

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of Southern Pioneer Electric Company,))
Regarding Violation of the Commission's Minimum))
Standards for Payment Methods for Utility Bills by) Docket No. 18-SPEE-428-SHO
Charging Its Customers a Convenience Fee to))
Submit Bill Payment via Electronic Check.))

STAFF'S REPLY TO SOUTHERN PIONEER'S RESPONSE TO
ORDER TO SHOW CAUSE

BACKGROUND

The Filing of Southern Pioneer's Application Requesting Waiver to Modify Credit Card Payment

1. On December 8, 2017, Southern Pioneer Electric Company (Southern Pioneer) filed an Application in Docket No. 18-SPEE-241-TAR (Docket 18-241) seeking a waiver from the Kansas Corporation Commission's (Commission) Minimum Standards for Payment Methods for Utility Bills and Allowing the Acceptance of Credit Cards (Minimum Standards) and proposing revisions to its Schedule of Fees related to a \$3.95 convenience fee for bill payments made by credit card. Through discovery requests of the Citizen's Utility Ratepayer Board (CURB) in Docket 18-241, Staff of the Commission (Staff) discovered that Southern Pioneer has been charging a fee of \$3.95 for bill payments made via electronic check (e-check) since April 2012.

The Filing of Staff's Report and Recommendation

2. On March 27, 2018, Staff submitted a Report and Recommendation (R&R), noting that by charging a convenience fee to customers who make bill payments via e-check, Southern Pioneer may be in violation of the Commission's Minimum Standards.¹ Staff also noted that to date, Southern Pioneer has not received a waiver to charge a convenience fee for bill payments

¹ Report and Recommendation, March 27, 2018, p. 1

made via e-check, nor is such convenience fee disclosed in the Schedule of Fees in Southern Pioneer's Rules and Regulations.² In its R&R, Staff recommended the Commission issue an Order to Show Cause whether Southern Pioneer is in violation of the Commission's Minimum Standards by charging its customers a convenience fee to submit bill payment via e-check.

The Issuing of Commission Order to Show Cause

3. On April 10, 2018, an *Order to Show Cause* was issued to determine whether Southern Pioneer is in violation of the Commission's Minimum Standards by charging its customers a convenience fee to submit bill payments via e-check.³

The Filing of the Response of Southern Pioneer

4. On May 10, 2018, Southern Pioneer filed its *Response to Order to Show Cause* (Response). In its Response, Southern Pioneer stated that it was unaware of its noncompliance until contacted by Staff in March 2018.⁴ Additionally, Southern Pioneer acknowledged that the currently implemented \$3.95 convenience has not been provided for in Southern Pioneer's Schedule of Fees or Rules and Regulations.⁵ Should it be determined the convenience fee was not previously approved, Southern Pioneer requests a waiver for the fee in this docket.

5. In its Response, Southern Pioneer posits it was charging the convenience fee with a "good faith" belief that its predecessor Mid-Kansas Electric Company, Inc. (Mid-Kansas) had received the requisite waiver from the Commission.⁶ In support of its contention, Southern Pioneer states:

- "Southern Pioneer believed that the requisite waiver had been received by Mid-Kansas Electric Company, Inc. ("Mid-Kansas") in 2012. Mid-Kansas was the certificated retail electric service provider for the customers located in the Southern Pioneer Division at

² Id.

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⁴ Southern Pioneer's *Response to Order to Show Cause*, May 10, 2018, p. 2-3

⁵ Id., p. 3

⁶ Southern Pioneer Response, p.5.

such time. Mid-Kansas, as the certificate holder, was responsible for receiving the necessary approvals from the Commission to allow Southern Pioneer to bill the \$3.95 Convenience Fee to retail customers located in the Southern Pioneer Division pursuant to the Retail Electric Service Agreement between Mid-Kansas and Southern Pioneer.⁷

6. According to Southern Pioneer, it was their understanding that Mid-Kansas submitted to the Commission a cover letter requesting approval of a bill insert which stated that customers paying online using an e-Check would be assessed a \$3.95 fee. Specifically:

- “Southern Pioneer understands that a Cover Letter and Proposed Bill Insert were forwarded to Commission Staff for review and comment. In an email obtained by Southern Pioneer from Mid-Kansas, dated February 23, 2012, Staff identified three concerns in its review . . . none of which involved concern over the stated \$3.95 transaction fee for e-Checks”⁸

7. Additionally:

- “Southern Pioneer was not involved in any . . . discussions between Commission Staff and Mid-Kansas regarding Staff’s concerns with the Proposed Bill Insert, but Southern Pioneer was aware that a mark-up of the Proposed Bill Insert was exchanged between Commission Staff and Mid-Kansas . . . The only modification made to the Proposed Bill Insert was the last paragraph of the insert to address authorized pay agents . . . There was again no identified concern or requested change by Commission Staff to the section of the Proposed Bill Insert stating that a \$3.95 convenience fee would be assessed for the customer’s payment of the bill online by e-Check.”⁹

8. Lastly, Southern Pioneer contends that the final bill insert approved by Staff, which “clearly indicates the online e-Check payment option and associated \$3.95 convenience fee charge,”¹⁰ led Southern Pioneer to believe that Mid-Kansas had received the requisite waiver.

