STATE OF CALIFORNIA
STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
TELEPHONE (916) 445-6493
FAX (916) 323-3387

October 8, 1999

Honorable Joseph F. Pitta
Monterey County Assessor
P. O. Box 570 - Courthouse
Salinas, California 93902

Attention: Eric Bailey
Assistant Assessor, Valuation

Re: Rule 905 and Supplemental Assessments

Dear Mr. Bailey:

This is in response to your July 29, 1999 letter to the Legal Division of the State Board of Equalization (State Board). Your inquiry has to do with electric generation facilities owned by PG&E as of lien date January 1, 1998 and sold to Duke Energy on July 2, 1998. Specifically, you ask whether the local assessor can issue a supplemental assessment and if so, is it correct to use the State Board's roll values as the "current roll"?

Our answer to both those questions is in the affirmative. First, the facilities are subject to a supplemental assessment. Second, the amount of the assessment should be calculated pursuant to Revenue and Taxation Code section 75.9[1] using the difference between the fair market value at the time of acquisition and the "taxable value" as defined in that code section. The "taxable value" is what is on the State Board's "current roll;" as explained more fully below, "taxable value" is not necessarily the same as fair market value.

Legal Analysis

Board Roll

Article XIII, section 19 of the California Constitution provides for state assessment of certain enumerated companies, including companies selling or transmitting electricity. Pursuant to that section, electric public utilities such as PG&E are state assessed on an annual basis. The State Board sets a value based on the unitary value of the company's California property; after a

[1] All statutory references are to the Revenue and Taxation Code unless otherwise specified.

unitary valuation is determined, another process is applied to allocate value to each county in which the company's property is located. This value is termed the "allocated value" and is the assessed value set out on the Board Roll of State Assessed Property (Board Roll). The Board Roll lists assessments and allocations on a county by county basis.

Supplemental Assessments

Supplemental assessments are made to locally assessed property but not to state assessed property. (Section 75 et seq.) However, when state assessed property becomes locally assessed; a supplemental assessment is applicable. Section 722.5, subd. (a) provides:

> (a) Real property assessed by the board pursuant to Section 19 of Article XIII of the California Constitution on January 1, which thereafter becomes subject to local assessment, shall not be assessed locally during the remainder of the assessment year, except as provided in Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1.

In making supplemental assessments, the general rule is to calculate the difference between the assessed value as set forth on the current local roll and the current value at the time of the reassessable event (e.g., change in ownership, new construction, change from state to local assessment). A pro-rata assessment is made based on the difference in value; a supplemental assessment is issued accordingly and a new base year value is established effective on the next lien date. In the interim, taxes are adjusted to reflect changes in value at the time they occur, consistent with the Legislative intent set out in section 75. Quite simply, a supplemental assessment has the effect of putting a new base year value in place when certain reassessable events occur.

Section 75.9 identifies the value to use in calculating the amount of the supplemental assessment. That section provides:

> "Taxable value" means the base year full value adjusted for any given lien date as required by law or the full cash value for the same date, whichever is less. In the case of real property which, prior to the date of the change in ownership or completion of new construction, was assessed by the board pursuant to Section 19 of Article XIII of the California Constitution, "taxable value" means that portion of the state-assessed value determined by the board to be properly allocable to the property which is subject to the supplemental assessment.

Thus, the term "taxable value" as used in section 75.9 is the same value as the "allocated value" used by the State Board in allocating a portion of a company's unitary value to the county in which it is located. Again, in effect, the "allocated value" is used as if it were the base year value on the current roll prior to the change in ownership.

Allocated Value compared to "Fair Market Value"

The "allocated value" as used for the purposes of the Board Roll is based on a value standard (either Reproduction Cost Less Depreciation or Historical Cost). It is not necessarily, and would only coincidentally be, the same as fair market value (as of the lien date). Usually the allocated value is known only to the State Board and to the assessed company. A county receives a total allocation for each state assessee to be distributed countywide; thus, the situs and value of a particular property has not historically been of particular relevancy. However, now that supplemental assessments must be made, the counties have been informed of the allocated values determined by the State Board for the properties which have been sold.

Full cash value or fair market value are terms defined in section 110[2] and are the measure of value used for annual state assessment.[3] The particular appraisal method will vary depending on the particular property. The State Board will determine the total unitary value of a company using the appraisal method or methods best suited for that property.

