STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DRAFT

CALIFORNIA STATE BOARD OF EQUALIZATION

SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40

In the Matter of the Petition for Reassessment of the 2015 Unitary Value for: **Panoche Energy Center LLC (1152)** Petitioner	Appeal No.: SAU 15-022 Case ID No.: 908350 Nonappearance Hearing Date: December 16, 2015

Representing the Parties:

For the Petitioner: Dannie A. Tobias, Dan Tobias & Associates, Inc.
Neal Panish, Attorney at Law

For the Respondent: Sonya Yim, Tax Counsel
Attorney for State-Assessed Properties Division

Richard Reisinger, Business Taxes Administrator III
State-Assessed Properties Division

Counsel for Appeals Division: Louis A. Ambrose, Tax Counsel IV

VALUES AT ISSUE

	Value	Penalty	Total
2015 Board-Adopted Unitary Value	$312,300,000	$0	$312,300,000
Petitioner's Requested Unitary Value	$257,950,285	$0	$257,950,285
Respondent's Recommendation On Appeal	$312,300,000	$0	$312,300,000
Petitioner's Revised Requested Value	$220,255,497	$0	$220,255,497
Respondent's Revised Recommendation	$294,100,000	$0	$294,100,000

FACTUAL BACKGROUND

The Panoche Energy Center facility, owned by Panoche Energy Center, LLC (petitioner) is a "peaker" facility which operates its electricity generating equipment only during the hours of highest daily, weekly, or seasonal demand. The facility utilizes four General Electric (GE) LMS 100 natural

gas-fired combustion turbines with fast-start capability and has a total California Energy Commission rating of 400 megawatts (MW). This facility began providing peaking generation to Pacific Gas and Electric Company (PG&E) in July 2009 pursuant to a 20-year tolling or power purchase agreement (PPA). The 2015 Board-adopted value was based on a 50-percent reliance on the Replacement Cost Less Depreciation approach to value (ReplCLD or cost approach) and a 50-percent reliance on the Capitalized Earnings Ability approach to value (CEA or income approach).

LEGAL ISSUE 1

Whether petitioner has shown that the State-Assessed Properties Division's (respondent) heat rate adjustment calculation does not account for all functional obsolescence.

FINDINGS OF FACT AND RELATED CONTENTIONS

Petitioner asserts that respondent did not properly calculate the heat rate calculation because respondent used the wrong denominator when comparing the subject property's heat rate of 9,368 to a state-of-the-art facility's heat rate of 9,120, and determined a change of 2.6434 percent. Petitioner contends that the formula should compare the difference between the two heat rates to a state- of-the-art facility's heat rate, rather than the subject property's heat rate, which results in a heat rate adjustment of 2.7193 percent.

Respondent states that it calculates functional obsolescence through a heat rate adjustment by comparing a facility's heat rate to the published standard heat rate. Respondent asserts that petitioner provides no support for its calculation which assumes that any heat rate inefficiency directly results in the same degree of obsolescence in the subject facility.

APPLICABLE LAW AND APPRAISAL PRINCIPLES

Burden of Proof

Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.) Petitioner has the burden of proof as to all issues of fact. (Cal. Code Regs., tit. 18, § 5541, subd. (a).)

ANALYSIS AND DISPOSITION

Here, petitioner provides no evidence showing that its calculation is a better measure of functional obsolescence and, thus, has failed to meet its burden of proof.

///

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DRAFT

LEGAL ISSUE 2

Whether petitioner has shown that the Board's standard "age-life" depreciation tables should be adjusted for petitioner's operating and overhaul costs.

FINDINGS OF FACT AND RELATED CONTENTIONS

Petitioner contends that respondent's table-based age-life method does not consider operational hours and starts and stops which occur more frequently with a peaker facility, that respondent did not account for planned maintenance and overhaul expenses, and that respondent incorrectly assumed that the subject property has zero operating hours as a new facility as of the lien date.

Respondent explains that the age-life method determines the age indicated by the condition and utility of a structure, by assuming that a new, modern, functionally efficient plant will usually earn more net income than a similar older plant and thus respondent uses an income adjustment factor to calculate decreasing net income over the expected life of the property. Respondent contends that petitioner's requested adjustment would not be proper unless the costs were extraordinary, unforeseen, major expenses, but that petitioner has not shown evidence of such expenses. Respondent also states that it valued petitioner's property as a six-year-old operating plant.

APPLICABLE LAW AND APPRAISAL PRINCIPLES

Burden of Proof

Please see Applicable Law and Appraisal Principles under Legal Issue 1 above.

