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Executive Director

January 29, 2003

TO ASSESSORS AND INTERESTED PARTIES:

No. 2003/009

"ELECTRIC GENERATION FACILITIES"  
STATE/LOCAL ASSESSMENT JURISDICTION ISSUES

The purpose of this Letter To Assessors (LTA) is to address state/local assessment jurisdiction issues regarding electric generation facilities. Specifically, this LTA interprets the recently chaptered Assembly Bill 81 (AB 81) and amended Property Tax Rule 905 and addresses issues in their application.

**Background**

Pursuant to section 19 of article XIII of the California Constitution, the State Board of Equalization (Board) is authorized to annually assess companies who transmit or sell electricity. Under this authority the Board amended Property Tax Rule 905 and the Legislature added Revenue and Taxation Code section 721.5 by way of AB 81.<sup>1</sup>

Section 721.5 states:

- (a)(1) Notwithstanding Section 721 or any other provision of law to the contrary, commencing with the lien date for the 2003-04 fiscal year, the board shall annually assess every electric generation facility with a generating capacity of 50 megawatts or more that is owned or operated by an electrical corporation, as defined in subdivisions (a) and (b) of Section 218 of the Public Utilities Code.
- (2) For purposes of paragraph (1), "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. Secs. 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).

<sup>1</sup> With the enactment of Assembly Bill 81, sections 100.9 and 721.5 were added to the Revenue and Taxation Code. Section 100.9 addresses the allocation of property taxes.

- (b) This section shall be construed to supersede any regulation, in existence as of the effective date of this section, that is contrary to this section.

Likewise, Rule 905, as amended by the Board on November 28, 2001 states, in part, that:

- (a) Commencing with the assessment for the lien date for the 2003 assessment year, 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;...<sup>2</sup>
- (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).

In general, existing regulations require the Board to assess an electric generation facility only if (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.

Beginning with the January 1, 2003 property tax lien date, AB 81/Rule 905 require the Board to annually assess an electric generation facility, with specified exceptions, with a generating capacity of 50 megawatts or more that is owned by an electrical corporation, as defined. In light of AB 81/Rule 905, the Board has no intent to assess small power production facilities and cogeneration facilities, but intends to maintain the status quo regarding the local assessment of such facilities.

## QUESTIONS AND ANSWERS

Following are questions and answers addressing the Board's assessment jurisdiction over qualifying small power production facilities and qualifying cogeneration facilities pursuant to AB 81/Rule 905 and the general application of section 721.5 and Rule 905.

**Question 1** – Several qualifying small power production facilities and qualifying cogeneration facilities may be losing their "qualified" status (for failure to conform to FERC standards,

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<sup>2</sup> For purposes of this analysis, the language in subsection (a) which states "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" is not considered; this language is superfluous in that it is merely restating a portion of the authority given to the Board under article XIII, section 19. Subsections (c), (d), and (e) of the rule are not relevant here.

expiration or buyout of a Standard Offer (SO) contract with a utility, a change in ownership, etc.). Will such facilities that are 50 megawatts or more become subject to state assessment?

**Question 2** – The QF designation has expired and, as such, is unavailable for power plants constructed after December 31, 1999, even for plants utilizing alternative energy sources. Will new plants that are constructed after December 31, 1999 that are traditionally designated as QFs and are 50 megawatts or more in capacity be subject to state assessment?

**Answer to 1 and 2** – Regardless of losing their "qualified" status, any facility that meets the definitions of a "qualified small power production facility" and "qualified cogeneration facility" provided by federal law, as discussed below, are excluded from the definition of "electric generation facility" and, thus, are not subject to state assessment.

Pursuant to section 721.5(a)(1) and Rule 905(a), an electric generation facility is subject to state assessment if

- (1) the facility has a generating capacity of 50 megawatts or more, and
- (2) the facility is owned or operated or used by a company, which is an electrical corporation, as defined by subdivisions (a) and (b) of Public Utilities Code section 218.

