

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

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

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 ON 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. The Commission has full power, authority and jurisdiction to supervise and control electric public utilities doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction.¹ “Electric public utility” means any public utility, as defined in K.S.A. 66-104, which generates or sells electricity.² K.S.A. 66-104 defines “public utility” in part as “all companies for the production, transmission, delivery or furnishing of heat, light, water, or power.”³

2. Electric public utilities subject to the Commission’s jurisdiction are “required to furnish reasonably efficient and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied or produced by such electric public utility, to establish

¹ K.S.A. 66-101, 66-101a, and 66-104.

² K.S.A. 66-101a.

³ K.S.A. 66-104(a).

just and reasonable rates, charges, and extractions and to make just and reasonable rules, classifications and regulations.”⁴

3. 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 service.⁵

4. Pursuant to K.S.A. 66-101d, “the Commission, upon its own initiative, may investigate all schedules of rates and rules and regulations of electric public utilities [...]” K.S.A. 66-101d provides:

If after investigation and hearing it is found that any regulation, measurement, practice, act or service complained of is unjust, unreasonable, unreasonably inefficient or insufficient, unduly preferential, unjustly discriminatory, or otherwise in violation of this act or of the orders of the commission, [...] the commission shall have the power to substitute therefor such other regulations, measurements, practices, service or acts, and to make such order respecting any such changes in such regulations, measurements, practices, service or acts as are just and reasonable.

5. The Commission has adopted Minimum Standards for Payment Methods for Utility Bills and Allowing the Acceptance of Credit Cards by Kansas Jurisdictional Electric, Natural Gas, and Water Utilities (Minimum Standards).⁶ Section (C) of the Commission’s Minimum Standards, provides “if electronic checks (ECM) are accepted by the utility or by an authorized agent of the utility they shall be accepted as a zero fee method.” Under a “zero fee” payment method, customers are not charged a fee on top of the actual amount of the utility bill.⁷

6. On March 27, 2018, Commission Staff (Staff) submitted a Report and Recommendation, noting that by charging a convenience fee to customers who make bill

⁴ K.S.A. 66-101b.

⁵ K.S.A. 66-117.

⁶ See Order Adopting the Minimum Standards for Payment Methods for Utility Bills and Allowing the Acceptance of Credit Cards by Kansas Jurisdictional Electric, Natural Gas, and Water Utilities (Order Adopting Minimum Standards), Docket No. 04-GIMX-651-GIV, Nov. 22, 2005, ¶ A.

⁷ See Section (B) of Minimum Standards attached to Order Adopting Minimum Standards.

payments via electronic check, Southern Pioneer Electric Company (Southern Pioneer) may be in violation of the Commission's Minimum Standards.⁸ Staff's Report and Recommendation is attached as Attachment A. 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.⁹ 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.¹⁰

7. 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.¹¹

8. 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.¹² Southern Pioneer acknowledges it has been charging the convenience fee since April 2012.¹³

9. In 2012, Mid-Kansas Electric Company (Mid-Kansas), the certificate holder responsible for obtaining a waiver, submitted a proposed bill insert to the Commission's Executive Director with language stating there would be a \$3.95 convenience fee for paying with an e-check or debit or credit card.¹⁴ Based on its good faith belief that Mid-Kansas has received a waiver to charge a convenience fee by virtue of the proposed billing insert, Southern Pioneer claims any

⁸ Report and Recommendation, March 27, 2018, p. 1.

⁹ *Id.*

¹⁰ *Id.*, p. 3.

¹¹ Order to Show Cause, Apr. 10, 2018, ¶ 8.

¹² Response of Southern Pioneer Electric Company to Order to Show Cause, May 10, 2018, ¶6.

¹³ *Id.*, ¶ 5.

¹⁴ *Id.*, ¶¶ 6-7.

violation was unintentional and should be excused.¹⁵ In the alternative, Southern Pioneer requests a waiver to allow it to charge a convenience fee of \$3.95 for payments by e-check, debit, or credit card.¹⁶

10. On May 21, 2018, Staff filed its Reply to Southern Pioneer's Response to Order to Show Cause, noting Southern Pioneer acknowledged its tariff does not provide for the convenience fee.¹⁷ Staff reiterates its belief that Southern Pioneer's request for a waiver is better addressed in a separate rate case docket.¹⁸ Staff recommends Southern Pioneer be ordered to refund any customers who paid the unauthorized convenience fee.¹⁹

11. On May 31, 2018, the Citizens' Utility Ratepayer Board (CURB)²⁰ 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.²¹ CURB urges the Commission to find Southern Pioneer violated the Commission's Minimum Standards, order refunds to customer who were charged a convenience fee, and deny Southern Pioneer's requested waiver.²²

12. It is undisputed that Southern Pioneer's tariff does not include an authorization to charge a convenience fee to customers paying by e-check. Under K.S.A. 66-117, Southern Pioneer is obligated to comply with the terms of its Tariff. Southern Pioneer's only defense is that its tariff violation was inadvertent. While the Commission may factor in intent when determining the size of the penalty, ignorance of the law is not a legally sufficient defense to a tariff violation.²³ The

¹⁵ *Id.*, ¶ 11.

¹⁶ *Id.*, ¶ 12.

¹⁷ Staff's Reply to Southern Pioneer's Response to Order to Show Cause, May 21, 2018, ¶ 4.

¹⁸ *Id.*, ¶ 13.

¹⁹ *Id.*, ¶ 14.

²⁰ CURB was granted intervention on April 26, 2018.

²¹ Memorandum in Support of State Corporation Commission Staff's Reply to Southern Pioneer's Response to Order to Show Cause, May 31, 2018, ¶ 6.

