

## S E V E N

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### Kansas



**WHILE FLORIDA'S GOVERNOR** Charlie Crist deserves accolades for his actions to nix five proposed coal plants in that state, in terms of sheer political courage, no politician in the country compares to Kansas governor Kathleen Sebelius, who never faltered throughout a protracted fight over a three-unit coal plant proposed for the town of Holcomb in the western part of the state. Technically, Rod Bremby, secretary of the Kansas Department of Health and Environment, made the decision to deny Sunflower Electric Cooperative the necessary air permit. But it was Sebelius who four times used her veto power to quash legislation that would have overturned Bremby's decision.

As the most hard-fought battle over coal anywhere in the United States, the Sunflower case was widely seen as a make-or-break moment for the anti-coal struggle. It was also legally significant as the first case in which a state official explicitly based a coal plant decision on the U.S. Supreme Court's 2007 ruling in *Massachusetts v. EPA* that carbon dioxide should be regulated under the Clean Air Act. What surprised many observers was the willingness of Sebelius, once she had made up

her mind, to defy the coal lobby in one of the most politically conservative states in the country. What made Sebelius's actions all the more surprising was that the governor had staked her career on a reputation for pragmatism, not for hard-line positions.

As described by Thomas Frank in his book *What's the Matter with Kansas?* politics in the state have been drifting to the right for decades. Republicans now outnumbered Democrats by nearly two to one, and Republican Party policies were generally controlled by hard-core ideologues. Despite the conservative climate, Sebelius had won her first governorship election in 2002 by a 53 to 45 percent margin. She moved quickly to establish a reputation for nondoctrinaire competence, erasing a \$1.1 billion state deficit without raising taxes or cutting education. Kansans rewarded Sebelius by reelecting her in 2006 in a 58 to 40 percent landslide. She continued to build her popularity by courting Kansans who felt marginalized by the Republican Party's hard turn to the right, recruiting a number of centrist Republicans into her administration. By 2007, when the confrontation over the Sunflower plant came to a head, Sebelius was riding on approval ratings of 60 percent among Republicans and 75 percent among Democrats, according to polls by Kansas stations KWCH and KCTV. But that popularity had no guarantee of lasting in a state where most people defined themselves as conservative and where conservative media outlets dominated the airwaves. Already, Sebelius had risked the wrath of pro-life advocates by vetoing multiple pieces of anti-abortion legislation and had angered the gun lobby by vetoing concealed weapons laws. In both cases she had managed to walk away with her high approval ratings intact, even among abortion opponents and gun owners.

In deciding to confront the Sunflower project, Sebelius was again taking a political gamble that presented her with little to gain and much to lose. Nothing like the concern over hurricanes that had transformed Florida politics existed in Kansas; even to mention climate change meant being labeled an “Al Gore liberal.” Those who thought about the issue at all were likely to accept the viewpoint articulated by right-wing leaders like Rush Limbaugh—that the alarm over climate change was nothing more than a ploy by liberals bent on controlling society.

Making the political prospects even worse for the governor was that the sponsor of the Sunflower project wasn’t a large, out-of-state corporation but rather a homegrown Kansas co-operative with extensive political roots. As in most midwestern and southern states, rural electric cooperatives (RECs) like Sunflower are among the most well-organized and politically powerful institutions in state politics, enjoying connections to every legislative district. Many Kansans, especially the generation born in the early years of rural electrification, view their local REC with an affection that borders on reverence.

To understand the political power of the rural electric co-operatives in rural America, it’s worth reflecting on farm life before electrification. To the big power companies that served urban areas, bringing power to the countryside didn’t look like a profitable endeavor, so rural kids did their homework by kerosene lantern and farmers milked their cows by hand. The Edison Electric Institute, which represented investor-owned utilities, wrote, “only in the imagination … does there exist any widespread demand for electricity on the farm or any general willingness to pay for it.”

Left to their own devices, farmers started organizing rural electric cooperatives in the 1920s. After Franklin Roosevelt

arrived in office in 1933, the movement took off. Looking for ways to jump-start an economy mired in depression, Roosevelt created the Rural Electrification Administration, which began lending money to RECs at low interest rates as well as giving them preferential access to cheap power from federal dams.

On paper, the original rural electric cooperatives looked very much like local food co-ops, and originally they elicited a comparable level of member involvement. In 1940 one observer wrote that co-op membership meetings “are not simply business sessions. They have an emotional overtone, a spiritual meaning to people who were so long denied the benefits of modern energy and convenience which had become a commonplace to their city neighbors.”

