

**Mick G. Harrison, Esq.**

205 N. College Ave., Suite 311  
Bloomington, IN 47404  
(812) 361-6220  
mickharrisesq@gmail.com

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Michael Sappington  
Secretary of the Commission Arkansas Public Service Commission  
1000 Center Street  
Little Rock, AR 72201

Re: APSC Docket 13-041-U

Dear Secretary Sappington:

Save the Ozarks (STO) has reviewed SWEPCO's letter of July 3, 2014, to the Arkansas Public Service Commission, which was submitted in response to the Commission's Order No. 36. In this letter SWEPCO informed the Commission that SWEPCO has discussed with the Southwest Power Pool (SPP) a protocol and timetable for complying with the Commission's request for *"more recent, comprehensive evidence on whether the proposed 345 kV project is needed, whether transmission requirements in the region might be met by alternative options, such as expanding, upgrading, or building lower capacity facilities, including 161 kV lines, and if not why not, the comparative costs associated with the options, the environmental impact of the options, and the long term sufficiency of the options."*

SWEPCO in its letter advised the Commission that SPP intends to inform its stakeholders of the reevaluation requested by the Commission, and that SPP intends to conduct this reevaluation parallel with its Transmission Plan (ITP) process for 2015, following the timetable set for that process which will be concluded by the end of January 2015. SWEPCO committed to filing a notice of completion of the SPP reevaluation within seven days of SPP's presentation of final study results. SWEPCO further suggested that, following the filing of this notice, the parties, with guidance from the Commission general staff, develop a proposed procedural schedule to submit for the Commission's consideration. In response to SWEPCO's letter, and the Commission's Order, STO respectfully suggests that the Commission consider a different procedural approach.

- A. In Light of the Commission's Findings, the Appropriate Approach is for the Commission to Deny SWEPCO's Application Now and Close the Current Docket, and for SWEPCO to Re-Apply to the Commission for Whatever New Project, If Any, SWEPCO Concludes in the Future Is Supported by the Results of Its Yet to be Completed Studies**

SWEPCO has already had two opportunities (via its initial application and the SPP restudy presented during the proceedings) to make its case that its application to the Commission for a new 345 kV line was justified. The Commission came to the conclusion, after reviewing all the evidence presented by all the parties, that the need for a 345 kV line was not established by SWEPCO's application or by the evidence presented during the proceedings.

Save the Ozarks maintains that the approach proposed by SWEPCO is not reasonable in light of the constraints and uncertainties that landowners affected by this proposal have suffered since SWEPCO submitted its application. Landowners have been facing loss of both property and property values. Many have held back on implementing plans they had for their properties -- dreams have been held in abeyance. If the Commission continues proceedings in this Docket while SWEPCO conducts its new evaluations, this ordeal landowners have been enduring will continue for another year or more.

Because the Commission's findings equate to a finding that SWEPCO could not meet its burden to justify the application that it submitted for a new 345kV transmission line, STO requests that the Commission deny SWEPCO's current application rather than keeping this docket open. SWEPCO has indicated in its letter that it and SPP will take many more months to complete their new studies. And then, many more months of litigation proceedings before the Commission will be required in the existing docket to consider the parties' analysis and conclusions regarding the results of SWEPCO's and SPP's new studies. But it is not certain that SWEPCO and SPP, given that their new studies are not completed and they have not yet analyzed those results, will even continue to propose a 345kV transmission line or any new transmission line. The public interests and judicial economy will be better served if the Commission simply denies SWEPCO's application, and waits to see if SWEPCO decides to submit a new application, and if so for what and on what basis, after the new studies are completed.

Denying SWEPCO's current application and closing this docket now will clearly serve the landowner's interests, the public interest and judicial economy in the event that SWEPCO decides not to pursue any new transmission line project in the short term based on the results of the yet to be completed studies. Further, should SWEPCO propose, after its new studies are complete, to pursue a new 161 kV line rather than the original 345kV line, then the landowners' interests and the public interest will also be better served by the Commission's denying SWEPCO's application and closing this docket now. Even if SWEPCO decides, based on the new studies to be done, that it wishes to pursue a new 345 kV line, it will be less confusing for the Commission, the parties, and any court reviewing the Commission's ultimate decision, if a new application is submitted by SWEPCO that includes only the routes it then proposes and only the new rationale and need demonstration based on the updated studies.

