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**

SOUTHWEST POWER POOL, INC.'S RESPONSE TO SWEPCO'S MOTION FOR LIMITED REHEARING AND TO SAVE THE OZARKS' PETITION FOR REHEARING OF COMMISSION ORDER 37

Comes now Southwest Power Pool, Inc. ("SPP") and for its Response to Southwestern Electric Power Company's ("SWEPCO") Motion for Limited Rehearing and to Save the Ozarks' ("STO") Petition for Rehearing of Commission Order 37 Issued March 25, 2015 states:

1. On March 25, 2015, the Arkansas Public Service Commission ("Commission") entered Order No. 37.[1] In Order No. 37, the Commission: (i) allowed SWEPCO to withdraw its Application for a Certificate of Environmental Compatibility and Public Need ("CECPN") and closed the Docket; (ii) denied STO' s request that the Commission issue an order denying SWEPCO' s Application for a CECPN; (iii) denied STO's request that the Commission find the Intervenors to be the prevailing parties in this Docket and issue a procedural order to consider awarding Intervenors attorneys' fees; and (iv) denied both STO's Motion for Leave to File

[1] Document No. 451, Order No. 37.

Surreply and the Joint Motion of SWEPCO, SPP and Arkansas Electric Cooperative Corporation ("AECC") to Strike STO's Surreply.[2]

2. On April 24, 2015, STO filed its Petition for Rehearing of Commission Order 37 Issued March 25, 2015 ("Petition for Rehearing")[3] and SWEPCO filed its Motion for Limited Rehearing.[4]

3. As set forth in greater detail herein, SPP asserts that Order No. 37 was proper with the exception that the Commission should have stricken from the record STO's Surreply on SWEPCO's Notice of Withdrawal of SWEPCO's Application For a Certificate of Environmental Compatibility and Public Need ("Surreply").[5] Accordingly, the Motion for Limited Rehearing of SWEPCO should be granted. STO's Surreply was untimely as it was filed 57 days out of time and the Commission's failure to strike STO's Surreply will allow it to remain in the record and be considered if this Docket is ever appealed. This is unreasonable in light of the fact that the Commission also found that the filing was untimely.

4. With that exception, Order No. 37 should be affirmed and STO's Petition for Rehearing should be denied for the following reasons:

A. The Commission properly determined that SWEPCO could withdraw its CECPN Application and that the Intervenors are not the prevailing party;

B. STO is not entitled to attorneys' fees under Arkansas law and the Commission is without the statutory authority required to award attorneys' fees;

C. There was no discovery abuse and/or misconduct in this Docket; and

[2] *Id*. at 12-13.
[3] Document No. 452, STO's Petition for Rehearing, April 24, 2015.
[4] Document No. 453, SWEPCO's Motion for Limited Rehearing, April 24, 2015.
[5] Document 449, STO's Surreply on SWEPCO's Notice of Withdrawal of SWEPCO's Application For a Certificate of Environmental Compatibility and Public Need, March 17, 2015.

D. Order No. 37 was supported by the evidence, is consistent with Arkansas law and should be affirmed.

5. Accordingly, as set forth more fully herein: (i) SWEPCO's Motion for Limited Rehearing should be granted and the Commission should strike STO's Surreply and (ii) STO's Petition for Rehearing should be denied. The Commission has correctly ruled upon each of STO's arguments and such rulings should be affirmed. An order of the Commission will only be void if arbitrary, unreasonable, and without substantial evidence.[6] STO has not demonstrated Order No. 37 to be arbitrary, unreasonable, or without substantial evidence.

I. SWEPCO's Motion for Limited Rehearing Should be Granted

On April 3, 2013, SWEPCO filed its Application for a CECPN with the Commission.[7] On December 30, 2014, SWEPCO filed a Notice of Withdrawal because it had received a notification from SPP that the proposed facilities were no longer needed to meet the reliability needs in the region.[8] On January 12, 2015, STO filed its Response to SWEPCO's Notice of Withdrawal.[9] SWEPCO, SPP and AECC filed a Joint Reply to STO's Response and a Joint on January 20, 2015 ("Joint Reply"). There were no filings made in the Docket until March 17, 2015, when STO filed its Motion for Leave to File Surreply,[10] along with its Surreply.[11]

The Commission's Rules of Practice and Procedure are clear. According to the Commission's Rules of Practice and Procedure 311, if STO had desired "to file a reply to a response," it was required to make such a filing "within seven (7) days after the filing of the

