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Office of Connecticut Attorney General Richard Blumenthal
Office of Delaware Attorney General Carl C. Danberg
Office of Maine Attorney General G. Steven Rowe
Office of New York State Attorney General Eliot Spitzer
Office of Rhode Island Attorney General Patrick C. Lynch
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December 15, 2006

VIA FACSIMILE & U.S. MAIL
(785) 296-7455

Kansas Department of Health
and Environment
Attn: Rick Bolfing, Project Engineer
Bureau of Air and Radiation
1000 SW Jackson, Suite 310
Topeka, KS 66612-1366

Re: Comments Regarding Proposed Holcomb Station Expansion Air Quality Construction Permit

Dear Mr. Bolfing:

The Attorney Generals of the States of California, Connecticut, Delaware, Maine, New York, Rhode Island, Vermont, and Wisconsin jointly submit these comments to the Kansas Department of Health and Environment (KDHE) to voice concerns regarding the proposed issuance of an air quality construction permit to Sunflower Electric Power Corporation (Sunflower) for the construction of three new 700 MW conventional coal-fired steam generating units in Holcomb, Kansas. As explained below, we request KDHE not to issue a permit for the proposed plant unless Sunflower designs the plant in a way that minimizes the generation of carbon dioxide (CO_2) emissions and/or allows the capture of such emissions.

Climate change is the single greatest environmental challenge facing the world today. Scientists overwhelmingly agree that the global community must reduce emissions of greenhouse gases, including CO_2, to well below 1990 levels within a few decades, if we are to stabilize the climate at acceptable levels. Although climate change is a global problem, effective action at the national, regional, and state level is needed to achieve the necessary reductions in CO_2 emissions.

To that end, all of the states listed on this letter have made the reduction of CO_2 emissions a priority. For example, eight northeastern states (Connecticut, Delaware, Maine, Maryland, New Hampshire, New Jersey, New York, and Vermont) have developed the Regional Greenhouse Gas Initiative (RGGI), a mandatory cap-and-trade program to reduce carbon dioxide (CO_2) emissions from power plants, which collectively represent a major contributor to global warming. By 2020, the RGGI states will achieve a 10% reduction in CO_2 emissions, totaling approximately 12 million tons annually. Similarly, California this year passed the Global Warming Solutions Act, A.B. 32, which requires the state's utilities, oil refiners, cement makers, and other large industrial greenhouse gas emitters to reduce their CO_2 emissions to 1990 levels by 2020. In addition, and directly relevant to the proposed plants in Kansas, California also enacted this year California Public Utilities Code § 8340 et seq., which precludes California utilities from entering contracts for electricity from sources, both inside and outside of California, that emit high levels of CO_2, including those like the proposed plants.

In contrast to these efforts, the proposed Holcomb plant would substantially increase CO_2 emissions from Kansas sources. As proposed, the three new 700 MW coal-fired units would utilize traditional coal-burning technology, which emits massive amounts of CO_2. In addition, the units are proposing to burn Powder River Basin sub-bituminous coal, which produces more CO_2 per unit of energy than other types of coal. The proposed Holcomb units are projected to increase emissions of CO_2 by 15.4 million tons or more per year,[1] thereby seriously undermining the concerted efforts being undertaken by multiple states to address global warming. In fact, the annual emissions from the Holcomb plant extension would cancel out all the emission reductions resulting from the RGGI. With a lifetime of more than 60 years, the Holcomb units, if built as proposed, might well emit more than one billion tons of CO_2 in total, thus significantly contributing to the public health and environmental damage associated with global warming.

We encourage Kansas to explore alternatives that will allow Kansas to satisfy its need for energy without exacerbating global warming. As an initial matter, implementation of energy conservation measures and construction of non-polluting renewable energy sources could reduce, or even ultimately obviate, the need for new coal-fired power in Kansas. If the proposed plant's power is still needed, Integrated Gasification Combined Cycle (IGCC) technology provides a viable alternative for Kansas to meet its energy needs while minimizing the proposed plant's contribution to global warming. IGCC technology not only prevents emissions of regulated pollutants, mercury and other heavy metals, it also improves the efficiency of the production process, thereby reducing CO_2 emissions, and, even more importantly, it enables the economically feasible capture and storage of all such emissions.

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[1] Based upon a capacity factor of at least 85%, which is likely to be greater given technology improvements.

State and federal laws require issuance of a Prevention of Significant Deterioration (PSD) air quality permit by KDHE to Sunflower prior to construction of the Holcomb expansion units. To obtain a PSD permit, Sunflower must demonstrate that the proposed Holcomb expansion units comply with the best available control technology (BACT). The BACT standard requires PSD applicants to consider other "production processes or available methods, systems, and techniques" including "innovative fuel combustion techniques" to achieve the "maximum degree of reduction for each pollutant subject to regulation" under the Clean Air Act (CAA). The legislative history of the CAA makes clear that Congress intended that the full range of production methodologies, including coal gasification, would be considered in a BACT analysis. See, e.g., 123 Cong. Rec. 18472 (1977). Thus, a BACT analysis for the Holcomb extension units must consider IGCC technology, an established and available production process.

Furthermore, KDHE must consider the "energy, environmental, and economic impacts" of each unit as part of the BACT analysis. This analysis extends to the overall environmental impacts of the units. See, e.g., In re North Country Resource Recovery Associates, 2 E.A.D. 229, 230, 1986 EPA App. LEXIS 14 (Adm'r 1986). Although the increased CO_2 emissions resulting from the proposed new units at Holcomb might not require their own BACT analysis as regulated pollutants under EPA's current interpretation,[2] the detrimental environmental effects of these emissions must be considered under the "environmental impacts" prong of BACT, which in turn informs the selection of control technology.

We recognize the need for additional sources of energy, but urge KDHE to consider whether efficiency improvements or non-polluting sources of electricity can meet increased demand for the next few years. If increased electricity-generating capacity is needed nonetheless, we urge KDHE to deny the issuance of the proposed permit and require that the plant be constructed instead with IGCC or other currently available technologies that will minimize the plant's CO_2 emissions.

We thank you for considering our views on this important matter.

Sincerely,

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