

Memorandum



755.0082

to: Mr. Gene Mayer, MIC:61

Date: March 23, 1994

From: Ken McManigal

Subject: Assessment Jurisdiction for Intercounty Pipeline Property

This is in response to your February 7, 1994, memorandum to Richard Ochsner wherein you attached a letter from ARCO's in-house counsel requesting a legal opinion regarding the proper assessment jurisdiction for mothballed or idled intercounty pipeline property.

Per your memorandum, the genesis of this request was a November 29, 1993, letter the Division sent to all pipeline assessees describing the Division's interpretation of the District Court of Appeal's decision in Southern Pacific Pipe Lines, Inc. v. State Board of Equalization, 14 Cal.App.4th 42, dealing with the Board's assessment jurisdiction over intercounty pipeline property, in particular item 3(d) of the letter:

"The purpose of this letter is to inform you of the Valuation Division's concept of property subject to the Board's assessment jurisdiction. The concepts are as follows:

* * *

3. 'Property necessary and essential to the operation of the intercounty pipeline' means tangible property required for the proper functioning of the mechanical device known as a 'pipeline.'
 - a. This property does NOT include all tangible property necessary for conducting the pipeline business enterprise.

- b. Property means the entire 'facility'. A facility should be defined by the accounting location code used to track asset costs.
- c. This property should include ALL tangible property other than land/land rights at a specific facility or NONE of the property at the facility should be reported for state assessment. For example, at a marketing terminal, no property at that facility should be reported to the state unless the entire facility is 'necessary and essential for the operation of the intercounty pipeline'; in which case the entire facility except land will be state assessed.
- d. Property can move between assessment jurisdictions for different assessment years. For example, pump stations mothballed or idled on a lien date would be county assessed; when placed back in service for an intercounty pipeline they become state assessed.

Again per your memorandum, ARCO's letter does not describe the property it is concerned about; however, the Division staff's discussions with ARCO about this issue has related to line pipe that has previously been Board assessed, but which is out of service. In some instances the line pipe has been filled with inert gases; in other instances it has simply not been used in recent times.

As indicated in Staff Counsel Robert Keeling's September 14, 1981, memorandum to Mr. Gordon Adelman concerning the Board's jurisdiction to assess pipelines and appurtenant parts thereof:

"Article XIII, Section 19 of the California Constitution provides that 'the Board shall annually assess (1) pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties...' The obvious intent of this constitutional provision is to cause the Board of Equalization to assess pipelines for the purpose of uniformity of assessments. This conclusion is supported by the holding of the California Supreme Court case General Pipe Line Company of California v. State Board of Equalization (5 Cal. 2d 253) in which the court said, 'We entertain no doubt that the clearly expressed intent of the amendment was to make the Board of Equalization (the assessor of the property described) for the sake of uniformity and in order to avoid the temptation which might exist in one of the counties to assess at more than its just proportion.... "

"The court went on to define a pipeline as:

"The line of pipe together with couplings, collars, valves and fittings, with protection covers; the structures supporting or encasing the pipe above or below ground or under water; the pumps, boilers, engines, motors, manifolds, intakes, header station, control valves and auxiliary equipment attached to and connected therewith and necessary to the operation of the said major station units, receiving, shipping, flow, balance and surge tanks, together with the suction from leased storage tanks, to, by and through pumping stations, when such pumps, tanks and so forth are essential and part of and necessary to the use and operation of the pipe line."

Thus, he concluded, in part, as to the assessment of line pipe:

"...I conclude the definition provides for the assessment of any part or portion of the pipeline which is considered to be 'essential and part of and necessary to the use and operation of the pipeline'. The extent to which property is thus to be included within the Board's jurisdiction to assess is judgmental to the extent that we must administratively determine which property is functionally necessary to the operation of the pipeline. For example, we in legal are persuaded that examples of such property which is functionally necessary is as follows:

* * *

"2. The pipe itself, the interim pumping plants and the surge tanks along the way as described by the court are functionally necessary for the very operational ability of the pipeline.

