FORMAL ISSUE PAPER
(Rev. 1-99)

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

Issue Paper Number 99-016

BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- ☐ Board Meeting
- ☐ Business Taxes Committee
- ☐ Customer Services Committee
- ☐ Legislative Committee
- ☒ Property Tax Committee
- ☐ Technology & Administration Committee
- ☐ Other

BOARD ASSESSMENT OF COMPANIES SELLING ELECTRICITY

I. Issue

With respect to electric generation facilities, how should the Board define the assessment jurisdiction granted to it by Article XIII, section 19 to assess property owned or used by companies transmitting and selling electricity.

II. Staff Recommendation

The Board should define its jurisdiction to include assessment of the property of any company which is an electric public utility . The definition of electric public utility should include any company that owns and operates facilities with the capacity to generate and sell electricity in amounts and in a manner that has an impact on the supply of electricity available to the public, with certain exclusions based on actual operations. The Board should not limit its definition of its jurisdiction to companies operating under a certificate of public convenience and necessity (CPCN). Further, the Board should support legislative resolution of the tax revenue allocation issue.

III. Other Alternatives Considered

1. Define Board assessment jurisdiction of a company owning generation facilities and selling electricity as a company holding a CPCN.

2. Define Board jurisdiction to include all companies that sell electricity, but exclude cogeneration and other qualifying facilities.

3. Define Board jurisdiction to include companies for which generating and selling electricity provides a primary or significant part of the company's revenues.

4. Define Board jurisdiction to include the property of all companies owning generation facilities and selling electricity.

IV. Background

<u>Issue Paper 98-032 - November, 1998.</u> The staff first presented this issue to the Board in Issue Paper 98-032, Jurisdiction for Assessment of Electric Generation Facilities, dated November 13, 1998. In that issue paper, which is incorporated herein by reference, the staff described the statutory restructuring of the electric utility industry, recapped prior Board assessment jurisdiction decisions regarding changing technologies, discussed important differences between state assessment and local assessment, and offered their opinion on the legal authority for the Board's jurisdiction. Basically, staff advised the Board that they could determine their own jurisdiction in the first instance, that the Board had authority to assess the property of all companies owning generation facilities and selling electricity, but that the Board could decline to assess the property of certain companies.

After discussing several alternatives, the staff recommended in Issue Paper 98-032 that the Board assert jurisdiction over all companies owning generation facilities with a capacity of 50 megawatts or more, and to leave to local assessment companies owning only generation facilities with a capacity under 50 megawatts and certain companies selling less than 50% of their generated electric power. The staff further recommended that their recommendation be implemented in two phases.

The Board considered Issue Paper 98-032 and its recommendations at their December 7-10, 1998 meeting in Sacramento. At that meeting, the Board elected to assess for the January 1, 1999 lien date the property of five enumerated companies which purchased electric power plants that had previously been included in the unitary value of state assessed electric utilities. (Note. The five companies later reorganized so that each of the fifteen plants are owned by a separate legal entity). The Board further directed staff to draft a proposed regulation on assessment jurisdiction for companies transmitting or selling electricity and to bring the proposed regulation to the Board for approval for publication at its February 2 meeting in Culver City.

<u>Issue Paper 99-001 - January, 1999.</u> In preparation for the February 2, 1999 meeting, the staff discussed the issues in detail with Board Member's staff, industry representatives and county and city representatives. The staff then drafted Issue Paper 99-001, dated January 7, 1999, which is incorporated herein by reference. Issue Paper 99-001 discussed changes in the staff recommendation to reflect comments from the Board and their staff. Most specifically, as indicated on page 2 of the Issue Paper, a preference was indicated to maintain jurisdiction over companies that are public utilities, but to exclude from state assessment all cogeneration facilities, and to otherwise minimize changes from pre-restructuring assessment patterns and minimize disruption of allocation of tax revenues among local jurisdictions. Staff drafted proposed Rule 905 to implement these preferences. The revised recommendation of staff, as reflected in proposed Rule 905, is set forth in detail on page 3 of Issue Paper 99-001.

The Board considered Issue Paper 99-001 at their February 2, 1999 meeting in Culver City and elected to continue the matter until the February 23 meeting in Sacramento.

