

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION OF]
MID-KANSAS ELECTRIC COMPANY, LLC FOR]
APPROVAL OF A DEBT SERVICE COVERAGE]
FORMULA-BASED RATEMAKING PILOT PLAN]
FOR THE GEOGRAPHIC TERRITORY SERVED]
BY ITS MEMBER-OWNER SOUTHERN PIONEER]
ELECTRIC COMPANY.]

KCC Docket No. 13-MKEE-452-MIS

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TESTIMONY IN OPPOSITION TO SETTLEMENT

ANDREA C. CRANE

ON BEHALF OF

THE CITIZENS' UTILITY RATEPAYER BOARD

July 8, 2013

1 **A. Introduction**

2 **Q. Please state your name and business address.**

3 A. My name is Andrea C. Crane and my business address is 90 Grove Street, Suite 211,
4 Ridgefield, Connecticut 06877. (Mailing Address: PO Box 810, Georgetown,
5 Connecticut 06829)

6

7 **Q. Did you previously file testimony in this proceeding?**

8 A. Yes, on May 1, 2013, I filed testimony on behalf of the Citizens' Utility Ratepayer Board
9 ("CURB") recommending that the State of Kansas Corporation Commission ("KCC" or
10 "Commission") deny the Application filed on January 8, 2013, by Mid-Kansas Electric
11 Company ("MKEC") seeking approval of a Debt Service Coverage Formula-Based
12 Ratemaking ("DSC-FBR") Plan ("DSC-FBR Plan," the "Plan") for the geographic
13 territory served by its Member-owner, Southern Pioneer Electric Company ("Southern
14 Pioneer" or "Company"). In the alternative, I recommended that if, in spite of my
15 primary recommendation, the KCC adopts a ratemaking plan for Southern Pioneer, then
16 the KCC should make several changes to the DSC-FBR Plan as proposed by the
17 Company. Specifically, I recommended that if the KCC adopts a DSC-FBR Plan, then
18 annual increases under the Plan should be limited to incremental debt service costs,
19 adjusted to reflect a DSC ratio of 1.40. In addition, I recommended that the KCC require
20 the Company to file an annual report that quantifies incremental debt, details the
21 associated repayment schedule, and identifies the specific uses for any incremental debt.

22 On May 10, 2013, I filed Cross Answering Testimony in response to Direct
23 Testimony filed by KCC Staff witness Justin Grady and Western Kansas Industrial

1 Energy Consumers' ("WKIEC") witness Jeffrey Pollack. In my Cross Answering
2 Testimony, I stated that if the KCC decided to adopt a ratemaking plan for Southern
3 Pioneer, then it should adopt many of the changes recommended by Mr. Grady.
4 However, I noted that the DSC ratios proposed by Staff were excessive, and should not
5 be adopted unless the KCC limited recovery of debt service to actual costs incurred in the
6 Test Year. I also opposed Staff's recommendation that the Commission exclude Local
7 Access Charge ("LAC") rates from any ratemaking plan adopted by the KCC.

8
9 **Q. What is the purpose of your Testimony in Opposition to Settlement?**

10 A. The purpose of my testimony is to explain CURB's objections to the Stipulation and
11 Agreement ("S&A") that has been filed by certain parties in this case, and to recommend
12 that the KCC reject the proposed S&A.

13
14 **B. Background of the Case**

15 **Q. Please briefly summarize the filed positions of the parties in this case.**

16 A. The DSC-FBR Plan as proposed by Southern Pioneer would allow for the annual
17 adjustment of retail rates based upon the establishment of a ratemaking formula that is
18 tied to the Company's annual DSC ratio. Pursuant to the Company's proposal, the annual
19 revenue increase could not exceed 10% without the filing of a general rate proceeding.
20 The Company proposed an accelerated three-month procedural schedule that would
21 hinder the effective participation of parties other than Staff. The Company proposed that
22 the KCC approve the DSC-FBR Plan for an initial term of five years. Southern Pioneer
23 proposed basing the annual increases on a pro forma DSC calculation using a template

1 that would be populated in each Annual Filing, with several pro forma adjustments that
2 include the use of prospective debt service costs. The Company proposed to set the target
3 DSC ratio at 1.60 in the first year and at 1.8 each year afterward, with a DSC floor of 1.6
4 and a DSC ceiling of 2.0.