ReplCLD Value Indicator

Property Tax Rule 6,[1] subdivision (d) provides that generally the ReplCLD value indicator is estimated by applying trend factors—price level changes, including the application of "current prices to the labor and material components of a substitute property capable of yielding the same services and amenities, with appropriate additions as specified . . . ." The resulting adjusted cost amount is "reduced by the amount that such cost is estimated to exceed the current value of the reproducible property by reason of physical deterioration, misplacement, over- or underimprovement, and other forms of

[1] All references to Property Tax Rules are to sections of title 18 of the California Code of Regulations.

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DRAFT

depreciation or obsolescence." (Property Tax Rule 6, subd. (e).) In general, the ReplCLD value indicator recognizes three types of depreciation: physical deterioration, functional obsolescence, and external, or economic, obsolescence, through the application of the Board's replacement cost new trend factors and percent-good factors. Petitioner has the burden of establishing the existence of any additional or extraordinary obsolescence. (See Property Tax Rule 6, subds. (d) & (e); Assessors' Handbook section 502, *Advanced Appraisal* (December 1998) (AH 502), pp. 20-21; *Unitary Valuation Methods* (March 2003) (UVM), p. 30.)

ANALYSIS AND DISPOSITION

Petitioner does not provide any evidence to show that respondent's method fails to account for functional obsolescence and economic obsolescence. As such, petitioner fails to meet its burden of proof because it does not fully account for all forms of depreciation claimed and it does not show that respondent's method does not consider the conditions under which a peaker facility operates.

LEGAL ISSUE 3

Whether petitioner has shown that the 2015 Board-adopted unitary value should be adjusted to reflect excess operating costs relating to carbon/greenhouse gas fees.

FINDINGS OF FACT AND RELATED CONTENTIONS

Petitioner states that current regulations require the reduction of greenhouse gas (GHG) emissions but the existing PPA is a legacy contract and that PG&E informed petitioner that, as of January 1, 2014, PG&E would not be including an "adder" to cover GHG compliance costs. Petitioner asserts that carbon/GHG fees will increase and under the PPA petitioner is unable to recover "compliance costs in excess of any interim relief."

Respondent states that, after the appeals conference, petitioner submitted information and a revised forecast projecting additional anticipated carbon gas fees. Based on this information, respondent recommends adjustments that result in an $18,200,000 reduction to the 2015 Board-adopted unitary value.

///

///

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DRAFT

APPLICABLE LAW AND APPRAISAL PRINCIPLES

Burden of Proof

Please see Applicable Law and Appraisal Principles under Legal Issue 1 above.

ANALYSIS AND DISPOSITION

Respondent's adjustment is presumed correct and petitioner has provided no evidence to meet its burden of showing error in the amount of that adjustment. Thus, we find that the adjustment is appropriate.

LEGAL ISSUE 4

Whether petitioner has shown that the value of the leased land on which the facility is sited was improperly included in the 2015 Board-adopted unitary value.

FINDINGS OF FACT AND RELATED CONTENTIONS

Petitioner contends that the leased land was double-assessed because it did not undergo a change in ownership and is not subject to reappraisal and that the land is locally assessed to the owner.

Respondent states that the California Constitution grants the Board assessment jurisdiction over property owned or used by companies that transmit or sell gas or electricity and that the Fresno County Assessor's Map shows that this land is assessed by the Board.

APPLICABLE LAW AND APPRAISAL PRINCIPLES

Burden of Proof

Please see Applicable Law and Appraisal Principles under Legal Issue 1 above.

ANALYSIS AND DISPOSITION

Petitioner provides no evidence and fails to meet the burden of proof that the leased land has been double-assessed.

LEGAL ISSUE 5

Whether petitioner has shown that respondent erred by using a 24-year remaining economic life.

FINDINGS OF FACT AND RELATED CONTENTIONS

Petitioner states that the facility has experienced a number of major design and equipment failures and that major operating components have failed due to design deficiencies. Petitioner asserts that the useful life of the facility will end in August 2029 and that respondent's estimate that the PPA

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DRAFT

will be renewed for an additional 10 years is unlikely given the construction of new projects. Petitioner asserts that an investor, developer, or owner would not be able to project the state-of-the-art heat rates, which drive the facility's future operations, at the termination of the PPA in 2028. Petitioner notes that another facility, at the termination of its own PPA, was not able to secure another PPA or operate in the open market due to its higher heat rate.