9. Based on the forgoing information, Southern Pioneer began assessing the \$3.95 convenience fee to customers paying their bill online via e-Check.

STAFF’S REPLY

Staff’s Inaction toward the e-Check Convenience Fee in the Bill Insert Does Not Constitute Commission Approval

⁷ Id., p 3.

⁸ Id., p. 4.

⁹ Id.

¹⁰ Id., p. 5.

10. As set forth in K.S.A. 66-117(c), Commission approval is required before a public utility subject to Commission jurisdiction changes its rates, joint rates, tolls, charges or classifications or schedules of charges, or any rules or regulations or practices pertaining to service.¹¹ That requirement was further refined in *Kansas Power & Light Co. v. Mobil Oil Co.*, 198 Kan. 556, Syl. ¶ 6, 426 P.2d 60 (1967), in which the Supreme Court of Kansas ruled that, “Tariff approval is not given in desultory fashion or through routine procedures, but must be based upon investigation and hearing at least when the proposed tariff changes existing tariffs.”

11. It is uncontroverted that Southern Pioneer’s Rules and Regulations, as presently written, do not provide for the convenience fee; as such, the application of the convenience fee alters existing rules and regulations, and thus, requires Commission approval. Despite Southern Pioneer’s proclaimed belief that Staff’s actions constituted approval of the convenience fee, at no point did Mid-Kansas nor Southern Pioneer receive outward, formal, or express confirmation that the convenience fee had received Commission approval. Rather, Southern Pioneer’s assertion of approval rests solely upon Staff’s inaction toward the convenience fee included in Mid-Kansas’ proposed bill insert; such assertions are by their very nature desultory and antithetical to the formal process contemplated in both K.S.A. 66-117(c) and *Kansas Power & Light Co. v. Mobil Oil Co.* Allowing Southern Pioneer’s subjective belief, regarding Staff’s intent, to control would remove the formal approval process from the hands of the Commission, and place it squarely with those companies regulated by the Commission under K.S.A. 66-104. Therefore, Staff recommends the Commission find that Mid-Kansas (and, therefore, Southern Pioneer) was not previously granted a waiver allowing a \$3.95 convenience fee for bills paid via e-check.

Southern Pioneer’s Request for a Waiver in the Instant Docket Is Not Appropriate

¹¹ K.S.A. 66-117(c).

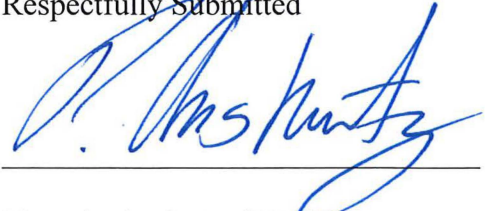
13. Should the Commission determine Southern Pioneer does not have in place an appropriate waiver of the Minimum Standards authorizing Southern Pioneer to charge the convenience fee, Southern Pioneer requests the Commission grant such a waiver in the instant docket.

13. If it is determined that no such waiver is in place, granting Southern Pioneer's request here would alter current rules and regulations. As stated above, the changing of rules and regulations requires formal Commission approval. Because the instant docket pertains to an *Order to Show Cause*, and not tariffs or the changing of rules and regulations, no such formal approval process can be afforded. As such, Staff is of the opinion that Southern Pioneer's request for a waiver is better served in a separately filed docket pertaining to a change in rates, joint rates, tolls, charges or classifications or schedules of charges, or any rules or regulations or practices pertaining service, where a formal approval process is available.

14. By charging a \$3.95 convenience fee per e-check transaction, Mid-Kansas/Southern Pioneer has been acting in violation of Commission standards since 2012. Therefore, Staff recommends the Commission find Southern Pioneer in violation of the Minimum Standards and Order Southern Pioneer to refund customers who were wrongly billed \$3.95 convenience fees for payment via e-check and provide for any other relief the Commission deems just and reasonable.

WHEREFORE, for the reasons set forth above, Staff respectfully requests the Commission find its arguments persuasive, find Southern Pioneer in violation of the Minimum Standards, Order Southern Pioneer to refund customers who were wrongly billed \$3.95 convenience fees for payment via e-check, and deny Southern Pioneer's request for a waiver.

Respectfully Submitted



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CERTIFICATE OF SERVICE

18-SPEE-428-SHO

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Reply to southern Pioneer's Response to Order to Show Cause was served via electronic service this 21st day of May, 2018, to the following:

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