[6] *City of Ft. Smith v. SW Bell Tel. Co.*, 220 Ark. 70, 77-78, 247 S.W.2d 474, 479 (1952).
[7] Document No. 2, SWEPCO Application for a Certificate of Environmental Compatibility and Public Need, April 3, 2013.
[8] Document No. 445, SWEPCO Notice of Withdrawal of its Application for a CECPN, December 30, 2014.
[9] Document No. 446, STO's Response to SWEPCO's Notice of Withdrawal of SWEPCO's Application for a Certificate of Environmental Compatibility and Public Need, January 12, 2015.
[10] Document 448, STO's Motion for Leave to File Surreply on SWEPCO's Notice of Withdrawal of SWEPCO's Application for a Certificate of Environmental Compatability and Public Need, March 17, 2015.
[11] Document 449, STO's Surreply.

response." If STO had desired to file its Surreply, it was due no later than January 27, 2015—not 57 days past the deadline on March 17, 2015. As set forth in the Joint Motion of SWEPCO, SPP and AECC,[12] and in SWEPCO's Motion for Limited Rehearing,[13] STO's Surreply was filed well beyond the seven day deadline and was therefore not properly before the Commission for consideration. This fact was recognized by the Commission in Order No. 37, finding STO's Motion for Leave to File Surreply untimely and stating that STO "failed to show good cause as to why its Motion and Surreply were filed 56 days after SWEPCO filed their Reply, or to present compelling facts for its failure to make a timely filing."[14]

In its Motion for Limited Rehearing, SWEPCO explained that the Commission inaccurately found "no need to strike the Surreply" and simply determined that it would not consider it.[15] SWEPCO correctly argues that the Commission's decision not to strike the motion effectively renders its denial of permission to file it moot because not striking the Surreply allows it into the record. If this Docket is to be appealed, the entirety of the record, including STO's untimely and improper Surreply, would be taken up for appellate review. As argued by SWEPCO, it would be "inappropriate and improper to allow STO to shoe-horn into the record belatedly filed argument and testimony in the form of an affidavit."[16] The Commission's denial of STO's Motion for Leave to File Surreply was proper and for those same reasons, the Surreply should have been stricken. It is squarely within the authority of the Commission to strike STO's Surreply.[17] It was untimely and there was no basis for its consideration. However, if it is not stricken from the record, the Commission's ruling has no effect. Because of this, the

[12] Document No. 450, Joint Reply to STO's Motion for Leave to File Surreply and Joint Motion to Strike STO's Surreply, March 18, 2015.
[13] Document No. 453, SWEPCO Motion for Limited Rehearing, April 24, 2015.
[14] Document No. 451, Order No. 37 at 12.
[15] Document No. 453, SWEPCO Motion for Limited Rehearing at 2.
[16] *Id*.
[17] Commission Rules of Practice and Procedure 3.01(a)(1).

Commission's failure to strike STO's Surreply was unreasonable, making rehearing on this limited issue appropriate. Accordingly, SWEPCO's Motion for Limited Rehearing should be granted and the Commission should strike STO's Surreply from the record.

II. STO's Petition for Rehearing Should be Denied

As set forth above, STO's Petition for Rehearing should be denied. There is no basis to support the rehearing, as the Commission has already correctly ruled on each of STO's arguments. STO has not demonstrated that Order No. 37 was unreasonable, arbitrary or without substantial evidence. Nor has it established that the Order is in violation of any Arkansas law or established precedent.

A. The Commission Properly Determined That SWEPCO Could Withdraw Its CECPN Application And That The Intervenors Were Not The Prevailing Party

As explained above, SWEPCO filed to withdraw its Application for a CECPN on December 30, 2014. On January 12, 2015, STO made a filing with the Commission requesting that SWEPCO not be permitted to withdraw its Application, that the Intervenors be declared the prevailing party, and the Commission set a procedural schedule for the purpose of considering attorneys' fees.[18] The Commission correctly determined in Order No. 37 that SWEPCO should be permitted to withdraw its Application and that the Intervenors are not the prevailing party. There is no basis for granting STO's petition for rehearing on these issues.