Petitioner notes that its facility is not an Investor-Owned Utility (IOU) that may operate beyond the original PPA period because its facility's "economics" are based solely on the management of the "tolling PPA and its operating and maintenance expenses." Petitioner states that neither respondent nor this Board has identified which service life study was relied on and asserts that the UVM "clearly acknowledges" that service life studies do not account for all economic obsolescence, including legal limitations on use which are created by the terms of the PPA. Petitioner contends that it is unreasonable to assume that a new PPA would include the same terms and conditions as the existing PPA. Petitioner also contends that respondent makes a "misleading argument regarding regulatory approval required for [a] facility shut down" and that, according to the instructions issued by the California Independent System Operator, petitioner has more than ample time to provide the required regulatory notice if and when it decides to shut down.

Respondent notes that similarly situated facilities tend to operate beyond the term of the original PPA and that most of these facilities tend to enter into another PPA for a percentage of the facility's power output. Respondent states that petitioner has not provided any indication of a notification or of an intent to shut down its facility. Respondent asserts that periodic maintenance tends to maintain operational parameters around a facility's original heat rate and that it is not aware of any current advancement in turbine technology with a significantly lower heat rate than petitioner's turbines. Respondent asserts that there are numerous older facilities currently operating with significantly higher heat rates than petitioner's facility.

APPLICABLE LAW AND APPRAISAL PRINCIPLES

Burden of Proof

Please see Applicable Law and Appraisal Principles under Legal Issue 1 above.

///

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DRAFT

Depreciation and the Replacement Cost Approach

In general, the ReplCLD value indicator recognizes three types of depreciation: physical deterioration, functional obsolescence, and external, or economic, obsolescence, through the application of the Board's replacement cost new trend factors and percent-good factors. Economic obsolescence is the diminished utility of a property due to adverse factors external to the property being appraised and is incurable by the property owner. (See Assessors' Handbook section 501, *Basic Appraisal* (January 2002), pp. 81-83.)

Percent-good Factors

Percent-good factors are used to determine the remaining value of a property as a basis for adjusting the replacement cost new (RCN) into an indicator of fair market value and are complements of physical deterioration and functional obsolescence. The factors used for a given property type are derived from the expected economic life of that property type and are based on service life studies which survey industry participants that own specific types of property. The factors can measure some, but not all, economic obsolescence, including increased competition, unexpected technological innovation, legal limitations on use, and environmental factors. (UVM, p. 30.) The four other variables that have an effect on percent-good factors are: the rate of return, the method of calculation, the survivor curve, and the presence of an income adjustment factor. Petitioner has the burden of establishing the existence of any additional or extraordinary obsolescence. (See Property Tax Rule 6, subds. (d) & (e); AH 502, pp. 20-21; UVM, p. 30.)

ANALYSIS AND DISPOSITION

Petitioner does not provide any evidence and fails to meet its burden of proof to overcome the presumption that respondent correctly determined a 24-year remaining economic life for petitioner's facility.

LEGAL ISSUE 6

Whether petitioner has shown that the 2015 Board-adopted unitary value incorrectly includes the value of exempt intangible assets.

FINDINGS OF FACT AND RELATED CONTENTIONS

Petitioner contends that the following intangibles have been improperly included in the CEA

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DRAFT

indicator: Working Capital, Trained and Experienced Workforce, Corporate Overhead, GE Swap, and Name Recognition and Expertise. Petitioner contends that, in *Service America Corporation v. County of San Diego* (1993) 15 Cal.App.4th 1232, 1238, the court held that "competent" management, a large cadre of employees, and substantial experience and "goodwill" were intangibles that contributed to the going business concern that must be deducted from the income stream. Petitioner states that, in *SHC Half Moon Bay v. County of San Mateo* (2014) 226 Cal.App.4th 471, the court allowed the deduction of a management fee and held that the assessor erred by not deducting the value of a hotel's workforce from the income stream. Petitioner maintains that the workforce was not "exceptional" and that the court rejected the Assessor's claim that the "intangible value was removed by deducting the management and franchise fee" from the income stream.

Petitioner contends that respondent erroneously interprets Property Tax Rule 8, subdivision (e) to require the exclusion of income to compensate unpaid or underpaid management only for superior management that was underpaid. Petitioner contends that the Supreme Court, in *Elk Hills Power, LLC v. Board of Equalization* (2013) 57 Cal.4th 593 (*Elk Hills*), held that emission reduction credits (ERCs) were not nontaxable intangible assets because the evidence showed that the sole purpose of the surrendered ERCs was "to enable the taxable property in question to function and produce income as a power plant." Because the taxpayer had "not articulated a basis for attributing to the surrendered ERCs a separate stream of income related to enterprise activity," the Court held that there was no basis for concluding the Board erred by not imputing some independent value to the ERCs that would be deducted from the total income. Petitioner asserts that the Court did not hold that ERC value is never deductible and that here respondent is required to deduct the value of the ERCs, which petitioner claims were "excess" ERCs, because these credits contribute to the income stream.

