

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' PETITION FOR REHEARING

Pursuant to Arkansas Code § 23-2-422 and Commission Rules of Practice and Procedure Rule 4.14, Intervenor Petitioner not-for-profit corporation Save the Ozarks (STO) hereby, by counsel, respectfully submits its Petition for Rehearing in the above captioned matter of Docket No. 13-041-U, Order No. 32 as modified by Order No. 33. Rehearing should be granted here because the Commission's decision issuing a Certificate of Environmental Compatibility and Public Need (CECPN) to SWEPCO for Route 109 is arbitrary and unreasonable, is contrary to Arkansas and federal law, is contrary to the Arkansas and Federal constitutional guarantees of due process, is not supported by substantial evidence, and is unjust for all the reasons presented herein. Petitioners do not seek rehearing on the Commission's decision that Routes 33 and 108 are unreasonable (see Docket No. 13-041-U, Order No. 32 as modified by Order No. 33).

I. REHEARING SHOULD BE GRANTED BECAUSE THE COMMISSION'S DECISION IS CONTRARY TO LAW

A. Contrary to Arkansas Code Arkansas Code § 23-18-519(b)(4), the Commission Concluded that SWEPCO Was Not Required to Obtain and Provide to the Commission with Its Application the Applicable Federal and/or State Environmental Permits

Arkansas law requires that the Commission consider the relevant environmental permits as part of the Commission's deliberations on whether to issue the CECPN. 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: (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. This language explicitly requiring consideration by the Commission of any environmental permits for the proposed major utility facility was added by a statutory amendment in 2011, following the Arkansas Court of Appeals and Arkansas Supreme Court decisions in the *Hempstead* case, *Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n*, 2010 Ark. 221, 384 S.W.3d 477 (2010) and *Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n*, 2009 Ark. App. 511, 324 S.W.3d 697 (2009) *aff'd as modified*, 2010 Ark. 221, 384 S.W.3d 477 (2010). This statutory language is clear and mandatory and the Commission like the Courts has a duty to apply this requirement literally.

Clearly, though, this court has a duty to review the findings and conclusions of the PSC, and, similarly, the PSC, as an arm of the legislature, has a duty to regulate and approve new plant construction under the statutory criteria.

Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n, 2010 Ark. 221, 21 384 S.W.3d 477, 485 (2010) (concurring opinion).

There is no exemption for major utility facilities from the requirements to obtain permits from State (or federal) agencies relating to air or water pollution.

(a) This subchapter does not affect the:

(1) Jurisdiction of the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission with respect to water and air pollution control or other matters within the jurisdiction of the department or the Arkansas Pollution Control and Ecology Commission; and

(2) Requirement that a person apply for and obtain a permit from the department as provided by the Arkansas Water and Air Pollution Control Act, §§ 8-4-101 -- 8-4-106, 8-4-201 -- 8-4-229, and 8-4-301 -- 8-4-313.

(b) This subchapter does not confer upon the Arkansas Public Service Commission any authority or jurisdiction conferred by law upon the department or the Arkansas Pollution Control and Ecology Commission.

(c) Notwithstanding the exemption provisions of § 23-18-504, each major utility facility constructed in Arkansas is subject to the environmental rules and regulations of the state and federal regulatory bodies having jurisdiction over the air, water, and other environmental impacts associated with the major utility facility.

Ark. Code § 23-18-506.

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 after the Commission's decision on whether to issue the Certificate.

Q. Okay. Now, in the text under Section 2.4 there on Page 2-6 [of the EIS], there's a statement: Construction is anticipated to begin following approval by the APSC, the Commission, and acquisition of all the necessary permits and easements. Do you see that?

A. Yes.

Q. Do you agree with that statement?

A. Yes. SWEPCO can't start construction until they get an approved project and they get all the permits.

Q. Okay. Now --

A. And easements.

Q. Did you have certain permits and easements in mind when you made that, or you or the other authors made that statement?

A. Yeah. There's a number of standard permits that are required for transmission line construction, many of which I believe were outlined throughout the document.

Q. Right.

A. And in my testimony.

TR 8/27/2013, Thornhill, p. 755-56.

Q. Okay. So at the moment SWEPCO's plan is to wait on the Commission decision in this case and obtain the permits afterwards?

A. That's correct.

TR 8/27/2013, Thornhill, p. 757.

A. But certainly the EIS, as well as my testimony, indicates that SWEPCO would need to obtain, or at least consult with the corps to determine if a Clean Water Act 404 permit was necessary.

Q. Okay. Now, with your clarification on the regulatory Section 10 permit question, has SWEPCO made a determination whether they agree or disagree with the corps that a regulatory Section 10 permit is required?

A. I don't know that that's SWEPCO's decision to make. That's the corps' responsibility to administer that program and they determine if its needed or not.

Q. Okay. So is it your understanding its SWEPCO's decision that they are going to defer to the corps' judgment on that question?

A. That's my understanding. The corps says they need to get it; so they'll get it.

Q. Okay. And I believe you said earlier that SWEPCO's plan is to obtain required permits after the Commission makes its decision on the route to be approved?

A. That's correct.

TR 8/27/2013, Thornhill, p. 839-41.

Q. (BY MR. HARRISON) So if you'll look over that document I handed you, sir, do you see that its an August 5th, 2013 letter from the Arkansas Public Service Commission signed by, I believe it was Dawn Guthrie, staff attorney?

A. Yes, sir, I do see that.

Q. Okay. And are you familiar with that?

A. Yes, I have seen this letter.

Q. Okay. Have you been tasked to review it and to help prepare a response?

A. Yes, I have. My sur-surrebuttal goes through I believe the majority of these items and discusses SWEPCO's position and where applicable information is

found in the EIS.

Q. Okay. So then if you go to the first page, the second paragraph has, it looks like a short bulleted list underneath?

A. Yes.

Q. Okay. And that the lead-in sentence to the list says specifically ADEQ, which I assume you'll agree with me is the Arkansas Department of Environmental Quality?

A. Yes, that's my understanding of that acronym.

Q. Okay. Indicated that the program team needs to consider obtaining -- and there's a colon, and then it has three bullets. Do you see that?

A. Yes.

* * *

Q. Second item, Section 401/404 certifications, do you see that?

A. Yes.

Q. What do you understand that to be referring to?

A. That refers to Sections 401 and 404 of the Clean Water Act. Section 404 permit is typically under the jurisdiction of the Corps of Engineers for dredge or fill activities that affect wetlands. Section 401 is a water quality certification that is typically issued concurrently with obtaining a 404 permit from the Corps of Engineers.

Q. Okay. Thank you. And these again are examples of permits that I take it SWEPCO doesn't dispute will be required but SWEPCO plans to obtain them after the -- after a route is approved, if a route is approved by the Commission?

A. That's correct. And that's specified in the EIS that those would be required or obtained as part of mitigation for the project

TR 8/27/2013, Thornhill, p. 847-49. *And see*, TR 8/27/2013, Thornhill, p. 873-74 (Section 401 Storm Water permit required but will not be obtained until after the Commission decision on the Certificate).

The APSC staff engineer assigned to review the SWEPCO Application and EIS admitted, after initially stating that he had not yet determined whether certain environmental permits from the Army Corps of Engineers would be required for this Project, see TR 8/30/2013, Cotten, p. 2376, that he had testified that such permits would eventually be obtained by SWEPCO but that no such permits had yet been obtained by SWEPCO.