<u>Action Plan and Time Line - February, 1999</u>. At its February 23, 1999 meeting in Sacramento, State Controller Kathleen Connell, as Chair of the Property Tax Committee, announced a Plan of Action and Timeline for consideration of Proposed Rule 905.

Pursuant to the Plan of Action and Timeline, the staff conducted two interested parties meetings, one on February 26, 1999 and another on March 29, 1999. Fourteen interested parties submitted comments in writing, and over 50 persons participated in the discussion. Most of the discussion centered on questions about the staff's proposed Rule 905. As the result of the disagreement and the issues raised at the meetings, staff concluded that the Board and the decision making process would best be served if the staff presented some basic core issues for Board decision at the April 21, 1999 Property Tax Committee meeting, rather than focus on the specifics of the staff-proposed rule. This issue paper presents those basic alternatives for discussion and decision.

<u>Concerns needing resolution.</u> The staff finds that the following concerns or issues need resolution by the Board before staff can prepare a final draft rule for publication:

> <u>Underlying legal authority for Board assessment jurisdiction.</u> Staff continues to advise the Board that they have authority to assess all companies selling electricity, but that they may leave to local assessment some companies, which are not public utilities. Some representatives of local government and industry disagree and suggest the Board can only assess companies holding a CPCN. This is a threshold issue and needs resolution before other issues can be addressed.
>
> <u>Scope of the Board's Jurisdiction.</u> What companies will be included? The Board needs to provide direction as to the basic scope of their jurisdiction. Which companies and facilities do they elect to assess; which, if any, do they elect not to assess?
>
> <u>Allocation Issue</u>. The Board needs to make the basic decision whether their assessment jurisdiction decision is going to be influenced by the allocation issue. This issue is pending in the Legislature (SB 329, Peace, amended March 15, 1999) and is within the legislative purview. If passed in its present form, it will address the concerns of the local jurisdictions with divested facilities or new facilities in their jurisdiction (the "situs districts") that favor county assessment allocation formulas. Those formulas provide for revenue going to the situs districts. Situs allocations help the situs districts to meet the costs associated with a facility and facilitate community approval of siting certification before the California Energy Commission. Some companies support local assessment for the same reasons.

Implementation Issues. If the Board elects to follow the staff recommendation set forth in this issue paper, some sub-issues will need resolution. These will be further discussed in the following section discussing the staff recommendation (Part V).

V. Staff Recommendation

A. Description of Staff Recommendation

The staff recommends that the Board define its jurisdiction to include assessment of the property of any company which is an electric public utility by virtue of the fact that the company owns and operates facilities with the capacity to generate and sell electricity in amounts and in a manner that has an impact on the supply of electricity available to the public, with certain exclusions based on actual operations. Staff believes this position that is consistent with the language and purposes of the Constitution, and best represents the Board's traditional authority;.

The Board should not limit its jurisdiction to companies operating under a certificate of public convenience and necessity (CPCN). This is too narrow an interpretation of the Board's Constitutional authority. While the Board may have followed this guideline or policy in the past, restructuring suggests a re-examination of the Board's policy and past practice, and it is certainly within the authority of the present Board to re-examine past policies.

Further, the staff recommends that the Board support legislative resolution of the tax revenue allocation issue. Including the allocation issue in the discussion complicates and confuses the discussion of assessment jurisdiction, as it causes interested parties to take positions on assessment jurisdiction based on factors which are really irrelevant to the basic assessment jurisdiction issue.

The Staff Working Draft of Proposed Rule 905, as presented to the Board's Property Tax Committee meeting on February 7, 1999 generally reflects this recommendation, except that proposed Rule 905 would exclude from state assessment all Qualifying Facilities which receive their QF status prior to December 31, 1999 and the current recommendation does not make this exclusion. Staff provided the exclusion of QF's in the draft rule based on its understanding of the consensus direction of the Board to exclude from state assessment all cogeneration facilities. Because staff is now asking the Board for specific direction on inclusions and exclusions, the exclusion of QF's is no longer included in the staff recommendation However, a variation of the QF exclusion concept is presented as Alternative No. 2.

