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BEFORE THE 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 THE PROPOSED 345 KV TRANSMISSION LINE BETWEEN THE SHIPE ROAD STATION AND THE PROPOSED KINGS RIVER STATION AND ASSOCIATED FACILITIES TO BE LOCATED IN BENTON, CARROLL AND/OR MADISON AND WASHINGTON COUNTIES, ARKANSAS	**DOCKET NO: 13-041-U**

PETITIONER SAVE THE OZARKS' RESPONSE TO SWEPCO'S NOTICE OF WITHDRAWAL OF SWEPCO'S APPLICATION FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

Intervenor Petitioner not-for-profit corporation Save the Ozarks (STO) hereby, by counsel, respectfully submits its Response to SWEPCO's Notice of Withdrawal of SWEPCO'S Application for a Certificate of Environmental Compatibility and Public Need (CECPN) for construction of a new 345 kV transmission line. For the reasons stated herein, STO requests that the Commission not simply allow SWEPCO to withdraw its application but rather issue an order denying SWEPCO's application, and set a briefing schedule on STO's anticipated motion for attorney fees and litigation costs.

I. SWEPCO's APPLICATION SHOULD BE DENIED, NOT WITHDRAWN, AND INTERVENORS INCLUDING STO SHOULD BE DECLARED THE PREVAILING PARTIES IN THIS MATTER

It is undisputed that in its Order 36 of June 9, 2014, on rehearing, the Commission, in vacating the issuance of the CECPN by the Presiding Officer, concluded that "the record is presently insufficient to determine: the need for the particular 345 kV project that has been

proposed, whether that project is consistent with the public convenience and necessity, and whether the project represents an "acceptable adverse environmenta1 impact," and that this conclusion by the Commission was made after considering SPP's and SWEPCO's proffered evidence of need for the proposed new 345 kV power line, including 2007 Ozark Transmission Study, the 2007 SPP Transmission Expansion Plan, and the supplemental evaluation conducted by SPP during this litigation (June 2013) (in addition to the other pre-trial and trial record evidence. *See*, Order 36 at 6, 11, 13, and 15. It is also undisputed that the Commission ordered the parties including SWEPCO and SPP to "provide additional testimony and 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". Order 36 at page 14. This portion of Order 36 was clearly issued as a result of STO's Petition for Rehearing and STO's arguments and evidence therein regarding the lack of a demonstration of need by SPP and SWEPCO.

It is also undisputed that in SWEPCO's recent Notice of Withdrawal SWEPCO stated:

> On December 29, 2014, SWEPCO received a notification letter from SPP stating that updated electric load forecasts showing lower future electric demand in North Arkansas than prior forecasts for the area critical to the Facilities, and the recent cancellation of several large long-term transmission service reservations, establish that the Facilities are no longer needed to meet the reliability needs in the region.

SWEPCO's December 30, 2014 Notice of Withdrawal at 1.

It is undisputed as well that in SPP's December 29, 2014 letter to SWEPCO attached to SWEPCO's recent Notice of Withdrawal, SPP stated:

> On June 9, 2014, the Arkansas Public Service Commission (APSC) issued Order No. 36 in Docket No. 13-041-U, which granted rehearing on Southwestern

> Electric Power Company's (SWEPCO) Application to construct a 345 kV transmission line from Kings River to Shipe Road (Project) and the APSC ordered a comprehensive reevaluation of the Project.
>
> As a result of Order No. 36, SPP performed a comprehensive reevaluation and has determined that the Project is no longer needed based on current system projections. Consequently, SPP will begin the process to withdraw the Notification to Construct (NTC) that directed SWEPCO to construct the Project. …
>
> SPP's comprehensive reevaluation showed that reliability needs in northern Arkansas have significantly decreased compared to previous studies of area needs. From these findings, we conclude that the Project is no longer necessary to meet currently projected needs in the area. Although there are several contributing factors resulting in the reduced need for the Project, it appears that there are two primary factors impacting the change. These factors consist of a significant decrease in load growth projections in north Arkansas and recently terminated long-term transmission service transactions in the area. …
>
> When conducting the comprehensive reevaluation of the Project, SPP used the updated load forecasts provided to SPP in the latest set of available transmission planning models. These forecasts showed a significant decrease in the load forecasted in the affected area compared to the 2007 Ozark Study, the 2007 SPP Transmission Expansion Plan, and the 2013 high-level evaluation conducted by SPP which continued to show a need for the Project.
>
> The forecast reduction included an almost 50% decrease in load growth rates in an area identified as having the highest impact on the need for the Project, compared to the load forecasts provided to SPP that were utilized in the 2013 high-level evaluation. SPP validated the decrease in load forecasts by reviewing more detailed information with responsible load serving utilities in and around North Arkansas.