The Commission's Rule of Practice and Procedure 1.03 provides, "The RPPs shall apply to all practices and procedures before the Commission unless otherwise specifically stated." Rule 3.10 allows for a party to seek relief by motion, "including motions available under the Arkansas Rules of Civil Procedure." And, while the Commission is not bound by the Arkansas Rules of Civil Procedure, Rule 41 of the Arkansas Rules of Civil Procedure allows that "any

[18] Document No. 446, STO's Response to SWEPCO's Notice of Withdrawal.

action may be dismissed without prejudice . . . by the plaintiff before the final submission of the case." Such a dismissal or "absolute right to nonsuit" exists at any time prior to the "submission of the case to the jury or to the court."[19] Arkansas recognizes the "absolute right to a nonsuit" even where the case has "come to a hearing," provided that the argument was not yet closed.[20] It is this fact which is so essential in the matter at hand. At the time SWEPCO filed its Notice of Withdrawal, the argument was not yet closed, and STO makes no attempt to establish otherwise.

In this Docket, the proceedings were clearly on-going and not yet closed. The Commission vacated the Presiding Officer's ruling and directed the parties to present further evidence.[21] Pursuant to Order No. 36,[22] the Commission ordered additional testimony, more recent, comprehensive evidence of need, evaluation of alternative transmission facilities to meet requirements and comparative costs and environmental impact of these options. In addition, the Commission had ordered that it would establish a procedural schedule for the purpose of further considering such information. With so much information still required for consideration in this Docket, STO cannot establish that argument was closed. While preparing and obtaining the additional evidence ordered by the Commission, SPP learned that the transmission facilities were no longer necessary and informed SWEPCO of its intent to withdraw the Notification to Construct ("NTC"). SWEPCO promptly withdrew its Application for a CECPN as allowed by the Commission's Rules of Practice and Procedure 3.10 and Arkansas Rules of Civil Procedure 41. At that time, the Commission had yet to even establish the procedural schedule for the taking and consideration of such additional information, which is clear evidence that the

[19] *White v. Perry*, 348 Ark. 675, 681, 74 S.W.3d 628, 631 (2002) (granting nonsuit because argument had not closed).
[20] *Duty v. Watkins*, 298 Ark. 437, 438, 768 S.W.2d 526, 527 (1989).
[21] Document No. 442, Order No. 36, filed June 8, 2014.
[22] *Id*.

argument was not yet closed. Therefore, the Commission was correct in determining that there was no final disposition and was acting within its discretion to allow SWEPCO to withdraw its Application.[23] This decision of the Commission was neither arbitrary nor was it unreasonable, and it is clearly consistent with Arkansas law. STO has not established otherwise. Accordingly, there is no basis for rehearing on this issue an STO's Petition for Rehearing should be denied.

In addition, STO has asserted that the Intervenors should be named the prevailing party in this Docket. The Arkansas Supreme Court has held that a nonsuit or "dismissal without prejudice does not sufficiently conclude the matter such that a determination of the prevailing party can be stated with certainty."[24] In other words, under Arkansas law, neither side is declared the "prevailing party" when the case is nonsuited under Rule 41. As established above, the "argument" in this Docket was on-going when SWEPCO filed its motion to withdraw its Application, and as the Commission correctly determined, there was no final disposition at the time the Application was withdrawn. Accordingly, SWEPCO's withdrawal of the Application was appropriate under Arkansas Rules of Civil Procedure 41 and incorporated by the Commission's Rules of Practice and Procedure 3.10. Because the Application was voluntarily dismissed, there is no prevailing party. Consequently, the Intervenors cannot be declared the prevailing party and the Commission should not grant rehearing on this matter. The Commission correctly denied STO's motion requesting to be declared the prevailing party and STO's Petition for Rehearing on this issue must be denied.

[23] Document No. 451, Order No. 37 at 11.
[24] *Burnette v. Perkins & Associates*, 343 Ark. 237, 242, 33 S.W.3d 145, 149-50 (2000).

