Appeals Court Won't Ease Way for Kan. Coal Plant

JOHN HANNA, Associated Press

TOPEKA, Kan. (AP) — A federal appeals court in Washington refused Tuesday to clear an obstacle to the construction of a new coal-fired power plant in southwest Kansas.

A three-judge panel of the U.S. Court of Appeals for the District of Columbia rejected a request from Sunflower Electric Power Corp., based in Hays, to overturn a federal judge's ruling that had put the $2.8 billion project on hold. Sunflower wants to build an 895-megawatt plant outside Holcomb.

U.S. District Judge Emmett Sullivan last year ordered the Rural Utilities Service, which is part of the U.S. Department of Agriculture, to complete an environmental study before granting any approvals to Sunflower for the project. The federal agency must sign off on decisions about the plant because it provided past financial support to Sunflower and oversaw corporate reorganizations.

The appeals-court panel said it didn't have the jurisdiction under federal law to hear an appeal because Emmett's decision directing the RUS to do a study didn't amount to a final order. Sunflower spokeswoman Cindy Hertel said the company is still reviewing the decision.

But the San Francisco-based environmental law group Earthjustice hailed the decision. The group represented the Sierra Club, which sued the Rural Utilities Services in 2007 in hopes of slowing or blocking Sunflower's construction of new coal-fired generating capacity.

"As of today, the Sunflower coal plant cannot be built," Earthjustice attorney Amanda Goodin, said in a statement.

Kansas granted a permit to Sunflower to build the new plant in 2010, more than a year after the Republican-controlled Legislature ratified an agreement between then Democratic Gov. Mark Parkinson and Sunflower. The deal allowed the plant to go forward when lawmakers approved "green" legislation favored by Parkinson and his predecessor, Democratic Gov. Kathleen Sebelius.

The Sierra Club also is challenging the state Department of Health and Environment's permit in a separate lawsuit now before the Kansas Supreme Court.

Sunflower supplies electricity for about 400,000 Kansans and its new plant would have enough capacity to meet the peak demands of 448,000 households, according to one state estimate.

Three-quarters of the new capacity would be reserved for a Sunflower partner, Tri-State Generation and Transmission Association Inc., of Westminster, Colo. That's

long been a sore point for environmentalists, who view the plant as unnecessary for meeting Kansans' power needs, but supporters of the project have said exporting power will be as beneficial to the economy as exporting agricultural products.

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Online:

Sunflower: http://www.sunflower.net/ [1]

Earthjustice: http://earthjustice.org/ [2]

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