

Under the Enterprise Zone building materials exemption, a deduction from Illinois Retailers' Occupation Tax liability exists for gross receipts from retail sales of materials that will be incorporated, by remodeling, rehabilitation, or new construction, into real estate located in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act. (See 35 ILCS 120/5k and 86 Ill. Adm. Code 130.1951(e).) (This is a PLR.)

July 8, 2019

Dear Xxxx:

This letter is in response to your letters dated May 23, 2019, and June 28, 2019, in which you requested information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

COMPANY ("Company") hereby respectfully requests a Private Letter Ruling ("PLR") pursuant to 2 Ill. Admin. Code Section 1200.110.

General Information:

1. We have enclosed a copy of Power of Attorney Form IL-2848, executed by an authorized agent of the Company, authorizing NAME and NAME 1 of the law FIRM, to act on the Company's behalf.
2. This PLR request is not based on alternative plans of proposed transactions or a hypothetical situation, but is instead based on the Company's actual business

transaction, the development and construction of a gas fired electrical generation plant, which is described in detail below.

3. The issue that is the subject of this PLR request is not currently being considered or examined by the Illinois Department of Revenue (“Department”) in an audit of the Company’s returns for any earlier tax period. The Company is not currently under audit by the Department.
4. Neither the Company, nor any related taxpayer, is engaged in litigation with respect to this issue with the Department. The Company is not currently involved in any litigation in which the Department is a party.
5. There are no regulations or dispositive case law concerning the transactions that are the subject of this request.
6. The Company knows of no authority contrary to the authorities referred to and cited in this request.
7. To the best of the knowledge of both the Company and its representatives, the Department has not previously ruled on the same or similar issue for the Company or its predecessor; nor has the Company or any representatives previously submitted the same or similar issue to the Department and withdrawn the request before a PLR was issued.
8. The Company requests that all identifying information included in this request, all information concerning the location of its property, all information concerning the Company’s permits, financing and communications with other governmental entities, and the detailed materials exhibit (Exhibit A) and the plant diagram (Exhibit B) be deleted by the Department from any publicly disseminated version of the PLR.

Statement of Facts:

1. The Company has entered into a contract to purchase 120 acres of land located in XXXX County, Illinois, and is in the process of developing the FACILITY, a YYYY MW natural gas-fired combined cycle electrical power generation facility that will be constructed on the property (“Facility”).
2. In connection with the development and construction of the Facility, the Company has performed a detailed environmental review of the property, and obtained the necessary permits to initiate construction; including a Construction Air Permit and Title IV Acid Rain Permit from Illinois Environmental Protection Agency, a Nationwide Permit from the Army Corps of Engineers, and a Site Development Permit from XXXX County. The Company is currently in the process of securing the financing to commence construction.

3. The Facility will include two heavy duty combustion turbines arranged in a single shaft arrangement with two heat recovery steam generators and two steam turbines.
4. The Facility will include all associated infrastructure and facilities required to generate and deliver electricity, and to monitor, maintain, and operate the generation facility, including a control building and facilities for cooling, mechanical, and water treatment. The Facility will connect to the existing power grid via the existing high voltage transmission lines, and the existing natural gas infrastructure via the existing high-pressure natural gas pipelines.
5. The Company is constructing the Facility for the sole purpose of generating electricity for wholesale.
6. A complete list of the building materials to be installed at the Facility is set forth in Exhibit A, which includes the following information for each of the categories listed: a detailed description of all items included in the category, an explanation of the purpose of each item, and an explanation of how the materials will be affixed to the real estate at the Facility.
7. A diagram of the Facility is included in this request as Exhibit B.
8. Each of the items listed in Exhibit A is critical to the Facility's design and operations and will be incorporated into and integral to the Facility. Each item is intended to be permanently affixed to the real estate, and will be specifically designed, fabricated, and constructed for exclusive, permanent, physical incorporation into the facility for the purpose of generating electricity.
9. The Company is currently negotiating contracts for the purchase of the items listed in Exhibit A. The Company will enter into two key agreements that cover these purchases:
 1. The Engineered Equipment Package ("EEP") Agreement – under this agreement, the Company will purchase the major generation equipment directly from the equipment manufacturer. This agreement includes the purchase of:
 - Power Generation Equipment consisting of gas turbines, steam turbines and electric generators;
 - Heat recovery steam generators; and
 - Fire protection systems for the Power Generation Equipment.
 2. The Engineering, Procurement, and Construction ("EPC") Agreement – under this agreement, the Company will contract with an EPC contractor who will be responsible for purchasing the balance of the items not included in the EEP Agreement. This includes the purchase of the following items, all building

materials required for their construction and/or installation of these items, and all building materials required for the installation of the items purchased under the EEP Agreement:

