

ILLINOIS POLLUTION CONTROL BOARD
December 19, 2013

DYNEGY MIDWEST GENERATION, INC.)
(Agglomerator Systems for Havana Station,)
Unit No. 6, Boiler No. 9) (Property I.D. No.)
19-11-400-001),)
)
Petitioner,)
)
v.) PCB 14-49
) (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 certain facilities of Dynegy Midwest Generation, Inc. (Dynegy) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2012); 35 Ill. Adm. Code 125. The facilities are associated with Dynegy’s Havana Power Station, a coal- and oil-fired station for generating electricity (Havana Station), which is located at 15260 North State Route 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 agglomerator systems for Unit Number 6, Boiler Number 9, at Havana Station are pollution control facilities.

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 2008.”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 facilities at issue:

The subject matter of this request consists of two Agglomerator Systems, which were constructed and installed by Dynegy [] on Unit No. 6, Boiler No. 9 of the Havana Station. According to the application, the systems were placed upstream of the unit’s electrostatic precipitators and, by design, act to “agglomerate finer, more difficult-to-collect particles to coarser more readily collected ones.” Rec. at ¶ 4, paraphrasing Rec. Exh. A at 1.

The Agency further describes the facilities: “The technology ‘improves ESP [electrostatic precipitator] power and enhance[s] ESP efficiency,’ with the latter reducing particulate and opacity emissions that would otherwise be emitted through the boiler’s operations.” Rec. at ¶ 4, paraphrasing Rec. Exh. A at 1; *see also* Rec. Exh. B (Agency technical memorandum). According to Dynegy’s application, Powder River Basin Wyoming Coal is combusted in Boiler Number 9, which is associated with Unit Number 6. Rec. Exh. A at 1.

The Agency recommends that the Board certify that the identified agglomerator systems are pollution control facilities 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 agglomerator systems identified in this order are pollution control facilities 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.

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

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

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 that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board