Q. If you look on lines 13 through 16 on page 32, you do make a reference here that SWEPCO will obtain -- actually starting on line 15, SWEPCO will obtain appropriate permits from the Army Corps for work activities such as clearing or access within wetlands. Do you see that?

A. I do.

Q. And I believe we've established, to your knowledge, those permits have not yet been obtained?

A. That's correct. Since there's -- we don't know what route will be constructed, they haven't made any applications.

Q. Okay. Have you had communications with the Corps to determine that they would not entertain permit applications for the three remaining routes simultaneous?

A. I have not.

TR 8/30/2013, Cotten, p. 2426.

APSC staff engineer Cotten also acknowledged that a storm water pollution prevention permit (called a program or plan) from the Arkansas Department of Environmental Quality (ADEQ) will be required, and to his knowledge none has been issued yet.

Q. And does the Arkansas Department of Environmental Quality require any permits for this -- for this utility facility?

A. As far as I know, they will have to have a storm water pollution prevention program or plan from the ADEQ, and they have stated they will get that.

Q. Okay. That has not been issued yet?

A. Not to my knowledge it has not.

TR 8/30/2013, Cotten, p. 2376.

APSC staff engineer Cotten stated that he did not make any determinations about state or federal permits that would be required for Route 109 in Missouri. TR 8/30/2013, Cotten, p. 2377.

APSC staff engineer Cotten admitted that he did not actually review the permits required for the SWEPCO Project and that the required permits have not yet been issued, and that he did not mean to imply in his testimony that either event had occurred when he said he considered the requirements of Arkansas Code § 23-18-519(b)(4) (which requires the Commission to consider any state or federal permits for the environmental impacts of the project). TR 8/30/2013, Cotten, p. 2376-77.

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).

Arkansas Code § 23-18-519(b)(4) requires that the Commission consider the relevant environmental permits as part of the Commission's deliberations on whether to issue the Certificate. 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. This statutory provision requires the Commission to deny any Certificate applied for prior to the Applicant having acquired the required federal or state environmental permits.

Here, SWEPCO has intentionally not applied for, obtained, or submitted to the Commission several such 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 have denied SWEPCO's Application. Its failure to do so is contrary to law.

SWEPCO may argue that the Commission can issue the Certificate now and merely add a condition that no construction commence until all required permits are obtained. However, while such an approach would satisfy a statute that simply required that applicable permits be obtained prior to construction of the project, which may have been the law in Arkansas prior to

the 2011 amendment to Arkansas Code § 23-18-519(b)(4), this approach will not satisfy the amended statute at hand which requires more - i.e. which requires not only that the permits be obtained but also that the permits be considered by the Commission before deciding whether to issue the Certificate.

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* the then applicable 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, the Commission's decision granting SWEPCO a CECPN is contrary to law.

B. Arkansas Law Requires that the EIS Submitted with an Application for a Certificate of Environmental Compatibility and Public Need Assess Adverse Impacts from a Proposed New Utility Project on Parks, Recreation Areas, and Historic Sites, But the Commission Concluded, Contrary to this Law, that SWEPCO Was Entitled to Such Certificate Despite the Record Showing that Federal and State Agencies Had Unresolved and Unaddressed Concerns Regarding Such Adverse Impacts

SWEPCO's is required by statute to provide an application for the certificate along with an EIS which adequately addresses the environmental impacts of the project including adverse impacts on parks, recreation areas, and historic sites. 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.

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:

* * *

(8)(A) An exhibit containing an environmental impact statement that fully develops the four (4) factors listed in subdivision (8)(B) of this section, treating in reasonable detail such considerations, if applicable, as:

(i) The proposed major utility facility's direct and indirect effect on the following in the area in which the major utility facility is to be located:

(a) The ecology of the land, air, and water environment;

(b) Established park and recreational areas; and

(c) Any sites of natural, historic, and scenic values and resources of the area in which the major utility facility is to be located; and

(ii) Any other relevant environmental effects.

(B) The environmental impact statement shall state:

(i) The environmental impact of the proposed action;

(ii) Any adverse environmental effects that cannot be avoided;

(iii) A description of the comparative merits and detriments of each alternate location considered for the major utility facility; ...

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

However, here the SWEPCO EIS and application have obvious defects and omissions in failing to address impacts on Army Corps properties including impacts on lakes and rivers. *See* Exhibit 1.

It is undisputed that on July 10, 2013, Randy Hathaway, Deputy Engineer with the Corps of Engineers (Department of the Army, Little Rock District) stated in a letter to the Arkansas

Public Service Commission, that “(a)ny impacts to Corps of Engineers property associated with crossing Beaver Lake, Table Rock Lake, or the White River will require a review for National Environmental Policy Act (NEPA) compliance...” Costner Surrebuttal Exhibit 5. It is undisputed that on July 10, 2013, Randy Hathaway, Deputy Engineer with the Corps of Engineers (Department of the Army, Little Rock District) stated in a letter to the Arkansas Public Service Commission, that “(a)ny impacts to Corps of Engineers property associated with crossing Beaver Lake, Table Rock Lake, or the White River will require ... a Regulatory Section 10 Permit...” It is undisputed that on July 10, 2013, Randy Hathaway, Deputy Engineer with the Corps of Engineers (Department of the Army, Little Rock District) stated in a letter to the Arkansas Public Service Commission, that “(t)he SWEPCO Environmental Impact Statement dated March 2013 associated with this project does not fully address all potential impacts to Corps of Engineers property.”

It is undisputed 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. SWEPCO has not sat down with the Army Corps to attempt to address the Corps’ concerns about adverse environmental impacts and omissions in the EIS. TR 8/27/2013, Thornhill, p. 843.

State agencies also expressed similar concerns regarding impacts to parks, recreation areas, and historic sites. *See*, Hearing Exhibits 3 and 4. Contrary to SWEPCO’s assertions and the apparent conclusion of the Commission in its Order, many of these agency concerns have yet to be resolved. For these reasons, the Commission’s decision granting SWEPCO a CECPN is contrary to law.

C. Arkansas Law Requires that the Project Comply with Regional as Well as State and Local Laws But the Commission Approved Route 109 Knowing that SWEPCO Failed to Demonstrate Compliance with Applicable Missouri Laws for Route 109, of which Twenty-Five Miles Are in Missouri, and without Requiring SWEPCO to Demonstrate Such Compliance

Arkansas law 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, except that the commission may refuse to apply all or part of any regional or local law or regulation if it finds that, as applied to the proposed major utility facility, the law or regulation is unreasonably restrictive in view of the existing technology, factors of cost or economics, or the needs of consumers whether located inside or outside of the directly affected government subdivisions;

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.

Cotton, APSC engineer, admitted that he does not consider Route 109, the Route approved in the Commission's decision, as reasonable based on the unknowns regarding Route 109 extending into Missouri. TR 08/30/13, Cotten p. 2436. APSC staff engineer Cotten stated that he did not make any determinations about state or federal permits that would be required for Route 109 in Missouri. TR 8/30/2013, Cotten, p. 2377.

The Applicant SWEPCO has recently filed a Limited Petition for Rehearing and in this Petition SWEPCO acknowledges, for its own reasons, that there are three bills pending in the Missouri Legislature that raise questions regarding the viability of Route 109 because if passed these laws would pose substantial obstacles for Missouri approval of Route 109.

For these reasons, the Commission's decision granting SWEPCO a CECPN is contrary to law.

