

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 4th of May, 2009, by and between the State of Kansas (Kansas) and Sunflower Electric Power Corporation ("Sunflower").

WHEREAS, Sunflower operates a 350 megawatt (MW) (nominal) electrical generating facility (H1), commonly referred to as the Holcomb Station, located near Holcomb, Kansas; and

WHEREAS, on February 6, 2006, Sunflower applied for a prevention of significant deterioration (PSD) Permit to Construct (PSD Permit) that would authorize the construction at the Holcomb Station of three additional 700 MW pulverized-coal generating units; and

WHEREAS, Sunflower thereafter notified KDHE that it was withdrawing the proposed third unit from the PSD Permit application; and

WHEREAS, the coal fired electric generation units will emit carbon dioxide (CO₂); and

WHEREAS, the Governor is the supreme executive of the state and is authorized to bind the State to this agreement;

WHEREAS, KDHE is a duly authorized agency of the State of Kansas created by an act of the Kansas Legislature; and

WHEREAS, the Secretary of the KDHE (Secretary) has jurisdiction over certain matters relating to emissions of pollutants into the ambient air pursuant to the Kansas Air Quality Act (ACT), K.S.A. 65-3001, et seq.; and

WHEREAS, K.S.A. 65-3005 provides that the Secretary shall have the power to enter into voluntary contracts and agreements with private entities to facilitate the purposes of the Act; and

WHEREAS, Sunflower is a non-profit, membership Kansas Corporation authorized to act as a public utility in the State of Kansas; and

WHEREAS, KDHE issued an Interim Guidance on the Treatment of Carbon Dioxide Emissions in the KDHE Permitting Process setting forth the terms KDHE would consider for the issuance of a permit for a new baseload electric generating unit of the type and nature as sought by Sunflower pursuant to its PSD Permit application; and

WHEREAS, pursuant to K.S.A. 65-3005, the Secretary and Sunflower each have the authority to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained in this Agreement and intending to be legally bound, the State and Sunflower agree as follows:

ARTICLE 1 STATEMENT OF PURPOSE

1.1 Purpose. The State and Sunflower are entering into this Agreement for the purposes of facilitating the timely issuance of a final PSD Permit for the construction of one nominal 895 MW pulverized super critical coal generating unit which shall be known as H2 and the withdrawal from the permit application for a PSD permit for a second new generating unit. This Agreement is not the result of any enforcement action or alleged non-compliance with any law, regulation, permit, or order.

ARTICLE 2 MODIFICATION OF HOLCOMB UNIT 1

2.1 NO_x Emissions. Under the current operating permit for H1, the PSD nitrogen oxides (NO_x) emission limitation is 0.50 lb/mmBtu and the Acid Rain NO_x emission limitation is 0.46 lb/mmBtu. As consideration herein, and without modifying these limitations for PSD NO_x or Acid Rain NO_x as set forth above, Sunflower agrees to achieve compliance with an additional NO_x emission limitation of 0.22 lb/mmBtu, as determined on a 12-month rolling average basis, excluding periods of startup, shutdown, and malfunction. In order to effect the reduction Sunflower agrees to install new Low-NO_x burners, or equivalent or better performing technology that achieves the same objective. Sunflower agrees to install this equipment at the next planned facility outage of sufficient duration, unless it becomes necessary due to operating circumstances and outage limitations to complete the work at a later date, but in no event later than one year after the commercial operation date of H2. Compliance with the new additional standard will begin twelve (12) months thereafter, following an initial compliance test.

2.2 SO₂ Emissions. Under the current permit for H1, the PSD sulfur dioxide (SO₂) emission limitation is 0.48 lb/mmBtu. Sunflower agrees to utilize best operating practices on H1 to achieve compliance with an additional SO₂ emission limitation of 0.12 lb/mm Btu, as determined on a 30-day rolling average basis. Sunflower will achieve these limitations within 12 months of the commercial operational date of H2.

2.3 Mercury Emissions. Sunflower agrees to utilize best operating practices or generally available control technology on H1 to meet a mercury emission limitation of 0.020 lb/GWh, on a 12-month rolling average basis, excluding periods of startup, shutdown, and malfunction. Sunflower will achieve this limitation within 12 months of the commercial operation date of H2.

