

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

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Jay Scott Emler

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.)

ORDER ASSESSING PENALTY FOR TARIFF VIOLATION

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, the Commission finds and concludes as follows:

1. On March 27, 2018, Commission Staff (Staff) submitted a Report and Recommendation, noting that by charging a convenience fee to customers who make bill payments via electronic check, Southern Pioneer Electric Company (Southern Pioneer) may be in violation of the Commission’s Minimum Standards.¹ Southern Pioneer has not received a waiver to charge a convenience fee for bill payments made via electronic check, nor is a convenience fee disclosed in the Schedule of Fees in Southern Pioneer’s Rules and Regulations.² Staff recommended the Commission issue an Order to Show Cause 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 electronic check.³

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

² *Id.*

³ *Id.*, p. 3.

2. On April 10, 2018, the Commission issued an Order to Show Cause adopting Staff's Report and Recommendation and giving Southern Pioneer thirty (30) days to show why it is not in violation of the Commission's Minimum Standards.⁴

3. On May 10, 2018, Southern Pioneer filed its Response to Order to Show Cause, agreeing with Staff that charging a \$3.95 convenience fee for payments made via e-check is not provided for in its tariff.⁵ Southern Pioneer acknowledges it has been charging the convenience fee since April 2012,⁶ but explained it had good faith belief that Mid-Kansas Electric Company (Mid-Kansas), the certificate holder responsible for obtaining a waiver, had received a waiver to charge a convenience fee by virtue of the proposed billing insert.⁷

4. On May 21, 2018, Staff filed its Reply to Southern Pioneer's Response to Order to Show Cause: (1) noting Southern Pioneer acknowledged its tariff does not provide for the convenience fee;⁸ and (2) recommending Southern Pioneer be ordered to refund any customers who paid the unauthorized convenience fee.⁹

5. On May 31, 2018, the Citizens' Utility Ratepayer Board (CURB)¹⁰ filed a Memorandum in Support of State Corporation Commission Staff's Reply to Southern Pioneer's Response to Order to Show Cause, adopting Staff's position.¹¹

6. On June 19, 2018, the Commission issued an Order on Tariff Violations, finding Southern Pioneer violated its tariff by charging customers who paid their bills via e-checks an

⁴ Order to Show Cause, Apr. 10, 2018, ¶ 8.

⁵ Response of Southern Pioneer Electric Company to Order to Show Cause, May 10, 2018, ¶6.

⁶ *Id.*, ¶ 5.

⁷ *Id.*, ¶ 11.

⁸ Staff's Reply to Southern Pioneer's Response to Order to Show Cause, May 21, 2018, ¶ 4.

⁹ *Id.*, ¶ 14.

¹⁰ CURB was granted intervention on April 26, 2018.

¹¹ Memorandum in Support of State Corporation Commission Staff's Reply to Southern Pioneer's Response to Order to Show Cause, May 31, 2018, ¶ 6.

unauthorized convenience fee.¹² To determine the appropriate remedy, the Commission sought additional information from the parties. Specifically, the Commission directed Southern Pioneer to supply information about: (1) the number of customers who were charged a convenience fee for paying their bills by e-check; (2) whether Southern Pioneer can identify the customers who paid a convenience fee for paying their bills by e-check; and (3) whether Southern Pioneer can identify the dollar amount of convenience fees charged to individual customers for paying their bills by e-check.¹³

7. On July 26, 2018, Staff filed its Response to the Commission's Order on Tariff Violation, explaining the Commission has the legal authority to issue refunds¹⁴ and recommending fining Southern Pioneer a total of \$5,000 for two violations:¹⁵ (1) not accepting e-checks as a zero fee method of payment¹⁶ and (2) not fully disclosing the convenience fee associated with e-checks in its Schedule of Fees.¹⁷ Staff relied on K.S.A. 66-138(a)(2), which authorizes the Commission to impose a fine of \$100-\$5,000 for each tariff violation.¹⁸

8. On July 30, 2018, CURB filed its Brief, agreeing with Staff that the Commission has the authority to issue refunds to customers who paid unlawful convenience fees for e-payments.¹⁹ CURB made no recommendation about the need for or amount of any fine, but recognized the Commission's authority to issue civil penalties under K.S.A. 66-138(a)(2).²⁰

9. On July 30, 2018, Southern Pioneer filed its Response, acknowledging the Commission has authority under K.S.A. 66-101 to order full refunds to customers who were

¹² Order on Tariff Violation, June 19, 2018, ¶ 12.

¹³ *Id.*, ¶ 13.

¹⁴ Staff's Response to Commission's Order on Tariff Violation, July 26, 2018, ¶ 15.

¹⁵ *Id.*, ¶ 18.