Additionally, section 721.5(a)(2) and Rule 905(b) excludes from the definition of "electric generation facility":

- (1) Qualified small power production facilities
- (2) Qualified cogeneration facilities

As such facilities are defined in sections 201 and 210 of Title II of the federal Public Utility Regulation Policies Act of 1978 (16 U.S.C. §§796(17), (18), and 824a-3).

This definition of an "electric generation facility" should be applied initially in determining the subset, within the universe of generation facilities, of those facilities that may be subject to state assessment pursuant to section 721.5(a)(1) and Rule 905(a).

According to 16 U.S.C. section 796(17)(A), a "small power production facility" is defined as "a solar, wind, waste, or geothermal facility." And, according to 16 U.S.C. section 796(18)(A), a "cogeneration facility" is defined as "a facility which produces – (i) electric energy, and (ii) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes."

These definitions in the federal statutes determine whether a facility is excluded from the definition of an "electric generation facility." If a facility meets one of these definitions, it is not within the "electric generation facility" definition and is not subject to state assessment. Furthermore, these definitions apply to both facilities constructed before and after December 31, 1999. The Board, in amending Rule 905, made clear that such facilities are not public utilities in the broad sense of that term and, therefore, are not within the Board's assessment jurisdiction.

**Question 3** – There are three different megawatt capacity definitions (i.e., nameplate rating capacity, gross plant capacity, and net plant capacity) on the form BOE-571-C. Which definition should be used for the 50-megawatt test to determine state assessment?

**Answer 3** - A determination by the California Energy Commission (CEC) that a facility's net output or net generating capacity is 50 megawatts or more should be utilized for establishing state assessment jurisdiction under the 50-megawatt test. The Amended Final Statement of Reasons for amended Rule 905 provides that:

The 50 MW threshold has been selected to parallel the capacity threshold for state site certification by the Energy Commission set forth in the Warren-Alquist State Energy Resources Conservation and Development Act (Pub.Res.Code §§25000 et seq.). ...this threshold has been selected to conform to existing state law and to exclude from state assessment those facilities that do not fall within the general understanding of public utilities.

The CEC determines its jurisdiction based upon a facility's net output or net generating capacity. Thus, the Board will likewise utilize a facility's net generating capacity, as reported in the CEC's Decision, for determining its assessment jurisdiction.

**Question 4** – When does a locally assessed parcel with a large electric generation facility under construction (i.e., grading, foundation, turbine installation, etc.) become subject to state assessment?

**Answer 4** – An electric generation facility will become subject to state assessment when an application for the construction and operation of a 50 megawatt or greater facility is approved by the CEC.

The Board therefore asserts its jurisdiction over a facility before construction begins, but after applications/permits for construction and operation are approved by the CEC. Thus, all work-in-progress of a facility would be subject to assessment by the Board, as the Board's assessment begins with the bare land. If, however, a parcel's sale is contingent upon the CEC's approval of a facility, then the parcel would not become subject to state assessment until the facility has been approved.

**Question 5** – Do water lines, gas lines, power lines, and right-of-ways built with the electric generation facility become subject to state assessment? If the facility shares the water lines, etc., with a locally assessed property (i.e., the water lines, etc., serve both the state assessee and the local assessee), how would this affect the assessment of these assets?

**Answer 5** - Section 19 of article XIII provides that the Board shall annually assess property "owned or used" by companies transmitting or selling gas or electricity. Here, the assets described would either be owned or used by an electric generation facility that is a state assessee.

Thus, these assets should be subject to state assessment, even if the facility shares the use of these assets with a locally assessed property.<sup>3</sup>

To further assist in determining assessment jurisdiction of electric generation facilities, enclosed is a list of electric generation facilities that will be under state assessment jurisdiction as of the lien date January 1, 2003 (Categories I, II, and III). Facilities included in Category IV of the enclosed listing will fall under state assessment jurisdiction if the application for the construction and operation of the facility is approved by the CEC. The enclosed list should be useful when determining whether to assess property at the county level. Any questions regarding assessment jurisdiction of specific electric generation facilities should be referred to Ms. Esther Lai of the Valuation Division at (916) 324-2969 or e-mail at [Esther.Lai@boe.ca.gov](mailto:Esther.Lai@boe.ca.gov).

