



Written Testimony in Support of HB 2178
Before the Kansas House Judiciary Committee

Pioneer Electric Cooperative, Inc. and Southern Pioneer Electric Company
Stephen J. Epperson, CEO

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Chairman Patton and members of the House Judiciary Committee, thank you for the opportunity to communicate support for HB 2178 on behalf of Pioneer Electric Cooperative, Inc. ("Pioneer") and Southern Pioneer Electric Company ("Southern Pioneer"). Pioneer is a member-owned Kansas electric cooperative with its principal place of business located in Ulysses, Kansas. Pioneer serves approximately 16,625 meters in ten southwest Kansas counties. It owns and operates approximately 128 miles of transmission line and 3,974 miles of distribution line and substation facilities. Pioneer is a certified electric public utility that is self-regulated under K.S.A. §66-104d. Southern Pioneer is a not-for-profit Kansas corporation with its principal place of business located in Ulysses, Kansas, with distribution and customer service offices located in Liberal and Medicine Lodge, Kansas. Southern Pioneer serves approximately 16,694 meters, as well as provides wholesale transmission services in ten south central and southwest Kansas counties. Southern Pioneer owns and operates approximately 302 miles of sub-transmission facilities and approximately 818 miles of distribution line and substation facilities. Southern Pioneer is a certificated electric public utility and a wholly owned subsidiary of Pioneer. Southern Pioneer is fully regulated by the Kansas Corporation Commission ("KCC").

On April 26, 2018, the KCC issued a final Order in General Investigation Docket No. 17-GIME-565-GIV ("Order"), finding that an electric utility is deemed to be an "Operator" of certain privately-owned commercial underground electric lines under the Kansas Underground Damage Prevention Act ("KUUDPA"),¹ thereby making an electric utility responsible for locating and marking such lines, even though the utility has no ownership or control over the lines. Simply put, the KCC concluded that utilities should be responsible for marking these customer-owned lines because there are electrons which originated from the utility flowing through them. This KCC Order fundamentally changed the historical application of KUUDPA, which excluded privately owned underground electric lines from the marking requirements of the Act.

¹ K.S.A. 66-1801 et seq.

Electric utilities have always been responsible for locating and marking those underground electric lines that they own to the point of demarcation of ownership between the utility and customer, defined in each utility's applicable tariffs, rules and regulations, and/or contract with the customer (the "Service Point"). The customer has been responsible for its privately-owned electric lines downstream of the Service Point. In the case of Pioneer and Southern Pioneer, the Service Point indicating change in ownership and responsibility for facilities is at the meter. Having a clear point of demarcation between the utility and customer where each is responsible for the facilities they install and which they have knowledge regarding design and installation promotes good safety. This relationship with our members/customers has worked very well over the last several decades.

The KCC Order now making utilities responsible for lines which they do not own, operate or otherwise control creates confusion and does not accomplish the public safety goals KUUDPA is designed to address. Further, it exposes electric utilities to unnecessary legal risk and liability and results in significant practical concerns, all resulting in increased electric costs. As not-for-profit utilities, these increased costs are ultimately recovered through electric rates.

Pioneer currently has approximately 11,900 commercial accounts and Southern Pioneer approximately 4,354 commercial accounts. Several of these accounts are large industrial customers (beef and hog processing plants, midstream gas and helium processing facilities, feed yards, dairies, etc.) that own and operate a complex network of underground electric facilities that could extend for miles on the customer side of the Service Point. Pioneer and Southern Pioneer have no knowledge of the location of these private underground facilities. The manpower and resources required to work with every customer across Pioneer and Southern Pioneer's 20-county service territory to attempt to obtain maps and diagrams to mark the customer-owned facilities, and to develop and maintain a database as well as a process to ensure all changes unilaterally made by the customer are documented, is overwhelming. There is also no obligation on the customer's part to assist the utility in obtaining the necessary information or documentation. Therefore, in some cases, it may be extremely difficult if not impossible for Pioneer/Southern Pioneer to attain and maintain, due to the constantly changing nature of ongoing installations, a complete and accurate database of maps of customer-owned facilities. This is a detriment to public safety and substantial and unwarranted liability could be placed on Pioneer and Southern Pioneer in the event there are damages arising from the inaccurate marking of these underground facilities. The public safety is better served by not putting the utility in the middle; rather, the responsibility to locate and mark privately-owned underground facilities should be between the excavator and the customer as the owner of the private facilities, as they are in the best position to ensure accurate locates.

Additionally, Pioneer and Southern Pioneer, like most utilities, only have easement or property rights to access the facilities owned by Pioneer and Southern Pioneer. There is no legal right to enter upon private property to locate and mark customer-owned facilities downstream of the Service Point, and no such right is provided under KUUDPA. The KCC Order now requiring utilities to locate and mark customer-owned facilities would place Pioneer and Southern Pioneer in the position of a trespasser exposing them to potential liability and additional expense.

HB 2178 would make clear that an electric utility is exempt from the definition of "Operator" with respect to privately-owned underground lines and therefore the utility is not required to locate and mark underground lines that it does not own. Electric utilities would still remain responsible for marking those underground electric lines that they own, upstream of the utility Service Point,

as defined by each utility's applicable tariffs, rules and regulations and/or contract with the customer. HB 2178 will therefore return implementation of KUUDPA to its original state prior to the KCC Order, thus ensuring the public safety and overall public interest.

Thank you for considering our comments in support of HB 2178. We respectfully request favorable action on the bill.

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