- d. Air-cooled condensers;
- e. Balance of plant fire protection systems;
- f. Water pumps;
- g. Closed cooling water system;
- h. Auxiliary boiler;
- i. Large field erected tanks;
- j. Control/administration/warehouse building;
- k. Chemical feed & electrical equipment enclosures;
- l. Piping materials;
- m. Valves and specialties;
- n. Natural gas facilities;
- o. Major electrical;
- p. Electrical – balance of plant;
- q. Instrumentation and controls;
- r. Air compressors and dryers;
- s. Structural steel; and
- t. Pollution control facilities.

10. In addition to the items listed in paragraph 9, the Company will make purchases of any repair and replacement materials needed for the items listed.

11. The Company has been working with the officials from the Village of VILLAGE, Illinois and the Counties of ZZZZ and XXXX, to assist in an expansion of the Village of VILLAGE Enterprise Zone, to encompass the Facility. The Village of VILLAGE has submitted an application to the Illinois Department of Commerce and Economic Opportunity for the expansion.

12. Upon the expansion of the enterprise zone, the Company will submit the information required by 86 Ill. Code 130.1951(c)(2)(A) to the Enterprise Zone Administrator and request that the Administrator apply for Exemption Certificates from the Department for the Company and all contractors making purchases in connection with the Facility.

Ruling Requested

The Company respectfully requests a ruling by the Department finding that:

The materials, including all listed components, as summarized in statements of fact 9 and 10, above and as described in detail in Exhibit A, are “building materials to be incorporated into real estate” within the meaning of the exemption set forth in 35 ILCS 120/5k (the “EZ Exemption”).

The Company notes and understands that for the EZ Exemption to apply, these items must be purchased in a “qualified sale” by a purchaser who has been issued an Enterprise Zone Building Materials Exemption Certificate by the Department, as provided by 35 ILCS 120/5k(a) and (b), and whose exemption certificate is “active” at the time of the sale.

Supporting Authorities and Analysis

The Illinois Retailers’ Occupation Tax (“ROT”) Act imposes a tax on persons engaged in the business of making retail sales of tangible personal property. 35 ILCS 120/2. The ROT is measured by the retailer’s gross receipts. 35 ILCS 120/2-10. The Use Tax Act imposes a tax on “the privilege of using in this state tangible personal property purchased at retail from a retailer.” 35 ILCS 105/3. The Use Tax is typically based on the “selling price” of the tangible personal property. Together these taxes comprise what is commonly referred to as the “sales tax” in Illinois.

The EZ Exemption is set out in section 5k of the ROT Act, and provides that “[e]ach retailer who makes a qualified sale of building materials to be incorporated into real estate in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act by remodeling, rehabilitation or new construction, may deduct receipts from such sales when calculating the tax imposed by [the ROT] Act.” 35 ILCS 120/5k(a). This section further provides that “on and after July 1, 2013, ‘qualified sale’ means a sale of building materials that will be incorporated into real estate as part of a building project for which an Enterprise Zone Building Materials Exemption Certificate has been issued to the purchaser by the Department.” 35 ILCS 120/5k. This exemption is also applicable to the Use Tax. See 86 Ill Admin. Code 150.101(c).

The Department’s regulation that “[i]n order to qualify for the building materials exemption under this Section, the materials being purchased must be building materials. That is, they must be purchased for physical incorporation into real estate.” 86 Ill. Adm. Code 130.1951(e). The regulation provides several examples of building material, including “common building materials such as lumber, bricks, cement, windows, doors, insulation, roofing materials and sheet metal...plumbing

systems...electrical systems” and other items that are “physically incorporated into the real estate.” 86 Ill. Adm. Code 130.1951(e)(1)-(8).

