

ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF THE APPLICATION OF)
SOUTHWESTERN ELECTRIC POWER COMPANY)
FOR A CERTIFICATE OF ENVIRONMENTAL)
COMPATIBILITY AND PUBLIC NEED FOR THE)
CONSTRUCTION, OWNERSHIP, OPERATION AND)
MAINTENANCE OF A COAL-FIRED BASELOAD)
GENERATING FACILITY IN HEMPSTEAD COUNTY,)
ARKANSAS)

DOCKET NO. 06-154-U
ORDER NO. 13

ORDER

On November 21, 2007, the Commission issued its final Order No. 11 in the above-styled Docket. Order No. 11 granted Southwestern Electric Power Company's ("SWEPCO") Application for a Certificate of Environmental Compatibility and Public Need for the Construction, Ownership, Operation and Maintenance of a Coal-Fired Baseload Generating Facility in Hempstead County, Arkansas (SWEPCO's "Application") subject to twelve (12) enumerated conditions.

On December 12, 2007, SWEPCO its Motion for Clarification and Acceptance of Conditions in Order No. 11 (SWEPCO's "Motion for Clarification"). Therein, SWEPCO stated its acceptance of the conditions imposed by Order No. 11. However, SWEPCO asked that Condition No. 1 be clarified. Condition No. 1 provides as follows:

- 1. The [Certificate of Environmental Compatibility and Public Need] is conditioned such that no transmission lines shall be constructed across the Nacatoch Ravines National Area, the Little River and Bois'd Arc Wildlife Management Area, recorded archeological sites, property owned by the Nature Conservancy, the high ecological value Grassy Lake Area, or along the Kiamichi Railroad. This condition is designed to minimize environmental impacts.

(Order No. 11 at 73. Emphasis added).

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SWEPCO argues that “[a]lthough recorded archeological sites are constraints [on transmission line siting], in most previous transmission siting cases before the [Arkansas Public Service] Commission transmission lines have routinely crossed recorded archeological sites. Recorded archeological sites are limited by law and regulations of the Arkansas Department of Heritage in the extent to which they can be disturbed. Pursuant to conditions and guidelines imposed by the Arkansas Department of Heritage and, when appropriate, other agencies such as the Corps of Engineers, transmission lines routinely span recorded archeological sites but do not disturb them. Indeed, in many instances the spanning of a recorded archeological site further protects the site by minimizing the structures which can be located thereon.” (Motion for Clarification at 2).

Accordingly, SWEPCO requests that Condition No. 1 be clarified “to authorize it to span or cross recorded archeological sites where necessary with the understanding that SWEPCO will consult and follow the recommendations and directives of the Arkansas Department of Heritage and, if appropriate, the Corps of Engineers concerning potential impacts to any recorded archeological sites.” (*Id.*).

The Commission agrees that the inclusion of the phrase “recorded archeological sites” within Condition No. 1 of Order No. 11 should be clarified to better reflect the Commission’s intent regarding the potential impact of proposed transmission lines on such sites. It is not the intent of the Commission to specifically prohibit the construction of transmission lines across such sites; nor is it the intent of the Commission to specifically authorize the construction of transmission lines across such sites. Rather, if SWEPCO’s subsequent application to construct transmission lines to or from the Turk plant involve the crossing of a recorded archeological site, it is the intent of the Commission that all relevant issues regarding the potential impact of such

proposed transmission lines on such sites shall be considered within such application proceeding. Therefore, with this clarification, the Commission finds that Condition No. 1 of Order No. 11 should be and is hereby amended to delete the phrase “recorded archeological sites.” As amended, Condition No. 1 of Order No. 11 now reads as follows:

1. The CECPN is conditioned such that no transmission lines shall be constructed across the Nacatoch Ravines National Area, the Little River and Bois'd Arc Wildlife Management Area, property owned by the Nature Conservancy, the high ecological value Grassy Lake Area, or along the Kiamichi Railroad. This condition is designed to minimize environmental impacts.

On December 20, 2007, the Intervenor Hunting Clubs (“Intervenors”) filed their Application for Rehearing of Order No. 11 (Intervenors’ “Rehearing Application”). Intervenors’ Rehearing Application essentially restates the factual and legal arguments presented during the evidentiary hearing.

