

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
NITROGEN OXIDES EMISSIONS FROM)	R08-19
VARIOUS SOURCE CATEGORIES:)	(Rulemaking – Air)
AMENDMENTS TO 35 ILL.ADM.CODE)	
PARTS 211 AND 217.)	

NOTICE OF FILING

To:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

Persons included on the
ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that we have today filed with the Office of the Clerk of the Pollution Control Board **POST-HEARING COMMENTS OF MIDWEST GENERATION.**



Kathleen C. Bassi

Dated: March 23, 2009

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POST-HEARING COMMENTS OF MIDWEST GENERATION

NOW COMES Participant, MIDWEST GENERATION, LLC, by and through its attorneys, SCHIFF HARDIN LLP, and offers these Post-Hearing Comments. Midwest Generation, LLC (“Midwest Generation”) participated in this rulemaking both through the Illinois Environmental Protection Agency’s (“Agency”) general outreach activities and through the Illinois Pollution Control Board’s (“Board”) hearings, where Midwest Generation presented testimony regarding proposed Subpart M and related general sections. Midwest Generation also discussed various provisions and implications of the proposal with the Agency independently of the Agency’s general outreach efforts.

With the amendments proposed to the Board by the Agency in its Motion to Amend Rulemaking Proposal (“Agency’s Motion”) filed January 30, 2009, Midwest Generation generally supports the Agency’s proposal as it applies to electric generating units (“EGUs”). The proposed amendments incorporate by reference provisions agreed to between the Agency and Midwest Generation as part of the Agency’s Answers to Midwest Generation’s Questions for Agency Witnesses (“Agency’s Answers”), which were filed before this Board on September 30, 2008. In the Agency’s Answers, the Agency proposed to amend the proposed rule as follows:

Section 217.340 Applicability [Subpart M]

Notwithstanding Subpart V or W of this Part, the provisions of Subpart C of this Part and this Subpart apply to ~~all fossil fuel fired stationary boilers subject to the CAIR NO_x Trading Programs under Subpart D or E of Part 225~~ any fossil fuel-fired stationary boiler serving at any time a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale, excluding any units listed in Appendix D of this Part, located at sources subject to this Subpart pursuant to Section 217.150 of this Part.

Section 217.342 Exemptions

- a) Notwithstanding Section 217.340 of this Subpart, the provisions of this Subpart do not apply to a fossil fuel-fired stationary boiler operating under a federally enforceable limit of NO_x emissions from such boiler to less than 15 tons per year and less than five tons per ozone season.

- b) Notwithstanding Section 217.340 of this Subpart, the provisions of this Subpart do not apply to a coal-fired stationary boiler that commenced operation before January 1, 2008, that is complying with Part 225, Subpart B through the multi-pollutant standard under Section 225.233 of Part 225 or the combined pollutant standards under Subpart F of Part 225.

Section 211.3100 Industrial Boiler

“Industrial boiler” means, for purposes of Part 217, an enclosed vessel in which water is heated and circulated either as hot water or as steam for heating or for power, or both. This term does not include boilers serving a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale, ~~and cogeneration units, as that term is defined in Section 225.130 of Part 225,~~ if such ~~boilers or cogeneration units are subject to~~ meet the applicability criteria under Subpart M of Part 217 ~~the CAIR NO_x Trading Programs under Subpart D or E of Part 225.~~

Section 217.160 Applicability [Subpart D]

- b) The provisions of this Subpart do not apply to boilers serving a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale, ~~and cogeneration units, as that term is defined in Section 225.230 of Part 225,~~ if such ~~boilers or cogeneration units are subject to~~ meet the applicability criteria under Subpart M of Part 217 ~~the CAIR NO_x Trading Programs under Subpart D or E of Part 225.~~

On January 30, 2009, the Agency proposed to amend the rule as follows:

Section 217.344

Emissions Limitations

On and after January 1, 2012, no person shall cause or allow emissions of NO_x into the atmosphere from any fossil fuel-fired stationary boiler to exceed the following limitations. Compliance must be demonstrated with the applicable emissions limitation on an ozone season and annual basis.

Fuel	Emission Unit Type	NO _x Emissions Limitation (lb/mmBtu)
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a) Solid	Boiler	0.09 <u>0.12</u>
b) Natural Gas	Boiler	0.06
c) Liquid	1) Boiler that commenced operation before January 1, 2008	0.10
	2) Boiler that commenced operation on or after January 1, 2008	0.08

The January 30, 2008, proposed amendments establish an emission rate of 0.12 lb/mmBtu for solid-fueled (*i.e.*, coal-fired) fossil fuel-fired (*i.e.*, EGUs) boilers. Through the averaging provisions of proposed Section 217.158, these emission limits can be determined on a plant-wide basis. The Agency's proposed amendments (contained in the Agency's Answers and the Agency's Motion) together clarify that EGUs that are subject to Part 225, Subparts C, D and E are exempt from the emission limitations of Subpart M.

Midwest Generation acknowledged in its testimony that a viable Illinois Clean Air Interstate Rule ("CAIR"), which was in question at the time that the testimony was delivered, exempts it from the emission limitations of Subpart M. Midwest Generation further notes here that the Illinois CAIR is, indeed, a viable rule today due to the decision of the U.S. Court of Appeals for the District of Columbia to remand without vacatur. *See North Carolina v. EPA*,

550 F.3d 1176 (D.C. Cir. 2008) (mandate issued January 7, 2009). All EGUs subject to Subpart M are subject to the Illinois CAIR. Despite this circumstance, the Agency determined that it was appropriate or necessary to establish specific emission limitations for the coal-fired EGUs. That being the case, Midwest Generation determined that it was important to ensure that the limitations applicable to coal-fired EGUs are, indeed, reasonably available control technology (“RACT”).

As has been discussed in this rulemaking, the two major components of a RACT determination are whether the proposed rate (or technology) is achievable by available technology and at a reasonable cost. Because of its already low emission rates of nitrogen oxides (“NOx”) at its units subject to this rule, Midwest Generation found that it could not comply with the NOx rate proposed, 0.09 lbs/mmBtu, within the cost parameters that the Agency determined was economically reasonable for this NOx RACT rule, \$2500-3000 per ton of NOx removed.

Subsequent to the hearing on December 9-10, 2008, Midwest Generation discussed this issue in more detail with the Agency. Based on those discussions and as proposed in the Agency’s Motion, Midwest Generation agrees that 0.12 lb/mmBtu is supportable as NOx RACT for coal-fired EGUs and encourages the Board to adopt that rate rather than the rate included in the Agency’s original proposal, filed May 9, 2008.

Respectfully submitted,

MIDWEST GENERATION, LLC.,

by:



One of Its Attorneys

Dated: March 23, 2009

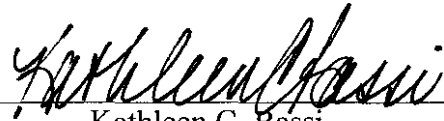
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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 23rd day of March, 2009, I have served electronically the attached **POST-HEARING COMMENTS OF MIDWEST GENERATION** upon the following persons:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
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and electronically (except for Matthew J. Dunn) and by first class mail, postage affixed upon persons included on the **ATTACHED SERVICE LIST**.



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