

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

In the Matter of the Investigation into Southern )  
Pioneer Electric Company Regarding the )  
February 2021 Winter Weather Events, as ) Docket No. 21-SPEE-331-GIE  
Contemplated by Docket No. 21-GIMX-331- )  
GIE. )

**CURB’S RESPONSE TO STAFF’S REPORT AND RECOMMENDATION**

COMES NOW, the Citizens’ Utility Ratepayer Board (CURB) and submits its response to the Report and Recommendation (“R&R”) from the Staff (“Staff”) of the Kansas Corporation Commission (“Commission”) filed on December 20, 2021 regarding Southern Pioneer Electric Company’s (“Southern Pioneer” or “Company”) proposal to recover its extraordinary costs incurred during Winter Storm Uri in February 2021 (“Winter Storm”). In support thereof, CURB states the following:

**Background**

1. From February 7, 2021, through February 19, 2021, Kansas and other states in the region were hit with an extended period of extreme cold weather conditions brought by Winter Storm Uri. Demand for natural gas and electricity rose to unprecedented levels. At the same time, energy production and distribution of natural gas began experiencing sudden and serious declines in operation and efficiency. The combination of these factors ultimately resulted in a historic spike in the costs of purchasing and securing fuel and natural gas supplies several magnitudes higher than previous winter seasons.

2. On February 15, 2021, the Commission issued an Emergency Order in response to the looming financial and operational crisis.<sup>1</sup> The Commission directed all jurisdictional natural

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<sup>1</sup> *Emergency Order* Docket No. 21-GIMX-303-MIS (February 15, 2021).

gas and electric utilities to coordinate efforts and to “take all reasonably feasible, lawful, and appropriate actions” to ensure adequate service to interconnected non-jurisdictional utilities and to do everything necessary to ensure that continued service was provided for their customers. The Commission further authorized every jurisdictional utility to defer extraordinary costs incurred to meet this mandate into a regulatory asset account. This also included the calculation of carrying costs for any debt taken on as a result, at the respective utility’s weighted average cost of capital.<sup>2</sup> This deferral is for accounting purposes only and subsequent treatment of the deferred amounts is to be addressed in future proceedings.

3. On March 9, 2021, the Kansas Corporation Commission issued an order in Docket No. 21-GIMX-303-MIS, adopting Staff’s recommendation to open company-specific dockets in response to Winter Event.<sup>3</sup> The Commission also directed all jurisdictional utilities to file plans to minimize the financial effects of the Winter Event. The company-specific dockets are to serve two purposes: 1) To facilitate the investigations into each utility’s unique circumstances and response to the Winter Event and 2) To allow review by Staff and other intervenors of each utility’s financial plans regarding recovery of costs associated with the Winter Event, including use of the Commission-approved regulatory asset.

4. On March 10, 2021, Southern Pioneer filed an application and request for an interim order as part of its compliance with the Commission’s orders.<sup>4</sup> Southern Pioneer asked for a Commission finding that the costs to be included in its Winter Event regulatory asset are reasonable and prudently incurred, approval of its proposed plan to apply a separate charge to

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<sup>2</sup> *Emergency Order* at pg. 2, ¶4.

<sup>3</sup> *Order Adopting Staff’s R&R to Open Company-Specific Investigations; Order on Petitions to Intervene of Bluemark and CURB; Protective and Discovery Order*, Docket No. 21-GIMX-303-MIS, (March 9, 2021).

<sup>4</sup> Per the order in Docket No. 21-GIMX-303-MIS, CURB was automatically granted intervention in all the company-specific Winter Event dockets by virtue of its intervention in the 21-303 Docket.

customers over 36 months to collect costs associated with the Winter Event, and a waiver of Southern Pioneer's Energy Cost Adjustment (ECA) tariff for those costs to the extent necessary to implement the terms of this proposed plan.<sup>5</sup> Each customer would be assessed a portion of the overall Winter Event costs based on that customer's actual kWh usage during the entire month of February 2021. Based on those figures, the average residential customer would see a charge of approximately \$7.89 per month for 36 months. However, all customers would have the option to pay off the charges through a one-time payment. Southern Pioneer also requested that the Commission issue an order approving special provisions for customers disconnecting prior to the Commission's issuance of a final order.