Petitioner argues that the GE Swap is a "favorable operating contract" because it "minimizes losses attributable to non-operation in the event of an outage," which is an intangible that cannot be accounted for by only deducting the cost of a replacement turbine.

Respondent states that, in *Elk Hills*, the Court held that the Board was required to deduct the estimated costs of the applied ERCs at issue from the ReplCLD indicator because the Board had previously added those estimated costs to that indicator but that the Board is not required to make a

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DRAFT

deduction if a taxpayer did not produce evidence that such intangible value was included. Respondent notes that it did not include a separate value in its ReplCLD indicator for either "name recognition for development" or "internal intrinsic capabilities" item and thus no deduction is required.

Respondent asserts that the *Elk Hills* Court differentiated between intangible assets and rights that indirectly enhance the value of tangible property by authorizing the beneficial and productive use of the tangible property (indirect intangibles) and intangible business or enterprise assets that directly enhance the business income stream, but are not necessary to the beneficial and productive use of the tangible property (direct intangibles). Respondent states that the court held that indirect intangibles are not deductible but that direct intangibles are deductible if the taxpayer adequately proves that the direct intangibles have created a separate stream of income or has enhanced the income stream above that which ordinarily would be reasonably expected from prudent business operations. Respondent asserts that Property Tax Rule 8 assumes typical business operations and, only when the taxpayer can demonstrate that an intangible asset is directly responsible for superior income, is a deduction for the intangible asset appropriate. Respondent addresses each of the types of intangible property identified by petitioner as follows:

- Respondent's CEA calculation properly adjusts for working capital requirements on line 17 of the discounted cash flow calculation and petitioner provides no evidence that this was improper.
- Petitioner has not provided any evidence to show that its "trained and experienced workforce" and "name recognition and expertise" produced an income superior to that which would have been produced with an ordinary workforce and ordinary expertise.
- Respondent calculated a discounted cash flow which assumes that all appropriate expenses, including corporate overhead, are included in the projected expenses provided by petitioner which are within a normal range compared with other similar properties.
- The "GE Swap" provides the facility with a replacement turbine in the event of an outage and thus is a type of insurance or extended warranty. No value for this item is included in the cost approach, and the value is already accounted for in the CEA value indicator by allowing an appropriate expense.

///

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DRAFT

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

APPLICABLE LAW AND APPRAISAL PRINCIPLES

Revenue and Taxation Code section 110

Revenue and Taxation Code (R&TC) section 110, subdivisions (d) and (e) set forth the limitations on taxation of intangible value and provide in part that:

> (d) Except as provided in subdivision (e), for purposes of determining the "full cash value" or "fair market value" of any taxable property, all of the following shall apply:
> (1) The value of intangible assets and rights relating to the going concern value of a business using taxable property shall not enhance or be reflected in the value of the taxable property.
> (2) If the principle of unit valuation is used to value properties that are operated as a unit and the unit includes intangible assets and rights, then the fair market value of the taxable property contained within the unit shall be determined by removing from the value of the unit the fair market value of the intangible assets and rights contained within the unit.
> [¶] . . . [¶]
> (e) Taxable property may be assessed and valued by assuming the presence of intangible assets or rights necessary to put the taxable property to beneficial or productive use.

Income Approach to Value

Property Tax Rule 8, subdivision (a) states that "the income approach is used in conjunction with other approaches when the property under appraisal is typically purchased in anticipation of a money income and either has an established income stream or can be attributed a real or hypothetical income stream by comparison with other properties." Subdivision (b) of Property Tax Rule 8 provides that the income stream is capitalized and discounted to its present worth, and subdivision (c) of the rule provides that "the amount to be capitalized is the net return which a reasonably well-informed owner and reasonably well informed buyers may anticipate on the valuation date that the taxable property existing on that date will yield under prudent management and subject to legally enforceable restrictions as such persons may foresee as of that date."

