

SUPREME COURT OF ARKANSAS

No. 10-1094

HEMPSTEAD COUNTY HUNTING
CLUB, INC.,

PETITIONER,

VS.

SOUTHWESTERN ELECTRIC
POWER COMPANY *et al.*,
RESPONDENTS,

Opinion Delivered November 11, 2010

REQUEST TO CERTIFY QUESTIONS
OF LAW FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS
(TEXARKANA DIVISION)

CERTIFIED QUESTIONS
ACCEPTED.

PER CURIAM

In accordance with section 2(D)(3) of Amendment 80 of the Arkansas Constitution and Rule 6-8 of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas, Judge William R. Wilson, Jr., of the United States District Court for the Western District of Arkansas filed a motion and certifying order with our clerk on October 22, 2010. The certifying court requests that we answer three questions of law that may be determinative of a cause now pending in the certifying court, and it appears to the certifying court that there is no controlling precedent in the decisions of the Arkansas Supreme Court.

The questions involved pertain to whether pendant state law claims are precluded in the current federal action; whether a utility's application for and receipt of a Certificate of Environmental Compatibility and Public Need (CECPN) indicates the utility's submission to the jurisdiction of the Arkansas Public Service Commission (APSC) and a waiver of the

utility's right to claim an exemption under Arkansas statutory law; and whether a public utility is required to obtain a Certificate of Convenience and Necessity in certain circumstances.

After a review of the certifying court's analysis and explanation of the need for this court to answer the question of law presently pending in that court, we accept certification of the following questions, as herein reformulated:

1) If the state-law claims of the Hempstead County Hunting Club were not brought in the first instance before the APSC, is court review of such claims precluded by Arkansas Code Annotated sections 23-1-108, 23-3-119, 23-3-206, 23-18-502(e), and 23-18-525 (Repl. 2002), or by the common law of Arkansas concerning the exhaustion of administrative remedies?

2) When a utility applies for, receives, and commences construction under a CECPN, has the utility voluntarily submitted to the jurisdiction of the APSC pursuant to Arkansas Code Annotated section 23-18-504(b) (Repl. 2002) and thereby waived its right to claim exemption under section 23-18-504(a)(5)?

3) Is a public utility seeking to build a major utility facility under the exemption set out in Arkansas Code Annotated section 23-18-504(a)(5) required to obtain a Certificate of Convenience and Necessity under Arkansas Code Annotated section 23-3-201(a)?

This per curiam order constitutes notice of our acceptance of the certification of the question of law. For purposes of the pending proceeding in this court, the following requirements are imposed:

- A. Time limits under Ark. Sup. Ct. R. 4-4 will be calculated from the date of this per curiam order accepting certification. The plaintiff in the underlying action, Hempstead County Hunting Club, Inc., is designated the moving party and will be denoted as the "Petitioner," and its brief is due thirty days from the date of this per curiam; the defendants, Southwestern Electric Power Company and others, shall be denoted as the "Respondents," and their brief shall be due thirty days after the filing of Petitioner's brief. Petitioner may file a reply brief

within fifteen days after Respondents' brief is filed.

- B. The briefs shall comply with this court's rules as in other cases except for the briefs' content. Only the following items required in Ark. Sup. Ct. R. 4-2(a) shall be included:
 - (3) Point on appeal which shall correspond to the certified question of law to be answered in the federal district court's certification order.
 - (4) Table of authorities.
 - (6) Statement of the case which shall correspond to the facts relevant to the certified question of law as stated in the federal district court's certification order.
 - (7) Argument.
 - (8) Addendum.
 - (9) Cover for briefs.
- C. Oral argument will only be permitted if this court concludes that it will be helpful for presentation of the issue.
- D. Ark. Sup. Ct. R. 4-6 with respect to amicus curiae briefs will apply.
- E. This matter will be processed as any case on appeal.
- F. Rule XIV of the Rules Governing Admission to the Bar shall apply to the attorneys for the Petitioner and Respondents.

Pursuant to Arkansas Supreme Court Rule 6-8(d), we request that the parties include in an Addendum the following pleadings: the complaint; the answer, if any; the motion to dismiss; and any responses, replies, and briefs in support thereof. In addition, if the parties believe that any additional pleadings will be useful to our understanding of the legal issues

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presented in this certified questions, those pleadings should be included as well.

Certified Question Accepted.

GUNTER and DANIELSON, JJ., not participating.