SPP's December 29, 2014 letter to SWEPCO attached to SWEPCO's Notice of Withdrawal.

SWEPCO's Notice and the attached SPP letter preclude the possibility that SWEPCO and SPP could submit to the Commission any additional evidence supporting need for the proposed new 345 kV line in response to the Commission's Order 36. Therefore, the Commission has more than a sufficient basis to conclude, and should so conclude, that SWEPCO failed to make an adequate demonstration of need to justify issuance of a CECPN pursuant to A.C.A 23-18-519(b) and Commission RPP Rule 6.06, and has failed to meet its burden on its application. For

this reason, SWEPCO's application should be denied, not withdrawn, and STO and other Intervenors who challenged SWEPCO's assertion of need should be declared to be prevailing parties in the above captioned matter.

After the expenditure of many tens of thousands of dollars, months of attorney time, months of efforts by Intervenor STO's members and the other Intervenors, public hearings, a lengthy trial, substantial briefing on multiple issues, and significant efforts and time commitments by the Commission, its presiding officer, and agency staff, all directed towards a just determination of the controversy in the above captioned docket, initiated by SWEPCO, SWEPCO should not be allowed to simply file its "never mind" Notice to close the matter. SWEPCO cites to no statutory provision or Commission regulation that provides for withdrawal of an application or for closing a Commission docket simply by filing a unilateral notice. Although the Commission has broad authority provided by statute, which no doubt provides the Commission the power to close a docket under appropriate circumstances, to simply close the docket here without further ado would be arbitrary given the post-trial and post-reconsideration posture of the case.

To do what SWEPCO asks here would be analogous to a civil court proceeding where a party seeks to voluntarily dismiss its action, over the objection of the opposing parties, after a full trial on the merits was conducted, post-trial briefing was completed, and reconsideration motions have been briefed and decided (substantially adversely to the party now seeking to voluntarily dismiss the matter). The Arkansas courts do not allow such unilateral voluntary dismissals at such a late stage in a litigation, and neither should the Commission.

> (a) Voluntary Dismissal; Effect Thereof.
> (1) Subject to the provisions of Rule 23(e) and Rule 66, **an action may be dismissed** without prejudice to a future action by the plaintiff **before the final**

> **submission of the case to the jury, or to the court** where the trial is by the court.

Ark. R. Civ. P. 41 (emphasis added).

> This absolute right to nonsuit exists so long as the nonsuit is requested prior to submission of the case to the jury or to the court. *See Blaylock v. Shearson Lehman Bros., Inc.*, 330 Ark. 620, 954 S.W.2d 939 (1997). Where the nonsuit is requested prior to the final submission of the case, the voluntary nonsuit is an absolute right; however, when it is requested by the plaintiff after final submission of the case, whether to grant a motion for voluntary nonsuit lies within the discretion of the trial court. *See Wright v. Eddinger*, 320 Ark. 151, 894 S.W.2d 937 (1995). A case has not been finally submitted where, even though it has come to a hearing, the argument has not yet closed. *See Duty v. Watkins, supra.* This court has further held in accordance with Rule 41(a) that in **632 order to be effective, a court order must be entered granting the nonsuit even when the nonsuit is a matter of absolute right and not subject to the trial court's discretion. *See Blaylock v. Shearson Lehman Bros., Inc., supra.* Unlike Federal Rule of Civil Procedure 41(a), which limits the plaintiff's unqualified right to a voluntary nonsuit up to the time that a defendant files his answer, the Arkansas rule follows prior Arkansas caselaw and permits the right to nonsuit until the case is submitted for decision. *See* Reporter's Notes to Ark. R. Civ. P. 41.

White v. Perry, 348 Ark. 675, 681, 74 S.W.3d 628, 631-32 (2002).

