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' POST-HEARING REPLY BRIEF

Intervenor Petitioner not-for-profit corporation Save the Ozarks (STO) hereby, by counsel, respectfully submits its post-hearing reply brief in the above captioned matter.

I. REQUIREMENTS OF ARKANSAS LAW FOR OBTAINING A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

Arkansas law specifies a number of requirements that must be satisfied by an applicant for a Certificate of Environmental Compatibility and Need (Certificate). Each of these legal requirements are discussed in separate sections below.

A. SWEPCO Misreads Arkansas Law Regarding the Requirement that SWEPCO Obtain and Provide to the Commission with Its Application the Required Federal and/or State Environmental Permits

SWEPCO argues in its opening brief at pages 24-26 that it was not required to obtain or submit with its Application to the Commission any environmental permits and that it is acceptable under Arkansas law to obtain these permits after the fact, after the Commission decides whether to issue the requested CECPN. SWEPCO may have been correct in regard to this argument prior to the 2011 amendments to the statute but SWEPCO is clearly incorrect in making this argument now. Arkansas law as of the 2011 amendments requires that the

Commission consider the relevant environmental permits as part of the Commission's deliberations on whether to issue the Certificate. Arkansas Code § 23-18-519(b)(4) specifically provides:

> (b) **The commission shall not grant a certificate** for the location, financing, construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the commission, **unless it finds and determines:**
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> * * *
>
> **(4) That the major utility facility represents an acceptable adverse environmental impact, considering** the state of available technology, the requirements of the customers of the applicant for utility service, the nature and economics of the proposal, **any state or federal permit for the environmental impact**, and the various alternatives, if any, and other pertinent considerations;

Arkansas Code § 23-18-519(b)(4) (emphasis added).

This statutory provision, as a logical necessity, requires SWEPCO to obtain the relevant environmental permits and submit these permits to the Commission with its Application so that the Commission may "consider" these permits prior to deciding whether to deny or grant the requested Certificate. However, here it is undisputed that SWEPCO has not obtained or submitted to the Commission a number of environmental permits required for a new major transmission line, and does not plan to do so until <u>after</u> the Commission decides whether to issue the Certificate. SWEPCO Brief at pages 24-25; TR 8/27/2013, Thornhill, p. 755-57, 839-41, 847-49; TR 8/30/2013, Cotten, p. 2376-77, 2426, 3276.

The July 2013 letter to the Commission from the Army Corps of Engineers (Corps) makes clear the position of the federal agency charged with issuing two of these environmental permits, a Rivers and Harbors Act Section 10 permit and a Clean Water Act (CWA) Section 404 permit, that such federal environmental permits are required to be obtained by SWEPCO for the project. STO Costner Surrebuttal Testimony Exhibit 5 (Docket 309-5). APSC staff engineer Cotten stated that he did not make any determinations about any additional state or federal permits that would be required for Route 109 in Missouri. TR 8/30/2013, Cotten, p. 2377.

Here, SWEPCO has intentionally not applied for, obtained, or submitted to the Commission required environmental permits including Army Corps issued River and Harbors Act Section 10 permits and Army Corps issued Section 404 CWA permits. Because SWEPCO has not yet obtained these required permits and has not submitted such permits for review by the Commission, SWEPCO has not complied with Arkansas Code § 23-18-519(b)(4) and SWEPCO's non-compliance precludes the Commission from complying with its obligations under Arkansas Code § 23-18-519(b)(4). Consequently, the Commission should deny SWEPCO's Application.

Further, the Commission's Rules of Practice and Procedure require that certificates of environmental compatibility and need be applied for using formal applications, that all formal applications must be in writing, and that in the event the statute under which the application is made requires any additional information, such as a permit, a copy thereof must be attached to the application. *See* Commission Rules 4.01 and 4.02. Here, SWEPCO could not have complied with this additional requirement of the Commission's Rules of attaching the relevant environmental permits because SWEPCO has yet to obtain those permits from the Army Corps. For these reasons, SWEPCO's Application should be denied.

SWEPCO argues that the required environmental permits "cannot be obtained until after the CECPN has been granted," SWEPCO brief at pages 25-26, but SWEPCO cites no law to support this argument. SWEPCO admits the statutory amendment of 2011 that added the above quoted language in Ark. Code § 23-28-519(b) referencing environmental permits as one of the items the Commission must consider before deciding whether to issue a CECPN. SWEPCO Brief at page 24. SWEPCO's argument that these permits "cannot be obtained" until after the CECPN decision is actually an argument that it would be inconvenient and expensive to comply.