D. Arkansas Law Requires Applicants such as SWEPCO to Provide Notice to All Landowners on All Proposed Alternative Routes for a Major New Utility Facility Power Line But the Commission Approved Route 109 Knowing that SWEPCO Had Failed to Provide Such Notice to Landowners Along the Missouri Portion of Route 109, and Without Requiring Such Notice Be Given

Arkansas law requires that each landowner along a proposed route for a new major utility facility transmission line be notified by the Applicant via certified mail of the filing of an application for a Certificate from the Commission. *See* Arkansas Code § 23-18-513.

Application for certificate--Service or notice of application

* * *

(c)(1) Each application shall also be accompanied by proof that written notice specifying the date on or about which the application is to be filed and the date that interventions or limited appearances must be filed with the commission, unless good cause is shown pursuant to § 23-18-517, **has been sent by certified**

mail to each owner of real property on the proposed route selected by the utility on which a major utility facility is to be located or constructed.

(2) The written notice required by this subsection shall be directed to the address of the owner of the real property as it appears on the records in the office of the county sheriff or county tax assessor for the mailing of statements for taxes as provided in § 26-35-705.

* * *

(e) Inadvertent failure of service on or notice to any of the municipalities, counties, governmental agencies, or persons identified in subsections (a) and (c) of this section may be cured pursuant to orders of the commission **designed to afford such persons adequate notice to enable their effective participation in the proceedings.**

Arkansas Code § 23-18-513 (emphasis added).

SWEPCO is required by statute to provide notice to landowners on the proposed routes via certified mail. *See* Arkansas Code § 23-18-513.

However, 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.

For these reasons, SWEPCO's Application is incomplete and in non-compliance with the controlling statute and the Commission acted contrary to law in approving SWEPCO's request for a CECPN.

E. Arkansas Law Requires SWEPCO to Provide Public Notice of Its Application via Publication in a Newspaper with Substantial Circulation in the Affected Counties But the Commission Approved Route 109 Knowing that SWEPCO had Published

Its Notice Only in an Arkansas Newspaper Having a Circulation of Less Than 20% in the Affected Arkansas Counties and in No Missouri Newspaper

Arkansas law requires that the public be notified by the Applicant of the filing of an application for a Certificate from the Commission for a new major utility facility including a new major transmission line facility via publication of notice in a newspaper having substantial circulation in the affected counties. *See* Arkansas Code § 23-18-513(d).

Application for certificate--Service or notice of application

* * *

(d)(1) Each application shall also be accompanied by proof that public notice of the application was given to persons residing in municipalities and counties entitled to receive notice under subsection (a) of this section by the publication in a newspaper having substantial circulation in the municipalities or counties of:

(A) A summary of the application;

(B) A statement of the date on or about which it is to be filed; and

(C) A statement that intervention or limited appearances shall be filed with the commission within thirty (30) days after the date stated in the notice, unless good cause is shown under § 23-18-517.

Arkansas Code § 23-18-513 (emphasis added).

Note that subsection “(e)” of Arkansas Code § 23-18-513 quoted *supra* in regard to notice via certified mail to landowners does not appear to apply by its plain language referring only to subsections (a) and (c) to the newspaper notice required in subsection “(d)”. This subsection “(e)” provides that inadvertent failure by the Applicant to provide notice to the specified landowners and public entities can be cured in some circumstances via late notice and some accommodations by the Commission as necessary to allow the late notified parties to be able to fully participate in the proceeding before the Commission regarding the requested Certificate. Consequently, a failure by the Applicant to provide the required newspaper notice

to the public (in a newspaper having substantial circulation in the affected counties), even if inadvertent, does not appear to be curable by late publication in an appropriate newspaper or by accommodations afforded to late-coming parties by the Commission.

The Arkansas Legislature made clear the importance of an applicant and the Commission providing adequate notice and opportunity to participate before the Commission on an application for a Certificate to all those affected by the proposed major utility project. *See* Arkansas Code § 23-18-502.

(d) Furthermore, the General Assembly finds that there should be provided an adequate opportunity for individuals, groups interested in energy and resource conservation and the protection of the environment, state and regional agencies, local governments, and other public bodies to participate in timely fashion in decisions regarding the location, financing, construction, and operation of major utility facilities.

Ark. Code § 23-18-502 (emphasis added). The importance of allowing all affected persons the opportunity to participate before the Commission was further emphasized by the Arkansas Legislature in discussing the streamlining and consolidating of multiple prior agency review processes into a single proceeding before the Commission.

(e)(1) The General Assembly, therefore, declares that it is the purpose of this subchapter to provide an exclusive forum with primary and final jurisdiction, except as provided in §§ 23-18-505 and 23-18-506, for the expeditious resolution of all matters concerning the location, financing, construction, and operation of a major utility facility in a single proceeding to which access will be open to individuals, groups, state and regional agencies, local governments, and other public bodies to enable them to participate in these decisions.

Ark. Code § 23-18-502. The Arkansas courts have likewise recognized the importance of strict compliance by applicants and the Commission with the public notice requirements of the statute.

The plain language of the statute states the legislature's objective to provide an adequate opportunity for timely participation in decisions regarding the location, financing, construction, and operation of major facilities

Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n, 2009 Ark. App. 511, 324 S.W.3d 697, 704 (2009) *aff'd as modified*, 2010 Ark. 221, 384 S.W.3d 477 (2010).

The APSC is statutorily required to structure a comprehensive evaluation based upon service needs and the most economical and environmentally safe means to meet the needs of the people served. The participation of the people served is essential to that process

Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n, 2009 Ark. App. 511, 16, 324 S.W.3d 697, 707 (2009) *aff'd as modified*, 2010 Ark. 221, 384 S.W.3d 477 (2010).

Moreover, pursuant to section 23–18–502(e), the proceedings before the Commission are provided to assure that “access will be open to individuals, groups, state and regional agencies, local governments, and other public bodies to enable them to participate in these decisions.” The proceeding in the Needs Docket failed to provide the requisite opportunity for participation.⁵ The Commission erred in deferring to the finding made in that docket.

Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n, 2010 Ark. 221, 384 S.W.3d 477, 485 (2010).

Arkansas Code Ann. section 23–18–513 is a very detail statute that requires, among other things, proof of service of the CECPN application on certain county and municipal officials and members of the General Assembly, the director or administrative head of specified Arkansas agencies, the offices of the Governor and the Attorney General, the head of any governmental agency charged with the duty of protecting the environment or of planning land use, and each owner of real property on the proposed route selected by the utility on which a major utility facility is to be located or constructed. It also requires that the CECPN application be made available for public inspection in the public libraries in each county where the facility is to be located. Public notice must also be given by publication in a newspaper having substantial circulation in the municipalities and counties where the facility is to be located.

Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n, 2009 Ark. App. 511, 27, 324 S.W.3d 697, 713 (2009) *aff'd as modified*, 2010 Ark. 221, 384 S.W.3d 477 (2010).

