

Opinion



301 West 13th Street • HAYS, KS 67601 • TEL: 785.623.3364 • www.sunflower.net

January 11, 2008

Kansans Must Have Regulatory Certainty

Over the recent months, much has been said about the appropriateness of the denial of the air permit for the Holcomb Expansion project. Certainly, Sunflower is very appreciative of the significant support we have received. However, while the question of the denial is important, a more important point has been lost in all the discussion surrounding the denial.

For years, Kansas utilities have operated under a well-established energy policy that requires utilities to provide reliable power at the least cost. This policy led to rates in Kansas that have encouraged economic growth and sustained the quality of life we now enjoy. This long-standing policy set by the Legislature has been the guiding principle under which utilities have operated to meet their statutory duty to serve the electric customers of Kansas.

Recently, as environmental concerns have increased, some have advocated for changes in current energy policy. Although change has been advocated, the current policy has not been altered by the Legislature—a necessary prerequisite for change.

In Sunflower's case, what has been largely overlooked is the fact that Secretary Bremby's denial of our air permit drastically altered this state's long established energy policy without advance notice, without rulemaking, without due process and, most importantly, without the authority of the Legislature.

As unsettling as the denial may be to Sunflower, the paramount problem confronting the state is not whether or not our permit should be issued, but whether or not Kansas will uphold the rule of law, a fundamental principle essential for an effective government and orderly society.

Although Sunflower has specific concern over the denial of its permit, all of us should have a greater concern about the impact regulatory uncertainty has on commerce, the financial markets that drive the economy, and on the confidence the general public has in our government's ability to function fairly and impartially.

Without policy and regulatory certainty, there is no predictability, without predictability there is no stability and without stability, there is no progress. People are simply unwilling and unable to act when the regulatory process functions without adherence to established policies and rules.

Sunflower followed and met all established requirements for issuance of its permit, but the permit was still denied by the Secretary. His denial was arbitrary in the sense there was an absence of a known or established rule authorizing his denial. In fact, to date there is still no established rule the public can use to determine if it is entitled to a permit or not. Furthermore, his action was unlawful because he unilaterally altered public policy, which only the Legislature has the authority to do.

The fact any Kansan can meet all known requirements, rules and regulations, and still be denied a permit should cause all fair-minded Kansans grave concern. Whether or not one agrees with the decision to deny the permit for the Holcomb project, everyone should agree that the regulatory process must be certain, fair, and impartial. Public policy must be set by the Legislature, and agencies must follow those policies. To do otherwise, destroys public confidence in our ability to govern by undermining one of the most fundamental principles of a democratic society.

—Earl Watkins is the President and CEO of Sunflower Electric Power Corporation.