B. STO Is Not Entitled To Attorneys' Fees Under Arkansas Law and the Commission is Without the Statutory Authority Required to Award Attorneys' Fees

It is well established under Arkansas law that in the absence of statutory authorization, that attorneys' fees may not be awarded.[25] There is no such statutory authority authorizing the Arkansas Public Service Commission to award attorneys' fees. Although STO attempts to argue that the Commission's broad authority should allow it to award attorneys' fees, this argument is misplaced. The Commission is "vested with the power and jurisdiction, and it is made its duty, to supervise and regulate every public utility defined in [Arkansas Code Annotated] § 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."[26] Clearly, the Commission has been granted the broad statutory authority to regulate public utilities and the protection of public health and safety;[27] however, this does not mean that the Commission's authority is unlimited. Rather, the Commission is "a creature of the General Assembly with its power and authority limited to that which the legislature confers upon it."[28]

STO attempts to cobble together an argument that there is a basis for attorneys' fees, which is neither correct nor persuasive. Despite the distinctions it attempts to make, the ruling in *Brandon v. Arkansas Public Service Commission*[29] is clear. There is no authority for the Commission to award attorneys' fees. Although the facts of the *Brandon* case may involve a common fund argument and legislative history on specific aspects of Commission authority, what STO fails to appreciate is that the ruling of the court of appeals and the basis of their

[25] *Harris v.City of Fort Smith*, 366 Ark. 277, 280, 234 S.W.3d 875, 878 (2006).
[26] Ark. Code Ann. § 23-2-301.
[27] *Arkansas Gas Consumers, Inc. v. Arkansas Pub. Serv. Comm'n*, 80 Ark. App. 1, 19, 91 S.W.3d 75, 87 (2002) (reversed on other grounds 354 Ark. 37, 118 S.W.3d 109 (2003)).
[28] *Arkansas Gas Consumers, Inc. v. Arkansas Pub. Serv. Comm'n*, 354 Ark. 37, 49, 118 S.W.3d 109, 116 (2003). The Commission has been reversed by the courts when it has acted outside of this legislative-created authority. *See e.g., Arkansas Cnty. v. Desha Cnty.*, 342 Ark. 135, 141, 27 S.W.3d 379, 383 (2000).
[29] 67 Ark. App. 140, 992 S.W.2d (1999).

decision is not restricted simply to complaint dockets. Rather, the basis for the actual decision in *Brandon* is that there is no statutory authority authorizing the Commission to award attorneys' fees. The *Brandon* court held that "our statutory scheme and the holdings of the supreme court that fees are only allowed in specific situations constrain us from making new law" and that allowing attorneys' fees in the absence of a statute was impermissible as the court is "unable to broaden the law to extend attorneys' fees to these circumstances, as this is a legislative function."[30]

STO attempts to argue that because the *Brandon* case was brought under a statute that at one point had a draft provision for attorneys' fees, which was removed before the law was even enacted, is somehow distinguishable from the CECPN statute which has never contained any provision for attorneys' fees. Because of this, they argue that the Commission should have authority to issue attorneys' fees in a CECPN proceeding. This attempted distinction is not supportable. The simple fact that STO overlooks is that the CECPN statute contains no authority to award attorneys' fees. In addition, there is no other statutory authority for the Commission to award attorneys' fees. Doing so, would violate the well-established Arkansas precedent that attorneys' fees are only recoverable when authorized by statute, and would broaden the Commission's authority, which *Brandon* clearly held was impermissible.[31]

STO argues that the Commission has broad authority that should allow it to grant attorneys' fees in CECPN cases and relies to Arkansas Code Annotated §23-2-301 which grants the Commission broad authority "to do all things, whether specifically mentioned in the act, that may be necessary or expedient in the exercise of such power and jurisdiction, or in the discharge of its duty." This reliance is misplaced. First, this statute predates the *Brandon* case and the

[30] *Brandon*, 67 Ark. App. at 158, 992 S.W.2d at 844.
[31] *Id*.

Brandon case even cites to this statute. Clearly, the *Brandon* court was aware of this broad authority. However, the *Brandon* court did not interpret this authority to be an authorization of the Commission to award attorneys' fees. If Arkansas Code Annotated §23-2-301 was broad enough to give the Commission the authority to award attorneys' fees, the *Brandon* court could have and would have made such a finding. Second, the vesting of broad authority in the Commission does not mean that it has the authority to disregard well-established precedent under Arkansas law or to act in direct contradiction of such precedent. It is clear that the Court of Appeals understood it did not have the ability to create authority that is solely within the purview of the legislature to create. If the Court of Appeals does not have the ability to expand the authority of the Commission, then it is certainly misplaced to argue that the Commission could do so.