In a recent letter ruling issued by the Department, involving a taxpayer that was in the process of constructing a gas-fired power generation facility similar to the Facility being constructed by the Company, Private Letter Ruling ST 17-0009- PLR (September 14, 2017), the Department explained the analysis used to determine whether purchases qualify for the EZ Exemption:

“The Department has invoked the intention test in the context of letter rulings concerning construction contractors. ST 08-0003-PLR (April 1, 2008) identifies a number of letters invoking the test. ST 00-0156 sets forth the intention test as follows:

'In determining whether an item is permanently affixed to real estate, a very fact-specific inquiry must be made regarding whether the item is intended to remain with the realty. In order to make a finding that the item is permanently affixed, at least three factors must generally be examined. First, the item must be affixed to the realty. The item must also be applied to the use or purpose to which the realty is put. Finally, the intent of the person affixing the item must be examined. Another factor often examined is whether the item is essential to the use to which the real estate has been put.'

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The specific question of whether the materials used in constructing an electric generating facility qualify for the building materials exemption under 35 ILCS 120/5k of the Retailers' Occupation Tax has been addressed in numerous private letter rulings issued by the Department in recent years. In Private Letter Ruling ST 99-0009 (March 9, 1999) the Department ruled that pipe racks, pipe, supports, and piping tie-ins installed at a natural gas fired power plant qualified for the exemption because they were permanently affixed to real estate. In Private Letter Ruling ST 00-0013 (July 7, 2000) the Department found that certain materials incorporated into realty within an electricity generating facility qualified for the exemption. The Department found that turbine generators, electrical transformers, electrical cabling, piping and other materials that are permanently affixed to real estate qualified for the exemption in 35 ILCS 120/5k and 86 Ill.(sic)Adm. Code Sec. 1951(a)(1). Thereafter, the Department has consistently ruled that these materials qualified for the exemption if it was demonstrated that they were permanently affixed to the real estate (see, for example, Private Letter Rulings ST 00-0025 (October 19, 2000), ST 00-0026 (November 3, 2000), ST 00-0033 (December 11, 2000), ST 00-0034 (December 11, 2000), ST 01-0001 (January 9, 2001), ST 01-0012 (April 5, 2001), ST 01-0014 (April 9, 2001), ST 01-0040 (September 24, 2001), ST 01-0045 (October 26, 2001), ST 02-0012 (June 10, 2002), ST 05-0020 (November 18, 2005) and ST 08-0003 (April 1, 2008).

Generally, the determination of whether an item qualifies for the exemption must be made on an item-by-item basis.”

The materials listed in Exhibit A that will be purchased for installation at the Company's Facility meet the requirements of the EZ Exemption. They will be permanently affixed to real estate and will be an integral part of the purpose to which the real estate has been put, namely, the generation of electricity. For the purposes of this analysis, the materials can be divided into three groups as described below.

Group 1 Materials

The materials in this group consist of the primary power generation facility systems and are essential to plant operations. Group 1 materials include the following items that will be purchased by the Company under the EEP Agreement:

- Power Generation Equipment consisting of gas turbines, steam turbines, and electric generators;
- Heat recovery steam generators; and
- Fire protection systems for the Power Generation Equipment.

Also included in Group 1 are the following items that will be purchased by the Company's contractor, under the EPC Agreement:

- Air-cooled condensers;
- Balance of plant fire protection systems;
- Water pumps;
- Closed cooling water system;
- Auxiliary boiler;
- Large field erected tanks;
- Natural gas facilities;
- Major electrical;
- Air compressors and dryers; and
- Pollution control facilities.

The Group 1 materials will be permanently dedicated and affixed to the Facility and physically incorporated into the real estate. As noted above, the generation of electricity is the sole purpose for which the land and Facility is dedicated. Each of the above systems are essential and integral to the operations of Facility.

Company's contractors will permanently affix each component material to the real estate. Each material component, as explained in detail in Exhibit A, will be either (i) directly anchor bolted to a concrete foundation, or (ii) will be permanently bolted or welded to another component, steel framing, or a housing or building structure that is anchor bolted to a concrete foundation. All piping interconnecting the various systems for water, steam, gas, and chemicals, will be hard-piped to each applicable system component (welded or flanged as required). All electrical connections are hardwired and permanently fastened. As a result of the manner of affixing the materials to the real estate and aligned with Company's intentions and the dedicated use of the real estate, the Group 1 materials will be permanently incorporated into real estate and immovable.

