

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

In the Matter of the Application of Southern Pioneer)
Electric Company for Approval of a Regulatory Asset,)
Allocation and Implementation Plan for Recovery of) Docket No. 21-SPEE-331-GIE
Extraordinary Costs Incurred as a Result of Extreme)
Weather and Market Conditions Experienced During)
the Month of February 2021.)

**RESPONSE OF SOUTHERN PIONEER TO PETITION TO INTERVENE
AND TO PROTEST OF WKIEC**

COMES NOW Southern Pioneer Electric Company (“Southern Pioneer”) and responds as follows to the *Petition to Intervene of the Western Kansas Industrial Energy Consumers* filed on March 16, 2021 (“PTI”), and the *Protest to Proposed Plan of Southern Pioneer Electric Company* filed by Western Kansas Industrial Energy Consumers on March 17, 2021 (“Protest”).

I. RESPONSE TO PETITION TO INTERVENE

1. Western Kansas Industrial Energy Consumers (“WKIEC”) states that it is “a voluntary association of Western Kansas industrial consumers which represents the interest of these industrial consumers in utility proceedings.”¹ WKIEC has no legal interests in utility proceedings separate and apart from the industrial consumers it represents in a docket. Therefore, WKIEC’s statement in its PTI that, “*WKIEC* and its industrial consumer members have a substantial, direct financial interest in issues that may be addressed, considered, and determined by the Commission in this Docket”² is not accurate. WKIEC does not have an interest; only its members do.

¹ PTI, p. 1, ¶1.

² PTI, p. 2, ¶6 (emphasis added).

2. Furthermore, WKIEC is not authorized to represent the interests of industrial consumers generally. Unlike CURB who is statutorily empowered to represent a group of customers³, WKIEC has no such general authority. WKIEC can only represent the interests of a consumer who has acquiesced to such representation and has been identified on the record.⁴ If an industrial consumer in Southern Pioneer's territory is not named by WKIEC, then WKIEC should not be viewed as pursuing that customer's interests or wishes. WKIEC's participation should be weighed with this consideration in mind; WKIEC does not represent all industrial customers in Southern Pioneer's territory and its positions taken and arguments made are not necessarily supported by other customers and may even be in conflict with the positions and interests of other industrial customers.

3. Thus, WKIEC's interests in this docket, at this time, are limited to the interests of Air Products. If WKIEC is granted intervention, the intervention should be limited to representing only the interests of its identified members.

II. RESPONSE TO PROTEST

4. Southern Pioneer requests an expedited interim order be issued (1) approving special provisions for customers disconnecting service prior to issuance of a final order in the docket, and (2) allowing one large industrial customer to pay its share of the extraordinary expenses in its April bill instead of through allocation of the regulatory asset.⁵ WKIEC objects to the request alleging that it is not supported by substantial, competent evidence and does not meet the legal standard for granting an Interim Order as set out in *Kansas-Nebraska Nat. Gas Co. v. State Corp. Comm'n*, 217 Kan. 604 (1975) ("*Kansas-Nebraska*"). WKIEC also asserts that

³ See K.S.A. 66-1222 *et seq.*

⁴ K.A.R. 82-1-204(i)(2) provides that "No unincorporated association shall obtain party status in a proceeding without identifying its membership". Therefore, WKIEC can only represent the interests of Air Products at this time.

⁵ Application, p. 10, ¶21.

granting the interim order will lock in place certain allocations that cannot be adjusted upon issuance of a final order.⁶

5. The Commission should reject the Protest and issue the interim order requested by Southern Pioneer with Staff's suggested modification.⁷ As a threshold consideration, as explained above, it should not be assumed that any industrial customer of Southern Pioneer supports the Protest of WKIEC other than Air Products. Certainly, Southern Pioneer's one industrial customer who requested the ability to pay its share of the extraordinary expenses in its April bill instead of through allocation of the regulatory asset does not support WKIEC's objection. This is a clear example of how the positions taken by WKIEC can actually be in *direct conflict* with the interests of industrial consumers whose interests WKIEC purports to represent.