Furthermore, there is clear Arkansas Supreme Court and Commission precedent on this point. Specifically, the Arkansas Supreme Court has stated that the Commission "may not award attorneys' fees" and that "attorneys' fees are generally not chargeable as costs of litigation unless expressly permitted by statute."[32] Moreover, this Commission has held a number of times that it has no statutory authority to award attorneys' fees. In addition to the underlying Commission order at issue in the Brandon case, the Commission has ruled in a number of other instances that it lacks any statutory authority to award attorneys' fees. In *Tyson Foods, Inc. v. Woodruff Electric Cooperative Corporation*, Order No. 7 states that: "[t]his Commission lacks the subject matter jurisdiction to award attorneys' fees."[33] Additionally, in *Maverick USA, Inc. v. First Electric Cooperative Corporation*, Order No. 3 clearly sets forth that "[t]o the extent Maverick is also seeking reimbursement or payment for consulting fees and attorneys' fees . . . it is well

[32] *Centerpoint Energy, Inc. v. Miller County Circuit Court, Second Div.*, 370 Ark. 190, 258 S.W.3d 336 (2007) (citing *Brandon*).
[33] Docket No. 07-147-C, Order No. 7 (February 18, 2009) (citing *Brandon*).

established that the Arkansas Public Service Commission in the exercise of its quasi-judicial jurisdiction lacks the subject matter jurisdiction to make an award to a prevailing party in cases of this type."[34] As recently as 2012, the Commission again found that it lacks the statutory authority for it to award attorneys' fees.[35] STO's attempts to draw distinctions between this case and *Brandon* are without merit, as it is the lack of the statutory authority to award attorneys' fees which is ultimately determinative.

The Commission properly rejected STO's arguments on this issue in Order No. 37. STO's Petition for Rehearing did not establish that the Commission's decision on attorneys' fees was arbitrary, unreasonable, or without substantial evidence. On the contrary, the Commission followed well-established law and precedent that clearly demonstrates that the legislature has not vested the Commission with the required statutory authority to grant attorneys' fees. Despite what STO attempts to establish, Arkansas law dictates that "every litigant to bear his or her attorney's fees, absent a state statute to the contrary."[36] There is simply no legal basis for disregarding this well-established precedent, and the Commissions denial of STO's request for a procedural schedule on attorneys' fees was proper. Accordingly, STO's Petition for Rehearing on this matter must be denied.

C. <u>There Was No Discovery Abuse Or Misconduct In This Docket</u>

STO asserts that the Commission should award it attorneys' fees as a "sanction for discovery abuse and misconduct." There has been no discovery abuse or misconduct. STO's assertions are baseless. There were no misrepresentations or failures to disclose material facts. Furthermore, the broad authority that STO attempts to create in the Commission simply does not

[34] Docket No. 08-148-C, Order No. 3 (December 15, 2009).
[35] *Schumacher and Gordon Watkins against Carroll Electric Cooperative*. Docket No. 11-077-C, Order No. 3, (September 18, 2012).
[36] *Fox v. AAA U-Rent It, et al.*, 341 Ark. 483, 489, 17 S.W.3d 481, 485 (2000).

exist. STO attempts to argue that because there is a Commission Rule of Practice and Procedure which permits the Commission to "award reasonable legal and/or expert fees, incurred as a result of the failure to comply with the Commission's order [directing discovery]"[37] that the Commission was in error for determining it inapplicable here.[38] The Commission correctly determined that this rule is not applicable in the present case. First, this is clearly not the situation at hand. This Rule of Practice and Procedure is not applicable to even STO's characterization of the matter. Second, STO is again attempting to create authority in the Commission that not authorized by the legislature. The one limited instance in the Commission's Rules of Practice and Procedure for awarding attorneys' fees in relation to disobeying a Commission order directing discovery is simply not applicable here. The Commission correctly found that STO has not identified any instance where this rule could be correctly applied in this case.[39] In its Petition for Rehearing, STO again tries to argue that the Commission has broad authority and beyond this limited discovery rule; however, the STO arguments are not supported by Arkansas law, and they cite no persuasive authority supporting their argument.

In addition to the fact that there is no basis in law to support STO's argument on this matter, there is also no basis in fact supporting STO's request for rehearing. SPP has not made misrepresentations or omitted material facts. As SPP explained in its December 29, 2014 letter to SWEPCO, reliability needs in northern Arkansas have significantly decreased compared to previous studies of area needs. There have been material changes in the load projected by the local load serving utilities in the north Arkansas area and the cancellation of transmission service reservations, which greatly altered the reliability needs in the area. This was what dictated the

[37] Commission Rule of Practice and Procedure 5.12(d)(4) (2013).
[38] Document 453, STO's Petition for Rehearing at 7.
[39] Document 451, Order No. 37 at 12.

change in reliability needs, and these changes in load projections occurred after SPP's 2013 reevaluation.

