

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

Before Commissioners: Dwight D. Keen, Chair
 Susan K. Duffy
 Andrew J. French

In the Matter of the Investigation into Southern)
Pioneer Electric Company Regarding the February) Docket No. 21-SPEE-331-GIE
2021 Winter Weather Events, as Contemplated by)
Docket No. 21-GIMX-303 MIS.)

ORDER GRANTING JOINT MOTION

This matter comes before the State Corporation Commission of the State of Kansas (“Commission”). Having examined its files and records, the Commission finds:

1. From February 7, 2021, through February 19, 2021, Kansas experienced extreme weather events resulting in severe prolonged sub-zero temperatures across the State.

2. On February 15, 2021, the Commission issued an Emergency Order relating to the stress on utility and natural gas providers caused by the sub-zero temperatures, which were causing increased energy demand and natural gas supply constraints throughout Kansas and wholesale natural gas prices to increases from 10 to 100 times higher than normal (“Winter Event”).¹ Since Kansas utilities were facing potential reliability issues related to the prolonged arctic temperatures the Commission announced its intention to exercise its emergency powers pursuant to K.S.A. 77-536(a).² The Commission directed all jurisdictional natural gas and electric utilities to coordinate efforts and take all reasonably feasible, lawful, and appropriate actions to ensure adequate transportation and electricity to interconnected, non-jurisdictional Kansas utilities.³ Utilities were ordered to do everything necessary to ensure natural gas service continued to be provided to their

¹ Emergency Order, Docket No. 21-GIMX-303-MIS, In the Matter of Record Natural Gas Prices and Potential System Reliability Issues from Unprecedented and Sustained Cold Weather, pg.1 (February 15, 2021).

² *Id.* at 1-2.

³ *Id.* at 3.

customers in Kansas.⁴ The Commission authorized every electric and natural gas utility to defer extraordinary costs relating to the Winter Event to a regulatory asset account.⁵

3. On March 9, 2021, the Commission issued an order in Docket No. 21-GIMX-303-MIS adopting Commission Staff's ("Staff") recommendation to open company-specific dockets to document issues raised in the Commission's investigation into each major jurisdictional utility's performance during the February 2021 winter weather event.

4. On March 10, 2021, Southern Pioneer Electric Company ("Southern Pioneer") filed its Application and Request for an Expedited Interim Order.⁶ Southern Pioneer set forth its plan ("Financial Plan") to recover the regulatory asset in rates that would minimize the impact on Southern Pioneer's customers. The Financial Plan was described in the supporting testimony of Chantry Scott, CFO and Vice President of Finance and Accounting for Southern Pioneer, which was filed simultaneously with the Application and would allow Southern Pioneer to attribute individualized costs to each customer based on their usage in February 2021, which would be collected over a 36 month period.⁷ Southern Pioneer also requested the Commission issue an Expedited Interim Order within ten days approving special provisions for customers disconnecting from service prior to the Commission's issuance of a final order in the docket.⁸

5. On March 15, 2021, Staff filed its Response to Southern Pioneer's Request for an Interim Order, supporting the request with specific instructions regarding customers who disconnect service from Southern Pioneer's system prior to a final order on the merits of the Application.⁹

⁴ *Id.*

⁵ *id.* at 2.

⁶ Application and Request for Expedited Interim Order (Mar. 10, 2021).

⁷ *Id.*, pgs. 9, 10.

⁸ *Id.*, at 12.

⁹ Staff's Response to Southern Pioneer's Request for an Interim Order, ¶3 (Mar. 15, 2021).

6. On March 30, 2021, Southern Pioneer filed a Clarification to Application to clarify that the extraordinary costs included in their regulatory asset include those costs incurred for customers taking service under the Sub-Transmission and Transmission level tariff.¹⁰

7. The Citizens' Utility Ratepayer Board ("CURB"),¹¹ National Beef Packing Company, LLC ("National Beef"),¹² and Western Kansas Industrial Energy Customers ("WKIEC")¹³ were all granted intervention in this docket.