2.4 Combined Mercury Emissions. The total annual mercury emissions from units H1 and H2 shall be less than the 2005 toxic release inventory reported emissions of 327 pounds for H1. Attached hereto is the data on HAPS previously provided to KDHE which KDHE acknowledges receipt of and does not dispute the accuracy of the data provided.

ARTICLE 3 CONDITIONS

3.1 Conditions. Unless otherwise provided herein, Sunflower agrees to make good faith efforts to meet the following conditions within 1 year, but agrees the conditions will be met no later than 2 years of the commercial operational date of H2.

a) Wind Development. Sunflower agrees that it will, or it will cause the participants in the project, to install and operate, or contract to purchase, wind resources to be located in Kansas equal to 20% of the net production capability of H2, which shall be in addition to any requirement for mandated renewable portfolio standards required of a Kansas utility participating in H2. In addition, should the state of Kansas mandate a renewable portfolio standard requiring at least 20% of its retail load of its members be generated by a renewable resource by the year 2020, Sunflower agrees to meet the mandated standard no later than 2016.

b) Biomass as Fuel Source. Sunflower agrees to use, or cause to be used, biomass as a fuel source equal to the sum of 10% of the full load heat input of H1 and H2 in the production of electric energy without respect to the location of the use. Sunflower shall not be required to meet such requirement if the usage of biomass is technologically or economically infeasible; provided costs no greater than 200% of the delivered in cost of coal to Holcomb Station shall be deemed economically feasible.

c) Transmission Development. The Parties acknowledge that to facilitate the expansion of wind as a source of energy, it is necessary to enhance the transmission grid. Provided Tri-State Generation and Transmission Association, Inc. (Tri-State), or a public utility on the western grid, participates in the plant at an equivalent level (600 MW) to Tri-State's participation, Sunflower agrees to use reasonable efforts to develop, with the assistance of others, two high voltage transmission lines of not less than 345kv from the location of H2 into the state of Colorado. The lines shall be completed no later than 5 years after the commercial operation date of H2, provided the construction of such lines are not delayed by reasons beyond the control of Sunflower or the transmission owner constructing the lines.

d) Energy Efficiency Programs. Sunflower shall develop and implement enhanced energy efficiency and demand side management programs (Efficiency Programs) which will provide information, technical assistance, and incentives to each type of customer and customer class Sunflower's members serve to conserve and more efficiently utilize energy.

Sunflower agrees to commit to the funding of Efficiency Programs, directly and/or through its members, at an amount of not less than 1% of its gross revenues based upon the previous year's gross sales of power to its members and its sister organization, Mid-Kansas Electric Company, LLC (Mid-Kansas) for a 5-year period beginning with the construction of H2. Under current sales, the amount allocated would be approximately \$4 million annually. The Parties acknowledge that Efficiency Programs will have diminishing returns over time and, therefore, agree that after the initial five years, Sunflower and KDHE will confer as to what Efficiency Programs' benefits exceed the cost and Sunflower shall continue to fund

those Efficiency Programs for another 5 years thereafter at levels not to exceed 1% of the gross revenues as described above. Regardless of any credit allowed under subsection (e) below, Sunflower agrees that during the first 5 years it will commit to funding at least .5% of its gross sales annually to Efficiency Programs.

e) Bioenergy Center. To advance new and innovative technology, Sunflower agrees to use reasonable efforts to plan, undertake, and support the research and development opportunities associated with an Integrated Bioenergy Center (IBC) in western Kansas, which may consist of an ethanol plant, a bio-diesel plant, an anaerobic digester, a dairy farm, and an algae reactor. Any funds expended on the undertaking of the IBC shall be credited against the funds required to be spent on Efficiency Programs.

f) Decommission of Plants. Sunflower shall as of the commercial operation date of H2 cease to operate and permanently decommission Garden City 1 and Garden City 2 generation units from its operational fleet.

3.2 Permit Issuance. Subject to the modifications as may be required herein and the confirmation of BACT emission limitations and PSD increment consumption constraints, the Secretary shall issue the final permit substantially in the form of the draft final permit prepared by the KDHE technical staff on or about July 17, 2007.

