

## **Court limits Perry's power over agencies / Ruling delays coal-plant hearings, likely adds fuel to fire on HPV vaccine**

By R.G. RATCLIFFE, Austin Bureau Staff

AUSTIN - A state district judge dealt a blow to Gov. Rick Perry's official powers Tuesday by blocking the governor's 2005 executive order creating a fast-track permitting process for coal-fired, electricity-generating plants.

State District Judge Stephen Yelenosky ruled Perry probably lacks the authority to tell a state agency when to hold a hearing and how long it should last before a ruling is issued.

Though Yelenosky's ruling did not directly affect the controversy over Perry's executive order requiring HPV vaccinations for sixth-grade girls, it likely will fuel the debate.

Yelenosky did not specifically halt a hearing scheduled for today on TXU Corp.'s request for permits for six coal-fired plants, but he told the state's administrative law judge to reconsider requests for a delay from environmental groups.

Perry spokesman Robert Black dismissed the ruling as coming from an Austin-based Democratic judge. "No one should be surprised that a single liberal Austin judge would rule against Governor Perry and his efforts to increase energy capacity in Texas," Black said.

### *Six months of hearings*

Perry issued an executive order in 2005 putting the permitting of new electricity-generating plants on a fast track. That meant administrative hearings on the permits, which normally take a year, would be reduced to six months.

Environmental lawyer Jim Blackburn said Perry may have been acting in what he thought was the state's best interests, but he said the governor lacks the official power to tell a state agency how to act.

"This is a grab of power that is unprecedented, and it's wrong," Blackburn said.

Yelenosky's temporary injunction said the four environmental groups that sued Perry "are likely to prevail on their argument that the governor lacks the authority" to issue an executive order mandating actions by state agencies.

TXU Corp. is seeking permits for 11 coal-fired units. The State Office of Administrative Hearings had been scheduled to start taking testimony today on permits for six of the units.

The ultimate decision on whether to issue the permits is up to the Texas Commission on Environmental Quality based on a recommendation to be made by the administrative law judge.

TXU spokeswoman Kim Morgan said the company is "disappointed" in Yelenosky's decision.

"Every day that a solution is delayed leaves older, less efficient power plants on-line too long - affecting prices and clean air," Morgan said. "And it brings us one day closer to the potential of widespread blackouts."

Morgan said lawyers for the interested parties have had "significant" discovery in the case so far.

"There is no reason why SOAH shouldn't go forward with the hearing," Morgan said.

Though Yelenosky's order did not specifically relate to the ongoing controversy over the human papillomavirus vaccine, HPV, it was the first judicial ruling that indicated a governor does not have the power to direct state agency operations by executive order.

Legislators have asked Attorney General Greg Abbott to rule on whether Perry had the authority to order HPV vaccinations for all girls entering the sixth grade in 2008. Lawmakers are considering legislation to overturn Perry's executive order.

Attorneys for Perry and the SOAH said the citizen groups did not have standing to sue unless the administrative law judge hearing the environmental case ruled against them. Yelenosky said the groups did have standing.

The attorney general's office referred all questions about Yelenosky's ruling to the SOAH. That office did not return telephone calls.

The lawsuit was brought by Citizens Organizing for Resources and Environment; Texans Protecting Our Water, Environment and Resources; Citizens for Environmental Clean Air; and East Texas Environmental Concerns. All four groups consist of people who live near the proposed coal-fired power plants.

### *Respiratory problems*

Robert Cervenka, a Waco-area farmer with TPOWER, said if the plants are built he will have to move because his wife has respiratory problems. There are nine units proposed for the Waco area.

"We're actually in a ring of fire," Cervenka said.

TXU was not a party to the court proceedings. The company has argued that the plants it is proposing will be cleaner than some older coal-fired facilities. They also have said the technology for a newer coal gasification facility is not developed to the point of being commercially viable.

Blackburn said the administrative law hearings need to be delayed so all sides have an adequate amount of time to submit evidence into the record that can then be used in any appeals. He said only that evidence in the record can be considered on appeal.

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