8. On June 11, 2021, Southern Pioneer filed a Supplement and Amendment to Application ("Supplement and Amendment"). In the Supplement and Amendment, Southern Pioneer stated that approximately \$400,000 of the \$17,000,000 in the regulatory asset related to the Winter Event cannot be attributed to individual customers, instead it is attributed to line loss, company use and storm related costs attributed to customer accounts that are no longer active. This \$400,000 would instead be recovered through the Energy Cost Adjustment ("ECA") tariff.¹⁴ Southern Pioneer also amended its original plan to recover carrying costs through its annual Formula Based Rate compliance filing. Instead each customer would pay the carrying costs on their individual balance of Winter Event costs.¹⁵ Additionally, Southern Pioneer requested an amendment to its application which provides that if a customer's Winter Event balance was \$5.00 or less, it would be collected all at once as opposed to over the 36 month period.¹⁶

¹⁰ Southern Pioneer Clarification to Application (March 30, 2021).

¹¹ Docket No.21-GIMX-303-MIS Order Adopting Staff's Report and Recommendation to open company-specific investigations; Order on Petitions to Intervene of BlueMark Energy, LLC and CURB; Protective and Discovery Order, filed in docket 21-SPEE-331-GIE (March 9, 2021).

¹² Order Granting Intervention to National Beef Packaging Company, LLC (March 3, 2021).

¹³ Order Granting Intervention to WKIEC (April 29, 2021).

¹⁴ Southern Pioneer Supplement and Amendment to Application, pgs. 1-2 (June 11, 2021).

¹⁵ Southern Pioneer Supplement and Amendment to Application, pg. 3 (June 11, 2021).

¹⁶ Southern Pioneer Supplement and Amendment to Application, pg. 3 (June 11, 2021).

9. On December 20, 2021, Staff filed its Report and Recommendation (“R&R”). Staff calculated that with the Financial Plan, the average residential customer’s Winter Event charge would be \$7.89/month.¹⁷ Staff found that Southern Pioneer’s costs were reasonable, necessary and prudently incurred and recommended that the Commission approve the Financial Plan.¹⁸ Staff suggested that if there is any revision to the Winter Event costs due to government relief or civil suits; that those revisions flow to the customers through either the ECA or be spread out over 36 months, depending on whether the revisions were less than 10% of the original balance.¹⁹

10. On December 30, 2021, CURB filed a response to Staff’s R&R. CURB supported Southern Pioneer’s Financial Plan as modified by Staff. Additionally, CURB encouraged Southern Pioneer to establish a process to receive questions and disputes to each customer’s Winter Event balance.²⁰

11. Southern Pioneer did not file a response to Staff’s R&R as Southern Pioneer had no objection to Staff’s recommended modifications or CURB’s comments.²¹

12. On February 9, 2022, Southern Pioneer, Staff, CURB, National Beef and WKIEC filed a Joint Motion for a Final Order (“Joint Motion”). The Joint Motion requests the Commission issue a Final Order approving Southern Pioneer’s Financial Plan as filed, with the modifications proposed by Staff and CURB. The Joint Motion also requests that that the carrying charges be reduced from 2.889% to 2.14%.²²

¹⁷ Staff Report and Recommendation, pg. 15 (December 20, 2021).

¹⁸ Staff Report and Recommendation, pg. 16 (December 20, 2021).

¹⁹ Staff Report and Recommendation pg. 16 (December 20, 2021).

²⁰ CURB’s response to Staff’s Report and Recommendation, pgs. 7-8 (December 30, 2021).

²¹ Joint Motion for a Final Order, pg. 2 (February 9, 2022).

²² Joint Motion for a Final Order, pg. 2 (February 9, 2022).

13. Also on February 9, 2022, Chantry Scott filed supplemental direct testimony on behalf of Southern Pioneer. Scott explained that although Southern Pioneer's interest cost is 2.14%, the carrying cost of 2.889% was originally requested to maintain the minimum debt coverage ratio of 1.35 required by its lender CoBank.²³ Southern Pioneer has agreed to reduce the requested carrying charges for customer's Winter Event balances to 2.14%.²⁴

14. On February 11, 2022, the Commission held an evidentiary hearing via Zoom and heard testimony in support of the Joint Motion from Chantry Scott representing Southern Pioneer, Patrick Orr representing CURB and Justin Grady representing Staff.

