

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

Before Commissioners: Andrew J. French, Chairperson
Dwight D. Keen
Susan K. Duffy

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.)

INTERIM ORDER ON SPECIAL PROVISIONS

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. The Commission finds as follows:

1. On February 15, 2021, pursuant to K.S.A. 77-536(a), the Commission issued an Emergency Order directing all jurisdictional natural gas and electric utilities to coordinate efforts and take all reasonably feasible, lawful, and appropriate actions to ensure adequate transportation of natural gas and electricity to interconnected, non-jurisdictional Kansas utilities.¹ Jurisdictional natural gas and electric utilities were ordered to do everything necessary to ensure natural gas and electricity serviced continued to be provided to their customers in Kansas.² The Commission mandated that once the 2021 Winter Weather Event ended, and after all costs have been accumulated and recorded, each jurisdictional utility is directed to file a compliance report in the 21-303 Docket detailing the extent of such costs incurred, and present a plan to minimize the financial impacts of this event on ratepayers over a reasonable time frame.³

¹ Docket No. 21-GIMX-303-MIS (21-303 Docket) Emergency Order, ¶ 3 (Feb. 15, 2021).

² *Id.*

³ *Id.* ¶ 5.

2. On March 9, 2021, the Commission issued an Order Adopting Staff's Report and Recommendation to Open Company-Specific Investigations.⁴ The Order directed each utility to file its plan to minimize the financial effects of the cold weather event, and initiated this docket.⁵

3. On March 10, 2021, Southern Pioneer submitted an Application and Request for an Expedited Order.⁶ Southern Pioneer requests approval of its regulatory asset, details its plan for recovery of the extraordinary costs incurred as a result of extreme weather and market conditions experienced during February 2021, and a waiver of its Energy Cost Adjustment (ECA) tariff to the extent necessary to carry out the terms of Southern Pioneer's proposed plan.⁷ Additionally, Southern Pioneer requested the Commission issue an Expedited Interim Order within ten (10) days of its application (1) approving special provisions for customers disconnecting service prior to a final Commission order in the docket, and (2) allowing one large industrial customer to pay its share of extraordinary expenses in its April bill instead of through allocation of the regulatory asset.⁸

4. Southern Pioneer explains interim provisions regarding charges upon disconnection are requested because of the inequities that would result were a customer to terminate service prior to a final order in the docket. Under normal circumstances, the customer's final bill would include their portion of power costs from the previous month per the ECA calculation.⁹ Because extraordinary costs from February will not be charged to customers until after a final order is issued, a customer who leaves the system prior to that time would avoid its responsibility for those

⁴ Order Adopting Staff's Report and Recommendation to Open Company-Specific Investigations; Order on Petitions to Intervene of BlueMark Energy, LLC and CURB; Protective and Discovery Order (Docket 21-303) (Mar. 9, 2021).

⁵ *Id.*, Ordering Clause ¶ A.

⁶ Application and Request for Expedited Order (Mar. 10, 2021).

⁷ *Id.*

⁸ *Id.* ¶ 21.

⁹ *Id.* ¶ 22.

costs as Southern Pioneer would not be able to collect from a former customer the portion of the regulatory asset ultimately determined to be their responsibility.¹⁰ An Interim Order will allow Southern Pioneer to estimate the amount of the regulatory asset a disconnecting customer is responsible for and add it as a charge to their final bill.¹¹ Disconnecting customers will be allowed to pay the charge over a period of thirty-six (36) months.¹² Southern Pioneer claims issuance of an Interim Order will avoid an inequitable situation.¹³

5. Additionally, Southern Pioneer explains the Interim Order is requested to allow Southern Pioneer to charge one large customer its full share of extraordinary February costs on the customer's April bill instead of collecting the amount through the regulatory asset charge.¹⁴ This request benefits Southern Pioneer and customers, but because the billings would occur before a final order is issued in the docket, and treatment is not completely consistent with Southern Pioneer's current ECA, an Interim Order allows Southern Pioneer to comply with the customer's request.¹⁵ The payment amounts to approximately \$5.5 million.