Once the Rural Electrification Administration was organized, giving the RECs access to the deep pockets of the federal government, the movement lost much of its initial passion and became more institutionalized. Yet the fact that local boards continued to run cooperatives meant that a grassroots network remained available as a power base, affixed permanently to the Democratic Party. In 1964 the rural electrics came under attack as communist institutions, and federal funding for the movement became an issue in the presidential campaign between Lyndon Johnson and Barry Goldwater. Goldwater said that the Rural Electrification Administration had “outlived its usefulness.” Johnson, on the other hand, had organized the REC that supplied electricity to his ranch in Texas. Not only was he a true believer in the benefits that the movement had brought to farm families, he also saw clearly that the thousand local co-op organizations operating in forty states were a politician’s dream. Goldwater likewise noted the strength of this network. During a Senate hearing, he told a representative of

the National Rural Electric Cooperative Association, “Within your organization you have a much more potent force at your fingertips than any source of pressure I have come in contact with since I have been here.”

As time passed, what had once been among the most progressive organizations in America became in many ways one of the least. During the 1960s and 1970s, the local co-ops started moving into the big leagues, forming larger “generation and transmission” co-ops (G&Ts) to build billion-dollar coal plants and nuclear plants. In rural states like North Dakota and Kansas, managers of G&Ts like Basin Electric and Sunflower Electric became accustomed to the status and deference that Fortune 500 CEOs enjoy in larger states. Reacting to the red-baiting they had experienced in the 1960s, the co-ops seemed to lean over backward to emulate their private utility counterparts. With the advent of environmental legislation, they joined corporate America in lobbying against tougher strip mine regulations, clean air standards, and plant-siting legislation.

Farmers and ranchers facing destructive strip mining and intrusive power lines were dismayed when their efforts to organize landowner protection groups were vilified in REC publications and radio shows. The issue of climate change seemed to particularly enrage many co-op managers. Following the release of Al Gore’s movie *An Inconvenient Truth*, the leadership of one co-op, Colorado’s Intermountain Rural Electric Association (IREA), wrote to other utility managers asking for money to support the work of Patrick Michaels, a leading global warming denier. According to the letter, IREA had already given Michaels \$100,000, and at least \$50,000 more had been pledged.

Besides moving to the right on environmental issues, many

of the co-ops had drifted far away from basic cooperative principles. In a *Harvard Law Review* assessment of the problem, Congressman Jim Cooper of Tennessee wrote that the word “cooperative,” with its implications of equal equity and member democracy, no longer fit the increasingly sclerotic reality. Cooper charged that the G&Ts that built and operated coal plants had become more intent on building economic empires for the benefit of their managers, boards, and circles of business cronies than on serving the needs of their members.

Sunflower Electric, which had been organized in 1957 by six western Kansas rural electric cooperatives looking for a reliable long-term power supply, exemplified the empire building syndrome. As proposed in early 2006, the three 700-megawatt coal plants scheduled for construction on the site of the existing 360-megawatt Holcomb plant would provide thirty times more power than needed by Sunflower itself—the lion’s share would be sold to other co-ops, many located out of state. Tri-State G&T, based in Colorado, would actually own two of the plants. Most of the power from the third plant would go to Golden Spread Electric Cooperative of Texas.

At the outset, the handful of Kansas environmentalists who were aware of Sunflower’s construction plans saw little chance of getting help from the Sebelius administration; indeed, there was no indication that the Sebelius administration would pursue any course other than to rubber-stamp the proposed plants. During her 2006 reelection campaign, the governor had ignored a Sierra Club request to support a moratorium on new coal-fired power plants, and the club had not endorsed her

As for any movement from the grassroots to oppose the project, early hearings on the Sunflower air permit were far from promising. At the first, held near the proposed construction

site and packed with Sunflower employees, 90 percent of those testifying spoke in support of building the plant. So did local officials, who liked the project mainly because it would create two thousand construction jobs and 140 permanent jobs. At a second hearing, held in Topeka, supporters again outnumbered opponents.

At a third hearing, held in Lawrence, a college town in eastern Kansas, the tone began to shift. On this evening over three hundred people arrived to testify. As at previous hearings, Sunflower brought busloads of supporters to pack the room. Arriving early, the pro-company claque occupied the bulk of seats in the hearing chamber, forcing opponents who arrived later to stand in the halls.

Angered by the sense that they had been out-organized and that the process was rigged against them, opponents of the plant demanded a second night of hearings, and they quickly pulled together a coalition that included the Sierra Club, True Blue Women, the Sustainable Sanctuary Coalition, the Kansas Natural Resources Council, the University of Kansas Enviros, and Concerned Citizens of Platte County. The coalition initiated a letter-writing campaign urging the governor to support wind power rather than coal plants.

As media attention steadily grew, so did attendance at each subsequent hearing. Hundreds of people showed up for Health Department hearings on the plant at the Kansas City Community College, and members of the coalition groups demonstrated at the governor's office in Topeka.

The involvement of environmentalists from eastern Kansas drew the ire of Sunflower executives. After the city of Lawrence took a position in opposition to the plant, Sunflower senior manager Steve Miller vowed, "I will personally make it my

crusade to make sure all our western Kansas dollars are diverted as far away from Lawrence as they can be, because they have unfairly stuck their nose in western Kansas's business."