15. Kansas favors compromising and settling disputes when the agreement is entered into intelligently and in good faith.²⁵ In this circumstance, the Joint Motion is the functional equivalent of a settlement agreement, and will be evaluated as such.

16. Because the agreement is unanimous, it will be evaluated using the Commission's three part test which determines whether the settlement: (1) is supported by substantial competent evidence in the record as a whole, (2) will establish just and reasonable rates, and (3) is in the public interest.²⁶

THE AGREEMENT IS SUPPORTED BY SUBSTANTIAL AND COMPETENT EVIDENCE IN THE RECORD AS A WHOLE

17. All items agreed to and included within the Joint Motion are supported by substantial competent evidence in the record as a whole. Southern Pioneer's Financial Plan was supported by Staff's R&R with only minor modifications by CURB.

²³ Supplemental Direct Testimony of Chantry C. Scott, pgs. 2-3 (February 9, 2022).

²⁴ Supplemental Direct Testimony of Chantry C. Scott, pg. 2 (February 9, 2022).

²⁵ See *Bright v. LSI Corp.*, 254 Kan. 853, 858 (1994) (citing cases).

²⁶ See, Docket 21-BHCG-418-RTS, Order Approving Unanimous Settlement Agreement, pgs. 6-7 (December 30, 2021).

18. At the hearing, Patrick Orr testified that Southern Pioneer acted prudently and recommended on behalf of CURB that the Commission approve Southern Pioneer's Financial Plan.²⁷ Justin Grady testified that his recommendation to adopt the Financial Plan came only after he assessed Southern Pioneer's activities in excruciating detail.²⁸

19. Substantial competent evidence possesses something of substance and relevant consequence, which furnishes a substantial basis of fact to reasonably resolve the issues.²⁹ Whether another trier of fact could have reached a different conclusion given the same facts is irrelevant; a Commission decision lacks substantial competent evidence when the Commission's determination "is so wide of the mark as to be outside the realm of fair debate."³⁰

20. Having reviewed the record as a whole, the Commission finds the Settlement Agreement is supported by substantial competent evidence.

THE AGREEMENT WILL RESULT IN JUST AND REASONABLE RATES

21. The Joint Motion will allow customers to pay their individual costs for the Winter Event at a lower carrying cost that was originally requested by Southern Pioneer and approved by Staff.

22. While nobody welcomes higher bills, Southern Pioneer's plan ensures that customer will only pay their portion of the Winter Event costs and allows customers the flexibility to pay that balance all at once and avoid carrying costs or to spread the payments over a 36 month period. At the hearing, Chantry Scott acknowledged that although an average monthly increase of \$7.89 was

²⁷ Tr. pg. 37.

²⁸ Tr. pgs. 44,45.

²⁹ *Farmland Indus., Inc. v. Kansas Corp. Comm'n.*, 25 Kan.App.2d 849, 852 (1999).

³⁰ *Id.* at 851, 856.

more than what would normally be seen in an annual filing, it was “tolerable”.³¹ Patrick Orr testified that the costs passed on to customers under the Financial Plan would result in rates that are reasonable and fair.³² Justin Grady testified that the reduction in carrying charges found in the Joint Motion would reduce the amount that customers will have to pay for their portion of the bill.³³

23. The financial plan recognizes Southern Pioneer should be allowed to recover reasonable and prudent costs of providing gas service, even when such costs may be extraordinary. However, the Agreement also protects customers by spreading out the time for payment and reducing carrying costs. Therefore, the Commission finds the Agreement will result in just and reasonable rates.

THE AGREEMENT IS IN THE PUBLIC INTEREST

24. The Commission notes that each party has a duty to protect the interests it represents. Southern Pioneer has a duty to its customers. CURB represents the interests of residential and small commercial customers. WKIEC represents the interests of its members. National Beef is one of Southern Pioneer’s largest customers.³⁴ Staff represents the public interest generally, placing Staff in the unique position of being required to weigh and balance the interests of Southern Pioneer’s customers, and any other interests impacted by the Commission’s Order that may not be party to the proceeding.

³¹ Tr. pgs. 31, 32.

³² Tr. pgs. 39-40.

³³ Tr. pg. 47.

