

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

In the Matter of the Informational Filing of)
Southern Pioneer Electric Company to Provide) Docket No. 19-SPEE-158-CON
Notification of Shared Services Agreement)

ORDER CLOSING DOCKET

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings:

1. On October 23, 2018, Southern Pioneer Electric Company (Southern Pioneer) filed a copy of a Shared Service Agreement between itself and Pioneer Electric Cooperative, Inc. (Pioneer) with the Commission. Southern Pioneer indicated that the filing was made pursuant to K.S.A. 66-101c and made for informational purposes.

2. On March 1, 2019, Southern Pioneer filed an amended version of the Shared Services Agreement pursuant to K.S.A. 66-1402. Southern Pioneer indicated that the amended version was created after discussions with Commission Staff in order to address Staff's concerns with the original filing.

3. Pursuant to K.S.A. 66-1402, "[n]o management, construction, engineering or similar contract, hereinafter made, with any affiliated interest, as defined in K.S.A. 66-1401 and amendments thereto, shall be effective unless it shall first have been filed with the commission." The Commission has the authority to disapprove such contracts found to not be in the public

interest; however, no action is required by the Commission to otherwise approve of the contract.¹

4. On March 29, 2019, Commission Staff submitted a Report and Recommendation (R&R), attached hereto and made a part hereof by reference. Staff explained that it raised concerns over the length of notice required for termination of the agreement and information regarding jurisdiction. Southern Pioneer amended the Shared Services Agreement to accommodate Staff's concerns. Upon review of the amended Shared Services Agreement, Staff recommended the Commission take no action pursuant to K.S.A. 66-1402 to prevent Southern Pioneer from participating in the Shared Services Agreement with Pioneer.

5. Upon review of Staff's R&R, the Commission adopts the same. The Commission finds it is appropriate to take no action and close this docket.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Staff's R&R is adopted; the Commission takes no further action and this docket is closed.

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).

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Emler, Commissioner

Dated: 04/11/2019 _____



Lynn M. Retz
Secretary to the Commission

MRN

¹See K.S.A. 66-1402.

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Dwight D. Keen
Commissioner Shari Feist Albrecht
Commissioner Jay Scott Emler

FROM: Tim Rehagen, Senior Auditor
Justin Grady, Chief of Accounting and Financial Analysis
Jeff McClanahan, Director of Utilities

DATE: March 29, 2019

SUBJECT: Docket No. 19-SPEE-158-TAR – In the Matter of the Informational Filing of Southern Pioneer Electric Company to Provide Notification of Shared Services Agreement.

EXECUTIVE SUMMARY:

On October 23, 2018, Southern Pioneer Electric Company (Southern Pioneer), pursuant to K.S.A. 66-101c, filed with the Commission for informational purposes a Shared Services Agreement (Agreement) entered into by Southern Pioneer and Pioneer Electric Cooperative, Inc. (Pioneer). This Agreement was originally executed on July 7, 2006, followed by an amended version on June 20, 2018, the latter being the version included in the current Docket. Staff reviewed Southern Pioneer's Agreement and recommended various changes to the termination conditions of the Agreement (discussed below). On March 1, 2019, Southern Pioneer filed another amended version of the Agreement with the Commission that incorporated Staff's recommendations. Staff is recommending that the Commission take no action that would preclude Southern Pioneer from implementing the modifications to the Agreement.

BACKGROUND:

On July 7, 2006, Southern Pioneer and Pioneer entered into a Services Agreement. This Agreement stemmed from Mid-Kansas Electric Company's (Mid-Kansas) acquisition of the electric assets of Aquila West Plains Kansas (Aquila-WPK).¹ After the bid to acquire the Aquila-WPK electric assets was awarded to Mid-Kansas and its member cooperatives, Southern Pioneer was created to assume Pioneer's interest in Mid-Kansas and the transfer of the Aquila-WPK assets and customers from Pioneer's acquired portion of the acquisition. Southern Pioneer was also scheduled to acquire twenty Aquila-WPK employees. Functional areas in which the acquired employees would perform were identified as well as areas in which Pioneer would be

¹ See Docket No. 06-MKEE-524-ACQ.

contracted to render services. Thus, the 2006 Services Agreement was created and approved by Southern Pioneer and Pioneer's Boards.

On June 20, 2018, an amended version of the original Services Agreement was executed. Pioneer and Southern Pioneer's organizational structure had evolved considerably in the intervening years. As a result, both Parties identified various additional services that were not included in the original Agreement. Moreover, additional services were identified that Southern Pioneer could provide to Pioneer. The Agreement was modified to include additional services provided by Pioneer to Southern Pioneer and additional services provided by Southern Pioneer to Pioneer. Additionally, language was added to emphasize that Southern Pioneer is now a not-for-profit entity and cannot distribute dividends to Pioneer. Finally, any pre-merger or pre-spin down language that was no longer relevant was omitted since Mid-Kansas was no longer the certificated utility.² Southern Pioneer filed this amended Agreement with the Commission on October 23, 2018, as an informational filing.³

ANALYSIS:

Section 7.02 of the amended Agreement executed on June 20, 2018, states the following:

“Either Party reserves the right to terminate this Agreement, or any part hereof, for its sole convenience at no cost to either Party upon three (3) month's advance written notice to the other Party (including, without limitation the right to terminate any separate category of Services described on Annex 2.00). The provisions of this article shall not limit or affect the right of either Party to cancel this contract for default.”

