

ILLINOIS POLLUTION CONTROL BOARD

January 9, 2014

MIDWEST GENERATION, LLC (Low NO <sub>x</sub> )	)	
Burner System with Separated Over-Fire Air )	)	
System for Waukegan Station, Unit No. 7) )	)	
(Property I.D. No. 08-15-200-006), )	)	
	)	
Petitioner, )	)	
	)	
v. )	)	PCB 14-78
	)	(Tax Certification - Air)
ILLINOIS ENVIRONMENTAL )	)	
PROTECTION AGENCY, )	)	
	)	
Respondent. )	)	

ORDER OF THE BOARD (D. Glosser):

On December 9, 2013, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify a certain facility of Midwest Generation, LLC (Midwest Gen) as a “pollution control facility” for preferential tax treatment under the Property Tax Code. See 35 ILCS 200/11-5 et seq. (2012); 35 Ill. Adm. Code 125. The facility is associated with Midwest Gen’s Waukegan Station, a coal-fired plant for generating electricity, which is located at 401 East Greenwood Avenue in Waukegan, Lake County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Midwest Gen’s Low Nitrogen Oxides (NO<sub>x</sub>) Burner System with Separated Over-Fire Air System on Unit No. 7 is a pollution control facility.

**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 (2012); 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 (2012); 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 the Agency. See 35 Ill. Adm. Code 125.202. If the Agency receives a tax certification application, the Agency 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 things, the Agency’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 (2012); *see also* 35 Ill. Adm. Code 125.216(a).

### **AGENCY RECOMMENDATION**

The Agency states that it received a tax certification application from Midwest Gen on or about April 25, 2008.<sup>1</sup> Rec. at ¶ 1. The Agency explains that it had misplaced Midwest Gen’s application. *Id.* On December 9, 2013, the Agency filed a recommendation on the application with the Board, attaching Midwest Gen’s application (Rec. Exh. A). The Agency’s recommendation identifies the facility at issue:

The subject matter of this request consists of a Low [NO<sub>x</sub>] Burner System with a Separated Over-fire Air Control System, which was constructed and installed by Midwest Gen on Unit No. 7 of the Waukegan Station. A low NO<sub>x</sub> burner system, as generally recognized in the field of air pollution control technology, is a type of process modification that offers enhanced abatement of NO<sub>x</sub> emissions while providing the basic functionality of conventional burners. An over-fire air system is a type of process modification that is not an inherent component of conventional boilers and provides a discrete, enhanced abatement of NO<sub>x</sub> emissions. As described in the application, the Low NO<sub>x</sub> Burner System for the affected boiler consists of the replacement of “all existing tilting nozzle tips in each wind box with redesigned tips and related dampers.” The Over-fire Air System consisted of the upgrading of the “existing windbox partition plates” and the addition of “multi-staged . . . registers above the main firing zone.” Rec. at ¶ 4 (quoting Rec. Exh. A; citations omitted).

The Agency further describes the facility:

The systems collectively regulate “the mixing of coal and air to limit oxygen availability during the initial stages of combustion” and, similarly, assure that “secondary air [mixes] with the products of initial combustion at a location near the flame boundary.” As a consequence, NO<sub>x</sub> formation during combustion is “inhibited” and the process modifications therefore act to prevent or reduce NO<sub>x</sub> emissions that would otherwise be emitted from the boiler. Rec. at ¶ 4 (quoting Rec. Exh. A; citations omitted).

The Agency recommends that the Board certify that the Low NO<sub>x</sub> Burner System with Separated Over-Fire Air System on Unit No. 7 is a pollution control facility as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2012)) with the primary purpose “to prevent or reduce air pollution.” Rec. at ¶¶ 7, 8; *see also* Rec. Exh. B (Agency technical memorandum).

### **TAX CERTIFICATE**

Based upon the Agency’s recommendation and Midwest Gen’s application, the Board finds and certifies that Midwest Gen’s Low NO<sub>x</sub> Burner System with Separated Over-Fire Air

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<sup>1</sup> The Agency’s recommendation is cited as “Rec. at \_.”

System identified in this order is a pollution control facility under the Property Tax Code (35 ILCS 200/11-10 (2012)). The Board makes no finding regarding the assessed value of that facility. 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 (2012); *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 (2012)). The Clerk therefore will provide Midwest Gen and the Agency with a copy of this order.

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.* (2012)). *See* 35 ILCS 200/11-60 (2012).

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 9, 2014, by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board