

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

In the Matter of Southern Pioneer Electric)
Company, Regarding Violation of the)
Commission’s Minimum Standards for)
Payment Methods for Utility Bills by) Docket No. 18-SPEE-428-SHO
Charging Its Customers a Convenience Fee)
to Submit Bill Payment via Electronic)
Check.)

**RESPONSE OF SOUTHERN PIONEER ELECTRIC COMPANY TO THE
COMMISSION’S ORDER ON TARIFF VIOLATION**

Southern Pioneer Electric Company (“Southern Pioneer”), pursuant to the State Corporation Commission of the State of Kansas’ (“Commission”) June 19, 2018, *Order on Tariff Violation* (“Order”), hereby files the following response to the Commission’s questions.

I. BACKGROUND

1. On December 8, 2017, Southern Pioneer filed an Application in Docket No. 18-SPEE-241-TAR (the “18-241 Docket”), seeking a waiver from the Commission’s Minimum Standards and proposed revisions to its Schedule of Fees related to the elimination of the assessment of the \$3.95 convenience fee for bill payments made by credit card. Through discovery requests in the 18-241 Docket proceeding, Staff discovered that Southern Pioneer was charging a \$3.95 convenience fee for bill payments made via e-Check.

2. On March 27, 2018, Commission Staff submitted a Report and Recommendation to the Commission, indicating Southern Pioneer may be acting in violation of the Commission’s Minimum Standards for Payment Methods for Utility Bills and Allowing the Acceptance of Credit Cards (the “Minimum Standards”) by charging a convenience fee to customers who make bill payments via electronic check (“e-Check”).¹ Staff states that Southern Pioneer has not been

¹ Staff Report and Recommendation, p. 2.

granted a waiver allowing it to charge a convenience fee for bill payments made by e-Check, and such a fee is not provided in the Southern Pioneer's Schedule of Fees in Southern Pioneer's Rules and Regulations.² Therefore, Southern Pioneer has inappropriately charged over \$85,000 in convenience fees for bill payment via e-Check from 2015-2017.³ Staff recommended the Commission issue an Order to Show Cause to determine whether Southern Pioneer is in violation of the Commission's Minimum Standards by charging its customers a convenience fee to submit bill payments via e-Check.⁴

3. On April 11, 2018, CURB petitioned to intervene in this docket; its request was subsequently granted by the Commission on April 26, 2018.

4. On April 10, 2018, an Order to Show Cause was issued to determine whether Southern Pioneer was in violation of the Commission's Payment Standards by charging its customers a convenience fee to submit bill payments via e-check.

5. On May 10, 2018, Southern Pioneer filed its Response to Order to Show Cause (Response). In its Response, Southern Pioneer stated that it was unaware of its noncompliance until contacted by Staff in March 2018.⁵ Southern Pioneer further contended it was charging the convenience fee with a "good faith" belief that its predecessor Mid-Kansas Electric Company, Inc. (Mid-Kansas) had received the requisite waiver from the Commission, based upon a series of e-mails exchanged between Mid-Kansas and Staff regarding a billing insert.⁶ Additionally, Southern Pioneer acknowledged that the currently implemented \$3.95 convenience fee has not been provided for in Southern Pioneer's Schedule of Fees or Rules and Regulations.⁷ Should it be determined the

² Id.

³ Id.

⁴ Id. at p. 3.

⁵ Southern Pioneer Response, ¶11.

⁶ Id. at ¶¶7-11.

⁷ Id. at ¶6.

convenience fee was not previously approved, Southern Pioneer requested a waiver for the fee in this docket.⁸

6. On May 21, 2018, Staff submitted its Reply to Southern Pioneer's Response ("Reply"). In its Reply, Staff contended that its inaction regarding thee-check provision in Southern Pioneer's Bill Insert does not constitute Commission approval.⁹ Specifically, Staff noted that pursuant to K.S.A. §66-117(c), Commission approval is required before a public utility subject to Commission jurisdiction changes its rates, joint rates, tolls, charges or classifications or schedules, or any rules or regulations or practices pertaining to service, and "at no point did Mid-Kansas nor Southern Pioneer receive outward, formal, or express confirmation that the convenience fee had received Commission approval."¹⁰

7. Staff also stated in its Reply that Southern Pioneer's request for a waiver in a Docket pertaining to an Order to Show Cause is not appropriate and therefore its request for a waiver would be better served in a separately filed docket.¹¹

8. Staff recommended the Commission find Southern Pioneer in violation of the Payment Standards, Order Southern Pioneer to refund customers who were wrongly billed convenience fees for payment via e-check, and deny Southern Pioneer's request for a waiver.

