

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

In the Matter of the Application of)
Southern Pioneer Electric Company)
Seeking Waiver of Minimum Standards) Docket No. 18-SPEE-241-TAR
For Payment Methods for Utility Bills and)
Allowing the Acceptance of Credit Cards)
and the Approval of Revisions to their)
Schedule of Fees Related to the Assessment)
of Credit Card Convenience Fees)

**RESPONSE OF SOUTHERN PIONEER ELECTRIC COMPANY TO NOTICE OF
FILING OF STAFF REPORT AND RECOMMENDATION AND CURB'S RESPONSE
TO STAFF'S REPORT AND RECOMMENDATION**

COMES NOW Southern Pioneer Electric Company (“Southern Pioneer”) and hereby submits its response to the *Notice of Filing of Staff Report and Recommendation* filed by the Staff of the State Corporation Commission of the State of Kansas (“Staff” and “Commission,” respectively) in the above-captioned docket on July 3, 2018 and the Citizens’ Utility Ratepayer Board’s (“CURB”) *Response to Staff’s Report and Recommendation* filed herein on July 13, 2018.

I. Background

1. On December 8, 2017, Southern Pioneer filed an application with the Commission for the purpose of seeking (i) a waiver of certain minimum standards for payment methods for utility bills and allowing the acceptance of credit cards; and (ii) approval to make certain revisions to Southern Pioneer’s Schedule of Fees related to the assessment of credit card convenience fees as contained in the Commission-approved Southern Pioneer Rules and Regulations for the geographic service territory served by Southern Pioneer, and for other related relief may be required.¹

¹ See Application of Southern Pioneer Electric Company Seeking Waiver of Minimum Standards for Payment Methods for Utility Bills and Allowing the Acceptance of Credit Cards and the Approval of Revisions to their

2. On December 15, 2017, CURB filed its Petition to Intervene and the Commission granted same intervention December 21, 2017.

3. On July 3, 2018, the Staff filed its Report and Recommendation (“Staff R&R” or “Report and Recommendation”). Staff recommended that Southern Pioneer be allowed to eliminate its credit card convenience fee and revise its Schedule of Fees accordingly.² Staff however, believes that limiting the no-fee program to only residential customers is unreasonably discriminatory and recommends that if the Commission approves the waiver, that all classes be allowed the zero-fee bill payment.³ Staff’s R&R also recommends that Southern Pioneer be allowed to incorporate the cost of processing credit cards transactions into its cost of service and requests that those costs be recovered through base rates from all customers in its *next* general rate case after historical credit card transaction cost data is available. Until that time, Staff recommends that Southern Pioneer be allowed to establish a regulatory asset to record its credit card processing transaction costs.⁴ Last, Staff’s R&R recommends that the Commission grant Southern Pioneer a waiver from Section D(2) of the Payment Standards and from only the portion of Section I(2) that states “(c)customers not paying with credit cards shall not be burdened with the transaction costs of customers utilizing these payment methods.”⁵

4. On July 13, 2017, CURB filed its response to Staff’s R&R. CURB indicates it analyzed the Application from the perspective of residential and small commercial ratepayers; reviewed the Commission’s Payment Standards; and reviewed the Commission’s Orders in other dockets in which the Commission granted requests to eliminate the transaction limit and

Schedule a Fees Related to the Assessment of Credit Card Convenience Fees (December 8, 2017) (“Application”).

² Staff Report and Recommendation, p. 2

³ *Id.* at p. 7.

⁴ *Id.* at p. 9.

⁵ *Id.*

convenience fee and for a waiver of Sections D(2) and I(2) of the Payment Standards. After doing so, CURB has determined that Staff's R&R is reasonable and in the best interest of Southern Pioneer's residential and small commercial ratepayers, and that CURB supports Southern Pioneer's request for a waiver of certain minimum standards for payment methods for utility bills and allowing the acceptance of credit cards, and Southern Pioneer's request to make certain revisions to Southern Pioneer's Schedules of Fees.⁶

II. Response to Staff Report and Recommendation

5. Southern Pioneer supports Staff's recommendation that Southern Pioneer be allowed to eliminate its credit card convenience fee and revise its Schedule of Fees accordingly and that the Commission grant Southern Pioneer a waiver from Section D(2) of the Payment Standards and from only the portion of Section I(2) that states "(c)ustomers not paying with credit cards shall not be burdened with the transaction costs of customers utilizing these payment methods.

6. Southern Pioneer does not agree with Staff's recommendation that limiting the no-fee program to only residential customers is unreasonably discriminatory under K.S.A. §66-101b.⁷ Section G of the of the Minimum Standards for Payment Methods for Utility Bills and Allowing the Acceptance of Credit Cards specifically states:

"Utilities have the *option* to offer electronic payment methods such as credit cards according to the desires of its customers and the ability of the utility to accommodate them. Utilities *are not required* to offer customers the opportunity to pay their bills with such payment methods."

