

ARKANSAS COURT OF APPEALS

EN BANC

Nos. CA09-283, CA09-304, & CA09-385

DONALD R. JOHNSON, MARY D.
JOHNSON, and CHARLES MICHAEL
TURNER

APPELLANTS

V.

ARKANSAS PUBLIC SERVICE
COMMISSION and SOUTHWESTERN
ELECTRIC POWER COMPANY

APPELLEES

AND

WILLIS B. SMITH, JR., and PATTY F.
SMITH

APPELLANTS

V.

ARKANSAS PUBLIC SERVICE
COMMISSION, SOUTHWESTERN
ELECTRIC POWER COMPANY, and
AMERICAN ELECTRIC POWER
COMPANY

APPELLEES

AND

HEMPSTEAD COUNTY HUNTING
CLUB, INC., SCHULTZ FAMILY
MANAGEMENT COMPANY, PO-BOY
LAND COMPANY, INC., YELLOW
CREEK CORPORATION, SCHULTZ
FAMILY LIMITED PARTNERSHIP,

Opinion Delivered JULY 28, 2010

APPEALS FROM THE PUBLIC
SERVICE COMMISSION
[NO. 08-001-U, 08-002-U, & 08-098-U]

NO. CA09-283

NO. CA09-304

NO. CA09-385

MARY O'BOYLE, and F. PATRICK
SCHULTZ

APPELLANTS

V.

ARKANSAS PUBLIC SERVICE
COMMISSION and SOUTHWESTERN
ELECTRIC POWER COMPANY

APPELLEES

REMANDED

PER CURIAM

On November 21, 2007, the Arkansas Public Service Commission (Commission) entered Order No. 11 in Docket No. 06-154-U granting Southwestern Electric Power Company (SWEPCO) a Certificate of Environmental Compatibility and Public Need (CECPN) for construction and operation of a coal fire baseload electric generation facility in Hempstead County, Arkansas (the Turk Plant). That decision was appealed to this court in *Hempstead County Hunting Club, Inc. v. Ark. Pub. Serv. Comm'n*, CA08-128.

While the Turk Plant appeal was pending, the Commission, in separate dockets, granted SWEPCO additional CECPNs to build transmission lines related to the Turk Plant. The granting of these CECPNs were then appealed to this court in *Donald R. Johnson v. Ark. Pub. Serv. Comm'n*, CA09-283; *Willis B. Smith, Jr. and Patty Smith v. Ark. Pub. Serv. Comm'n*, CA09-304; and *Hempstead County Hunting Club, Inc. v. Ark. Pub. Serv. Comm'n*, CA09-385. Afterwards, the parties to these appeals filed various motions to consolidate appeals, to separate

jointly filed appeals, and they sought stays on briefing schedules until their motions were decided. Decisions on these motions were held over by us until the appeal in the Turk Plant was decided, although stays were granted for the filing of briefs in CA09-283 and CA09-304 and, at the Commission's request, for the filing of the record in CA09-385.

On June 24, 2009, this court reversed the CECPN granted to SWEPCO for the Turk Plant in *Hempstead County Hunting Club, Inc. v. Arkansas Public Service Commission*, 2009 Ark. App. 511, 324 S.W.3d 697. Thereafter, the supreme court granted the appellees' petition for review of this decision in Docket No. 09-71. In an opinion handed down May 13, 2010, the supreme court reversed the CECPN for construction of the Turk Plant and affirmed as modified the opinion of this court. See *Hempstead County Hunting Club, Inc. v. Ark. Pub. Serv. Comm'n*, 2010 Ark. 221, 384 S.W.3d 477.

With the reversal of SWEPCO's CECPN for the Turk Plant, appellants in two of the pending appeals have now filed emergency motions to stay the CECPNs previously granted to SWEPCO for transmission lines for the Turk Plant. SWEPCO and the Commission oppose these motions.

The motions now pending in this court for disposition are:

CA09-283 - Separate appellants Donald R. Johnson and Mary D. Johnson's emergency motion to stay CECPN, filed July 6, 2010, with responses filed by SWEPCO and the Commission.

CA09-283 - Separate appellants Donald R. Johnson and Mary D. Johnson's motion to withdraw emergency motion to stay CECPN, filed July 15, 2010.

CA09-283 - Appellants' motion to consolidate appeals CA08-128 and CA09-283.

(Held over.)

CA09-283 - Appellants' motion to withdraw motion to consolidate with CA08-128, filed July 15, 2010.

CA09-304 - Appellants' motion to consolidate CA09-304 with CA09-283 and CA08-128. (Held over.)

CA09-385 - Appellants' emergency motion to stay CECPN, filed July 8, 2010, with responses filed by SWEPCO and the Arkansas Public Service Commission.

CA09-385 - Appellants' motion to file reply to appellees' response, filed July 21, 2010.

CA09-385 - Appellees' joint motion to separate Arkansas Public Service Commission dockets filed jointly on appeal with response and amended response filed by appellants. (Held over.)

In consideration of the supreme court's decision in *Hempstead*, we hereby remand the above-listed motions and the orders granting the CECPNs that are being appealed in CA09-283, CA09-304, and CA09-385 to the Arkansas Public Service Commission for determination of whether the *Hempstead* decision nullifies the CECPNs granted in these appeals and for such further orders as the Commission deems necessary.

Remanded.