SWEPCO wants the Commission to read the plain language of the statute as if it stated something that it does not.

SWEPCO argues that the statute should be read as if it says that the Commission must consider any "permits that may be required" rather than what it says which is that the Commission must consider "any state or federal permit for the environmental impact." SWEPCO's desire to rewrite this statute for its convenience should be addressed to the Legislature, not the Commission. The Commission, like the courts, must enforce the statute as it is written. SWEPCO predictably argues that the Commission may issue the CECPN contingent on SWEPCO obtaining the required permits after the fact but as noted in STO's opening brief, this procedure may have been allowed prior to the 2011 amendment but now would prevent the Commission from meeting its obligation under the statute to consider the permits before issuing a decision on the CECPN.

B. SWEPCO Erroneously Asserts that It Did Prepare and Submit to the Commission the Analysis of the Projected Economic and Financial Impact on the Local Communities Required by Statute

SWEPCO argues in its opening brief at pages 12-15 that it has sufficiently complied with Arkansas law requiring an analysis of economic and financial impacts on local communities from the project notwithstanding admissions from its witness at hearing that SWEPCO did not prepare such an analysis of adverse economic impacts to any specific local communities including impacts on tourism. This SWEPCO argument is simply incorrect.

SWEPCO is required by statute to provide an application for the certificate along with an EIS which adequately addresses the economic and financial impacts of the project on the local communities affected and the Applicant. SWEPCO relies on the Application section 10 to support its assertion that it has complied, but this section of the Application (mis-cited by

SWEPCO as if it were the EIS) speaks only to the absence of any significant positive economic or financial effects on unspecified local communities from the project but does not address any adverse impacts at all including impacts on tourism (which is not mentioned).

SWEPCO also relies on a creative argument about proving a negative that misses the point of the statute. SWEPCO asserts that STO is trying to force it to prove a negative but STO is not trying to force SWEPCO to prove anything on this issue either way but simply is pointing out that the clear statutory requirement for an analysis of these adverse economic impacts has not been prepared and submitted with the application as required by Arkansas law, which provides as follows.

> **An applicant for a certificate shall file** with the Arkansas Public Service Commission **a verified application** in the form required by the commission and **containing the following information**:
>
> * * *
>
> (6) **An analysis of the projected economic or financial impact** on the applicant **and the local community in which the major utility facility is to be located as a result of the construction and the operation of the proposed major utility facility**;

Arkansas Code § 23-18-511 (emphasis added).

What evidence SWEPCO can offer on economic impacts during the litigation of an Application for a CECPN at hearing or in pre-filed testimony is not the question addressed by the statute in Ark. Code § 23-28-511. The statutory question here is what did SWEPCO submit, or fail to submit, with its Application referenced in the public notices and served on the State agencies as required by statute (see Ark. Code § 23-28-513). SWEPCO did not prepare or submit with its Application any analysis of adverse economic impacts on local communities from the project, including adverse impacts on tourism. The only mention of economic impacts in the EIS and Application concerns the lack of any significant positive economic impacts such

as significantly increased local employment due to the project. *See* EIS p.5-7 (Docket 2-2), Application at page 8-9 (Section 10). There is no discussion in the Application or EIS of adverse impacts on tourism, the arts, or other businesses in local communities such as Eureka Springs.

Intervenors have offered considerable evidence, both expert opinion and fact testimony as well as documentary evidence, to support their conclusion that the proposed SWEPCO transmission lines will cause significant adverse economic impacts on the local communities through which the lines will pass including Eureka Springs including significant adverse impacts on tourism. *See* Bishop direct testimony pp.3-10; Costner direct testimony p.12; DeVito direct testimony p.2, 9; Severe direct testimony p. 7; Hamby direct testimony p.11; Stowe direct testimony, pp.10 -13. Clearly there was a legitimate issue to be analyzed regarding these impacts. The data on tourism and expert and lay opinion submitted by STO witnesses regarding the visual impacts of the project and the consequential impact on local artists and on tourists seeking scenic beauty does constitute evidence not just "concerns" as SWEPCO argues. And, regardless of what weight is to be given to SWEPCO's witnesses conclusory opinions and photographs of other communities on whom transmission lines have been imposed, which do not, standing alone, say anything about the economic impacts on tourism of the power lines photographed (SWEPCO has not done studies in the past of impacts on tourism from power lines, TR 08/29/13, Johnson, p. 1475) , SWEPCO's litigation presentation does nothing to satisfy the statutory requirement here regarding the content of the Application.

