

ILLINOIS POLLUTION CONTROL BOARD
December 19, 2013

DYNEGY MIDWEST GENERATION, INC.)
(Fogging System for Barge Unloading Coal)
Tower, Hennepin Station) (Property I.D. No.)
01-27-100-000),)
)
Petitioner,)
)
v.) PCB 14-53
) (Tax Certification - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (D. Glosser):

On December 2, 2013, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify a certain facility of Dynegy Midwest Generation, Inc. (Dynegy) as a “pollution control facility” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2012); 35 Ill. Adm. Code 125. The facility is associated with Dynegy’s Hennepin Power Station, a coal-fired station for generating electricity (Hennepin Station), which is located at 13498 East 800 Street in Hennepin, Putnam County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Dynegy’s fogging system for the barge unloading coal tower at Hennepin Station 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 (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 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 Dynegy “[s]ometime in late 2006.”¹ Rec. at ¶ 1. The Agency explains that it had misplaced Dynegy’s application. *Id.* On December 2, 2013, the Agency filed a recommendation on the application with the Board, attaching Dynegy’s application (Rec. Exh. A). The Agency’s recommendation identifies the facility at issue:

The subject matter of this request consists of a Fogging System for the Barge Unloading Coal Tower, which is a type of emissions control measure that was constructed and installed by Dynegy [] at the Hennepin Station. According to the application, the system is comprised of “a series of full cone and fan jet spray nozzles at set intervals along two opposing manifolds placed at the top of the barge unloading coal tower.” Application of water through the system is applied in a “curtain of small diameter micro droplets” and “are delivered above the unloading drop hopper for the clam-shell bucket.” Rec. at ¶ 4 (internal citations omitted), quoting Rec. Exh. A at 1.

The Agency further describes the facility: “The system controls fugitive coal dust emissions and thereby acts to prevent or reduce air contaminants that would otherwise be released to the atmosphere.” Rec. at ¶ 4; *see also* Rec. Exh. B (Agency technical memorandum). According to Dynegy’s application, Powder River Basin Wyoming Coal is combusted in two boilers at Hennepin Station. Rec. Exh. A at 1.

The Agency recommends that the Board certify that the identified fogging system for the barge unloading coal tower is a pollution control facility 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.

TAX CERTIFICATE

Based upon the Agency’s recommendation and Dynegy’s application, the Board finds and certifies that Dynegy’s coal tower fogging system identified in this order is a pollution control facility under the Property Tax Code (35 ILCS 200/11-10 (2012)). 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) (quoting in italics 35 ILCS 200/11-30 (2012)). The Clerk therefore will provide Dynegy and the Agency with a copy of this order.

IT IS SO ORDERED.

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

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 December 19, 2013, 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 flourish extending to the right.

John T. Therriault, Clerk
Illinois Pollution Control Board