Freeport-McMoran Resource Partners v. *Lake County* (1993) 12 Cal.App.4th 634

The Court of Appeal in *Freeport-McMoran* found that the subject power plant would only be offered for sale in conjunction with its PPA because the PPA was integral to the economic viability of the plant and a prospective purchaser would be willing to pay more for a plant with a PPA because it guarantees a higher income. Thus, the court held that the proper market for the valuation of the taxpayer's power plants was a market consisting of existing facilities with similar power purchase agreements. The court rejected the taxpayer's arguments that the income generated from the PPA was

DRAFT

nontaxable intangible property and that including the value of a PPA "improperly taxes appellant's enterprise activity or business skill."

Watson Cogeneration Co. v. *Los Angeles County* (2002) 98 Cal.App.6th 1066

The Court of Appeal in *Watson Cogeneration* held that the assessor properly included the value of a PPA in the calculation of the income approach value indicator for the assessment of a cogeneration power facility developed as a "qualifying facility" that was assured of selling its output to a public utility pursuant to a 20-year contract that provided for above-market prices for its electricity. The court found that the highest and best use of the property was as a qualifying facility which guaranteed the sale of its output at an above-market price and, thus, the assessor properly used actual income under the contract rather than imputed income to value the property.

Elk Hills Power LLC v. State Board of Equalization (2013) 57 Cal.4th 593

In *Elk Hills*, the Supreme Court held that the Board improperly assessed the intangible value of the taxpayer's ERCs in violation of R&TC section 110 when it added the replacement cost of the ERCs to the ReplCLD value indicator. (*Elk Hills*, 57 Cal.4th at p. 616.) The Court found that ERCs fall within the class of intangibles described in R&TC section 110, subdivision (d)(1), because the ERCs are intangible assets that enable the day-to-day functioning of the power plant and, therefore, necessarily relate to the going concern value of that business under either definition of going concern value. (*Id.* at p. 602.) The Court further held that under the income approach "not all intangible rights have a quantifiable fair market value that must be deducted" (*Id.* at p. 617) and that, "[t]here was no credible showing that there is a separate stream of income related to enterprise activity or even a separate stream of income at all that is attributable to the ERCs in this case." (*Id.* at p. 602.) Thus, the Court concluded that the Board was not required to deduct a value attributable to the ERCs from the CEA value indicator. (*Ibid.*)

ANALYSIS AND DISPOSITION

Here, petitioner has not provided evidence that the claimed intangibles directly enhance the income stream and has not provided any evidence or authority to support its position that the GE Swap constitutes a "favorable operating contract" for which a deduction is required. Petitioner has not presented evidence to meet its burden of proof that the ReplCLD indicator included value for those

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DRAFT

intangible rights or assets.

LEGAL ISSUE 7

Whether petitioner has shown that respondent understated projected operating expenses by failing to consider all capital expenditures in determining its CEA value indicator.

FINDINGS OF FACT AND RELATED CONTENTIONS

Petitioner contends that respondent understated projected operating expenses by not considering capital expenditures and that respondent "for the most part" considered petitioner's "prior year actuals except for a certain operating expense" which increased the CEA value indicator. Petitioner also contends that a deduction should be made for additional expected operating costs and capital expenditures consisting of unreimbursed carbon/GHG fees as described in Legal Issue 3 above.

Respondent states that it used petitioner's own projected operating and capital expenditures from the property statement in calculating the CEA indicator. Respondent states that petitioner's projections included both operating and capital expenditures and that petitioner has not provided any evidence that its own property statement did not account for all expenses.

APPLICABLE LAW AND APPRAISAL PRINCIPLES

Burden of Proof

Please see Applicable Law and Appraisal Principles under Legal Issue 1 above.

ANALYSIS AND DISPOSITION

As discussed in Legal Issue 3 above, respondent made appropriate adjustments to the value indicators. Petitioner provides no evidence that the property statement failed to account for or understated any operating expenses and, therefore, has not met its burden of proof with respect to potential adjustments related to those expenses.

LEGAL ISSUE 8

Whether petitioner has shown that the CEA value indicator should reflect an economic life determined by the term of the current PPA.

FINDINGS OF FACT AND RELATED CONTENTIONS

Petitioner asserts that there is no market data to support respondent's position that the PPA will be renewed at comparable terms and rates for 10 years, which assumes that the ratepayers are willing to

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DRAFT

pay more for electricity from a less efficient plant, and that respondent "makes no overhaul assumptions at the termination of the PPA." Petitioner also argues that the use of an economic life beyond the PPA term for the subject facility is improper because it ignores a "legal limitation on use" which constitutes economic obsolescence. Petitioner asserts that the court in *Freeport-McMoran* rejected a similar argument made by the taxpayer, a non-IOU power plant, that a PPA should be disregarded in determining the fair market value of the taxpayer's facility because the PPA was "integral to the economic viability of the plant" and that the taxpayer's "income for the 10-year period in question is fixed by the . . . contract." Petitioner asserts that respondent has not provided any evidence that "it is foreseeable that the market will need additional peaking power" when the PPA terminates and that there is no evidence to suggest that peakers will continue to fulfill integration needs for the electricity system.