* * *"

Consistent therewith, my recollection is that line pipe connected to and part of a pipeline assessed by the Board has been assessed by the Board if it has been fully used, partially used, or unused but available for use, if needed. The rationale is that the line pipe is part of an intercounty pipeline, as defined by the court in General Pipe Line Company of California v. State Board of Equalization, supra: "The line of pipe...". Such is a question of fact, but the fact to be ascertained is whether the line pipe is connected to the pipeline, not whether it is in use, not whether it is essential

and necessary to the operation of the pipeline, etc. If an unused portion of line pipe has been disconnected from the pipeline, my recollection is that in such event, assessment jurisdiction of that line pipe has reverted to the appropriate county assessor.

Southern Pacific Pipe Lines, Inc. v. State Board of Equalization, supra, does not compel any different result with respect to line pipe. First, it is a District Court of Appeal decision, while General Pipe Line Company of California v. State Board of Equalization, supra, was a Supreme Court decision. A District Court of Appeal decision does not alter or affect a Supreme Court decision. Secondly, Southern Pacific Pipe Lines, Inc. v. State Board of Equalization, supra, does not pertain to any aspect of the assessment of line pipe but rather, it pertains to the Board's authority to assess pipeline lands, rights-of way, and three specific terminal facilities connected to specific pipelines. Thus, the decision is of no relevance to any aspect of the assessment of line pipe, particularly so in light of the General Pipe Line Company of California v. State Board of Equalization, supra, definition of pipeline as the line of pipe.

When considering the Board's authority to assess the three specific terminal facilities in Southern Pacific Pipe Lines, Inc. v. State Board of Equalization, supra, the District Court of Appeal determined from the evidence presented that they were not essential and necessary to the operation of intercounty pipelines and thus, were not assessable by the Board. Such was a question of fact, decided by the trial court and confirmed by the District Court of Appeal:

"The second question we must answer concerns the trial court's findings that the Ventura Products Plant, Avila Wharf and Estero Bay Marine Terminal were not essential and necessary to the operation of respondents' intercounty pipelines.

* * *

"On the record before us, we have no difficulty finding that ample evidence was presented to support the trial court's findings of fact. Taken as a whole, respondents' various declarations show that the three facilities were engaged in multiple uses and that the intercounty pipelines which terminated there were not essential to their operation."

Such is consistent with the Supreme Court's analysis in General Pipe Line Company of California v. State Board of Equalization, supra, as quoted above:

"the pumps, boilers, engines, motors, manifolds, intakes, header station, control valves and auxiliary equipment attached to and connected therewith and necessary to the operation of the said major station units, receiving, shipping, flow, balance and surge tanks, together with the suction from leased storage tanks, to, by and through pumping stations, when such pumps, tanks and so forth are essential and part of and necessary to the use and operation of the pipe line." (emphasis added.)

Accordingly, we have advised that whether terminal facilities and storage facilities/tanks are essential and necessary to the operation of intercounty pipelines and thus, assessable by the Board are factual questions which must be decided on the basis of the evidence pertaining to such facilities/tanks. Presumably, that advice was the basis for item 3(c) of the November 29, 1993, letter.

Returning to your memorandum, you conclude by stating that your position on this issue is that it should be a question of fact, to be jointly resolved between the assessee and staff, as to whether or not line pipe, pump stations, etc. are "necessary and essential" to the operation of an intercounty pipeline. As indicated above, the test for line pipe is not the same as that for terminal facilities and storage facilities/tanks. As to pump stations, item 3(d) of the November 29, 1993, letter, it appears that you have determined that they are more akin to facilities/tanks than line pipe, and that the "essential and part of and necessary to the use and operation of the pipeline" test rather than the "part of the pipeline" test has been employed. Such appears to coincide with the Supreme Court's test in General Pipe Line Company of California v. State Board of Equalization, supra:

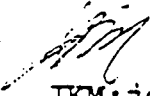
"pumps... attached to and connected therewith and necessary to the operation of the said major station units, ...tanks, together with the suction from leased storage tanks, to, by and through pumping stations, when such pumps, tanks and so forth are essential and part of and necessary to the use and operation of the pipe line."

Mr. Gene Mayer

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March 23, 1994

We are attaching a separate memorandum pertaining solely to the Board's jurisdiction to assess line pipe for your transmittal to ARCO, as requested.


JKM:jd
precednt/valuadiv/94005.jkm

Attachment

cc: Mr. Richard H. Ochsner
Mr. John Hagerty, MIC:62
Mr. Octavio Lee, MIC:61
Mr. Dave Hendrick, MIC:61