SWEPCO's EIS consultant Thornhill noted in commenting on the draft EIS that impacts on tourism should have been considered. TR 08/27/13, Thornhill, p.763-65. SWEPCO admitted that no analysis of adverse impacts on tourism in the local communities from the proposed transmission lines was prepared. TR 08/29/13, Johnson, p.1479; TR Thornhill, 08/28/13, p. 943.

APSC engineer Cotten did not do any independent analysis of his own on tourism impacts. TR 8/30/2013, Cotten, p. 2440.

Despite SWEPCO's smoke and mirrors argument in its brief that attempts to recreate history, SWEPCO simply completely failed to perform and include with its Application any analysis of the adverse economic impacts of the project on the local communities affected such as Eureka Springs, including regarding tourism. This material omission prejudiced the public, landowners, and agencies required by law to be notified of and given access to the Application to inform their decisions on whether and how to comment and intervene before the Commission. Consequently, SWEPCO's Application is incomplete and in non-compliance with the controlling statute and should be denied.

C. SWEPCO and SPP Err in Asserting that SWEPCO Has Met Its Burden Under Arkansas Law to Demonstrate Need for the Proposed Major New Utility Facility

SWEPCO acknowledges in its opening brief that it is required to show a need for the proposed new major utility facility in order to be eligible for the requested CECPN. This of course is correct. SWEPCO's is required by statute to provide an application for the certificate along with an EIS which adequately demonstrates the need for the project. Arkansas Code § 23-18-511; Arkansas Code § 23-18-519(b). *See* discussion in STO's opening brief regarding Arkansas law relating to the requirement to demonstrate need, which is incorporated herein by reference.

However, SWEPCO clearly errs when it argues in its opening brief at pages 7-11 that it has sufficiently (and timely via the Application) demonstrated the need for the project as proposed (i.e. a new 345 kV transmission line). Testimony from SPP's Nickell, which was unrebutted by any SWEPCO witness, established that SWEPCO itself, the Applicant here,

believed that only a 161kV line was needed to satisfy the identified need (the initially asserted reliability problems) and had requested that SPP approve only a 161 kV line "rebuild". TR August 29, 2013, Nickell, p. 1843. SWEPCO in its brief clarifies importantly that this 161kV rebuild would have been upgrading existing 161 kV systems. Thus this rebuild alternative would essentially be a no-new-terrain alternative which would have dramatically less adverse environmental impacts and costs than new terrain alternatives. SWEPCO concealed this material fact in its Application to the Commission and presented an application and testimony in support of that application that mislead the Commission and the public to believe that SWEPCO actually had concluded that a 345kV line was needed to resolve identified electric power transmission reliability problems. However, SWEPCO knew that it was SPP, who is not the applicant, who had rejected SWEPCO's 161kV line proposal because SPP wanted a 345 kV to get the benefit of "head room" for purposes of anticipated future projects or development for which there was and is no demonstration of need. TR August 29, 2013, Nickell, p. 1843; August 26, 2013, Hassink, pp. 365-67; Johnson, August 29, 2013, pp. 1411-12.

SPP's desire, for its own corporate (or public policy) purposes, for "head room" does not equate to a legally sufficient demonstration of need for a 345 kV transmission line. What SPP wants here is not the same as what the public needs. Regardless of whether SPP actually desires what the presiding Administrative Law Judge referenced as "super reliability" (TR August 26, 2013, Hassink, 365-66), what STO would call excessive reliability -- a level of reliability beyond what is legally required and which is not justified from a public need or cost-benefit perspective, or whether SPP, using SWEPCO as its agent here, is merely using the concept of such super reliability as a pretext for a project that serves its corporate purposes or some private purpose, there is simply no legally sufficient demonstration of need here for the project as proposed.

SWEPCO's lack of candor in its Application to the Commission, regarding which party really wants a 345kV line and why, is sufficient reason for this Application for a CECPN to be denied.

