



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

Office of the
Secretary

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Phone: (302) 739-9000
Fax: (302) 739-6242

**NOTICE OF
ADMINISTRATIVE PENALTY ASSESSMENT ORDER**

Pursuant to 7 *Del.C.* §6005

Order No. 2019-A-0030

***PERSONALLY SERVED BY
AN ENVIRONMENTAL CRIMES
UNIT OFFICER***

Issued To:
Diamond State Generation
Partners, LLC (Bloom Energy)
1593 River Road
New Castle, DE 19720
Attn: Legal

Registered Agent:
Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808
Attn: Legal

This is to notify Diamond State Generation Partners, LLC (Bloom Energy) (“Respondent”) that the Secretary of the Department of Natural Resources and Environmental Control (“Department”) has found that Respondent has violated 7 *Del.C.* Chapter 60 and Air Pollution Control Operating and Construction Permits at its Red Lion Facility in New Castle, Delaware. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment Order (“Notice and Order”) in an endeavor to obtain compliance with the requirements of 7 *Del.C.* Chapter 60.

BACKGROUND

Respondent owns and operates a fuel cell facility in New Castle, Delaware, commonly identified as the “Red Lion” facility. The facility produces energy utilizing solid oxide fuel cell (“SOFC”) technology to chemically convert natural gas to electrical power in a non-combustion process. The Red Lion facility is a natural minor facility (“NM”) and operates under Permit: APC-2012/0013-OPERATION (Amendment 6). This permit allows for the operation of fuel cells to generate 27 MW of electricity.

On October 24, 2018, Respondent applied for a construction permit to upgrade the fuel cells at Red Lion by upgrading/replacing 42 new fuel cells. The purpose of the new fuel cells was to replace/upgrade the fuel cells currently installed at these locations. Based on the applications, the new cell sites will have a smaller footprint, a lowered energy capacity and lower emissions. Upon completion of the construction authorized by the permit, the new Red Lion site would consist of 110 fuel cells with capacity to produce 24.9 MW of electricity.

Condition 1.6 of Permit: APC-2019/0031-CONSTRUCTION states that “[t]he applicant shall, upon completion of construction, installation, or alteration, request that the Department grant approval to operate.” Condition 3.1.9 of Permit: APC-2019/0031-CONSTRUCTION provides that “At no time during the deployment of the upgrade will the nameplate capacity in Permit: APC-2012/0013-OPERATION (Amendment 6) dated July 14, 2014 be exceeded.” In the introductory paragraph of Permit: APC-2012/0013-OPERATION (Amendment 6) dated July 14, 2014, the capacity of the Red Lion site is to be 27 MW of electricity.

After a public hearing on January 10, 2019, the Secretary issued construction Permit: APC-2019/0031-CONSTRUCTION which authorized the requested construction to replace and upgrade the fuel cells. Pursuant to condition 3.1.9, Respondent was required to ask DNREC for approval to operate after completion of the authorized work. The permit did not authorize operation of the units, except for the purpose of conducting the required DNREC inspection, before DNREC issued an operating permit for the upgraded/replaced equipment.

On July 11, 2019, Respondent informed DNREC personnel that they could come to the facility to undertake the inspection. The inspection was scheduled for July 12, 2019. In preparation for the inspection, DNREC personnel inquired as to the status of use of the upgraded/replaced equipment and was informed that Respondent had been operating upgraded/replaced equipment beginning on June 16, 2019. Further inquiries determined that the Respondent installed and operated a total of 27.5 MW on June 16, 2019, and that the site production capacity was reduced to 25.5 MW on June 17, 2019. Unauthorized use of the new equipment resulted in an exceedance of the facility's capacity of 27 MW of electricity on June 16, 2019.

The construction to operation inspection took place on July 12, 2019 at the Red Lion facility. The inspection was incomplete because Respondent failed to provide documentation of the work performed at the site and had no records available for review. On July 15, 2019, the Respondent presented most of the required information to the Department with the remaining information being provided via email on July 16, 2019.

Following the receipt of information on July 16th, the Department proceeded with issuing Permit: APC-2019/0031-OPERATION, authorizing the operation of the installed upgraded units, and Permit: APC-2012/0013-OPERATION (Amendment 7), to reflect the removal of old units from the site. These permits were issued on July 19, 2019.

1'

FINDINGS OF FACT

1. Respondent failed to contact DNREC and request authorization to operate the new fuel cells at the Red Lion facility prior to operating them.
2. Respondent operated 42 new fuel cells at the Red Lion facility without obtaining the required operating permit.
3. As of June 16, 2019, Respondent had installed and was operating fuel cells with 27.5 MW of capacity at the Red Lion facility. Thereafter, on June 17, 2019, the facility's production capacity was reduced to 25.5 MW of electricity.

4. Additional construction remains authorized under Permit: APC-2019/0031-CONSTRUCTION. Respondent is hereby on notice that any further use of any future replacement/modifications pursuant to the construction permit without a prior site inspection and written authorization to operate the individual units will constitute repeat violations.

STATUTORY AND PERMIT REQUIREMENTS

1. In 7 Del.C. §6003(a)(1), it states:

“No person shall, without first having obtained a permit from the Secretary, undertake any activity in a way which may cause or contribute to the discharge of an air contaminant.”