³⁴ National Beef Packaging Company, LLC’s Petition to Intervene, pg. 2 (March 16, 2021).

25. Justin Grady testified that the public interest is served when the Commission evaluates whether a utility's actions were prudent, reasonable, economic and done with the goal of continuing to provide service; and that Southern Pioneer's actions met that criteria.³⁵

26. The Commission agrees with Mr. Grady and finds that the Joint Motion is in the public interest because it allows Southern Pioneer's customers to pay their portion of the Winter Event costs over a reasonable amount of time in a flexible manner while paying a reduced carrying charge.

27. Based on the above, the Commission finds that Southern Pioneer's plan as amended and modified by Staff and CURB, is supported by substantial competent evidence in the record as a whole, results in just and reasonable rates, and is in the public interest. The Commission approves the Financial Plan.

THEREFORE, THE COMMISSION ORDERS:

- A. The Joint Motion for a Final Order is granted.
- B. Southern Pioneer's Financial Plan as filed with the modifications proposed by Staff and CURB and found in paragraph 7 of the Joint Motion is approved.
- C. Any party may file for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).³⁶

³⁵ Tr. pg. 53.

³⁶ K.S.A. 77-529(a)(1).

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Duffy, Commissioner; French Commissioner.

Dated: 03/017/2022.

Lynn M. Retz

Lynn M. Retz
Executive Director

DGC

CERTIFICATE OF SERVICE

21-SPEE-331-GIE

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
03/17/2022
electronic service on _____.

JOSEPH R. ASTRAB, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
j.astrab@curb.kansas.gov

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.nickel@curb.kansas.gov

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
s.rabb@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.smith@curb.kansas.gov

DAVID COHEN, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.cohen@kcc.ks.gov

CARLY MASENTHIN, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
c.masenthin@kcc.ks.gov

TERRI PEMBERTON, CHIEF LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
t.pemberton@kcc.ks.gov

GLENDA CAFER, ATTORNEY
MORRIS LAING EVANS BROCK & KENNEDY
800 SW JACKSON
SUITE 1310
TOPEKA, KS 66612-1216
gcafer@morrisolaing.com

BRET G. WILSON, VICE PRESIDENT AND GENERAL
COUNSEL
NATIONAL BEEF PACKING COMPANY
12200 N. Ambassador Dr.
Suite 500
Kansas City, MO 64195
bret.wilson@nationalbeef.com

CERTIFICATE OF SERVICE

21-SPEE-331-GIE

LARISSA BATTERTON, LEGAL EXECUTIVE ASSISTANT
PIONEER ELECTRIC COOP. ASSN., INC.
1850 W OKLAHOMA
PO BOX 368
ULYSSES, KS 67880-0368
lbatterton@pioneerelectric.coop

ANNE E. CALLENBACH, ATTORNEY
POL SINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
acallenbach@polsinelli.com

FRANK A. CARO, JR., ATTORNEY
POL SINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
fcaro@polsinelli.com

CONNOR A. THOMPSON
SMITHYMAN & ZAKOURA, CHTD.
7421 WEST 129th STREET
OVERLAND PARK, KS 66213-2634
connor@smizak-law.com

JAMES P. ZAKOURA, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7421 WEST 129th STREET
OVERLAND PARK, KS 66213-2634
jim@smizak-law.com

LINDSAY CAMPBELL, EXECUTIVE VP - GENERAL
COUNSEL
SOUTHERN PIONEER ELECTRIC COMPANY
1850 W OKLAHOMA
PO BOX 430
ULYSSES, KS 67880-0368
lcampbell@pioneerelectric.coop

STEPHEN J. EPPERSON, PRESIDENT AND CHIEF
EXECUTIVE OFFICER
SOUTHERN PIONEER ELECTRIC COMPANY
1850 W OKLAHOMA
PO BOX 430
ULYSSES, KS 67880-0368
sepperson@pioneerelectric.coop

CHANTRY SCOTT, CFO, VP OF FINANCE AND
ACCOUNTING
SOUTHERN PIONEER ELECTRIC COMPANY
1850 WEST OKLAHOMA
PO BOX 403
ULYSSES, KS 67880
cscott@pioneerelectric.coop

/s/ DeeAnn Shupe
DeeAnn Shupe