ARTICLE 4 EFFECTIVE DATE, SUSPENSION, TERMINATION

4.1 Effective Date. The State and Sunflower contemplate the passage of certain energy legislation in the 2009 legislative session that would modify the Kansas Air Quality Act, establish a renewable portfolio standard, require net metering by investor owned utilities and other miscellaneous energy related legislation, which shall be substantially similar to H.B. 2127, (Energy Legislation). This Agreement shall be effective upon both the passage of the Energy Legislation and the date the PSD Permit issued by KDHE for the construction of H2 becomes final and non-appealable.

4.2. Operative Effect. If the validity or enforceability of the PSD Permit is challenged by a third party initiating an action for judicial review, then (i) the terms and conditions of Article 2 and 3 shall immediately be suspended, and the time in which Sunflower is required to perform under these Articles shall be tolled; and (iii) the time for Sunflower's performance hereunder otherwise shall be extended by an amount of time equal to the length of time the permit(s) are being contested. Provided further, if such an action for judicial review results in the permit being vacated and ultimately either denied or modified, then this Agreement shall immediately terminate and be of no further force or effect. If the PSD Permit sought by Sunflower is issued but for any reason H2 is not constructed under the authority of that PSD Permit, then this Agreement shall immediately terminate and be of no further force or effect.

**ARTICLE 5
MISCELLANEOUS**

5.1 Admission of Liability. Nothing in this Agreement shall be considered an admission of any fact or acknowledgment of any liability or obligation by any Party, nor as an admission of any fact or acknowledgment of any violation of any law, regulation, permit, or order. Neither the State of Kansas, nor KDHE or any other agency, shall be held out as a party to any contract entered into by Sunflower or others in carrying out activities pursuant to this Agreement. Provided further, that upon execution of this Agreement, Sunflower shall dismiss with prejudice its current suit pending before the Federal District Court, Case No. 08-CV-2575-EFM-DWB with each party to bear their own attorneys fees and costs.

The parties agree to file a Joint Motion to stay proceedings pending before the Kansas Supreme Court, Case Nos.07-99565-AS, 09-101,857-AS, 09-101,858-AS, 09-101,859-AS until such time as a PSD permit is issued, at which time Sunflower agrees to dismiss these cases with prejudice, with each party to bear their own attorneys fees and costs.

5.2 Authority of the Secretary. Sunflower acknowledges this Agreement does not diminish or supplant the authority of the Secretary or KDHE under the statutes and lawful regulations which they administer.

5.3 Governmental Regulations. Sunflower's performance hereunder is subject to and conditioned upon receiving all governmental and regulatory approvals necessary for it to lawfully perform the terms and conditions hereof, including approval of the recovery of costs of performance through its rate structure. If Sunflower is unable to obtain all such approvals, then such performance shall be excused and that requirement of performance shall be of no further force or effect.

5.4 Amendment. This Agreement may be amended by the mutual agreement of the State and Sunflower. Each such amendment shall be in writing and shall have as its effective date the date on which it has been signed by both parties.

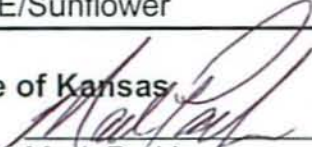
5.5 No Third-Party Beneficiaries. This Agreement inures solely to the benefit of the Parties; and it cannot be construed to be for the benefit of any person or other entity not a party to the Agreement, or to grant any such non-party person a private right of action to enforce it.

5.6 Applicable Law. The terms of this Agreement shall be construed in accordance with the applicable laws of the State of Kansas.


5.7 Future Permits. The Parties herein acknowledge that by entering into this Agreement that Sunflower is not precluded from seeking PSD permits in the future for the construction of electric generation plants, provided however, Sunflower agrees not to file for a PSD permit for a pulverized coal plant prior to April 30, 2011.

In witness thereof, the representatives of the Parties have affixed their signatures on the dates set forth below. Each signatory to this Agreement hereby certifies that he/she is authorized to execute and legally bind the Party he/she represents to this Agreement.

State of Kansas

By: 
Name: Mark Parkinson
Title: Governor
Date: 5/4/2009

Sunflower Electric Power Corporation

By: 
Name: L. Earl Watkins, Jr.
Title: President and Chief Executive Officer
Date: May 4, 2009