5. On March 15, 2021, Staff filed an R&R in support of the interim request to charge disconnecting customers their share of Winter Event costs prior to a final order.<sup>6</sup> Staff recommended approval of the request for an interim order on a subject-to-refund basis until a final review can be completed.

6. On March 16, 2021, CURB filed its response to Staff's R&R on the interim order.<sup>7</sup> There, CURB supported the use of an interim order to account for customers during the Winter Event who later disconnect and leave the system before a final order is made on the financial plan. CURB further recommended that the Commission refine the pre-order assessment of costs to only those who voluntarily disconnect and leave the system to avoid unduly burdening customers who are unable to pay their bills and are subject to involuntarily disconnection. CURB also encouraged Southern Pioneer to take additional efforts to educate its customers about this interim proposal and on how customers would be billed under it.

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<sup>5</sup> *Application and Request for an Expedited Interim Order*, pg. 11, ¶25. (March 10, 2021).

<sup>6</sup> *Staff's Response to Southern Pioneer's Request for an Interim Order* (March 15, 2021).

<sup>7</sup> *CURB's Response to Southern Pioneer's Request for an Interim Order* (March 16, 2021).

7. On March 30, 2021, the Commission issued its order adopting the interim provisions with the modifications laid out by Staff and CURB.<sup>8</sup>

8. On June 11, 2021, Southern Pioneer filed an Amendment to its application.<sup>9</sup> Southern Pioneer identified approximately \$400,000 in the regulatory asset amounts that were for line losses, Company usage, and other miscellaneous items, such as bad debt arising from involuntary disconnections, which were not attributable to any specific customer. The Company proposed to recover these amounts through its normal ECA method from all of its customers. Southern Pioneer also determined that collecting Winter Event carrying costs through its regular ratemaking process would result in an unfair outcome compared to collecting it based on individual customer usage. Southern Pioneer explained that customers who choose to pay their obligation off early will only be charged carrying costs on their personal outstanding balance. Finally, Southern Pioneer asked to be allowed to charge customers whose Winter Storm balance is less than \$5.00 a one-time charge rather than over 36 months.

#### **CURB's Response**

9. CURB has reviewed the confidential filings from Southern Pioneer's application, supplemental discovery requests, and Staff's R&R from the perspective of residential and small commercial ratepayers. The reasonableness and prudence of the decisions made by Southern Pioneer should be considered in light of the Company's unique structure. First, unlike other jurisdictional utilities who communicate directly with the Southwest Power Pool (SPP), Southern Pioneer responds to directives from Sunflower Electric Power Corp ("Sunflower") regarding matters such as load shedding events. This can add a layer of delays in communication and decision-making not experienced by other utilities. Second, Southern Pioneer is a not-for-profit

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<sup>8</sup> *Interim Order on Special Provisions* (March 30, 2021).

<sup>9</sup> *Southern Pioneer Electric Company Supplement and Amendment to Application* (June 11, 2021).

company, which means it does not sell shares of its business to generate equity. Instead, Southern Pioneer utilizes formula-based ratemaking (FBR) to determine the rates it charges customers, as recently updated in Docket No. 19-SPEE-240-MIS (“19-240 Docket”). At its core, the Company’s FBR process factors in the Company’s total equity level and expenses while calculating a debt service coverage ratio (DSC) to maintain a sufficient level of income to provide service while paying on its debt obligations. As a result, any changes to the rates should consider the impact to the overall formula.