5 In its Direct Testimony, Staff proposed a DSC target ratio of 1.75, a DSC floor of
6 1.6, and a DSC ceiling of 1.80. MKIEC filed Direct Testimony opposing the DSC-FBR
7 Plan but did not recommend specific DSC ratios in the event that a ratemaking plan was
8 adopted by the KCC.

9
10 **C. Discussion of the Stipulation and Agreement**

11 **Q. Since your Direct Testimony was filed, have the parties engaged in settlement**
12 **discussions?**

13 A. Yes, the parties have engaged in subsequent settlement discussions. As a result, the
14 Company, Staff, and WKIEC entered into an S&A to resolve the issues in this case.
15 CURB is not a party to the S&A and is opposed to the S&A, for the reasons specified in
16 this testimony. Kansas Electric Power Cooperative, Inc. ("KEPCo") did not sign the
17 S&A but has indicated that it will not oppose the agreement.

18
19 **Q. Can you please summarize the terms of the S&A?**

20 A. The S&A provides for adoption of a five-year pilot DSC-FBR Plan. Annual rate
21 increases would be based on a DSC ratio of 1.75 and would be limited to 10% of total
22 revenue calculated on a system-wide basis. Rates would be determined pursuant to a 90-
23 day review period unless Staff and interveners file testimony opposing the increase, in
24 which case the review period can be extended an additional 30 days. The Plan would

1 apply only to retail distribution rates and not to the LAC, although the LAC allocators
2 will be updated in each filing.

3
4 **Q. What are your primary concerns regarding the S&A?**

5 A. My primary concern is that the DSC ratio of 1.75 is too high, especially since the annual
6 rate increases will be based on projected debt service levels. Moreover, as stated in our
7 Cross Answering testimony, CURB continues to recommend that any ratemaking plan
8 approved by the KCC apply to all MKEC rates that are under the KCC's jurisdiction,
9 including the LAC.

10
11 **D. Standards of Review**

12 **Q. Are you familiar with the standards used by the KCC to evaluate a settlement that**
13 **is proposed to the Commission?**

14 A. Yes, I am. The KCC has adopted five guidelines for use in evaluating settlement
15 agreements. These include: (1) Has each party had an opportunity to be heard on its
16 reasons for opposing the settlement? (2) Is the agreement supported by substantial
17 evidence in the record as a whole? (3) Does the agreement conform to applicable law? (4)
18 Will the agreement result in just and reasonable rates? (5) Are the results of the
19 agreement in the public interest, including the interests of customers represented by any
20 party not consenting to the agreement? Since I am not an attorney, I will not address item
21 3, i.e., does the agreement conform to applicable law? However, I will discuss the
22 remaining four guidelines.

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Q. Has each party had an opportunity to be heard on its reasons for opposing the settlement?

A. Yes, they have. As noted by Staff, the Company, and WKIEC in their Testimony in Support of the S&A, CURB participated in the settlement discussions. Moreover, I have the opportunity to file this testimony in opposition and to appear at the hearings before the KCC to address CURB’s opposition. Therefore, I believe that each party has had an opportunity to be heard on its reasons for opposing the settlement.

Q. Is the agreement supported by substantial evidence in the record as a whole?

A. No, it is not. The DSC-FBR Plan includes a DSC ratio of 1.75 as the floor, target, and ceiling. This ratio results in a DSC floor that is higher than the DSC floor recommended by any party in this case, including the Company. Both Southern Pioneer and Staff proposed a DSC floor of 1.60 and CURB proposed a DSC floor of 1.40. Therefore, there is no evidence supporting a DSC floor ratio that is higher than 1.60.