Not only is it unclear at this point what if any new project SWEPCO will decide to pursue once its studies are complete, it is also unclear which intervening parties will oppose SWEPCO's new, yet to be defined proposal, and on what basis. Even if there remains a controversy after the new studies are done, the rationale for any new project is certain to be substantially different, the nature of the project may be substantially different, the route may be different (particularly if a no-new-terrain route is used for a 161 kV line) or non-existent (if the new proposal involves actions other than a new transmission line, such as STO's expert Dr. Merrill's proposed

alternatives), and newly impacted landowners may seek intervenor status. Thus, the likely outcomes of SWEPCO's new studies, particularly in light of the Commission's findings, are: a) no new proposed project and no further action required by the Commission; b) a substantially different proposed project that may not generate opposition from the intervening parties (or the same parties); or a proposed project similar to the last but based on a substantially new scientific/fact rationale and record including a new need justification and environmental impact analysis (i.e., a new application). In each of these scenarios, if any further Commission action is required, creating a new docket based on a new application is the most reasonable, clear, efficient, and economical method, and the option that best serves the interests of the public, ratepayers, stakeholders, and the landowners involved.

## **B. STO's Proposed Procedural Option in the Alternative**

Should the Commission choose to keep the current Docket open for consideration of future studies to be conducted by SWEPCO and SPP, notwithstanding the countervailing considerations presented by STO above, then STO proposes, in the alternative to immediate denial of SWEPCO's application, that the following procedure be followed:

### **1. First Alternative Approach: Review Period for STO's and Intervenors' Experts**

If the Commission allows SWEPCO and SPP the additional 6-7 months they have requested in SWEPCO's letter to complete new studies consistent with the Commission's Order, then the Commission should allow STO and the other intervenors (other than SPP) an equal amount of time to review SWEPCO's and SPP's new studies after those studies are completed. This review period for STO and the other intervenors should start only after SPP and SWEPCO have provided to all parties all relevant information (models used, data used, assumptions used, and all data, reports and appendices) in order to facilitate a thorough review by STO's experts including Dr. Hyde Merrill. Additionally this alternative will allow STO an opportunity to conduct independent studies parallel with or in response to SWEPCO's and SPP's new studies. Such studies would, of course, aid the Commission in arriving at an ultimate decision in the case based on a full, fair and complete record.

### **2. Second Alternative Approach: Formative Involvement of STO and Intervenors**

If the Commission declines to use STO's first alternative approach (immediately above), then STO proposes that the Commission direct SWEPCO and SPP to timely provide STO and the other intervenors all drafts, models, input data, assumptions, reports, appendices, and other relevant materials as the 6-7 month study period proceeds, to enable STO's experts to have ample opportunity to become familiar with and analyze the new data and studies before active litigation in this docket resumes, and to offer constructive suggestions to SWEPCO's and SPP's experts. As part of this alternative procedure, STO also proposes that the Commission direct SWEPCO and SPP to allow certain STO-designated individuals to participate as stakeholders in the process of reevaluation and consideration of alternatives required by the Commission's Order and referenced in SWEPCO's letter in the same manner as SWEPCO's and SPP's other stakeholders. Of course, any dissemination of information to STO or other intervenors would be

subject to the terms of the confidentiality agreement which is currently on file in the docket. STO will agree to amend the confidentiality agreement in order to encompass the new studies.

Allowing this formative involvement will ensure that SWEPCO and SPP in their new studies adequately address the environmental impacts of the alternatives considered including karst impacts, impacts on threatened and endangered species, economic impacts on tourism and local communities, aesthetic impacts, and loss of property value. Such involvement will also ensure that the substantial and numerous concerns stated by various state and federal agencies are also addressed.

In addition, STO proposes, if the Commission declines to accept STO's primary recommendation stated at the beginning of this letter that the Commission deny SWEPCO's original application now and close this docket, that the Commission order SWEPCO to reimburse STO's and the other intervenors' experts and attorneys' fees going forward, including the fees and expenses of STO expert Dr. Hyde Merrill, for any participation by them allowed in the 2015 ITP process, in performing independent analysis and presenting testimony and argument to the Commission on the results of the 2015 ITP process and any application and studies resulting therefrom, and for their participation in any further proceedings ordered by the Commission in this docket, regardless of whether any future application for the originally proposed or similar line, or some alternative project (or none) is approved by the Commission. Absent such an Order, SWEPCO and SPP can simply continue to make flawed applications, year after year, in the hope that intervenors eventually run out of money or energy and give up, an outcome which will not serve the public interest and which will be contrary to the intent of the Arkansas Legislature.

Respectfully submitted,

/s/

Mick G. Harrison  
Mick G. Harrison, Esq. (Penn. Bar No. 65002)  
205 N. College Ave., Suite 311  
Bloomington, IN 47404  
Telephone: 812-361-6220  
Email: mickharrisesq@gmail.com

/s/

Gregory Ferguson, Esq.  
Ark. Bar No. 80043  
600 West Fourth Street  
North Little Rock, AR 72114  
501-374-3535  
Email: gfjump4u@gmail.com  
Counsel for STO