SUNFLOWER ELECTRIC POWER CORPORATION

A Touchstone Energy® Cooperative

Testimony of Wayne Penrod, Executive Manager Environmental Policy
On Behalf of Sunflower Electric Power Corporation
Before Senate Utilities Committee
Opposing S. 170
February 19, 2015

Mr. Chairman and members of the Committee, thank you for allowing the opportunity to share our opinions about Senate Bill 170 (S. 170), which would require the completion of a judicial review before Kansas agencies can respond with an implementation plan to meet the requirements for EPA's 111(d) rule. We oppose the bill.

Sunflower has serious concerns with EPA's proposed 111(d) rule; it is seriously flawed, and we have submitted detailed comments to that effect to the EPA, as have more than 2 million others. We share the legislature's deep concerns about the cost of complying with EPA's rule and about the impact of the rule on grid reliability.

We've already discussed the various ways EPA has proposed to reduce GHG emissions, and you have been addressed by several experts on the specifics of these issues during the last couple of weeks. The impacts below are reasonably foreseeable:

- EPA's proposed rule would redispatch electric energy production from the most economically available resources of such energy to intermittent generation resources and to those that use more expensive fuels.
- A significant wholesale electricity cost increase is expected—perhaps as much as a 60% increase in our area.
- Dramatic voltage control problems -including voltage collapse and blackouts- have been identified by the Southwest Power Pool, the reliability pool that serves all or parts of 9 states, including Kansas.

For these reasons, and many others, the proposed rule will have significant negative economic and quality-of-life impacts on families and businesses across our state, particularly in rural areas where Sunflower's members serve. As a cooperative, we are committed to providing reliable electric service at the lowest possible cost in an environmentally responsible way. The proposed rule will unnecessarily conflict with our cooperative commitment.

If the rule becomes final, cooperatives, along with others, will seek to reduce the negative impact such a final rule will have on our ratepayers, including necessary legal action. Legal opinions vary, and different utilities and different states will likely pursue all of them. Such efforts will undoubtedly involve prolonged litigation. It seems reasonable to identify whether a particular legal theory has a better fit in Kansas and to identify what happens in those intervening years.

Actions taken in these situations have been established years ago. Under the Kansas Air Quality Act (KAQA), the Kansas Department of Health and Environment (KDHE) is the agency charged with developing the response to EPA's final rule. The Clean Air Act (CAA) requires KDHE to develop a state compliance plan within a specified time after the final rule is published. If states fail to submit a plan, the EPA is required to develop a federal compliance plan in lieu of the state for the affected sources in those states. Kansas, like all other states, will have just 12-13 months to respond to the final GHG rule, an amazingly short period of time. This means that following the late summer 2015 rollout of a final rule, KDHE will need to complete its work by early fall 2016, and an EPA decision regarding the Kansas compliance plan should be determined by the end of 2017.

S. 170 prohibits KDHE from submitting a Kansas compliance plan until final legal disposition is accomplished. Unless enforcement of the final 111(d) rule is stayed, S. 170 will almost certainly result in a federal compliance plan being imposed on Kansas sources as early as 2017, well before the litigation is concluded. This result may place Kansas in the weakest of legal positions.

It is arguable that Kansas may be better positioned by KDHE submitting a compliant implementation plan tailored to and in coordination the Kansas utilities. A rejection by EPA of a legally defensible compliance plan could place Kansas in the strongest legal position to successfully defend the state's plan. Also, any KDHE plan compliant with the laws of the CAA would almost certainly be less restrictive than a federally imposed plan. With a state implemented plan, Kansas utilities would be subject to a plan they helped to shape to blunt the adverse impacts of the rule on costs and reliability of service. Without a state plan, Kansas utilities and ratepayers will be subject to a federal plan that neither the state nor the utilities had an opportunity to influence.

As with any legal issue, there are varying opinions as to the best strategy for challenging the rule. We deeply appreciate that the state, with the assistance of KDHE and the Commission, is working to arrive at an approach that effectively addresses environmental concerns while ensuring reliable and cost-prudent electric service. We will need to work together to get a reasonable state plan developed under the current statute. To do otherwise would be contrary to the best interests of the people of Kansas.

On behalf of Sunflower, I want to thank the Committee for the time to review our comments. Feel free to contact me at (785) 650-9004 with any questions you might have.