9. On May 31, 2018, CURB filed its Memorandum in Support of State Corporation Commission Staff's Reply to Southern Pioneer's Response to Order to Show Cause. In it, CURB expressed its support for Staff's Reply and likewise urged the Commission to find that Southern Pioneer is in violation of the Commission's Payment Standards, Order Southern Pioneer to refund customers who were wrongly billed convenience fees for e-checks, and deny Southern Pioneer's request for a waiver.

⁸ Id. at ¶12.

⁹ Staff's Reply, ¶11.

¹⁰ Id.

¹¹ Id. at ¶13.

10. On June 19, 2018, the Commission filed its Order. In that Order, the Commission determined that Southern Pioneer violated its tariff by charging customers who paid their bills via e-Checks an unauthorized convenience fee.¹² Ultimately, the Commission determined that an appropriate remedy was necessary to correct Southern Pioneer's tariff violation.

11. In order to acquire additional information as to the scope of Southern Pioneer's tariff violation, the Commission directed Southern Pioneer to answer the following questions:¹³

- a) How many customers were charged a convenience fee for paying their bills by e-check?
- b) Is Southern Pioneer able to identify which customers paid a convenience fee for paying their bills by e-check?
- c) Is Southern Pioneer able to identify the dollar amount of convenience fees individual customers paid for paying their bills by e-check?

12. The Commission also directed all parties to answer the following questions:¹⁴

- a) Does the Commission have authority to order Southern Pioneer to issue refunds to customers who paid a convenience fee for paying their bills by e-check?
- b) What is the legal authority for the Commission to order Southern Pioneer to issue refunds to customers who paid a convenience fee for paying their bills by e-check?
- c) What is an appropriate amount to fine Southern Pioneer for violating its tariff?

II. QUESTIONS DIRECTED TO SOUTHERN PIONEER

1. How many customers were charged a convenience fee for paying their bills by e-check?

A. *27,382 customer accounts were actually charged a convenience fee.*

¹² Id.

¹³ Order, ¶13.

¹⁴ Id. at ¶14.

During the 7-year period of time (March 2012 through July 8, 2018 – the “Period”¹⁵), a total of 32,950 customer accounts representing various revenue classes were paid using e-check as the form of payment. However, because customers may have paid multiple accounts in a single transaction during the Period, and Southern Pioneer’s billing system sees this as one transaction and assess a single \$3.95 convenience fee to the first account number entered of the multiple accounts paid, of the 32,950 customer accounts only 27,382 were actually charged a convenience fee. *See **SOUTHERN PIONEER EXHIBIT 1***, attached hereto and as part of responding to KCC Staff DR-1 for a detailed breakdown.

2. Is Southern Pioneer able to identify which customers paid a convenience fee for paying their bills by e-check?

A. *Without physically reviewing each electric customer’s account and the daily transactions logs during the Period, Southern Pioneer cannot definitively determine which accounts of the 32,950 total may have been accessed a \$3.95 fee due to multiple accounts being processed as one transaction.*

While it (the 32,950) overstates the actual number of accounts that did in fact pay a fee by 5,568 (32,950 total accounts using e-check as the

¹⁵ Because of required programming necessary to change assessment of convenience fees and the different payment portals in which all forms of electronic payments (i.e. credit cards, IVR, e-Checks, Smart Hub, etc.) flow through, Southern Pioneer cannot simply turn off the assessment of convenience fees for e-Checks without impacting convenience fees assessed for credit card transaction payments too. Therefore, with Kansas Corporation Commission Staff’s (“KCC Staff”) recommendation and the pending approval by the Commission to waive convenience fees in Docket No. 18-SPEE-241-TAR (the “18-241 Docket”), upon issuance of the Final Order in the 18-241 Docket approving eliminating the fees and resolution in this instant docket, programming can immediately be completed to eliminate all convenience fees and the Period can be synched up to capture the total number of all accounts impacted from March 2012 through the date of resolution.

form of payment minus 27,382 accounts actually assessed fee), Southern Pioneer can and has definitively identified all 32,950 customer accounts using e-check as the form of payment.