However, for the first time, Intervenors argue that SWEPCO’s Application is defective because it was “unsworn.” Intervenors’ argument is without merit. Ark. Code Ann. § 23-18-511 states: “An applicant for a certificate shall file with the Commission a verified application in such form as the Commission may prescribe ...” Rule 2.05(c) of the Commission’s *Rules of Practice and Procedure* provides the form the Commission prescribes for all pleadings: “All pleadings and amendments shall be verified by the party filing the same unless signed by the party’s attorney in which event such signature shall constitute a certificate by him that he has read the pleading: that to the best of his knowledge, information and belief there is good ground to support it ...” SWEPCO’s Application was signed by its attorney, which constitutes a verified application in the form prescribed by the Commission. As such, Intervenors’ argument on this point is without merit.

Further, Intervenor ask that certain of the conditions imposed by Order No. 11 be clarified or amended. Certain of the requested clarifications or amendments requested by the Intervenor are justified and are addressed hereafter.

Condition No. 2 of Order No. 11 provides as follows:

2. Subsequent Commission docket matters relating to the Turk plant's transmission line corridor shall be filed with the Commission only after independent review and input is provided by the SPP in order to assure that the transmission lines not only move the power from Turk but improve congestion in the area. SPP shall participate in subsequent transmission line docket matters related to the Turk plant.

(Order No. 11 at 74). Intervenor, in part, ask that Condition No. 2 be amended to require that SWEPCO provide notice to Intervenor of any matters relating to the Turk plant's transmission corridor. Intervenor's request for such notice is reasonable. Therefore, Condition No. 2 of Order No. 11 is hereby amended to read as follows:

2. Subsequent Commission docket matters relating to the Turk plant's transmission line corridors shall be filed with the Commission only after independent review and input is provided by the SPP in order to assure that the transmission lines not only move the power from Turk but improve congestion in the area. SPP shall participate in subsequent transmission line docket matters related to the Turk plant. Further, SWEPCO shall provide proper notice to Intervenor of subsequent Commission docket matters relating to the Turk plant's transmission line corridors.

Further, Intervenor ask that Condition No. 11 of Order No. 11 be amended. Condition No. 11 provides as follows:

11. The [Certificate of Environmental Compatibility and Public Need] is further conditioned on SWEPCO conducting a base-line mercury study and periodic update studies thereafter over the life of the plant in order to properly monitor mercury levels. These mercury studies shall be performed in cooperation with the Staff and with [the Arkansas Department of Environmental Quality]. Further, although there are presently no regulatory requirements to sequester CO₂ emissions, SWEPCO shall annually perform an updated analysis of the technical and economic feasibility of CO₂ recapture and sequestration at the plant. If sequestration is determined to be technically and economically feasible by

SWEPCO and this Commission, SWEPCO shall be prepared to install such technology.

(Order No. 11 at 75-76).

SWEPCO, among other requests regarding Condition No. 11, ask that Condition No. 11 be amended to include Intervenors and the Arkansas Game and Fish Commission in the list of agencies that must be consulted during the implementation of the required mercury study. Intervenors also ask that Condition No. 11 be amended to require that the mercury baseline study include all of the elements of the specific mercury study as described in SWEPCO's Exhibit MEH 7. Intervenors also ask that the Commission retain jurisdiction over this issue.

The Commission agrees that Condition No. 11 should be so amended. Therefore, Condition No. 11 is hereby amended to read as follows:

11. The CECPN is further conditioned on SWEPCO conducting a base-line mercury study and periodic update studies thereafter over the life of the plant in order to properly monitor mercury levels. These mercury studies shall include all of the elements of the specific mercury study as described in SWEPCO Exhibit MEH 7 and shall be performed in cooperation with the Staff, the Arkansas Department of Environmental Quality, the Intervenors, and the Arkansas Game and Fish Commission. Further, although there are presently no regulatory requirements to sequester CO₂ emissions, SWEPCO shall annually perform an updated analysis of the technical and economic feasibility of CO₂ recapture and sequestration at the plant. If sequestration is determined to be technically and economically feasible by SWEPCO and this Commission, SWEPCO shall be prepared to install such technology. The Commission specifically retains jurisdiction over all aspects of the required mercury studies and CO₂ sequestration analyses.

