pioneer and Southern Pioneer and their respective members and customers, potentially exposing them to significant legal liability and expense in attempting to comply with any obligations imposed on the utility for customer-owned facilities. While it is completely reasonable for a utility to incur the risk associated with locates of facilities it owns and operationally controls, including the risks of being sued, it is not reasonable to incur the risks of liability for locates for facilities for which it has no legal interest in due to an illogical construct of "operator" of customer-owned facilities under KUUDPA. Such a determination would impose an obligation on utilities and ratepayers disproportionate to the threat to public safety resulting from damage to underground facilities located on private property and is not in the public interest.

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Respectfully submitted,

/s/ Lindsay A. Shepard

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**ATTORNEY FOR SOUTHERN PIONEER  
ELECTRIC COMPANY**

**VERIFICATION**

STATE OF KANSAS            )  
  )  
COUNTY OF GRANT        )       ss:

Lindsay A. Shepard, of lawful age, being first duly sworn on oath states:

That she is counsel for Pioneer Electric Cooperative, Inc. and Southern Pioneer Electric Company; that she has read the Initial Comments of Pioneer Electric Cooperative, Inc. and Southern Pioneer Electric Company, submitted on October 12, 2017 in Docket No. 17-GIME-565-GIE; that she knows the contents thereof; and that the facts therein are true and correct to the best of her knowledge, information, and belief.

  
Lindsay A. Shepard

SUBSCRIBED AND SWORN to before me this 12th, day of October, 2017.



  
Notary Public

My Commission expires: 9-30-2021

## **CERTIFICATE OF SERVICE**

I do hereby certify that on the 12<sup>th</sup> day of October, 2017, I electronically filed via the Kansas Corporation Commission's Electronic Filing System a true and correct copy of the above and foregoing Initial Comments with a copy emailed to all parties of record.

/s/ Lindsay A. Shepard

Lindsay A. Shepard