

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

In the Matter of the General Investigation to )  
Examine Issues Surrounding Rate Design for ) Docket No. 16-GIME-403-GIE  
Distributed Generation Customers. )

**INITIAL BRIEF OF**  
**SOUTHERN PIONEER ELECTRIC COMPANY**

COMES NOW 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 its Initial Brief in the above-captioned matter.

**I. Introduction and Background**

1. On July 12, 2016, the Commission issued the Order opening this general investigation docket in order to examine various issues surrounding rate structure for Kansas distributed generation (“DG”) customers.<sup>1</sup>

2. The Order provided that all Kansas electric public utilities subject to the Commission’s jurisdiction over retail rates are made a party to the proceeding and must enter an entry of appearance no later than thirty (30) days from the date of the Order<sup>2</sup>, and file within forty five (45) days from the date of the Order written comments on how the general investigation should proceed to minimize the need for extensive comment periods.<sup>3</sup>

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<sup>1</sup> Docket No. 16-GIME-403-GIE, Order Opening General Investigation, Ordering Clause A, p. 5 (July 12, 2016) (“Order Opening”).

<sup>2</sup> Order Opening, Ordering Clause C, p. 5.

<sup>3</sup> Order Opening, Ordering Clause D, pp. 5-6.

3. Entry of Appearances were entered by Westar Energy, Inc., (“Westar”), Kansas City Power and Light Company (“KCP&L”), The Empire District Electric Company (“Empire”), and Southern Pioneer. Petitions to intervene were received and granted to Sunflower Electric Power Corporation (“Sunflower”), Mid-Kansas Electric Company, LLC (“Mid-Kansas”), Midwest Energy, Inc. (“Midwest”) Brightergy, LLC (“Brightergy”) United Wind, Inc. (“United Wind”), the International Brotherhood of Electrical Worker Local No. 304 (“IBEW 304”), Cromwell Environmental (“Cromwell”), the Citizens’ Utility Ratepayer Board (“CURB”), The Alliance for Solar Choice (“TASC”) and the Climate and Energy Project (“CEP”).

4. On February 16, 2017, the Commission issued an order setting the Procedural Schedule to include the submission of initial and reply comments by the parties with supporting affidavits by March 17, 2017 and May 5, 2017, respectively.<sup>4</sup> The Order also provided that roundtable discussions be held among the parties on March 30, 2017 and April 13, 2017.<sup>5</sup>

5. Initial and Reply Comments were filed by all parties to the proceeding in accordance with the Procedural Schedule. Additionally, all parties to the proceeding fully participated in the Commission-ordered roundtable discussions where the parties attempted to understand and address respective issues and positions as outlined in the initial round of filed comments.

6. On April 28, 2017, the parties filed a Joint Motion to Modify Procedural Schedule, requesting that the Commission convert the June 5, 2017 prehearing conference into a settlement conference. The Prehearing Officer approved the request by issuing the Order Modifying Procedural Schedule on May 19, 2017, which established the settlement conference.

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<sup>4</sup> Docket No. 16-GIME-403-GIE, Order Setting Procedural Schedule, Findings and Conclusions, p. 3 (February 16, 2017)

<sup>5</sup> Id.

7. On June 5, 2017, the parties met to discuss positions and potential settlement terms during the scheduled settlement conference. The majority of the parties were able to reach agreement on how the issues raised by the Commission should be addressed and were incorporated into a Non-Unanimous Settlement Agreement (“Stipulation”).

8. On June 16, 2017, Staff, Westar, KCP&L, Empire, Southern Pioneer, Midwest Energy, Sunflower, Mid-Kansas and KEC (collectively, the “Settling Parties”) filed a Joint Motion seeking Commission approval of the Non-Unanimous Stipulation and Agreement. Testimony Supporting the Stipulation was filed by the Settling Parties on June 20, 2017. Testimony in opposition to the Stipulation was filed by CURB, Cromwell and CEP (the “Opposing Parties”) also on June 20, 2017. United Wind, while not a party to the Stipulation, indicated that they do not oppose the Stipulation. On June 26 and 27, 2017, an evidentiary hearing on the matter was held by the Commission.