Group 2 Materials

The materials in Group 2 consist of the materials used to construct the following building and enclosures, which house major facility components and personnel and storage operations, and are essential to plant operations:

- Control/administration/warehouse building; and
- Chemical feed and electrical equipment enclosures.

The building, enclosures and related materials will be permanently incorporated into the real estate and dedicated to the Facility's power generation operations. As noted above, the generation of electricity is the sole purpose for which the land and Facility is dedicated. The building and enclosures provide shelter and support structure to key systems components and operations and are, therefore, essential and integral to the power generation operations. Materials used to construct buildings and enclosures are clear examples of "building materials to be incorporated into real estate" as indicated in the Department's regulation, 86 Ill Adm. Code Sec. 130.1951(e)(1)-(5).

The Company's contractors will construct the building and enclosures, including installation of prefabricated components, and permanently affix materials to the real estate or to other permanently affixed materials described in detail in Exhibit A. As a result of the manner of affixing the materials to the real estate, and aligned with Company's intentions and the dedicated use of the real estate, the Group II materials will be permanently incorporated into real estate and immovable.

Group 3 Materials

The materials in Group 3 consist of various building materials such as communications cable, electric cable, electric panelboards, conduit, pipe, hangers, valves, structural steel, anchor bolts, component materials repair or replacement parts that will be used throughout Facility in conjunction with various materials, components, and processes and are essential to plant operations. They include the following major categories of items:

- Piping materials;

- Valves and specialties;
- Electrical – balance of plant;
- Structural steel; and
- Repair and replacement materials.

The materials in this group will be permanently dedicated and affixed to the power generation facility and physically incorporated into the real estate. As noted above, the generation of electricity is the sole purpose for which the land and Facility is dedicated. Each of the above materials are essential and integral to the operations of Facility.

The Company's contractors will permanently affix each component to the real estate. For example, piping materials and valves will be permanently installed underground or welded or flanged to structural steel, large pieces of plant equipment, or dedicated pipe support structural steel that is permanently affixed to concrete foundations with anchor bolts. Electric and communication cable will be run through conduit or trays above and below ground. Above-ground conduit will also be permanently fastened to such support structures. Structural steel will be used throughout the plant to create support framing and infrastructure and will be welded or bolted to structures or material components or anchor-bolted to concrete throughout the plant as needed.

Repair and replacement materials (excluding any consumable maintenance items) will be used as necessary to keep the plant operational. Such repair and replacement materials will be affixed and incorporated into the facility in the same manner as the original installation.

As a result of the manner of affixing the materials to the real estate and aligned with Company's intentions and the dedicated use of the real estate, the materials in Group 3 are permanently incorporated into real estate and are immovable.

Conclusion

All the items described in Exhibit A and in the foregoing analysis are intended to be permanently affixed and incorporated into real estate and fully dedicated to the use for which the real estate is put, which is the generation of electricity. The Company's contractors will permanently affix the materials and material components to real estate making them immovable, consistent with the Company's intent for the materials to remain a permanent part of the real estate. For these reasons, these items constitute "building materials to be incorporated into real estate" for purposes of the EZ Exemption. Accordingly, we respectfully request the Department issue the Ruling Requested above.

Thank you for your assistance in this matter. If you have any questions or require additional information, please contact me.

EXHIBIT A

Major Categories of building materials to be installed at the Three Rivers Energy Center (“Facility”):

A. Power Generation Equipment

The Facility will include natural gas turbines, steam turbines, and electric generators that serve as the prime movers for the power generation process. The Facility configurations will be single shaft power trains. The single shaft power trains will feature a single Gas Turbine direct coupled to a generator that converts the mechanical power to electric power. The generator will convert mechanical power to electric power from the steam turbine that is coupled to the opposite end of the generator via a clutch. Each power generation train is arranged in a straight line, sharing a common shaft, therefore considered a single shaft arrangement. All of the power generation equipment (gas turbines, steam turbines, and electric generators) will be permanently affixed to a common foundation via anchor bolts.

