



SUNFLOWER ELECTRIC POWER CORPORATION

August 29, 2018

Via FedEx

Gyanendra Prasai
Permit Chief, Bureau of Air
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 310
Topeka, Kansas 66612-1366

Re: Holcomb Expansion Project Construction Permit
Commence Construction Permit Extension
Source Identification Number (Permit No.) 0550023

Dear Mr Prasai:

On behalf of Sunflower Electric Power Corporation (Sunflower), I am writing to request that the Kansas Department of Health and Environment (KDHE), pursuant to its authority under K.A.R. § 28-19-350(b)(1), extend the prevention of significant deterioration (PSD) permit for Sunflower's proposed Holcomb 2 Electric Utility Steam Generating Unit (permit number 0550023). As you know, the deadline for commencing construction under this permit is September 27, 2018. For the reasons discussed below, we are requesting that it be extended for eighteen (18) months –*i.e.*, until March 27, 2020.

Rationale for Extension

Sunflower is the permit holder and owner/operator of the current unit at the Holcomb Station (Holcomb 1). Sunflower and Tri-State Generation and Transmission Association (Tri-State) are parties to certain agreements whereby the parties agreed to jointly develop the proposed Holcomb 2 project. Both are electric cooperatives that have an obligation to meet the electricity needs of their members and whose costs are fully paid by their members. Collectively, we have invested more than \$100 million dollars in developing Holcomb 2. If the permit is allowed to expire, the vast majority of this investment will likely be lost.

As you know, Holcomb 2 has been delayed for many years for reasons outside the control of Sunflower and Tri-State. Among other things, it has been the subject of protracted litigation, including two separate appeals to the Kansas Supreme Court. Since the initial permit application for Holcomb 2 was submitted more than 14 years ago, Sunflower and Tri-State have been forced to find other sources of energy to meet

the needs of their members and no longer need the electricity that would be produced by Holcomb 2. Thus, since the most recent Kansas Supreme Court decision that finally upheld the validity of the Holcomb 2 permit, we have been looking for other entities that would be interested purchasing power from a baseload unit in this part of the country.

This effort has been greatly affected by the dramatic changes in the electric power sector and the relevant energy markets over the last decade, including the formation of the Integrated Market in the 14-state Southwest Power Pool (SPP). As renewable energy resources have rapidly come on-line in the SPP, concerns have arisen regarding the need for the inherent stability and reliability that are provided by baseload coal-fired resources such as the proposed Holcomb 2 project.

For these reasons, there is significant interest in Holcomb 2, but more time is needed to finalize the arrangements that would support its construction and connection to the SPP grid. Given the complexity of the issues involved and the pace of ongoing discussions, an additional 18 months is needed before construction can commence on Holcomb 2.

KDHE Authority

The U.S. Environmental Protection Agency (EPA) has approved Kansas's PSD permitting program as part of the Kansas State Implementation Plan (SIP). K.A.R. § 28-19-350(b)(1), which is part of this program, gives KDHE explicit authority to extend the permit deadline for commencing construction on Holcomb 2. Because Kansas has a SIP-approved PSD program, KDHE has broad discretion to extend a PSD permit whenever there is "a satisfactory showing that an extension is justified." *Id.* As we have discussed with KDHE, we believe that we have made such a showing for the reasons summarized above.

EPA Guidance

Although Kansas has its own SIP-approved PSD program, it has in the past looked at EPA's interpretation of 40 C.F.R. § 52.21(r) for guidance on how to implement K.A.R. § 28-19-350(b)(1), since the relevant wording of both provisions is the same. EPA's current guidance on permit extensions was issued in 2014 and explicitly supersedes prior EPA statements on this subject. See Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, "Guidance on Extensions of PSD Permits under 40 CFR 52.21(r)(2)" (January 31, 2014) (the "Page Memo"), available at <https://www.epa.gov/sites/production/files/2015-7/documents/extend14.pdf>.