10. Prudence of Southern Pioneer/Sunflower’s actions should be evaluated by the context in which they were taken. From CURB’s perspective, “prudent” action does not equate to “perfect” action when deciding on cost recovery resulting from an unprecedented emergency event. CURB continues to be cautious in applying substantial hindsight evaluations of the Company’s actions during the series of events in February 2021. In addition to the unprecedented magnitude of the operational and supply issues stemming from the Winter Event, Southern Pioneer responded to directives from Sunflower when curtailment decisions were made. Generally, Sunflower is responsible for organizing when and where curtailments occur in order to meet load shed orders from SPP and for the operations of its generation plants. This can create delays in communication before such curtailment and can affect Southern Pioneer’s ability to independently manage its load shedding duties and to provide customer notice.

11. Southern Pioneer/Sunflower’s efforts to provide continued service with minimal interruptions appear to be reasonable during the Winter Event because service was maintained in spite of supply and operational problems. Staff provides an extensive review of Sunflower’s fuel purchasing and generation efforts and issues during the Winter Event. As a result, Staff attributes Sunflower’s actions to the prudence of the costs incurred in this docket. While

CURB does the same, Southern Pioneer's reaction to Sunflower's directives is also relevant to a prudence review as discussed below. In the R&R, Staff examines Sunflower hedging and purchasing strategy going into the Winter Event.<sup>10</sup> Additionally, Staff outlines the number of generation issues that Sunflower experienced during the Winter Event.<sup>11</sup> CURB notes that while there were a number of operational problems that impacted service, losses to property were minimal and essential human services remained available. Although the discussion is largely focused on the costs to achieve this, the value of that outcome cannot be understated. The Winter Event created the unenviable choice between paying hundreds of times the normal price for gas or going without and the risk of further and more widespread system failures. CURB has reviewed the pertinent discovery documents and Staff's analyses and concludes that in light of these issues and the challenges presented by the Winter Event, Southern Pioneer and Sunflower acted prudently while maintaining service in its jurisdiction.

12. Southern Pioneer made reasonable efforts to inform its customers of the volatile supply and pricing issues and made numerous requests for increased conservation efforts by its customers. Southern Pioneer utilized many different communication methods, such as news broadcasts, social media, and telephone calls. As mentioned above, Southern Pioneer was in the position of receiving its information from Sunflower in regards to SPP load shedding. Southern Pioneer maintained contact with Sunflower throughout the Winter Event in order to provide customers with as much information as soon as practicable. While the specific efficacy of these efforts will be further examined in the next phase of this docket regarding lessons learned, CURB believes that the efforts documented by Southern Pioneer and reviewed by Staff and CURB were prudently taken during the Winter Event, in light of all the circumstances.

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<sup>10</sup> See Staff R&R at pgs. 7-10.

<sup>11</sup> *Id.* at pgs. 11-14.

13. The financial plan as proposed by Southern Pioneer offers several direct benefits for residential and small commercial ratepayers. First, Southern Pioneer is offering an extended period of 36 months to recover approximately \$16.8 million in extraordinary costs. This is an extension beyond typical recovery periods for similar costs of one year. Subsequently, the monthly bill impact for customers is reduced by a fair margin. CURB posits that this aspect of the plan is a benefit versus a more aggressive recovery period and the associated monthly bill impact. CURB recognizes that this and other surcharges related to the Winter Event will have a disparate impact on ratepayers with varying levels of financial resources. In CURB's opinion, the number of customers who will experience increased financial hardships from rising utility bills only grows as the surcharge gets higher. CURB is keenly aware of the challenges that people with inelastic financial situations face. While a customer may end up paying more overall under an extended financial plan, the monthly bill impacts are smaller and, thus, more manageable month-to-month.

14. Second, customers who choose to do so may pay their calculated share of the Winter Event costs off in a single payment in order to avoid the accrual of carrying charges during the repayment period. The Company should anticipate an influx of inquiries from customers regarding the plan, if approved. In response to discovery request CURB-15 (attached below) and according to Southern Pioneer's Rules and Regulations, customers have the ability to dispute any part of its monthly billing, including metering data.<sup>12</sup> This infers a customer's ability to dispute the calculation of their share of the Winter Event costs based on the metering data for February 2021. While disputes on metering data are referred to in the context of disconnections, CURB encourages Southern Pioneer to establish a process to receive questions and disputes to the total

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<sup>12</sup> Southern Pioneer's Rules and Regulations, Section V-Discontinuation of Service to Customers, Sheet 6 or 9, pg. 49 of 121. Accessed at: <https://www.southernpioneer.net/wp-content/uploads/2018/12/SPECO-Rules-and-Regs-12.19.18.pdf>.

amount to be billed from the Winter Event once the plan goes into effect. CURB intends to aid in customer communication and education on the recovery of Winter Event costs to the greatest extent possible and as needed by Southern Pioneer and other utilities.

