

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

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

PROTEST TO PROPOSED PLAN OF SOUTHERN PIONEER ELECTRIC COMPANY

COMES NOW, Western Kansas Industrial Energy Consumers (“WKIEC”) and respectfully protests Southern Pioneer Electric Company’s (“Southern Pioneer”) Request for an Interim Order. WKIEC respectfully requests the Commission endorse Southern Pioneer’s regulatory asset, grant Southern Pioneer’s requested waiver of its Energy Cost Adjustment, but deny the remaining portion of Southern Pioneer’s request at this time. In support thereof, WKIEC states the following:

I. CONDENSED PROCEDURAL BACKGROUND

1. In February 2021, Kansas experienced an extreme cold weather event that prompted Governor Kelly to issue a State of Disaster Emergency (“2021 Winter Weather Event”).¹ This event caused enormous spikes in the price for wholesale natural gas.²
2. To protect ratepayers, the Commission directed jurisdictional utilities to defer extraordinary costs related to the 2021 Winter Weather Event to a regulatory asset account.³ Thereafter, the Commission directed jurisdictional utilities to file compliance reports detailing the extent of costs incurred and present a plan to minimize the financial impact of the 2021 Winter Weather Event on ratepayers.⁴

¹ See Order Adopting Staff’s Report and Recommendation to Open Company-Specific Investigations, *et al.*, ¶1 (Mar. 9, 2021) (“Investigative Order”).

² See *id.*

³ See *id.* at ¶3.

⁴ See *id.* at ¶4.

3. The instant matter is Southern Pioneer’s company-specific compliance docket.

II. PROTEST

4. WKIEC appreciates the Commission and Southern Pioneer’s expeditious attention to addressing and mitigating the effects of the 2021 Winter Weather Event. However, Southern Pioneer’s Interim Application inadvertently sets the methodology allocating costs to customers. WKIEC respectfully requests the Commission deny portions of Southern Pioneer’s request until the ultimate ratepayer impact is known, and parties have been permitted to issue discovery.

A. Summary of Southern Pioneer’s Request

5. Southern Pioneer’s request consists of four key elements:
 - a. Create a regulatory asset to defer approximately \$17 million of extraordinary costs associated with the 2021 Winter Weather Event;⁵
 - b. Waive Southern Pioneer’s Energy Cost Adjustment (“ECA”) as necessary to effectuate future recovery of the regulatory asset;
 - c. Institute special provisions for customers who disconnect from Southern Pioneer before the Commission issues a final order approving Southern Pioneer’s plan (i.e., recovery of the regulatory asset); and
 - d. Authorize large industrial customers the option to pay their portion of the deferred regulatory asset (provided proper notice is given).⁶

B. Interim Application Deficient

6. The Commission is authorized to issue interim orders pursuant to K.S.A. 66-117, and the use of interim rates and terms is a matter of Commission discretion.⁷ However, those orders must be supported by substantial, competent evidence.⁸ The decision to issue an interim

⁵ The use of regulatory asset accounts was authorized in the 21-303 Emergency Order. Therefore, Southern Pioneer does not need to separately request approval for use of this particular regulatory asset. Still, since this docket utilizes the regulatory asset it should be considered an integral part of Southern Pioneer’s Request.

⁶ See Application and Request for an Expedited Interim Order, pp. 8 – 11 (Mar. 10, 2021) (Application).

⁷ See *Kansas-Nebraska Nat. Gas Co. v. State Corp. Comm’n*, 217 Kan. 604, 612, 538 P.2d 702, 709 (1975).

⁸ See *Kansas City Power & Light Co. v. State Corp. Comm’n of State*, 52 Kan. App. 2d 514, 519, 371 P.3d 923, 927 (2016).

order should “ordinarily depend on whether irreparable harm would result to the utility by reason of a distinctive and sudden deficiency in revenue which is not subject to recovery.”⁹ Southern Pioneer’s request does not satisfy this standard.

7. Southern Pioneer relies on estimates – not concrete facts – as the basis for granting its request. The costs allocated from Sunflower Electric Power Corporation (“Sunflower”) to Southern Pioneer are estimates and these estimates are subject to change pending further market settlements and make-whole payments.¹⁰ Before the Commission can rule on interim or final rates, there must be a review of the extraordinary costs, how they were incurred, and how they will be recovered. Authorizing Southern Pioneer’s request before any investigation or analysis has been conducted places an unneeded sense of urgency on an unnecessarily accelerated request.

8. The Commission must review how physical curtailments of load from Southern Pioneer’s customers impacted the costs Southern Pioneer incurred, and whether these curtailments were borne equally throughout Southern Pioneer’s customer base. Likewise, the Commission must review whether the portion of costs billed to Southern Pioneer from Sunflower are reasonable.

C. No Irreparable Harm by Denying Southern Pioneer’s Request

9. The Commission’s Emergency Order issued in Docket No. 21-GIMX-303-GIE (“21-303 Emergency Order”) authorized Southern Pioneer to defer extraordinary costs associated with ensuring its customers continued to receive utility service to a regulatory asset account.¹¹ The 21-303 Emergency Order permits Southern Pioneer to use deferral accounting to capture the costs related to the 2021 Winter Weather Event. While the total amount of these costs has not been

⁹ Kansas-Nebraska Nat. Gas Co. v. State Corp. Comm’n, 217 Kan. 604, 614, 538 P.2d 702, 711 (1975).