In the Page Memo, EPA explains that there are not "any specific criteria or required process that must be satisfied before [the permitting authority] can exercise its discretion to determine that a permit extension is justified." *Id.* at 2. It goes on to say, in several places, that the permitting authority has broad discretion as to whether or not to

grant an extension and that each decision should be made on “a case-by-case basis.” *Id.* at 2, 3, 4, 6, 7, 8.

The Page Memo does state that, “in most cases a request for a second extension of the commence construction deadline should include a substantive re-analysis and update of PSD requirements.” For the reasons we have discussed with KDHE, we believe that Holcomb 2 is one of the cases where this is not necessary and would not result in any meaningful changes to the current permit or any environmental benefits.

With regard to the “best available control technology,” EPA’s RACT/BACT/LAER clearinghouse shows that there have not been any advancements in pollution control technology for coal-fired electricity generating units (EGUs) since the current permit was issued. Nor have any similar coal-fired EGUs been permitted or constructed in the U.S. since that time.

There are two new PSD-related requirements that have come into effect since the permit was issued, but EPA’s guidance explicitly notes that, in similar circumstances, EPA has sometimes “grandfathered” sources “from having to demonstrate compliance with the new or revised permitting requirements.” *Id.* at 6. The Agency goes on to say that “a permitting authority has the discretion to evaluate on a case-by-case basis whether and under what circumstances it would be justified to issue a PSD permit extension without requiring the source to meet a new requirement that took effect during the term of the initial permit.” *Id.*

We do not believe that the application of new PSD requirements would result in any meaningful changes to the current PSD permit for Holcomb 2 or any environmental benefits, even though two new PSD requirements have come into effect.

First, since Holcomb 2 was permitted, CO₂ has become a regulated pollutant under the PSD program, but the addition of a CO₂ permit limit for Holcomb 2 would not likely reduce its CO₂ emissions because Holcomb 2 will be subject to a “new source performance standard” (NSPS) for CO₂ under a rule that EPA will be proposing next month. Because construction on Holcomb 2 will not commence before the date of the proposed rule (which is the applicability date under the NSPS program), it will be required to comply with the NSPS for CO₂, and the NSPS limit would be included in the operating permit for Holcomb 2. There is no reason to believe that a PSD permit limit for CO₂ would be any different from an NSPS limit that is based on the “best system of emission reduction” that is currently available.

Second, since Holcomb 2 was originally permitted, EPA has started to require applicants and state permitting authorities to consider whether certain emissions will lead to the secondary formation of ozone or PM_{2.5} that would cause or contribute to an exceedance of a NAAQS or relevant increment. However, even using very conservative methods (*i.e.*, methods known to overstate actual air quality impacts),

Holcomb 2 does not even come close to causing or contributing to an exceedance of a NAAQS or increment.

Process


As noted above, the Page Memo states that there is no “required process that must be satisfied before the [permitting authority] can exercise its discretion to determine that a permit extension is justified.” *Id.* at 2. It goes on to say that “[p]ublic notice and comment is not necessary for permit extension actions that would simply extend the deadline for commencing construction without reconsideration or amendment of the substantive conditions of the permit.” *Id.* at 7.

In addition, nothing under Kansas law or KDHE regulations requires notice-and-comment prior to extending the construction deadline under a PSD permit. The Kansas Air Quality Act does not prescribe any process for KDHE’s review or approval of PSD permit extensions, and the relevant KDHE’s regulations require public participation only “in the permit development or modification process,” not for extensions. K.A.R. 28–19–204.

* * * * *

Thank you for consideration of this request. If you have any questions regarding this request or need additional information, please contact me at (620)277-4549 or mthompson@sunflower.net. We would be happy to meet with you to further discuss this request at your convenience.

Sincerely,



Mike Thompson
Senior Manager, Generation Engineering and Environmental

- c. Rick Brunetti (KDHE)
- Mindy Bowman (KDHE)
- Kate Gleeson (KDHE)
- Barbara Walz (Tri-State)
- Dan Casiraro (Tri-State)