6. On March 15, 2021, Commission Staff (Staff) filed a response to Southern Pioneer's request for an interim order.¹⁶ Staff states its support of Southern Pioneer's request, but recommends, to the extent the Southern Pioneer's request is approved, the Commission order that each customer who disconnects service from Southern Pioneer's system prior to a final order only be charged on an interim, subject-to-refund basis.¹⁷ Staff explains that because the costs included in Southern Pioneer's application are not final and will be reviewed and analyzed by Staff and

¹⁰ *Id.*

¹¹ Direct Testimony of Chantry C. Scott on Behalf of Southern Pioneer, pg. 16 (Mar. 10, 2021).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Direct Testimony of Chantry C. Scott on Behalf of Southern Pioneer, pgs. 14-15

¹⁶ Staff's Response to Southern Pioneer's Request for an Interim Order (Mar. 15, 2021).

¹⁷ *Id.*, ¶ 3.

intervenors, charging disconnecting customers on an subject-to-refund basis will allow those customers to be reimbursed if the Commission later determines a portion of the costs were imprudent, the costs should be allocated differently, or the costs are offset by any emergency funding that becomes available.¹⁸

7. On March 16, 2021, the Citizens' Utility Ratepayer Board (CURB) filed a response to Southern Pioneer's request.¹⁹ CURB is supportive of Southern Pioneer's request, as modified by Staff.²⁰ CURB agrees with Staff's recommendation to approve the disconnection charge as subject-to-refund, as it is a fair way to ensure customer who incurred costs during the Winter Event do not escape those costs and pass them onto remaining customers.²¹ Additionally, CURB would like to see additional consumer protection measures, especially for low-income and fixed income residents. To that degree, CURB recommends the Commission require Southern Pioneer distinguish between voluntary disconnections versus involuntary disconnections before applying the Winter Event charges.²² Further, CURB states the Commission should consider modifying the payment plan to include more protections or outright exclude involuntary disconnections from the interim order on disconnection charges.²³

8. CURB further recommends Southern Pioneer 1) be required to inform the Commission about its process and implementation of the charges for customers who disconnect before a final order and 2) exert sufficient effort to educate its customers about the potential for additional disconnection fees and charges related to the Winter Event prior to assessing the charges when a customer leaves the system.²⁴ Finally, CURB recommends the Commission make the

¹⁸ *Id.*

¹⁹ CURB's Response to Southern Pioneer's Request for an Interim Order (Mar. 16, 2021).

²⁰ *Id.*, ¶ 4.

²¹ *Id.*

²² *Id.*, ¶ 5.

²³ *Id.*

²⁴ *Id.*, ¶ 6.

payment option mandatory for all customers who disconnect before a final order and allow customers to opt-out of the payment plan.²⁵

9. On March 16, 2021, the Western Kansas Industrial Electric Consumers (WKIEC) submitted a petition to intervene.²⁶ The next day, March 17, 2021, WKIEC submitted a Protest to Proposed Plan of Southern Pioneer (Protest).²⁷ In its Protest, WKIEC presents a number of claims, including: Southern Pioneer’s request does not illustrate irreparable harm would come to the utility were the interim order not issued; no irreparable harm would come to Southern Pioneer should the interim request be denied; allocating Southern Pioneer’s regulatory asset using February’s energy usage may harm those customers who significantly cut load; Southern Pioneer customers that curtailed load could be further disadvantaged by paying for costs based on usage that occurred outside the emergency order; and approving Southern Pioneer’s request locks customer classes into Southern Pioneer’s allocation methodology and requires them to pay their “full obligation”, however that obligation will not be determined until a final order in this docket, amongst other claims.²⁸

10. On March 19, 2021, Southern Pioneer submitted a Response to WKIEC’s Petition to Intervene and Protest.²⁹ Southern Pioneer asserts WKIEC has no legal interests in utility proceedings separate and apart from the industrial customers it represents in a docket, and therefore, WKIEC’s statement in its petition to intervene that “WKIEC and its industrial consumer members have a substantial, direct financial interest in issues that may be addressed, considered, and determined by the Commission in this Docket” is not accurate, as WKIEC does not have an

²⁵ *Id.*, ¶ 7.

²⁶ Petition to Intervene of WKIEC (Mar. 16, 2021).

²⁷ WKIEC Protest to Proposed Plan of Southern Pioneer (Mar. 17, 2021).