Moreover, there is no basis for the adoption of a DSC target ratio of 1.75. As noted in my Cross Answering Testimony, Southern Pioneer’s Credit Agreement is based on a DSC requirement of 1.35, well below the DSC ratio reflected in the S&A. Since rates will be reset annually, and are being set based on projected levels of debt service, there is no need to provide the same “cushion” that one would apply under a more traditional ratemaking approach. The S&A would result in annual rate increases even if the Company was meeting its required DSC ratio of 1.35. In addition, even a DSC ratio of 1.35 includes an operating expense cushion of 35% of debt service costs, a cushion

1 that can be used by the Company for any purpose it chooses, including to increase its
2 equity or to recover costs incurred by the Company that are traditionally disallowed by
3 regulators, such as costs for lobbying and political activity, and 50% of charitable
4 contributions.

5
6 **Q. What does the S&A say with regard to these types of costs?**

7 A. The S&A provides that Southern Pioneer will file a “detailed accounting, by account, of
8 all dues, donations, charitable contributions, promotional advertising, penalties and fines,
9 and entertainment expenses incurred during the Test Year.” However, the S&A does not
10 specifically state that these costs will be excluded from rates, as is the usual practice in
11 Kansas.

12
13 **Q. Has the Company admitted that it would be able to meet its equity requirements
14 with a DSC-FBR Plan based on lower DSC ratios?**

15 A. Yes, it has. As shown in the response to KCC-5¹, the Company would meet the required
16 equity targets required pursuant to the Credit Agreement with a DSC floor of 1.40 and a
17 DSC target of 1.60. In fact, that response indicates that the equity requirements would be
18 exceeded if those ratios were adopted. Accordingly, even if the KCC adopts the DSC-
19 FBR Plan, and even if it rejects the 1.40 target that I recommend, there is still no basis for
20 establishing a target that exceeds 1.60.

21
22 **Q. Is the S&A inconsistent with the KCC’s ruling that it will regulate Southern Pioneer
23 “in the same manner it does all other C-corporations it regulates”?**

¹ The response to KCC-5 was attached to my Cross Answering Testimony.

1 A. Yes, it is. As noted in my Direct Testimony, in Docket No. 12-MKKEE-380-RTS, the
2 KCC stated that if the Company retained its current organizational structure as a C-
3 corporation, then it would analyze future applications in the same manner as applications
4 made by other utilities that are C-corporations.² Adoption of a DSC-FBR Plan represents
5 a significant departure from the way that C-corporations have been regulated in Kansas.
6 Adoption of a DSC-FBR Plan as proposed in the S&A is inconsistent with the KCC's
7 stated intention and will invite other C-corporations to move for similar regulatory
8 flexibility, thereby weakening regulatory oversight in the State.

9
10 **Q. Will the agreement result in just and reasonable rates?**

11 A. No, it will not. Since the underlying DSC ratio is excessive, then the resulting rates will
12 not be just or reasonable. In addition, while the S&A caps an annual increase at 10%,
13 that 10% cap is not limited to non-fuel distribution rates. Thus, the non-fuel component
14 of rates could increase by as much as 40%³, based solely on a limited and expedited
15 review by the KCC.

16 Moreover, if the LAC is excluded from the DSC-FBR Plan, as proposed in the
17 S&A, the Company will have a greater incentive to implement rate increases through the
18 formulaic DSC-FBR Plan than through the ratemaking process used to increase the LAC.
19 The Plan proposed in the S&A does require the Company to update the LAC allocators
20 annually; this is a significant improvement over the Company's initial proposal, which
21 proposed to utilize the allocators approved in the 380 Docket for filings made during the
22 five-year pilot period. However, if the Company has two possible sources of revenues,

² Order in KCC Docket 12-MKKEE-380-RTS.

³ As shown in Exhibit A, Attachment 2, page 1 of the S&A, approximately 75% of the electric cost of service relates to purchased power costs.

1 one of which is easily implemented and one of which is not, then it only makes sense to
2 assume that it will take the path of least resistance and pursue retail increases more
3 readily than increases requiring a full regulatory review. The end result is a possible
4 subsidization of LAC costs by retail rates, even with the annual updates to the allocation
5 factors now envisioned by the proposed S&A.