15. Third, the plan is only seeking to recover costs from ratepayers who recorded usage during February 2021. Other utilities are proposing plans that will require future ratepayers to pay towards Winter Event costs. Southern Pioneer's approach means that future ratepayers will not be subject to the surcharge from this plan. From a generational view, this benefits residential ratepayers by eliminating a subsidy for current customers by future ones. However, Southern Pioneer may incur incremental bad debt expenses related to non-payment of Winter Event costs under the plan. The Company intends to treat these costs like regular bad debt and recover them through the ECA. In that regard, future ratepayers may be indirectly paying such costs down the road. In order to mitigate this situation, Southern Pioneer should remain dedicated to assisting customers who experience payment issues to avoid costly disconnection and collection efforts.

16. Southern Pioneer's method of calculating Winter Event bills based on the total monthly usage is based on its current billing practices and provides a reasonable manner to assign costs. CURB understand that no perfect solution may exist, but believes the plan strikes a good balance in equity. For example, if bills were just based on usage during the Winter Event, customers who were able to conserve during the "warmer" periods of February 2021, but not during the colder Winter Event, may see higher totals compared to those who could consistently reduce their demand. Such a group is likely to include a higher proportion of low-income customers who may be inflexible in their ability to reduce consumption to adequately heat their home. The method of actual kWh usage aims to balance out a customer's response to conservation



requests during the Winter Event with their regular usage. CURB finds that this approach is a reasonable plan, in addition to the use of an extended payment period.

17. In regards to the decision to include carrying costs incurred while Southern Pioneer collects the extraordinary Winter Event costs, CURB supports the Company's amendment to include such amounts in this plan. CURB has advocated for a fair examination of all costs expected to be borne by ratepayers in all the Winter Event dockets created by the Commission. In this instance, CURB believes that no one class should be unreasonably burdened by costs incurred to serve another class. Southern Pioneer's unique financial structure and strict requirements on equity and revenue levels warrant special consideration of the costs that go into the final rates. CURB agrees with Staff's conclusion that keeping carrying costs separate from the FBR calculations will prevent customers from paying for costs they themselves did not incur. CURB also supports the setting of the carrying charge at 2.889% for the duration of the 36 month recovery period. As Staff points out in its R&R, this number was derived by the actual cost of debt and the minimum coverage ratio needed to maintain Southern Pioneer's covenants with its lenders.<sup>13</sup> This reasoning is akin to the preservation of credit ratings and metrics for other jurisdictional utilities in that increased regulatory certainty of income levels improves access to lower costs and access to future financing. Fortunately, unlike other utilities, Southern Pioneer's loan covenants provide a sort of brightline to determine an appropriate level of carrying costs to maintain financial integrity. Therefore, CURB believes that Southern Pioneer's plan satisfies the Commission's order for utilities to adopt a financial plan to mitigate the financial impacts on ratepayers.

18. CURB also agrees with Staff's recommendation to track any revisions in the extraordinary Winter Event costs associated with SPP market resettlements, changes in natural gas

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<sup>13</sup> *Staff R&R* at pg. 15, footnote 24.

invoicing, government proceeds related to market-manipulation investigations, and any other judgment or order that accomplishes the same. Such revisions may occur well after the plan is implemented. This ongoing requirement will allow the Commission to quickly review and issue orders regarding such revisions. Staff further recommended that any revision of the original charges of at least 10% should be spread over the same 36 months as the original plan, and anything less being flowed through the ECA.<sup>14</sup>