Implementation of the staff proposal will involve Board decision making. The staff proposal will require the Board, on occasion, to make assessment jurisdiction decisions on a case by case basis. Some see this as a negative aspect of the staff proposal, as it relies on Board discretion and introduces a measure of uncertainty. Staff observes that the Board makes many similar decisions at every meeting. Indeed, that is one of the basic reasons the Board exists.

Staff assumptions. In order to provide a meaningful staff analysis and recommendation, staff has to make certain assumptions and advocate certain thresholds and definitions. All of these assumptions are based on the information that staff had at its disposal at the time this issue paper was written. Staff recognizes that reasonable people can differ as to where the lines should be drawn.

Facilities below 50 MW capacity will be excluded. Based on the standard used in Public Utilities Code section 1091 and Public Resources Code section 25120, staff recommends that 50 megawatts be the threshold at which a generation facility has sufficient capacity to be considered subject to state control and concern, and therefore large enough to have an impact on the supply of electricity to the public. Below 50 MW, the facility is too small to have such an impact. Therefore, staff is recommending that all single facilities with a capacity below 50 MW and under one ownership should be excluded from the definition of electric public utility, thus leaving assessment of such facilities to the county assessor.

Acquisition and expansion my impact assessment jurisdiction. If a company undertakes to develop or purchase one or more facilities which, singly or in the aggregate, have a capacity of 50 MW or more, the company has taken steps for business reasons to become a company which may have an impact on the supply of power to the public. That company should be state assessed, unless there are other facts about the operation to indicate that the primary purpose of the company in operating the generation facility is not selling electricity.

Tests for determining whether "primary purpose" is selling electricity. For purposes of determining whether selling electricity is the primary purpose for operating the facility, staff recommends that the threshold be established at 50% of the electric power generated. In other words, of the electric power generated, if more than 50% is self consumed, rather than being sold directly or indirectly to the public, the primary purpose of the facility is not selling electricity and the company owning that facility will be locally assessed. Staff further suggests that if the company can document that, while they sell more than 50% to the grid, they buy back and/or self consume a total amount in excess of 50% in their own operations, they would not be state assessed.

The staff recommends 50% as the threshold to use in determining whether a company is selling electricity as a primary purpose of operating the generation facility because it is a well recognized test for "primary purpose" in administering taxes. (See, for example, Rev. and Tax. Code secs. 6358, 6377, 17053.37, 17053.49, 23637, and 23649)

Bright Line Test. Staff submits that facility capacity of 50 megawatts is a bright line test. Under 50 MW capacity, a company and its facility would not be state assessed; over 50 MW capacity the company and its facility will be state assessed unless it comes within the exclusion for self-consumers.

The test could be 80 MW, which is the threshold for qualification for status as a Qualifying Facility by FERC, or 100 MW, which is the definition of small power plant found in the Energy Commission regulations. There is some subjectivity to whichever threshold is chosen, but it is a defensible bright line test based on the capacity of the facility and therefore the amount of power that is generated and offered to the public.

No "flip-flops" A major concern that has been raised about the staff working draft (and which would continue with this proposal), has been that companies will yearly change from state assessment to local assessment or vice versa depending on the amount of power generated and consumed; in other words, the company will "flip-flop" between state assessment and local assessment. Such will definitely not be the case.

First, the basic test of the staff proposal is the capacity of the facility. If the capacity does not change, assessment jurisdiction will not change.

Second, if a company adds capacity through new construction or acquisition, such that it exceeds the basic capacity threshold of 50 MW, that would be a reason for assessment jurisdiction to change, and that is what staff is proposing. Again, this is a bright line test that companies can refer to in making their plans.

Third, with respect to the primary purpose test, staff proposes the following standards. For existing plants, staff proposes a three year historical average of sales to the public. This is admittedly an arbitrary test, and is proposed only on the basis that it seems reasonable. Once this determination is made, assessment jurisdiction will not change unless there is a change in ownership or new capacity is constructed or acquired, in which case the test will be reapplied.

For new facilities, if the facility's capacity exceeds 50 MW, it will be state assessed. After three years of operations, the company can petition the Board to have local assessment. This will not be a flip-flop; this will be a conscious choice on the part of the plant's owners.