## **II. The Non-Unanimous Settlement Agreement**

9. The Commission has before it a non-unanimous Stipulation regarding rate design structures for residential DG customers, supported or not opposed by all parties except CURB, CEP and Cromwell. A majority of the parties were able to resolve, through substantial and thorough roundtable and settlement discussions involving all parties, many of the issues raised in this docket, including the quantifiable costs and benefits of DG.<sup>6</sup> The Stipulation is supported by substantial, competent evidence in the record, and is in the public interest. The Joint Motion seeking approval of the Stipulation and supporting testimony of the Settling Parties addressed the

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<sup>6</sup> Every party to this proceeding had the opportunity to offer their opinions to the Commission on how this docket should proceed, file initial and reply comments, participate in two roundtable meetings, participate in the settlement conference, participate in a follow-up settlement conference call, and submit testimony regarding the Stipulation.

five factors the Commission considers when determining whether a non-unanimous settlement is in the public interest, and is incorporated herein by reference.

10. Southern Pioneer requests the Commission approve the Stipulation in its entirety and incorporate its terms as part of the Commission's Order in this docket. The Stipulation sets forth nine (9) findings that the Settling Parties are requesting the Commission confirm. The salient terms include: (i) the underlying challenge in appropriately charging DG customers utilizing traditional, two-part rate design; (ii) the various valid rate design approaches that utility may use to ensure appropriate and equitable cost recovery from residential DG customers; (iii) request that rates for residential DG customers be based upon cost of service studies and that no further studies are necessary for the purpose of this docket or any future utility-specific rate case dockets regarding DG rate design; (iv) defining the scope of a value of resource study in the event the Commission determines such a study is necessary in a future proceeding; (v) a conclusion that this docket is an appropriate time for the Commission to provide guidance on these matters in order to set clear expectations that will allow for the development of a sustainable DG marketplace in Kansas; and (vi) the requirement for a customer education program. The limited outstanding issues of CURB, Cromwell and CEP were reserved for litigation at the evidentiary hearing and are addressed herein.

11. As substantiated by the record, it is a well demonstrated fact that production from DG resources is intermittent (not predictable or dispatchable due to uncontrollable weather conditions), and in many cases, is not available during generation, transmission, or distribution system peaks which are major cost drivers. The ability to recover the cost to serve these DG customers, historically, utilities' rate designs, including Southern Pioneer's, have been developed

to recover a majority of its costs through volumetric energy charges.<sup>7</sup> DG customers are allowed to offset energy delivered by the utility with energy produced by the DG customer over the course of a billing period even if there isn't a match hour-by-hour. As a result, a DG customer can partially or fully avoid the volumetric component of their bill, and thus the utility is unable to collect from the same DG customer the costs of providing service (i.e. facilities and resources) when the customer's intermittent DG resource is not producing.<sup>8</sup> This results in under-recovery from DG customers, and ultimately an over-recovery from non-DG customers of the fixed costs for the electric infrastructure utilities are statutorily obligated to have in place to serve the DG customers.<sup>9</sup> The Stipulation is intended to address this inequitable cross-subsidization by providing alternative rate options for residential DG customers and ensuring such are established based upon on cost of service ratemaking principles.<sup>10</sup>

12. The Stipulation first addresses the fact that residential DG customers do in fact have differing load profiles and characteristics and therefore allows utilities to create a separate residential class or sub-class for DG customers which appropriately allocates the fixed costs and benefits of providing service to residential private DG customers.<sup>11</sup> This finding is supported by the Initial and Reply Comments filed by Westar, Staff, CURB, KCP&L, Empire, KEC, Southern Pioneer and IBEW. Specifically, the evidence demonstrates why residential private DG customers are partial requirements customers that utilize the electric system differently than non-DG

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<sup>7</sup> Initial Comments of Southern Pioneer, ¶14.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> The concept of basing rates upon cost of service studies or principles is consistent with long-standing electric ratemaking principles and does not preclude the consideration of other long-standing electric ratemaking standards including gradualism.

<sup>11</sup> Stipulation, ¶9.

residential customers and therefore may be included in a class separate from other residential customers.<sup>12</sup>

13. CEP argues that there are not significant differences in the usage characteristics of DG customers compared to residential non-DG customers, and states that this position is supported by their analysis of the Westar DG customer data.<sup>13</sup> However, this analysis is erroneous and invalid, as pointed out by Westar witness Dr. Ahmad Farqui in Westar's Rebuttal Testimony in Support of the Stipulation. CEP witness Mr. Gilliam omitted material data utilized to create his work papers supporting his finding regarding consumption values of DG customers, thus not accurately representing DG customers' net load.<sup>14</sup> Therefore, his testimony is without merit and should be disregarded.