6. Substantively, WKIEC's Protest is based upon an erroneous analysis of the law and an errant representation of the facts. WKIEC asserts an incorrect standard for evaluating whether an interim order should be issued⁸ and argues that estimates cannot constitute substantial, competent evidence to support a utility's application.⁹ Both of these arguments are incorrect.

7. Citing to *Kansas-Nebraska*, WKIEC claims that, "The decision to issue an interim 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'", and then concludes that "Southern Pioneer's request does not satisfy this standard."¹⁰ But *Kansas-Nebraska* did not adopt this as a standard for interim orders, as WKIEC claims. Furthermore, *Kansas-*

⁶ Protest, pp. 4-5, ¶11.

⁷ Staff recommends it be made clear that charges under the interim order are interim and subject to refund. See *Staff's Response to Southern Pioneer's Request for an Interim Order*, filed March 15, 2021. CURB also supports the interim order with this clarification. Southern Pioneer agrees this is the proper interpretation of how an interim order works and has no objection to the Commission clearly stating such in the interim order.

⁸ Protest, pp. 2-3, ¶6.

⁹ Protest, p. 3, ¶7.

¹⁰ Protest, pp. 2-3, ¶6.

Nebraska involved a different set of facts that make some of the statements in the analysis in that decision inapposite to Southern Pioneer’s request for an interim order in this case. WKIEC mischaracterizes and misuses the *Kansas-Nebraska* decision.

8. First, *Kansas-Nebraska* did not adopt the standard WKIEC alleges for evaluating interim orders. What the court said is as follows:

*Necessarily, the determination as to whether a situation warrants the grant of interim rate relief to a public utility rests in the sound discretion of the corporation commission within the perimeter of reasonableness and justice to the utility and those served by it. We think that whether an interim rate should be granted pending final decision 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. The fact that a utility is unable to arrange necessary debt financing at reasonable rates without improved revenues manifestly could be a condition warranting the grant of interim rate relief. This condition is mentioned only by way of illustration and it is not meant that others of like import are to be excluded as grounds for such relief.*¹¹

In other words, the Commission is to use its discretion when deciding whether an interim order should issue, and in doing so, is to consider not just the utility’s financial situation but also justice for customers.

9. The portion of the *Kansas-Nebraska* order quoted by WKIEC really only makes sense in the context of a rate case, which is what the *Kansas-Nebraska* case was.¹² It involved a very different set of facts than Southern Pioneer’s application. Granting interim rate relief to *Kansas-Nebraska* would have resulted in increased revenues for the utility overall since higher rates could have been collected right away, subject to true-up later based on the increase granted in the final order. In contrast, Southern Pioneer’s request is based upon achieving fairness and

¹¹ *Kansas-Nebraska* at 614 (emphasis added.)

¹² The quote presented by WKIEC begins with the qualifying statement “[t]o warrant a temporary rate increase in the course of fixing final rates, there should be at least one of the following conditions in existence, besides the obvious requirement of a revenue deficiency...”, then the court lists the items which include the standard asserted by WKIEC. Clearly, the court was addressing interim orders in dockets involving rate increase applications.

equity among its customers; Southern Pioneer stands to receive no additional revenue as a result of the interim order. Southern Pioneer is seeking to ensure that the extraordinary costs caused by extreme weather conditions in February do not impose unnecessary hardship or inconvenience to its customers and that no customer can easily shift its responsibility for these costs to other customers by discontinuing service before charges can be assessed under a final order in this docket.¹³ It makes no sense to impose the *Kansas-Nebraska* financially-based, rate case considerations in this case which would require Southern Pioneer to show it will suffer irreparable financial harm when the benefits from the interim order requested will not accrue to Southern Pioneer; they will accrue to Southern Pioneer's customers. Clearly, the analysis in *Kansas-Nebraska* is not transferable to non-rate case dockets such as the present one.