It should be further noted that of the 32,950 customer accounts identified as of July 2018 as using e-check as the form of payment, 22,743 (69%) are currently active, indicating the customer presently receives electric service today, presumably has a current address and could be located for individual refund/bill credit, if so order. The remaining 10,207 (31%) accounts of the 32,950 total are inactive/disconnected accounts and locating for an individual refund, as there is no current billing statement to credit, if so ordered, may be problematic.

3. Is Southern Pioneer able to identify the dollar amount of convenience fees individual customers paid for paying their bills by e-check?

A. *No, as previously described, Southern Pioneer cannot with certainty identify the exact dollar amount of convenience fee(s) paid by the “individual customers”.*

However, Southern Pioneer can affirmatively determine that in total, because of the \$3.95 fixed-fee charged per transaction, that 27,382 electric accounts during this Period paid \$108,158.90 (27,382 accounts x \$3.95) in fees as billed to Southern Pioneer by NISC, Southern Pioneer’s third-party software billing and credit card processing agent.

Because Southern Pioneer cannot individually identify which accounts may have been assessed a fee as previously explained, Southern Pioneer extracted from its customer billing data base a listing of all electric

accounts (32,950) that used e-check as a form of payment. If one was to error to the benefit of all customers and generously use this total of 32,950 accounts as opposed to the 27,382 so as to ensure no one account was overlooked in a refund scenario, if so ordered, which disregards the fact that only one account within a group of accounts paid in one transaction is assessed a single convenience fee, the hypothetical fees collected would have been equivalent to \$130,152.50 (32,950 accounts x \$3.95) or \$21,993.60 greater than the actual billed and collected of \$108,158.90.

III. QUESTIONS DIRECTED TO ALL PARTIES

- 4. Does the Commission have the authority to order Southern Pioneer to issue refunds to customers who paid a convenience fee for paying their bills by e-check?**

A. The Commission determined in its Order that Southern Pioneer violated its existing Commission-approved tariff by charging customers who paid their bills via e-Checks an unauthorized \$3.95 convenience fee. Therefore, Southern Pioneer believes the Commission has the power under its general statutory authority as well as pursuant to Kansas case law to order a remedy for the violation that would require Southern Pioneer to issue refunds to customers who paid a convenience fee for paying their bills by e-check.

- 5. What is the legal authority for the Commission to order Southern Pioneer to issue refunds to customers who paid a convenience fee for paying their bills by e-check?**

A. The Kansas legislature has granted the Commission the full power, authority and jurisdiction to supervise and control electric public utilities, and the

Commission is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.¹⁶ Specific to customer refunds, the Kansas Court of Appeals has held that the Commission has the implied authority under K.S.A. 66-101 to order a full refund to customers when it has been determined that charges have not been made pursuant to a rate legal at the time of the charge.¹⁷ In *Sunflower Pipeline Company*, a pipeline company contracted with customers for a rate above the authorized utility rate. The Commission ordered full restitution of all moneys collected pursuant to contracts in excess of the approved rate. The Court noted that the Commission has the power to order refunds for charges in excess of published rates, stating that this power is derived from the implied power to enforce rate orders.¹⁸

If the Commission determines a refund is in order, due to the number of refunds to be processed, Southern Pioneer requests 90-days to immediately implement billing software programming changes and then administratively process the refunds due to all customers from March 2012 through the current billing period for those customers in which Southern Pioneer has current contact information.

6. What is the appropriate amount to fine Southern Pioneer for violating its tariff?

A. K.S.A. §66-138 grants the Commission the authority to levy fines or

¹⁶ K.S.A. §66-101.

¹⁷ *Sunflower Pipeline Company v. State Corporation Commission*, 5 Kan. App. 715, 721, 624 P.2d 466 (Kan. App. 1991).