Without appreciating that a finding of need is a critical part of the proof SWEPCO must present to obtain a CECPN, the APSC denied appellants an opportunity to challenge SWEPCO's proof by binding them to a decision made in a docket to which they were not parties and were not given notice. The “public notice” that appellees contend was given—all APSC filings are available in real time on its

website—is largely illusory. Posting filings on the APSC website does not come close to meeting the requirements of Ark.Code Ann. § 23–18–513. [footnote omitted] This procedure denied appellants that statutory right under the Utility Act, which mandates an “adequate opportunity for individuals, groups interested in energy and resource conservation and the protection of the environment, state and regional agencies, local governments, and other public bodies to participate in timely fashion in decisions regarding the location, financing, construction, and operation of major facilities.” Ark.Code Ann. § 23–18–502(d). The significance of Entegra's petition to intervene demonstrates that the APSC was aware that evidence was available that could controvert SWEPCO's need for additional resources, but this evidence was not allowed and, therefore, was not considered by the APSC before it made its finding on SWEPCO's needs application. Certainly, it could not be developed by appellants, because they were not notified of the needs proceeding and, therefore, were not parties to it

Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n, 2009 Ark. App. 511, 26-27, 324 S.W.3d 697, 712-13 (2009) *aff'd as modified*, 2010 Ark. 221, 384 S.W.3d 477 (2010).

The notice published by SWEPCO in a newspaper was not in a newspaper having substantial circulation in the affected counties. As the Danos Petitioners have pointed out in their motion to dismiss and testimony, SWEPCO posted a public notice of this APSC filing in the Arkansas Democrat-Gazette on Monday, April 1, 2013 and Tuesday, April 2, 2013.

SWEPCO admits that Its public newspaper notice in the Arkansas Democrat-Gazette had the potential to reach only 10-20% of the homes in Carroll and Madison counties. There are other newspapers that serve these counties with more substantial circulation (i.e. Ozark Trader, Carroll County News). For this reason, SWEPCO's Application is incomplete and in non-compliance with the controlling statute and the Commission's approval of SWEPCO's request for a CECPN is contrary to law.

F. Arkansas Law Requires SWEPCO to Provide in Its Application and the Documents Filed with the Application a Demonstration of Need and an EIS Addressing Adverse Environmental Impacts and Alternatives but SWEPCO Failed to Do So in Several Key Areas, Making Its Application Incomplete and the Commission Decision Approving Its Application Contrary to Law

SWEPCO offered information in *post-hoc* testimony regarding several significant issues that are required to be addressed earlier in the process in the CECPN Application and materials filed with the Application. The issues not addressed in the Application or EIS filed initially as required by Arkansas law, see Ark. Code § 23-18-511, include adverse environmental and economic impacts including visual impacts from the project (see Dr. Smardon's testimony for STO), costs (see discussion *infra*), economic impacts including tourism impacts (see discussion *infra*), karst environmental impacts (see discussion *infra*) and need (see discussion *infra*).

Clearly 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 Non-Applicant Southwest Power Pool's (SPP) 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.

SWEPCO via its Application and supporting documents misled 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 not SWEPCO the applicant, who wanted the 345kV line and who had rejected SWEPCO's 161kV line proposal because SPP wanted the 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.

SWEPCO similarly omitted required information in its Application regarding economic impacts. 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). 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.

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 additional information presented by SWEPCO and SPP during the litigation after the Application and EIS were 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, but such *post-hoc* information on these issues cannot be used to satisfy the procedural requirements of Ark. Code §§ 23-18-511 and 23-18-513 regarding what information must be included in the Application and accompanying EIS and noticed to the public and agencies. SWEPCO's Application was legally incomplete in numerous areas including regarding need, visual impacts analysis, costs analysis, economic impact analysis, and analysis of karst impacts. These significant material omissions in the Application and EIS cannot be cured by *post-hoc* submissions during the hearing process, and therefore the Commission's decision approving such an incomplete CECPN Application for is contrary to law.

II. REHEARING SHOULD BE GRANTED BECAUSE THE COMMISSION'S DECISION IS ARBITRARY AND UNREASONABLE

A. Arkansas Law Requires SWEPCO to Prepare and Submit to the Commission an Analysis of the Projected Economic and Financial Impact on the Local Communities in which the Major Utility Facility Is to Be Located, But the Commission Arbitrarily and Unreasonably Concluded that this Requirement of Arkansas Law Was Satisfied by a One-Sided Analysis that Ignored the Adverse Impacts and Addressed the Positive Economic Impacts Only

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.

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).

Further, the Commission shall not grant a Certificate for a major utility facility unless it finds and determines each of the following:

* * *

(2) That the major utility facility **will serve the public interest**, convenience, and necessity;

* * *

(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**, * * *

(5) **The nature of the probable economic impact** of the major utility facility;

(6) That the major utility facility financing method either as proposed or as modified by the commission **represents an acceptable economic impact, considering economic conditions** and the need for **and cost** of additional public utility services;

* * *

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

Arkansas Code § 23-18-511(6) requires that the applicant analyze the economic and financial impacts of the proposed project on the affected local communities and the applicant. In addition, the Commission must determine the nature of the economic impacts of the project.

Arkansas Code § 23-18-519(b)(5). These statutory requirements that economic impacts be addressed are not limited to positive or favorable economic impacts. However, no such economic analysis was conducted or presented to the Commission with the SWEPCO

Application or EIS. The only mention of economic impacts in the EIS concerns the lack of any

positive economic impacts such as significantly increased local employment due to the project. *See* EIS p.5-7 (Docket 2-2). There is no discussion in the EIS of adverse impacts on property values, tourism, the arts, or other businesses in local communities such as Eureka Springs.

Intervenors have offered considerable evidence, both expert and fact testimony as well as documentary evidence, to support their conclusion that the proposed SWECO transmission line will cause significant adverse economic impacts on the local communities through which the lines will pass including Eureka Springs, in particular through 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 is a need for an analysis of adverse economic impacts of this project before the Commission can even consider issuing a Certificate allowing the project to proceed.

Even 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 line was prepared. TR 08/29/13, Johnson, p.1479. APSC engineer Cotten did not do any independent analysis of his own on tourism impacts. TR 8/30/2013, Cotten, p. 2440.

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 applicable statute. In this case, non-compliance by SWEPCO is apparent due to the complete failure by SWEPCO to perform any analysis of the adverse economic impacts of the project on the local communities affected such as Eureka Springs. For these

reasons, SWEPCO's Application and EIS are incomplete and in non-compliance with the controlling statute and the Commission's decision approving a CECPN for SWEPCO is arbitrary and unreasonable.

B. Arkansas Law Requires Applicants Such As SWEPCO to Prepare and Submit to the Commission an Adequate Demonstration of Need for the Proposed Major New Utility Facility But the Commission Here Arbitrarily and Unreasonably Relied on a *Post Hoc* and Demonstrably Unreliable Need Rationalization by Non-Applicant SPP for a 345kV Line that Even Applicant SWEPCO Did Not Believe Was Needed

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.

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:

* * *

(3) A statement of the need and reasons for construction of the facility, including, if applicable, a reference to any prior commission action in an energy resource declaration-of-need proceeding determining the need for additional energy supply or transmission resources by the public utility;

* * *

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

Arkansas law further provides that the Commission shall not grant a Certificate for a major utility facility unless it finds and determines each of the following:

(1)(A) The basis of the need for the major utility facility.

* * *

(2) That the major utility facility will serve the public interest, convenience, and necessity;

* * *

(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, . . . , **and the various alternatives**, if any, and other pertinent considerations;

* * *

(6) That the major utility facility financing method either as proposed or as modified by the commission represents an acceptable economic impact, considering economic conditions **and the need for** and cost of additional public utility services;

* * *

Arkansas Code § 23-18-519(b) (emphasis added). These statutory requirements for a demonstration and determination of need have been recognized by the Arkansas courts.