Further, although SPP witness Nickell attempted to provide an updated analysis and justification of need for the proposed project after STO expert Dr. Merrill demonstrated through his direct and surrebuttal testimony, 13-041-U_181_1 Direct testimony by Dr. Merrill for STO; 13-041-u_312_1_Surrebuttal by Dr. Merrill, that the original statement of need was outdated and that the originally anticipated N-1 scenario overloads are no longer expected, Nickell's work product and testimony is not legally sufficient to justify the proposed project in terms of need for a number of reasons. First, Nickell's new need and reliability analysis was done without the normal process and input from other concerned parties and was not included in any new Notice to Construct (NTC). Second, Nickell's new post-hoc analysis (post-application and post-litigation) of reliability problem scenarios had obvious major errors pointed out by STO's expert Dr. Merrill in Merrill's surrebuttal testimony. These obvious errors involved the inclusion by Nickell in his table of purported reliability scenarios submitted without correction with both his direct testimony and surrebuttal testimony of impossible/nonsensical scenarios that should never have been included in the first instance by anyone with expertise in the field. TR 1690, 1791-96.

At minimum, these blatant errors should have been caught by Nickell after submission of his direct testimony before he re-submitted the same erroneous table of scenarios with his surrebuttal testimony. The fact that Nickell or his staff or colleagues made these blatant errors in Nickell's direct testimony and that these blatant errors went unnoticed and uncorrected when Nickell submitted his surrebuttal testimony is more than sufficient basis to reject and find not credible and/or not persuasive Nickell's post-hoc attempt to rehabilitate SWEPCO's originally submitted and now shown to be outdated statement of need.

In addition, as Dr. Merrill explained, Nickell's post-hoc analysis of reliability scenarios, even if found to be credible, focused incorrectly on N-1-1 and N-2 scenarios that are not required by NERC to be addressed in transmission planning and needs analyses, and on low probability low-hydro scenarios which have less costly and less environmentally damaging alternative solutions even if they occurred. Again, the record reflects that SPP was offering post-hoc a " super reliability" rationale for a new 345 kV transmission line that even SWEPCO recognized at the time the NTC was being considered was not needed.

There was prejudice to both potential and actual intervenors and commenters from SWEPCO's lack of candor in its Application regarding whether only a 161 kV line was needed in its view even though it was asserting that a 345 kV line was needed, and regarding SPP's real rationale for the 345 kV line. The concealment of this material information in the Application and its attachments prejudiced those members of the public who chose, or would have chosen, to participate by way of the public comment process, and those who might have chosen to intervene had they known these facts. The public would have made materially different comments on SWEPCO's assertion of need for the project had the public been timely noticed of SWEPCO's request for a 161 kV line and of SPP's super reliability rationale. Thus, even if the Commission were to decide that need was belatedly demonstrated at hearing by SWEPCO or SPP, which STO disputes for all the reasons stated herein, in STO's opening brief which is incorporated here, and in Dr. Merrill's Direct and Surrebuttal testimony, there nonetheless is a failure to comply with Arkansas law because the need rationale ultimately relied upon by SWEPCO was not presented timely to the public via the Application that was noticed pursuant to Ark. Code § 23-28-513.

D. SWEPCO and SPP Err in Asserting that SWEPCO Has Met Its Burden Under Arkansas Law to Prepare and Submit to the Commission an Adequate EIS with Its Application that Meets Specific Statutory Requirements

It does not take a microscope or a magnifying glass here to discern that SWEPCO's arguments in its opening brief at 16-27 to the effect that its EIS was legally sufficient are simply wrong. SWEPCO in its brief fails to acknowledge obvious defects in its EIS and Application regarding analysis of environmental impacts and alternatives.

One of those obvious defects was pointed out by a federal agency. SWEPCO's EIS fails to address impacts on Army Corps properties including impacts on lakes and rivers. *See* Exhibit 5 to Costner Surrebutal Testimony (July 10, 2013 Letter from Army Corps to the Commission). "The SWEPCO Environmental Impact Statement dated March 2013 associated with this project does not fully address all potential impacts to Corps of Engineers property." *Id*. (noting that the SWEPCO EIS fails to address erosion and sedimentation issues relating to Corps properties stemming from potential loss of vegetation, loss of Bald Eagle roosting habitat, impacts to cultural resources, and the aesthetic impacts from a 150 ft right-of-way).

Another obvious defect in the EIS and the EIS process is that karst data will not be collected until after the Commission decides the issue of the Certificate. TR 08/27/13, Coffman, pp. 468-9, TR 08/27/13, Thornhill, pp. 824-5. This omission precluded the EIS from adequately addressing impacts from the project on karst eco systems including impacts on cave dwelling species such as the endangered Indiana Bat and other cave dwelling bats now threatened by the White Nose Syndrome that is decimating cave dwelling bat populations in the United States. Significant adverse impacts on karst eco systems from the project are anticipated and should have been analyzed. *See* Direct and Surrebuttal testimony of STO Expert Thomas Aley, 13-041-U Doc. 183 and Doc. 307.