Unitary and nonunitary property - scope of the Board's appraisal. Another concern has been whether the Board would assume assessment jurisdiction for all of a company's property if the Board assumes jurisdiction for assessment of the generation facilities. In a departure from past policy, the staff is recommending that, where a company's primary business is something other than selling electricity, the division or functional unit operating the generation facility be assessed separately by the Board, and the remainder of the company's property not be state assessed (unless, of course, they are otherwise subject to Board assessment). Thus, were a cogeneration facility at an oil refinery to come under Board assessment, the Board would separately assess the generation facility and not the refinery or other property of the oil company.

Doubt to be resolved by provisions in the rule. Should the Board elect to adopt the staff recommendation, the staff will prepare a revised Rule that specifically addresses the concerns discussed above.

Legal Authority for Board Assessment. The opinion of the Board's Legal Division on the question of the Board's Constitutional assessment authority is set forth in Issue Paper 98-032 at pages 5-6. Some interested parties have agreed with the staff's interpretation; many others have disagreed. The position papers of those who disagree have been provided to you by their authors.

B. Pros of the Staff Recommendation

- Maintains Board jurisdiction consistent with state constitutional provisions.
- Provides statewide uniformity of assessment of companies operating larger generation facilities, which should aid competition.
- Provides similar assessment treatment of all companies competing in the business of selling electricity to the public.
- For companies competing in the business of selling electricity to the public, provides for local property taxes to be based on fair market value assessment determined annually and not on value at time of acquisition under Proposition 13, thus further promoting uniformity and avoiding any competitive advantages resulting solely from the date of facility acquisition or construction.
- Provides for appraisal by a single assessing agency for companies operating in more than one county.
- Promotes efficient use of company and government resources.
- Provides flexibility in determining assessment jurisdiction that may be useful in some fact situations.

- Places authority for making assessment jurisdiction decisions with the Board rather than binding the Board by decisions made by other agencies such as the CPUC.

C. Cons of the Staff Recommendation

- From the viewpoint of local government, results in less local control.
- Makes tax bills and local revenue less predictable than with Prop. 13 valuation.
- Removes one incentive for local jurisdictions to approve new facilities if a county/situs allocation formula is not enacted by SB 329 or other legislation
- May reduce tax revenues received by local jurisdictions providing local services.
- Provides for a change in assessment of some QF's which are now county assessed.
- Revises the traditional basis for unitary taxation, since each facility can be assessed as a single appraisal unit.
- Presents some difficulties for state assessment of non-electric business facilities if generation operations are not organizationally separated from other operations.

D. Statutory or Regulatory Change

No statutory change is required for assessment jurisdiction. Legislation to revise allocation formula should be supported by the Board.

E. Administrative Impact

To predict the administrative impact, staff must make certain assumptions based on the information available on the number and capacity of generation facilities and the number of companies owning those facilities. Based on the information staff has on existing facilities, the staff recommendation could bring between 22 and 28 additional companies under state assessment in the first year. Also, it is likely that new generation facilities requiring state assessment will be constructed. Staff estimates that an additional 40 companies will be added to the Board Roll in the next five years. This additional workload will require 3 additional auditor-appraisers.

With taxes as a cost item coming out of a company's profit margin rather than a rate base calculation, it is expected that lower valuation assessments will be vigorously sought, resulting in an increase in the number of petitions that must be processed, analyzed and set for Board hearing. While this will increase the workload of the

Board, the Board Proceedings Division and the Legal Division, this workload can be absorbed with no increase in staff.

F. Fiscal Impact

1. Cost Impact

Increased staff needs are estimated to be three (3) auditor-appraisers.

Cost in Year 2000:	$ 221,000
Cost in Year 2001 and ongoing:	$ 207,000

2. Revenue Impact.

See Revenue Estimate attached to issue paper 98-032.

G. Taxpayer/Customer Impact

It may be that, over time, there will be some impact due to the differences between valuation under Article XIIIA (Proposition 13) and valuation at current fair market value under state assessment.

Companies operating in more than one county may prefer centralized state assessment for purposes of cost efficiency.