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG:bt  
Enclosure

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<sup>3</sup> Foreign improvements are distinguishable from the property described above. Foreign improvements owned by a local assessee on state-assessed land are subject to local assessment if the improvements are not used by the state assessee. See *State Assessment Manual*, Appendix B.

**Electric Generation Facilities  
Subject to Assessment by  
California State Board of Equalization  
Data Current as of 12-24-02**

**I. Electric Generation Facilities Divested by Utility Companies**

<b>Item No.</b>	<b>County</b>	<b>Plant Name</b>	<b>SBE No.</b>	<b>Megawatts *</b>	<b>Company Name</b>	<b>Mailing Address</b>
1	Alameda	Oakland	1105	165	Duke Energy Oakland LLC	PO Box 1642 Houston, TX 77251-1642
2	Contra Costa	Contra Costa	1109	1,210	Mirant Delta, LLC	1350 Treat Blvd. Walnut Creek, CA 94598
3	Contra Costa	Pittsburg	1109	2,022	Mirant Delta, LLC	1350 Treat Blvd. Walnut Creek, CA 94598
4	Los Angeles	Alamitos	1100	2,088	AES Alamitos, LLC	690 North Studebaker Rd Long Beach, CA 90803
5	Los Angeles	Redondo Beach	1101	1,310	AES Redondo Beach, LLC	1100 North Harbor Drive Redondo Beach, CA 90277
6	Los Angeles	El Segundo	1110	1,020	El Segundo Power LLC	PO Box 4777 Houston, TX 77210-4777
7	Los Angeles	Long Beach	1111	530	Long Beach Generation LLC	PO Box 4777 Houston, TX 77210-4777
8	Monterey	Moss Landing	1103	1,510	Duke Energy Moss Landing LLC	PO Box 1642 Houston, TX 77251-1642
9	Orange	Huntington Beach	1102	788	AES Huntington Beach, LLC	21730 Newland Street Huntington Beach, CA 92646
10	San Bernardino	Cool Water	1113	628	Reliant Energy Coolwater LLC	PO Box 4567 Houston, TX 77210-4567
11	San Bernardino	Etiwanda	1116	911	Reliant Energy Etiwanda LLC	PO Box 4567 Houston, TX 77210-4567
12	San Bernardino	Mountainview	1119	1,056	Mountainview Power Company	25770 San Bernardino Ave. San Bernardino, CA 92408
13	San Bernardino	Riverside Canal	1120	154	Riverside Canal Power Company	25770 San Bernardino Ave. San Bernardino, CA 92408
14	San Diego	Encina	1106	965	Cabrillo Power I LLC	PO Box 4777 Houston, TX 77210-4777

**Electric Generation Facilities  
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**I. Electric Generation Facilities Divested by Utility Companies (continued)**

<b>Item No.</b>	<b>County</b>	<b>Plant Name</b>	<b>SBE No.</b>	<b>Megawatts *</b>	<b>Company Name</b>	<b>Mailing Address</b>
15	San Diego	Peakers - Kearny, Miramar, El Cajon, Division, N. Island, Naval Training Center, Naval Station	1107	163	Cabrillo Power II LLC	PO Box 4777 Houston, TX 77210-4777
16	San Diego	South Bay	1118	706	Duke Energy South Bay LLP	PO Box 1642 Houston, TX 77251-1642
17	San Francisco	Potrero	1108	540	Mirant Potrero, LLC	1350 Treat Blvd. Walnut Creek, CA 94598
18	San Luis Obispo	Morro Bay	1104	1,002	Duke Energy Morro Bay LLC	PO Box 1642 Houston, TX 77251-1642
19	Santa Barbara	Ellwood	1117	57	Reliant Energy Ellwood LLC	PO Box 4567 Houston, TX 77210-4567
20	Ventura	Mandalay	1114	435	Reliant Energy Mandalay LLC	PO Box 4567 Houston, TX 77210-4567
21	Ventura	Ormond Beach	1115	1,500	Reliant Energy Ormond Beach LLC	PO Box 4567 Houston, TX 77210-4567

