

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Complaint of Southern)
Pioneer Electric Company Against the Kansas)
Power Pool Regarding Bypass and) Docket No. 17-KPPE092-COM
Duplication of Service for 34.5kV Delivery to)
the City of Kingman.)

PETITION FOR RECONSIDERATION OF DISCOVERY ORDER

Southern Pioneer Electric Company (“Southern Pioneer” or “Complainant”) pursuant to K.S.A. 66-118b, K.S.A. 2014 Supp. 77-529, and K.A.R. 82-1-235, hereby requests reconsideration of the State Corporation Commission of the State of Kansas’ (“Commission” or “KCC”) *Order Designating Prehearing Officer; and Protective and Discovery Order* issued in this docket on September 27, 2016 (“Order”). In support thereof, Southern Pioneer states the following:

I. BACKGROUND AND DISCUSSION

1. On September 8, 2016, Southern Pioneer filed a formal complaint against Kansas Power Pool (“KPP”) seeking relief from the Commission to prevent the bypass and duplication of service of certain Southern Pioneer 34.5 kV local delivery facilities (Complaint).

2. Contemporaneously with the filing of the Complaint, Southern Pioneer filed a motion requesting the Commission issue a Protective and Discovery Order in this matter (“Motion”). As part of its Motion, Southern Pioneer requested the Discovery Order clearly state that for the purposes of calculating discovery-related deadlines that Saturdays, Sundays, and legal holidays be excluded.¹ Southern Pioneer noted that the Commission has recently issued a similar order in Docket No. 16-KCPE-593-ACQ (“the 16-593 Docket”), wherein it explicitly

¹ Motion, ¶ 3.

stated that “[i]n computing discovery deadlines, intermediate Saturdays and Sundays and holidays shall be excluded.”²

3. When the Commission issued its Order in the instant proceeding, rather than explicitly stating that “in computing discovery deadlines, intermediate Saturdays and Sundays and holidays shall be excluded,” the Commission utilized standardized discovery order language that includes a combination of explicit language and references to Commission regulations, resulting in different deadline calculations for the various discovery-related activities contemplated in a docket.

4. Specifically, paragraph eighteen (18) of the Commission’s Order provides that responses to data requests issued by Commission Staff (“Staff”) are due within seven (7) days and that “[r]esponses to all other data requests are due within 10 days, not counting Saturdays, Sundays, or legal holidays.”³ Read together, this results in responses to Staff’s data requests being required within seven *calendar* days, but responses to all other data requests being required within ten *business* days. This differing treatment creates confusion.

5. Further, paragraph nineteen (19) of the Commission’s Order states that objections to data requests shall be issued “within five days of the data request” and cites to K.A.R. 82-1-217, which states “[w]hen the period of time prescribed or allowed is less than seven days, intermediate Sundays and holidays shall be excluded in the computation.”⁴ This means that the deadline for objecting to a data requests differs from that used in calculating the deadline for

² Docket No. 16-KCPE-593-ACQ, *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company and Westar Energy, Inc. for approval of the Acquisition of Westar Energy, Inc. by Great Plains Energy Incorporated*, Order Granting in Part, Denying in Part Joint Applicants' Petition for Reconsideration of Discovery Order, ¶B, issued Aug. 25, 2016.

³ K.A.R. 82-1-234a(b), the Commission regulation governing discovery, notes that responses to Staff data requests are due “within seven days of the date on which the information was requested, unless otherwise directed.”

⁴ The Order also states that where parties have not agreed to electronic service that objections shall be made “within five working days after service, plus three days if service is by mail.” However, paragraph C of the Order directs the use of electronic service in this proceeding, making the provision of the Order discussing mail service inapplicable in this matter.

responding to data requests. The paragraph also includes a reference to “working” days, which is not defined in the Order or the regulation. These ambiguities create confusion with regard to the appropriate computation for discovery-related deadlines.

6. Paragraph nineteen (19) also addresses responses to motions to compel, and states that such responses “are to be filed within three days after the motion is received, not counting intermediate Sundays, or legal holidays.” Both the provision pertaining to discovery objections and the one pertaining to responses to motions to compel require that Saturdays be counted for the purposes of determining the due date of the respective objection to discovery or response to a motion to compel.

7. The time computations contained in the Commission’s Order not only create potential confusion but also a hardship on all parties involved in discovery. For example, for a data request issued on a Friday afternoon, the time in which a party must issue an objection includes counting the immediate Saturday, which allows the objecting party only four business days to review the data requests and issue any objections. Yet, in calculating the time in which to issue a *response* to the same data request, the immediate Saturday is *excluded*, unless of course the data request was issued by Staff, at which point the immediate Saturday, Sunday, and/or legal holiday must be included.

8. Further, a motion to compel filed on a Friday afternoon requires a responding party to formulate and file a response in only two (2) business days, because under the Commission’s Order the time computed for filing the response includes counting the immediate Saturday. Two business days to formulate and file a response to a motion to compel is burdensome to any party.

9. K.A.R. 82-1-202(a) allows the Commission to waive its regulations for good cause if doing so is in the public interest. Avoiding confusion by having the same computation of time for all discovery-related issues will help avoid confusion in this docket and constitutes “good cause” for waiving the provision of K.A.R. 82-1-217 that requires Saturdays to be included in computing discovery-related deadlines, and K.A.R. 82-1-234a(b) that requires Saturdays, Sundays, and legal holidays to be included in computing the response time to Staff data requests. Further, allowing parties sufficient time to review and respond to discovery will allow for a more thorough analysis. Avoiding confusion and allowing more thorough review and responses to discovery-related matters are both in the public interest.

10. As noted above, the Commission recently addressed this issue in the 16-593 Docket, wherein it explicitly stated that “[i]n computing discovery deadlines, intermediate Saturdays and Sundays and holidays shall be excluded.” Southern Pioneer respectfully requests the Commission do the same in the instant proceeding.

WHEREFORE, Southern Pioneer respectfully requests the Commission reconsider its *Order Designating Prehearing Officer; and Protective and Discovery Order* with regard to time computation on discovery-related issues and explicitly exclude Saturdays, Sundays and holidays in computing all discovery time deadlines.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above pleading was electronically served, hand-delivered or mailed, postage prepaid, this 12th day of October, 2016 to:

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