

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) DOCKET NO: 13-041-U
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)

JOINT REPLY TO SAVE THE OZARKS’ MOTION FOR LEAVE TO FILE SURREPLY AND JOINT MOTION TO STRIKE SAVE THE OZARKS’ SURREPLY

COME now Southwestern Electric Power Company (hereinafter “SWEPCO” or the “Company”), Southwest Power Pool, Inc. (“SPP”) and Arkansas Electric Cooperative Corporation (“AECC”) and for their Joint Reply to Save the Ozarks’ (“STO”) Motion for Leave to File Surreply and for their Joint Motion to Strike the Surreply state:

1. On April 3, 2013, SWEPCO filed with the Arkansas Public Service Commission (“APSC” or “Commission”) its Application for a CECPN to construct a new 345 kV transmission line from SWEPCO's Shipe Road Station near Centerton, Benton County, Arkansas, to a proposed Kings River Station northwest of Berryville in Carroll County, Arkansas, and for the new Kings River Station (“Facilities”). The Application was predicated upon a Notification to Construct (“NTC”) dated February 13, 2008 from SPP, the Regional Transmission Organization (“RTO”) of which SWEPCO is a member. The NTC required the Facilities to be in service by June 2016. Although SWEPCO was the lone applicant in this

proceeding, both SPP and AECC intervened in support of the Application, and both parties offered pre-filed and live witness testimony at the initial hearing of this matter.

2. On December 30, 2014, SWEPCO filed notice that it no longer seeks the relief requested and thereby withdrew its Application for a CECPN in order that this Docket could be closed. This withdrawal was predicated upon a notification letter received from SPP, dated December 29, 2014, and was attached to SWEPCO's Notice of Withdrawal as Exhibit "A".

4. On January 12, 2015, STO filed its Response to SWEPCO's Notice of Withdrawal and asked the Commission to not allow SWEPCO to withdraw its Application, but instead to declare the Application "denied" and identify STO and the other opposing intervenors as "prevailing parties" in order that they might seek an award of attorneys' fees. Although styled as a Response, STO's pleading was clearly a motion given its request for specific relief from the Commission. Thus the filing timelines dictated by Rule 3.10 apply.

5. On January 20, 2015, SWEPCO, SPP and AECC filed a Joint Reply to STO's Response. (Monday, January 19 was a state and federal holiday, and the APSC was closed. Pursuant to APSC Rule 3.08, this holiday extended the deadline to January 20, 2015.)

6. On March 17, 2015, STO filed a Motion for Leave to File a Surreply and also filed its Surreply. As will be discussed below, the Motion for Leave to File is untimely and contrary to the APSC's *Rules of Practice and Procedure*. STO's Surreply was improperly filed and should be stricken from the record.

A. Joint Reply to Save the Ozarks' Motion for Leave to File Surreply

7. Arkansas Public Service Commission *Rules of Practice and Procedure* 3.10 and 3.11 govern motions and strictly delineate the time period for filing a "reply to a response."

Rule 3.11 provides that “any Party desiring to file a reply to a response to a written motion shall file such within seven (7) Days after the filing of the response.” Thus, STO’s Surreply was due no later than January 27, 2015—seven days after the Joint Reply was filed. STO failed to file its Surreply until March 17, 2015.

8. STO’s Motion for Leave to File Surreply should be denied as it was filed weeks beyond the deadline for such motions. APSC RPP 3.11 allows the Commission to extend deadlines; however, the request for such an extension “shall be made on or before such deadline.” STO’s Motion for Leave to File Surreply, filed March 17, is fifty-six (56) days beyond the deadline.

7. Pursuant to the Arkansas Public Service Commission’s *Rules of Practice and Procedure*, STO’s Motion for Leave to File is untimely and should be denied.

8. Assuming that the APSC considers STO’s Motion for Leave to File, despite its untimeliness, the Motion for Leave to File must fail because no “good cause” is shown. APSC Rule 3.11 necessitates that there be “good cause shown” for an extension of time. Quite simply, STO’s Motion for Leave and Surreply are a continuation of their pre-trial testimony and oral testimony. There is no just cause why this Surreply could not have been timely filed, or at the very least a motion requesting an extension could not have been timely filed. Everything in the Motion for Leave and Surreply was available in January. STO procrastinated. Without “good cause,” there can be no extension.

9. Most significant, however, is that the APSC Rules require that a motion for extension of time be made within seven (7) days. By delaying fifty-six (56) days, STO has waived the right to seek leave to file their Surreply.

10. The Motion for Leave to File Surreply should be denied as untimely filed and without good cause.

B. Joint Motion to Strike STO's Surreply

11. A "reply to a response" or surreply must be filed within seven days of the response, unless an extension of time has been granted. (APSC Rule 3.10, 3.11) As stated above, a request for extension must be made before the seven-day period expires. STO's Motion for Leave to File a Surreply and the Surreply itself are fifty-six days late. STO's purported filing of its Surreply does not comply with the Commission's *Rules of Practice and Procedure*.

12. Pursuant to RPP 3.01 (a) STO's Surreply should be stricken from the record in its entirety. The Surreply is untimely and contains nothing that could not have been included in a timely filing in January. The filing of the document by the Secretary of the Commission as a result of STO's utilization of the Commission's electronic filing system is not a determination or waiver of compliance with the RPPs. Accordingly, the entirety of STO's Surreply is improperly filed and should be stricken from this Docket and the Docket should be closed.

C. Conclusion

The Motion for Leave to File Surreply should be denied for failure to comply with the Commission's *Rules of Practice and Procedure*. The Surreply, which has been improperly filed, should be stricken from the record and the Docket closed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, David R. Matthews, attorney for SWEPCO, state that I have on this 18th day of March, 2015, provided a true and correct copy of the above and foregoing instrument to all parties of record electronically, by first class mail or both.

/s/ David R. Matthews
David R. Matthews