The operative language in the standards is "optional" and "are not required." While the standards are silent on requiring that all customers versus select customer rate classes be

⁶ CURB Response to Staff R&R, §II, ¶ 6 and 7, p.3.

⁷ K.S.A. 66-101b states in part: "Every unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, charge or exaction is prohibited and is unlawful and void."

afforded the opportunity to use this payment method, the Commission has clarified through its action and approval of KCP&L's Credit Card Program in Docket 06-KCPE-828-RTS ("06-828 Docket"). In the 06-828 Docket, the Commission approved limiting credit card usage to pay electric bills to residential customers only and by doing so, affirmed that it was not unreasonably discriminatory nor was a utility obligated to offer to all rate classes. Staff rationalizes in its Report and Recommendation filed herein that because KCP&L did not accept credit cards prior to the application it is not unreasonably discriminatory, but that because Southern Pioneer did, it results in unreasonable discrimination.⁸ Regardless, what occurred before, if the results are the same (i.e. limited to one rate class), if it is unreasonably discriminatory for one utility then it would be for both.

7. Further, having differences in tariff or rules and regulations provisions for different classes of customers does not in and of itself make the tariff or rules and regulations unreasonably discriminatory.⁹ The Kansas Supreme Court has stated that "the touchstone of public utility law is the rule that one class of consumers shall not be burdened with costs created by another class."¹⁰ Staff has indicated a willingness to expedite review in the event a customer class incurs unreasonably high transaction costs¹¹, which we appreciate. However, since Southern Pioneer's customer base consists primarily of commercial and industrial load with customers in many cases having substantially large billings, placing no limits on these customers being able to pay by way of several credit card transactions for their monthly bill subjects Southern Pioneer to an unknown cost ultimately paid by the rate payers. Therefore, Staff's recommendation would lead to

⁸ Staff Report and Recommendation, pp. 5-6 and 9.

⁹ Just as Southern Pioneer's tariffs provide for different rates for residential versus commercial customers, other tariff and rules and regulation provisions are different for different classes of customers.

¹⁰ *Jones v. Kan. Gas & Elec. Co.*, 222 Kan. 390, 401 (Kan. 1977).

¹¹ Staff Report and Recommendation, p.7.

unreasonable cost-shifting and subsidization. Rates that cause one set of customers to pay costs caused by another set of customers is unreasonable in violation of K.S.A. §66-101b.

8. In the event the Commission is not persuaded by Southern Pioneer's arguments and determines that Southern Pioneer should accept credit cards from all customer rate classes as recommended by Staff, Southern Pioneer requests that at a minimum, the Commission allow Southern Pioneer to place a \$1,000 cap on each credit card transaction in order to better manage the risks.

9. Southern Pioneer acknowledges that its Commission-approved formula based ratemaking ("FBR") program absent a regular cost of service study and general rate case, and the lack of historical credit card transaction cost as these charges were paid by the consumer, makes traditional cost recovery initially challenging. Southern Pioneer appreciates Staff's willingness to work with Southern Pioneer. However, Southern Pioneer is currently conducting a Class Cost of Service Study and anticipates it will file a general rate case yet in third quarter of 2018 with an expected order in mid-2019. Because of the timing of this general rate case versus the next, which could be three to five years depending on whether the Commission approves a continuation of Southern Pioneer's FBR program, creating a regulatory asset to record these credit card transactions is not ideal in that Southern Pioneer will carry this cost for three to five years before receiving any recovery. Southern Pioneer, as discussed in response to Staff's data request, would suggest that all stakeholders (Staff, CURB and Southern Pioneer) work together to identify a methodology to fairly recover these costs, whether it is in Southern Pioneer's next rate case or as part of its renewal of the FBR program.

III. Response to CURB's Response to Staff Report and Recommendation

10. Southern Pioneer appreciates CURB's recommendation and support of the waiver and generally agrees with CURB's response, except for those limited issues in Staff's R&R for which it disagrees as outlined above.

WHEREFORE, Southern Pioneer respectfully requests that the Commission accept Staff's and CURB's recommendation to incorporate the cost of processing credit cards into Southern Pioneer's cost of service and those transaction costs be recovered through base rates and grant a waiver from Section D(2) of the Payment Standards and a portion of Section(2). Southern Pioneer further respectfully requests that the Commission reject Staff's recommendation of allowing all customer classes to pay with credit cards and limit to residential customers only as requested in the Application; or in the alternative, place a \$1,000 limit per transaction. Last, in lieu of establishing a long-term regulatory asset due to timing of the next general rate case, Southern Pioneer requests the Commission permit the stakeholders to collaboratively work together in Southern Pioneer's next general rate case or renewal of its FBR program, whichever occurs first, to identify acceptable methodologies to recovery through base rates in a timelier manner.

Respectfully submitted,

/s/ Lindsay A. Campbell

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**ATTORNEY FOR SOUTHERN PIONEER
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Response of Southern Pioneer Electric Company was electronically served this 16th day of July, 2018, on the following:

/s/ Lindsay A. Campbell

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