Arkansas Code Annotated section 23–18–511(3) (Supp.2007) requires an applicant for a CECPN to include in its application “[a] statement of the need and reasons for construction of the facility.” Further, and of critical importance in this proceeding, the very first finding required of the APSC before it may grant a CECPN is “[t]he basis of the need for the facility.” Ark.Code Ann. § 23–18–519(b)(1) (Supp.2007).

Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n, 2009 Ark. App. 511, 17, 324 S.W.3d 697, 708 (2009) *aff'd as modified*, 2010 Ark. 221, 384 S.W.3d 477 (2010).

Without appreciating that a finding of need is a critical part of the proof SWEPCO must present to obtain a CECPN, the APSC denied appellants an opportunity to challenge SWEPCO's proof by binding them to a decision made in a docket to which they were not parties and were not given notice.

Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n, 2009 Ark. App. 511, 26-27, 324 S.W.3d 697, 712-13 (2009) *aff'd as modified*, 2010 Ark. 221, 384 S.W.3d 477 (2010).

Also see, Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n, 2010 Ark. 221, 15-16, 22, 384 S.W.3d 477, 485, 488 (2010) (concurring opinion).

Here, the record reflects that the original reliability problem that served as SWEPCO's asserted basis of need in its Application to the Commission no longer exists. The record also

reflects that Applicant SWEPCO itself did not perceive the need for a new 345kV line and had proposed to SPP a 161kV line alternative. This fact was not disclosed in SWEPCO's EIS or in its application for Commission approval of the new 345kV line that SPP wanted but for which Applicant SWEPCO itself did not see the need.

At hearing SPP offered a new *post hoc* rationale for the need for the new 345kV line that was not in the SWEPCO Application and that rationale was based only on an informal study that had obvious errors which indicated that it had been prepared hastily and with a predisposition to reach a predetermined conclusion. 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. But 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 to invalidate and make worthless from an evidentiary perspective Nickell's *post-hoc* attempt to rehabilitate SWEPCO's originally submitted and now shown to be outdated statement of need.

STO Expert Dr. Merrill's testimony made clear that there was no need for a new 345kV line, that SPP had overstated the potential future reliability and overload problems, and that less expensive and less environmentally damaging alternative solutions were available for any reliability or overload problems that might occur. The difference between N-1, N-1-1, and N-2 is significant. Judge Griffin astutely observed something that none of Applicant's witnesses addressed: reliability isn't black or white, but can have different grades – for instance, basic or robust or extra or super.¹ She obviously was concerned with the trade-off between reliability and cost (including costs that cannot be measured in dollars, like environmental impact).

For the reasons explained below, neither SWEPCO nor SPP demonstrated that there is a public need for the proposed 345 kV transmission line and associated new substation. Rather, SPP and SWEPCO, apparently only because SPP requires it to do so, argue for a project that far exceeds what is needed, for "head space," essentially arguing that a new costly and environmentally damaging project can be justified based on the desire for super-reliability in the transmission system. The Commission in its decision approves the CECPN and makes a finding of need in significant part on the rational that the project will promote future development (i.e, there may be a need in the future). See, Commission's Order, Docket No. 13-041-U, Order No.

¹ Cross Examination, p. 305, lines 15-22.

32, Page 96 (stating “It will also permit load growth and the opportunity for economic development in the region.”). There is no basis in law for SPP or SWEPCO’s or the Commission’s position in this regard.

SWEPCO sat on the Notice to Construct for four years (from 2008 until 2012) before looking at how to implement it,² and for five years (from 2008 until 2013) before filing the Application, with a schedule that suddenly was “Critical.”³ Asked why the delay occurred, Mr. Hassink said that SWEPCO delayed because “The need date was further out than required [getting started] in 2008.”⁴

Dr. Merrill discusses in detail why NERC requires that plans not rely on long-term forecasts and analyses and cites two major lines that were first proposed in 2007 (for service in 2012, NERC’s five-year horizon). The needs were re-evaluated every year, and every year the need became less severe and receded a year. In 2010 and 2011 the projects were cancelled. Even five-year forecasts and analyses proved unreliable.⁵

Dr. Merrill says that “load forecasts [are] the most important driver” of need for transmission reinforcement.⁶ He presents SPP data which showed that, for SPP as a whole, demand has been stagnant since 2006.⁷ He observes that the forecast for 2016 that was made in 2006 followed years of consistent high demand growth and preceded the stagnant demand since 2006. He says,

Despite overall load growth that has been stagnant for six years, SPP continues to insist that 2016 load will be just slightly lower than was forecast back in 2006. In other words, most of the load growth that was projected to occur in the ten years between 2006 and

² Hassink Cross Examination, p. 284, lines 6-10.

³ Application, p. 10, § 2.

⁴ Hassink Cross Examination, p. 292, lines 21-24.

⁵ Merrill Direct, pp. 11-14. See especially Exhibits HMM-3 and HMM-4 on pp. 11 and 13.

⁶ *Id.*, p. 15, line 2.

⁷ *Id.*, Exh. HMM-6, p. 16.

2016 is still projected to occur – but in the four years between 2012 and 2016. This is manifestly unreasonable.⁸

Mr. Hassink’s rebuttal supplies historic and projected growth rates for the immediate Northern Arkansas region.⁹ He observes that, “The load forecast growth rate of 2.2% reflects slower growth than observed historically.”¹⁰

Dr. Merrill points out that Mr. Hassink’s forecast is more than twice recent growth rates:

[Mr. Hassink’s] numbers show that demand growth [in Northern Arkansas] since 2007 has been 1% per year. [His] claim that the forecast growth rate is lower than historical growth rates . . . isn’t true if we consider the most recent five years.¹¹

NERC also requires that, “Studies be conducted annually unless changes to system conditions do not warrant such analyses.”¹² Dr. Merrill testified that PJM, the Mid-Atlantic equivalent to SPP, does “retool” studies every year to determine if major projects continue to be needed.¹³

Dr. Merrill includes a copy of the NERC standards in his Surrebuttal Testimony. But he contrasts N-1 to the more rigorous N-1-1 standard, and to the still more rigorous N-2 standard:

When two separate contingencies are involved, the Category C standard allows manual intervention [by the system operator] after the first contingency in anticipation of the second. This is sometimes called N-1-1.

The N-2 conditions tested by Mr. Nickell are more severe than the standard’s N-1-1 because he assumes that the two contingencies occur simultaneously [without manual intervention after the first one]. This assumption is standard practice for convenience in modeling – it is easier to test N-2 than N-1-1.

But it is understood that operational alternatives are to be considered once problems are identified. The standard does not require the system to withstand N-2 or simultaneous contingencies. To do so would be over-design . . .¹⁴

⁸ *Id.*, p. 17, lines 4-7. See also p. 17, Exh. HMM-7.

⁹ Hassink Rebuttal, p. 14, lines 1-8.

¹⁰ *Id.*, p. 14, lines 7-8.

¹¹ Merrill Surrebuttal, p. 22, lines 10-14. See also p. 22, Exh. HMM-S-5.

¹² Merrill, Surrebuttal, Att. 1 (NERC Standards), p. 1, §R1.3.3.

¹³ Merrill Surrebuttal, p. 15, lines 10-16.

¹⁴ *Id.*, p. 7, line 19 – p. 8, line 4.