\* Based on the most recent data available from the California Energy Commission

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**II. Online Merchant Electric Generation Facilities Constructed after AB 1890**

<b>Item No.</b>	<b>County</b>	<b>Plant Name</b>	<b>SBE No.</b>	<b>Megawatts *</b>	<b>Company Name</b>	<b>Mailing Address</b>
1	Contra Costa	Delta Energy Center	1128	887	Delta Energy Center, LLC	c/o Calpine Corporation 50 W. San Fernando Rd. San Jose, CA 95113
2	Contra Costa	Los Medanos Energy Center	1130	555	Los Medanos Energy Center, LLC	c/o Calpine Corporation 50 W. San Fernando Rd. San Jose, CA 95113
3	Kern	Sunrise Power Plant	1137	320	Sunrise Power Company, LLC	c/o ChevronTexaco Corporation Attn: Tax Department PO Box 1392 Bakersfield, Ca 93302
4	Kings	Hanford Energy Park Peaker	1122	95	GWF Energy, LLC	4300 Railroad Ave. Pittsburg, CA 94565
5	Kings	Henrietta Peaker	1123	96	GWF Energy, LLC	4300 Railroad Ave. Pittsburg, CA 94565
6	Riverside	Indigo Units 1, 2, 3	1141	135	Wildflower Energy LP	c/o InterGen 15 Wayside Road Burlington, MA 01803-4609
7	San Diego	Larkspur	1142	90	Wildflower Energy LP	c/o InterGen 15 Wayside Road Burlington, MA 01803-4609
8	Santa Clara	Calpine Gilroy	1129	135	Gilroy Energy Center	c/o Calpine Corporation 50 W. San Fernando Rd. San Jose, CA 95113
9	Sutter	Sutter Energy Center	1132	540	Calpine Construction Finance Co., LP	c/o Calpine Corporation 4160 Dublin Blvd. Dublin, CA 94568-3139
10	Los Angeles	Harbor Cogen <sup>1</sup>	1145	98	Harbor Cogeneration Company	350 Indiana St., Suite 400 Golden, Colorado 80401

<sup>1</sup> Harbor Cogen was constructed prior to passage of AB 1890 as a cogeneration facility. It has been converted to a combined cycle facility and is subject to California Board of Equalization assessment jurisdiction.

\* Based on the most recent data available from the California Energy Commission



**Electric Generation Facilities  
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**III. Merchant Electric Generation Facilities Under Construction**

<b>Item No.</b>	<b>County</b>	<b>Plant Name</b>	<b>SBE No.</b>	<b>Megawatts *</b>	<b>Company Name</b>	<b>Mailing Address</b>
1	Alameda	Russell City Energy Center	1139	600	Calpine Corporation	4160 Dublin Blvd. Dublin, CA 94568-3139
2	Kern	La Paloma	1112	1,048	La Paloma Trust Company	c/o La Paloma Generating Co., LLC Attn: Tax Department 7500 Old George Town Road Bethesda, MD 20814-6161
3	Kern	Elk Hills	1126	500	Elk Hills Power, LLC	HQ 06B 101 Ash Street San Diego, CA 92101
4	Kern	Pastoria Energy Facility	1131	750	Pastoria Energy Facility, LLC	c/o Calpine Corporation 50 W. San Fernando Rd. San Jose, CA 95113
5	Kern	Sunrise Power Project II	1137	265	Sunrise Power Company, LLC	c/o ChevronTexaco Corporation Attn: Tax Department PO Box 1392 Bakersfield, CA 93302
6	Riverside	Blythe Energy	1136	520	Blythe Energy, LLC	c/o FPL Energy LLC 700 Universe Blvd. Juno Beach, FL 33408
7	San Bernardino	High Desert	1127	720	High Desert Power Trust 2000-A	Attn: Tax Department 111 Market Place, Suite 200 Baltimore, MD 21202-7110
8	San Diego	Otay Mesa	1134	510	Otay Mesa Generating Company, LLC	c/o Calpine Corporation 50 W. San Fernando Rd. San Jose, CA 95113
9	San Joaquin	Tracy Peaker	1124	169	GWF Energy, LLC	4300 Railroad Ave. Pittsburg, CA 94565
10	San Mateo	United Golden Gate I	1121	51	United Golden Gate Power Co. LLC	PO Box 2511 Houston, TX 77252-2511