However, in calculating the "allocated value" for use on the Board Roll, Board staff uses one of two appraisal methods: the Reproduction Cost Less Depreciation (RCLD) method or the Historical Cost (HC) method. The resulting value is an allocated value that may differ from fair market value as of the lien date. These allocation methods are used because, under the unitary valuation method, the market value of any individual asset or group of assets is not known. The unitary valuation method estimates the value of all assets, working together as a unit, without regard to the value of individual assets.

Board staff uses the cost methods mentioned above to allocate a portion of the total Board-adopted unitary value of a state assessee to individual counties because each county receives an allocated value based on a straight-forward, consistent approach. The subsequent sales price of a particular asset or group of assets may differ materially from the allocated value of those assets on the prior Board Roll. The total assessee unitary value allocated to each county, however, is fair and reasonable in relation to the value allocated to other counties.

Rule 905

Rule 905, now pending before the Office of Administrative Law (OAL), provides for local assessment of an electric generation facility if that facility is owned by a company that was not issued a certificate of public convenience and necessity (CPCN) by the California Public Utilities

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[2] Section 110 provides in part:

> (a) Except as is otherwise provided in Section 110.1, "full cash value" or "fair market value" means the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and both the buyer and the seller have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used, and of the enforceable restrictions upon those uses and purposes.

[3] This same section is used for establish new base year values. Section 110.1

Commission to construct the facility. While this rule has not yet been approved by OAL, it is our opinion that the rule in its present form is interpretive of current law and may be relied upon.

Purchase by Duke Energy

Addressing your question specifically, it is our understanding that the facilities purchased by Duke Energy were not constructed pursuant to a CPCN issued to Duke Energy. Consequently, the facilities you describe are subject to local assessment beginning July 2, 1998. Your office must ascertain the allocated value attributed to the particular facilities as set forth on the Board Roll, compare that value to the fair market value at the time of acquisition, and issue a supplemental assessment accordingly.

If you have any questions, please feel free to call me at (916) 445-6493 or Janet Saunders, Tax Counsel, at (916) 324-2642.

Enclosed for your further information is a letter dated July 21, 1999 to Raymond L. Jerland, Chair, Standards Committee, California Assessors' Association.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely

Lawrence A. Augusta
Assistant Chief Counsel

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Enclosure

cc: Mr. Richard C. Johnson (MIC:63)
Mr. Harold Hale (MC:64)
Mr. David J. Gau (MIC:64)
Ms. Jennifer L. Willis (MIC:70)
Mr. Timothy W. Boyer (MIC:83)
Ms. Janet Saunders (MIC:82)

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July 21, 1999

Honorable Raymond L. Jerland, Chair
Standards Committee
California Assessors' Association
825 Fifth Street, Room 129
Eureka, California 95501-1153

Re: Supplemental Assessments:
Electric Generation Facilities Sold in 1998

Dear Ray:

This is to follow up on the discussion at the recent CAA Standards Conference in Shell Beach regarding the electric generation facilities that changed ownership in 1998. In particular, an issue was raised whether the facilities in question would be subject to supplemental assessments.

Some 15 facilities were sold by regulated public utilities to other investor owned companies (IOCs) in 1998. The Board has determined that the property of those IOCs, including the newly acquired facilities, will not be subject to state assessment unless the IOCs are subject to state assessment on another basis (Proposed Property Tax Rule 905). Accordingly, these facilities, which were subject to state assessment for the 1998 lien date, became subject to local assessment when purchased by the IOCs.

Revenue & Taxation Code section 722.5 provides that property that is state assessed on the lien date, but which becomes locally assessable thereafter, is to be assessed during the remainder of the assessment year in accordance with the provisions of Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 of the R&T Code. Chapter 3.5 is the law relating to supplemental assessments.

Section 75.10[1] provides that whenever a change in ownership occurs, the assessor shall appraise the property changing ownership on the date the change in ownership occurs. This section applies to the property in question.

A supplemental assessment can result in either an increase or decrease in the taxable value. If the supplemental assessment results in an increase in taxable value, the auditor will send the property owner a supplemental tax bill (Section 75.51). If the supplemental assessment results in a decrease in taxable value, the auditor will make a refund (Section 75.43). The supplemental

[1] All references are to the Revenue and Taxation Code.

assessment is pro-rated for the portion of the fiscal year in which it is owned by the purchaser (Section 75.41).

Section 75.9 defines taxable value for purposes of the supplemental assessment law. For properties changing from state assessment to local assessment, the taxable value is that portion of the state-assessed value determined by the Board to be properly allocable to the property which is subject to the supplemental assessment.