For these reasons, the Commission should close this docket but only after issuance of an Order denying SWEPCO's application, and, for the reasons discussed below, after consideration of motions and briefing on the question of the entitlement of the prevailing Intervenors to attorney fees and litigation costs.

II. THE PREVAILING INTERVENORS HAVE A SUBSTANTIAL BASIS FOR ASSERTING THEIR RIGHT TO AN AWARD OF ATTORNEY FEES AND LITIGATION COSTS UNDER THE CIRCUMSTANCES HERE AND THEREFORE THE COMMISSION SHOULD SET A SCHEDULE FOR FILING AND BRIEFING INTERVENORS' MOTIONS FOR FEES AND COSTS

A. Arkansas Law Provides the Commission Authority to Award Attorney Fees to Intervenor STO as a Prevailing Party in a Contested Case Regarding an Application for a Certificate of Environmental Compatibility and Public Need

1. The Commission's Statutory Authority Allows the Commission to Award Attorney Fees to a Prevailing Party in a Contested Case Regarding an Application for a Certificate of Environmental Compatibility and Public Need

Arkansas follows the American rule which is that attorneys' fees are not chargeable as costs in litigation unless specifically permitted by statute. *See*, *Brandon v. Arkansas Public Service Com'n*, 67 Ark. App. 140, 992 S.W.2d 834 (1999) citing *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986). However, here, the Legislature has provided the Commission by statute authority to issue attorney fees, albeit in a non-typical manner. *See*, A.C.A. 32-2-301.

The Arkansas Legislature, somewhat unusually, granted to the Commission broad authority to do all things necessary and reasonable to accomplish its assigned mission including powers not explicitly enumerated in the governing statutes. The Arkansas courts have recognized this broad authority and have held, for example, that the Commission has authority to hear and decide class actions even though this power is not explicitly enumerated in the governing statutes.

> We recognize that the Commission is a creature of the legislature and must act within the power conferred upon it by legislative act. See Southwestern Bell Tel. Co. v. Arkansas Pub. Serv. Comm'n, 267 Ark. 550, 593 S.W.2d 434 (1980). We note, however, that the legislature has chosen not to limit the Commission's jurisdiction to the powers expressly set out in the public utility statutes. Arkansas Code Annotated section 23–2–301 (1987) also defines the Commission's authority, and it provides:
>
> > The commission is vested with the power and jurisdiction, and it is made its duty, to supervise and regulate every public utility defined in section 23–1–101 **and to do all things, whether specifically designated in this act, that may be necessary or expedient in the exercise of such power and jurisdiction, or in the discharge of its duty**.

Brandon v. Arkansas Public Service Com'n, 67 Ark. App. 140, 992 S.W.2d 834 (1999) (quoting A.C.A. 32-2-301) (emphasis added).

If this broad grant of authority is sufficient to provide the Commission power to decide class actions notwithstanding that this power was not enumerated in the governing statutes, then the Commission's power should also be deemed broad enough to provide the Commission the power to award attorney fees to prevailing parties in contested cases regarding the issuance of a CECPN. In *Brandon*, the Court of Appeals considered this argument and decided that in the circumstances there (a case involving a consumer complaint, not a contest over issuance of a CECPN) that the legislative history of the statutory provision in question precluded the court from recognizing the Commission's power to grant an award of attorney fees. *Id*. The legislative history in question, though, which involved deletion by the Legislature of language providing for attorney fees awards by the Commission from the final version of the bill enacting an amendment, was related only to the statutory provisions regarding consumer complaints, not the statutory provisions regarding CECPN contested cases. *Brandon* is therefore distinguishable from the case here where there has been no deletion of language providing for attorney fees from any proposed legislation relating to CECPN contested cases.

Judge Griffen, concurring in *Brandon*, expressed the clear rationale for why it would be in the public interest and further the Commission's mission for the Commission to be able to make awards of attorney fees.

> I would have been happy to reverse the Public Service Commission's decision on appellant's second point. However, I am forced to conclude, as Judge Rogers has written in the majority opinion, that the Arkansas General Assembly apparently decided not to confer the power to award attorneys' fees to the Commission when it enacted Act 758 of 1985. I cannot ignore the plain fact that the General Assembly deleted language in House Bill 393 that would have authorized the Commission to award attorneys' fees when it enacted Act 758. Nevertheless, I am convinced that the Commission's power to regulate public utilities will only be enhanced if the legislature authorizes it to award attorneys' fees in appropriate cases. The ordinary ratepayer will almost always have too small a pecuniary interest at stake to justify the significant cost of challenging an allegedly excessive utility rate. Yet, such challenges, when successful, produce benefits to a

> range of ratepayers and serve the public interest in fair utility rates. Unless the legislature confers the power to award attorneys' fees, it is obvious that potential challenges to allegedly excessive utility rates will go unasserted.

