

ILLINOIS POLLUTION CONTROL BOARD  
February 21, 2002

DUKE ENERGY NORTH AMERICA (Lee )	)	
County) (Property Identification Numbers 18-	)	
08-12-200-005, 18-08-12-200-008, 07-08-01-	)	
400-003, 14-09-07-100-011),	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 02-110
	)	(Tax Certification)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by C. A. Manning):

On February 11, 2002, the Illinois Environmental Protection Agency (Agency) recommended that the Board certify certain facilities of Duke Energy North America (Duke) as “pollution control facilities” for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2000)). The Agency filed the recommendation under Part 125 of the Board’s procedural rules (35 Ill. Adm. Code 125). The Agency recommended that the Board issue a tax certification for the concrete structures and sumps, but deny a tax certificate for the sanitary waste septic tank and associated lift station.

The Board is not ruling today on whether the septic tank and lift station are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2000)). Instead, in a separate order, the Board is opening docket PCB 02-113 to address the Agency’s recommendation on those items.

**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 (2000); *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 (2000); *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. 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. 35 Ill. Adm. Code 125.204(a). Among other things, the Agency’s filing must recommend that the Board issue or deny tax

certification. 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 (2000); *see also* 35 Ill. Adm. Code 125.216(a).

### **AGENCY RECOMMENDATION**

The Agency states that it received a tax certification application from Duke on August 27, 2001.<sup>1</sup> Agency Recommendation (Agency Rec.) at 1. On February 11, 2002, the Agency filed a recommendation on the application with the Board. The Agency’s recommendation identifies the facilities at issue:

A 50 ft. by 34 ft. by 2 ft. 6 inch concrete containment structure for the main transformer to contain transformer oil spills.

A 27 ft. by 16 ft. 6 inch by 1 ft. 9 inch concrete structure for the auxiliary transformer to contain transformer oil spills.

Eight 1,500 gallon maintenance sumps with grates used to collect any contaminants during maintenance of the gas turbines.

Eight 4,000 gallon wash water sumps with grates to collect water from the water wash skids. Agency Rec. at 1-2.

The Agency’s recommendation also identifies the location of the facilities: NE 1/4 of Section 12, T21N, Ranges 9 and 10 W of the 4th Principal Meridian on Nashua Road in South Dixon Township, Lee County. Agency Rec. at 1.

The Agency recommends that the Board certify that the identified facilities are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2000)) because the primary purpose of the facilities is “eliminating, preventing, or reducing water pollution.” Agency Rec. at 2-3.

### **TAX CERTIFICATE**

The Board finds and certifies that Duke’s facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2000)). 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 (2000); *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

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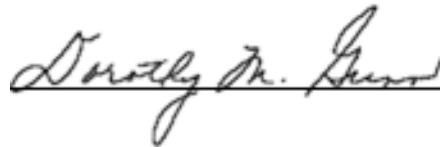
<sup>1</sup> The Agency recommendation states that it received the request from “Tri County, FS, Inc. (Jersey County). The Board will assume that this is a typographical error stemming from a previous recommendation filed with the Board.

125.216(d) (quoting in italics 35 ILCS 200/11-30 (2000)). The Clerk therefore will provide Duke 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) (2000); *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.

I Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 21, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board