10. The Supreme Court noted that few cases have come before courts involving the granting of interim rate relief, and that this may derive from “the fact interim rates are generally placed into effect under a refunding obligation *so that it is difficult for those on either side of the fence to demonstrate damage from the grant of interim rates.*”¹⁴ And yet, WKIEC claims granting Southern Pioneer's request for an interim order would harm WKIEC's members, arguing that “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).”¹⁵ This completely ignores the fact that the interim order would be subject to true-up based upon the final order in the docket. If a different allocation is ultimately adopted by the Commission, charges under the interim order will be adjusted accordingly so there is no harm as WKIEC claims.

¹³ WKIEC is incorrect when it states that, “the inequities referenced by Southern Pioneer are speculative at best.” (Protest, p. 5, ¶12.) Southern Pioneer has recently received notice from a commercial customer that it will be disconnecting due to the sale of its business to another customer, effective April 1. Even without knowing of this specific example, it is unrealistic to assume the problem is only speculative; disconnects happen regularly in the normal course of day-to-day operations.

¹⁴ *Kansas-Nebraska* at 613 (emphasis added).

¹⁵ Protest, p. 4, ¶10.

Conversely, and remarkably, WKIEC asserts, without explanation or support, that “no irreparable harm will fall on Southern Pioneer *or its customers* by denying approval of Southern Pioneer’s request at this time.”¹⁶ This assertion completely ignores the explanation in the Application of the potential irreparable harm to customers if the interim order is not issued.

11. Similarly, WKIEC interprets Southern Pioneer’s request to allow one industrial customer to pay “its full share” of the February costs on its April bill as locking in a methodology for allocating the extraordinary costs.¹⁷ Again, any charges for February’s extraordinary costs charged to or paid by a customer under the interim order are subject to true-up based on the final order. If this was unclear in the Application, Southern Pioneer so clarifies its request now.

12. WKIEC argues that the subject-to-refund aspect of the interim order will be “unworkable”. Southern Pioneer, Staff and CURB did not see this as an obstacle, as indicated by their support of the interim order and the ultimate true-up approach for protecting customers and honoring the preferences of some customers without compromising the rights of other customers. Only WKIEC assumes this approach cannot be reasonably accomplished from an administrative perspective. Southern Pioneer respectfully disagrees and hereby represents to the Commission that the administration of the interim provisions will be accomplished in a transparent, fair, and efficient manner.

13. As for WKIEC’s insinuation that cost estimates cannot serve as substantial, competent evidence to support an Interim Order¹⁸, there is no authority for this assertion, and it is wrong. Commission orders frequently rely upon cost estimates. And if such evidence is adequate

¹⁶ Protest, p. 4, ¶9 (emphasis added).

¹⁷ Protest, p. 4, ¶11.

¹⁸ Protest, p. 3, ¶7.

to support a Commission decision generally, it is sufficient to support an interim order, especially when that interim order is subject to true-up.

14. Finally, WKIEC asserts that the Commission must investigate all the issues posited in this case before it can rule “on interim or final rates”.¹⁹ But *Kansas-Nebraska* states otherwise—“We do not mean to say that a full-blown hearing on every possible issue is necessary before interim rate relief can be granted but at least a showing of need, acceptable on its face, should be made.”²⁰ That showing has been made in the Application, the testimony of Chantry Scott, and the recommendations of Staff and CURB. Requiring a full investigation before issuing an interim order, as WKIEC claims should be done, turns the interim order into a final order, defeating the purpose and destroying the benefits Southern Pioneer, Staff and CURB are trying to ensure to customers through the interim order.

Respectfully submitted,

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¹⁹ Protest, p. 3, ¶7.

²⁰ *Kansas-Nebraska* at 615.

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

VERIFICATION

I, Glenda Cafer, verify under penalty of perjury that I have caused the foregoing pleading to be prepared; that I have read and reviewed the same; and that the contents thereof are true and correct to the best of my information, knowledge, and belief.

Glenda Cafer

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing pleading was electronically served this 19th day of March, 2021 to:

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