Brandon, *supra*, Judge Griffen concurring. Because the Legislature's deletion of language providing for attorney fees in proposed legislation was applicable only to consumer complaints, and not to CECPN contested cases which fall under a different portion of the statutes governing the Commission, that legislative history and the *Brandon* decision do not control the question of the Commission's power to award attorney fees here.

What does control here, however, is the broad grant of authority by the Legislature to the Commission as noted in *Brandon* which includes not only all powers necessary but also all powers expedient to performance of the Commissions charge, whether enumerated in the statutes or not. The Commission has, as noted *infra*, already recognized that this power is broad enough for the Commission to make an award of attorney fees as a discovery sanction. Judge Griffen's cogent analysis in his Concurring Opinion makes clear why the Commission should recognize that it has the power to award attorney fees to a prevailing party in CECPN contested cases.

2. The Commission has Authority to Award Attorney Fees to a Prevailing Party in a Contested Case Regarding an Application for a Certificate of Environmental Compatibility and Public Need under the Common Fund Doctrine

The Common Fund Doctrine, or the Commission's broad statutory authority to award fees in analogous circumstances, provides the Commission authority to make an award of attorney fees to the prevailing party in a CECPN contested case. In *Brandon*, the majority found that there were logical and compelling reasons why an award of attorney fees should be made by the Commission under the Common Fund Doctrine. The *Brandon* court held, however, as noted *supra*, that because of the unique legislative history involving deletion of language providing for awards of attorney fees from a proposed amendment to the statutory provision regarding

consumer complaints, that the court was constrained from holding that such fees were available in that case. *Brandon v. Arkansas Public Service Com'n*, 67 Ark. App. 140, 992 S.W.2d 834 (1999).

> Although logical and equitable reasons are advanced here for payment of attorneys' fees under the common-fund doctrine, our statutory scheme and the holdings of the Supreme Court that fees are only allowed in specific situations constrain us from making new law in these circumstances. We recognize that, by this holding, ratepayers will have a difficult, if not impossible, task of funding legal counsel to represent them in actions against utilities. We are unable to broaden the law to extend attorneys' fees to these circumstances, as this is a legislative function.

Id.

Here, as noted *supra*, in a case involving a challenge to an application for a CECPN, the legislative history involving deletion of language providing for fee awards (as opposed to the consumer complaints) is not present. But the logic that supports a Common Fund Doctrine or analogous award under the Commission's broad authority is present.

> The Supreme Court discussed the common-fund doctrine in *Bradshaw v. Bank of Little Rock*, 76 Ark. 501, 504, 89 S.W. 316, 317 (1905): "[W]hen many persons have a common interest in a fund, and one of them for the benefit of all brings a suit for its preservation, and retains counsel at his own cost, a court of equity will order a reasonable amount to be paid to him out of the funds in the hands of the receiver in reimbursement of his outlay." (quoting *Davis v. Bay State League*, 158 Mass. 434, 33 N.E. 591 (1893)). *See also Marlin v. Marsh & Marsh*, 189 Ark. 1157, 76 S.W.2d 965 (1934); *Valley Oil Co. v. Ready*, 131 Ark. 531, 199 S.W. 915 (1917). A court of equity is not incompetent to grant an award of costs and attorney's fees to a taxpayer out of a common fund established because of his efforts in a taxpayer suit on behalf of himself and other taxpayers to recover misappropriated county funds.

Brandon v. Arkansas Public Service Com'n, 67 Ark. App. 140, 992 S.W.2d 834 (1999), citing *Crittenden County v. Williford*, 283 Ark. 289, 675 S.W.2d 631 (1984). S*ee also, Powell v. Henry*, 267 Ark. 484, 592 S.W.2d 107 (1980).