14. Creating a separate class or sub-class for residential DG customers is not uncommon in traditional utility ratemaking. In fact, as explained by Staff witness Dr. Glass, this is the appropriate treatment for groups of customers that receive different types of service (i.e. full versus partial requirements) and/or have different load and thus cost characteristics.<sup>15</sup> It certainly does not by definition mean that these customers are being unduly discriminatorily against in the assignment of costs or even that they will necessarily pay more a different or higher electric rate.<sup>16</sup> Rather, creating a separate class or sub-class for residential DG customers simply allows utilities to review residential DG customers on a more granular basis and appropriately recognize both the costs and benefits that these customers represent when providing electric service to such customers.<sup>17</sup> For example, if these customers cause a reduced capacity requirement, they will be

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<sup>12</sup> Faruqui Initial Affidavit, pp. 3-4; Martin Initial Affidavit, pp. 2-3; Faruqui Reply Affidavit, pp. 1-2; Martin Reply Affidavit, pp. 2-4.

<sup>13</sup> Testimony of the CEP, p. 7, Lines 16-20.

<sup>14</sup> See Dr. Ahmad Farqui Rebuttal Testimony.

<sup>15</sup> See Glass, Tr. Vol. 2, p. 325, Line 15 through p. 333, Line 191 and p. 336, Line 8 through p. 339, Line 3.

<sup>16</sup> Id.

<sup>17</sup> Id.

allocated less capacity-related costs.<sup>18</sup> These type of results and analyses, which are provided for in a cost of service study, would be helpful in evaluating and potentially designing appropriate rate structures for DG customers.

15. Southern Pioneer believes it is important to recognize that residential DG customers are partial requirements customers with different usage patterns. Southern Pioneer appreciates the provision of the Stipulation allowing, but not requiring, that residential DG customers be separated into their own class or sub-class, as it may not be possible or the best option for the utility depending on the utility's own technologies and data available on residential DG customers or the determination of the appropriate rate design by the utility to address the cross-subsidies occurring with residential DG customers.

16. The Stipulation next allows utilities to make changes to rate design for residential DG and/or all customers in their next general rate case and outlines three cost of service based rate design options that would be permissible for utilities to utilize in setting rates based upon a cost of service study: (i) a three-part rate consisting of a customer charge, demand charge, and energy charge; (ii) a grid charge based upon either the DG output or nameplate rating; or (iii) a cost of service-based customer charge that is tiered based upon a customer's capacity requirements.<sup>19</sup> Additionally, a utility is not precluded from proposing other appropriate rate designs within that individual utility's rate case proceeding.<sup>20</sup>

17. Rather than prescribe a "one-size fits all" specific rate design structure, the Stipulation provides the flexibility to determine a cost of service based rate design structure that best meets the specific utility's needs as technologies and markets evolve. These proposed cost-

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<sup>18</sup> Id.

<sup>19</sup> Stipulation, ¶11.

<sup>20</sup> Id.

based rate structures will update the current 2-part rate design to better ensure that all customers are paying their equitable share of the costs necessary to serve, including residential DG customers. As a result, the rates that will ultimately be implemented through future utility-specific rate cases, if the Commission approves the Stipulation, will be just and reasonable and in the public interest.

18. CURB was not able to reach settlement with the Settling Parties due to its limited issue regarding whether the class cost of service study provides sufficient support for establishing residential DG rates. CURB's position is that a class cost of service study provides necessary but not sufficient support for the design of residential DG rates.<sup>21</sup> CURB asserts that an appropriate DG revenue requirement target should reflect the *net* cost of providing generation, transmission and distribution related services to DG customers and that in order to determine the net cost the class cost of service study should be adjusted to reflect the quantifiable net benefits of DG on an individual utility's system by way of a separate analysis and/or value study.<sup>22</sup> CURB specifically suggests the application of the Total Resource Cost Test or Ratepayer Impact Measure Test in evaluating and setting rates for residential DG customers.<sup>23</sup> However, during cross examination, CURB witness Mr. Brian Kalcic was unable to articulate those quantifiable net benefits that are not already addressed by or included in a class cost of service study or how such additional studies would be used to set residential DG rates, and therefore his testimony should be disregarded.<sup>24</sup>

19. Cromwell and CEP have also made unsubstantiated claims that the class cost of service study may not accurately capture the costs and benefits of DG customers and have requested that the parties carry out on their behalf elaborate, independent third party cost/benefit

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<sup>21</sup> Testimony in Opposition to Non-Unanimous Stipulation and Agreement of Brian Kalcic on Behalf of CURB, p. 2, Lines 16-20.

