

NEWS



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Sunflower Asks Supreme Court to Lift Stay

Hays, Kan., October 10, 2008—Sunflower Electric Power Corporation filed a motion with the Kansas Supreme Court on October 8 asking it to lift the stay on the cases involving the Holcomb Expansion project.

On November 1, 2007, Sunflower filed a request for reconsideration of the KDHE decision. The agency referred the request to the Office of Administrative Hearings.

On April 24, 2008, the Supreme Court entered a “stay” of the appeals filed by Sunflower and other parties seeking to overturn the decision by the Secretary of the Kansas Department of Health and Environment (KDHE) denying Sunflower a permit for the project. The order directed Sunflower to first finish the appeals with the state Office of Administrative Hearings (OAH) and cases filed in Finney County District Court.

On July 22, 2008, Finney County District Court Judge Philip Vieux, with the consent of Sunflower and KDHE, dismissed the two Holcomb-related lawsuits saying he didn't have jurisdiction to rule on the cases. Judge Vieux wrote that the Kansas Court of Appeals has exclusive jurisdiction of all issues arising out of KDHE's denial of Sunflower's permit application. His order said the, “Court of Appeals of Kansas has exclusive jurisdiction to undertake judicial review of all issues arising out of the Kansas Department of Health and Environment's denial of Sunflower Electric Power Corporation's permit application that is the subject of said petitions.”

On September 26, 2008, the Office of Administrative Hearings set a conference hearing limited to the issues of whether the statutes, rules, and regulations relied upon by the Secretary of KDHE permit him to deny the permit being sought by Sunflower. The Presiding Officer ruled there were no additional facts that needed to be determined and that the hearing will focus solely on legal issues.

Sunflower is asking for the stay to be lifted by asserting that the Supreme Court is the appropriate place for decisions interpreting the law to be since OAH agrees it is a legal matter to be resolved.

“Time is of the essence for this project. Eliminating what we believe is an unnecessary step in the process could help resolve this matter more quickly,” said Mark Calcara, Sunflower's vice president and general counsel. “In light of the Presiding Officer's comments, we believe Sunflower has exhausted its administrative remedies,” Calcara added.

Calcara also noted that the air permit application was filed 31 months ago, and that the ongoing time delays cause undue hardships on the electric ratepayers of central and western Kansas that will benefit from the expansion project.

Similar motions were filed by Tri-State Generation and Transmission Association, the Finney County Board of Commissioners, and Garden City Area Chamber of Commerce regarding similar lawsuits. Because Finney County, Garden City Area Chamber of Commerce, and Tri-State were not the actual applicants for the air permit, they are not required to pursue administrative appeals under the law and their appeals, when dismissed at the district court level, are now properly before the appellate courts.

Media Contact

Cindy Hertel – Telephone 785.623.3341 – Cell 785.259.0209
email: chertel@sunflower.net

About Sunflower—

Sunflower Electric Power Corporation is a regional wholesale power supplier that operates a 1,257 MW system of wind, gas, and coal-based generating plants and a 2,300-mile transmission system for the needs of its six member cooperatives who serve more than 400,000 customers living in central and western Kansas. Visit Sunflower's website at <http://www.sunflower.net>

Sunflower's member cooperatives include Lane-Scott Electric Cooperative, Dighton; Pioneer Electric Cooperative, Ulysses; Prairie Land Electric Cooperative, Norton; Victory Electric Cooperative Association, Dodge City; Western Cooperative Electric Association, WaKeeney; and Wheatland Electric Cooperative, Scott City, Kansas.