H. Critical Time Frames

It is important for a rule to be in place before the lien date in the year 2000 to resolve the assessment jurisdiction issues. To meet this deadline, the Board should adopt a rule and submit it to the Office of Administrative Law (OAL) no later than October 1, 1999. This time frame applies to all alternatives.

VI. Alternative 1 - Define Board assessment jurisdiction of a company owning generation facilities and selling electricity as a company holding a CPCN.

A. Description of Alternative 1 (CPCN Alternative)

Under this alternative, the Board would assess the property of companies owning generation facilities and selling electricity to the public which operate under a certificate of public convenience and necessity (CPCN). The property of all other companies owning generation facilities and selling electricity to the public would be county assessed.

As rate regulated companies divest themselves of generation facilities, this alternative would reduce the number of generation facilities subject to state assessment.

Requirements to obtain a CPCN are set forth in Public Utilities Code section 1001 *et seq.*, and CPUC regulations (20 Cal. Code of Regs. 18). Requirements include: siting approval issued by the California Energy Commission pursuant to the Warren-Alquist Act and "Facts showing that public convenience and necessity require, or will require, the proposed construction or extension, and its operation." (Siting approval is currently required for generation plants over 50 MW.)

B. Pros of Alternative 1 (CPCN Alternative)

- Provides a simple "bright line" test which is easy to administer.
- Provides for increased local authority over assessment of electric generation facilities.
- If there is no legislative resolution of allocation: meets needs of situs district for revenue allocations.
- May aid in reducing local opposition to construction of new generation facilities in California.
- Maintains traditional Board policy with respect to assessment jurisdiction of electric companies.

C. Cons of Alternative 1 (CPCN Alternative)

- This alternative may not be consistent with the broad constitutional mandate that the Board shall assess the property of companies selling electricity.
- There will be increased administrative costs for county government.
- May impact future disputes over Board assessment authority by tying assessment jurisdiction to the CPCN.
- Delegates decision as to which companies are subject to state assessment to the CPUC, since the CPUC decision as to which companies receive a CPCN will be binding on the Board.
- If there is no legislative resolution of the allocation issue, this alternative may result in shifts from the present pattern of allocating assessed values among revenue districts.

D. Statutory or Regulatory Change

No statutory change is required. The Board may adopt a regulation to implement this alternative, but a regulation is not necessary. The Board could implement this alternative by continuing what has been their past practice as approved by a decision of the Attorney General (29 Ops. Cal. Atty. Gen. 77).

E. Administrative Impact

Board workload would remain relatively unchanged since the number of state assessees would not change materially from the current level.

F. Fiscal Impact

1. Cost Impact

State administrative costs would not be significantly affected.

2. Revenue Impact

See Revenue Estimate attached to issue paper 98-032.

G. Taxpayer/Customer Impact

Potential additional cost for companies owning facilities in more than one county due to dealing with more than one assessing agency.

H. Critical Time Frames

It is important for a rule to be in place before the lien date in the year 2000 to resolve the assessment jurisdiction issues. To meet this deadline, the Board should adopt a rule and submit it to the Office of Administrative Law (OAL) no later than October 1, 1999..

VII. Alternative 2 – Define Board jurisdiction to include all companies that sell electricity, but exclude cogeneration and other qualifying facilities.

A. Description of Alternative 2 (exclude qualifying facilities)

This is a variation of the staff recommendation, and, in concept is essentially the proposal represented by the staff working draft of Rule 905 as well as Mr. Andal's proposal. The Board's assessment jurisdiction would continue to extend to companies that sell electricity in an amount and manner that has an impact on the supply of electricity available to the public, but would specifically exclude cogeneration and other qualifying facilities (QF's), including solar, geothermal, biomass and wind facilities.

The Status of Qualifying Facilities (QF's) If the Board elects not to assess cogeneration facilities, a sub-issue is how to distinguish those facilities. One option is the staff's use in Proposed Rule 905 of their classification as Qualifying Facilities (QF's). Staff was advised that all cogeneration plants are QF's and that is the basis for our use of that classification to exclude cogeneration facilities from state assessment. Use of the QF status would also exclude from state assessment companies operating alternative energy sources other than cogeneration facilities, including wind power, solar power and geothermal power. Staff believes that these facilities should also be excluded from state assessment if cogeneration facilities are excluded, because they all belong to the same class of generation facilities, namely alternative energy sources.

