

ILLINOIS POLLUTION CONTROL BOARD  
September 17, 2020

MIDWEST GENERATION, LLC )  
Dry Sorbent Injection Systems and Related )  
Improvements to Electrostatic Precipitators for )  
Powerton Generating Station, Unit Nos. 5 & 6 )  
 )  
Petitioner, )  
 )  
v. ) PCB 21-14  
 ) (Tax Certification - Air)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by C.M. Santos):

On August 20, 2020, the Illinois Environmental Protection Agency (IEPA) filed a recommendation that the Board certify specified facilities of Midwest Generation, LLC (Midwest Generation) as “pollution control facilities” for preferential tax treatment under the Property Tax Code.<sup>1</sup> *See* 35 ILCS 200/11-5 *et seq.* (2018); 35 Ill. Adm. Code 125. Midwest Generation’s Powerton Station, a coal-fired power generation facility, is located at 13082 East Manito Road in Pekin, Tazewell County. In this order, the Board describes the legal framework for tax certifications, discusses the IEPA’s recommendation, and certifies that Midwest Generation’s identified dry sorbent injection systems and related improvements to its electrostatic precipitators are pollution control facilities.

**LEGAL FRAMEWORK**

Under the Property Tax Code, “[i]t is the policy of this State that pollution control facilities should be valued, at 33 1/3% of the fair cash value of their economic productivity to their owners.” 35 ILCS 200/11-5 (2018); *see also* 35 Ill. Adm. Code 125.200(a)(2). “For tax purposes, pollution control facilities shall be certified as such by the Pollution Control Board and shall be assessed by the Department [of Revenue].” 35 ILCS 200/11-20 (2018); *see also* 35 Ill. Adm. Code 125.200(a). Under the statute, the Board determines if the facilities are pollution control facilities; however, the Board is not authorized to assess a value of those facilities.

Under Section 125.202 of the Board’s procedural rules, a person may submit an application for tax certification to IEPA. *See* 35 Ill. Adm. Code 125.202. If IEPA receives a tax certification application, IEPA must file with the Board a recommendation on the application, unless the applicant withdraws the application. *See* 35 Ill. Adm. Code 125.204(a). Among other

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<sup>1</sup> Although Midwest Generation’s application for certification and IEPA’s technical memorandum refer to Units 5 & 6, the caption of IEPA’s recommendation refers to Units 4 & 5. The Board considers this reference inadvertent and above has corrected the caption.

things, IEPA’s filing must recommend that the Board issue or deny tax certification. *See* 35 Ill. Adm. Code 125.204(a)(4). If the Board finds “that the claimed facility or relevant portion thereof is a pollution control facility . . . , the Pollution Control Board . . . shall enter a finding and issue a certificate to that effect.” 35 ILCS 200/11-25 (2018); *see also* 35 Ill. Adm. Code 125.216(a).

### **IEPA RECOMMENDATION**

IEPA states that it received a tax certification application from Midwest Generation on or about July 30, 2020.<sup>2</sup> Rec. at 1. On August 20, 2020, IEPA filed a recommendation with the Board, attaching Midwest Generation’s application (Rec. Exh. A). IEPA’s recommendation identifies the facilities at issue:

a project installing Dry Sorbent Injection (DSI) Systems to two coal-fired boilers, Unit Nos. 5 and 6, operating at the Powerton Generating Station. The DSI Systems inject a dry sorbent (*i.e.*, commercially known as Trona, which consists, in its mineral form, of sodium carbonate and sodium bicarbonate) into the flue gases of the boilers immediately prior to the Electrostatic Precipitators (ESPs) resulting in an endothermic decomposition process (*i.e.*, calcination). . . . In addition, the project included modifications to the ESPs to allow for the added loading of particulate matter (PM) to the control train from the sorbent. *Id.* at 2; Exh. A at 2-3.

IEPA further describes the facilities as “conventional pollution control technologies that, as described in the application, act to control and/or reduce SO<sub>2</sub> and PM emissions that would otherwise be emitted from the coal-fired boilers.” *Id.* at 2.

IEPA recommends that the Board certify that the DSI Systems and related improvements to the ESPs are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2018)) with the primary purpose “of preventing or reducing air pollution.” Rec. at 3; *see also* Rec., Exh. B (IEPA memorandum).

### **TAX CERTIFICATE**

Based upon the IEPA’s recommendation, Midwest Generation’s application, and the Board’s technical review, the Board finds and certifies that Midwest Generation’s DSI Systems and related improvements to the ESPs at its Powerton Station identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2018)). The Board makes no finding regarding the assessed value of those facilities. Under Section 11-25 of the Property Tax Code, the effective date of this certificate is “the date of application for the certificate or the date of the construction of the facility, which ever is later.” 35 ILCS 200/11-25 (2016); *see also* 35 Ill. Adm. Code 125.216(a). Section 125.216(d) of the Board’s procedural rules states that the Clerk “will provide the applicant and the Agency with a copy of the Board’s order setting forth *the Board’s findings and certificate, if any.*” 35 Ill. Adm. Code 125.216(d) (quoting in italics 35 ILCS 200/11-30 (2018)). The Clerk therefore will provide Midwest Generation and IEPA with a copy of this order.

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<sup>2</sup> IEPA’s recommendation is cited as “Rec. at \_.”

IT IS SO ORDERED.

Section 11-60 of the Property Tax Code provides that any applicant or holder aggrieved by the issuance, refusal to issue, denial, revocation, modification or restriction of a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate may appeal the Board's finding and order to the Circuit Court under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (2018)). *See* 35 ILCS 200/11-60 (2018). Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

<b>Names and Addresses for Receiving Service of Any Appeal Filed with the Circuit Court</b>	
<b>Parties</b>	<b>Board</b>
Midwest Generation, LLC Attn: Kathryn Tronsberg Macciocca Duff and Phelps LLC 2000 Market Street, Suite 2700 Philadelphia, PA 19103 Kathryn.tronsberg@duffandphelps.com	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601 don.brown@illinois.gov
Illinois Environmental Protection Agency Attn: Robb H. Layman, Assistant Counsel 1021 North Grand Avenue East PO Box 19276 Springfield, Illinois 62794-9276 robb.layman@illinois.gov	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 17, 2020, by a vote of 4-0.



Don A. Brown, Clerk  
 Illinois Pollution Control Board