Although there is no already collected fund of rate payer moneys here due to the timing and nature of this CECPN action, here STO litigated and prevailed in a challenge to a new major electric power transmission line that would have cost rate payers approximately $125 million and would have caused significant environmental damage, negative economic impacts, and aesthetic harm. All rate payers benefited substantially from this effort but incurred no cost to gain that benefit thanks to STO's initiative. But STO's herculean effort here at its own expense is the exception not the rule and it is generally not practical without substantial personal sacrifice, if at all, for citizens and consumers to be able to bring such expensive and arduous challenges. It would promote the public interest and facilitate the Commission's performance of its duties if the Commission made awards of attorney fees to prevailing parties under the circumstances herein, and consequently, the Commission should recognize that it has the power to do so in this case either under the Common Fund Doctrine or under the Commission's broad grant of authority from the Legislature.

B. The Commission has Authority to Award Attorney Fees to STO as a Prevailing Party in a Contested Case Regarding an Application for a Certificate of Environmental Compatibility and Public Need under the Commission's Authority to Sanction Misconduct of a Party

As noted *supra*, the Legislature granted broad authority to the Commission as reflected in A.C.A. § 23-2-301. The Commission clearly views this authority as broad enough to allow it to issue sanctions, including attorney fees, for discovery failures and abuses. *See*, Commission Rules of Practice and Procedure (RPP), Rule 5.12(d)(4) (2013). There is no reason to believe this broad authority does not extend to the issuance of sanctions for other misconduct in proceedings before the Commission, including a party making knowingly false material representations directly or by material omission, and violations of the duty of candor. Here SWEPCO and SPP made knowing

material misrepresentations, directly and by omission and failures to disclose material facts, and violated their duty of candor to the tribunal.

SWEPCO submitted an application to the Commission for a CECPN for construction of a new 345 kV transmission line and represented to the Commission via that application that there was a need for the proposed new 345 kV transmission line. However, as became evident only at hearing in this matter on cross examination of SPP witness Lanny Nickell by STO's counsel, SWEPCO had actually determined there was not a need for such a new 345 kV line but that a less ambitious 161 kV rebuild alternative would suffice. Nickell referred to an undefined 161-kV solution proposed by SWEPCO to solve the problem identified in 2006-2007, the same problem SWEPCO later represented to the Commission via its Application required for its solution a new 345 kV line. Nickell testified that SPP overruled SWEPCO's 161 kV solution in favor of the new 345-kV facilities reflected in SWEPCO's ultimate Application. *See*, TR August 29, 2013, Nickell, p. 1843.

SWEPCO submitted its application for the 345 kV line and its representations of need for same to the Commission apparently only because SPP required it to do so. Thus, SWEPCO knew when it submitted its application to the Commission that its own analysis had determined that the 345 kV line it was applying for was not needed, but SWEPCO failed to disclose this fact or its 161 kV rebuild (no-new-terrain) alternative to the Commission when it submitted its Application and accompanying EIS. Neither the EIS nor any document submitted by SPP or SWEPCO to the Commission contained an analysis of the costs, impacts, feasibility, or relative effectiveness of the 161 kV rebuild alternative. TR Nickell, pp. 1834, 1844.

SWEPCO clarified, in its Post-Hearing Brief at 8, importantly, that this 161 kV rebuild alternative would have been upgrading existing 161 kV systems. Thus this rebuild alternative

would essentially be a no-new-terrain no-new-station alternative which would have dramatically less adverse environmental impacts and costs than the new terrain alternatives SWEPCO and SPP were advocating before the Commission. Given that SWEPCO asserted that the Route 33 alternative was identified as the preferred alternative because it had the least adverse impacts and cost, the SWEPCO 161 kV alternative should have been prominently addressed in the EIS.

Had this 161 kV rebuild alternative been addressed in the EIS, the Intervenors (and the public) would have been on timely notice of that alternative and SWEPCO's (the Applicant's support for it) and could have pursued more focused and effective pre-hearing discovery. Had SWEPCO timely disclosed these facts, STO and other intervenors would have been able to develop this information in pre-hearing discovery rather than having been limited to eliciting only the tip of this evidentiary iceberg during adverse cross examination at hearing. SWEPCO's conduct in this regard violates SWEPCO's duty of candor to the tribunal and is a basis for an award of attorney fees by the Commission to the prevailing Intervenors, including STO, as a sanction.