A sub-sub-issue is whether to exclude only those plants that are qualified before December 31, 1999. Staff proposed this as a form of "grandfather clause" for those who relied on local assessment when they built or planned their facilities. Given the importance of the classification, some further description of QF's is appropriate.

Prior to the passage of AB 1890, the electric industry was vertically integrated with traditional public utilities operating under a CPCN. AB 1890 provided for the divestment of generation plants and allows for sale of electricity to the public by companies other than CPCN utilities. Prior to AB 1890, sales of electricity to the public were made only by companies holding a CPCN.

In the 1970s, pursuant to changes in state and federal policy to encourage the use of more efficient energy production, FERC established the classification of "Qualifying facilities (QF's);" QF's are small electric power plants of not more than 80 mw, cogeneration plants of any size and certain other plants of any size using renewable resources. (See 18 CFR Part 292) Sales of electricity by QF's are made to CPCN electric public utilities pursuant to "standard offer contracts" made under CPUC direction. QF's are not required to have a CPCN issued by the CPUC; rather, they are certified by FERC. FERC certification is not necessarily based on inspection or investigation; rather, it can be based on self certification. That is, the owner of the facility can certify to meeting certain standards, and FERC will grant the status based on this written application. Facilities over 50 MW capacity are also required to obtain siting certification from the California Energy Commission.

When the QF's came into being in the 1970's, Board staff did not assert state assessment jurisdiction. There was no formal decision by the Board at that time.

Operations of cogeneration plants and other QF's. Briefly, cogeneration plants provide steam for industrial purposes and produce electricity. Electricity is used to service the industrial host and/or may be sold through the grid. Some cogeneration plants produce very significant amounts of electricity for sale to the grid; these plants are major providers of electricity and compete with other merchant plants. Cogeneration plants may be owned by the industrial host, by an energy company or by a partnership of the host and the energy company.

Response to concerns. The same concerns discussed and answered under the discussion of the staff recommendation apply here. Please refer to that discussion. If this alternative is preferred by the Board, staff will prepare a revised draft rule which addresses the issues which have been raised.

B. Pros of Alternative 2 (exclude qualifying facilities)

- In general, maintains the status quo of local assessment for cogeneration and other qualifying facilities.
- Avoids possible shifts in allocations among local taxing jurisdictions.
- Provides a measure of stability in the assessment and taxation system by not changing assessment jurisdiction for these facilities.
- Similar to the staff recommendation, to a large degree, provides for appraisal by one assessing agency rather than multiple assessing agencies for companies operating in more than one county.

C. Cons of Alternative 2

- Provides for the local assessment of the property of some companies generating or selling major amounts of electricity, with the possible result that some companies in competition with each other may not be treated similarly for taxation purposes., since not all generation facilities will be assessed using the same method of arriving at taxable value. County assessed properties will be valued pursuant to Article XIIIA (Proposition 13); state assessed property will be valued annually at fair market value.
- From the viewpoint of local government, this alternative does not provide the increase in local authority that other alternatives may provide.
- Requires an increase in staffing

D. Statutory or Regulatory Change

No statutory change is required. A regulation will clarify existing statutory, constitutional and case law.

E. Administrative Impact

The exact impact will not be known until the basic decisions are made. However, this alternative would have approximately the same impact as the staff recommendation, which is as follows:

To predict the administrative impact, staff must make certain assumptions based on the information available on the number and capacity of generation facilities and the number of companies owning those facilities. Based on the information staff has on existing facilities, the staff recommendation could bring between 22 and 28 additional companies under state assessment in the first year. Also, it is likely that new generation facilities requiring state assessment will be constructed. Staff estimates that an additional 40 companies will be added to the Board Roll in the next five years. This additional workload will require 3 additional auditor-appraisers.

With taxes as a cost item coming out of a company's profit margin rather than a rate base calculation, it is expected that lower valuation assessments will be vigorously sought, resulting in an increase in the number of petitions that must be processed, analyzed and set for Board hearing. While this will increase the workload of the Board, the Board Proceedings Division and the Legal Division, this workload can be absorbed with no increase in staff.