Yet another major omission in the EIS is consideration of constructability when evaluating alternatives. Constructability was removed as a factor to be used in evaluating and screening alternative routes and the decision to remove constructability came at a suspicious time -- after constructability had been initially included and constructability scores for the numerous alternatives being screened had already been computed and reviewed. TR 8/27/2013, Thornhill, p. 772-74.

Harm to private property was also not addressed in the EIS, and APSC engineer Cotton did not directly evaluate this factor in his review. TR 8/30/2013, Cotton, p. 2379. Harm to private property is one of the factors to be considered in the process of deciding whether a CECPN should be issued. *See* Order No. 5 in Docket No. 91-182-U ("damage or injury to private property is a relevant and permissible consideration in transmission line siting proceedings").

In addition, the EIS on its face fails to address the clearly available and feasible alternatives to the project identified in the direct testimony of Dr. Hyde Merrill that solve the problem identified by SWEPCO in the Application and by SPP in the Notice to Construct as creating the need, and the SWEPCO 161 kV rebuild alternative. Arkansas law requires that alternatives to a new transmission line must also be considered in an EIS, not just alternative routes for a new transmission line. *See* Arkansas Code § 23-18-519(b)(4). Dr. Merrill testified that his alternative solutions resolve this prior identified need with dramatically less environmental impacts and at dramatically lower cost. There is nothing in the EIS that provides a counter analysis.

The EIS also does not address (and neither does the Application) the connection of the project to the Entergy system, which SPP and SWEPCO admit is required to complete the

project. Neither does the EIS address alternatives to the chosen location for the new Kings River substation or the comparative impacts of same. One such alternative, the existing Osage Creek Station was evaluated. TR 8/26/2013, Bittle, p. 188. However, the evaluation was not included in the EIS.

This is not a case where there needs to be a careful review by the Commission of competing expert testimony on technical details in order to determine whether there has been compliance with the statute. In this case, non-compliance by SWEPCO is apparent due to the complete failure by SWEPCO to address fundamentally important issues in the statutorily required EIS. Arkansas law makes clear that SWEPCO is required by statute to provide an application for the certificate along with an EIS which adequately addresses the environmental impacts of the project. The EIS submitted must include among other things a full analysis of the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided, a description of the comparative merits and detriments of each alternate location considered for the major utility facility, reasons why the proposed location and production process were selected, and any irreversible and irretrievable commitments of resources that would be involved. *See* Arkansas Code § 23-18-511. The material omissions in the SWEPCO EIS described above are clearly unacceptable under Arkansas law. Arkansas Code § 23-18-511; Arkansas Code § 23-18-519(b).

Note that the language in § 23-18-519(b)(4) requires the Commission (and therefore the applicant) to consider alternatives generally, not only alternative locations or routes.

> The PSC has concluded by a vote of two to one, based on the record before it, that a coal-fired generating plant in Hempstead County "represents an *acceptable* adverse environmental impact." That is a finding and determination that the PSC must make in its order under the Utility Code to grant the certificate to SWEPCO. Ark.Code Ann. § 23–18–519(b)(4) (Repl.2002). In making this mandated finding and determination of an acceptable adverse environmental impact, the statute

> directs that the PSC must consider, among "other pertinent considerations," the following:
> a) the state of available technology;
> b) the requirements of the customers of the applicant utility service;
> c) the nature and economics of the proposal; and
> d) the various alternatives.
> Hence, a decision by the PSC in SWEPCO's favor based on these factors is essential for there to be an acceptable adverse environmental impact.

Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n, 2010 Ark. 221, 15-16, 384 S.W.3d 477, 485 (2010) (concurring opinion) (emphasis added).

A key omission in the EIS regarding alternatives analysis is the omission of any analysis of the 161 kV rebuild alternative proposed by SWEPCO itself. Testimony from SPP's Nickell, which was unrebutted by any SWEPCO witness, established that SWEPCO, the Applicant here, believed that only a 161kV line was needed to satisfy the identified need (the initially asserted reliability problems) and had requested that SPP approve only a 161 kV line "rebuild". TR August 29, 2013, Nickell, p. 1843. SWEPCO in its brief clarifies importantly that this 161kV rebuild 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 new terrain alternatives. Given that SWEPCO asserts 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.

