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- Associated Press Writer

TOPEKA — Sunflower Electric Power Corp. said Tuesday it has asked a federal court to block the state from denying the utility an air quality permit it needs to build two coal-fired power plants in southwest Kansas.

The lawsuit is the latest in the ongoing battle with the state over the October 2007 denial of the permit by Health and Environment Secretary Rod Bremby, who cited potential carbon dioxide emissions and global warming. Many scientists link man-made greenhouse gas emissions to global warming.

The Legislature tried three times this year to pass measures to overturn Bremby's decision and allow the Hays-based Sunflower to build the plants outside Holcomb in Finney County. Each bill was vetoed by Gov. Kathleen Sebelius, who backed Bremby's decision.

Environmentalists opposed the \$3.6 billion project, but there was bipartisan support because many legislators, especially those from western Kansas, viewed it as economic development. But lawmakers couldn't muster the two-thirds majority in both chambers to override the vetoes.

"In denying the air permit, the administration has discriminated against 400,000 Kansans and more than 1.5 million citizens in other states who will be forced to pay the price of this decision for decades to come through higher electric rates," said Earl Watkins Jr., Sunflower's chief executive officer.

"Sunflower's permit application is the only one, out of thousands of applications since 2003, that the KDHE has denied," Watkins said.

"This is unfair and a violation of rights guaranteed to Sunflower by the U.S. Constitution."

Bruce Nilles, director of the Sierra Club's national coal campaign, called the lawsuit a "last-ditch" effort by the utility.

"This is a naked attempt by the coal industry to block efforts by states to lead on solving global warming," Nilles said. "The states always have had the right to protect the health and welfare of their residents."

Earth Justice attorney Nick Persampieri said his group is considering its options, including asking to join KDHE's defense by filing a friend-of-the-court brief.

"We don't plan to stand idly by," he said. "Sunflower has gotten a free pass for years for its carbon dioxide emissions, and it's clear they see the handwriting on the wall that the rules are about to change."

Sunflower and many legislators contend Bremby overstepped his authority because the state has no law or regulation setting carbon dioxide emissions standards. His decision came after the KDHE staff recommended issuing the permit.

Sebelius told reporters she hadn't seen the lawsuit filed Monday in U.S. District Court in Kansas City, Kan., but was disappointed Sunflower didn't exhaust its legal options at the state level, including administrative hearings.

Sunflower has sued in state court, but the Kansas Supreme Court said it first must go through the state's administrative appeals process with the agency, which hasn't been completed.

KDHE spokeswoman Maggie Thompson said the agency doesn't comment on pending litigation.

Among other things, the lawsuit asks the court to rule the state's denial order violates Sunflower's right to conduct interstate commerce.

Sunflower wants to sell about 86 percent of the new power to two out- of-state electric cooperatives that are helping finance the project.

They are Tri-State Generation and Transmission Association Inc. of Westminster, Colo., and Golden Spread Electric Cooperative, in Amarillo, Texas.

The new generating capacity, totaling 1,400 megawatts, would be enough to meet the peak demands of 700,000 households, according to one state estimate. Sunflower and a sister utility, Midwest Energy Inc., serve about 400,000 customers in 55 Kansas counties.

No hearing date has been set for the case, assigned to District Judge Eric Melgren.

The case is Sunflower Electric Power Corp. v. Kathleen Sebelius, Mark Parkinson and Roderick L. Bremby, Number 08-2575.

On the Net:

Sunflower Electric Power Corp.: <http://www.sunflower.net>

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