

Memorandum

To : Monte Williams

Date : November 8, 1995

From : Bill Kimsey

Subject : Energy Resources Surcharge Exemption Request By

This memorandum is in reference to the letter of August 18, 1995, written by [redacted]. In their letter, they request exemption from the energy surcharge for the equivalent kilo-watt hours (kWH) purchased from Los Angeles Department of Water and Power (LADWP) which is self generated and sold to LADWP. You requested that we research the issue and determine whether it has been answered before.

There is only one related issue that has been addressed. In 1987, we registered [redacted] as a utility because they purchased a cogeneration plant which had previously been registered as a utility under the name of [redacted]. The [redacted] wrote to Mr. William Bennett requesting relief from the reporting requirement. We requested Legal's input on the issue (copy of David Levine's January 7, 1988, response attached) and ultimately informed the [redacted] that they must file quarterly returns.

[redacted] request is for an exemption from the surcharge because they are, in Mr. [redacted] view, a utility. However, all utilities must pay the surcharge on all electrical energy purchased and consumed in activities unless used directly in the generation, transmission and/or distribution. This is evidenced in Sections 40019 and 40019.1. The taxable use of energy sold to a utility is included on line 10 of the tax return.

Mr. [redacted] states that "we believe that the electricity generated by [redacted] and consumed by [redacted] should be exempt from the surcharge, whether distributed to the campus via LADWP's system or the [redacted] s." Energy wheeled into the LADWP system is a sale to LADWP for which [redacted] is compensated. The electrical energy generated by [redacted] is not actually consumed by it.

Through our research, we found a listing of all California electricity generation plants which was sent to us by the California Energy Commission. A cursory review of the list revealed that, as of January 1992, there were 164 power plants in [redacted] County. At least 96 of those power plants were cogeneration facilities owned by persons not registered with the Board as utilities. Section 40010 defines an Electric Utility. That section states, in part, that an electric utility is any person engaged in generating electrical energy. It also states, "The term does not include a person who generates electrical energy or redistributes energy solely for his own use or for the use of his tenants and not for sale to others." If we decide to register [redacted] and allow an offset, as requested,

Memorandum

To : Mr. Monte Williams, Administrator
Excise Taxes Division (MIC:56)

Date: March 6, 1996

From : Janet Vining
Legal Division

Subject: Energy Resources Surcharge - Self-Generated Electrical Energy

This is in reply to your request for our opinion as to whether the [redacted] is exempt from the Energy Resources Surcharge ("Surcharge") under the facts set forth in a letter dated August 18, 1995 from Mr. [redacted] of the [redacted]. For the reasons explained below, it is our opinion that the [redacted] is not exempt from the Surcharge.

According to [redacted]' letter, the [redacted] generates electricity which is "wheeled" (distributed) to other [redacted] substations via the distribution system of the [redacted]. Through an agreement between the [redacted] and [redacted], the [redacted] utilizes [redacted]'s distribution system to supply cogenerated electricity to three smaller substations of the University. The wheeled electricity passes through [redacted]'s metering equipment and the [redacted] is billed for the electricity it receives through [redacted]'s system. The [redacted] argues that it is exempt from the Energy Resources Surcharge pursuant to 18 CCR sec. 2300. Essentially, the [redacted] contends that it is exempt from the Surcharge because it is consuming self-generated electricity.

The facts of this case do not appear to support the [redacted] position. The stated facts indicate that the electricity generated by the [redacted] goes into the general power grid of [redacted] and is commingled with power [redacted] generates itself or receives from various sources. In other words, the electricity the U [redacted] generates is not necessarily the electricity it receives and consumes.

Given these circumstances, there is no basis to conclude that the [redacted] is consuming only self-generated electricity. Accordingly the [redacted] would not be exempt from the Surcharge.

JV:es



cc: Ms. Mary Armstrong
Mr. Bill Kimsey (MIC:56)

we will then need to register all owners of power generation plants and offer them the same exemption.

Please let me know if you have any questions.

BK:mg

Bill King

Attachments

cc: Jim Van Gundy