If one of the Parties elects to terminate the Agreement, then all services provided to the other Party will eventually cease. To continue providing efficient and reliable services to its consumers, the remaining Party will need ample time to make any necessary changes or additions to its organizational structure to compensate for the services it will no longer receive upon termination of the Agreement. Staff contends that three months is not enough time for the remaining Party to make up for the services that will cease when the Agreement is terminated. Therefore, Staff recommended that Southern Pioneer modify the Agreement to state that the Party intending to terminate the Agreement shall notify the remaining Party in writing twelve months in advance of the termination. This will provide the remaining Party with enough time to make up for the services it will no longer receive after the Agreement terminates.

Southern Pioneer stated in its Application that the Agreement was filed with the Commission for informational purposes only, pursuant to K.S.A. 66-101c. However, Staff asserts that the Agreement falls under the category of “contracts with affiliated interests,” which is governed by K.S.A. 66-1402:⁴

² In Docket No. 13-MKEE-447-MIS, Mid-Kansas' Certificate of Convenience and Necessity in the geographic service area served by Southern Pioneer was transferred (or “spun down”) to Southern Pioneer.

³ See the response to Staff Data Request No. 1, attached to this Report and Recommendation, for a detailed explanation of the history of the Agreement and a list of the additional services that were added to the Agreement.

⁴ Upon seeking advice from the Commission's litigation counsel, Staff concludes that Southern Pioneer and Pioneer are affiliated entities. According to K.S.A. 66-1401, one of the characteristics that designates an entity as an “affiliated interest” is, “(e)very corporation which has one or more officers or one or more directors in common with

“No management, construction, engineering or similar contract, hereafter made, with any affiliated interest, as defined in K.S.A. 66-1401 and amendments thereto, shall be effective unless it shall first have been filed with the commission. If it be found that any such contract is not in the public interest, the commission, after investigation and a hearing in accordance with the provisions of the Kansas administrative procedure act, is hereby authorized to disapprove such contract.”

K.S.A. 66-1402 grants the Commission the right to disapprove a contract with an affiliated interest if, after investigation and a hearing, it is determined that the contract “is not in the public interest.” Regulated utilities in Kansas have an obligation to provide safe, reliable service to their customers. Staff was originally concerned that either Pioneer or Southern Pioneer could terminate the Agreement within three months. Staff was also concerned that this would be an insufficient time period for the Commission to step in and ensure that Southern Pioneer had established the appropriate processes, personnel, systems, etc. to enable it to perform all of the required activities of a stand-alone, regulated public utility in Kansas.

Therefore, Staff discussed the original Agreement with Southern Pioneer and recommended an addition to the Agreement that would require the party initiating a termination to provide written notice to the Commission of its intent to terminate the Agreement at least twelve months in advance of the termination. This would give Staff ample time to determine whether or not Southern Pioneer had all of the arrangements in place to be successful as a stand-alone regulated public utility as of the date of termination of the Agreement.

Southern Pioneer agreed to modify its Agreement and incorporate Staff’s recommendations into it. On March 1, 2019, Southern Pioneer filed an amended version of the Agreement with the Commission in the current Docket. The amended version contains a revised version of section 7.02, which states that either Party may terminate the Agreement “upon twelve (12) month’s advance written notice to the other Party...” Additionally, Southern Pioneer added a new section (Section 12) stating the following:

“This Agreement and any amendments thereto shall be subject to the jurisdiction of the Kansas Corporation Commission (KCC) if provided by Kansas law. For so long as this Agreement is under the jurisdiction of the KCC as provided by Kansas law, Southern Pioneer will notify the Commission in writing at least twelve (12) months before the effective date of termination of this Agreement if the Agreement is terminated for convenience by either Party as provided in Section 7.02 of this Agreement.”

RECOMMENDATION:

While K.S.A. 66-1402 grants the Commission the authority to disapprove a contract with affiliated interests, it does not grant the Commission the authority to officially approve such a contract. Staff concurs with Southern Pioneer’s modifications to the Agreement. While the Commission cannot formally approve the modified Agreement, Staff recommends that the

such utility corporation.” Since Randall D. Magnison is the Executive Vice President and Assistant CEO of both Southern Pioneer and Pioneer, these two companies would be classified as affiliated entities.

Commission take no action that would prevent the Parties from executing the amended Agreement.

Accordingly, no action is necessary from the Commission at this time.

CERTIFICATE OF SERVICE

19-SPEE-158-CON

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 04/11/2019.

MICHAEL NEELEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3167
m.neeley@kcc.ks.gov

RANDY MAGNISON, EXECUTIVE VICE PRESIDENT -
ASSISTANT CEO
PIONEER ELECTRIC COOP. ASSN., INC.
1850 W OKLAHOMA
PO BOX 368
ULYSSES, KS 67880-0368
Fax: 620-356-4306
rmagnison@pioneerelectric.coop

LINDSAY CAMPBELL, EXECUTIVE VP - GENERAL
COUNSEL
SOUTHERN PIONEER ELECTRIC COMPANY
1850 W OKLAHOMA
PO BOX 403
ULYSSES, KS 67880-0430
Fax: 620-356-4306
lcampbell@pioneerelectric.coop

/S/ DeeAnn Shupe
DeeAnn Shupe
