

ILLINOIS POLLUTION CONTROL BOARD

March 1, 2007

DYNEGY MIDWEST GENERATION, INC.)
HAVANA POWER STATION)
(Property Identification Number 09-11-400-)
001),)
)
Petitioner,)
)
v.) PCB 07-78
) (Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by G.T. Girard):

On February 20, 2007, the Illinois Environmental Protection Agency (Agency) recommended that the Board certify certain facilities of Dynegy Midwest Generation, Inc. (Dynegy), as “pollution control facilities” for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2004); *see also* 35 Ill. Adm. Code 125). Dynegy’s electric power generation plant is located at 15260 No. State Rt. 78 in Havana, Mason County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Dynegy’s primary ash deposition cell at its Havana plant 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 (2004); *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 (2004); *see also* 35 Ill. Adm. Code 125.200(a).

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 (2004); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Dynegy on December 29, 2005, and on February 2, 2006.¹ Agency Rec. at 1. On February 20, 2007, the Agency filed a recommendation on the application with the Board, attaching the application. The Agency's recommendation identifies the facility at issue:

Newly constructed primary ash deposition cell, whose bottoms and sidewalls are lined with a 45-mil polypropylene liner and 12 inches of compacted clay. *Id.*

The Agency's recommendation further describes the facility: "The facility is used to remove fly ash, bottom ash, and other miscellaneous low volume wastes from the sluice water." Rec. at 1. The Agency's recommendation also identifies the location of the facility: Section 12, T21N, R9W in Mason County. *Id.*

The Agency recommends that the Board certify that the identified facility is a pollution control facility as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2004)) because the primary purpose of the facility is "eliminating, preventing, or reducing water pollution." Agency Rec. at 2.

TAX CERTIFICATE

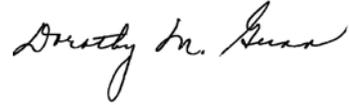
Based on the Agency's recommendation and Dynegy's application, the Board finds and certifies that Dynegy's primary ash deposition cell identified in this order is a pollution control facility under the Property Tax Code (35 ILCS 200/11-10 (2004)). Under Section 11-25 of the Property Tax Code, the effective 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 (2004); *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 (2004)). The Clerk therefore will provide Dynegy and the Agency with a copy of this order.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2004); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

¹ The Agency's recommendation is cited as "Agency Rec. at _."

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 1, 2007, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board