B. Heat Recovery Steam Generators

The Facility will include triple pressure reheat Heat Recovery Steam Generators (HRSGs). A HRSG is a boiler that converts exhaust energy into steam that powers the steam turbine. Each gas turbine will be connected to a dedicated HRSG via fixed duct work. The gas turbine exhaust flows to the HRSG, where the excess heat is captured to create steam before being discharged out of the stack. This design feature is essential to the overall operation of the Facility as it significantly improves the efficiency of the plant and increases the output of the Facility.

The HRSG will be approximately XXX feet long and YYY feet high to the top of the casing duct. Flue gas exiting the HRSG is released to the atmosphere via a ZZZ foot stack. Each HRSG is a large component that is delivered to the project site in many pieces and is permanently erected over several months. The HRSG is fixed to a concrete mat foundation via a series of anchor bolts and baseplates throughout the unit. Beyond the major heat transfer sections (modules) that make up the internals of the HRSG, each unit is also comprised of steam, feedwater, vent and drain piping that is permanently welded to the unit. Also included in the HRSG are the catalyst sections that provide controls for the NOx and CO emitted from the units.

C. Fire Protection System for the Power Generation Equipment

The Facility will include a plant wide fire protection system consisting of a fire water piping loop, dedicated primary and backup pumps, dedicated on-site water storage, on-site water supply wells, associated piping, hydrants, sprinklers, power cabling, hard-wired controls, manual pull stations, smoke detectors, heat detection, fire eyes, alarm horns as well as standalone specialty foam type fire protection skids for various pieces of plant equipment. This equipment is required to maintain the safe operation of the Facility. Piping pumps, storage tanks, water supply wells, hydrants, sprinklers and supporting fire protection equipment will be permanently installed at the Facility in a variety of ways, including dedicated skids affixed to concrete foundations via anchor bolts and

direct connections to structural and supporting steel. The part of the fire protection system that will protect the power generation equipment will be purchased under the EEP Agreement directly from the manufacturer.

D. Air Cooled Condensers

The Facility will include air cooled condensers (ACCs) used to cool exhaust steam from the steam turbine. In order to allow continuous operation of the Facility, the steam turbine exhaust steam is cooled, condensed and collected in a condensate receiver tank for reuse and recycling within the plant as a part of the power generation process. There will be a ACC for each of the shaft power trains. ACCs are elevated structures to allow for adequate air flow to cool the steam from the steam turbine exhaust. Each ACC is supported by structural steel that is in turn permanently affixed to a network of dedicated foundation pads via anchor bolts. Each ACC features several rows of heat exchanger bundles, fans, gearboxes and associated piping and valving, power cabling, instrumentation and hard-wired controls in order to properly condense the steam. All of these components are permanently affixed to the structural steel framing of the ACC. To support air removal within the ACC, each unit will have a dedicated air removal system consisting of pumps, piping, power cabling and controls. The air removal system will be permanently affixed to dedicated concrete foundations via anchor bolts.

E. Balance of Plant Fire Protection System

As described above in item C, the Facility will include a plant wide fire protection system. The part of the fire protection system that will protect the power generation equipment will be purchased under the EEP Agreement directly from the manufacturer. The fire protection system for the remainder of the Facility will be purchased under the EPC Agreement, and the EPC Contractor will be responsible for the construction and installation of the entire system, which will be permanently installed at the Facility in a variety of ways, including dedicated skids affixed to concrete foundations via anchor bolts and direct connections to structural and supporting steel.

F. Water Pumps – Various Systems

The Facility will utilize various water pumps within plant systems that are critical to power generation both on the steam cycle and cooling systems. Major pumps include, but are not limited to the following systems: boiler feed water, condensate, demineralized water, well supply, water treatment, natural gas heating, glycol/water component cooling, fire pumps, chemical treatment, service water, and potable water. Each of these pumps will be standalone or skid mounted, but in either configuration will be permanently affixed to concrete foundations via anchor bolts.

