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Registration Electric Service Providers

The Electric Service Provider (ESP) that contracts with the consumer to provide electrical energy is selling the electrical energy to the consumer and is an electric utility required to collect, report and remit the surcharge, notwithstanding any collection or billing arrangements the ESP may have with others. The electric utility that delivers the electrical energy to the consumer on behalf of the ESP is not selling the electrical energy to the consumer. 12/24/97. (M99-1).

December 24, 1997

Ms. (Redacted)

Re: Electrical Energy Surcharge Law

Dear Ms. (Redacted)

Your October 10 and (redacted) letters were recently referred to the Legal Division for reply. I understand from your letters and my discussion with Board staff that you are inquiring regarding how the Energy Resources Surcharge Law will apply once the deregulation of the electrical energy industry is implemented and are requesting that the energy surcharge be applied to the distribution volumes of electrical energy.

As you are aware, the Energy Resources Surcharge Law (Rev. & Tax. Code § 40001 et seq.)¹ imposes a surcharge on the consumption in this state of electrical energy purchased from an electric utility on or after January 1, 1975 (Rev. & Tax Code § 40016). While the ultimate liability for the surcharge is on the person consuming electrical energy in this state purchased from an electric utility (Rev. & Tax Code § 40018), every electric utility making sales of electrical energy to consumers in this state is required to collect the surcharge from each consumer (other than a consumer that is an electric utility) at the time it collects its billing from the consumer (Rev. & Tax. Code § 40019) and report and remit the surcharge to the Board of Equalization (Rev. & Tax Code §§ 40061 et seq.). Therefore, notwithstanding deregulation, only the electric utility actually selling the electrical energy to a consumer is required to collect, report and remit the surcharge to the Board of Equalization.

For example, using the scenario in your October 10 letter, if a customer chooses an alternative energy supplier (referred to as an Electric Service Provider or "ESP") on or after January 1, 1998, PG&E, will deliver the energy and bill the customer/consumer in accordance with CPUC approved tariffs for distribution services. However, the ESP will be the electric utility selling the electrical energy to the customer/consumer, and the ESP, not PG&E, will be required under

¹A copy of the Board's pamphlets setting forth the Energy Resources Surcharge Law and Regulations are enclosed for your convenience.

Rev. & Tax Code § 40019 to collect, report and remit the surcharge. PG&E will be responsible under Rev. & Tax Code § 40019 to collect, remit and report the surcharge for those customers to whom PG&E is selling the electrical energy, i.e., those customers who do not choose an ESP. However, PG&E will not be required to report concerning customers to whom it only provides delivery of electrical energy.

Only one entity is required to collect and remit the surcharge, and that is the electric utility that sells energy to a consumer. The law does not provide for the surcharge to be applied to the distribution volumes of electrical energy. Thus, when the law is applied correctly, the surcharge is collected only once, regardless of an electric utility's billing practices.

While the current Electrical Energy Surcharge Return does not specifically refer to the sale of electrical energy to an ESP, energy sales by PG&E to ESP's should be reported on line 4 of the return as a deduction. The Board's staff is in the process of revising the instructions to the return to make this clear.

I hope that this letter answers your questions and concerns. Please contact me at the above address if you have any further questions.

Sincerely,

Monica Gonzalez Brisbane
Tax Counsel

Cc: Mr. Monte Williams, Chief
Excise Taxes Division (MIC: 56)