SPP's study gave dramatically different results from the 2006-2007 Ozark Transmission Study.¹⁵ "SPP used a 2018 model . . . First, the Shipe Road – Kings River 345 kV line was removed from the aforementioned 2018 summer peak model."¹⁶

Dr. Merrill points out that this is a far cry from what Mr. Hassink deems adequate:

[T]he way that subsequent studies "build upon the results of the SPP Ozark" study and other "past plans" in a "regular and cumulative validation" is to simply *assume that the planned projects are built in future studies*. This in no way constitutes a validation of the previous [need] studies. The way you do that is the way Mr. Nickell did – you study the system *without* the project.¹⁷ (Italics added)

Mr. Hassink takes Dr. Merrill to task for not considering maintenance outages in his restudy of the 2006-2007 contingency.¹⁸ He either does not know or chooses to ignore that NERC clearly states that operational adjustments will be made to protect the system: "studies [should] include any necessary adjustments that might be required to accommodate planned outages, since a planned outage is not a 'contingency.'"¹⁹ In other words, the system is to be operated as reliably with planned outages as without planned outages.

Dr. Merrill points out that the NERC standards balance two conflicting objectives of power system planning. Society needs a system that isn't too reliable and costly, or too cheap and unreliable, but that like Baby Bear's porridge is "just right."

Two conflicting objectives of transmission planning are to maximize reliability and to minimize cost (investment in transmission facilities). The latter can be quantified in dollars once specific options or alternatives are considered. Reliability has an economic benefit, but it is exceedingly difficult to quantify precisely in dollars.

The purpose of the NERC transmission planning standards is to provide an objective resolution of this conflict that can be generally applied, so that transmission planners do not have to resolve the difficult tradeoff between cost and reliability project by project.²⁰

¹⁵ Nickell Direct, p. 11, lines 11-44 and pp. 21-22. The original p. 21 is in Merrill Surrebuttal, p. 16.

¹⁶ *Id.*, p. 12, lines 4, 13-14.

¹⁷ Merrill Surrebuttal, p. 21, lines 2-6.

¹⁸ Hassink Rebuttal, p. 6, lines 10-13.

¹⁹ Merrill Surrebuttal, Att. 1 (NERC Standards), p. 8, last paragraph.

²⁰ Merrill Surrebuttal, p. 6, lines 3-10.

Consistent with SPP's stated standard quoted above, the Ozark Transmission Study performed N-1 analysis (NERC Category B) but reported no N-1-1 analyses (NERC Category C) or N-2 analyses (more severe than NERC Category C).²¹ The 2008, 2010 and 2012 STEP plans considered only N-1 contingencies.^{22, 23, 24}

Only in SPP's June 2013 study is there concrete record of SPP applying criteria beyond N-1.²⁵ SPP's original report lists 18 "Overloaded Facilities." Of these, 13 are labeled "N-2" or equivalently "G-1 and N-1." (Two of these are in error and were retracted later by SPP.) The other five are N-1, but only under statistically unusual Low Hydro conditions.

Using the N-2 problems to attempt to justify the facilities is a violation of long-standing SPP standards and of NERC standards. Even under NERC Category C or "N-1-1" conditions²⁶, Dr. Merrill points out, "manual intervention must be considered after the first contingency in every situation" and "one alternative [under industry-consensus and legally mandated NERC standards], applicable to all of the N-2 scenarios, is to shed load."²⁷

Five of sixteen – about one-third – of the overload cases found in SPP's June 2013 studies 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.²⁸

²¹ Ozark Transmission Study, p. 3, §2, p. 4, §3, p. 6, §3, p. 7, §2.

²² 2008 SPP Transmission Expansion Plan, p. 14, §1, p. 16, §2, 3, 4, and 5, p. 84, penultimate paragraph.

²³ 2010 SPP Transmission Expansion Plan, p. 13, §4, p. 15, §8, etc.

²⁴ 2012 SPP Transmission Expansion Plan, p. 39, §4.

²⁵ Nickell Direct, pp. 22-23.

²⁶ Merrill Surrebuttal, Att. 1 (NERC Standards), p. 4, s.v. "Category C."

²⁷ Merrill Surrebuttal, p. 15, lines 4-5 and p. 23, line 5.

²⁸ Montgomery Cross Examination, p. 406, lines 16-25.

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.

Dr. Merrill's assertions about the NERC criteria were not challenged or contradicted by SPP or SWEPCO, except his interpreting the five contingencies with Low Hydro conditions as being N-2. However, for three of the five he identifies simple and less expensive fixes – two transformers. He observes that the last two of the five are so remote from Northern Arkansas as to be irrelevant –they should be fixed locally if needed.²⁹

In June 2013 Dr. Merrill and SPP independently re-evaluated the only contingency cited in the Application as violating NERC criteria, the sole basis for the need for the facilities. Dr. Merrill³⁰ and SPP concur that that contingency will not cause a violation in 2016. SPP says it will not cause a violation until after 2018.³¹ No SPP studies done since 2006-2007 presented in this proceeding show that it will ever cause a violation.

Dr. Merrill showed that under NERC criteria doing nothing is acceptable for all of SPP's N-2 issues, and neither NERC nor SPP criteria require that the system be designed to N-2 criteria. But if N-2 reliability were required, he showed that most of the N-2 problems identified have other much less costly and less intrusive fixes, compared to the proposed facilities.³² Of all of the supposed overloads identified in SPP's study of June 2013, only five are in N-1 conditions, albeit under unusual low hydro conditions that Mr. Hassink says are four times less likely than normal hydro conditions.³³ Dr. Merrill argues that one new transformer (call it the one SPP wants to install in Kings River) will resolve both of SPP's Brookline transformer

²⁹ Merrill Surrebuttal, p. 23, lines 8-16.

³⁰ Merrill Direct, p. 25.

³¹ Nickell Direct, p. 22, 3rd and 4th lines.

³² Merrill Surrebuttal, pp. 23-24.

³³ Hassink Sur-surrebuttal, p. 10, lines 9-11.

problems. A second, smaller transformer will solve the Washburn transformer problem.³⁴ Mr. Nickell characterized Dr. Merrill's solutions as "nearsighted" or "short term."³⁵ For this alternative and others Mr. Nickell's characterization is wrong. For example, the Ozark Transmission Study included three new transformers in both options A and B – in addition to transformers that are not specifically named but are part of the proposed facilities and other projects.³⁶ Dr. Merrill argues that the last two N-1/low hydro issues are remote from Northern Arkansas and should be addressed locally.³⁷

Mr. Hassink admits that doing nothing (apparently referring to Dr. Merrill's suggestion to take the Avoca-Beaver Dam 161-kV line out of service through switching) has been satisfactory in the past. He asserts without any justification that for some undefined reason it won't work in the future. Hassink Cross Examination, p. 367, line 15-p. 368, line 7.

The record shows no meaningful consideration by SPP or SWEPCO of less costly and less intrusive alternatives to the facilities, assuming that there was a need. The alternatives Mr. Nickell referred to were generally alternatives in addition to the proposed facilities. For example, see Nickell Cross Examination, p. 1759, lines 19-25.

Nickell did refer to an undefined 161-kV solution proposed by SWEPCO to solve the problem identified in 2006-2007. He said that SPP overruled it in favor of the proposed 345-kV facilities. Nowhere in the record is there analysis demonstrating that the proposed 345-kV facilities constituted a more advantageous alternative than SWEPCO's original 161-kV proposal. 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

³⁴ Merrill Surrebuttal, pp. 23, lines 11-12.

³⁵ Nickell Cross Examination, p. 1855, lines 6-14.

