

Paul Suskie  
Chairman  
(501) 682-1451

Colette D. Honorable  
Commissioner  
(501) 682-1455

Olan W. Reeves  
Commissioner  
(501) 682-1453

**ARKANSAS  
PUBLIC SERVICE COMMISSION**  
1000 Center  
P.O. Box 400  
Little Rock, Arkansas 72203-0400  
<http://www.Arkansas.gov/psc>



**FOR IMMEDIATE RELEASE:**

July 8, 2009

**ARKANSAS PUBLIC SERVICE COMMISSION PETITIONS THE SUPREME  
COURT TO REVIEW THE COURT OF APPEALS DECISION IN THE TURK  
PLANT CASE**

Commission asks the Arkansas Supreme Court to review the process used by the Public Service Commission in every plant siting case since 1973.

(Little Rock) – The Arkansas Public Service Commission (Commission or PSC) has petitioned the Arkansas Supreme Court to review the Arkansas Court of Appeals decision regarding the John W. Turk, Jr. (Turk) Plant in Hempstead County, Arkansas.

On June 25, 2009, the Court of Appeals issued an opinion that invalidated the process used by the Commission in granting Southwestern Electric Power Company (SWEPCO) a Certificate of Environmental Compatibility and Public Need (CECPN or Certificate) to construct, own, operate and maintain the 600-MW coal-fired electric generating plant.

In 1973, the Arkansas legislature delegated to the PSC the exclusive jurisdiction to issue CECPN certificates to jurisdictional utilities with the adoption of Act 164, which is known as the "Utility Facility Environmental and Economic Protection Act." In its opinion the Court of Appeals rejected the procedure used by the Commission since the adoption of the CECPN statute in 1973. The Commission followed the same procedure it has used since 1973 by siting the electric generating plant and transmission lines in separate dockets.<sup>1</sup>

"Because the Commission's CECPN procedure of holding a single proceeding for an electric generating plant docket and a separate single proceeding for an electric transmission line docket has been in place for more than thirty-five years, the Commission believes it is critical that the state's highest court clarify the procedures the Commission must follow now and in the future," Paul Suskie, Chairman of the Arkansas Public Service Commission stated. "As it stands now, the Court of Appeals decision will

---

<sup>1</sup> Prior to the approval of the Turk Plant, the PSC followed the procedure of establishing separate dockets for seven (7) different power plants cases. These include the White Bluff coal-powered plant (1973); the Flint Creek coal-powered plant (1974); the Independence coal-powered plant (1977); the Electric Cooperative of Arkansas Hydropower Generating Station (1993); the Fulton gas-powered plant (1999); the Fitzhugh repowered gas-powered plant (2001); and the Mattison gas-powered plant (2006).

impact the siting of all future generating plants subject to the PSC, whether these plants generate electricity from nuclear, natural gas, coal, wind, solar, hydro, biomass, geothermal or other renewable power sources.” Suskie added.

In its Petition, the PSC also asked the Supreme Court to consider the “standard of review” used by the Court of Appeals as well as the remedy the Court of Appeals ordered for what it deemed was procedural errors with the PSC’s Turk Certificate in light of prior appellate court rulings regarding Commission matters.

Additionally, the Commission asked the Supreme Court to reconcile how Act 204 of 2003 and Federal Energy Regulatory Commission (FERC) orders mandating a federal transmission planning process within federal Regional Transmission Organizations (RTOs)<sup>2</sup> impacts how the PSC must read and implement the Utility Facility Environmental and Economic Protection Act which was adopted decades earlier in 1973. With the adoption of Act 204 of 2003, the Arkansas legislature required utilities to engage in an integrated resource planning process which the Commission did in SWEPCO’s “needs” docket pursuant to Act 204.

“The Commission hopes that the Arkansas Supreme Court will review this case, not only because it is a matter of first impression, but also due to the very important public policy issues involved regarding how Arkansas utilities build and generate electricity for Arkansans,” Suskie stated.

“Whether the Supreme Court will review this important process or the Court of Appeals ruling stands, the Commission will follow the mandates of our courts,” Suskie concluded.

Contact: Paul Suskie at 501-682-5809  
E-mail: [psuskie@psc.state.ar.us](mailto:psuskie@psc.state.ar.us)

---

<sup>2</sup> In 1996, FERC issued Order 888 and in 1999 FERC issued Order 2000 which mandates that electric generation and transmission facilities must be planned separately and regionally across state lines. As a result most Arkansas jurisdictional utilities have joined the FERC-recognized Southwest Power Pool (SPP) RTO which is responsible for the planning of electric transmission lines across eight (8) states which includes: Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas. SWEPCO is a member of the SPP RTO. Therefore, SWEPCO transmission lines are subject to SPP’s federally regulated processes.