\* Based on the most recent data available from the California Energy Commission

**Electric Generation Facilities  
Subject to Assessment by  
California State Board of Equalization  
Data Current as of 12-24-02**

**III. Merchant Electric Generation Facilities Under Construction (continued)**

<b>Item No.</b>	<b>County</b>	<b>Plant Name</b>	<b>SBE No.</b>	<b>Megawatts *</b>	<b>Company Name</b>	<b>Mailing Address</b>
11	Santa Clara	Metcalf Energy Center	1133	600	Metcalf Energy Center	c/o Calpine Corporation 50 W. San Fernando Rd. San Jose, CA 95113
12	Santa Clara	Los Esteros Critical Energy Facility	1143	180	North San Jose Energy Center LLC	c/o Calpine Corporation 4160 Dublin Blvd. Dublin, CA 94568-3139
13	Shasta	Three Mountain	1125	500	Three Mountain Power, LLC	3085 Crossroads Drive Redding, CA 96003

\* Based on the most recent data available from the California Energy Commission

**Electric Generation Facilities  
Subject to Assessment by  
California State Board of Equalization  
Data Current as of 12-24-02**

**IV. Merchant Electric Generation Facility Projects Under Review by the California Energy Commission**

<b>Item No.</b>	<b>County</b>	<b>Plant Name</b>	<b>SBE No.</b>	<b>Megawatts *</b>	<b>Company Name</b>	<b>Mailing Address</b>
1	San Diego	Palomar Energy Project	E003	546	Palomar Energy LLC	c/o Sempra Energy Resources 101 Ash Street San Diego, CA 92101
2	Santa Clara	Spartan I Energy Center	E006	96	Spartan Power LLC	Not Available
3	Riverside	Inland Empire Energy Center	E001	670	Inland Empire Energy Center LLC	c/o Calpine Corporation 4160 Dublin Blvd. Dublin, CA 94568-3139
4	Merced	Los Banos Voltage Support Facility	E009	80	Cummins West, Inc	Not Available
5	Kings	Avenal	E008	600	Duke	Not Available
6	Fresno	San Joaquin Valley Energy Center	1140	1,060	San Joaquin Valley Energy Center, LLC	c/o Calpine Corporation 4160 Dublin Blvd. Dublin, CA 94568-3139
7	Alameda	Tesla Power Plant Project	E002	1,120	Midway Power LLC	c/o FPL Energy LLC 700 Universe Blvd. Juno Beach, FL 33408
8	Alameda	East Altamont Energy Center	E004	1,100	East Altamont Energy Center, LLC	c/o Calpine Corporation 4160 Dublin Blvd. Dublin, CA 94568-3139
9	San Mateo	United Golden Gate II	1121	570	United Golden Gate Power Co. LLC	PO Box 2511
10	Santa Clara	Gilroy Energy Center II	1129	135	Gilroy Energy Center	c/o Calpine Corporation
11	Riverside	Blythe Energy II	1136	520	Blythe Energy, LLC	c/o FPL Energy LLC
12	Placer	Roseville Energy Facility	E007	900	Calpine/Enron	Not Available

\* Based on the most recent data available from the California Energy Commission