SWEPCO had a second convenient opportunity to disclose to the Commission pre-hearing that its own analysis did not support the need for the new 345 kV line for which it had applied on SPP's insistence. This was in June of 2013 when SPP presented to the Commission in its pre-hearing submissions a new analysis for the purpose of this litigation on the question of need for the proposed new 345 kV line. This new analysis was purportedly prepared by SPP's Mr. Lanny Nickell. However, testimony at hearing of Mr. Nickell on cross examination by STO's counsel made clear that not only had Mr. Nickell not himself drafted key aspects of the new analysis, but he had failed even to conduct a meaningful quality review of the new analysis before it was presented to the Commission. In this regard, Nickell failed to notice on both

occasions that this analysis was submitted to the Commission that his analysis contained these two nonsensical scenarios that were later retracted. TR 1690, 1791-96.

In this new analysis SPP strains to justify the new 345 kV line by focusing on extreme conditions not required by NERC to be addressed, extreme scenarios apparently never before used even by SPP to justify a new power line. Only in SPP's June 2013 study is there a concrete record of SPP applying criteria beyond N-1.[1] SPP's original report lists 18 "Overloaded Facilities" scenarios. Of these, 13 are labeled "N-2" or equivalently "G-1 and N-1." Two of these scenarios were blatantly illogical and so clearly in error that there is no way Nickell could have done a meaningful quality review of this new analysis document before it was submitted to the Commission without catching these irrational scenarios that were later retracted by SPP. Using the N-2 scenarios to attempt to justify the new facilities is a violation of long-standing SPP standards and of NERC standards.

Five of sixteen – about one-third – of the overload cases found in SPP's June 2013 study had to do with N-2 overloads on the Entergy 161-kV lines in the area between and around Osage Creek and Harrison. An Entergy witness testified that:

- Entergy did not request resolution of a reliability problem in this area,
- Entergy had not diagnosed a reliability problem here, and
- Entergy was not trying to resolve a reliability problem here.[2]

In other words, SPP's alleged criteria violations in that area were of its own making, due to application of an N-2 standard which Judge Griffin could appropriately call "super-reliability," a standard that neither NERC nor SPP nor Entergy applies.

[1] Nickell Direct, pp. 22-23.
[2] Montgomery Cross Examination, p. 406, lines 16-25.

Five scenarios were technically N-1, but only under statistically unusual Low Hydro conditions. Mr. Hassink testified that these "low-hydro" conditions are four times less likely than normal hydro conditions.[3]

At the point at which SPP offered this admittedly unilateral purported justification for the new 345 kV line, which analysis was, for the reasons referenced immediately above, not only obviously defective but suspect as not having a good faith basis in fact, given that SWEPCO had not made the aforementioned disclosures earlier, SWEPCO should have disclosed to the Commission at least at this point in time that its own earlier analysis did not justify a new 345 kV line and that it had in fact proposed a less ambitious 161 kV rebuild (no-new-terrain) alternative to SPP. SWEPCO's continued silence on this key material fact misled the Commission into believing that SWEPCO concurred in Nickell's new analysis and in the need for a new 345 kV line.

Of course, SPP is no innocent in this matter either. SPP knew that SWEPCO had proposed the 161 kV rebuild alternative solution to SPP's preferred 345 kV line and that, in applying to the Commission for the CECPN, SWEPCO was putting forth SPP's proposal, not its own. SPP also remained silent on these matters, in violation of its own duty of candor to the Commission. And, SPP of course is responsible for putting forth to the Commission the new June 2013 need analysis purportedly as work done by Nickell, or at least thoroughly reviewed and approved by Nickell, and as having a good faith basis in fact, contrary to what the hearing record disclosed.

CONCLUSION AND RELIEF RQUESTED

[3] Hassink Sur-surrebuttal, p. 10, lines 9-11.

For all of the foregoing reasons, SWEPCO's application to the Commission for the CECPN should be denied, Intervenors including STO should be found to be the prevailing parties in the above captioned docket, and Intervenors, including STO, should be provided a reasonable time in which to submit their motion(s) for attorney fees and litigation costs prior to closing of this docket.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 12, 2015, a true and correct copy of the foregoing STO Response to SWEPCO's Notice of Withdrawal was served on all parties of record by electronic mail and first class mail.

/s/ Mick G. Harrison
Mick G. Harrison, Esq.