<sup>22</sup> Id. at p. 3, Lines 1-11.

<sup>23</sup> Notice of Filing of CURB's Initial Comments, Attachment A, ¶¶ 21 and 26.

<sup>24</sup> Kalcic, Tr. Vol. 2, p. 280, Line 20 through p. 288.



or Value of Solar studies to determine the actual costs and benefits of residential DG customers in Kansas.<sup>25</sup> These studies are costly and are inevitably subjective and divisive as they include long-term benefits (often including externalities such as societal benefits) instead of the actual embedded cost of service which is the basis for a utility's rates. There are so many variables and uncertainties, it is impossible to conduct an analysis that does not rely on arbitrary assumptions and judgments. While these studies have been conducted in other jurisdictions, none of these studies have been utilized to establish rate designs for DG customers and therefore they have very little value in this proceeding as it relates to setting the policy for future residential DG customer ratemaking. Like CURB, neither CEP nor Cromwell have clearly explained the value of these studies in this docket or how these types of studies would be directly used to set residential DG rates.

20. As discussed in Southern Pioneer's Reply Comments, Southern Pioneer does not believe a Value of Solar study is appropriate in this docket.<sup>26</sup> The Kansas Legislature has already fully addressed, captured and compensated DG customers for such value through the implementation of net metering and parallel generation policies in the Kansas Easy Connection Act. Under the net metering requirements, for example, DG customers are compensated the full retail price for a wholesale energy product. Paying the DG customer for generation export at the retail energy charge implies that the utility's energy charges are only collecting the utility's variable generation costs. However, the retail rate includes costs associated with capacity costs, transmission and distribution costs and other fixed costs, even though all of these capacity services are not provided by the residential DG customer, but by the utility. Therefore, crediting DG

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<sup>25</sup> Cromwell Testimony in Opposition to Non-Unanimous Stipulation and Agreement, pp. 2-3; Reply Comments of CEP, Attachment A, p. 18, ¶¶25 through p. 22.

<sup>26</sup> See Southern Pioneer Reply Comments, ¶¶ 3-11.

customers the full energy rate overcompensates DG net metering customers for the services they do not provide. This is in addition to the DG customer avoiding the portion of fixed costs embedded in the variable energy charge that are necessary to serve the residential DG customer when it is utilizing the grid to produce and/or consume energy – costs that will get passed on to non-DG customers. Considering the current compensation policy mandated by the State of Kansas and given this docket’s objective to address ratemaking principles regarding electric service to DG customers for use in future utility rate cases, Southern Pioneer reasserts that there is not a role for Value of Solar studies in this docket.

21. The fundamental rule of rate regulation is to ensure that rates are “just and reasonable.” In order to ensure just and reasonable (fair) rates, the Commission has traditionally observed the principles of cost causation – the customer who causes a cost to be incurred (e.g. the cost of generation resources necessary to provide energy to the customer and the cost of the transmission and distribution facilities necessary to interconnect and delivery the energy to the customer) should, as reasonably practicable, pay for such costs – they should not be paid for by other customers. Rate design should consider differentiating customer classes and cost allocation based upon cost causation.

22. The Commission has consistently determined that a class cost of service study submitted by utilities in utility-specific rate cases provides sufficient support for the design of retail rates, including residential DG. Any actual avoided or increased generation, transmission or distribution costs incurred by the utility in the test year due to serve the Residential DG Customer will be attributed to the DG Customer through the cost of service study, and may therefore be appropriately reflected in its rate designs.<sup>27</sup> This is exactly what the Stipulation is attended to

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<sup>27</sup> Glass, Tr. Vol. 2, p. 325, Line 15 through p. 333, Line 191 and p. 336, Line 8 through p. 339, Line 3.

address. A separate study that gives preferential treatment to DG customers is needed nor appropriate to achieve this desired end goal. The rate designs proposed in the Stipulation would not impact existing DG customers, due to being grandfathered, and for new DG customers, it would not constitute a rate increase on DG customers that causes them to pay rates above the actual cost to serve Residential DG Customers.<sup>28</sup> The opposing parties' comments are misleading and evasive, and testimony regarding the deficiencies of cost of service studies in considering benefits demonstrates an incorrect understanding regarding the fundamental concepts underlying cost of service ratemaking.<sup>29</sup>

