**Private Letter Ruling**

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| **Ruling Number:** | **P-2007-004** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Purchases of electricity generating peaking units.** |
| **Keywords:** |  |
| **Approval Date:** | **07/26/2007** |

**Body:**

Office of Policy & Research

July 26, 2007

XXXX
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XXXX

RE: Your letter dated March 19, 2007

Dear XXXX:

Thank you for your recent letter. You ask whether the purchases of electricity generating peaking units by XXXXX (XXX) are exempt from Kansas sales tax. The answer is yes. These units qualify for exemption as manufacturing machinery and equipment, as does the related equipment that is exempted under K.S.A. 2006 Supp. 79-3606(kk).

XXX is a customer-owned energy company that serves customers in Kansas. XXX buys electricity from various suppliers. XXX also services ]] natural gas customers in Kansas.

XXX is buying electricity generating peaking units that will be located at a new plant in Polk County, Kansas. The power plant will house nine power generating peaking units plus the machinery and equipment needed to support their operation. The estimated cost of the plant is $60 million.

Peaking plants are being constructed across the nation to provide power when energy demands are very high. Because electricity cannot be stored, sufficient generation capacity must exist to meet demand during the hottest hours of summer when the demand for electricity is the greatest.

There are several different kinds of electricity generation plants. A draft of a staff white paper available on the California Energy Commission's web site that discusses different kinds of power plants and the needs that they fill. *Resource, Reliability and Environmental concerns of Aging Power Plant Operations and Retirements, California Energy Commission, August 13, 2004.*The power plants include:

Baseload plants that run at full output, around the clock, throughout the year. These plants tend to be costly to build, but are relatively inexpensive to operate once constructed. They include nuclear, gas, and coal powered facilities, among others;

Load-following power plants that often contain generating units that turn off at night or run at minimum levels when demand is low, increase output during the day as demand increases, and then cut production in the early evening as commercial and industrial demand falls. Some of these plants provide power only during the summer; and

Peaking units or plants that provide generating capacity to meet needs during peak periods of demand. These plants may only operate during mid-afternoon in the summer. Some plants may not be operated at all in some years. Peaking units must be on line and reliable enough to be placed in service and taken out of service in a matter of minutes, as customer demand dictates. These plants tend to be less efficient than baseload and load-following power plants. However, they reduce the need for an individual power company to buy power on the wholesale market at those times when it is most expensive.

The electricity generators in all of these plants qualify for exemption as manufacturing machinery and equipment under K.S.A. 2006 Supp. 79-3606(kk)(2)(D)(i). This includes the electricity generating peaking units that are being purchased by XXX. The exemption is clearly shown in the following language of Subsection (kk)(2)(D)(i):

*(i) Industrial manufacturing or processing operations include, by way of illustration but not of limitation, the fabrication* *of automobiles, airplanes, machinery or transportation equipment, the* *fabrication of metal, plastic, wood, or paper products, electricity power generation, water treatment, petroleum refining, chemical production,* *wholesale bottling, newspaper printing, ready mixed concrete production,* *and the remanufacturing of used parts for wholesale or retail sale.*

You ask what other types of purchases are exempt when purchased as part of the construction of the plant. However, you do not identify what the purchases are or how a particular purchase will be used.

When the integrated production exemption was first enacted by the Kansas legislature in 2000, the department published Notice 00-08 to explain its application. I have attached a copy of the Notice for your review. It provides a very clear explanation about both what is exempt and what is taxable at a manufacturing plant. Construction materials that are used to construct the plant building, parking lots, driveways, fences, etc. are taxable, as are equipment and materials that are used for plant lighting, plant cooling and heating systems, fire prevention systems, communications systems, etc. Your client should carefully follow the Notice with the understanding that exempt construction materials do not include those used build driveways, roads, parking lots, the plant building, fences, and so forth, or that are necessary to light, heat, and cool the plant building even though lighting, cooling, and heating the plant may be essential for its operation.

This is a private letter ruling pursuant to Kansas Administrative Regulation 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this ruling. Please call me if you need to discuss anything further.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

Enclosure

**Date Composed: 07/27/2007 Date Modified: 07/27/2007**