

**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-KPPE-092-COM
Duplication of Service for 34.5kV)
Delivery to the City of Kingman.)

NOTICE OF FILING OF LEGAL MEMORANDUM

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) files the attached Legal Memorandum and states as follows:

1. Staff hereby files the attached Legal Memorandum. The Memorandum evaluates the Complaint filed by Southern Pioneer Electric Company (Southern Pioneer) on September 8, 2016, against the Kansas Power Pool (KPP) for compliance with the Commission's procedural regulations. As a result of this evaluation, Staff recommends the Commission find Southern Pioneer's Complaint complies with the procedural requirements set forth in K.A.R. 82-1-220 and should be served upon KPP for an Answer.

WHEREFORE Staff submits its Legal Memorandum for Commission review and consideration and for such other relief as the Commission deems just and proper.

Respectfully submitted,



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**MEMORANDUM
LEGAL DIVISION**

TO: Chairman Jay Scott Emler
Commissioner Shari Feist Albrecht
Commissioner Pat Apple

FROM: Andrew French, Senior Litigation Counsel

DATE: September 23, 2016

SUBJECT: 17-KPPE-092-COM
In the Matter of the Complaint of Southern Pioneer Electric Company
against the Kansas Power Pool Regarding Bypass and Duplication of
Service for 34.5kV Delivery to the City of Kingman.

EXECUTIVE SUMMARY:

On September 8, 2016, Southern Pioneer Electric Company (Southern Pioneer) filed a Complaint against the Kansas Power Pool (KPP), pursuant to K.A.R. 82-1-220.¹ In its Complaint, Southern Pioneer alleges that KPP is “attempting to by-pass Southern Pioneer’s facilities in a manner contrary to the public interest and that such by-pass will create a duplication of facilities and will unduly burden the customers of Southern Pioneer...”² Legal Staff recommends the Commission accept Southern Pioneer’s Complaint and serve the Complaint on KPP for an Answer.

BACKGROUND:

On September 8, 2016, Southern Pioneer filed a Formal Complaint against KPP. In its Complaint, Southern Pioneer explains that KPP currently takes “local access delivery service” (LADS) over Southern Pioneer’s 34.5 kV facilities.³ The Commission has deemed this service to be “transmission service” under Kansas law (the 34.5 kV facilities are sometimes referred to as “sub-transmission facilities”).⁴ Southern Pioneer explains in its Complaint that this service is provided pursuant to the Open Access Transmission Tariff (OATT) of Mid-Kansas Electric Company, LLC (MKEC), which administers the

¹ Complaint of Southern Pioneer Electric Company against the Kansas Power Pool, September 9, 2016. (Complaint.)

² Complaint, p. 1.

³ Complaint, ¶ 8.

⁴ Docket No. 11-GIME-597-GIE, Order Addressing Joint Motion to Approve Stipulation and Agreement, January 11, 2012, ¶¶ 22, 35, 42-43.

LADS service.⁵ Furthermore, several settlements between Southern Pioneer, KPP, and Mid-Kansas have resulted in special contract rates and terms.⁶

While KPP currently takes LADS service, Southern Pioneer alleges that KPP plans to construct its own 34.5 kV facilities adjacent to Southern Pioneer's facilities to directly connect to the Mid-Kansas transmission system. This action would result in a by-pass of Southern Pioneer's 34.5 kV "sub-transmission" system and LADS service for delivery of power to the City of Kingman.⁷

Southern Pioneer alleges that the bypass of its 34.5 kV line through construction of an adjacent facility will result in a wasteful duplication of electric facilities, economic waste, and higher electric rates for Southern Pioneer's retail and wholesale LADS customers. Therefore, Southern Pioneer asks the Commission to prevent KPP from constructing the facilities. In the alternative, Southern Pioneer requests to charge KPP a facility switching fee.

ANALYSIS:

Upon the filing of a formal complaint, the Commission must determine "whether or not the allegations, if true, would establish a [prima] facie case for action by the commission and whether or not the formal complaint conforms to [the Commission's] regulations."⁸ If the Commission determines these conditions are satisfied, the Complaint is served on the subject utility for an Answer.