6
7 **Q. Are the results of the agreement in the public interest, including the interests of**
8 **customers represented by any party not consenting to the agreement?**

9 A. No, the results of this agreement are not in the public interest, since the S&A will result
10 in annual rate increases of up to 40%. Surely, increases of this magnitude and frequency
11 will negatively impact the customers as well as the small southwestern Kansas
12 communities and rural areas in which they live. Moreover, these rate increases will be
13 based on an expedited review which, by definition, will be limited in scope, and will be
14 based on excessive DSC ratios.

15 Perhaps more importantly, approving the S&A will set a dangerous precedent for
16 other investor-owned utilities to argue that a) they too should be subject to a
17 performance-based ratemaking plan and b) that they should be permitted to recover
18 certain costs that are traditionally excluded from utility rates. These outcomes will
19 weaken regulatory oversight. Neither of these outcomes is in the public interest.

20
21 **Q. What do you recommend?**

22 A. I recommend that the KCC find that the S&A is not based on sufficient evidence, will not
23 result in just and reasonable rates, and is not in the public interest. Accordingly, I
24 recommend that the KCC reject the S&A.

1

2 **Q. Does this conclude your testimony?**

3 **A. Yes, it does.**

VERIFICATION

STATE OF CONNECTICUT)

COUNTY OF FAIRFIELD)

ss: RIDGEFIELD

Andrea C. Crane, being duly sworn upon her oath, deposes and states that she is a consultant for the Citizens' Utility Ratepayer Board, that she has read and is familiar with the foregoing testimony, and that the statements made herein are true to the best of her knowledge, information and belief

Andrea C. Crane
Andrea C. Crane

Subscribed and sworn before me this 3RD day of July, 2013.

Notary Public Barbara C. Serfilippi

My Commission Expires: 5/31/15

BARBARA C. SERFILIPPI
NOTARY PUBLIC
MY COMMISSION EXPIRES MAY 31, 2015

CERTIFICATE OF SERVICE

13-MKEE-452-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 8th day of July, 2013, to the following parties who have waived receipt of follow-up hard copies:

RAY BERGMEIER, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
r.bergmeier@kcc.ks.gov

JUDY JENKINS, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
j.jenkins@kcc.ks.gov

BRIAN G. FEDOTIN, ADVISORY COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
b.fedotin@kcc.ks.gov

DON GULLEY, VP, Regulatory and Market Affairs
MID-KANSAS ELECTRIC COMPANY, LLC
301 WEST 13TH STREET
PO BOX 980
HAYS, KS 67601
dgulley@sunflower.net

RANDY MAGNISON
EXECUTIVE VICE PRESIDENT
SOUTHERN PIONEER ELECTRIC COMPANY
P.O. BOX 430
ULYSSES, KS 67880-0430
rmagnison@pioneerelectric.coop

MARK D. CALCARA, ATTORNEY
WATKINS CALCARA CHTD.
1321 MAIN STREET SUITE 300
PO DRAWER 1110
GREAT BEND, KS 67530
mcalcara@wcrf.com

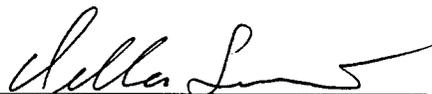
GLEND A CAFER, ATTORNEY
CAFER LAW OFFICE, L.L.C.
3321 SW 6TH STREET
TOPEKA, KS 66606
glenda@caferlaw.com

TERRI PEMBERTON, ATTORNEY
CAFER LAW OFFICE, L.L.C.
3321 SW 6TH STREET
TOPEKA, KS 66606
terri@caferlaw.com

CURTIS M. IRBY, ATTORNEY
GLAVES, IRBY AND RHOADS
155 N. MARKET, SUITE 1050
WICHITA, KS 67202
cmirby@sbcglobal.net

MARK DOLJAC, DIR RATES AND REGULATION
KANSAS ELECTRIC POWER CO-OP, INC.
600 SW CORPORATE VIEW (66615)
PO BOX 4877
TOPEKA, KS 66604-0877
mdoljac@kepco.org

WILLIAM G. RIGGINS, SR VICE PRES AND GENERAL COUNSEL
KANSAS ELECTRIC POWER CO-OP, INC.
600 SW CORPORATE VIEW (66615)
PO BOX 4877
TOPEKA, KS 66604-0877
briggins@kepco.org



Della Smith
Administrative Specialist