G. Closed Cooling Water System

The Facility will include independent closed cooling water systems. The systems will be identical and will consist of an air-cooled heat exchanger, primary and backup pumps, in-line strainers, expansion tank, chemical dosing tank, along with associated piping, valves, power cabling, instrumentation and hard-wired

controls. Each piece of equipment will be permanently affixed to concrete foundations via anchor bolts.

H. Auxiliary Boiler

The Facility will include a single auxiliary boiler, which will produce steam for various plant systems during start-up, normal operation, shut-down, as well as post-shutdown for freeze protection during cold weather events. The auxiliary boiler will require associated piping, valves, power cabling, instrumentation and hard-wired controls to support operation. The auxiliary boiler system will be permanently affixed to a concrete foundation via anchor bolts.

I. Large Field Erected Tanks

The Facility will include common storage tanks for the Demineralized Water, Service Water, Fire Water, and Waste Water systems to support power generation. Service Water and Fire Water will be a combined, dual service tank with dedicated Fire Water capacity per NFPA and local applicable standards. Demineralized Water and Waste Water tanks will be individual standalone tanks. All large field erected tanks will be either welded or bolted construction and will have dedicated concrete foundations, with the tanks permanently affixed via anchor bolts.

J. Control/Admin/Warehouse Building

The Facility will feature a combined control, administrative, and warehouse building. This building will house the control room, office space for the staff, and a warehouse to store spare parts and workspace for maintenance activities. The building will be equipped with dedicated electrical, sanitary piping, potable water piping, an HVAC system with hard-wired controls, fire detection and suppression, and a lifting beam and hoist in the warehouse area. The building will also include electric wiring and systems to monitor and control the entire Facility. The building will be supported by a dedicated concrete foundation with the structure permanently affixed via anchor bolts.

K. Chemical Feed & Electrical Equipment Enclosures

The Facility design will include multiple chemical feed and electrical equipment enclosures to support power generation at the Facility. The various systems throughout the Facility that utilize chemicals for normal operation will be equipped with a chemical feed skid and enclosure designed to house key equipment, including the chemical feed pumps, chemical totes, spill containment and associated power cabling, instrumentation and hard-wired controls. The chemical feed enclosure will be mounted on a dedicated concrete pad with the structure permanently affixed via anchor bolts.

The Facility will include electrical equipment enclosures to house and protect critical electrical equipment. The various electrical equipment enclosures are mostly elevated structures to allow cabling to enter from the bottom. The electrical equipment enclosures are supported by structural steel stilts, which are permanently affixed to a concrete foundation via anchor bolts. To the extent electrical equipment enclosures are not elevated and are located at ground level,

the enclosures will be permanently affixed directly to a concrete foundation via anchor bolts.

L. Piping Materials

Piping materials will be installed throughout the Facility to convey fluids and steam to/from critical equipment to support power generation. Pipe runs will either be permanently installed underground or connected to the Facility via welds and flanges and supported by connection to structural steel, large pieces of plant equipment such as the HRSG, and/or dedicated pipe support structural steel that themselves permanently affixed to concrete foundations via anchor bolts. Major steam and water piping gathered together with a consolidated pipe rack along each of the power trains. Pipe runs within the pipe rack are supported by structural steel. A large majority of pipe runs will also have permanently affixed heat trace cabling and instrumentation and insulation and cladding as required for freeze protection and personnel protection.

M. Valves and Specialties

Valves and specialty equipment are essential to control, monitor, and regulate system conditions that are critical to the power generation Facility. Valves and specialty components are permanently affixed either by being mounted within pipe runs or directly mounted to the outer pipe wall utilizing welded or flanged connections.

N. Natural Gas Facilities

The Facility will utilize natural gas to generate power. Natural gas will be delivered to the site via pipeline and metering facilities. Downstream of the metering facilities, equipment will be installed to regulate the pressure and temperature of the natural gas. The regulation, heating, and compression equipment will be permanently affixed to a concrete foundation with anchor bolts.