K.A.R. 82-1-220(b) requires formal complaints to satisfy three procedural requirements:

- (1) Fully and completely advise each respondent and the commission as to the provisions of law or the regulations or orders of the commission that have been or are being violated by the acts or omissions complained of, or that will be violated by a continuance of acts or omissions;
- (2) set forth concisely and in plain language the facts claimed by the complainant to constitute the violations; and
- (3) state the relief sought by the complainant.

In support of its argument that KPP should be enjoined from constructing allegedly duplicative and wasteful facilities, Southern Pioneer cites Kansas statutes, Commission policy, relevant case law, and existing agreements between itself and KPP.⁹ Therefore, the Complaint fully and completely advises the respondent and the Commission as to the

⁵ Complaint, ¶ 6.

⁶ Complaint, ¶¶ 9-15.

⁷ Complaint, ¶¶ 28-32.

⁸ K.A.R. 82-1-220(c).

⁹ Complaint, ¶¶ 32-52.

provisions of law that have been allegedly violated in compliance with procedural requirement (1).

Southern Pioneer's Complaint also plainly describes the circumstances giving rise to its Complaint.¹⁰ Therefore, the Complaint complies with procedural requirement (2) above.

Finally, the Complaint seeks specific relief. As noted above, Southern Pioneer asks the Commission to enjoin KPP from constructing the facilities.¹¹ In the alternative, Southern Pioneer requests to charge KPP a facility switching fee.¹² Therefore, the Complaint states the relief sought in compliance with procedural requirement (3).

The Commission has jurisdiction over both KPP and Southern Pioneer. KPP is a municipal energy agency, created pursuant to K.S.A. 12-885. Under that statute, KPP is authorized to plan, study, and develop supply, transmission, and distribution facilities and to transmit energy for distribution through the distribution systems of its member cities. By statute, KPP is not required to obtain a certificate from the Commission pursuant to K.S.A. 66-131.¹³ However, it is otherwise subject the Commission's jurisdiction in the same manner as any other public utility.¹⁴ Southern Pioneer is a certificated electric public utility providing both retail and transmission service.¹⁵

The Commission has been given full power, authority, and jurisdiction to supervise and control the electric public utilities doing business in Kansas.¹⁶ The Commission is also charged with ensuring the provision of efficient and sufficient service at just and reasonable rates.¹⁷ Furthermore, the Commission's powers are to be liberally construed, and the Commission is expressly granted all incidental powers necessary to carry into effect the provisions of the public utility statutes.¹⁸ Finally, the rates and services of all public utilities, including Southern Pioneer and KPP, must be approved by the Commission.¹⁹

Southern Pioneer's Complaint implicates the Commission's broad powers by invoking the concepts of inefficient service and unjust and unreasonable rates resulting from an alleged duplication of electric facilities. Furthermore, the ability to hear and decide disputes between Kansas public utilities related to jurisdictional issues is an incidental power necessary to carry into effect the provisions of Kansas public utility statutes. Therefore, Staff recommends the Commission find that Southern Pioneer's allegations present a jurisdictional *prima facie* case for Commission action.

¹⁰ Complaint, pp. 1-16.

¹¹ Complaint, pp. 38-39.

¹² Complaint, p. 39.

¹³ K.S.A. 12-8,111(a).

¹⁴ K.S.A. 12-8,111(b).

¹⁵ Docket No. 13-MKEE-447-MIS, Southern Pioneer Electric Company Certificate and Order, November 21, 2013.

¹⁶ K.S.A. 66-101.

¹⁷ K.S.A. 66-101b.

¹⁸ K.S.A. 66-101g.

¹⁹ K.S.A. 66-117.

This memorandum makes no recommendation regarding the validity or truthfulness of the Southern Pioneer's claims. While the Commission may have *jurisdiction* to grant the relief sought by Southern Pioneer, this memorandum makes no recommendation on the merits of the Complaint.

RECOMMENDATION:

Legal Staff recommends the Commission find:

- The Formal Complaint complies with the procedural requirements of K.A.R. 82-1-220;
- The Formal Complaint establishes a *prima facie* case for Commission action; and
- Pursuant to K.A.R. 82-1-220(c), the Formal Complaint should be served upon the Kansas Power Pool for an Answer.

CERTIFICATE OF SERVICE

17-KPPE-092-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing docket was served via electronic service this 23rd day of September, 2016, to the following:

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