2. In 7 Del.C. §6003(b)(1), it states:

“No person shall, without first having obtained a permit from the Secretary, construct, install, replace, modify or use any equipment or device or other article which may cause or contribute to the discharge of an air contaminant.”

3. In Section 2.1 of 7 DE Admin. Code 1102, it states:

“Except as exempted in 2.2 of this regulation, no person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form.”

4. In condition 1.6 of Permit: APC-2019/0031-CONSTRUCTION, it states:

“The applicant shall, upon completion of construction, installation, or alteration, request that the Department grant approval to operate.”

5. In condition 3.1.9 of Permit: APC-2019/0031-CONSTRUCTION, it states:

“At no time during the deployment of the upgrade will the nameplate capacity in Permit: APC-2012/0013-OPERATION (Amendment 6) dated July 14, 2014 be exceeded.”

6. In the introductory paragraph of Permit: APC-2012/0013-OPERATION (Amendment 6) dated July 14, 2014, it identifies the capacity of the Red Lion site to be 27 MW.

CONCLUSIONS

Based on the foregoing facts, the Department has determined that Respondent has violated 7 *Del.C.* Chapter 60 and its permit conditions as follows:

1. Respondent violated 7 *Del.C.* §6003(a)(1), 7 *Del.C.* §6003(b)(1), Section 2.1 of 7 DE Admin. Code 1102, and condition 1.6 of Permit: APC-2019/0031-CONSTRUCTION by operating between 10 and 42 newly installed fuel cells (“units”) between June 16, 2019, and July 19, 2019.
2. Respondent violated condition 3.1.9 of Permit: APC-2019/0031-CONSTRUCTION and Permit: APC-2012/0013-OPERATION (Amendment 6) by installing more than the 27 MW allowed in Permit: APC-2012/0013-OPERATION (Amendment 6) and operating an additional 0.5 MW on June 16, 2019.

ASSESSMENT OF PENALTY AND COSTS

Pursuant to the provisions of 7 *Del.C.* §6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$40,000 for the violations identified in this Notice and Order.

In addition to the penalty assessment, Respondent is hereby assessed costs in the amount of \$5,454.43, pursuant to 7 *Del. C.* § 6005(c), which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit one check to the Department in the amount of \$40,000 to pay the penalty and one check in the amount of \$5,454.43, to pay the Department’s costs within 30 days from the receipt of this Notice and Order. The check(s) shall be made payable to the “State of Delaware” and shall be directed to Valerie S. Edge, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

The Department reserves the right to take additional enforcement actions regarding these and other violations by Respondent, including but not limited to one or more of the following: an action under the authority vested in the Secretary by 7 *Del.C.* Chapter 60 and 7 DE Admin. Code 1100 to revoke Respondent's air quality permit(s) for the State of Delaware; an action under 7 *Del.C.* §6005(b)(1) seeking penalties for past violations; an action under 7 *Del.C.* §6005(b)(2) seeking penalties for continuing violations; an action in the Court of Chancery pursuant to 7 *Del.C.* §6005(b)(2) seeking a temporary restraining order or an injunction; and, the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del.C.* §§6005(b)(3) & (c)(1).

PUBLIC HEARING AND APPEAL RIGHTS

This Assessment and Order is effective and final upon receipt by Respondent. Pursuant to 7 *Del.C.* §6008, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within 20 days of the receipt of the Assessment and Order. In the alternative, Respondent may, pursuant to 7 *Del.C.* §6005(b)(3), request a public hearing on the penalty assessment and Order, within 30 days of receipt of the Assessment and Order. A hearing would be conducted pursuant to 7 *Del.C.* §6006, and the Secretary's Order following the hearing would be subject to appeal, pursuant to 7 *Del.C.* §6008, by any person substantially affected.

To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee, with a check made payable to the "Environmental Appeals Board" and sent to:

Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Phone: (302) 739-9000

If you want a hearing and opportunity to contest this Assessment and Order, you must submit your request, in writing, within 30 days of receipt of this Assessment and Order to:

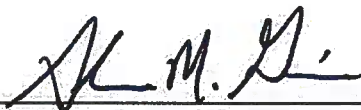
Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Phone: (302) 739-9000

Respondent may waive its right to request a hearing or to file an appeal by signing the waiver attached herein and prepaying the penalty. If no hearing is requested or appeal filed as described above and the administrative penalty of \$40,000 and costs in the amount of \$5,454.43 are not paid within the time frame above, DNREC may immediately take action to collect the above amount.

If you have any questions, please contact, or have your attorney contact, Valerie Edge, Deputy Attorney General at (302) 739-4211.

Date

7/28/19


Shawn M. Garvin, Secretary
Department of Natural Resources and
Environmental Control

WAIVER OF STATUTORY RIGHT TO A HEARING

Diamond State Generation Partners, LLC (Bloom Energy) hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. Diamond State Generation Partners, LLC (Bloom Energy) will pay the administrative penalty in the amount of \$40,000 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to Valerie S. Edge, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904; and
2. Diamond State Generation Partners, LLC (Bloom Energy) will reimburse the Department in the amount of \$5,454.43 which represents the Department's costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to Valerie S. Edge, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904; and
3. Diamond State Generation Partners, LLC further agrees to abide by all of the terms and conditions set out in this Notice, Order and Assessment.

Diamond State Generation Partners, LLC

Date: July 31, 2019

By: *Mark Stork*

Title: *VP of Finance*