¹⁸ *Id.* at 720, 722, 470, 472.

penalties against a public utility for violation of state statute, failing or neglecting to obey a lawful requirement or order of the Commission, or final judgment or decree made by a court of appeals. K.S.A. §66-138(a)(2) authorizes the Commission to assess an amount “not less than \$100 and not more than \$5,000 for such offense.” As noted in Southern Pioneer’s Response, any violation by Southern Pioneer was not knowing or intentional, but rather, was merely an oversight or inadvertence by Southern Pioneer in ensuring Mid-Kansas Electric Company, Inc., the certificated retail electric service provider at the time, received the necessary approvals.¹⁹

Should the Commission order that Southern Pioneer refund its affected customers for those convenience fee charges collected in violation of its Commission-approved tariff in the amounts indicated above, Southern Pioneer will willingly comply with such order and whatever other actions the Commission deems necessary to allow Southern Pioneer to be compliant retroactively and moving forward. However, given Southern Pioneer’s good faith belief that Mid-Kansas had received the requisite Commission-approvals and that it was therefore charging the \$3.95 convenience fee in accordance with all requisite Commission approvals and had appropriately notified its customers of such charges via the Commission Staff-approved bill insert, and given this is Southern Pioneer’s first finding of violation of its tariff, Southern Pioneer respectfully requests that the Commission forego the assessment of any sanctions or penalties against Southern Pioneer as part of its recommended solution to this matter.

¹⁹ Southern Pioneer Response, ¶¶6 and 11.

IV. CONCLUSIONS

WHEREFORE, Southern Pioneer submits these responses for the Commission's consideration and respectfully requests that (i) should the Commission order a refund, Southern Pioneer be granted at least 90-days to process the refunds; and (ii) the Commission forgo the assessment of penalties against Southern Pioneer for the reasons stated herein.

Respectfully submitted,

/s/ Lindsay A. Campbell

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CERTIFICATE OF SERVICE

I do hereby certify that on the 30th day of July, 2018, I electronically filed via the Kansas Corporation Commission's Electronic Filing System a true and correct copy of the above and foregoing Response with a copy emailed to the below parties of record.

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SOUTHERN PIONEER EXHIBIT 1

SOUTHERN PIONEER 2012 - 2018 e-CHECK TRANSACTION SUMMARY

	2012	2013	2014	2015	2016	2017	2018	Totals			<u>Hypothetical Fees</u>
Active Accounts ¹	436	1,582	2,680	3,501	4,835	6,050	3,659	22,743	69%	\$	89,834.85
Inactive Accounts ²	731	1,847	2,352	2,229	1,660	1,124	264	10,207	31%	\$	40,317.65
Total Accounts Paid Using e-Check ³	1,167	3,429	5,032	5,730	6,495	7,174	3,923	32,950	100%	\$	130,152.50
											<u>Actual</u>
Accounts Assessed Fee ⁴	1,005	2,836	4,131	4,670	5,461	5,935	3,344	27,382		\$	108,158.90
Variance ⁵	162	593	901	1,060	1,034	1,239	579	5,568		\$	21,993.60
Fees Collected ⁶	\$ 3,969.75	\$11,202.20	\$ 16,317.45	\$18,446.50	\$21,570.95	\$23,443.25	\$ 13,208.80	\$108,158.90			

¹ Indicates account status as of July 2018 for probability of refunding fee to current consumers.

² Indicates account status as of July 2018 for improbability of refunding fee to inactive/disconnected consumers with no forwarding address.

³ Total number of electric accounts that consumers paid using e-Check - Source is the individual Annual E-Check Detail Tabs.

⁴ Number of electric accounts assessed fee - Source is amounts collected and remitted to NISC.

⁵ Variance represents the difference between "Total Accounts Paid Using e-Check" and "Accounts Assessed \$3.95 Fee". If consumer pays multiple accounts at one time, it is considered one transaction and the first account entered is assessed the fee, not all accounts. Without reviewing each individual consumers account each month, Southern Pioneer cannot readily tell which account was assessed the fee. Would be more efficient to reimburse 32,950 total accounts versus 27,382 assessed a fee, which errors to the benefit of the consumers at an additional costs of \$21,993.60.

⁶ Fees Collected is the "Accounts Assessed Fee" times the fixed \$3.95 fee.