23. None of the opposing parties' positions regarding the need to adjust the traditional class cost of service study or to conduct additional cost/benefit studies in order to appropriately capture the benefits of Residential DG is supported by substantial, competent evidence and as such the Commission should reject their respective proposals and instead approve the Stipulation as presented to the Commission in the Joint Motion. The opposing parties are advocating for the Commission to utilize a different ratemaking process and standard for DG customers than that which has traditionally been utilized to set rates for retail customers. In a traditional ratemaking setting, it is inappropriate to include any costs and benefits that are unknown and cannot be measured without any confidence. In the future, rates will be adjusted based on actual quantifiable costs and benefits that are appropriate for ratemaking purposes at that time. Adopting a different or unique ratemaking standard or policy for DG customers would be problematic not only in that it could be unduly discriminatory against non-DG customers but that it would setup a policy or

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<sup>28</sup> Stipulation, ¶16.

<sup>29</sup> See Tr., Volume 2, pp. 387-390, where Mr. Cromwell indicates under cross-examination that he has not conducted nor is familiar with cost of service studies in a ratemaking setting.

expectation that other special interest customer groups or industries may pursue of the Commission.

24. CEP and Cromwell argue that residential DG customers should not be singled out by way of a separate rate class; yet, they argue that residential DG customers should in fact be singled out and afforded special treatment by considering uncertain and speculative avoided future costs or external benefits outside of the traditional cost of service ratemaking process. Such a consideration specific only to residential DG customers is a slippery slope and could potentially leave residential non-DG customers paying more than their equitable share of today's actual quantifiable costs. Notwithstanding these concerns, nothing has stopped any opposing party from conducting such a study as part of this docket and nothing in the Stipulation prevents a party from advancing such a study in any future rate utility-specific rate case. Yet none of the Opposing Parties have offered a Kansas study they believe the Commission should consider in the course of this proceeding.

25. CEP and Cromwell's arguments that the Commission does not yet have enough data to support approval of the Stipulation at this time is also without merit. While DG is currently only implemented by a relatively small number of Kansas customers, that number has been growing and the cross subsidy from non-DG to DG customers is undeniable. Further, the Commission is not being asked to set a rate in this docket. The Stipulation merely provides the policy framework by which residential DG customer rates will be considered by the Commission in future utility-specific rate cases. The data necessary to support any change in rates for DG Customers will be brought forward by the utility to be determined by the Commission on a case-by-case basis. These claims by CEP and Cromwell are merely an attempt to delay implementation

of DG ratemaking policies by the Commission in this docket in order to protect their financial performance and/or advance their particular energy policy goals.

### **III. Conclusion**

26. The calls for delay by the Opposing Parties pending sufficient data or additional value of solar or cost/benefit studies is unwarranted and not supported by substantial competent evidence. The proposed findings in the Stipulation are in the long-term interest of the development of renewables in the State of Kansas and the acknowledgement of DG as a valuable resource. The Stipulation is a result of Commission Staff, CURB, utilities, and DG vendors, customers and advocates working together to recognize issues and concerns and arrive at a fair and equitable rate design to effectively implement DG without penalizing either the residential DG customer or residential non-DG customer. Southern Pioneer believes it is important for the Commission to determine the policy for rate design for residential DG customers now, in this docketed proceeding, rather than wait until there is substantial penetration and an unbearable increase in the cross-subsidization that currently occurs with residential DG. Approval of the Stipulation is necessary to establish the ratemaking principles for DG customers that will ensure all customers are paying their fair share of the actual costs to serve and will result in just and reasonable rates for Kansas ratepayers. Southern Pioneer respectfully requests that the Commission approve the Stipulation presented in the Joint Motion because the Stipulation is based upon substantial, competent evidence in the record as a whole, meets the Commission's five-factor test on settlements and is in the public interest as set forth above and in the filed comments and testimonies filed in this proceeding.

Respectfully submitted,

/s/ Lindsay A. Shepard

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**ATTORNEY FOR SOUTHERN PIONEER  
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### **CERTIFICATE OF SERVICE**

I do hereby certify that on the 21<sup>st</sup> day of July, 2017, I electronically filed via the Kansas Corporation Commission's Electronic Filing System a true and correct copy of the above and foregoing Initial Brief with a copy emailed to all parties of record.

/s/ Lindsay A. Shepard

Lindsay A. Shepard