¹⁰ See Application, ¶¶ 12, 19.

¹¹ Emergency Order, ¶3, Docket No. 21-GIMX-303-GIE (Feb. 15, 2021).

finalized, Southern Pioneer is clearly able to adequately silo such costs as necessary to comply with the Commission's Emergency Order. As such, a critical goal of the Commission's Emergency Order has been satisfied. Because Southern Pioneer has identified the initial extraordinary costs to place in the subject regulatory asset, no irreparable harm will fall on Southern Pioneer or its customers by denying approval of Southern Pioneer's request at this time.

D. Inconsistent Symmetry

10. Southern Pioneer requests the Commission quantify each customer's share of extraordinary weather costs based on their energy usage for the entire month of February 2021. However, these costs were only incurred for a brief time in February 2021. Allocating Southern Pioneer's regulatory asset using the entire month's energy usage may harm those customers who significantly cut load (or were curtailed by Southern Pioneer). These customers may have aided the system and lowered overall costs by dramatically cutting usage when wholesale electricity and natural gas prices were high. However, under Southern Pioneer's proposal, customers that curtailed load could be further disadvantaged by paying for costs based on usage that occurred outside of the energy emergency. Southern Pioneer's allocation of costs relies purely on energy consumption and does not adequately consider beneficial load shed that some members contributed.

E. Lock-In Cost Allocation

11. Approving Southern Pioneer's request locks customer classes into Southern Pioneer's proposed allocation methodology. Southern Pioneer's request allows a single large customer to pay "its full share of the obligation in its April bill."¹² Permitting a single customer to pay their "full obligation" establishes the methodology for determining every customer's

¹² Application, p. 8, n. 7 (Mar. 10, 2021).

obligation. How can one customer pay its “full obligation” if the manner in which costs are allocated has not been determined? The only way a customer can pay its “full obligation” is if the obligation is known. If the method for determining a single customer’s obligation is known, then the method for determining other customers’ obligations must be known as well. Waiving the ECA may be necessary to prevent 2021 Winter Weather Event costs from flowing to ratepayers immediately and in an unfair manner. Still, it should not also permit a single customer to pay their “full obligation” and lock other customers into any particular allocation methodology.

12. Likewise, the inequities referenced by Southern Pioneer are speculative at best. Southern Pioneer has presented no evidence any customers intend to disconnect from Southern Pioneer – to “avoid [their] responsibility” or otherwise.¹³ Even if they chose to disconnect, Southern Pioneer’s request would still require Southern Pioneer allocate costs to disconnecting customers. Like the single customer above, this would set a methodology for allocating costs to all customers.

13. Staff and CURB support Southern Pioneer’s proposal for disconnecting customers provided it be done “only on an interim, subject-to-refund basis.”¹⁴ As Staff asserted, granting Southern Pioneer’s request on a subject-to-refund basis provides flexibility if certain costs are later deemed imprudent, should be allocated differently, or are offset by emergency funding.¹⁵ WKIEC believes administration of Staff’s subject-to-refund proposal is unworkable. If a customer disconnects from Southern Pioneer’s system, who will be responsible for tracking where that customer goes? How will this (now disconnected customer) be billed or refunded? Staff’s proposal is customer-specific, but there is no procedure for following up with disconnected customers.

¹³ See *id.* at ¶22.

¹⁴ Staff’s Response to Southern Pioneer’s Request for an Interim Order, ¶3 (Mar. 15, 2021) (Staff’s Response); CURB’s Response to Southern Pioneer’s Request for an Interim Order, ¶4 (Mar. 16, 2021).

¹⁵ See Staff’s Response at ¶3.

III. CONCLUSION

14. WKIEC supports Southern Pioneer's use of Commission-authorized regulatory asset accounts to capture costs related to the 2021 Winter Weather Event. However, WKIEC has concerns approving Southern Pioneer's request will inadvertently lock in the methodology used to allocate the 2021 Winter Weather Event's costs to customers. Likewise, Staff's support for Southern Pioneer's request, based on utilizing a subject-to-refund approach, is unworkable given its customer-specific nature.

WHEREFORE, WKIEC respectfully requests and prays the Commission: (1) endorse Southern Pioneer's use of a regulatory asset account to capture costs related to the 2021 Winter Weather Event, (2) waive Southern Pioneer's February 2021 Energy Cost Adjustment to account for 2021 Winter Weather Event costs deferred to a regulatory asset, (3) defer any decision regarding how costs should be allocated, and (4) for any other relief the Commission deems just and reasonable.

Respectfully submitted,

/s/ James. P. Zakoura

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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

James P. Zakoura, being duly sworn upon his oath, deposes and states that he is the Attorney for Western Kansas Industrial Energy Consumers, that he has read and is familiar with the foregoing *Protest to Proposed Plan of Southern Pioneer Electric Company*, and the statements therein are true to the best of his knowledge, information, and belief.

James P. Zakoura

James P. Zakoura

SUBSCRIBED AND SWORN to before me this 17th day of March, 2021.



Nancy L. Carlson

Notary Public

My Appointment Expires:
August 31, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March 2021, the foregoing *Protest to Proposed Plan of Southern Pioneer Electric Company*, was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the service list as follows:

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