Inadvertently, Sunflower had changed the issue of the plant into an east-west controversy, a blunder in a state whose population tilts heavily toward its eastern counties. Although the company retracted Miller's comments, it was not able to do anything about the steady progression of the Sunflower issue onto the stage of national climate politics. State attorneys general from California, Connecticut, Delaware, Maine, New York, Rhode Island, Vermont, and Wisconsin all submitted objections to the permit application, complaining that the pollution from the plant would cancel out their own attempts at greenhouse gas reductions.

Even before Kansas made its decision, the Sierra Club had already filed a lawsuit challenging the state's refusal to hold an evidentiary hearing on the plants. Sierra followed the first lawsuit with a second in November, this time objecting that the Rural Utilities Service had failed to submit an environmental impact statement.

The tide was turning. In September 2007 Sunflower's opponents got some unexpected help when Colorado adopted a law requiring that rural electric cooperatives get 10 percent of their power from renewable resources. The Colorado legislation forced Sunflower to withdraw its application for the third unit of the project, which depended on commitments from Colorado utilities that were placed in question by the new legislation. In October the Sebelius administration announced its decision on the remaining two units. In a statement that made international headlines, Kansas Health and Environment commissioner Rod Bremby declared that the permit application for the remaining

two units was being rejected on the basis of the U.S. Supreme Court's precedent in *Massachusetts v. EPA*. The era of blocking coal plants on explicit climate grounds had arrived.

Sunflower's response to the Bremby decision was swift and blunt: a broadside of attack ads, paid for by the newly formed pro-utility group Kansans for Affordable Energy, which sought to smear Governor Sebelius. Beneath photographs of Russian president Vladimir Putin, Venezuelan president Hugo Chávez, and Iranian president Mahmoud Ahmadinejad, the ads asked, rhetorically, "Why are these men smiling? Because the recent decision by the Sebelius Administration means Kansas will import more natural gas from countries like Russia, Venezuela and Iran."

Again, Sunflower's political instincts appear only to have made matters worse for the co-op. The effort to swiftboat the governor failed to intimidate Governor Sebelius, who called the attack campaign an affront to Kansan sensibilities. Sebelius released the following statement: "Anyone who would associate our state with the controversial and disreputable world leaders pictured in this ad fundamentally misunderstands and disrespects the people of Kansas. The ad is offensive to every Kansan, and the people of Kansas deserve an apology."

In the wake of the Bremby decision, the battle over Sunflower moved to the state legislature, where Sunflower allies, holding an easy majority, enacted legislation revoking Health and Environment commissioner Bremby's power to approve air permits. Sebelius vetoed the legislation, and the legislature tried the tactic again, both times failing to find the two-thirds majority needed to override the governor's veto. On May 29, 2008, the legislature ended its annual session without attempting to override a third veto by the governor.

Ironically, it was the election of Barack Obama that made it possible for one unit of the Sunflower plant to begin moving forward. In May 2009, immediately after Governor Sebelius left Kansas to take the position of Health and Human Services secretary in the Obama administration, the state's new governor, Mark Parkinson, reversed the Sebelius/Bremby position on the project, announcing that the co-op would be allowed to build a single 895-megawatt facility. Under the Parkinson plan, which was brokered with no public knowledge, most of the power from the plant would be exported to electric cooperatives in Colorado, while 200 megawatts would remain in Kansas. To offset pollution from the plant, Sunflower promised to shut several dirtier plants. The agreement also contained a provision sought by Sunflower and its allies to limit the Kansas Department of Health and Environment's power to regulate greenhouse gases and other pollutants. In exchange for allowing construction of Sunflower's coal plant, legislators were required to pass a bill enacting renewable energy measures sought by Parkinson.

For the coalition that had opposed the plant, it was a bitter loss, and Parkinson came under immediate fire. Critics charged that although the new governor touted the concessions made by Sunflower, the utility had already planned many of those concessions before striking the deal. Also as part of the agreement, Sunflower promised to decommission two outdated oil-fired power plants in Garden City, but according to the company, those oil burners had not actually been used in over two decades. Environmental groups charged that by stripping Kansas's top regulator of the discretion he had used to reject the Sunflower project in 2007, the deal would make it easier for other utilities to build coal plants in the state.

It remained an open question whether the Sunflower plant would actually be built. Like other proposed coal-fired power plants across the country, the project faced escalating construction costs, a tough climate for obtaining financing, and fading demand growth. Other sources of power, especially wind farms, looked competitive when compared with the cost of new coal plants. Meanwhile, legal teams at the Sierra Club and Earthjustice remained poised to seize any available handle to stop the project.

Despite what looked like defeat, at least in the short run, Sunflower opponents remained hopeful. Governor Sebelius was no longer in the state to lead the fight, but her vetoes had bought the anti-coal movement a critical window of time—perhaps just enough to win.

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