



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0080
LAWRENCE AUGUSTA (916) 445-6493
DIANE OLSON (916) 322-9569
FAX (916) 324-3984
www.boe.ca.gov

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
State Controller, Sacramento

JAMES E. SPEED
Executive Director

July 27, 2001

No. 2001/050

TO COUNTY ASSESSORS:
COUNTY COUNSELS: AND
TO INTERESTED PARTIES:

NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION
PROPERTY TAX RULE 905 ASSESSMENT ELECTRIC GENERATION FACILITIES

PUBLIC HEARING: SEPTEMBER 12, 2001

NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to authority vested in it by subdivision (c) of section 15606 of the Government Code, proposes to amend Rule 905, Assessment Electric Generation Facilities, in Title 18, Division 1, Chapter 9, Article 1 of the California Code of Regulations relating to property tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, California at 1:30 p.m., or as soon thereafter as the matter may be heard, on September 12, 2001. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by September 12, 2001.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Article XIII, section 19 of the California Constitution provides for assessment by the State Board of Equalization of property of companies transmitting or selling electricity. Rule 905 interprets article XIII, section 19 to specify which electric generation facilities will be state assessed property following the restructuring of the electrical industry pursuant to A.B. 1890, Statutes 1996, chapter 854. The electric generation facilities to be state assessed property under the present Rule are those that were constructed pursuant to a certificate of public convenience and necessity issued by the California Public Utilities Commission to the company that presently owns the facility, and those facilities owned by a company which a state assessee for reasons other than the ownership of the generation facility or the ownership of pipelines, flumes, canals, ditches, or aqueducts lying within two or more counties.

Rule 905 is proposed to be amended to provide that electric generation facilities shall be state assessed property if the facility has a generating capacity of 50 megawatts or more and the facility is owned or used by a company that is an electrical corporation as defined in section 218 of the Public Utilities Code, or the facility is owned or used by a company which is a state assessee for reasons other than its ownership of an electric generation facility or its ownership of pipeline, flumes, canals, ditches, or aqueducts lying within two or more counties.

As proposed to be amended, Rule 905 would specifically exclude from state assessment electric generation facilities that are qualifying small power production facilities or qualifying cogeneration facilities within the meaning of sections 201 and 210 of Title II of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. sections 796 (17), (18) and 824a-3). The amended rule would also define “company” to include separate divisions or other functional units of a business enterprise which is created and maintained to operate any electric generation facility, and to require the maintenance of certain accounting records.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined the following:

- The proposed amendments to the rule do not impose a mandate on local agencies or school districts;
- The proposed amendments will result in a direct cost to the State Board of Equalization;
- The proposed amendments will result in no direct or indirect cost or savings to any other State agency;
- The proposed amendments will not result in any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code;
- The proposed amendments will not result in any other non-discretionary costs imposed on local agencies, but may result in savings to local agencies in the cost of assessing certain generation facilities that will no longer be assessed by the county assessor;
- The proposed amendments will not result in any cost or savings in federal funding to the State of California

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5, subdivision (a)(8), the State Board of Equalization has made an initial determination that the adoption of the proposed amendments to Rule 905:

- Will have no significant statewide adverse economic impact directly affecting business;
- Will neither create nor eliminate jobs in the State of California nor result in the elimination of existing business nor create or expand business in the State of California;
- Will not be detrimental to California businesses in competing with businesses in other states;
- May affect small business.

SIGNIFICANT EFFECT ON HOUSING COSTS

The proposed amendments will have no significant effect on housing costs.

FEDERAL REGULATIONS

Rule 905 has no comparable federal regulations

AUTHORITY

Section 15606, sub. (c), Government Code

REFERENCE

California Constitution, Article XIII, section 19

Revenue and Taxation Code, section 721

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Mr. Lawrence A. Augusta, (916) 445-6493, at 450 N Street, MIC: 82, Sacramento, CA 95814.

Written comments for the Board's consideration, notice to present testimony, bring witnesses to the public hearing, and inquiries concerning the proposed administrative action should be directed to Diane Olson, Regulations Coordinator (916) 322-9569, Fax (916) 324-3984 (email Diane.Olson@boe.ca.gov) or Joann Richmond, Property Taxes Analyst, (916) 322-1931 (email Joann.Richmond@boe.ca.gov), 450 N Street, MIC:80, Sacramento, CA 95814.

ALTERNATIVES CONSIDERED

The State Board of Equalization must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The State Board of Equalization has prepared an initial statement of reasons and an underscored version (express terms) of the Rule as proposed to be amended. Both of these documents and all information on which the proposal are based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amended Rule are available on the Internet at the Board's web site: <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed amendments. It is also available for public inspection at 450 N Street, Sacramento, California 95814.

ADDITIONAL COMMENTS

Following the public hearing, the State Board of Equalization may, in accordance with the law, adopt the proposed amended rule if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified rule will be available to the public from Ms. Diane Olson. The State Board of Equalization will consider written comments on the modified rule for fifteen days after the date on which the modified rule is made available to the public.

Date: July 27, 2001

STATE BOARD OF EQUALIZATION

Deborah Pellegrini, Chief
Board Proceedings Division

Rule 905. ASSESSMENT OF ELECTRIC GENERATION FACILITIES.

905. (a) An electric generation facility shall be state assessed property for purposes of article XIII, section 19 of the California Constitution if: (1) the facility has a generating capacity of 50 megawatts or more; and (2) is owned or used by a company which is an electrical corporation as defined in subdivisions (a) and (b) of section 218 of the Public Utilities Code; or, the facility is owned or used by a company which is a state assessee for reasons other than its ownership of the electric generation facility or its ownership of pipelines, flumes, canals, ditches, or aqueducts lying within two or more counties.

(b) "Electric generation facility" does not include a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title II of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. §§796(17), (18) and 824a-3) and the regulations adopted for those sections under that act by the Federal Energy Regulatory Commission (18 C.F.R. 292.101-292.602).

(c) For purposes of this section, "company" means:

- (1) A person as defined in Revenue and Taxation Code section 19;
- (2) A separate division or other functional unit of a business enterprise which is created and maintained to operate any electric generation facility, where the business enterprise is engaged in a primary business other than generating, transmitting, distributing or selling electricity to the public.

(d) If an electric generation facility is operated by a separate division or other functional unit of a business enterprise, as described in this rule, the business enterprise must maintain accounting and other records sufficient to distinguish the costs and revenues of the separate division or unit from other divisions and units of the business enterprise.

~~.(1) the facility was constructed pursuant to a certificate of public convenience and necessity issued by the California Public Utilities Commission to the company that presently owns the facility; or, (2) the company owning the facility is a state assessee for reasons other than its ownership of the generation facility or its ownership of pipelines, flumes, canals, ditches, or aqueducts lying within two or more counties.~~

Authority: Section 15606 (c) Government Code

Reference: California Constitution, article XIII, section 19; Section 721, Revenue and Taxation Code.