³⁶ Ozark Transmission Study, p. 14.

³⁷ Merrill Surrebuttal, p. 23, lines 13-15.

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. Consequently, this alternative would be required to be included in the EIS analysis of alternatives but was not, and if analyzed properly would have shown there was no need for a 345kV line.

Further, neither the EIS nor SWEPCO’s Application include the connection of the project to the Entergy system. Both SPP and SWEPCO admit this connection is required to complete the project and allow it to perform its intended function. This means that due to an incomplete Application, there is no way the Project as applied for could resolve the need asserted by SPP and SWEPCO.

For these reasons, SWEPCO’s Application and Need demonstration are incomplete, inadequate, and in non-compliance with the controlling statute. The Commission’s Order states “It will also permit load growth and the opportunity for economic development in the region.” Docket No. 13-041-U, Order No. 32, Page 96. However, the potential for future economic development does not legally equate with a demonstration of present need as required by Arkansas law. For all these reasons, the Commission’s decision approving a CECPN for SWEPCO is arbitrary and unreasonable.

C. Arkansas Law Requires SWEPCO to Prepare and Submit to the Commission an EIS with Its Application that Meets Specific Statutory Requirements Including an Analysis of Alternatives, But Here the Commission Approved the Project Notwithstanding that SWEPCO’s EIS Ignored and Omitted Analysis of Key

Alternatives Including the 161kV Alternative that SWEPCO Itself Privately Proposed to SPP

SWEPCO is required by statute to provide an application for the certificate that includes an EIS which adequately addresses not only the environmental impacts of the project but alternatives to the Project as well.

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:

* * *

(8)(A) An exhibit containing an environmental impact statement that fully develops the four (4) factors listed in subdivision (8)(B) of this section, treating in reasonable detail such considerations, if applicable, as:

(B) The environmental impact statement shall state:

(i) The environmental impact of the proposed action;

(ii) Any adverse environmental effects that cannot be avoided;

(iii) A description of the comparative merits and detriments of each alternate location considered for the major utility facility;

(iv) For generating plants, the energy production process considered;

(v) A statement of the reasons why the proposed location and production process were selected for the major utility facility; ...

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

With regard to this information, before the APSC may grant a CECPN, Arkansas Code Annotated section 23-18-519(b)(4) requires the APSC to find and determine that “the 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, and the various alternatives, if any, and other pertinent considerations.”

Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n, 2009 Ark. App. 511, 18-19, 324 S.W.3d 697, 708-09 (2009) *aff'd as modified*, 2010 Ark. 221, 384 S.W.3d 477 (2010).

The Commission shall not grant a Certificate for a major utility facility unless it finds and determines each of the following:

* * *

(3) **The nature of the probable environmental impact** of the major utility facility;

(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) (emphasis added).

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 Arkansas courts have recognized the statutory requirement that the EIS include an analysis of alternatives in the EIS.

We hold SWEPCO's application, including the EIS, did not provide sufficient information regarding alternative locations or the comparative merits and detriments of each alternate location to satisfy sections 23–18–511(2) and (8)(b)(iii).

Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n, 2009 Ark. App. 511, 20, 324 S.W.3d 697, 709 (2009) *aff'd as modified*, 2010 Ark. 221, 384 S.W.3d 477 (2010).

Staff witness Clark Cotten admitted that SWEPCO's EIS did not contain a description of the comparative merits and detriments of each alternative location as required by section 23–18–511(8)(B)(iii).

Id.

The PSC's ultimate finding of an acceptable adverse environmental impact also seems arbitrary where the PSC fails to fully consider and analyze the pros and cons of alternative sites in its order.

Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n, 2010 Ark. 221, 15-16, 21-22, 384 S.W.3d 477, 485, 488 (2010) (concurring opinion).

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).

The record shows no meaningful consideration by SPP or SWEPCO of less costly and less intrusive alternatives to the proposed new 345kV line, assuming that there was a need. The “alternatives” Mr. Nickell referred to were generally alternatives in addition to the proposed new facilities rather than alternatives to them. For example, see Nickell Cross Examination, p. 1759, lines 19-25.

Dr. Merrill however proposed several reasonable less costly alternatives having less adverse environmental and economic impacts which SWEPCO had not addressed in its Application or EIS. The six alternatives mentioned by Merrill are: (a) Do nothing, and dispatch generation to avoid overloads; (b) Open the Avoca-Beaver 161-kV line; (c) Open the Avoca-Beaver 161-kV line and build a second E Roger-Avoca 161-kV line; (d) Install a special protection scheme (“SPS”) that opens the Avoca-Beaver 161-kV line if the Flint Creek-

Brookline 345-kV line trips; (e) Install a phase-angle regulator ("PAR"), probably to limit the flows on the Avoca-Beaver 161-kV line; and (f) Install a flexible alternating current transmission system ("FACTS") device, probably to limit the flows on the Avoca-Beaver 161-kV line.

Nickell in his testimony did refer to an undefined 161-kV solution proposed by SWEPCO to solve the problem identified in 2006-2007. He said that SPP overruled it in favor of the proposed 345-kV facilities. However, nowhere in the record is there a comparative analysis of SPP/SWEPCO's currently proposed 345-kV facilities versus SWEPCO's original 161-kV proposal. Neither does the EIS address the impacts from or alternatives to the chosen location for the new Kings River substation. 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.

The EIS also 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. See discussion of the Need issue in the preceding section of this argument. 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) (quoted *supra*). Dr. Merrill testifies 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 or hearing record that provides a reasonable counter analysis.

For these reasons, the Commission's approval of Route 109 and the SWEPCO requested CECPN is arbitrary and unreasonable, and SWEPCO's Application and EIS are incomplete and in non-compliance with the controlling statute, because SWEPCO and the Commission fail to address reasonable alternatives, including the primary alternative first proposed by Applicant

SWEPSCO itself to SPP (the 161kV line alternative). Given that SWEPSCO asserts that the Route 33 alternative was identified as the preferred alternative because it had the least adverse impacts and cost, the SWEPSCO 161 kV alternative should have been prominently addressed in the EIS.

III. REHEARING SHOULD BE GRANTED BECAUSE THE COMMISSION'S DECISION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

A. Arkansas Law Requires SWEPSCO to Prepare and Submit to the Commission an Adequate Analysis of the Costs of the Proposed Major New Utility Facility but the Commission Approved the Certificate of Environmental Compatibility and Public Need on a Record Devoid of Any Evidence Concerning the Major Cost Factors of Constructability Generally and Construction in Karst Environments Specifically

The Commission shall not grant a Certificate for a major utility facility unless it finds and determines each of the following:

* * *

(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, * * * and other pertinent considerations;**

* * *

(5) **The nature of the probable economic impact** of the major utility facility;

(6) That the major utility facility financing method either as proposed or as modified by the commission represents **an acceptable economic impact, considering economic conditions** and the need for **and cost of additional public utility services;**

* * *

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

These statutory provisions were clearly intended and properly read to require a total cost analysis. *See* Arkansas Code § 23-18-502.

(b) The General Assembly further finds that it is essential to the public interest to minimize any adverse effect upon the environment and upon the quality of life of

the people of the state that the new facilities might cause **and to minimize the economic costs to the people of the state** of obtaining reliable, clean, safe, and adequate energy supplies.