The load forecasts provided to SPP for Mr. Nickell's 2013 reevaluation still supported a need for the line. Mr. Nickell's testimony in 2013 was accurate based on the 2013 reevaluation performed at that time. There was no misrepresentation and no failure to disclose material facts. Rather, there was prefiled testimony about the load projections by both SWEPCO and AECC witnesses, which was the basis for SPP's 2013 reevaluation. Mr. Nickell answered extensive discovery on this reevaluation, as well as on the original studies, and provided sworn prefiled and oral testimony. In addition, Mr. Nickell testified extensively at the hearing about SPP's planning process, which are governed by its FERC-approved Open Access Transmission Tariff ("Tariff"). Mr. Nickell never attempted to conceal any 161 alternative. In fact, Mr. Nickell testified in his prefiled testimony that "in general, while a 161 kV facility might serve as a short-term solution for limited purposes, a 345 kV facility will serve as a solution for a future consisting of greater load growth over a longer period of time, as well as for a future including interconnection of new generation resources, or for a future consisting of possible displacement of existing generation resources."[40] Based on the load forecasts available to SPP at the time of its 2013 reevaluation, Mr. Nickell testified that it "would not be prudent to continue the incremental development of the 161 kV system that would only provide short-term solutions that would have to be replaced and/or expanded over time resulting in a larger cumulative investment over the same time frame."[41] In addition, he provided extensive testimony on this issue upon cross examination. There was no omission of facts or misrepresentation by SPP.

[40] Document 313, Surrebuttal Testimony of Lanny Nickell, August 7, 2013 at 11.
[41] *Id*. at 11-12.

With respect to the differences between the 2013 reevaluation performed in connection with this Docket and the Commission-ordered reevaluation, the underlying demand in the north Arkansas area has changed and as a result the reliability needs have changed. The 2007 Ozark Study, 2008 STEP and 2013 reevaluation showed a reliability need for the line. SPP has no interest in building transmission that is not needed and receives absolutely no benefits or gains based on building transmission. SPP's sole interest is ensuring the reliability of the transmission grid. Upon the reevaluation with new load forecasts from the local utilities, it became clear that the demands and reliability needs in the north Arkansas area have changed significantly and the Project is no longer needed. This was not the result of misrepresentation or omission of any facts. It was simply that the reliability needs of the area and the surrounding region no longer require the project. Accordingly, upon reaching this determination, SPP began the process of withdrawing the NTC.

There is no basis in law or fact supporting the awarding of attorneys' fees for any alleged misconduct. Sanctions are unwarranted and would be inappropriate. There has been no discovery abuse and no basis for sanctions based on misconduct. The Commission's determination on this issue was reasonable and was not arbitrary. STO's Petition for Rehearing on this issue must be denied.

D. Order No. 37 Was Supported By The Evidence, Is Consistent With Arkansas Law And Should Be Affirmed

STO has made no demonstration that Order No. 37 was unsupported by substantial evidence, unreasonable, arbitrary, or that it was inconsistent with Arkansas law. Accordingly, Order No. 37 should be affirmed,[42] and STO's Petition for Rehearing denied. The Commission acted within its authority to permit the CECPN application to be withdrawn pursuant to Arkansas

[42] With the exception of the matter raised by SWEPCO for limited rehearing on striking STO's Surreply.

Rule of Civil Procedure 41 and correctly refused to declare the Intervenors the prevailing party. In addition, the Commission properly refused to issue a procedural order on the matter of attorneys' fees, correctly determining that there was no basis under Arkansas law to do so. Finally, there was no basis for sanctions. For all of these reasons, STO's Petition for Rehearing must be denied.

III. Conclusion

For all of the reasons set forth in this Response, SPP prays that SWEPCO's Motion for Limited Rehearing be granted and STO's Petition for Rehearing be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Erin Cullum Marcussen, attorney of record for Southwest Power Pool, Inc., do hereby certify that I have, on this 4th day of May, 2015, duly served a true and correct copy of the above and foregoing pleading upon all parties of record by electronic mail.

Erin Cullum Marcussen