

ILLINOIS POLLUTION CONTROL BOARD
January 9, 2014

MIDWEST GENERATION, LLC (Low NO _x))	
Over-Fire Air Systems for Powerton Station,))	
Unit No. 5, Boiler Nos. 51 & 52) (Property I.D.))	
No. 10-10-09-100-002),)	
)	
Petitioner,)	
)	
v.)	PCB 14-73
)	(Tax Certification - Air)
ILLINOIS ENVIRONMENTAL))	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (D. Glosser):

On December 10, 2013, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of Midwest Generation, LLC (Midwest Gen) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2012); 35 Ill. Adm. Code 125. The facilities are associated with Midwest Gen’s Powerton Station, a coal-fired plant for generating electricity, which 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 Agency’s recommendation, and certifies that Midwest Gen’s Low Nitrogen Oxides (NO_x) Over-Fire Air Systems on Unit No. 5, Boiler Nos. 51 and 52 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 (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, 2008.¹ Rec. at ¶ 1. The Agency explains that it had misplaced Midwest Gen’s application. *Id.* On December 10, 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 facilities at issue:

The subject matter of this request consists of two Low [NO_x] Over-fire Air Systems, which were constructed and installed by Midwest Gen on Unit No. 5, Boiler Nos. 51 & 52 of the Powerton Station. This type of process modification, as generally recognized in the field of air pollution control technology, is not an inherent component of conventional boilers and provides a discrete, enhanced abatement of NO_x emissions. As described in the application, each system assures that “a portion of the total combustion air is diverted away from the main combustion zone in the cyclone combustors, and introduced into the furnace above the cyclone burners.” In doing so, each system is “essential for completing the combustion process,” thus ensuring that the combustion in the boiler is efficient, and also a “staging technique for controlling NO_x formed in the main combustion zone.” Rec. at ¶ 4 (quoting Rec. Exh. A; citations omitted).

The Agency further describes the facilities: “The application states that each system ‘suppresses the conversion of both fuel, and to some extent, atmospheric nitrogen to [NO_x],’ and consequently acts to prevent or reduce NO_x emissions that would otherwise be emitted from the boiler.” Rec. at ¶ 4 (quoting Rec. Exh. A; citation omitted).

The Agency recommends that the Board certify that the Low NO_x Over-Fire Air Systems on Unit No. 5, Boiler Nos. 51 and 52 are pollution control facilities 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_x Over-Fire Air Systems identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2012)). 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 (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)

¹ The Agency’s recommendation is cited as “Rec. at _.”

(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.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board