F. Fiscal Impact

1. Cost Impact

Increased staff needs are estimated to be three (3) auditor-appraisers.

Cost in Year 2000:	$ 221,000
Cost in Year 2001 and ongoing:	$ 207,000

2. Revenue Impact.

See Revenue Estimate attached to issue paper 98-032.

G. Taxpayer/Customer Impact

It may be that, over time, there will be some impact due to the differences between valuation under Article XIIIA (Proposition 13) and valuation at current fair market value under state assessment.

H. Critical Time Frames

It is important for a rule to be in place before the lien date in the year 2000 to resolve the assessment jurisdiction issues. To meet this deadline e, the Board should adopt a rule and submit it to the Office of Administrative Law (OAL) no later than October 1, 1999.

VIII. Alternative 3 – Define Board jurisdiction to include companies for which generating and selling electricity provides a primary or significant part of the company's revenues

A. Description of Alternative 3 (The Primary Business Alternative)

This alternative differs from the staff recommendation in that this alternative bases state assessment jurisdiction on **gross revenues** from selling electricity while the staff's recommendation is based on **generation capacity.** Under this alternative, a company will be state assessed if selling electricity constitutes *either* the **primary** source of the companies revenues, or a **significant** portion of the companies revenues even if not the primary source.

To implement this alternative, a number of additional definitions would have to be proposed by the staff and approved by the Board. At the minimum, staff would have to propose definitions of "primary" and "significant." Staff feels confident that such definitions can be drafted that are logical, workable and understandable. In general, we would use the definitions of "primary" discussed above under the staff recommendation. The test would be based on gross revenues from operations of the company. This would require additional information to be reported by the affected companies.

Number of companies affected. Staff does not have sufficient information to estimate the scope of this alternative in terms of the number of companies and plants that would be affected, though we believe that it would not vary greatly from the staff recommendation. If the Board elects to pursue this concept, the staff would provide more detailed information at the next committee meeting.

B. Pros of Alternative 3 (The Primary Business Alternative)

- Excludes from state assessment some incidental sellers of electricity.

  Has many of the same benefits as the staff recommendation, including:

- Maintains Board jurisdiction consistent with state constitutional provisions.

- Provides a large measure of statewide uniformity of assessment which aids competition.

- Provides similar assessment treatment of most companies selling electricity to the public.

- For the most part, provides for local property taxes to be based on fair market value assessment determined annually and not on value at time of acquisition under Proposition 13, thus further promoting uniformity and avoiding any competitive advantages resulting solely from the date of facility acquisition or construction.

- Provides for appraisal by a single assessing agency for companies operating in more than one county.

- Provides flexibility in determining assessment jurisdiction that may be useful in some fact situations.

- Places authority for making assessment jurisdiction decisions with the Board rather than binding the Board by decisions made by other agencies such as the CPUC.

C. Cons of Alternative 3 (The Primary Business Alternative)

- May result in some companies in competition with each other not being treated similarly for taxation purposes since some companies generating or selling major amounts of electricity will be locally assessed.

- From the viewpoint of local government, results in less local control.

- Makes tax bills and local revenue less predictable than with Prop. 13 valuation.

- Removes one incentive for local jurisdictions to approve new facilities if a county/situs allocation formula is not enacted by SB 329 or other legislation

- May reduce tax revenues received by local jurisdictions providing local services.

- Revises the traditional basis for unitary taxation, since each facility can be assessed as a single appraisal unit.

- Presents some difficulties for state assessment of non-electric business facilities if generation operations are not organizationally separated from other operations.

D. Statutory or Regulatory Change

No statutory change is required. This would be part of a proposed regulation to clarify existing statutory, constitutional and case law.

E. Administrative Impact

Not entirely predictable, but believed to be similar to staff recommendation. Staff estimates that an additional 40 new companies will be added to the Board Roll in the next five years. This additional workload will require 3 additional auditor-appraisers.

F. Fiscal Impact

1. Cost Impact

If staff's assumptions are correct, increased staff needs are estimated to be three (3) auditor-appraisers.