(c)(1) The General Assembly further finds that laws and practices relating to the location, financing, construction, and operation of the utility facilities should provide for the protection of environmental values, encourage the development of alternative renewable and nonrenewable energy technologies that are energy-efficient, and take into account the total cost to society of the facilities, including without limitation the cost of providing safe, reliable, and cost-effective energy resources.

Ark. Code § 23-18-502 (emphasis added).

Costs analysis is a key factor in the statutorily required determination of whether the environmental impacts from a proposed utility project are acceptable.

c. Nature and Economics of the Proposal

One frightening aspect of the Turk plant is its eventual cost. Although no one seriously maintains that the original cost estimate of \$1.334 billion made in 2005 is close to what the cost will ultimately be, the PSC's order used the original estimate. Contrary to that estimate, these facts seemed to be accepted by the parties:

- At the PSC hearing on September 7, 2007, SWEPCO CEO, Venita McCellon–Allen, testified that cost would be no less than \$1.754 billion. That was three years ago.
- In addition to the \$1.754 cost estimate, congressional and administrative regulation of carbon dioxide generated by the Turk plant are estimated to cost hundreds of millions of dollars more, according to PSC expert David Schlissel. PSC Chairman Paul Suskie and Commissioner Bassett seemed influenced in their decision by potential volatility in natural gas prices and diversification of fuel sources. What is largely undisputed, however, as already mentioned, is that the imminent regulation of carbon dioxide will cause the cost of the coal-fired plant to soar. The price tag, as noted, could quickly reach \$3 billion and more. Yet, the PSC used the 2005 estimate in its analysis, which is an unrealistic figure.

* * *

To summarize, ... , the ultimate cost of the plant is considerably higher from original 2005 estimates and an unknown, customer need was determined in a non-public arena, analysis of alternative sites has been given short shrift in the PSC's order, and the preference given to coal over natural gas seems arbitrary in light of cost and the higher toxic emissions associated with coal. I conclude that the burden of substantial evidence has not been met based on these criteria so as to render the adverse impact acceptable, and for that reason, I would also deny the certificate for these additional reasons

Hempstead Cnty. Hunting Club, Inc. v. Arkansas Pub. Serv. Comm'n, 2010 Ark. 221, 15-19, 22, 384 S.W.3d 477, 488 (2010) (concurring opinion).

SWEPCO's expert admitted that in order to prepare a good cost estimate of constructing in an area with karst features, a geotechnical survey would need to be completed. TR 08/27/13, Coffman p. 476-79. Geotechnical surveys have not been done for the project. TR 08/29/13 Johnson p.1424; TR 08/30/13 Cotten p.2390-91. No cost assessment for construction in karst has been prepared. TR 8/26/2013, Hassink, p. 334.

No comparative cost assessment was done that would support the conclusion that the proposed project was the most cost effective for rate payers, and no assessment was done comparing the costs of the proposed project to Dr. Merrill's identified alternatives. TR 8/26/2013, Bittle, p. 185-186. Operation and maintenance costs were not included in the cost estimate that was done. TR 8/26/2013, Hassink, p. 282-83; TR 8/29/2013, Johnson, p.1433. Thornhill admitted that total cost of the project was not a criterion that was used in evaluating alternatives, and the EIS was not intended to do an evaluation of alternatives in terms of cost. TR 8/27/2013, Thornhill, p. 771-72. The cost estimates Jackson used were provided to her over the phone and were for Route 33 only, and she has never seen a cost estimate for other routes (such as Route 109, the Route approved by the Commission). TR 8/28/2013, Jackson, p. 1160-61.

Nickell testified that if Route 33 was rejected, and Route 108 or 109 was chosen, then SPP would probably still want to build it, but they would also consider the costs as one criteria, so if there was a significant cost increase, that might change SPP's decision to build Route 108 or 109. He also stated that it is fair to say that they do not know at this point what the costs for these other routes would be. TR 8/29/2013 Nickell, p. 1782-84.

Costs were not part of the criteria used to evaluate and rate alternative routes. TR 8/28/2013, Thornhill, p. 955. Johnson testified that he did not task Burns & McDonnell to include a cost analysis in the EIS. TR 8/28/2013 Johnson, p. 1380.

Again, 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 or whether the record supports the Commission decision approving SWEPCO's requested CECPN. In this case, it is apparent that there was a complete failure by SWEPCO to perform any comparative analysis of the costs of the project or even a complete cost assessment of the SWEPCO preferred Route 33, let alone the Commission approved Route 109. For these reasons, the Commission's decision is unsupported by substantial evidence in the record.

B. Arkansas Law Requires SWEPCO to Prepare and Submit to the Commission an Adequate Analysis of the Environmental Impacts of the Proposed Major New Utility Facility but the Commission Approved the Certificate of Environmental Compatibility and Public Need on a Record Devoid of Any Evidence Concerning Significant Adverse Impacts from the Proposed Project that Are Certain to Occur Including Adverse Impacts on Karst Environments and Ecosystems

SWEPCO is required by statute to provide an application for the certificate that includes an EIS which adequately addresses the environmental impacts of the as well as alternatives.

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:

* * *

(8)(A) An exhibit containing an environmental impact statement that fully develops the four (4) factors listed in subdivision (8)(B) of this section, treating in reasonable detail such considerations, if applicable, as:

(i) The proposed major utility facility's direct and indirect effect on the following in the area in which the major utility facility is to be located:

(a) The ecology of the land, air, and water environment;

(b) Established park and recreational areas; and

(c) Any sites of natural, historic, and scenic values and resources of the area in which the major utility facility is to be located; and

(ii) Any other relevant environmental effects.

(B) The environmental impact statement shall state:

(i) The environmental impact of the proposed action;

(ii) Any adverse environmental effects that cannot be avoided; ...

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

The record reflects that data on the location and nature of karst features, environments, and ecosystems impacted by the Project will not be collected until after the Commission decides the issue of the Certificate and the Project is being constructed on the ground. 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 cave dwelling species including the federally protected and endangered Indiana Bat. 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.

Harm to private property was 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”).

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.

Another obvious omission in the EIS 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).

This again is not a case where there is a dispute regarding the meaning of a careful review by the Commission of competing expert testimony on technical details in the record. Rather, in this case, it is apparent from the record that there was a complete failure by SWEPCO to address fundamentally important adverse impacts in the statutorily required EIS and there is no evidence in the record to support the Commission's decision that SWEPCO complied with the Arkansas law requirements to assess such impacts.

CONCLUSION AND RELIEF REQUESTED

For all of the foregoing reasons, pursuant to Arkansas Code § 23-2-422 and Commission Rules of Practice and Procedure Rule 4.14, the Commission should grant Intervenor Petitioner not-for-profit corporation Save the Ozarks' (STO) Petition for Rehearing, reverse the Commission decision granting a CECPN to SWEPCO for Route 109, Docket No. 13-041-U, Order No. 32 as modified by Order No. 33, and deny any CECPN to SWEPCO for this proposed major new utility project. Rehearing should be granted here because the Commission's decision issuing a Certificate of Environmental Compatibility and Public Need to SWEPCO is arbitrary and unreasonable, is contrary to Arkansas and federal law, is contrary to the Arkansas and Federal constitutional guarantees of due process, is not supported by substantial evidence, and is unjust for all the reasons presented herein.

Respectfully submitted,

/s/ Mick G. Harrison

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CERTIFICATE OF SERVICE

The undersigned certifies that on March 18, 2014, a true and correct copy of the foregoing STO Petition for Rehearing was served on all parties of record by electronic mail.

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