²⁸ *See id.*

²⁹ Response of Southern Pioneer to Petition to Intervene and to Protest of WKIEC (Mar. 19, 2021).

interest, only its members do.³⁰ Southern Pioneer also states WKIEC is not authorized to represent the interests of industrial customers generally, WKIEC can only represent the interests of a consumer who has acquiesced to such representation and has been identified on the record.³¹ Further, Southern Pioneer states if an industrial consumer in Southern Pioneer's territory is not named by WKIEC, then WKIEC should not be viewed as pursuing that customer's interests and wishes.³² Thus, WKIEC's interests are limited to the interests of Air Products, the only consumer named in WKIEC's petition to intervene. As such, Southern Pioneer states if WKIEC is granted intervention, the intervention should be limited to representing only the interests of its identified members.³³

11. Regarding WKIEC's protest, Southern Pioneer claims the Commission should reject it as the protest is based on erroneous analysis of law and errant representation of facts.³⁴ Southern Pioneer explains the irreparable harm standard cited by WKIEC is not the standard adopted by Kansas courts; rather, Courts gave the Commission discretion when deciding an interim order should be issued, and in doing so, the Commission is to consider the reasonableness and justice to the utility. Additionally, Southern Pioneer claims few cases have come before the Supreme Courts involving the granting of interim rate relief, and this may derive from "the fact interim rates are generally placed into effect under a refunding obligation so that it is difficult for those on either side of the fence to demonstrate damage from the grant of interim rates."³⁵ Southern Pioneer further explains if a different allocation is adopted by the Commission, charges under the interim order will be adjusted accordingly.³⁶

³⁰ *Id.*, ¶ 1.

³¹ *Id.*, ¶ 2.

³² *Id.*

³³ *Id.*

³⁴ *Id.*, ¶ 6.

³⁵ See *Id.*, ¶ 10.

³⁶ *Id.*

12. Pursuant to K.S.A. 66-101, the Commission has full power, authority and jurisdiction to supervise and control public utilities, as defined by K.S.A. 66-101a, doing business in Kansas and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

13. Pursuant to K.S.A. 101b, every electric public utility governed by this act shall be 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 just and reasonable rates, charges and exactions and to make just and reasonable rules, classifications and regulations.

14. Pursuant to K.S.A. 66-117(a), the Commission, for good cause, may allow a changed rate, joint rate, toll, charge or classification or schedule of charges, or rule or regulation or practice pertaining to the service or rates of any public utility to become effective on less than 30 days' notice.

15. The [Commission] has authority to fix interim or temporary rates for public utilities regulated by it.³⁷ Further, the determination as to whether a situation warrants the grant of interim rate relief to a public utility rests in the sound discretion of the [Commission] within the perimeter of reasonableness and justice of the utility and those served by it.³⁸

16. The Commission determines it is reasonable and serves justice to Southern Pioneer and its customers to issue an interim order approving the requested special provisions. The special provisions allow Southern Pioneer to begin collecting extraordinary expenses from the February WinterWeather Event; recouping the extraordinary expenses helps ensure Southern Pioneer continually provides efficient and sufficient service. Further, the Commission agrees with Staff

³⁷ *Kansas-Nebraska Natural Gas Co., v. State Corp. Commission*, 217 Kan. 604.

³⁸ *Id.* at 614.

regarding the subject-to-refund designation for customers who disconnect from Southern Pioneer system prior to the issuance of a final order in this docket. Charging disconnecting customers on a subject-to-refund basis ensures those customers are properly reimbursed should a portion of the extraordinary expenses be deemed imprudent, allocated differently, or offset by emergency funding.

17. Finally, the Commission believes CURB recommendations provide a necessary safeguard for low-income Kansans and adopts them in their entirety. Southern Pioneer shall (1) distinguish between voluntary and involuntary connections prior to applying Winter Event charges, (2) exclude involuntary disconnections from the Winter Event charges, (3) inform the Commission about its processes and implementation of the Winter Event charges for customers who disconnect prior to a final order, (4) educate its customers about the potential for additional disconnection fees and charges related to the Winter Event prior to assessing charges to customers who leave the system, and (5) make the 36-month payment option mandatory for all customers who disconnect prior to a final order and also allow customers to opt-out of the payment plan.

THEREFORE, THE COMMISSION ORDERS:

A. Southern Pioneer's request for an expedited interim order is approved. Southern Pioneer shall be allowed to charge one large customer its full share of extraordinary February costs on the customer's April bill instead of collecting the amount through the regulatory asset charge. Further, Southern Pioneer shall be allowed to estimate the amount of the regulatory asset a disconnecting customer is responsible for and add it as a charge to their final bill, subject to the modifications contained in paragraphs 16 and 17 above.

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).³⁹

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 03/30/2021.

Lynn M. Retz

Lynn M. Retz
Executive Director

PZA

³⁹ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

21-SPEE-331-GIE

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 03/30/2021.

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