Cost in Year 2000:	$ 221,000
Cost in Year 2001 and ongoing:	$ 207,000

2. Revenue Impact.

See Revenue Estimate attached to issue paper 98-032.

G. Taxpayer/Customer Impact

It may be that, over time, there will be some impact due to the differences between valuation under Article XIIIA (Proposition 13) and valuation at current fair market value under state assessment.

Companies operating in more than one county may prefer centralized state assessment for purposes of cost efficiency.

H. Critical Time Frames

It is important for a rule to be in place before the lien date in the year 2000 to resolve the assessment jurisdiction issues. To meet this deadline, the Board should adopt a rule and submit it to the Office of Administrative Law (OAL) no later than October 1, 1999.

IX. Alternative 4 – Define Board Jurisdiction to include all companies owning generation facilities and selling electricity

A. Description of Alternative 4 (Board assesses all electric companies)

This alternative is based on the theory that section 19 must be interpreted to require Board assessment of all companies selling electricity and that the Board does not have discretion to delegate assessment jurisdiction of any of those companies to the local assessor.

Under this alternative, the Board would assume responsibility for assessment of 450 companies owning over 700 generation facilities. This compares with responsibility for 43 companies owning 189 facilities under the staff recommendation. With the exception of the facilities that have been sold or will be sold (a total of 32), all these facilities are presently county assessed.

B. Pros of Alternative 4 (Board assesses all electric companies)

- Provides clarity as to which companies are state assessed.
- Provides uniformity of assessment and valuation as to all companies.
- Reduces the workload in county assessors' offices.
- Provides uniformity of appeals procedures and practices, since all will be at the state level.
- Permits companies operating in several counties to deal with only one assessor, the State Board of Equalization, rather than multiple assessors.

C. Cons of Alternative 4 (Board assesses all electric companies)

- Disregards prior actions of the Board regarding deregulated utilities.
- Departs from prior Board policies and actions limiting Board assessment to companies that are clearly public utilities.
- Shifts workload from the county to the state; increases state costs.
- Reduces local authority over assessments.
- Revises allocation of revenues.

D. Statutory or Regulatory Change

Statutory and regulatory changes are not required; however, the Board has the option of promulgating regulations clarifying, explaining or making the law more specific.

E. Administrative Impact

Significant increased workload for the Board, Valuation Division, the Board Proceedings Division and the Legal Division. Under this alternative, the Board would be assessing an estimated 450 new state assessees with over 700 generation facilities in the first year of implementation. This increase in workload would require an additional 24.5 staff members, including 2 supervising auditor-appraisers and 20 journey level auditor-appraisers, 1 Office Technician in the BPD and 1.5 tax counsels.

Since this alternative will require a transition from Proposition 13 valuation to annual fair market valuation for the majority of these companies, it will be necessary for field appraisers to physically inspect and value these properties. It may take as long as three years for the Board to become fully staffed and operational, taking into account budgeting, recruiting and training. In the interim, certain undesirable administrative shortcuts may be required.

Under this alternative, the number of state assessees will more than double. It is anticipated that the number of petitions for reassessment will also approximately double. This will require commensurate increased staffing in the Legal Division and the Board Proceedings Division.

F. Fiscal Impact

1. Cost Impact

Increased staffing needs are estimated to be 2 supervising auditor appraisers, 20 journey level auditor-appraisers; 1 Office Technician; and 1.5 Tax Counsels.

Cost in Year 2000:	$ 1,572,000
Cost in Year 2001 and ongoing:	$ 1,456,000

2. Revenue Impact

See Revenue Estimate attached to issue paper 98-032.

G. Taxpayer/Customer Impact

Under this alternative, an estimated 450 companies generating and selling electricity will be moved from county assessment (Proposition 13 taxable value) to state assessment (annual fair market valuation)

H. Critical Time Frames

It is important for a rule to be in place before the lien date in the year 2000 to resolve the assessment jurisdiction issues. To meet this deadline, the Board should adopt a rule and submit it to the Office of Administrative Law (OAL) no later than October 1, 1999.

Prepared by: Legal Division, Property Taxes Section
Current as of April 7, 1999