Petitioner states that PG&E will continue to face procurement mandates for renewable energy and that, "given the likely advancements in technology by the year 2029," it is speculative whether the subject facility will be able to satisfy PG&E's requirements at that time. Petitioner states that it has "specific knowledge" that its turbine manufacturer is developing alternative platforms with improved heat rates. Petitioner disputes respondent's claim that petitioner cited "plant closures of 50- and 60-year-old plants that are outmoded and inefficient." Finally, petitioner states that it is not aware of any non-IOU facilities that have extended or renewed their PPAs for periods greater than 1 to 2 years.

Respondent states that petitioner's claim is contrary to the market environment for peaking power and that petitioner cites the closures of outdated and inefficient 50- and 60-year-old plants as evidence that petitioner's facility will cease to operate at the termination of the PPA. Respondent asserts that government mandates to increase renewable power production make it foreseeable that the market will need additional peaking power and thus it is reasonable to assume that petitioner's facility will operate beyond the termination of the current PPA.

APPLICABLE LAW AND APPRAISAL PRINCIPLES

Burden of Proof

Please see Applicable Law and Appraisal Principles under Legal Issue 1 above.

///

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DRAFT

ANALYSIS AND DISPOSITION

Petitioner's only support for its position are broad assertions that there is no market data to support respondent's position that the PPA will be renewed, that there have been a number of older projects that simply shut down, and that a number of new projects are coming on line that will replace older units that are less efficient. Thus, petitioner has not met its burden of proof. Additionally, contrary to petitioner's implication, the *Freeport-McMoran* decision did not address any issues related to the economic life of a plant based on the term of a PPA.

LEGAL ISSUE 9

Whether petitioner has shown that respondent erred by placing reliance on two value indicators.

FINDINGS OF FACT AND RELATED CONTENTIONS

Petitioner contends that the AH 502 states that respondent's "explicit weighting methodology" as "an arithmetic mean of value" is generally recognized as inappropriate" and that the methodology is not supported by market data and "incorrectly implies" that "the value indicators have equal validity." Petitioner contends that the income approach is the primary and only indicator of value in the electric generation industry. Petitioner asserts that a "substantial 27.01% variance" between the two value indicators is a "strong indicator of an improper weighted average and an improper application of the valuation approaches."

At the appeals conference, respondent explained that this Board has requested that explicit reliance (or the weight given each) on each indicator of value be listed on the Appraisal Data Report and that such reliance is a valid and well-recognized appraisal practice.

APPLICABLE LAW AND APPRAISAL PRINCIPLES

Burden of Proof

Please see Applicable Law and Appraisal Principles under Legal Issue 1 above.

Reconciliation of Value Indicators

Property Tax Rule 3 requires that, in estimating value, the assessor shall consider one or more of the approaches to value "as may be appropriate for the property being appraised," which includes the comparative sales approach, the replacement or reproduction cost approach (e.g., ReplCLD valuation methodology), or the income approach. The final value estimate reflects the relative weight that the

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DRAFT

appraiser assigned, either implicitly or explicitly, to each approach. (AH 502, p. 112.)

ANALYSIS AND DISPOSITION

Petitioner has presented no legal or appraisal authority to support its position that it is improper to place reliance on two value indicators in the determination of a final opinion of value, whereas Property Tax Rule 3 and AH 502 contemplate such a methodology and provide guidance in its application. As discussed above, petitioner has not met its burden of proving that the ReplCLD value indicator is unreliable for any of those reasons. Based on the foregoing, we conclude that petitioner has not met its burden of proof to overcome the presumption that respondent correctly relied upon both indicators.

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DRAFT

STATE BOARD OF EQUALIZATION
PROPERTY TAX APPEAL

DECISION

Accordingly, the petition for reassessment is granted in part and the reduction of the 2015 Board-adopted unitary value of $312,300,000 to $294,100,000 is affirmed.*

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

* The decision was rendered in Sacramento, California on December 16, 2015. This summary decision document was approved on February 23, 2016, in Culver City, California.

DRAFT