19. CURB supports consideration of the Company's ability to collect and refund amounts received from any external source. CURB agrees that large increases to the original costs should also use an extended recovery plan to mitigate the bill impact. However, CURB recommends that the parties and the Commission review carrying charge levels and recovery periods at the time the revisions are known in order to account for any changes to the FBR or other factors related to the revision. Conversely, any potential refunds after the original plan has concluded should be considered for special treatment. If the Company is allowed to spread the refund over a longer period of time, the Commission should consider the charging of interest on that refund. Should such a situation arise, the parties should confer and make a subsequent recommendation on how to treat those amounts. Staff's recommendation for a 10% threshold appears workable to at least warrant a further review of changes to the original plan with other amounts flowing through the ECA.

20. The Winter Event was by and large a financial disaster beyond a scale that anyone in recent history has experienced. As Kansas utilities and residents prepare for another upcoming winter season, regulators and interested parties will be watching to see how the utilities fare in the event that another extreme weather event impacts pricing and supply trends. CURB is preparing

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<sup>14</sup> Staff R&R at pg. 15.

to join the larger conversation on lessons learned from February 2021 and anticipates that a utility's response to this 2021-22 winter season may provide additional data for parties to consider. While Southern Pioneer is offering a flexible plan to recover extraordinary Winter Event costs now, the hope is that Kansans will not have to shoulder such tremendous financial responsibility so frequently as to keep ratepayers locked into a cycle of repayment for services already rendered.

WHEREFORE, CURB supports Staff's R&R and its recommendations regarding Southern Pioneer's financial plan to recover \$16.8 million in prudently-incurred extraordinary Winter Event costs. CURB respectfully requests that the Commission approves the plan, as modified by Staff and further refined by CURB in its response and to issue any and all orders as the Commission deems appropriate.

Respectfully Submitted,



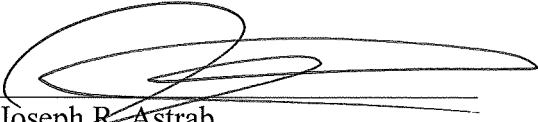
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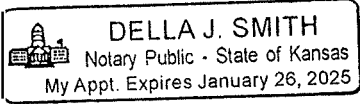
**VERIFICATION**

STATE OF KANSAS                    )  
  )  
COUNTY OF SHAWNEE            )        ss:

I, Joseph R. Astrab, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Joseph R. Astrab

SUBSCRIBED AND SWORN to before me this 30<sup>th</sup> day of December, 2021.



  
\_\_\_\_\_  
Notary Public

My Commission expires: 01-26-2025.

**Citizens' Utility Ratepayer Board**  
Information Request

Request No: CURB-15

Company Name                    SOUTHERN PIONEER ELECTRIC COMPANY  
Docket Number                21-SPEE-331-GIE  
Request Date                    May 27, 2021  
Date Information Needed      June 11, 2021

**Please Provide the Following:**

Does Southern Pioneer have a way for customers to review and even appeal their meter data on monthly consumption as reported on their bills? If so, please provide a short narrative about that process.

**Response:**

Yes, Southern Pioneer customers have the ability to review and appeal their monthly meter/consumption data reported on their bills. *See* Section V Discontinuance of Service, R5, Sheet 6 of 7 of Southern Pioneer's Ruled and Regulations in the attachment "which outlines the procedure for a customer to dispute any part of its monthly billing, including metering data.


Submitted By: Joseph R. Astrab

Submitted To: Lindsay A. Campbell

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**VERIFICATION OF RESPONSE**

I have read the foregoing Data 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 Citizens' Utility Ratepayer Board any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Data Request.

Signed:   
Name: Lindsay Campbell  
Position: Executive VP-Assistant CEO & General Counsel  
Dated: June 11, 2021

## CERTIFICATE OF SERVICE

21-SPEE-331-GIE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 30<sup>th</sup> day of December, 2021, to the following:

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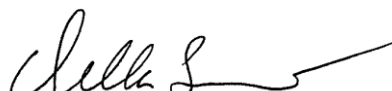
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