O. Major Electrical – Generated Power & Facility Source Power

The FACILITY will include major electrical equipment to transmit generated power to the electric power grid and to source power throughout the Facility. In order to transmit generated power to the electric power grid, each electric generator will be connected to an electric transformer via power cabling that will be connected to a high voltage electric substation via additional power cabling. The high voltage electric substation will consist of power breakers, switching equipment, bus work, and associated protection and controls. Lastly, high voltage transmission cabling will be strung on new and existing aboveground transmission poles to connect the high voltage electric substation to the existing electric power grid. The electric transformers, power breakers, switching equipment, bus work, and transmission poles will all be affixed to concrete foundations either directly via anchor bolts or by structural steel anchored by a concrete foundation. Facility source power will be distributed throughout the Facility via an integral network of cabling which will either be permanently installed underground or via connection to structural steel or large pieces of plant equipment that are themselves permanently affixed to concrete foundations via anchor bolts.

- P. **Electrical – Balance of Plant**
Balance of Plant Electrical equipment includes but not limited to: Bus Duct, Motor Control Centers, Essential Services System, Low Voltage System, Uninterruptible Power Supply backup systems, Auxiliary Motors to drive equipment, Relay Protection Systems, Standby Diesel Generator, Lightning Protection, Metering, Cable Raceways, Cabling, Lighting, Plant Security System, Electrical Heat Trace, Cathodic Protection Systems, Grounding Systems, Site Access Control Systems, Communications Systems and Plant Control Systems. The cabling will be routed both aboveground and underground, as required. These systems are critical for both plant operation, as well as personnel and plant safety. Bus Duct and cable raceways will be supported by structural steel or standalone steel structures anchored, which are affixed to concrete foundations via anchor bolts. The Standby Diesel Generator will be mounted on a dedicated concrete foundation and permanently affixed via anchor bolts. Electrical Heat Trace and Cathodic Protection Systems are permanently affixed to the piping they are associated with. Cathodic Protection, and Grounding Systems are predominately underground systems. Site Access Control, Lighting, Plant Security, Communications and Plant Control Systems are a large network of hard-wired connections installed throughout the Facility. The balance of plant electrical systems are permanently installed and integral to the operation of the Facility.
- Q. **Instrumentation and Controls**
The instrumentation and controls at the Facility are critical to the power generation process as they provide the ability to safely monitor and operate the plant equipment. Installed on equipment throughout the Facility, the plant instrumentation and controls automate a number of activities and processes at the plant, leading to a safer and more effective operation. The instrumentation and controls gather information from the operating equipment and send signals back to the control room, allowing plant operators to monitor and control the operation of key equipment throughout the Facility from a common control location. Plant instrumentation and controls are affixed to plant equipment and hard-wired in place to provide reliable and safe operation of the Facility.
- R. **Air Compressors and Dryers**
Air compressors and dryers are utilized by the project to provide clean and dry compressed air for both control air for instrumentation and control valves, as well as service air. This air is critical for plant operations, controls, monitoring and to support maintenance activities. The air compressors and dryers will be mounted on a concrete foundation permanently via anchor bolts.
- S. **Structural Steel**
Structural steel is utilized to support all plant equipment that is not directly supported by a concrete foundation. Structural steel supports are permanent support structures that are affixed to a concrete pad or foundation via anchor bolts or baseplates. In addition to supporting plant equipment, structural steel

will also be utilized to affix pipe runs, conduit, cable raceways, bus duct and plant lighting throughout the Facility.

T. Pollution Control Facilities – Other

Pollution control facilities will be installed on various pieces of equipment at the Facility and are integral to the compliant operation of the Facility. As described above, the HRSG will include a catalyst section to provide controls for the NO_x and CO emitted from the units. Other pollution control facilities will be installed within the HRSG proper and the combustion section of the gas turbines. Pollution control facilities will also be installed on other equipment, including the auxiliary boiler, fuel heater, fire water pump, backup diesel generators, and wastewater treatment system. All major pollution control components are either constructed as permanent internal components of the equipment or installed via support structures that are permanently affixed to a concrete foundation with anchor bolts.

U. Repair and Replacement Materials

Repair and replacement materials for the equipment described above will be purchased and stored at the Facility. In the event of an equipment failure or maintenance event, the repair and replacement materials will be installed at the Facility in a similar fashion as described above, becoming permanently affixed as an integral component. Repair and replacement materials are purchased in advance and stored at the Facility to significantly reduce the amount of time the Facility is down and unable to operate due to an equipment failure or maintenance event.