In addition, the Commission specifically retains jurisdiction and regulatory oversight, compliance, and enforcement authority over all of the terms and conditions of Order No. 11 as amended herein. Further, the Commission finds that Order No. 11 as initially issued and as amended herein, is based on substantial evidence of record and is in compliance with all

applicable rules, regulations and statutory requirements. Therefore, as amended hereinabove, Order No. 11 is hereby affirmed.

Finally, Intervenors' Rehearing Application is otherwise denied.

BY ORDER OF THE COMMISSION.

This 31st day of December, 2007.



Paul Suskie, Chairman

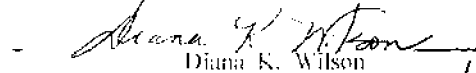


Daryl E. Bassett, Commissioner



Diana K. Wilson
Secretary of the Commission

I hereby certify that the following order issued by the Arkansas Public Service Commission has been served on all parties of record this date by U.S. mail with postage prepaid, using the address of each party as indicated in the official docket file.



Diana K. Wilson
Secretary of the Commission

12/31/07

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION
OF SOUTHWESTERN ELECTRIC POWER
COMPANY FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE CONSTRUCTION,
OWNERSHIP, OPERATION, AND
MAINTENANCE OF A COAL-FIRED
BASELOAD GENERATING FACILITY IN
HEMPSTEAD COUNTY, ARKANSAS

DOCKET NO. 06-154-U
DISSENTING OPINION

David Newbern, Special Commissioner, dissenting. The Petition for Rehearing should be granted. Intervenors correctly assert that this Commission should not consider itself to be bound by its earlier determination in Docket No. 06-024-U to the effect that SWEPCO has demonstrated a need for an additional 600MW of generating capacity. See Ark. Code Ann. § 23-2-426 which permits the Commission to rescind or amend a prior order.

As discussed in the dissenting opinion accompanying Order No. 11, the record contains strong evidence that far in excess of 600MW could be made available to SWEPCO from the existing Entegra natural gas powered plant only some 100 miles from SWEPCO's Hempstead County site. Rather than consideration of the construction of a coal-fired generating plant, with attendant heavy atmospheric pollution, the effort that has gone into this

proceeding could better have been spent if focused upon issues concerning the transmission of power that is already available. The solution of the transmission problem could have addressed the purported need with, much cleaner, gas fired power in the region served by SWEPCO. It is also clearly demonstrated in this record that SWEPCO's voluntarily undertaken sales of power to its wholesale customers could be reduced, and the power previously devoted to them could be easily sufficient to satisfy the prospective needs of SWEPCO's retail rate payers that purportedly will accrue by 2011. Surely, given a three-year lead time, SWEPCO could find the means to use available excess power that is produced other than by burning coal and releasing massive amounts of carbon dioxide into the atmosphere.

Arkansas Code Ann. § 23-18-502 (e) states the purpose of the General Assembly to achieve the "...resolution of all matters concerning the location, financing, construction, and operation of electric generating plants and electric and gas transmission lines and associated facilities in a single proceeding..." By separating the issues of (1) need, (2) construction and financing, and (3) transmission line construction and location into three separate dockets, the clear intent of the General Assembly is subverted. The reception and consideration in this proceeding of evidence that has a strong

bearing upon the need for additional generating capacity, despite the “final” decision on that issue in an earlier docket, presents a graphic illustration of the desirability, practicality, and propriety of the General Assembly’s decision to require a “single proceeding.”

The same can surely be said with respect to the reception and consideration in this proceeding of minimal and inconclusive evidence concerning the location and financing of transmission lines, despite the intention of the Commission to entertain a later proceeding that addresses transmission line issues. All of that evidence belonged in this proceeding. Because of the prior “need” docket and the proposed transmission-lines docket, however, consideration of the construction and operation issues is, at best, skewed, and the full context, which is legislatively mandated, is lost. This Commission, the Intervenors, and the public are thus prevented from having before this Commission in this proceeding all of the evidence that is integral and relevant to the decision whether to issue a Certificate of Environmental Compatibility and Public Need.

The majority Commissioners have also erred in this case in their deference to the Arkansas Department of Environmental Quality and by failure to consider sufficiently the evidence of costs that must be borne by the rate payers that will be far in excess of \$1.344 billion. As those points

are covered adequately in the opinion dissenting from Order No. 11, they need not be redeveloped here.

As the Petition for Rehearing should be granted, I respectfully dissent.

A handwritten signature in black ink, reading "David Newbern", written over a horizontal line.

David Newbern, Special Commissioner