¹⁶ *Id.*, ¶ 19.

¹⁷ *Id.*, ¶ 20.

¹⁸ *Id.*

¹⁹ Brief of the Citizens' Utility Ratepayer Board, July 30, 2018, ¶ 12.

²⁰ *Id.*, ¶¶ 17-18.

charged the unauthorized convenience fee and requesting 90 days to implement billing software changes and process refunds.²¹ Southern Pioneer requests the Commission forgo assessing any penalties because this is its first violation of the tariff and it was unintentional.²²

10. Southern Pioneer reports it is able to affirmatively determine that \$108,158.90 was improperly received from customers who were charged a convenience fee.²³ The Commission accepts that figure and directs Southern Pioneer to refund that money plus interest to the \$27,382 customer accounts charged the unauthorized convenience fee from March 2012 - July 8, 2018, within 90 days of the issuance of this Order. The Commission adopts Staff's recommendation to calculate the interest rate based upon the Commission-approved Customer Deposit Rates in Docket No. 98-GIMX-348-GIV, which reflect prevailing interest rates on short-term, risk-free investments.²⁴

11. Based on Southern Pioneer's responses, there appears to be some confusion over which customers paid an unauthorized convenience fee and how many times those customers incurred a convenience fee. Southern Pioneer admits:

Without physically reviewing each electric customer's account and the daily transactions logs during the Period, Southern Pioneer cannot definitively determine which accounts of the 32,950²⁵ total may have been accessed a \$3.95 fee due to multiple accounts being processed as one transaction.²⁶

²¹ Response of Southern Pioneer Electric Company to the Commission's Order on Tariff Violation, July 30, 2018, p. 8.

²² *Id.*, p. 9.

²³ *Id.*, p. 6.

²⁴ See Staff's Response to Commission's Order on Tariff Violation, ¶ 17.

²⁵ Southern Pioneer explains, "32,950 customer accounts representing various revenue classes were paid using e-check as the form of payment. However, because customers may have paid multiple accounts in a single transaction during the Period, and Southern Pioneer's billing system sees this as one transaction and assess a single \$3.95 convenience fee to the first account number entered of the multiple accounts paid, of the 32,950 customer accounts only 27,382 were actually charged a convenience fee." Response of Southern Pioneer Electric Company to the Commission's Order on Tariff Violation, p. 5.

²⁶ Response of Southern Pioneer Electric Company to the Commission's Order on Tariff Violation, p. 5.

Southern Pioneer does not appear to be able to identify which of its customers are entitled to a refund. Similarly, Southern Pioneer concedes it “cannot with certainty identify the exact dollar amount of convenience fees paid by the ‘individual customers.’”²⁷

12. The Commission is deeply concerned by Southern Pioneer’s admission that of the 32,950 customer accounts identified as paying via e-checks, only 22,743 of those accounts (69%) are currently active, making it difficult to locate the remaining 10,207 accounts (31%).²⁸ Therefore, the Commission finds Southern Pioneer shall place the funds due to the remaining 10,207 accounts in an interest-bearing escrow account and publish notice of the fund in the newspapers covering in service territory. The account shall be opened and notice shall be published within 90 days of the issuance of this Order. Southern Pioneer shall coordinate with the Commission’s Office of Public Affairs & Consumer Protection on the wording of the notice and which newspapers shall publish the notice. Southern Pioneer is directed to file an affidavit attesting that the notice was published and an escrow account has been opened. Any refunds unclaimed one year after this Order was issued shall be paid to the State Treasurer to be held as unclaimed property for those former customers that could not be located.²⁹

13. To ensure that all customers entitled to a refund receive the refund, Southern Pioneer is directed to physically review each customer’s account and daily transaction logs from March 2012 through July 8, 2018 to determine which customers are entitled to a refund and the amount of that refund.

14. The Commission is troubled that 27,382 customer accounts were charged the unauthorized convenience fee from March 2012 - July 8, 2018.³⁰ Based on the volume and

²⁷ *Id.*, p. 6.

²⁸ *Id.*

²⁹ *See* K.S.A. 58-3935(a)(12); K.S.A. 58-3951.

³⁰ *Id.*, 4.

duration of violation, Southern Pioneer's request that it not be assessed a penalty is unreasonable. Likewise, the Commission finds Staff's recommended \$5,000 penalty grossly inadequate. In proposing a \$2,500 penalty for not accepting e-checks as a zero fee method of payment and another \$2,500 fine for not fully disclosing the convenience fee associated with e-checks in its Schedule of Fees, Staff believes Southern Pioneer's omission of the e-check convenience fee from its Schedule of Fees was unintentional, but also that Southern Pioneer should have taken steps to ensure its tariff fully disclosed all fees associated with payment methods.³¹ Therefore, Staff recommended a penalty in the middle of the statutory range.³²

15. All of the parties to this Docket agree K.S.A. 66-138(a)(2) authorizes the Commission to impose a fine of \$100-\$5,000 for each violation. The question before the Commission is how many times did Southern Pioneer violate its tariff.