To calculate the taxable value of the facilities changing ownership as provided in Section 75.9, the county assessor needs to have information on the allocated value attributable to a particular facility. "Allocated values" are prepared by the Board's Valuation Division based on the property tax statements submitted to the Board. The Board is authorized to provide that information to the assessor pursuant to Section 833, subject to the confidentiality requirements of that section.

I hope that this will answer the questions raised at the conference. If you would like to discuss this further, please feel free to call Janet Saunders at (916) 324-2642 or me at (916) 445-6493.

Sincerely,

Lawrence A. Augusta
Assistant Chief Counsel

LAA:lg
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cc: Hon. Bruce Dear
Hon. Jim Maples

Mr. Richard Johnson MIC:63
Mr. Harold Hale MIC:64
Mr. David Gau MIC:64
Ms. Jennifer Willis MIC:70
Timothy W. Boyer
Ms. Janet Saunders

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No. 85/75

June 27, 1985

TO COUNTY ASSESSORS:

QUESTIONS AND ANSWERS REGARDING
SUPPLEMENTAL ASSESSMENTS

Here is the fourth letter in our series of questions and answers regarding supplemental assessments.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:wpc
Enclosure
AL-04D-2427A

QUESTIONS AND ANSWERS REGARDING SUPPLEMENTAL ASSESSMENTS

June 27, 1985

Question 1:

Should property that is eligible for tax relief pursuant to Revenue and Taxation Code Section 68 be subject to supplemental assessment?

Answer 1:

Because of the conflict between Section 68 and the supplemental assessment statutes (i.e., comparable replacement property is excluded from change in ownership and therefore supplemental assessment), we have not been able to satisfactorily resolve this issue. However, a legislative resolution appears near at hand in the form of AB 312 (Klehs). This measure, in the latest form available to us, amends Section 68 and specifies that any change in the adjusted base year value of the replacement property shall be treated as a change in ownership for supplemental assessment purposes. We will, of course, keep you up to date on the progress of this proposed legislation which we first reported in our legislative summary dated March 19, 1985.

Question 2:

If a property subject to a supplemental assessment is damaged by misfortune or calamity, can the owner receive tax relief under Section 170 on both the regular roll and the supplemental roll?

Answer 2:

Yes. Subdivision (b) of Section 75.1 states:

> "The other provisions of this division apply to assessments made pursuant to this chapter."

Further, subdivision (d) of Section 51 requires that property be assessed pursuant to Section 170 if it has been damaged or destroyed by disaster, misfortune, or calamity and the board of supervisors in the county in which the property is located has adopted an ordinance pursuant to Section 170. This, of course, would require two sets of calculations to determine the amount of tax relief--one for the regular roll and one for the supplemental roll.

Question 3:

What assessment procedure should be followed when real property that has been assessed by the Board is sold or otherwise transferred and, as a result, becomes locally assessable?

Answer 3:

Once a new base-year value has been established pursuant to Section 75.10, the taxable value on the current roll or the roll being prepared must be

Answer 6:

No. The homeowners' exemption can only be allowed to the extent of the supplemental assessment (in this case $5,000) not to exceed $7,000. Subdivision (a) of Section 75.21 states in part:

> "Exemptions shall be applied to the amount of the supplemental assessment, provided...the assessee is eligible for and makes a timely claim for the exemption."

Because of this language, we are of the opinion that each separate owner must qualify the property for exemption. To grant an exemption greater than the amount of the actual supplemental assessment is tantamount to granting an exemption to a property not qualified for the exemption.

Question 7:

A property acquired in May 1983 with a market value of $75,000 has a taxable value of $78,030 on March 1, 1985. A room is added, and construction is completed in April 1985. The full cash value of the addition is $20,000. However, in determining the value of the newly constructed property, you learn that, on March 1, the current market value of the original property (prior to new construction) was $60,000 (i.e., total value = $80,000 or $60,000 + $20,000). How should this be handled?

Answer 7:

Section 75.11(a) requires two supplemental assessments when new construction is completed between March 1 and May 31. In this case, both supplemental assessments would be in the amount of $20,000. However, the 601 roll procedure is a bit tricky in this situation, and care must be taken to enroll the proper value. Section 51 requires enrolling (on the regular roll) the lesser of current market value or factored base-year value. In this case the March 1, 1985 601 roll value should be $60,000 rather than $78,030. For March 1, 1986, factored base-year value would equal $99,991 ($78,030 + $20,000 = $98,030 and $98,030 x 1.02 = $99,991). You would also need to calculate the current market value so you could enroll the appropriate value pursuant to Section 51.