In addition to these substantive omissions which make the SWEPCO EIS legally deficient, there is another fatal flaw in regard to the process by which the EIS was prepared. Here, the EIS process was an afterthought, a pretextual exercise intended to create a justification for a decision already made. The decision to build a new transmission line and new station

versus other alternatives was made in 2008, prior to considering environmental impacts and alternatives in the EIS. TR, 9/26/2013, Hassink, p. 294.

In addition, SWEPCO offered testimony and information in post-hoc testimony regarding visual impacts from the project in response to Dr. Smardon's testimony for STO, se 13-041-U Doc. 186 and Doc. 310, which was not included in its Application or EIS. Although this additional information presented during the litigation after the Application was filed and noticed may be used by SWEPCO in an attempt to persuade the Commission that the substantive requirements for issuance of a CECPN were satisfied, such post-hoc information on this issue and other issues (such as need) cannot be used to satisfy the procedural requirements of Ark. Code 23-18-511 regarding what information must be included in the Application. The failure to timely include the technical information SWEPCO intended to rely on regarding analysis of environmental impacts such as visual impacts in scenic areas in the Application and EIS noticed to the public, landowners, and agencies prejudiced the public, landowners, and agencies in deciding on what comments to make and whether to intervene just as the late disclosed need rationale prejudiced these same parties.

For all of the above stated reasons, SWEPCO's Application is incomplete and in non-compliance with the controlling statute and should be denied.

E. SWEPCO and SPP Err in Asserting SWEPCO Has Complied with Arkansas Law Requirements for Conforming to Regional Laws

SWEPCO argues in its opening brief at pages 31-32 that it complied with the requirements of Arkansas law relating to conforming with regional laws. However, SWEPCO addresses this issue only in regard to the location of the Kings River Substation and Route 33, but does not address compliance with Missouri law regarding Route 109.

Arkansas law further requires that the project must be shown to conform as closely as practicable to applicable state, regional, and local laws as well, as a condition precedent to the Commission issuing a Certificate.

* * *

> (10) **That the location of the major utility facility as proposed conforms as closely as practicable to applicable state, regional, and local laws and regulations issued thereunder**, … .

Arkansas Code § 23-18-519(b) (emphasis added).

This provision is reasonably read to require compliance with the applicable laws of Missouri for that portion of Route 109 that extends into Missouri. Although the APSC does not have the power to decide what utility projects will be built in Missouri (i.e. cannot mandate that a project be built over the objections of Missouri officials), the APSC under the laws cited *supra* is nonetheless authorized to reject a Certificate for a proposed major utility facility to be built in part in Arkansas if any of the alternatives presented to the APSC include, as here, a route that extends into Missouri and the applicant has not demonstrated compliance with applicable Missouri laws, such as statutory or constitutional provisions requiring notice before the government takes or harms the property of a citizen. SWEPCO has not identified what Missouri laws would be applicable here but at minimum Due Process would apply under both State and Federal constitutions. APSC staff engineer Cotten stated that he did not make any determinations about what additional state or federal permits would be required for Route 109 in Missouri. TR 8/30/2013, Cotten, p. 2377.

It is not genuinely disputed that numerous landowners along the portion of proposed Route 109 that extends into Missouri have yet to receive notice via certified mail and it is too late in the proceedings before the Commission for SWEPCO or the Commission to cure this failure

by belatedly issuing Notice. SWEPCO admits it has not attempted to serve notice on these Missouri landowners. These Missouri landowners who should have received timely notice from SWEPCO of its Application include Jamie Harvey and several others for whom Ms. Harvey submitted affidavits. TR 08/26/13 Harvey pp. 152-54.

CONCLUSION AND RELIEF RQUESTED

For all of the foregoing reasons, SWEPCO's Application is incomplete, SWEPCO has not met its burden to demonstrate compliance with the controlling statutory requirements of: a) submission to the Commission for consideration all relevant environmental permits; b) submission of an adequate analysis of projected adverse economic and financial impacts on the local affected communities, c) submission of an adequate and timely demonstration of need; d) submission of an adequate EIS; and e) compliance with regional laws. Consequently, SWEPCO's application to the Commission for the Certificate should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 16, 2013, a true and correct copy of the

foregoing STO Post-Hearing Reply Brief was served on all parties of record by electronic mail.

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