²² *Id.*

²³ *See State v. Roeder*, 300 Kan. 901, 915 (2014).

Commission finds Southern Pioneer violated its tariff by charging customers who paid their bills via e-checks an unauthorized convenience fee.

13. K.S.A. 66-138(a)(2) authorizes the Commission to impose a civil penalty ranging from \$100 to \$5,000 for any violation of the Public Utilities Act, including tariff violations. To assist it in determining the appropriate remedy for Southern Pioneer's tariff violation, the Commission requires additional information as to the scope of Southern Pioneer's tariff violation. Therefore, the Commission directs Southern Pioneer to answer the following questions by July 30, 2018:

- a) How many customers were charged a convenience fee for paying their bills by e-check?
- b) Is Southern Pioneer able to identify which customers paid a convenience fee for paying their bills by e-check?
- c) Is Southern Pioneer able to identify the dollar amount of convenience fees individual customers paid for paying their bills by e-check?

14. The Commission directs all of the parties to answer the following questions by July 30, 2018:

- a) Does the Commission have the authority to order Southern Pioneer to issue refunds to customers who paid a convenience fee for paying their bills by e-check?
- b) What is the legal authority for the Commission to order Southern Pioneer to issue refunds to customers who paid a convenience fee for paying their bills by e-check?
- c) What is an appropriate amount to fine Southern Pioneer for violating its tariff?

THEREFORE, THE COMMISSION ORDERS:

A. Southern Pioneer is directed to file answers to the Commission's questions listed in paragraph 13 by July 30, 2018. The parties are directed to file answers to the Commission's questions listed in paragraph 14 by July 30, 2018.

B. 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).²⁴

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

06/19/2018

Dated: _____



Lynn M. Retz
Secretary to the Commission

BGF

²⁴ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

STATE OF KANSAS



ATTACHMENT A

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REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Pat Apple, Commissioner

FROM: Josh Frantz, Senior Research Economist
Lana Ellis, Deputy Chief of Economics and Rates
Bob Glass, Chief of Economics and Rates
Jeff McClanahan, Director, Utilities Division

DATE: March 27, 2018

SUBJECT: Recommending An Order to Show Cause Whether Southern Pioneer Is in Violation of the Commission's Minimum Standards for Payment Methods for Utility Bills by Charging Its Customers a Convenience Fee to Submit Bill Payment via Electronic Check.

EXECUTIVE SUMMARY:

It has come to the attention of Staff of the Kansas Corporation Commission (Commission) that Southern Pioneer Electric Company (Southern Pioneer) may be acting in violation of the Commission's Minimum Standards for Payment Methods for Utility Bills and Allowing the Acceptance of Credit Cards (Minimum Standards) by charging a convenience fee to customers who make bill payments via electronic check (e-check). Southern Pioneer has not been granted a waiver allowing it to charge a convenience fee for bill payments made via e-check, and such a fee is not disclosed in the Schedule of Fees in Southern Pioneer's Rules and Regulations.

Commission Staff (Staff) recommends 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.

BACKGROUND:

On December 8, 2017, Southern Pioneer filed an Application in Docket No. 18-SPEE-241-TAR (Docket 18-241). In its Application, Southern Pioneer sought a waiver from the Commission's Minimum Standards and proposed certain revisions to its Schedule of Fees related to the assessment of credit card convenience fees.

Through discovery requests of the Citizen's Utility Ratepayer Board (CURB) in Docket 18-241, Staff became aware that Southern Pioneer's customers are charged a \$3.95 convenience fee for bill payments made via e-check.¹

ANALYSIS:

Standard of Review

Under K.S.A. 66-101d:

The commission, upon its own initiative, may investigate all schedules of rates and rules and regulations of electric public utilities....

If after investigation and hearing it is found that any regulation, measurement, practice, act or service complained of is unjust, unreasonable, unreasonably inefficient or insufficient, unduly preferential, unjustly discriminatory, or otherwise in violation of this act or of the orders of the commission... the commission shall have the power to substitute therefor such other regulations, measurements, practices, service or acts, and to make such order respecting any such changes in such regulations, measurements, practices, service or acts as are just and reasonable.

Violation of the Commission's Minimum Standards

Charging a convenience fee for payments made via e-check is a violation of the Commission's Minimum Standards—specifically, section (C), which states: "If electronic checks (ECM) are accepted by the utility or by an authorized agent of the utility, they shall be accepted as a zero fee method."²

Although Staff is not sure how long Southern Pioneer's e-check fee has been in effect, from 2015–2017, Southern Pioneer customers were charged over \$85,000 in convenience fees for bill payment via e-check.³ Southern Pioneer has not been granted a waiver allowing it to charge a convenience fee for bill payment via e-check and such a fee is not disclosed in Section VII(K)(7) of Southern Pioneer's Rules and Regulations which lists the Schedule of Fees for bill payment.

¹ See Southern Pioneer's response to CURB data requests 15 and 20 in Docket 18-241.

² Section (B) of the Commission's Minimum Standards defines "zero fee" and "non-zero fee" payment methods: A "zero fee" payment method is one in which the customer is not charged a fee for use of the payment method above the actual amount of the utility bill being paid. Postage or money order fees necessary to mail a payment shall not be considered a fee. A "nonzero fee" payment method is any payment method for which the utility or its authorized agent proposes to charge a fee above the actual amount of the utility bill being paid.

³ See Southern Pioneer's response to CURB data request 20 in Docket 18-241.

RECOMMENDATION:

Based upon information found through Discovery in Docket 18-241, Staff recommends 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.

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 06/19/2018.

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CERTIFICATE OF SERVICE

18-SPEE-428-SHO

/S/ DeeAnn Shupe

DeeAnn Shupe