In your letter dated DATE, you state, in part, as follow:

The requested expansion of the VILLAGE Enterprise Zone was approved on DATE by the Illinois Department of Commerce and Economic Opportunity. The site is now within the VILLAGE Enterprise Zone. Enclosed is a copy of the certification issued by the Department of Commerce and Economic Opportunity.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois.

A "qualified sale" means a sale of building materials that will be incorporated into real estate as part of a building project for which an Enterprise Zone Building Materials Exemption Certificate has been issued to the purchaser by the Department. A construction contractor or other entity shall not make tax-free purchases unless it has an active Enterprise Zone Building Materials Exemption Certificate issued by the Department at the time of the purchase. 86 Ill. Adm. Code 130.1951(c)(1).

The Department's regulation at 86 Ill. Adm. Code 130.1951(e) provides examples of qualifying building materials. The enterprise zone exemption includes component parts of building materials that are permanently affixed to realty. While the examples in the Department's regulation reflect more conventional buildings, the fundamental concept of the building materials exemption is that, to qualify, provided that the other requirements of the regulation are met, the materials at issue must also be physically incorporated into real estate.

The Department has invoked the intention test in the context of letter rulings concerning construction contractors. ST 08-0003-PLR (April 1, 2008) identifies a number of letters invoking the test. ST 00-0156 sets forth the intention test as follows:

“In determining whether an item is permanently affixed to real estate, a very fact-specific inquiry must be made regarding whether the item is intended to remain with the realty. In order to make a finding that the item is permanently affixed, at least three factors must generally be examined. First, the item must be affixed to the realty. The item must also be applied to the use or purpose to which the realty is put. Finally, the intent of the person affixing the item must be examined. Another factor often examined is whether the item is essential to the use to which the real estate has been put.”

In your written request and the attachments, you have described each item of tangible personal property, explained the functions of the items, and described how each item is permanently affixed to the real estate. The specific question of whether the materials used in constructing an electric generating facility qualify for the building materials exemption under 35 ILCS 120/5k of the Retailers' Occupation Tax has been addressed in numerous private letter rulings issued by the Department in recent years. In Private Letter Ruling ST 99-0009 (March 9, 1999) the Department ruled that pipe racks, pipe, supports, and piping tie-ins installed at a natural gas fired power plant qualified for the exemption because they were permanently affixed to real estate. In Private Letter Ruling ST 00-0013 (July 7, 2000) the Department found that certain materials incorporated into realty within an electricity generating facility qualified for the exemption. The Department found that turbine generators, electrical transformers, electrical cabling, piping and other materials that are permanently affixed to real estate qualified for the exemption in 35 ILCS 120/5k and 86 Ill. Adm. Code Sec. 1951(a)(1). Thereafter, the Department has consistently ruled that these materials qualified for the exemption if it was demonstrated that they were permanently affixed to the real estate (see, for example, Private Letter Rulings ST 00-0025 (October 19, 2000), ST 00-0026 (November 3, 2000), ST 00-0033 (December 11, 2000), ST 00-0034 (December 11, 2000), ST 01-0001 (January 9, 2001), ST 01-0012 (April 5, 2001), ST 01-0014 (April 9, 2001), ST 01-0040 (September 24, 2001), ST 01-0045 (October 26, 2001), ST 02-0012 (June 10, 2002), ST 05-0020 (November 18, 2005) and ST 08-0003 (April 1, 2008).

Generally, the determination of whether an item qualifies for the exemption must be made on an item-by-item basis.”

The Department has reviewed each of the items identified in the request, its regulations at 86 Ill. Adm. Code 130.1951, and its prior letters issued within the last 10 years. Based on its review, it is the Department's determination that the items would qualify for the building materials exemption in Section 5k of the Retailers' Occupation Tax Act.

In paragraph (C) of Appendix A, there are references to “standalone specialty foam type fire protection skids” and “supporting fire protection equipment.” It is unclear what items are encompassed within these references. It should be noted that to qualify for the exemption, the items must be permanently affixed to the real estate. Items such as fire extinguishers and gloves do not qualify for the exemption.

To qualify for the exemption the property must be located within an enterprise zone and the purchaser must possess an Exemption Certificate at the time the building materials are purchased.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Chairman, Private Letter Ruling Committee

RSW:rkn