16. The Commission has wide latitude to determine the appropriate penalty. In Docket No. 15-WSEE-509-COM (15-509 Docket), HomeServe had marketed its services, without authorization, to 388,000 Westar customers through a total of 16 rounds of mailing.³³ The Commission treated each of the 16 batches of mailings as a violation.³⁴

17. In the present docket, it appears that Southern Pioneer overcharged its customers for a period of 76 months (March 2012-July 8, 2018). Applying the logic used in the 15-509 Docket, Southern Pioneer would have sent out approximately 76 batches of bills to its customers. Therefore, the Commission finds Southern Pioneer committed 76 violations of its Tariff. Under K.S.A. 66-138(a)(2), the Commission could impose a penalty ranging from \$7,600 to \$380,000.

³¹ Staff's Response to Commission's Order on Tariff Violation, ¶ 20.

³² *Id.*

³³ Order Assessing Fines for Tariff Violations, Docket No. 15-WSEE-509-COM, Nov. 2, 2017, ¶ 12.

³⁴ *Id.*, ¶ 14.

18. Based on the volume and duration of violation, the Commission believes it is appropriate to assess a \$250 penalty for each violation, for a total penalty of \$19,000.

THEREFORE, THE COMMISSION ORDERS:

A. Within 90 days of this Order, Southern Pioneer shall distribute a \$108,158.90 refund plus interest among the 27,382 customer accounts charged the unauthorized convenience fee from March 2012-July 8, 2018.

B. Southern Pioneer shall place the funds due to the remaining 10,207 accounts that are no longer active in an interest-bearing escrow account and publish notice of the fund in the newspapers covering its service territory within 90 days of the issuance of this Order. Any unclaimed refunds shall be paid to the State Treasurer to be held for those former customers with inactive accounts.

C. To ensure that all customers entitled to a refund receive the appropriate refund, Southern Pioneer is directed to physically review each customer's account and daily transaction logs from March 2012 through July 8, 2018 to determine which customers are entitled to a refund and the amount of that refund.

D. Southern Pioneer is assessed a civil penalty of \$19,000 for violating its Tariff by not accepting e-checks as a zero fee method of payment and for not fully disclosing the convenience fee associated with e-checks in its Schedule of Fees.

E. Payment of the penalty is due within 21 days of the mailing of this Order. Payment shall reference this Docket, and be made to the Commission, addressed to the Commission's fiscal office, 1500 SW Arrowhead Road, Topeka, Kansas 66604-4027. If the penalty is not timely paid, the Commission may consider canceling, suspending or revoking Southern Pioneer's certificate of

convenience and necessity to offer electric service in Kansas. Upon timely payment of the penalty, this Docket will be closed.

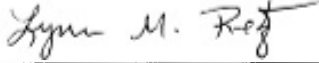
F. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).³⁵

G. The Commission retains jurisdiction over the subject matter and the parties to enter further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Emler, Commissioner

Dated: 02/05/2019



Lynn M. Retz
Secretary to the Commission

BGF

³⁵ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

18-SPEE-428-SHO

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 02/05/2019.

THOMAS J. CONNORS, ATTORNEY AT LAW
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
tj.connors@curb.kansas.gov

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.nickel@curb.kansas.gov

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
s.rabb@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.smith@curb.kansas.gov

PHOENIX ANSHUTZ, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
p.anshutz@kcc.ks.gov

BRIAN G. FEDOTIN, DEPUTY GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
b.fedotin@kcc.ks.gov

AMBER SMITH, CHIEF LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3167
a.smith@kcc.ks.gov

RANDY MAGNISON, EXECUTIVE VICE PRESIDENT -
ASSISTANT CEO
PIONEER ELECTRIC COOP. ASSN., INC.
1850 W OKLAHOMA
PO BOX 368
ULYSSES, KS 67880-0368
Fax: 620-356-4306
rmagnison@pioneerelectric.coop

LINDSAY CAMPBELL, EXECUTIVE VP - GENERAL
COUNSEL
SOUTHERN PIONEER ELECTRIC COMPANY
1850 W OKLAHOMA
PO BOX 403
ULYSSES, KS 67880-0430
Fax: 620-356-4306
lcampbell@pioneerelectric.coop

CERTIFICATE OF SERVICE

18-SPEE-428-SHO

/S/ DeeAnn Shupe
DeeAnn Shupe
